



## Metropolitan Cases

### ***Alameda County Flood Control & Water Conservation District, Zone 7, et al. v. California Department of Water Resources (California Court of Appeal, Third District)***

The deadline for plaintiffs to file a petition for review by the California Supreme Court was March 27, 2013. No petition was filed, so this case is essentially over. This represents a significant victory for Metropolitan and the other intervenors, and brings to a close nearly eight years of contentious litigation. Although attorneys' fees are not recoverable, the intervenors are entitled to recoup their costs on appeal, as well as certain costs incurred during the lower court proceedings, which could amount to several hundred thousand dollars.

As previously reported, on September 14, 2009, the trial court issued a final ruling in favor of the Department of Water Resources (DWR) and the intervenors. The court rejected all of the arguments made by the plaintiffs challenging the manner in which revenues from the Hyatt-Thermalito power complex have been and are being allocated. This ruling was memorialized in a statement of decision and interlocutory judgment issued by the court. Based on this ruling, the court dismissed the remaining causes of action asserted by the plaintiffs and, on June 17, 2010, entered a final judgment dismissing both their original suit and a related case they filed in 2007. On July 1, 2010, plaintiffs filed a notice of appeal. Six days later, intervenors filed a notice of cross-appeal. That appeal was heard on November 16, 2012 and a decision in favor of DWR and the intervenors was issued on February 15, 2013. (See General Counsel's May 2011 Activity Report.)

### ***Colorado River QSA Coordinated Cases***

As previously reported, the retrial of the state court challenges to the validity of the Quantification Settlement Agreement (QSA) took place on November 13 and 14, 2012. The court focused exclusively on CEQA issues during the hearing, such as the use of co-lead agencies, the proper environmental baseline for the water transfers by Imperial Irrigation District (IID), what constitutes an appropriate "no project" alternative, whether the

transfers to San Diego County Water Authority (SDCWA) are growth inducing, and the nature of the transfer's impacts on the Salton Sea. In the retrial, Judge Connelly discouraged the parties from arguing about other legal issues, such as claims of Brown Act violations, ultra vires acts, trust/Water Code violations, lack of authority to contract, duress and undue influence, all of which relate to what the IID board did or did not do in approving the QSA in October 2003, stating that these were already well pled. At the end of the retrial the judge took the case under submission and indicated that he would rule within 90 days.

On the 90<sup>th</sup> day, February 13, 2013, the court issued an order vacating the submission of the case and ordering the parties to submit additional briefs on the issue of whether IID's general manager had acted "ultra vires" by exceeding the authority granted by his board in executing the QSA Joint Powers Authority agreement. That order triggered a wave of unrelated filings by parties to the case. First, IID associated new counsel, Stuart Somach, solely for the purpose of moving for a stay of the court's ruling while IID pursued settlement negotiations. This motion was supported by the County of Imperial, its Air Pollution Control District, and the IID landowners involved in the lawsuit. SDCWA, Coachella Valley Water District (CVWD), and the State of California opposed the stay request. On February 22, the court issued a further order requiring that all briefs on the ultra vires question be filed March 5, and agreeing to delay the ruling in the case until June 3 to allow settlement discussions to proceed.

Through its original counsel of record, IID filed a brief on March 5 addressing the ultra vires question and arguing that the authority to execute the QSA JPA agreement was properly delegated by the IID board. Additional briefs in support of this position were filed by CVWD and SDCWA, while the opposing parties also filed briefs. But two days after filing its brief, IID substituted its original counsel out of the case and is now represented by Patrick Redmond of the New Mexico law firm, Law and Resource Planning Associates. On March 11, IID's new counsel filed a request to withdraw its brief asking the court for additional time to file a "substitute brief."



SDCWA filed an opposition to IID's request to withdraw its original brief, which it had joined. At the same time, Cuatro del Mar filed a motion seeking to have the court reopen the case and allow it to undertake further discovery on the issues related to the authority granted by IID's board on the execution of the QSA agreements. These pleadings were filed on March 18. At this time, the court has not acted on IID's request to withdraw its brief or Cuatro del Mar's motion to reopen the case. Nor has Metropolitan's counsel been contacted regarding the purported settlement discussions that initially triggered the delays in bringing the case to conclusion. (See General Counsel's November 2012 Activity Report.)

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

MAPA filed an unfair practice charge with the Public Employment Relations Board (PERB) on March 22, 2013. The charge alleges Metropolitan

violated the Meyers-Milias-Brown Act (MMBA) by changing certain job descriptions and salary grades for seven WSO section managers without implementing MAPA's request to increase the salary grade for all other MAPA classifications by one salary grade. While MAPA did agree to the changes to the descriptions and salary grades for the section managers, the Charge alleges that Metropolitan refused to meet and confer in good faith by creating salary disparities within MAPA and by implementing the proposed changes without following the District's impasse procedures. Metropolitan will respond to the charge by lodging a position statement. The Legal Department will represent Metropolitan in this matter.

## Items of Interest

### Finance

On March 13, 2013, Metropolitan posted the remarketing statement for \$104,180,000 Water Revenue Refunding Bonds, 2009 Series A-2 (Index Mode). Legal Department staff attorneys worked with finance and resources staff to prepare Appendix A incorporated in the Remarketing Statement and worked with bond counsel to prepare bond documents.

On March 21, 2013, Metropolitan executed a revolving credit agreement with The Bank of New York Mellon, which will extend credit to Metropolitan to purchase tendered (put) variable rate water revenue bonds and to backstop Metropolitan's own liquidity. Legal Department staff attorneys worked with bond counsel and bank counsel to negotiate and deliver the agreement.