



## Metropolitan Cases

### **Foli v. Metropolitan (United States District Court, Southern District of California)**

On January 25, 2013, Metropolitan's Motion to Dismiss plaintiffs' case challenging Metropolitan's use of hydrofluosilicic acid ("HFSA") in the water treatment process was granted. Judge Janis Sammartino dismissed with prejudice plaintiffs' federal law claims for deprivation and impairment of civil rights, and dismissed without prejudice plaintiffs' state law claims, declining to exercise jurisdiction over them. Plaintiffs have 30 days to appeal after the court's order is entered.

The court had previously granted Metropolitan's Motion to Dismiss plaintiffs' original Complaint and given plaintiffs 14 days to file an amended Complaint. The First Amended Complaint continued to allege that Metropolitan's fluoridation process is an unlawful and unconstitutional medication of the plaintiffs and added a new allegation that Metropolitan's treatment of drinking water violates California's Sherman Food, Drug, and Cosmetic Law. The Legal Department represented Metropolitan in this case.

**Copper Pipe Cases: *Lennar Homes of California, Inc. v. Metropolitan Water District, et al.*; *Briosa Owners Ass'n v. Moulton Niguel Water District, et al.*; *Cantora Community Ass'n v. Metropolitan Water District, et al.*; *Cypress Point Condominium Ass'n v. Metropolitan Water District, et al.*; *Williams, et al. v. Irvine Ranch Water District, et al.* (Orange County Superior Court)**

On January 25, 2013, the court denied Metropolitan's and Santa Margarita Water District's (SMWD) motions for judgment on the pleadings in the *Lennar* case, finding that the issues raised by the motions are "prime summary judgment questions -- either Lennar can show noncompliance or, as MWD suggests, fault rests with Lennar's choice of pipe." Metropolitan and SMWD have filed motions for summary judgment based on their compliance with drinking water standards. The motions are scheduled to be heard on April 12, 2013, approximately one month before the trial date of May 13.

As previously reported, on February 9, 2012, Lennar Homes of California, Inc. (Lennar) filed a complaint against Metropolitan and SMWD seeking to recover more than \$360,000 for costs to repair leaks in copper water supply lines in residential developments in San Clemente. In its motion for summary judgment, Metropolitan argues it cannot be held liable for damages because it has met Safe Drinking Water Act water treatment standards.

A motion to transfer the *Lennar* case to a complex litigation courtroom will be heard on February 20, 2013. It is anticipated that the trial date will be continued as a result of that hearing. Nevertheless, Metropolitan is actively preparing its trial defense, which includes a cross-complaint alleging that "fault rests with Lennar's choice of pipe" and related installation issues.

In November and December 2012, four other cases (*Briosa, Cantora, Cypress Point, and Williams*) were filed by homeowners and homeowners associations in Orange County. These cases allege claims that are different than those in the *Lennar* case, including consumer protection theories and inverse condemnation. (See General Counsel's May 2012 Activity Report.) Metropolitan's responses to the first three cases listed above are due by February 21, 2013. Metropolitan's response to the *Williams* lawsuit is due by March 8, 2013.

**Delta Smelt Biological Opinion Litigation (*Metropolitan v. United States Fish and Wildlife Service; United States Bureau of Reclamation and California Department of Water Resources real parties in interest; San Luis & Delta Mendota Water Authority v. Salazar; State Water Contractors v. Salazar; Coalition for a Sustainable Delta v. U.S.F.W.S.*) (U.S. District Court, Eastern District of California)**

The Federal Defendants and the Department of Water Resources (DWR) filed a joint motion asking the district court to extend by three years the time for the federal fish agencies to complete new Biological Opinions (BiOps) for Delta smelt and salmonid species. Under this request, a new Delta smelt BiOp would be due in 2016 instead of 2013,



and a new salmon BiOp would be due in 2019 instead of 2016. The Federal Defendants and DWR sought the extension to provide time and to free up resources to engage in a collaborative science and adaptive management program with stakeholders, including the State and Federal Water Contractors. The collaborative science and adaptive management program would evaluate, and hopefully modify the BiOp restrictions on water project operations. The State and Federal Water Contractors either supported, or committed not to oppose the joint Federal Defendant-DWR request for an extension. The Defendant-Intervenor Environmental Organizations, however, objected to the extension. On January 30, 2013, the district court denied the extension request, mainly on the ground that additional detail about the collaborative science and adaptive management program was needed in order for the court to determine if the extension was justified. The court has directed the Federal Defendants and DWR to submit supplemental briefing on the collaborative science and adaptive management program by March 1, 2013. (See General Counsel's March 2012 Activity Report.)

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

As previously reported, AFSCME Local 1902 filed an unfair practice charge on September 27, 2012, with the Public Employment Relations Board (PERB). The charge alleges Metropolitan violated the Meyers-Milias-Brown Act (MMBA) on July 13, 2012 by updating the employee evaluation form and deploying two new *MyPerformance* forms, one for evaluating employees, and the other for evaluating managers. AFSCME alleges that by this conduct, Metropolitan violated its obligation to meet and confer with respect to issues within the scope of representation. On October 31, 2012, Metropolitan responded by lodging a position statement seeking a dismissal on the basis that the charge is premised on erroneous information, the charge is moot, and that AFSCME's concerns may be subject to the MOU hearing officer appeal process. On January 18, 2013, PERB issued a complaint in this matter. Metropolitan will file an answer to the complaint denying the allegations of an unfair labor practice. The Legal Department will continue to represent Metropolitan's interests in this matter, which will include appearing at an Informal Conference scheduled for February 22. (See General Counsel's September 2012 Activity Report.)