



## 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 December 14, 2011, the U.S. Fish and Wildlife Service (FWS) released a draft Biological Opinion (BiOp) on the effects of the Central Valley Project and State Water Project on Delta smelt. The 300-page draft BiOp analyzes the effects of the projects on Delta smelt but does not contain Reasonable and Prudent Alternatives or an Incidental Take Statement. According to the FWS, those portions of the BiOp will be completed after the Bureau of Reclamation (Reclamation) and the Department of Water Resources revise the project description and include any proposed conservation measures, and after compliance by Reclamation with the National Environmental Policy Act. While the draft BiOp does take into account some of the new scientific research and analysis that the water contractors have undertaken, including life cycle modeling, much of the draft BiOp continues to rely on previous scientific paradigms and assumptions which have been criticized, such as the supposed biological utility of Fall X2 outflows. (See General Counsel's November and December 2011 Activity Reports.)

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

As previously reported, Metropolitan employee John Kitos filed a complaint on May 27, 2010 in Los Angeles County Superior Court against Metropolitan and one manager. 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; 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 an individual manager. On August 4, 2011, the hearing on Metropolitan's demurrer to the second amended complaint was held. The demurrer challenged three of the causes of action. The Los Angeles County Superior Court accepted Metropolitan's arguments on all grounds and sustained the demurrer without leave to amend. Subsequently, plaintiff filed a motion for reconsideration seeking to have the court reverse this ruling. On November 29, the court denied plaintiff's motion for reconsideration. Consequently, the only portion of the lawsuit remaining is the age discrimination complaint against Metropolitan. A case management conference is set for January 19, and the Legal Department continues to provide legal representation. (See General Counsel's July 2011 Activity Report.)



## Matters Involving Metropolitan

### Hoover Power Allocation Act of 2011

On December 20, 2011, President Obama signed into law the Hoover Power Allocation Act (H.R. 470). Passage of the act culminated three years of work by the agencies with Hoover power contracts. The Legal Department assisted in negotiating and drafting the terms incorporated in the legislation and provided support to the Operations and Public Affairs staff in responding to legislative requests for background and information on the bill. With bipartisan support, Congress passed the legislation proposed by the power contractors that mandates renewal of existing contracts for a 50-year term. A pool for new customers is created by reallocating 5 percent of the capacity and energy for that purpose. New power customers are required to financially support the

Lower Colorado River Multi-Species Conservation Program that provides Endangered Species Act coverage for power operations on the lower Colorado River.

The Western Area Power Administration (WAPA) was concurrently pursuing an administrative process to remarket the Hoover power in the event no legislative direction was provided by Congress. WAPA's initial decisions, published in April 2011, would have limited contract renewals to 30 years and reserved a portion of the capacity for WAPA's use. WAPA also left open the issue of how much capacity and energy would be reallocated from existing contractors for marketing to new customers. With the enactment of H.R. 470, WAPA officially withdrew its decisions and proposals for marketing Hoover power by notice published in the Federal Register on December 28, 2011.

## Items of Interest

### Annual Information Filing

Legal Department staff posted Metropolitan's annual financial information filings for fiscal year 2010/11, pursuant to continuing disclosure requirements for outstanding bond issues. These filings include the Official Statement for Metropolitan's Water Revenue Refunding Bonds, 2011 Series C, audited financial statements and statistical information included in the 2011 Comprehensive Annual Financial Report. They are available at <http://emma.msrb.org> (the Electronic Municipal Market Access (EMMA) system established in 2009 by the Municipal Securities Rulemaking Board).