Metropolitan Cases

Colorado River QSA Coordinated Cases

As previously reported, in February 2010 the trial court held that the Quantification Settlement Agreement Joint Powers Authority (QSA JPA) agreement was invalid because it violated the state constitutional debt limitation. Under the QSA JPA agreement, Imperial Irrigation District (IID), Coachella Valley Water District (CVWD) and San Diego County Water Authority (SDCWA) have agreed to contribute $163 million toward Salton Sea mitigation and restoration costs and the State has agreed to pay for any costs in excess of that amount. The court also held that 11 other agreements, including the QSA itself, were invalid because they were inextricably linked to the QSA JPA agreement. The trial court's decision was appealed by many parties, both in favor of (Category 1) and opposed to (Category 2) the QSA.

On December 7, 2011, the court of appeal issued its ruling reversing, in part, the trial court's ruling. In particular, the court of appeal held that while the State's commitment to fund mitigation costs in excess of $163 million was unconditional, actual payment of such costs was subject to a valid appropriation by the Legislature, as required under the California Constitution. Moreover, the State's commitment did not create a present debt in excess of the State Constitution's $300,000 debt limit. Thus, the QSA JPA agreement was held to be constitutional. The court of appeal also rejected other challenges to this agreement, including that it was beyond the IID's authority, there was no "meeting of the minds," and there was a conflict of interest. Subsequently, certain Category 2 parties filed petitions for review by the California Supreme Court and the United State Supreme Court, both of which were rejected. In light of the court of appeal's ruling, the matter was remanded back to the trial court for further proceedings on the claims that had been dismissed as moot. In September and October, all parties submitted their opening and responsive trial briefs, respectively. A four-day bench trial is scheduled to begin on November 13, 2012.

As also reported, the County of Imperial and Imperial County Air Pollution Control District (ICAPCD) filed a federal lawsuit in October 2009 asserting that the Department of Interior, Bureau of Reclamation and other federal parties (federal defendants) failed to comply with the Clean Air Act (the Act) and National Environmental Policy Act (NEPA) in approving the Colorado River Water Delivery Agreement, often referred to as the "Federal QSA." This lawsuit also named IID, CVWD, Metropolitan and SDCWA as "real parties in interest" (non-federal defendants). With respect to NEPA, the complaint alleged that the environmental impact statement prepared by the Bureau of Reclamation failed to adequately analyze potential impacts on the Salton Sea and on land use, growth and socioeconomics; improperly segmented various project components; failed to address cumulative impacts; and failed to address mitigation of potential impacts. With respect to the Act, the complaint alleged that the Bureau of Reclamation failed to conduct a conformity analysis as required under the Act and ICAPCD's own rules.

On April 6, 2012, the court ruled against the plaintiffs and in favor of the defendants on all claims. The court held that the plaintiffs lacked standing to pursue NEPA and Clean Air Act claims and that the NEPA claims lacked merit. On May 4, 2012, the plaintiffs filed a notice of appeal, and on May 22, the non-federal defendants filed a notice of cross-appeal. The plaintiffs submitted their opening briefs in October. The federal defendants' and non-federal defendants' opening briefs on cross-appeal/ responsive briefs are due on December 18. Briefing on all appeals is expected to be completed by early 2013.

***Central Delta Water Agency, et al v. Semitropic Water Storage District; Delta Wetlands Properties as Real Party in Interest et* al (San Francisco Superior Court #CPF-11-511753)**

San Francisco Superior Court Judge Teri L. Jackson entered judgment on October 12, 2012 denying Plaintiffs' petition for writ of mandate challenging an environmental impact report prepared by the Semitropic Water Storage District (Semitropic). Delta Wetlands Properties (Delta Wetlands) has for several years pursued a project

to convert two islands in the Sacramento-San Joaquin Delta to storage reservoirs for the storage and subsequent resale of water. Delta Wetlands has a pending petition with the State Water Resources Control Board (SWRCB) to appropriate water for the storage project. Semitropic, a water district in the San Joaquin Valley with a large groundwater storage program that could be involved in transactions involving Delta Wetlands water sales, prepared the environmental impact report (EIR) for the SWRCB petition on behalf of Delta Wetlands. Delta Wetlands' SWRCB petition lists a number of water supply entities, including Metropolitan, as potential buyers of the water. Plaintiffs consequently named Metropolitan and the other entities listed in Delta Wetlands' SWRCB petition as Real Parties in Interest in the litigation. Plaintiffs did not seek any affirmative relief from the Real Parties in Interest; therefore the General Counsel monitored, but did not respond to the litigation. Unless appealed, this litigation is now concluded. (See General Counsel's February 2012 Activity Report.)

San Gabriel Basin Water Quality Authority v. Aerojet-General Corp., et al. **(SEMOU matter) (U.S. District Court, 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 settled at the time of the General Counsel's April 2012 report, including the remaining parties with direct cross-claims against Metropolitan. Later, the final remaining defendants (TDY Industries, et al.) reached agreement with the plaintiffs on a framework for settlement.

On October 26, the United States filed its proposed consent decree with the Court. Under the settlement, TDY will pay $1.8 million in total - $1.44 million to the United States and $360,000 to the state and local plaintiffs. These payments will go into funds used to offset the cleanup costs at the TDY sites. TDY had brought cross-claims against Upper San Gabriel Valley MWD and Main San Gabriel Basin Watermaster, alleging that water imported by Metropolitan was responsible for the perchlorate contamination. As part of the consent decree and settlement, TDY agrees to waive all such claims against third parties, but retains all claims it has against its insurance carriers. Under standard federal CERCLA procedures, notice of the consent decree shall be published in the Federal Register, and there will be a public comment period of at least 30 days. If the court approves the consent decree after this notice period, it will constitute the final judgment with regard to TDY. (See General Counsel's June and July 2012 Activity Reports.)

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

On September 27, 2012, AFSCME Local 1902 filed an unfair practice charge with the Public Employment Relations Board (PERB). The charge alleges Metropolitan violated the Meyers-Milias-Brown Act (MMBA) on July 13, 2012 by updating the employee evaluation form and deploying two new *MyPerformance* forms, one for evaluating employees and the other for evaluating managers. AFSCME alleges that by this conduct, Metropolitan violated its obligation to meet and confer with respect to issues within the scope of representation. On October 31, 2012, Metropolitan responded by lodging a position statement seeking a dismissal on the basis that the charge is premised on erroneous information, the charge is moot, and that AFSCME's concerns may be subject to the MOU hearing officer appeal process. The Legal Department represents Metropolitan in this matter. (See General Counsel's September 2012 Activity Report.)

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

As previously reported, AFSCME Local 1902 filed a PERB unfair practice charge against Metropolitan on June 20, 2011. The charge alleges Metropolitan violated the MMBA by refusing to meet and confer over the salary grade for the proposed new Planner/Scheduler job classification. Metropolitan responded by lodging a position statement seeking dismissal of the charge on the basis that the proposed Planner/Scheduler job classification has not yet been implemented, and that Local 1902 and Metropolitan have not yet completed negotiations concerning an ongoing classification/compensation study. On October 19, 2012, PERB place the charge in abeyance pursuant to AFSCME's request. The Legal Department represents Metropolitan in this matter. (See General Counsel's June 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 October 29, the State Water Resources Control Board (State Board) issued a revised draft order concerning the appeal 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. In January 2011, SRCSD appealed to the State Board seeking to overturn the Regional Board's permit order. In May 2012, the State Board issued a draft appeal order that would have largely upheld the Regional Board's permit, but would have remanded the permit back to the Regional Board to make certain corrections. Specifically, the May draft order would have required the Regional Board to make a correction to the final ammonia effluent limitation calculation and to reevaluate the justification for the permit's specific nitrate limit. In July, the State Board conducted a workshop to solicit comments on the May draft appeal order.

Like the May order, the State Board's revised draft appeal order reject's SRCSD's arguments and upholds most of the Regional Board's permit order. It rejects SRCSD's argument that tertiary filtration is not warranted and upholds the overall approach the Regional Board took in setting the ammonia limit. However, unlike the May order, the new draft goes further by actually modifying the permit to make the corrections for the ammonia limit calculation and to provide additional reasons for affirming the final nitrate limit. Thus, with adoption of this draft order, remand back to the Regional Board will not be necessary and the appeal administrative appeal process will be concluded. The State Board will consider adopting the revised draft order at a December 4 hearing.

Conclusion of the administrative appeal will not be the end of this matter, however. Last December SRCSD brought litigation over the permit in Sacramento County Superior Court. That litigation has been stayed until the State Board appeal process concludes. Following the December 4 hearing, SRCSD is expected to revive the litigation and continue its fight over the plant's 2010 discharge permit. (See General Counsel's July 2012 Activity Report.)

Items of Interest

Conferences

Assistant General Counsel Sydney Bennion was a panelist at the Bond Attorneys' Workshop sponsored by the National Association of Bond Lawyers on October 24-26. She spoke about continuing disclosure requirements and pension disclosure on the "Current Topics Facing Issuer's Counsel" panel. In-house counsel from the District of Columbia Housing Finance Authority, attorneys from two bond counsel firms and Ms. Bennion comprised the panel.

Administrative

Taking full advantage of Metropolitan's status as a Minimum Continuing Legal Education (MCLE) provider, the Office of the General Counsel plans to provide continuing legal education required seminars and workshops in-house for its attorneys and other relevant staff. This enables us to focus on pertinent and timely legal issues and practices that serve Metropolitan. Accordingly, the Office of the General Counsel conducted two seminars this month on critical issues: *Uses (and Abuses) of Email and Ethical Issues for In-house Counsel*, and *Crafting Clear Contract Clauses - Lessons Learned from Litigation*. Relevant staff from Metropolitan's IT services were in attendance for the first seminar.

Date of Report: October 29, 2012