



## Metropolitan Cases

**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

On October 19, 2011, Defendant-Intervenor Natural Resources Defense Council (NRDC) filed its opening appellate brief in the Ninth Circuit in NRDC's appeal of Judge Wanger's Fall X2 injunction. The Water Contractors are now preparing their opposition brief in that appeal. On October 31, the parties in the Delta smelt cases filed a joint stipulation asking the court to extend until December 2 the time in which the parties shall either agree on a consultation schedule for the new Delta smelt BiOp, or, if there is no agreement, submit their separate proposals for that schedule. The district court had vacated the earlier schedule that was set for the new smelt BiOp and had given the parties until October 31 to try and agree on a new schedule. The parties have been discussing both the schedule and modifications to the consultation process which would hopefully allow greater Water Contractor involvement in the process. Because those discussions have not been concluded, the parties are seeking additional time until December 2 to continue those discussions.

### Salmon BiOp Litigation

On October 31, 2011, the parties also filed a joint stipulation in the salmon BiOp cases asking the court to extend until December 2 the time in which to either agree upon or submit separate proposals for a proposed final judgment in the salmon cases, and a schedule for the consultation over the new salmon BiOp. As in the Delta smelt cases, discussions are ongoing over how the salmon consultation process might be modified to allow greater Water Contractor involvement.

(See General Counsel's July and September 2011 Activity Reports.)

### ***San Diego County Water Authority v. Metropolitan Water District of Southern California (San Francisco Superior Court)***

Judge Richard Kramer granted SDCWA's motion to amend its complaint in this action on October 27, 2012. MWD and its co-party member agencies had opposed the amendment - which adds a number of new causes of action - because it could delay prompt resolution of SDCWA's initial challenge to MWD's water rates. The new causes of action are unrelated to the underlying reverse validation action on MWD's rates, are based largely on different facts and legal issues and involve different procedural issues. The judge did not make any determinations regarding the allegations in the new claims or on MWD's legal challenges to those claims. A hearing was set for January 4, 2012 in which the judge will consider any challenges by MWD and the member agencies to the causes of action asserted in the amended complaint. On that same date a case management conference is scheduled to discuss how to sequence proceedings on the various claims to resolve the rate challenge and other claims in the most expeditious fashion. (See General Counsel's August and September 2011 Activity Reports.)



## Matters Involving Metropolitan

***Monterey II Cases: Central Delta Water Agency, et al. v. Department of Water Resources (“Central Delta I”); Rosedale-Rio Bravo Water Storage District, et al. v. Department of Water Resources (“Rosedale”); Central Delta Water Agency, et al. v. Kern County Water Agency (“Central Delta II”) (Sacramento County Superior Court)***

In October, the court issued rulings on two pending procedural motions in these cases. In *Central Delta Water Agency v. DWR*, the court denied a motion for judgment on the pleadings and found that *res judicata* did not operate to bar petitioners’ claims. The motion was based on the argument that the prior court’s dismissal of the original Monterey lawsuit expressly determined that the new Environmental Impact Report for the Monterey Amendment complied with CEQA and barred bringing a separate, subsequent lawsuit.

In the *Rosedale* case, the court issued its final ruling denying a motion to dismiss on indispensable party grounds brought by Metropolitan and Coachella Valley Water District. The court’s final ruling concluded that the litigation could continue without Metropolitan and most other State Water Project Contractors because they are not “indispensable” parties. Thus, the only State Water Contractor members currently in this litigation are Kern County Water Agency and Dudley Ridge Water District. The determination that Metropolitan and the other urban State Water Contractors are not indispensable parties appears directly opposite the holding in the very similar *County of Imperial v. Superior Court* case brought in connection with the QSA cases. Kern County Water Agency filed a motion for reconsideration which will be heard in mid-December. (See General Counsel’s June and September 2011 Activity Reports.)

**Discharge Permit Proceedings for the Central Contra Costa Sanitary District Wastewater Treatment Plant**

In October, the San Francisco Regional Water Quality Control Board (Regional Board) issued a tentative discharge permit for the Central Contra Costa Sanitary District’s (CCCSD) Wastewater Treatment Plant. The CCCSD plant collects and discharges, on average, 40 million gallons per day of treated sewage into Suisun Bay. Suisun Bay lies at the confluence of the Sacramento and San Joaquin Rivers, forming the western tip of the Sacramento-San Joaquin Delta. Like the Sacramento Regional County Sanitation District’s plant that discharges to the Sacramento River at the northern end of the Delta, the CCCSD plant provides only a secondary level of treatment and does not include nutrient removal for ammonia and nitrate. The Sacramento Regional plant must implement nutrient removal facilities under a new discharge permit issued last year and most other dischargers to the Delta or its tributaries have already implemented nutrient removal.

The tentative permit for the CCCSD plant does not require ammonia removal. Ammonia discharged to the Delta has been shown to be impairing the base of the food web that supports aquatic life throughout the Delta. In comparison to the Sacramento Regional plant, CCCSD’s discharge contributes a smaller share of the total ammonium loadings and appears to primarily impact western Suisun Bay. However, nutrients from both Sacramento Regional and CCCSD are major stressors that are contributing to the decline of the food web.

Metropolitan staff participated with staff from other water agencies in developing detailed comments on the tentative permit. The comments call for revisions in the permit to provide for ammonia removal, or in the alternative, to defer issuing a final permit until completion of ongoing studies that are investigating the ammonia issue concerning this discharge.

The tentative permit is scheduled to be considered at the Dec 14, 2011, Regional Board meeting.