



## Metropolitan Cases

### ***San Diego County Water Authority v. Metropolitan Water District of Southern California (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 a third case management conference in this litigation with Judge Richard A. Kramer on April 18, 2011. Three issues were discussed. First, San Diego County Water Authority (SDCWA) and Imperial Irrigation District (IID) agreed that the documents submitted by Metropolitan in its proposed administrative record for the case are appropriate. Both of those parties, however, indicated they will propose additional records for inclusion, some of which may be disputed. Second, Judge Kramer directed the parties to submit statements of their interests in the case that will help him decide whether to dismiss IID and the Utility Consumers Action Network, a second party that answered in support of SDCWA, due to their lack of direct interest in the rates that are at issue in this case, and to determine the appropriate standard of review. Third, the parties were directed to prepare a plan for the exchange of relevant information they may use in this case. The judge continued to indicate that he did not anticipate any additional discovery. The next case management conference has been scheduled for June 17 when IID's standing and the standard of review could be decided by Judge Kramer. (See General Counsel's November 2010 and February 2011 Activity Reports.)

### ***Orange County Water District v. Northrop Corporation, et al.; Northrop Grumman Systems Corporation v. Metropolitan (Orange County Superior Court)***

In December 2004, Orange County Water District (OCWD) initiated this action against Northrop Corporation and other industrial defendants seeking cleanup costs and damages from volatile organic compound contamination of groundwater within the North Basin of the Orange County Aquifer. In January 2008, Northrop brought a cross-complaint against Metropolitan, alleging that Metropolitan is responsible for the portion of the cleanup costs attributable to perchlorate that was imported via Colorado River water. From

April 3, 2009 through April 1, 2011, all proceedings in this case were stayed.

When the matter was taken off stay, the judge set a trial date of September 14, 2011. The parties have since stipulated to a continued trial date of February 10, 2012.

The trial was previously set for two phases; Phase 1 to address the primary complaint, and Phase 2 to address the cross-complaints, which includes the claims against Metropolitan.

Discovery involving Metropolitan has already commenced and will continue during Phase 1. Metropolitan needs to defend this discovery and pursue discovery against Northrop, as well as OCWD and other witnesses.

A status conference is set for May 10, 2011, along with the hearings on several dispositive motions that may narrow the parties' exposure or change the process of the impending trial.

Staff will continue to update the Board on the changing circumstances of this matter. (See General Counsel's March 2011 Activity Report.)

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

The Public Employment Relations Board (PERB) filed complaints against Metropolitan on April 13, 2011 and April 15, 2011. The first complaint alleges Metropolitan committed an unfair practice by failing and refusing to meet and confer in good faith concerning a moratorium on processing job audit requests and, in so doing, interfered with the rights of bargaining unit employees to be represented by AFSCME.

This complaint relates to a previously reported unfair practice charge AFSCME filed against Metropolitan on September 14, 2010. The charge sought to lift the moratorium on the processing of employee job audit requests that is contained in the March 15, 2007 AFSCME Classification and Compensation Study Project Plan. The charge alleged the moratorium expired during September 2008, and by not lifting the moratorium, the District unilaterally changed its policies and agreement without providing notice to AFSCME and the



opportunity to bargain. The charge sought an order requiring Metropolitan to recommence conducting job audits and to post a notice describing the relief ordered by PERB. Although Metropolitan filed a position statement seeking dismissal of the charge, PERB filed the complaint. Metropolitan will answer the complaint and appear at an informal conference scheduled for May 26.

The second complaint alleges Metropolitan committed an unfair practice by issuing a new policy without prior notice to AFSCME and without meeting and conferring with AFSCME. Metropolitan will answer the complaint and appear at an informal conference scheduled for June 7.

As previously reported, AFSCME filed a PERB unfair practice charge against Metropolitan on September 24, 2010, that alleged Metropolitan violated the Meyers-Miliias-Brown Act (MMBA) and PERB regulations by issuing disciplinary actions against employees based on a “new” policy governing cell phone usage that was implemented without going through the meet and confer process. The charge sought a posted order requiring: (1) rescission of Metropolitan’s new policy on cell phone usage; (2) rescission of disciplines issued to AFSCME members pursuant to the changed cell phone policy; and (3) prohibiting Metropolitan from enacting new policies without first providing notice to and meeting and conferring with Local 1902. Metropolitan sought dismissal of the charge, since Metropolitan has not issued any new policy on cell phone usage. Nonetheless, PERB filed the complaint.

Legal Department staff represent Metropolitan in both matters. (See General Counsel’s September 2010 Activity Report.)

***Village Retail Center, LLC v. Metropolitan Water District (Los Angeles County Superior Court)***

On March 17, the court granted summary judgment/summary adjudication dismissing the inverse condemnation case relating to the limitation of access to plaintiffs’ property during construction of the North Reach of the Perris Valley Pipeline. Metropolitan’s remaining potential

liability is limited solely to the alleged interference with the flow of subsurface water to plaintiffs’ property.

After the court ruling, Metropolitan made a statutory settlement offer of \$75,000 for the only remaining issue in the case. Plaintiffs did not accept the offer. They have replaced their attorneys and trial was scheduled for May 16. In order to avoid the significant cost of a trial solely on the issue of the subsurface water, Metropolitan and the plaintiffs have agreed that the pending matter will be dismissed at this time subject to plaintiffs’ option to either accept full and final settlement of the water claim for \$85,000 or, if plaintiffs proceed with an appeal of the court’s prior ruling, to tie the water claim to the appeal. In that case, if plaintiffs’ appeal is not successful, the water claim will be dismissed with prejudice without payment from Metropolitan. If the plaintiffs prevail on any portion of the appeal and the case is remanded back to the trial court, the water claim will be tried concurrently with other issues in the case. (See General Counsel’s November 2010 and March 2011 Activity Reports.)

***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)***

Judge Wanger held a hearing on April 27, 2011 on the federal government’s motion to change the schedule for completion of the new Biological Opinion (BiOp) for Delta smelt and compliance with the National Environmental Policy Act (NEPA). The federal government sought to push those completion dates back to 2014. The water contractors were willing to approve a shorter extension but not one back to 2014. The judge has not yet issued a decision on this request to change the BiOp and NEPA schedule.



## Matters Involving Metropolitan

### ***Axio Power Inc. Option Executed***

Metropolitan's Board, at its February 8, 2011 meeting, authorized staff to negotiate and execute option agreements with Axio Power Inc. to lease up to 627 acres of Metropolitan's DVL property for the potential construction of two solar photovoltaic facilities. The negotiations have concluded successfully and the option agreements were executed by both parties on March 29. The agreements provide Axio with up to five years to develop the projects and are subject to specific milestones and conditions that include obtaining all required project approvals and CEQA compliance. Axio's initial payments under the agreements have been received and Axio submitted its initial interconnect applications to Southern California Edison on March 31 seeking approval for up to 80 MW of generation on the west property and 39 MW on the north property.