



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

The water contractors are preparing to file briefs this month in the Ninth Circuit in the environmental-intervenors' appeal of the district court's Fall X2 injunction. In addition to a merits brief supporting the injunction, the contractors will also file a motion to dismiss the Fall X2 appeal on the ground that the Fall X2 action is over, the injunction has expired, and the controversy over Fall X2 is moot. Later on, the contractors will file their appellate brief in the appeal of the district court's summary judgment, which is the main appeal in the smelt cases. The schedule for completion of the remand and issuance of a new Delta smelt BiOp could not be resolved through negotiation of the parties, and is still in controversy. All parties, including the contractors, will submit their proposed schedules for the new smelt BiOp to the district court on December 2, 2011.

Salmon BiOp Litigation

As in the Delta smelt cases, the parties have been unable to agree on a schedule for completion of the new salmon BiOp. Consequently, all parties

will submit their proposed schedules to the district court on December 2, 2011, along with their schedules for the new Delta smelt BiOp.

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

San Gabriel Valley Water Quality Authority v. Aerojet-General Corporation, et al. (U.S. District Court)

In this federal court matter, industrial defendants alleged that Metropolitan and other water entities contributed to the contamination of the main San Gabriel Groundwater Basin due to deliveries of Colorado River Water containing perchlorates. On August 26, 2011, due to pending settlements with several other parties, the court stayed Metropolitan's motion to dismiss the claims. Upper San Gabriel Valley Municipal Water District (Upper District) is also a co-defendant and would have brought the motion jointly with Metropolitan. Since that time, Special Master Timothy P. Gallagher has mediated additional settlements in principle. However, to date there has been no settlement in principle with defendants TDY Industries Inc. and Seachrome Corp. If all of the pending settlements in principle are finalized and entered, no cross-claims would remain against Metropolitan. However, the cross-claims would remain against Upper District. Chief Judge Collins set a status conference for December 19 and ordered a report on the status of all settlements. She also ordered the parties to be prepared to discuss a briefing schedule for the motions to dismiss by Metropolitan, Upper District, Main San Gabriel Basin Watermaster, County of Los Angeles, and LA County Flood Control District. (See General Counsel's August 2011 Activity Report.)



Matters Involving Metropolitan

City of Boulder City, Nevada v. Bureau of Land Management (Interior Board of Land Appeals No. 2011-243)

In 1958, Congress authorized the Secretary of the Interior to sell the State of Nevada up to 126,000 acres of federal land located in the El Dorado Valley southwest of Hoover Dam. The sale of 107,000 acres was finally completed in 1995, and the State immediately transferred the land to Boulder City, which plans on leasing the lands for solar power projects. However, the patent for the land reserved to the federal government the right to locate future transportation and utility corridors on the property and the Bureau of Land Management asserts that its reserved rights require that it approve any proposed project to be constructed on the land. Boulder City is challenging the reserved rights in an administrative appeal process through the Department of the Interior.

Metropolitan, along with the Los Angeles Department of Water and Power and the Southern California Edison Company, operate electric transmission lines across the property to convey their electric power generated at the Hoover Dam power plant. Metropolitan was granted the right-of-way for its transmission lines in 1935 pursuant to the Boulder Canyon Project Act of 1928. The administrative appeal filed by Boulder City suggests that it has the authority to affect existing transmission lines. The Legal Department has filed an answer in the appeal proceeding asserting Metropolitan's prior existing rights and rejecting any authority by Boulder City or Bureau of Land Management to affect those rights without Metropolitan's consent. In particular, the answer cites the federal statute authorizing the conveyance to the State of Nevada which requires that the conveyance be subject to existing valid rights. In addition, the Legal Department is coordinating with the Los Angeles City Attorney's office which represents the Department of Water and Power in the appeal proceeding.

Central Delta Water Agency v. Semitropic Water Storage District (San Joaquin County Superior Court)

Metropolitan was served with a copy of this action on November 1, 2011. Metropolitan is not named as a defendant, but rather as a real party in interest, and no relief against Metropolitan is requested. The case deals with a long-pending project by Delta Wetlands Properties to reinforce islands it owns in the Delta and develop them as storage reservoirs. It has reinitiated a petition to the State Water Resources Control Board (SWRCB) for a right to divert water from the Delta for storage and redelivery to potential customers. Apparently, the Semitropic Water Storage District acted as lead agency for preparing an environmental impact report under CEQA supporting the SWRCB petition. Plaintiffs allege that the CEQA compliance is inadequate, naming Semitropic as respondent and Delta Wetlands as a real party in interest. The SWRCB petition listed a number of water supply agencies, including Metropolitan, as potential customers. Consequently plaintiffs' complaint named Metropolitan and the other agencies listed in the SWRCB petition as real parties in interest. Staff is reviewing the complaint and MWD's options. A response is not due until the administrative record on the CEQA process is filed with the court. It is probable that Metropolitan will seek a stipulated dismissal from the litigation. This action was in the San Joaquin County Superior Court, but parties have stipulated to move it to San Francisco Superior Court.