



## Metropolitan Cases

### ***Central Basin Municipal Water District v. Water Replenishment District of Southern California (Los Angeles Superior Court)***

On January 14, 2011, Central Basin Municipal Water District (CBMWD) served Metropolitan with its Petition for Writ of Mandate for the above-referenced case, filed in the Los Angeles Superior Court on December 29, 2010. Metropolitan and its member agencies were named as real parties in interest in the lawsuit. In this action, CBMWD alleges that the Water Replenishment District of Southern California (WRD) violated the California Environmental Quality Act (CEQA) when it declared a water emergency in the groundwater basin it manages, the Central Basin, on November 19, 2010. CBMWD alleged Metropolitan and its member agencies have an interest in the lawsuit because Metropolitan provides imported water for groundwater replenishment.

Metropolitan's General Counsel and General Manager concluded that no interests exist that warranted Metropolitan's involvement in this action. Legal staff, in consultation with member agency counsel, negotiated a stipulation and proposed order with CBMWD and WRD wherein they agree Metropolitan and its member agencies without pumping rights in the basin are not real parties in interest and thus should be dismissed from this action with prejudice by the court. Metropolitan will continue to monitor the case but not be a named party.

CBMWD and several of the parties to the Central Basin adjudication are challenging the substance of the emergency drought declaration in that adjudication, in which Metropolitan is not a party. Metropolitan staff will monitor this proceeding as well. (See General Counsel's January 2011 Activity Reports.)

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

Metropolitan Legal Department staff, as well as attorneys for eight member agencies who joined this litigation as co-defendants, participated in two motion hearings and case management conferences (CMC) in this litigation during February.

At a February 3 hearing Judge Kramer denied motions filed by Metropolitan and by Imperial Irrigation District (IID). Metropolitan has asked the court to dismiss both IID and the Utility Consumers Action Network (UCAN), who joined this litigation as "defendants" but are supporting the Water Authority's position, from the case because those parties are not "interested parties" with standing to join this litigation. IID had asked the judge to require Metropolitan to file a specific point by point answer to the Water Authority's complaint rather than the general denial that Metropolitan filed. The judge denied both motions. However, he indicated he had the authority to determine whether IID and UCAN have standing to participate in the case through other means and that he would ask all parties to file statements in order to support their standing.

At a second hearing on February 22 Judge Kramer refused to consider the Water Authority's motion to compel Metropolitan and the member agency defendants to respond to additional interrogatories. Instead, the court took the motion off calendar pending further submissions by the parties. The judge directed the parties to meet and confer to agree on a "core" administrative record regarding adoption of Metropolitan's water rates to be submitted prior to an April 18, 2011 CMC. (Metropolitan already has assembled what it believes is the record and submitted it to the other parties for their comments.) Each of the parties will have an opportunity to submit any additional documents they believe should be included in the agreed-upon core record; the judge will accept and add to that core administrative record any proposed additional documents, so long as they otherwise would qualify for the record and are relevant. At the April 18 CMC the form of and timing to file a brief describing the parties' interest in the case will be discussed; this brief on "standing" could result in the dismissal of IID and UCAN. If necessary after submission of the Administrative Record, the judge may allow additional discovery. A schedule for additional briefing on the standard of review and the merits of the case and an ultimate trial on the merits will follow. (See General Counsel's November and December 2010 Monthly Activity Reports.)



### **Rate Structure Integrity Mediation**

On March 9, Metropolitan will participate in mediation with the San Diego County Water Authority (SDCWA) related to implementation of the Rate Structure Integrity (RSI) provisions of Metropolitan's local resources, seawater desalination, and conservation program incentive agreements. On December 14, 2008, the Board of Directors directed that the Rate Structure Integrity language be included in the standard terms of Metropolitan's incentive agreements with member agencies. The stated purpose of the language is to ensure a stable revenue stream for development of vital local projects and conservation programs to meet IRP resource targets. The term provides that in the event a member agency brings litigation or legislation challenging Metropolitan's existing rate structure, Metropolitan may terminate that member agency's incentive agreements. Under the terms of the provision, before termination may be effective, the member agency is entitled to formal mediation. The mediation on March 9 is pursuant to that provision. In this case, the General Manager provided notice of intent to terminate four existing incentive agreements with SDCWA on August 25, 2010. The SDCWA subsequently elected to proceed with mediation. After completion of the mediation the staff will report to the Legal and Claims Committee and Water Planning and Stewardship Committee. Termination of the existing agreements with the SDCWA pursuant to the RSI requires approval of the Board.

**Delta Smelt and Salmon Biological Opinions 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.; MWD v. U.S.F.W.S. and State Water Contractors v. Locke, et al; Kern County Water Agency, et al. v. Gary Locke, et al.*) (U.S. District Courts, Eastern District of California)**

### **Delta Smelt BiOp Litigation**

All parties signed an interim remedies settlement agreement which was approved by Judge Wanger on February 25, 2011. The settlement agreement specifies a range of Old and Middle River (OMR) flow levels, and creates an enhanced coordination process for water contractor input into

the setting of OMR flow levels. The settlement agreement also provides for judicial review of OMR decisions. The settlement agreement only covers interim project operations through June 30, 2011. Criteria for interim operations after June 30, 2011 may be set either by a subsequent negotiated agreement or, if that fails, through motions in the pending litigation. The court has asked the parties to propose, by March 15, 2011, a deadline for completion of the new Delta smelt Biological Opinion. (See General Counsel's May and December 2010 Monthly Activity Reports.)

### **Salmon BiOp Litigation**

The preliminary injunction motion in the salmon BiOp case is currently scheduled to be heard by Judge Wanger on March 23-25, 2011. The parties have filed extensive pleadings in the matter, and expect to call several expert witnesses. The primary Biological Opinion restriction being challenged by the water contractors is the San Joaquin River Inflow:Export ratio which severely limits exports during the months of April and May. The court has not yet issued a summary judgment decision in the salmon BiOp case. At the February 25, 2011 hearing on the Delta smelt interim remedies settlement agreement; the court indicated that it may be some time before it issues a salmon summary judgment decision. (See General Counsel's May and December 2010 Monthly Activity Reports.)

### **Management and Professional Employees Association, AFSCME Local 1001 v. Metropolitan (Public Employment Relations Board)**

As previously reported, the Management and Professional Employees Association (MAPA) filed a PERB unfair practice charge on August 31, 2009, alleging Metropolitan violated the MMBA by purportedly engaging in anti-union conduct towards MAPA employees. Although Metropolitan was able to substantially reduce the scope of the charge by lodging position statements, PERB issued a complaint on five alleged incidents involving two employees and the Assistant General Auditor. Metropolitan responded to the complaint on March 22, 2010, by denying the allegations. On April 20, 2010, MAPA filed a motion to amend the complaint, seeking to include allegations against the General Auditor and thirty-seven individual



Board members. PERB denied the motion. On October 20, 2010, Metropolitan filed a motion to dismiss this case since Len Gagliano, Metropolitan's Assistant General Auditor, passed away on October 19<sup>th</sup>, after an extended illness. PERB denied the motion. On February 23-25, 2011, an administrative trial was held before PERB Administrative Law Judge (ALJ) Anne L. Weinman. Closing briefs are due on May 15<sup>th</sup>. Since ALJ Weinman retired effective at the end of the hearing, she will not write the decision. That task will be left to an ALJ to be determined, who will render a decision based on a review of the transcript, exhibits and briefs. ALJ Weinman confidentially met with each of the parties after conclusion of the hearing to encourage further settlement discussions. The Legal Department represents Metropolitan. (See General Counsel's August 2009, March 2010, April 2010 and May 2010 Activity Reports.)

***Andrew James Ellsworth, Jr. v. Metropolitan, et al. (Los Angeles County Superior Court)***

The case is scheduled for a two-week jury trial to commence on March 7, 2011 before the Honorable Teresa Sanchez-Gordon. On February 8, 2011, the court granted defendants' motion to bifurcate punitive damages as to the individual defendants. On that date, the court denied Metropolitan's motions for judgment on the pleadings and summary adjudication of the claim for failure to prevent discrimination, harassment, and retaliation. The court held the final status conference on February 25, 2011. The parties engaged in unsuccessful settlement conferences with the court on February 8 and 25, 2011. On the first day of trial, the court will consider several motions in limine (motions to exclude evidence) filed by defendants.

As previously reported, plaintiff, a Metropolitan employee, filed his initial complaint against Metropolitan and four employees in Los Angeles County Superior Court on September 8, 2009. (See General Counsel's July, October 2010 and January 2011 Activity Reports.)

**Matters Involving Metropolitan**

**Delta Stewardship Council Draft Delta Plan**

The 2009 Delta Reform Act created the Delta Stewardship Council to coordinate and oversee a program to achieve the co-equal goals of that Act—providing for more reliable water supply and protecting, restoring and enhancing the Delta ecosystem. The Act directed the Council to develop and adopt a Delta Plan by January 1, 2012 to add in furthering those goals. The Council issued its first draft of a Delta Plan, which will be followed by a number of additional drafts before it is finalized in 2012. Metropolitan Legal Department and General Manager staff contributed to comments submitted to the Council jointly by the State and Federal Contractor Water Agency, Northern California Water Association and San Joaquin River Group. Metropolitan previously has contributed to, and submitted on its own, comments to the Council on such issues as the scope of its authority, the scope of its review of actions proposed by other state, local and federal agencies and the meaning of the Act's policy that the State reduce its reliance on the Delta for future water supply needs through investment in

water management, conservation and local supply development. Staff will continue to review the Stewardship Council's subsequent versions of its Delta Plan and other Council documents and actions and provide comments to protect and further Metropolitan's service area's interests in achieving the co-equal goals.

***In re Tronox Incorporated, et al., Chapter 11 Case No.: 09-10156 (ALG)***

**United States Bankruptcy Court Southern District of New York**

On February 14, 2011 the Tronox Bankruptcy matter closed. As part of the closing, the Tronox facility in Henderson, Nevada was conveyed to an Environmental Trust that will be responsible for continuing the pump and treat of perchlorate and other contaminants leaching from the site and for the eventual remediation of the site and Tronox and its related entities were relieved of any future legal or financial liability for the contamination. In addition to the distribution of money and assets to the Environmental Trust, Metropolitan received \$778,394.16 as reimbursement for a portion of the funds



expended on legal fees and consultants in the case. Metropolitan spent approximately \$1.77 million on this matter. The refund was approximately 45 percent of the funds expended.

As a result of the participation of Metropolitan and the other Colorado River Entities in the case, the value of cash and assets received by the Henderson Environmental Trust was increased by more than \$70 million.

***Los Angeles Community College District v. County of Los Angeles, et al. (Los Angeles County Superior Court)***

Metropolitan was named as a “real party in interest”, along with other Los Angeles County taxing agencies, in an action filed by the Los Angeles Community College District against the County of Los Angeles, the County Auditor-Controller and the redevelopment agencies within the County. The complaint alleges that the Auditor-Controller miscalculated payments to taxing agencies made to mitigate their transfers to the Educational Revenue Augmentation Fund, and that this miscalculation erroneously reduced pass-through payments to schools and community colleges since 1994. Los Angeles Community College District seeks payment of the diminished pass-through tax revenue amounts which they claim they are owed. Metropolitan levies only special taxes for voter-approved indebtedness and is not required to transfer property taxes to the Educational Revenue Augmentation Fund; therefore Metropolitan’s tax levy should not be affected. Legal Department staff will monitor this litigation. This action will be coordinated with the related case of *Los Angeles Unified School District v. County of Los Angeles, et al.*, also a case to which Metropolitan is a real party in interest.