



## Metropolitan Cases

### ***San Luis Rey River Indian Water Authority v. Metropolitan Water District (JAMS Case No. 1400013202)***

As previously reported by memorandum dated July 18, 2012, Metropolitan received a favorable ruling from the arbitration panel hearing the claims made by the San Luis Rey River Indian Water Authority (IWA). The IWA alleged that Metropolitan's method of calculating payments in trust for water conserved by the lining of the All-American and Coachella Canals did not conform to the contract terms. The panel confirmed Metropolitan's method of calculation. As anticipated, the IWA has filed a motion asking that the panel modify the award to reverse the rulings on the payment calculations. Metropolitan will vigorously oppose the motion. The panel's decision must be made by August 30, 2012. (See General Counsel's May 2012 Activity Report.)

### ***Jena Minor v. Metropolitan (California Court of Appeal)***

Plaintiff Jena Minor filed her brief with the California Court of Appeal on April 20, 2012.

Metropolitan filed its responding brief on July 20. Plaintiff's reply brief was due on August 9. Appellate briefing has now concluded and the Court of Appeal will set oral argument.

As previously reported, in June 2011, the Los Angeles County Superior Court granted Metropolitan's motion for summary judgment and in July, the court entered judgment in Metropolitan's favor. In September, plaintiff filed a notice of appeal of the entry of judgment.

In March 2010, plaintiff, a Metropolitan employee, filed a complaint in the superior court against Metropolitan. Plaintiff alleged retaliation in violation of the Fair Employment and Housing Act for having engaged in the protected activity of complaining about gender and race discrimination and sexual harassment, and for having complained about retaliation. The case had been set for a 14-day jury trial commencing in June 2011. Metropolitan's Legal Department provided legal representation for Metropolitan through November 2010, when the law firm of Meserve, Mumper and Hughes LLP associated in as counsel. (See General Counsel's October 2011 Activity Report.)

## Matters Involving Metropolitan

### ***Sacramento Regional County Sanitation District v. Regional Water Quality Control Board and State Water Resources Control Board (Sacramento Superior Court)***

On July 18, the State Water Resources Control Board (State Board) held a workshop on the petitions of Sacramento Regional County Sanitation District (SRCSD) and the California Sportfishing Protection Alliance concerning the National Pollutant Discharge Elimination System (NPDES) discharge permit for SRCSD's wastewater plant. SRCSD's Sacramento River wastewater plant is by far the largest wastewater plant in the Central Valley, with an average permitted capacity of 181 million gallons per day. The plant provides only a secondary level of treatment and, among other water quality concerns, its discharge of ammonia has been linked to food web impacts throughout the Delta.

In December 2010, the Central Valley Regional Board (Regional Board) ordered a new discharge permit for the plant that would require nitrification/denitrification upgrades and tertiary filtration. Through its appeal, SRCSD sought to overturn the Regional Board's permit order.

The purpose of the July 18 workshop was to solicit comments on a draft appeal order that State Board staff issued in May. The draft order largely upholds the Regional Board's permit. The draft order rejects SRCSD's argument that tertiary filtration is not warranted, finding that the Regional Board properly relied on risk evidence and California Department of Public Health recommendations. The draft order upholds the overall approach the Regional Board took in setting the ammonia limit; however, the draft order would remand the permit back to the Regional Board to make a correction to the final ammonia



effluent limitation calculation. The draft order also agrees that record evidence supports the need for denitrification to reduce the total nitrogen load from the plant, but would remand the permit back to the Regional Board to reevaluate the justification for the specific nitrate limit in the current permit. Parties invited to provide comments at the workshop included the Regional Board, SRCSD, the California Sportfishing Protection Alliance, and the Water Agency parties representing state and federal water contractors. Metropolitan provided comments on behalf of the water agency parties. Comments were also made by EPA Region 9, the Department of Water Resources, the Department of Public Health, the Delta Stewardship Council, various dischargers and discharger associations, and the Sacramento Chamber of Commerce. The State Board will consider adopting the order at a yet-to-be scheduled meeting.

Also in July, SRCSD sought relief from the permit requirements from Sacramento Superior Court. Last December SRCSD brought litigation over the permit in Sacramento County Superior Court, which had been stayed until July 1 while the State Board appeal proceeded. On July 2, SRCSD filed papers and scheduled a July 6 ex parte hearing seeking to extend the stay of the permit requirements until after conclusion of the litigation. The requested stay was not granted and instead SRCSD and the Regional Board agreed to stay and extend the permit compliance dates only for the duration of the State Board appeal process. Metropolitan and the water agency parties opposed the stay.

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

This case involves groundwater contamination in the San Gabriel basin, in the South El Monte area. Metropolitan was brought into the case in 2004 as an alleged source of perchlorate in the basin by virtue of deliveries of untreated Colorado River water to its member agencies. Most parties in this

action had reached tentative settlements at the time of the General Counsel's April 2012 report. On July 11, Chief Judge Collins entered a consent decree resolving claims against the Weiss parties, the last parties with direct contribution claims against Metropolitan. On July 20, Judge Collins granted the motion for entry of an order approving a good faith settlement and order barring further litigation of claims related to the Weiss parties. After the Weiss parties make full payments, the final claims in the case against Metropolitan will be dismissed. (See General Counsel's February, April, and June 2012 Activity Reports.)

***Solano County Water Agency v. State of California Department of Water Resources (Sacramento Superior Court)***

All of the parties to this litigation have signed the Agreements in Principle (AIP), including Metropolitan, as authorized by the Board at its May 2012 meeting. The AIPs are term sheets for settlement that will serve as the basis for final settlement agreements, including the ultimate dismissal of this case with prejudice. The parties currently are drafting the settlement agreements and the Department of Water Resources (DWR) has commenced the CEQA documentation required to implement them. Based on the AIPs, the parties have agreed to extend until September 30, 2012 an existing litigation stay pending completion of the CEQA process and drafting and execution of the settlement agreements. The plaintiffs, north-of-Delta state water contractors, alleged in their complaint that since they are located in the watershed of origin of the State Water Project, they should not be subject to the shortage provisions of their state water contracts. Metropolitan and 13 other south-of-Delta contractors intervened in support of DWR's contrary interpretation of the contracts. At the urging of Sacramento Superior Court Presiding Judge Robert Hight, the parties pursued several months of mediation that resulted in agreement on the AIPs.

## Items of Interest

***Grand Canyon Trust v. U.S. Bureau of Reclamation, et al. (U.S. Court of Appeals for the Ninth Circuit)***

On August 13, 2012, the United States Court of Appeals for the Ninth Circuit upheld the decision of

the U.S. District Court for the District of Arizona in a broad challenge to the federal government's operation of Glen Canyon Dam in the Upper Basin of the Colorado River system. The action claimed the Dam operations violate the Endangered



Species Act (ESA) and National Environmental Policy Act (NEPA) through its determination of release schedules and resulting effects on the endangered humpback chub native fish species.

The claim of greatest concern to Metropolitan alleged that the Bureau of Reclamation's (Reclamation) process for annual operational decisionmaking (AOPs) must include annual ESA and NEPA consultations and documentation. Metropolitan intervened in the case to assert that such annual consultations are not required by law and would cause unnecessary delay and uncertainty in Reclamation's decisionmaking for River operations.

The Court of Appeals upheld the trial court's decision that AOPs are not subject to annual consultation under the ESA or NEPA. Consistent with Metropolitan's arguments, the Court of Appeals reasoned that the primary purpose of the AOPs was informational, as a factual report of the prior year's operations and a projection of the upcoming year's operations, and that the AOPs did not represent discretionary agency actions. The Court also supported Metropolitan's contention that requiring annual ESA and NEPA consultations on a routine report would create unreasonable delays in administrative decisionmaking by the federal agencies.

The Grand Canyon Trust has a 45-day period in which to request a rehearing by a larger panel of Ninth Circuit justices. (See General Counsel's January 2012 Activity Report.)