



## Metropolitan Cases

### ***J.R. Filanc Construction Co., Inc. v. Metropolitan (Los Angeles County Superior Court)***

On February 9, 2012, the J.R. Filanc Company filed a complaint against Metropolitan in Los Angeles County Superior Court alleging that Metropolitan breached a construction contract between the parties by failing to pay Filanc “acceleration” costs associated with its work on the Inlet Conduit Relocation Project at the Weymouth Water Treatment Plant. Filanc claims that it is owed not less than \$2.6 million in damages for labor costs it incurred to meet shutdown start dates when Metropolitan failed to extend the start dates following rain delays in the winter months of 2009-10 and 2010-11. In seeking declaratory relief, Filanc also alleges that Metropolitan misrepresented its inability to move the shutdown start dates and interpreted the contract in an unconscionable manner to preclude the recovery of damages for weather-related delays. The deadline for responding to the complaint is April 2, 2012.

### ***Lennar Homes of California, Inc. v. Metropolitan (Orange County Superior Court)***

On February 9, 2012, Lennar Homes filed a complaint against Metropolitan and the Santa Margarita Water District in the Superior Court of Orange County alleging that Metropolitan has supplied corrosive, aggressive, and/or improperly treated water to certain homeowners within the City of San Clemente resulting in damage to and pinhole leaks in copper piping in residential properties constructed by Lennar. Lennar is seeking indemnification of all costs it has incurred

to repair the plumbing in the affected properties. The deadline for Metropolitan’s initial response to the complaint is March 16.

### ***San Gabriel Basin Water Quality Authority v. Aerojet-General Corp., et al. (The SEMOU matter) (U.S. District Court for the Central District of California)***

This matter relates to the recovery of cleanup costs for contamination, including perchlorate, in the San Gabriel Basin. Metropolitan is a cross-defendant in this case. Several defendants alleged that Metropolitan is responsible for perchlorate contamination resulting from the delivery of Colorado River water. All of the parties with direct cross-claims against Metropolitan have now executed settlement agreements with the San Gabriel Basin Water Quality Authority. Because the U.S. Environmental Protection Agency (EPA) is involved in the case, the settlements do not become final until publication and approval of a federal consent decree by the court, which should be routine.

The only remaining defendant that does not have an agreement in principle with the Water Quality Authority and EPA is TDY Industries. To date TDY has not filed a cross-complaint against Metropolitan; however, they have filed a cross-complaint against Upper San Gabriel Municipal Water District. Metropolitan will continue to monitor the case until there is either a complete settlement with all parties or resolution of TDY’s liability. Metropolitan and Upper San Gabriel are sharing the cost of representation in this matter. (See General Counsel’s November 2011 Activity Report)

## Matters Involving Metropolitan

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

As reported last month, in February the San Francisco Regional Water Quality Control

Board (SF Regional Board) approved new discharge permits for two wastewater treatment plants that discharge to the Bay-Delta: the Central Contra Costa Sanitary District’s (CCCSD) 55-million gallon per day (mgd) wastewater treatment plant; and the Vallejo Sanitation & Flood Control District’s (Vallejo)



15.5-mgd wastewater treatment plant. Both plants provide only a secondary level of treatment which does not include 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 providing detailed comments and testimony in the permit renewal proceedings, as well as in discussions with the SF Regional Board and CCCSD over our concerns. For the CCCSD permit, although the adopted permit does not include ammonia limits, it does require specific studies to be undertaken in the near term with respect to the effects of ammonia and it requires CCCSD to begin facility planning work for the eventual installation of ammonia removal facilities. The SF Regional Board was not persuaded, however, to include similar requirements in the Vallejo permit.

Because the SF Regional Board failed to address the ammonia problem in the Vallejo permit, Metropolitan and the other participating water agencies will file a petition within the 30-day appeal period with the State Water Resources Control Board for its review. With this filing, however, the water agencies will request that the petition be placed in abeyance to allow for continued discussion with the Regional Board and Vallejo on possible

resolutions. (See General Counsel's October 2011 and February 2012 Activity Reports)

### ***Central Delta Water Agency v. Semitropic Water Storage District (San Francisco County Superior Court)***

A number of parties have filed their answers to the petition for writ of mandate in this case. The litigation involves the long-pending Delta Wetlands Properties' project to reinforce islands it owns in the Delta and develop them as storage reservoirs. Plaintiffs' petition for writ of mandate alleges that the CEQA documentation supporting the Delta Wetland's petition to the State Water Resources Control Board for the project is inadequate. The petition named as "real parties in interest" a number of entities who might be potential buyers of water from the proposed project, including Metropolitan. The petition did not seek any relief from Metropolitan and the other named real parties in interest; consequently, Metropolitan did not join the litigation by filing an answer. Defendant Semitropic Water District and real party in interest Delta Wetlands Properties did file answers, as did real parties in interest Western Municipal Water District, San Bernardino Valley Water District and the Antelope Valley-East Kern Water Agency. (See General Counsel's November 2011 Activity Report)

## Items of Interest

### **Finance**

Metropolitan priced its \$181,180,000 Water Revenue Refunding Bonds, 2012 Series A on February 22, 2012 to refund outstanding fixed rate bonds for debt service savings. Closing is scheduled for March 20, 2012. Legal Department staff attorneys worked with Finance, Resources and Engineering staff to prepare Appendix A for the Official Statement describing the 2012 Series A bonds, dated February 22, 2012, and are assisting with preparation of closing documents. On February 28, Metropolitan posted the remarketing statement for \$128,875,000 Water Revenue Refunding Bonds, 2011 Series A-1 and 2011 Series A-3 (Index Mode), which incorporates by reference Appendix A and other appendices to the Official Statement for the 2012 Series A bonds.

The Official Statement and the Remarketing Statement are available on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access web page at <http://emma.msrb.org/> and on the Finance page of Metropolitan's website, <http://www.mwdh2o.com/mwdh2o/pages/finance/finance01.html>, under "Financial Documents."