



## Metropolitan Cases

### ***Shimmick-Obayashi v. Metropolitan*** **(Los Angeles Superior Court)**

Metropolitan was sued by Shimmick Obayashi Joint Venture (SOJV) in November 2011 over the ozone disinfection conversion construction contract at the Robert A. Skinner Treatment Plan. The complaint alleged that Metropolitan wrongfully withheld retention for incomplete and deficient work. SOJV sought release of \$3.3 million held in retention and interest penalties totaling \$8 million.

On April 11, 2012, several members of the Project staff and in-house counsel participated in a 13-hour mediation session. At the conclusion of the mediation, the parties mutually agreed that Metropolitan is entitled to an offset against retention in the amount of \$850,000. Upon execution of a mutually acceptable settlement agreement, Metropolitan will release retention, less \$850,000, which will be credited back to the project budget and the lawsuit will be dismissed with prejudice. The Legal Department represented Metropolitan in this matter.

### ***Foli v. Metropolitan*** (United States District Court, Southern District of California)

Plaintiffs in the case challenging Metropolitan's use of hydrofluosilicic acid (HFSA) in the water treatment process have filed a first amended complaint. The amended complaint continues to allege that Metropolitan's fluoridation process is an unlawful and unconstitutional medication of the plaintiffs. Additionally, the new complaint adds an additional allegation that Metropolitan's treatment of drinking water violates California's Sherman Food, Drug, and Cosmetic Law.

Judge Janis Sammartino of the United States District Court in San Diego recently granted Metropolitan's motion to dismiss the case. In dismissing the entire action without prejudice, Judge Sammartino allowed plaintiffs fourteen days to file an amended complaint. Metropolitan's response to the amended complaint is due by May 15.

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

As previously reported, phase 1 of the trial in this matter started on February 10, 2012. The court adjourned the trial after testimony of a single witness to allow Orange County Water District (OCWD) to complete the depositions of defendants' expert witnesses.

During opening statements on March 26-27, defendants stated that they intend to raise the issue of Metropolitan's alleged responsibility for perchlorate in their defense during phase 1 of the trial. To date, there have been approximately ten days of trial.

During this time, OCWD has called three witnesses: Mike Wehner, OCWD Assistant General Manager, Dr. Richard Waddell, OCWD's expert regarding defendants' site-specific liability, and Virginia Grebbien, OCWD's General Manager from 2003 to 2007.

Mr. Wehner gave an overview of OCWD's operations including its basin recharge using Colorado River water. Dr. Waddell provided expert testimony regarding each defendant's alleged responsibility for contamination in the basin. Ms. Grebbien testified regarding OCWD's review and approval of the proposed North Basin Groundwater Protection Project during her tenure, and her knowledge of perchlorate in Colorado River water. She also identified historic industrial and agricultural practices as potential sources of perchlorate in the basin. Defendants' cross-examination of Ms. Grebbien focused largely on OCWD's knowledge of perchlorate in Colorado River water. At this pace, OCWD may conclude its case in late May or early June, at which time defendants would proceed with their defense. Defendant Northrop Corporation (Northrop) subpoenaed Metropolitan employees Brad Coffey and Brent Yamasaki to tentatively testify in June.

As previously reported, in December 2004, OCWD initiated this action against Northrop and other industrial defendants seeking cleanup costs and damages primarily 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 was responsible for any perchlorate cleanup costs that Northrop would incur, due to perchlorate found in water imported from the Colorado River and originating from industrial sites in Henderson, Nevada. From mid-2009 through April 1, 2011, all proceedings in this case were stayed. Since April 2011, the parties have been involved in extensive discovery and pretrial preparations, leading up to the present trial.

Phase 1 is a bench trial, before the judge with no jury, between OCWD and defendants. Phase 2 will be a jury trial between the same parties. If there is a finding of liability against defendants, a third phase will commence between defendants and cross-defendants, including Metropolitan, regarding the various parties' contributions to the contamination. If defendants are found liable for perchlorate contamination, Metropolitan will participate in phase 3 of the trial.

Staff will continue to monitor phase 1 of the trial and update the Board.

#### ***Management and Professional Employees Association v. Metropolitan (Public Employment Relations Board)***

The Management and Professional Employees Association (MAPA) filed an unfair practice charge with the Public Employment Relations Board (PERB) on April 20, 2012. The charge alleges Metropolitan violated the Myers-Milias-Brown Act (MMBA) by creating and posting the Manager of Administrative Services classification, an unrepresented position that recently was filled.

Previously, several of the job duties now performed by the Manager of Administrative Services were assigned to the Business Services Section Manager, a classification within the MAPA bargaining unit. However, as a result of a vacancy created by a retirement, a new classification was established based on the addition of new job duties placing a greater emphasis on personnel issues, including employee relations matters. As a result of the changes, the District designated the new classification as unrepresented. Metropolitan will respond to the charge by lodging a position statement seeking a dismissal. The Legal Department will represent Metropolitan in this matter.

#### ***John Del Toro v. Metropolitan (Los Angeles County Superior Court)***

On April 4, 2012, former Metropolitan employee John Del Toro filed a complaint in Los Angeles County Superior Court against Metropolitan. In response to being discharged for cause, plaintiff alleges a single cause of action for retaliation in violation of the Fair Employment and Housing Act. Plaintiff was terminated due to findings of misconduct reached in connection with administrative and EEO investigations. The EEO investigation was conducted by an independent investigator retained by Metropolitan pursuant to the District's EEO policies, and the investigator determined that Mr. Del Toro engaged in discriminatory conduct against another District employee.

This case has been assigned to Superior Court Judge Ernest Hiroshige. Plaintiff served the summons and complaint on Metropolitan on April 9, 2012. Metropolitan is the sole defendant. The Legal Department will represent Metropolitan in this matter.

## **Matters Involving Metropolitan**

#### **Petition to List the Longfin Smelt as Endangered or Threatened**

On April 12, 2012 the United States Fish and Wildlife Service (USFWS) determined that listing the San Francisco Bay-Delta "distinct population segment" of the longfin smelt was warranted under the Federal Endangered Species Act (FESA). However, USFWS also determined that due to a lack of resources and the existence of higher priority actions, listing of the longfin is currently

precluded. USFWS eventually intends to develop a rule listing the longfin as threatened or endangered as its priorities allow. In the meantime, the fish will be designated a "candidate species," which does not add any additional protection for the species pending the listing decision. The longfin already has been listed as threatened under the California Endangered Species Act (CESA).



Since the longfin benefits from actions taken under CESA and actions to protect other fish listed under FESA (e.g. Delta smelt, salmon), it cannot be determined at this time whether or to what extent this action could impact Metropolitan's State Water

Project (SWP) supplies. Because of the longfin's questionable status, the BDCP parties have included it as a species that will be covered in that plan since the beginning of the process.

## Items of Interest

### ***Vanni v. Rindge Land Reclamation District*** **(San Joaquin Superior Court)**

On April 2, 2012, the San Joaquin County Superior Court issued its tentative decision in favor of the Department of Water Resources (DWR) in this action. Plaintiffs had alleged that operation of the SWP had caused, or contributed to causing, the failure of a levee protecting the Upper and Lower Jones Tracts in the South Delta, resulting in flooding of those tracts. In particular, plaintiffs alleged that SWP operations altered the volume and velocity of water in the Delta channels, causing scouring and erosion leading to the failure of the levees. The court held that plaintiffs had failed to meet their burden of proving that any alleged scour/erosion was related to the operation of the SWP; that if there was scour/erosion it caused the levee failure; or that DWR had any responsibility with respect to the levee at issue, a non-project levee which the state did not design or construct and does not own, operate, control or maintain. DWR was directed to prepare and file a Proposed Statement of Decision and Judgment within 30 days of the April 2 tentative decision.

Metropolitan's website, <http://www.mwdh2o.com/mwdh2o/pages/finance/finance01.html>, under "Financial Documents." Legal Department attorneys prepared Appendix A to the Official Statement and assisted outside bond counsel with the bond documents and closing.

### **Finance**

Metropolitan priced its \$98,585,000 Water Revenue Refunding Bonds (SIFMA Index Mode), 2012 Series B on April 24, 2012 and closed the transaction on April 27, 2012. The 2012 Series B Bonds were issued to refund Metropolitan's outstanding 1999 Series B and C water revenue bonds in the amount of \$100,000,000. The 1999 Series B and C Bonds were variable rate bonds supported by bank liquidity facilities that expired on May 1, 2012. These bonds were subject to mandatory tender due to expiration of the liquidity facilities. Refunding these bonds with the 2012 Series B Bonds reduced Metropolitan's exposure to liquidity banks and administrative and financing costs. The Official Statement describing the 2012 Series B Bonds is available on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access web page at <http://emma.msrb.org/> and on the Finance page of