



## Metropolitan Cases

### ***San Diego County Water Authority v. Metropolitan Water District of Southern California (San Francisco Superior Court)***

The parties have completed their briefing on Metropolitan's motion to dismiss the Imperial Irrigation District and Utility Consumers Action Network, which was scheduled to be heard on August 30, 2011. However, the hearing has been rescheduled for September 22. A case management conference is also scheduled for that day to discuss future steps in this litigation. In the meantime, the San Diego County Water Authority (SDCWA) has filed a pleading in which it notified the court and other parties of its intent to add additional claims against Metropolitan either by amending its current complaint or through filing additional actions. The additional claims apparently will include allegations of breach of fiduciary duty of the "majority members" of Metropolitan's board; alleged improper exclusion of SDCWA's payments for purchase of water under the Exchange Agreement from its preferential rights calculation; alleged illegality of Metropolitan's Rate Structure Integrity provision; and breach of the Exchange Agreement based on Metropolitan's allegedly improper calculation of the price SDCWA pays Metropolitan under that agreement. This pleading was filed on behalf of SDCWA by a new law firm, Kecker & Van Nest, which is now the fourth law firm representing SDCWA in this litigation. (See General Counsel's May and June 2011 Activity Reports.)

### ***San Gabriel Valley Water Quality Authority v. Aerojet-General Corporation, et al. (U.S. District Court)***

This litigation commenced in 2003 and relates to the South El Monte Operable Unit of the San Gabriel Valley Superfund Site (SEMOU). In 2004, several industrial defendants cross-claimed against Metropolitan for liability under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and state law. These parties claimed Metropolitan contributed to the contamination of SEMOU due to the delivery and use of Colorado River water containing perchlorate to recharge the Main San Gabriel Basin. The parties brought similar

claims against Upper San Gabriel Valley Municipal Water District (Upper District), Main San Gabriel Basin Watermaster, and LA County Flood Control District. Later in 2004, the federal court stayed the action to allow a comprehensive mediation process. Because the mediation did not extend to third-party claims, Metropolitan was not a participant. The mediation stay lasted until early 2011, when the court resumed hearing the case to consider settlement agreements reached by the mediating parties.

Several industrial defendants had not settled, and the court granted Metropolitan's request to file motions to dismiss. The bases for the motions to dismiss address fundamental legal issues relevant to other existing or future claims alleging that Metropolitan is responsible for damages from contaminants placed into Metropolitan's source waters by third parties. Metropolitan and Upper District prepared draft briefs asserting that: (1) neither agency arranged for the disposal of a waste and is therefore not subject to liability under CERCLA for perchlorate-related cleanup costs; and (2) neither agency can be liable under state law because the claim does not allege that the agencies violated a mandatory statutory or regulatory duty. Prior to August 31, the due date for the motion, several additional industrial defendants reached settlements in principle with the USEPA, the San Gabriel Basin Water Quality Authority, and the other plaintiffs. Because of these pending settlements, the court vacated the filing date for Metropolitan's motion until after finalization of those settlements. If those settlements are finalized, only three sites will remain in the litigation. If settlement of those sites does not progress, we expect the court to reset a hearing date and briefing schedule for the motions to dismiss.

### ***Unemployment Insurance Benefits (Two Appeals)***

On August 5, 2011, the California Unemployment Insurance Appeals Board affirmed a decision by an administrative law judge, which determined that a former Metropolitan employee was disqualified from receiving benefits since he was fired for



on-duty misconduct. On August 15, 2011, an administrative law judge affirmed the determination by the Employment Development Department that a former Metropolitan employee who ended his employment by retiring is nonetheless eligible for benefits since he was compelled to end his District employment due to the transfer of his wife's place of employment from the Long Beach area to Bishop, California. The Legal Department represented Metropolitan in these matters.

***Management and Professional Employees Association, AFSCME Local 1001 v. Metropolitan (Public Employment Relations Board)***

As previously reported, the Management and Professional Employees Association (MAPA) filed a PERB unfair practice charge on August 31, 2009, alleging Metropolitan violated the Meyers-Milias-Brown Act (MMBA) by purportedly engaging in anti-union conduct towards MAPA employees. Although PERB substantially reduced the scope of the charge in response to Metropolitan's position statements, PERB issued a complaint based on five alleged incidents involving the Assistant General Auditor, who passed away after an extended illness. On February 23-25, 2011, an administrative trial was held before PERB Administrative Law Judge Anne L. Weinman. ALJ Weinman confidentially met with each of the parties at the conclusion of the hearing to encourage settlement. Since ALJ Weinman retired effective at the end of the hearing, PERB reassigned this matter to ALJ Robin W. Wesley to render a decision based on a review of the

transcript, exhibits and briefs. Eventually the parties reached a settlement, which has been executed. Key provisions of the settlement include the withdrawal of the PERB charge, the filling of open management positions and the removal of a document from a personnel file. On August 3, 2011, MAPA withdrew its charge. On August 8, 2011, PERB dismissed the complaint and closed this matter. The Legal Department represented Metropolitan. (See General Counsel's February 2011 Activity Report.)

***Management and Professional Employees Association, AFSCME Local 1001 v. Metropolitan (Public Employment Relations Board)***

On January 6, 2009, the Management and Professional Employees Association (MAPA) filed a PERB unfair practice charge alleging Metropolitan violated the MMBA by purportedly engaging in abusive and anti-union conduct towards MAPA employees within the Water System Operations Group. MAPA sought the issuance of a cease and desist order. On February 5, 2009, Metropolitan filed a position statement seeking dismissal of the charge. MAPA filed an amended PERB charge on March 20, 2009, and the charge was placed in abeyance by PERB on April 28, 2009. After a substantial period of inactivity, PERB closed this matter on July 14, 2011 due to MAPA's withdrawal of the charge. The Legal Department represented Metropolitan.

## Matters Involving Metropolitan

***Solano County Water Agency v. State of California Department of Water Resources (Sacramento Superior Court)***

Metropolitan Legal staff, along with outside counsel, Department of Water Resources (DWR) personnel and representatives of other parties in this litigation continued to participate in mediation discussions. The discussions, which are an outgrowth of settlement discussions requested by Judge Robert Hight (Presiding Judge, Sacramento County Superior Court), are being mediated by James Waldo, who has mediated a number of water and other resources issues in California in which Metropolitan has been involved. Additional dates were scheduled for September 1 and 2,

during which the parties hope to determine whether they will be able to reach an agreement on a settlement in concept. Plaintiffs are north of Delta state water contractors who allege that since they are located in the watershed of origin of State Water Project water, they should not be subject to the shortage provisions of their state water contracts. Metropolitan has coordinated a group of 14 south of Delta state water contractors who intervened in support of DWR. (See General Counsel's May and June 2011 Activity Reports.)