



## Metropolitan Cases

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

The arbitration of this contract dispute between Metropolitan and the San Luis Rey River Indian Water Authority (IWA) was resolved in Metropolitan's favor by an award issued on July 18, 2012. As reported last month, the IWA filed a motion asking the panel to reverse its rulings. Metropolitan filed an opposition to the motion on both procedural grounds (the panel has no authority to revise its substantive rulings) and substantive grounds (the award correctly interprets the contract). On August 30, the panel issued its order denying IWA's motion. The order is based on the legal arguments raised in Metropolitan's brief. It is anticipated that the IWA will challenge the arbitration award in court. (See General Counsel's July 2012 Activity Report.)

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

As reported in July, phase 1 of the trial in this matter started on February 10, 2012. Phase 1 will be completed on September 13, 2012. This phase 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. Metropolitan is not a party to phase 1 or 2. If, at the conclusion of phase 2, there is a finding of liability for perchlorate contamination against any of the defendants, Metropolitan will participate in phase 3 of the trial. Phase 3 will commence no earlier than 12 months after the conclusion of phase 2.

The parties completed presentation of their cases and the submission of evidence in phase 1 on August 27. Closing arguments will be September 11 and 13. The judge will take the matter under submission and provide a written judgment thereafter. The judge recently dismissed one defendant from the case, MAG Aerospace, based on a motion for judgment, agreeing that plaintiff had not provided sufficient evidence of causation or sufficient evidence of its contribution to the alleged groundwater contamination. This

leaves five defendants remaining. It is possible that additional defendants will be dismissed when the court makes its phase 1 ruling.

Plaintiff OCWD and defendant Northrop introduced evidence of Metropolitan's role in delivering untreated Colorado River water containing perchlorate to the basin. Northrop argued that Metropolitan should be responsible for any costs of perchlorate contamination. Metropolitan filed a written stipulation regarding publicly available facts on the detection of perchlorate in Colorado River water in lieu of trial testimony by Metropolitan staff. Plaintiff OCWD is seeking to have defendants pay for all the treatment including perchlorate. The court has indicated that if any issues remain for the jury, it will direct the parties to engage in mediation before phase 2 commences.

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.

Because Metropolitan was not a party to phase 1, any rulings made will be binding on plaintiff but will not be binding on Metropolitan. If, at the conclusion of phase 2, there is no finding of liability for perchlorate contamination against any of the defendants, Metropolitan will be dismissed and there will be no phase 3. Legal Department staff is continuing to monitor the trial and will report on the future judgment.



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

As reported previously, AFSCME Local 1902 filed an unfair practice charge with the Public Employment Relations Board on May 11, 2012. The charge alleges Metropolitan violated the Myers-Milias-Brown Act by reclassifying AFSCME employees into the Environmental, Health and Safety Field Specialist job family, and moving them into the confidential employees bargaining unit. By letter dated August 3, AFSCME amended its charge after Metropolitan lodged a position statement opposing the original charge. On August 17, Metropolitan filed an additional response stating that AFSCME's May 11 charge failed to comply with the applicable six-month limitations period since AFSCME acknowledged and knew of the reclassification of its members into the Environmental, Health and Safety Field Specialist job family as early as 2010. The Legal Department continues to represent Metropolitan

in this matter. (See General Counsel's May 2012 Activity Report.)

### **Delta Smelt Biological Opinion 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.) (U.S. District Court, Eastern District of California)**

The Ninth Circuit granted the water contractors' motion to dismiss the environmental intervenors' appeal of Judge Wanger's Fall X2 injunction on the ground that the injunction has expired and any controversy over the validity of the injunction is moot. The Ninth Circuit also has scheduled oral argument on the appeal of the final judgment in the Delta smelt cases for September 10, 2012 in Las Vegas. (See General Counsel's March 2012 Activity Report.)

## Matters Involving Metropolitan

### **Boulder City Claim in El Dorado Valley, Interior Board of Land Appeals Case No. 2011-243**

In 1958, Congress enacted a law authorizing the sale of 126,000 acres of land located in the El Dorado Valley south of Boulder City to the Colorado River Commission of Nevada. The sale was required to be subject to existing and future uses by the United States. The land was finally transferred in 1995, and the Colorado River Commission concurrently transferred the land to the City of Boulder City, which plans to use it for solar power development and recreational/open space uses. The federal patent expressly reserved existing rights-of-way and corridors for future utility uses.

Metropolitan has easements for electric transmission lines across the transferred property. These lines convey Metropolitan's Hoover power to the Colorado River Aqueduct and the easements were granted pursuant to the Boulder Canyon Project Act of 1928.

In 2010, Boulder City became concerned that the retention of property interests by the federal government would require compliance with federal environmental laws for their proposed development. As a result, Boulder City sought to have the Bureau of Land Management (BLM)

"correct" the patent to remove the reserved rights-of-way or issue a release of all property interests. BLM refused, and the city filed an appeal to the Department of the Interior. Both Metropolitan and the Los Angeles Department of Water and Power intervened in the appeal to preserve their existing electric line rights-of-way connecting to Hoover Dam. On August 30, 2012, the decision of the administrative law judge denying the city's appeal was filed. Metropolitan was represented by in-house counsel in this matter.

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

In the General Counsel's Monthly Activity Report for April, we reported the San Joaquin Superior Court's *tentative* decision in this matter in favor of the Department of Water Resources (DWR). On August 17, 2012 the court issued its *final* Statement of Decision and Judgment essentially adopting its tentative decision. Plaintiffs had alleged that operation of the State Water Project (SWP) caused, or contributed to, the failure of a levee protecting the Upper and Lower Jones Tracts in the Delta, resulting in flooding. The court held that plaintiffs did not meet their burden of showing that there was a causal connection between operation of the SWP and the failure of the levees.



***Monterey II Cases: Central Delta Water Agency, et al. v. Department of Water Resources (“Central Delta I”); Rosedale-Rio Bravo Water Storage District, et al. v. Department of Water Resources (“Rosedale”); Central Delta Water Agency, et al. v. Kern County Water Agency (“Central Delta II”) (Sacramento County Superior Court)***

These three lawsuits brought by environmental organizations, two Delta water agencies, and two Kern County water storage districts challenge the Monterey Amendment to the SWP contracts. The cases include CEQA challenges to DWR’s May 2010 completion of a new Environmental Impact Report for the project, as well as reverse validation challenges to the underlying contracts.

To date, activity in these cases has been focused on pretrial motions and preparation of the

administrative records. A legal issue concerning the reverse validation challenges is whether they are barred by the statute of limitations and therefore must be dismissed. Validation actions must be filed within 60 days from the date in which a matter such as a contract comes into existence. The respondents maintain that since the Monterey Amendment and related agreements were executed in 1995 and 1996, and the Settlement Agreement for the original litigation in 2003, all applicable statute of limitations periods have long since passed. Judge Frawley has scheduled a November 2 “mini trial” to consider the statute of limitations and other time-bar defenses. On August 31, Metropolitan and the State Water Project Contractors filed an opening trial brief on the statute of limitations defense. (See General Counsel’s September and October 2011 Activity Reports.)

## Items of Interest

### Finance

On August 22, 2012 Metropolitan posted the remarketing statement for \$104,185,000 Water Revenue Refunding Bonds, 2009 Series A-1 (Index Mode). Legal Department staff attorneys worked with finance and resources staff to prepare Appendix A for the Remarketing Statement and worked with bond counsel to prepare bond documents.

On August 29, 2012 Metropolitan executed a standby bond purchase agreement with U.S Bank, National Association, which will provide liquidity support for Metropolitan’s Water Revenue Refunding Bonds, 2004 Series A-1 and A-2, effective September 28, 2012. This agreement replaces a standby bond purchase agreement with JPMorgan Chase Bank that terminates on September 28. Legal Department staff attorneys worked with bond counsel and bank counsel to negotiate and deliver the agreement and prepare bond disclosure documents.