



Metropolitan Cases

AFSCME Local 1902 v. Metropolitan (Public Employment Relations Board)

AFSCME Local 1902 filed a Public Employment Relations Board (PERB) unfair practice charge against Metropolitan on January 30, 2012. The charge alleges Metropolitan violated the Meyers-Milias-Brown Act (MMBA) by unilaterally changing the manner in which it schedules and compensates AFSCME employees for maintenance work performed during shutdowns of Metropolitan facilities. Metropolitan will respond by lodging a position statement seeking dismissal of the charge on the basis that Metropolitan has complied with all MOU and MMBA requirements concerning shutdown work schedules. The Legal Department will represent Metropolitan before PERB in this matter.

John Kitos. v. Metropolitan, et al. (Los Angeles County Superior Court)

As previously reported, Metropolitan employee John Kitos filed a complaint on May 27, 2010 in Los Angeles County Superior Court against

Metropolitan and one manager. Plaintiff alleges four causes of action: wrongful demotion, wrongful demotion/retaliation in violation of public policy, discrimination based on age in violation of the Fair Employment and Housing Act; and intentional infliction of emotional distress. Metropolitan prevailed on its demurrer that was heard on August 4, 2011 challenging three of the causes of action. Consequently, the only portion of the lawsuit remaining at that time was the age discrimination claim against Metropolitan. Then, in response to information disclosed during discovery, the plaintiff filed a request and entry for dismissal with prejudice as to his age discrimination claim on January 18, 2012. The superior court judge has dismissed all causes of action. At this time, there still remains the possibility that plaintiff may appeal the trial judge's earlier granting of Metropolitan's demurrers to the Court of Appeal. The Legal Department has represented and will continue to represent Metropolitan in this litigation. (See General Counsel's July and December 2011 Activity Reports.)

Matters Involving Metropolitan

Sacramento Regional County Sanitation District v. Regional Water Quality Control Board and State Water Resources Control Board (Sacramento Superior Court)

At the end of 2010, the Central Valley Regional Water Quality Control Board (Regional Board) ordered a new discharge permit for the Sacramento Regional County Sanitation District's (SRCSD) wastewater plant on the Sacramento River. That plant is by far the largest wastewater plant in the Central Valley, with an average permitted capacity of 181 million gallons per day. The plant provides only a secondary level of treatment and, among other water quality concerns, its discharge of ammonia has been linked to food web impacts throughout the Delta. The new discharge permit will require nitrification/denitrification upgrades and tertiary filtration.

In January of last year, SRCSD appealed the Regional Board's order to the State Water Resources Control Board (State Board), and that appeal is pending. In October, the State Board adopted an order providing for "on own motion" review of the appeal, which means the normal timeframe for rendering a decision – within 270 days of the date the petition is deemed complete – is lifted. The State Board anticipates issuing a draft decision on the petition in late spring of this year.

In a surprising move, SRCSD filed a lawsuit on December 30 in Sacramento Superior Court against the Regional and State Boards seeking to overturn and relax the new discharge permit. SRCSD also requested a January 23 ex parte court hearing to stay the new permit requirements concerning tertiary filtration treatment pending resolution of the litigation.



The timing of the litigation is highly unusual because SRCSD's administrative appeal for review of the new permit is pending before the State Board. SRCSD justifies the action based on an argument that because the State Board did not act on the appeal within the normal 270-day clock, which expired on December 23, 2011, SRCSD's appeal was effectively denied.

Metropolitan and other water agencies that participated as "designated parties" in the Regional Board permit proceedings moved to intervene in the case. Meanwhile, SRCSD and the Regional Board entered into a stipulation to stay the litigation pending completion of the State Board's review. The stipulation would also stay, by around six months, certain compliance requirements relating to tertiary filtration. The water agencies opposed the stipulated stay on the grounds that the court lacks jurisdiction over the permit while the administrative appeal remains pending before the State Board.

At the January 23 hearing, Sacramento Superior Court Judge Michael Kenny granted intervenor status, over SRCSD's objections, to Metropolitan and the other export water agencies. The judge, however, sided with SRCSD in granting the stay order. With the stay order now in place, no further action will occur in Superior Court until after the State Board has completed its review. (See General Counsel's September 2011 Activity Report.)

Wastewater Treatment Plant Discharge Permit Proceedings for Central Contra Costa Sanitary District and Vallejo Sanitation & Flood Control District

Last fall, the San Francisco Regional Water Quality Control Board (SF Regional Board) issued tentative discharge permits for the Central Contra Costa Sanitary District's (CCCSD) wastewater treatment plant and for the Vallejo Sanitation & Flood Control District's (Vallejo) wastewater treatment plant. Both of these plants discharge to the Bay-Delta and, like the Sacramento Regional County Sanitation District's plant (see separate report), both plants provide only a secondary level of treatment which does not include ammonia removal.

The CCCSD plant discharges, on average, 40 million gallons per day (mgd) of treated sewage into Suisun Bay. Suisun Bay lies at the confluence of the Sacramento and San Joaquin Rivers, forming the western tip of the

Sacramento-San Joaquin Delta. The Vallejo plant discharges, on average, 15.5 mgd to the Napa River and Carquinez Strait, just west of Suisun Bay. Both plants discharge to habitat occupied by Delta smelt and longfin smelt. The tentative permits for the CCCSD plant and Vallejo plant do not require ammonia removal. Ammonia discharged to the Delta has been shown to be impairing the base of the food web that supports aquatic life throughout the Delta.

Metropolitan staff participated with staff from other water agencies in developing detailed comments on the tentative permits. The comments call for revisions in the permits to provide for ammonia removal, or in the alternative, for the SF Regional Board to defer issuing a final permit until completion of further studies on the effects of ammonia from these two dischargers.

This month, the SF Regional Board issued its responses to comments on the tentative permits. The SF Regional Board revised the permits to respond to some of the water agencies' comments, but did not agree to require ammonia removal at this time. Metropolitan and the other water agencies submitted additional comments restating and further documenting our concerns, and held meetings with CCCSD and the SF Regional Board to discuss and agree on specific studies that could be undertaken in the near term. Staff is hopeful that agreement will be reached with both dischargers on ammonia and ammonia treatment studies that can be included as requirements of the permits. These studies would further the science on ammonia effects and require the dischargers to immediately begin planning work for ammonia removal facilities. Both discharge permits will be considered by the SF Regional Board at its February 8, 2012 meeting. (See General Counsel's October 2011 Activity Report.)

Grand Canyon Trust v. U.S. Bureau of Reclamation, et al. (U.S. Court of Appeals for the Ninth Circuit)

In December 2007, Grand Canyon Trust (Trust) filed litigation in the U.S. District Court for the District of Arizona challenging the federal government's operation of Glen Canyon Dam. The Trust's lawsuit includes multiple counts, including that Dam operations violate the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA) through its



determination of release schedules and resulting effects on the endangered humpback chub native fish species. The claim of greatest concern to Metropolitan alleged that Reclamation's process for annual operational decisionmaking (Annual Operating Plans, or AOPs) must include annual ESA and NEPA consultations and documentation. Metropolitan intervened in the case to assert that such annual consultations are not required by law and would cause unnecessary delay and uncertainty in Reclamation's decisionmaking for River operations.

On March 29, 2011, the court issued a final ruling in the case, upholding all of the federal agencies' prior decisionmaking for Glen Canyon Dam operations, which addressed details of schedules and mitigation for releases from the Dam. The Trust filed notice of appeal to the Ninth Circuit Court of Appeals and unsuccessfully sought immediate injunctive relief from that court.

On January 4, 2012, Metropolitan jointly submitted Intervenor's Combined Joinder and Supplemental Answer Brief in support of the United States' answering brief in the appeal. Metropolitan staff attorneys participated in drafting portions of the brief, which was written and submitted jointly with the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, Colorado River Commission of Nevada, Southern Nevada Water Authority, Central Arizona Water Conservation District, New Mexico Interstate Stream Commission, Colorado River Energy Distributors Association, and Imperial Irrigation District. The Intervenor's brief argued that the AOPs should not be subject to annual ESA or NEPA review, and that Glen Canyon Dam operations should remain within the purview of the agencies charged with its management.

Oral argument for the appeal has not yet been set.

Items of Interest

Finance

Legal Department attorneys reviewed the water rate and budget proposals presented to the Board in January for conformity with the existing water rate structure and legal requirements. Together with Finance staff, they examined bond covenants and reporting requirements to assure continuing compliance following the change to modified accrual accounting for budgeting and reporting purposes.

Annual Statement of Economic Interests Form 700

The Office of the General Counsel has emailed and/or mailed a notice, an interactive version of the Form 700 (2011-12), and a Reference Pamphlet prepared by the Fair Political Practices Commission (FPPC). The Office of the General Counsel continues to assist and answer questions filers may have. In light of the recent changes made by the FPPC regarding gift rules, we encourage filers to complete their forms as soon as possible in order to address any issues that may require clarification. Please remember the deadline for your filing is **Thursday March 15, 2012**.