



## 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 March 19, 2012, the Water Contractors filed their answering brief in the appeal filed by the Federal Government and Environmental Interveners in the Delta smelt BiOp Cases.

### Longfin Smelt BiOp Listing as "Candidate" Species

On March 29, 2012, the U.S. Fish & Wildlife Service (FWS) issued its 12-month determination on the petition to list the longfin smelt under the Endangered Species Act (ESA). The FWS found that the longfin did not merit listing throughout its entire range, which stretches from California up the coast to the Pacific Northwest. However, FWS did find that the Bay-Delta portion of the longfin was a "distinct population segment" of the species, and that listing this segment of the species under the ESA was "warranted but precluded." "Warranted but precluded" means that while the criteria for listing were met and listing was "warranted," there were too many other higher-priority listing matters that FWS had to address which "precluded" FWS from further considering whether to list the longfin. FWS has placed the longfin on the "candidate list," and will review annually whether FWS has the resources to address the longfin listing issue later on. Because the longfin is only a "candidate" species at this time, no ESA restrictions based on longfin impacts may be imposed on the water projects. However, in its 12-month determination, the FWS found that the primary threat to the Bay-Delta segment of longfin was reduced freshwater flows in the Delta.

### ***San Gabriel Basin Water Quality Authority v. Aerojet-General Corp., et al.* (SEMOU matter) (U.S. District Court for the Central District of California)**

On February 27, U.S. District Court Judge Collins held a status conference in this case involving recovery of cleanup costs for contamination including perchlorate in the San Gabriel Basin. The last defendants with direct cross-claims against Metropolitan for contribution (the Weis Parties) have now executed settlement agreements with the San Gabriel Basin Water Quality Authority (Authority). That settlement will become final after a minimum publication time for a federal consent decree and approval by the Court. Only one group of defendants, including TDY Industries, has no settlement in principle now with the Authority and U.S. Environmental Protection Agency (USEPA). TDY has no third-party claim against Metropolitan, although it has an outstanding claim against Upper San Gabriel Municipal Water District (Upper District) and the Main San Gabriel Basin Watermaster (Watermaster). Judge Collins ordered the remaining non-settling parties and their insurers to a special settlement conference with Special Master Timothy Gallagher on March 22. The parties made substantial progress, and the United States and TDY agreed to an extension of outstanding discovery.

Discovery among the Authority, USEPA, and TDY is now underway. Previously, Judge Collins ruled that any remaining claims against Metropolitan, Upper District, Watermaster, Los Angeles County Flood Control District, or County of Los Angeles would be deferred until a liability phase for TDY was finalized. Metropolitan will continue to monitor the litigation as it progresses, in the event the issue of liability for perchlorate in imported groundwater replenishment supplies surfaces in the course of discovery. In addition, Judge Collins has stayed motions to dismiss that Metropolitan had prepared for filing in September 2011. So long as the settlement with the TDY parties becomes final, the case will be dismissed and the pending motions will no longer be necessary. (See General Counsel's February 2012 Activity Report.)



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

As previously reported, AFSCME Local 1902 filed a Public Employment Relations Board (PERB) unfair practice charge against Metropolitan on January 30, 2012. The charge alleges Metropolitan violated the Meyers-Milias-Brown Act (MMBA) by unilaterally changing the manner in which it schedules and compensates AFSCME employees for maintenance work performed during shutdowns at MWD facilities. Metropolitan responded by lodging a position statement seeking dismissal of the Charge on the basis that the District has complied with all MOU and MMBA requirements concerning shutdown work schedules. Pending PERB's processing of the charge, the parties reached a settlement that has been executed. The key provisions of the settlement include the parties' agreement that for the remainder of the term of the 2011-16 MOU, Metropolitan will not change an employee's start day on a temporary basis for shutdown work, and Local 1902's agreement to withdraw the PERB charge and all related grievances. In addition, Metropolitan – for the recent shutdowns leading to the PERB charge – will recalculate overtime compensation based on the employees' normal work schedule. The Legal Department represented Metropolitan. (See General Counsel's January 2012 Activity Report.)

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

As previously reported, AFSCME filed a Public Employment Relations Board (PERB) unfair practice charge against Metropolitan on September 14, 2010. The charge seeks 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 alleges the moratorium expired during September 2008, and by not lifting the moratorium, the District has unilaterally changed its policies and agreement without providing notice to AFSCME and the opportunity to bargain. PERB filed a complaint on April 13, 2011, and a formal hearing was scheduled for March 27-28, 2012. The parties reached a settlement on March 26 that has been executed. The key provisions of the settlement include the parties' agreement to lift the job audit moratorium, and Local 1902's agreement to withdraw the PERB charge. The Legal Department represented Metropolitan. (See General Counsel's September 2010 and April 2011 Activity Reports.)