



## Metropolitan Cases

### ***San Diego County Water Authority v. MWD (Los Angeles County Superior Court)***

The San Diego County Water Authority (SDCWA) filed *San Diego County Water Authority v. Metropolitan Water District of Southern California, et al.* on June 11, 2010. Metropolitan was served with SDCWA's petition for writ of mandate, complaint for declaratory relief and complaint for determination of invalidity on June 15, 2010. The complaint requests a court order invalidating the rates and charges adopted April 13, 2010, and that Metropolitan be mandated to allocate costs associated with State Water Project supplies and the Water Stewardship Rate to water supply charges.

A portion of the complaint seeks to utilize section 863 of the California Code of Civil Procedure. This statute permits an "interested person" to bring an action to determine validity of a matter subject to a validation action by a public agency. On June 29, 2010, SDCWA petitioned for an order for publication of a summons to "ALL PERSONS INTERESTED IN THE VALIDITY OF THE RATES ADOPTED BY THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ON APRIL 13, 2010 TO BE EFFECTIVE JANUARY 1, 2011" in newspapers in each of the six counties in Metropolitan's service area. The order was granted June 30. Interested persons have until August 20, 2010 to file responses.

### ***Alameda County Flood Control & Water Conservation District, Zone 7, et al. v. California Department of Water Resources (Sacramento County Superior Court)***

Plaintiffs in this matter involving allocation of revenues under the State Water Contract appealed on July 1, 2010. As previously reported, on September 14, 2009, the court issued a final ruling in favor of the Department of Water Resources (DWR) and the intervenors. The court rejected all of the arguments made by the plaintiffs challenging the manner in which revenues from the Hyatt-Thermalito (H-T) power complex have been and are being allocated. This ruling was memorialized in a statement of decision and interlocutory judgment issued by the court on October 16 and November 2, 2009, respectively.

On February 16, 2010, DWR and the intervenors filed separate motions for judgment on the pleadings, in which they requested that all remaining causes of action asserted by the plaintiffs in two separate cases be dismissed in light of the above ruling and judgment. These motions were granted on April 21, 2010, and a proposed judgment dismissing the original case in its entirety was entered by the court on May 3. However, the language of the judgment was somewhat unclear as to whether it applied to a related case filed by plaintiffs in 2007 that had been consolidated with the original case. Accordingly, intervenors filed a motion to clarify that the judgment applied to both cases, which was granted on June 17.

On May 25, 2010, plaintiffs filed a motion for a new trial. Opposition and reply briefs were filed on June 4 and June 11, respectively. On June 17, the court issued a tentative ruling denying this motion. Plaintiffs did not request oral argument and, as such, the tentative ruling became final on June 18. As expected, on July 1, plaintiffs filed a notice of appeal. No briefing schedule has yet been set, which ultimately depends on how long it takes to compile the relevant records and transcripts. Given the size and scope of this case, it could be many months before any briefing occurs.

Finally, as part of the judgment, DWR and the intervenors were awarded their costs. (Attorneys' fees are not recoverable.) On May 20, intervenors filed a memorandum of costs seeking approximately \$550,000 in reimbursable costs. On June 9, plaintiffs filed a motion to strike or "tax" these costs. A hearing on this motion has tentatively been set for October 22. (See General Counsel's December 2009 and May 2010 Monthly Activity Reports)

### ***Valley Retail Center, LLC, et al. v. Metropolitan, et al. (Los Angeles County Superior Court)***

On June 11, 2010, Metropolitan was served with a complaint arising from construction of the Perris Valley Pipeline. The plaintiffs are owners of a vacant commercial property with frontage on Alessandro Boulevard. During construction, Metropolitan's contractor implemented a partial closure of the street to install the pipeline within the



public street right-of-way. This closure blocked direct access from Alessandro Boulevard to the plaintiffs' property, but access was available from the abutting cross-street that was not closed. Plaintiffs contend that delays in construction caused the loss of use of their property and prevented their planned commercial development. In addition, the plaintiffs contend that the pipeline trench has allowed subsurface water flow to be diverted away from a well located on the property that the owners installed to provide landscape irrigation. Negotiations with the property owners in an effort to settle the claims without litigation were unsuccessful. The lawsuit alleges that Metropolitan and the construction contractor, W. A. Rasic Construction Co., are liable for loss of use and loss of water on legal theories of negligence, nuisance, and inverse condemnation. The complaint seeks damages of \$7.5 million.

***Central Delta Water Agency, et al. v. Department of Water Resources (Sacramento County Superior Court); Rosedale-Rio Bravo Water Storage District, et al. v. Department of Water Resources (Kern County Superior Court); Central Delta Water Agency, et al. v. Kern County Water Agency (Kern County Superior Court)***

On May 5, 2010 DWR filed a Notice of Determination (NOD) regarding the Monterey Amendment to the State Water Project Contracts, completing a 7½-year process to redo the EIR for this project. The new EIR was completed as part of a settlement of litigation originally brought in 1995 by the Planning and Conservation League (PCL) and others. The Monterey Amendment changed the allocation provisions and made other changes to the delivery contracts, largely to settle a dispute in the early 1990s between agricultural and urban SWP contractors over the allocation of water during droughts.

On June 4, two new lawsuits were filed challenging the DWR's final decision on the project. Central Delta Water Agency, South Delta Water Agency, California Water Impact Network, California Sportfishing Protection Alliance, and the Center For Biological Diversity filed a lawsuit against DWR in Sacramento County Superior Court challenging the validity of the EIR under CEQA and the validity of underlying agreements under a reverse validation action. Metropolitan is named as a real party in interest in this action. Rosedale-Rio Bravo Water Storage District and Buena Vista Water Storage District filed a lawsuit against DWR in

Kern County Superior Court challenging the EIR. Metropolitan is not named in this action.

Metropolitan staff has learned that a third lawsuit was just filed on July 2 in Kern County Superior Court by the plaintiffs in the Sacramento County Case -- Central Delta Water Agency, South Delta Water Agency, California Water Impact Network, California Sportfishing Protection Alliance, and the Center For Biological Diversity. This lawsuit is targeting the transfer of land from DWR to the Kern Water Bank, which was completed as part of the original Monterey Amendments.

Metropolitan staff has been coordinating with DWR and the other contractors in organizing our defense. (See General Counsel's May 2010 Activity Report)

***Susan Robinson v. Metropolitan (Los Angeles County Superior Court)***

On June 21, 2010, Metropolitan filed a demurrer to plaintiff's petition for writ of mandate and complaint on the ground that plaintiff failed to state a cause of action because she did not allege a legally cognizable claim, exhaust judicial remedies, exhaust administrative remedies, or name the proper writ respondent. The hearing on the demurrer is scheduled for August 9. The case has been assigned to the Honorable James C. Chalfant.

As previously reported, in January 2010, Hearing Officer Robert Bergeson issued his decision sustaining plaintiff's discharge from employment following an appeal hearing pursuant to the Supervisors Association MOU. On April 22, plaintiff filed a petition for writ of mandate and complaint in Los Angeles County Superior Court against Metropolitan. Plaintiff alleges three causes of action: writ of mandate (Cal. Code of Civil Procedure Section 1094.5) alleging the Hearing Officer should have applied an adverse inference against Metropolitan, the evidence did not support the findings, and the findings did not support discharge; violation of pre-discharge due process (*Skelly v. State Personnel Board*); and declaratory relief concerning the materials to which an employee is entitled before discharge. On May 20, plaintiff served her summons, petition, and complaint on Metropolitan. Metropolitan's Legal Department is providing legal representation for Metropolitan. (See General Counsel's April and May 2010 Activity Reports)



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

On May 27, 2010, Metropolitan employee John Kitos filed a complaint in Los Angeles County Superior Court against Metropolitan and one employee. 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 (FEHA), and intentional infliction of emotional distress. All causes of action are asserted against Metropolitan, and the wrongful demotion/retaliation in violation of public policy and intentional infliction of emotional distress causes of action are also asserted against the individual employee defendant. Metropolitan's Legal Department is providing legal representation for all defendants in the case.

***Jena Minor v. Metropolitan (Los Angeles County Superior Court)***

The court has scheduled the first Case Management Conference for August 4, 2010. As previously reported, on March 26, 2010, plaintiff, a

Metropolitan employee, filed a complaint in Los Angeles County Superior Court against Metropolitan. On April 2, plaintiff filed an amended complaint. Plaintiff alleges one cause of action: retaliation in violation of the FEHA for having engaged in the protected activity of complaining about gender and race discrimination and sexual harassment, and for having complained about retaliation. Plaintiff served the summons and amended complaint on April 6. Metropolitan filed a Notice of Related Case on April 14 concerning plaintiff's previous complaint against Metropolitan containing the same claim, which plaintiff filed in June 2009 and then dismissed without prejudice in October 2009, after missing a discovery deadline. On April 26, 2010, the court ordered the case related to plaintiff's previously filed case, resulting in a change in judicial assignment to the Honorable Daniel J. Buckley. On May 6, Metropolitan filed its answer to plaintiff's first amended complaint, containing a general denial and affirmative defenses. Metropolitan's Legal Department is providing legal representation for Metropolitan. (See General Counsel's April and May 2010 Activity Reports)

## Matters Involving Metropolitan

**Participation in binational negotiations with Mexico regarding the Colorado River**

Pursuant to the Water Treaty of 1944 between Mexico and the United States, Mexico receives an annual delivery of 1.5 million acre-feet of water from the Colorado River. The treaty provides that in the event of an "extraordinary drought or serious accident to the irrigation system of the United States" that forces a reduction or shortage of deliveries from the river, Mexico's share of deliveries will "be reduced in the same proportion as consumptive uses in the United States are reduced." As a result of the current drought conditions in the Colorado River basin, the International Boundary and Water Commission (IBWC), working with the Bureau of Reclamation (USBR) in consultation with the Basin states, began discussions on a binational water management proposal to address how the United States would apportion Colorado River supply in the event of an extraordinary drought. As part of this discussion, the parties have grappled with the question of how Mexico should share in any future shortages. Over the past year, USBR has been working cooperatively with representatives from

the United States and Mexico to model future water supply and shortage scenarios, and to study the feasibility of small pilot projects that could serve as a basis for a long-term agreement to address any future shortages. When the earthquake hit the Mexicali area on April 4, 2010, Mexico's water infrastructure suffered significant damage, making it virtually impossible for Mexico to take delivery of and use its full share of Colorado River supplies this year and possibly for the next few years while Mexico repairs its infrastructure. Out of this tragedy a unique opportunity has arisen for both countries to address Mexico's immediate needs and resolve the long-term, binational shortage sharing issue. With the assistance of the Legal Department, staff from the Executive Office is leading Metropolitan's participation in a series of expedited binational negotiations with representatives of the Basin states, USBR, IBWC, and Mexico to address the immediate and long-term water needs of both countries. The parties hope to reach resolution before the end of the year. Staff will continue to report on the status of these efforts.



## Items of Interest

### **Finances**

Metropolitan's first issue of variable rate bonds based solely on Metropolitan's liquidity, the \$128,005,000 Special Variable Rate Water Revenue Refunding Bonds, 2010 Series A, closed on June 24, 2010. Legal Department staff assisted Finance staff and outside bond counsel with the bond documents and closing documents and prepared Appendix A to the Official Statement.