



## 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 treatment plant. In its complaint, Filanc sought damages of \$2.6 million plus interest. Metropolitan responded to the complaint by filing a demurrer on five of Filanc’s six causes of action and propounding comprehensive discovery requests. Prior to the hearing on the demurrer, Filanc initiated settlement discussions, and on May 31, the parties agreed to a settlement. Upon the execution of a mutually acceptable settlement agreement, Metropolitan will pay Filanc \$230,000 to dismiss the lawsuit with prejudice, thereby resolving all outstanding disputes between the parties relating to the project. The settlement amount will be paid from remaining project funds and will not require a further appropriation from the Board. (See General Counsel’s February 2012 Activity Report.)

### ***San Luis Rey Indian Water Authority v. Metropolitan Water District***

The arbitration hearing on the contract dispute brought by the San Luis Rey Indian Water Authority (Indian Water Authority) was held the week of May 7 in San Diego. Metropolitan was represented by staff attorneys Joseph Vanderhorst and Michael Hughes. The arbitration panel (Judge Jack Komar (ret.), Rita Maguire, and Eric Van Loon) heard four days of testimony and argument. Post-hearing briefs will be filed on June 1 and a written decision is expected from the panel by July 13. The dispute relates to both whether the Indian Water Authority is entitled to any payments prior to settlement of their pending dispute relating to water rights in the San Luis Rey River and, if so,

the method for calculating payments under a QSA-related contract between Metropolitan and the Indian Water Authority. The payments are for 16,000 acre-feet of water annually that is being conserved by the All-American and Coachella Canal Lining Projects and that is to be used by the federal government to settle the pending water rights dispute. Metropolitan has been taking delivery of the water and making payments for the water to benefit the Indian Water Authority.

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

Metropolitan’s demurrer to Lennar’s complaint was heard on May 18, 2012 and was overruled. Metropolitan’s responsive pleading is now due June 14, by agreement of the parties. 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. (See General Counsel’s February 2012 Activity Report.)

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

AFSCME Local 1902 filed an unfair practice charge with the Public Employment Relations Board (PERB) on May 11, 2012. The charge alleges Metropolitan violated the Meyers-Miliias-Brown Act (MMBA) by reclassifying Environmental Specialists and moving them into positions outside of the Local 1902 bargaining unit, without notifying Local 1902 or offering to meet and confer over the reclassifications. Metropolitan will respond to the charge by lodging a position statement seeking a dismissal based on factual inaccuracies contained in the charge. The Legal Department will represent Metropolitan in this matter.



## Matters Involving Metropolitan

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

On May 14, State Water Resources Control Board (State Board) staff issued a draft order on the petitions of Sacramento Regional County Sanitation District (SRCSD) and the California Sportfishing Protection Alliance concerning the National Pollutant Discharge Elimination System (NPDES) discharge permit for SRCSD's wastewater plant. SRCSD's Sacramento River wastewater 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. In December 2010, the Central Valley Regional Board (Regional Board) ordered a new discharge permit for the plant that would require nitrification/denitrification upgrades and tertiary filtration. Through its appeal, SRCSD sought to overturn the Regional Board's permit order. SRCSD also brought litigation over the permit in Sacramento County Superior Court, which has been stayed pending the final outcome of the appeal.

The State Board's draft appeal order largely upholds the Regional Board's permit. The draft order rejects SRCSD's argument that tertiary filtration is not warranted, finding that the Regional Board properly relied on risk evidence and California Department of Public Health recommendations. The draft order upholds the overall approach the Regional Board took in setting the ammonia limit, in which the Regional Board denied a "mixing zone" credit based on aquatic wildlife impacts and adverse impacts on biologically sensitive habitats. The denial of the mixing zone is key to supporting the ammonia effluent limit. The draft order remands the permit back to the Regional Board to make corrections to the final ammonia effluent limitation calculation. It appears this correction will only change the ammonia effluent limit slightly. The draft order agrees with SRCSD on one point – that the Regional Board improperly denied a human health mixing zone for nitrate, and as a result the permit's nitrate effluent limit

of 10mg/L is not supported. The draft order remands the permit to the Regional Board to reconsider the allowance of dilution credits for nitrate and recommends that the Regional Board reevaluate the need to control the discharge of nutrients (total nitrogen and phosphorus) on a basis other than human health.

The State Board's draft order sets a June 15 deadline for written comments and schedules a State Board workshop on July 18 to solicit comments on the draft order. Metropolitan and other water agencies are preparing comments on the order and will appear and participate at the workshop. The State Board will consider adopting the order at a yet-to-be scheduled meeting. (See General Counsel's January 2012 Activity Report.)

### **Federal Communications Commission Proceedings**

On May 31, Metropolitan submitted final documentation to the Federal Communications Commission (FCC) consummating FCC's approval of the transfer of three clear-channel radio frequencies from the commercial-carrier spectrum for Metropolitan's wide-area emergency response and operations radio communications. Obtaining this approval involved detailed transactional work and briefing to the FCC in connection with Metropolitan's administrative petition to obtain final approval.

### **Inland Feeder Project**

Early in construction of the Arrowhead East portion of the Inland Feeder there was a change in tunnel alignment that brought the tunnel close to the boundary of the reservation of the San Manuel Band of Mission Indians (the Tribe). In 1999 high inflows of groundwater into the tunnel caused the tunneling to be halted. The project resumed using a bolted and gasketed tunnel liner.

During the review of the project methods, the Tribe was involved in the discussions regarding the best approach to complete the tunnel. In 2001, the General Manager offered to pay the Tribe for their consulting and other costs incurred in the discussion and in monitoring groundwater resources on the reservation. No



agreement was reached on a payment at the time.

In 2007, the Tribe requested payment from Metropolitan in reliance on the 2001 offer. In February 2009, the Metropolitan Board authorized a payment to the Tribe. As part of the settlement agreement, the Tribe had 2 years after substantial completion of the Arrowhead East Tunnel to file a claim for resource damages to the Reservation resulting from the construction of the tunnel. The last day for filing such a claim was May 19, 2012. No claim was received and the matter is now concluded.