



## Metropolitan Cases

***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)***

Activities in January mark a milestone of sorts for the *Monterey II* cases, as trial briefing was concluded and a bench trial was held in this litigation that challenges the 1995 Monterey Amendments to the State Water Project (SWP) contracts. This litigation was brought by environmental organizations, two Delta water agencies, and two Kern County water storage districts. At issue is CEQA compliance for DWR’s May 2010 completion of a new Environmental Impact Report (EIR) for the project. The original EIR was invalidated by the Court of Appeal in 2000 through an earlier round of litigation.

The trial was held on January 31 before Sacramento Superior Court Judge Timothy Frawley. Judge Frawley is expected to issue his decision on the merits of the litigation by May 1. (See General Counsel’s June and December 2013 Activity Reports.)

***State Water Contractors, et al. v. Delta Stewardship Council (Sacramento County Superior Court Case No. 34-2013-80001530), now coordinated with six other actions in the Delta Stewardship Council Cases (Judicial Council Coordinated Proceeding No. 4758)***

As previously reported, cross-motions regarding the administrative record are scheduled to be heard by Judge Kenny on February 14, 2014. The Delta Stewardship Council has asked the court to order that the administrative record it has prepared be used as the record in all seven of the coordinated actions. Four of the seven petitioner groups are seeking an order requiring the Council to produce all records to them in response to a Public Records Act request so that they may prepare their own administrative record for use in their cases, or in the alternative, for use in all seven cases. The State Water Contractors,

including Metropolitan, support the Council’s motion, and oppose the four “electing petitioners” cross-motion.

At or soon after the February 14 hearing, we anticipate the judge will set a scheduling conference to establish a time frame to resolve an anticipated motion to bifurcate the challenges to the Delta Plan and associated regulations from the CEQA challenges, any challenges to the adequacy of the administrative record (or records), a briefing schedule, and a date for one or more hearings on the merits. (See General Counsel’s December 2013 Activity Report.)

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

As previously reported, MAPA filed an unfair practice charge with PERB on March 22, 2013. The charge alleges Metropolitan violated the Meyers-Milias-Brown Act (MMBA) by creating job descriptions and salary grades for seven new WSO section manager positions without implementing MAPA’s request to increase salaries for all other MAPA classifications by one pay grade. While MAPA did agree to the changes to the job descriptions and salary grade for the new 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 Metropolitan’s impasse procedures. On August 6, PERB issued a complaint alleging Metropolitan acted improperly by not affording MAPA the opportunity to meet and confer to impasse over the decision to change job descriptions and salary grades, and a formal hearing was scheduled for January 23, 2014. On January 9, the parties signed a settlement agreement resolving the complaint. Under the agreement, the parties will meet and confer to determine whether there are any unresolved changes affecting the conditions of employment for the seven new manager positions. In addition, the parties will informally discuss the subject of salary compaction. Per the agreement, MAPA withdrew its charge with prejudice. On January 10, PERB dismissed the complaint and closed its file in this



matter. The Legal Department represented Metropolitan in this matter. (See General Counsel's July and September 2013 Activity Reports.)

***AFSCME Local 1902 v. Metropolitan (Public Employment Relations Board)***  
***AFSCME Local 1902 v. Metropolitan (MOU Hearing Officer Appeal)***  
***Retired Employees 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 then-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 had not yet been implemented, and that Local 1902 and Metropolitan had not yet completed negotiations concerning the then-ongoing classification/compensation study. On October 19, 2012, PERB placed the charge in abeyance pursuant to AFSCME's request. (See General Counsel's June 2011 and October 2012 Activity Reports.)

Meanwhile, on May 31, 2012, AFSCME submitted Grievance No. 1205G030. The grievance alleged Metropolitan failed to fully respond to a request for information regarding a March 22, 2001, job audit report that was performed by a consultant on the District's Planner/Schedulers. As a consequence, the grievance contended Human Resources violated the AFSCME MOU and the Administrative Code. As a remedy, AFSCME sought back pay going back several years and a retroactive reclassification of several Planner/Schedulers to the Engineering Technician III classification. In response, Metropolitan denied any violation of the MOU or Code, while asserting AFSCME failed to allege a proper grievance. Pursuant to the MOU's hearing officer appeal procedure, an appealability hearing on the grievance began on June 18, 2013, before Hearing Officer R. Douglas Collins. After opening statements, the parties agreed to place the hearing in abeyance to discuss settlement.

On January 15, 2014 the parties executed an agreement fully resolving: (1) the PERB charge; (2) the grievance; and (3) any concerns AFSCME expressed with the current slotting of Senior Planner/Schedulers, a new classification

recognized by the February 2013 MOU implementing the AFSCME classification/compensation study. Key terms of the settlement include AFSCME's withdrawal of the charge, AFSCME's withdrawal of the grievance, and the retroactive temporary promotion of ten Planner/Schedulers for a period up to eighteen months.

A former Planner/Scheduler – and current retiree – requested and received a copy of the settlement pursuant to the Public Records Act. Since this individual did not personally benefit from the settlement, he requested Metropolitan to engage in separate negotiations with him concerning the same subject matters addressed by the charge and grievance described above. Metropolitan respectfully declined that request. In response, the retiree lodged a PERB unfair practice charge against Metropolitan on January 23, 2014. His charge alleges Metropolitan violated the MMBA by not including retired employees in the settlement described above. Metropolitan will file a position statement opposing this latest charge.

The Legal Department represented Metropolitan in these three matters.

**Update on Copper Pitting Cases**

In July 2013, the General Counsel's Office reported that Metropolitan was dismissed from several copper pitting cases. In the remaining cases, *Caito*, *Eckert*, and *Williams*, it was reported that Metropolitan would once again seek to dismiss claims for inverse condemnation and nuisance. Since the report in July, all copper pitting cases defended by Metropolitan have been deemed related by the Orange County Superior Court and have been referred to the Hon. Stephen L. Perk for coordination in the Complex Civil Litigation Court.

On January 10, 2014, a second hearing of demurrers aimed at dismissing either the entire actions or specific claims was heard by Judge Perk. Judge Perk dismissed several additional causes of action (recovery theories) including breach of contract, breach of warranty and claims under the Consumer Legal Remedies Act addressed solely to Irvine Ranch Water District and Moulton Niguel Water District. On February 3 Metropolitan will file its answers to remaining complaints alleging inverse condemnation and nuisance claims. Metropolitan's compliance with the federal and California Safe Drinking Water Acts continues to be Metropolitan's primary factual defense.



At a status conference on January 6, the judge and parties agreed that certain threshold legal issues should be clarified by the Court of Appeal before litigation escalates in earnest. These issues include: (1) whether the trial court has jurisdiction to hear the nuisance cause of action; and (2) whether the treatment of drinking water can be deemed a constitutional taking. Favorable rulings for Metropolitan could result in complete dismissal of the cases.

The parties are negotiating over the procedure and scope of the facts and issues, which should proceed to a “Phase I” trial of threshold legal issues. Under this process, the trial court would issue decisions on specified legal issues which could be appealed. A trial on the facts would occur only if the ruling on the legal issues did not fully resolve all claims. If the parties can agree to a procedure and to the scope of threshold issues, a Phase I trial may occur in the summer of 2014. A decision on appeal would most likely be rendered in the summer of 2015.

Copper pitting claims have been received by the Yorba Linda and Las Virgenes Water Districts, which are outside of south Orange County, where a majority of the claims exist. Both claims are filed by attorney Robert A. Stutman. The claim in YLWD is made by Mercury Insurance Group in the amount of \$15,000 and involves a single family residence. The claim in LVWD is a private party claim in the amount of \$30,000 and also involves a single family residence. The Law Offices of Robert A. Stutman are located in Fort Washington, PA. The Stutman website reports large recoveries in fire and construction-related subrogation claims throughout the country. (See General Counsel’s January and July 2013 Activity Reports.)

### **Salmon Biological Opinion Litigation**

Oral argument before the Ninth Circuit has been continued to September in light of the “anticipated opinion” on the smelt decision. It is not clear if the Court was simply apprised of the pending Smelt case, or if the decision on the Smelt BiOp will, in fact, be issued shortly. (See General Counsel’s August 2013 Activity Report.)

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

This matter is commonly referred to as the “Area of Origin Litigation.” It relates to the rights of north-of-Delta state water contractors. The proposed terms

of the settlement were reported to the Board at its July 9, 2013 meeting. All parties have since signed the Settlement Agreement and Release in this litigation and it has been submitted to the court for approval. The parties anticipate the court will approve the settlement agreement, resulting in dismissal of the matter *with prejudice*.

The case was originally filed in 2008 by four north-of-Delta state water contractors who alleged that since they are located in the watershed of origin of the SWP, they should not be subject to the shortage provisions of their state water contracts. Metropolitan organized twelve other state water contractors to intervene in support of DWR; the intervenors participated directly in all stages of the litigation, including the lengthy settlement negotiations. If the litigation had been successful, Metropolitan and other contractors could have lost significant supply in shortage years. Under the settlement, plaintiffs essentially concede that neither the SWP contract nor California water law give north-of-Delta contractors a preferential right to SWP water, and in return creative SWP management programs and operations were identified that will firm up supplies for the benefit of plaintiffs at a reasonable cost to other contractors. (See General Counsel’s July 2012 Activity Report.)

### ***Sacramento Regional County Sanitation District v. Regional Water Quality Control Board and State Water Resources Control Board* (Sacramento Superior Court); *Alameda County Water District, et al v. Sacramento Regional County Sanitation District* (California Court of Appeal, Third District)**

The Sacramento Regional County Sanitation District (SRCSD) brought litigation to challenge the discharge permit imposed on its Sacramento River Wastewater Treatment Plant (Treatment Plant). The permit was adopted by the Central Valley Regional Water Quality Control Board (Regional Board) in 2010 and upheld by the State Water Resources Control Board in 2012. The Treatment Plant provides only a secondary level of treatment and has long been of significant concern to Metropolitan for its discharge of nutrients, pathogens, and other constituents into the Delta water supply. The challenged permit calls for a dramatic reduction in the discharge of ammonia and nitrate by requiring full nitrification/denitrification treatment, as well as tertiary filtration for pathogen removal. Metropolitan and other state and federal water contractors participated in



the permit proceedings and its appeal, and are parties to the litigation.

Last spring, the parties reached a partial settlement of the litigation, whereby SRCSD agreed to dismiss its challenge to the ammonia and nitrate limits, as well as a cause of action regarding toxicity. That left a cause of action concerning the pathogen and filtration requirements still to be litigated. A hearing had been scheduled for April 4. Recently, however, SRCSD and the Regional and State Boards began settlement discussions of the remaining litigation. To facilitate further discussions with Metropolitan and the other water agencies, the parties have stipulated to a two-month delay in litigation deadlines.

In a related proceeding, Metropolitan, other state water contractors, and the Contra Costa Water

District had earlier brought a successful CEQA challenge in response to significant, unmitigated water quality impacts that would occur from a planned expansion of the Treatment Plant. SRCSD appealed the trial court ruling and the case has been pending for several years in the Third District Court of Appeal awaiting oral argument. Argument was finally set for February 24, 2014.

However, following an exchange of correspondence between the parties and the Court of Appeal, the Court on January 10 dismissed the appeal as moot. The dismissal was based on SRCSD's representation that the expansion project is no longer planned. That leaves attorneys' fees for Metropolitan and the other prevailing parties in the trial court as the only remaining issue in this CEQA case. (See April 2013 Activity Report.)

## Other Activities

### Finance

On January 29, 2014, 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 bond counsel to prepare bond documents.

On January 29, 2014, Metropolitan and Wells Fargo Bank National Association executed a supplement to the Paying Agent Agreement for the 2000 Authorization Series B-3 and Series B-4 amending the qualifications of remarketing and paying agents. Also on January 29, Metropolitan executed an amendment to a standby bond purchase agreement with Wells Fargo Bank National Association, which provides liquidity support for Metropolitan's Water Revenue Bonds, 2000 Authorization Series B-3 and Series B-4. This amends certain provisions in the standby bond purchase agreement and extends the expiration date from February 18, 2014 to February 17, 2017. Metropolitan also executed agreements on January 29 to replace Citigroup Global Markets Inc. with Wells Fargo Bank National Association as remarketing agent for the 2000 Authorization Series B-3 and Series B-4 Bonds, effective February 18, 2014. Staff attorneys prepared a supplement to the Official Statement for Metropolitan's Water Revenue

Bonds, 2000 Authorization Series B-3 and Series B-4, disclosing the amendments to and extension of the expiration date of the standby bond purchase agreement and the replacement of the remarketing agent. Legal Department staff attorneys worked with bank counsel and underwriter's counsel to negotiate and deliver the necessary documents for these transactions.

### Form 700 Filings

The Legal Department is coordinating with the Ethics Office to transition Form 700 filing officer duties to the Ethics Office.

### Bay-Delta

Legal Department staff continue to work on a variety of BDCP issues, including review of the CEQA/NEPA documents issued for the proposed BDCP, participate in the Delta Plan litigation, provide assistance on various proposed acquisitions for habitat and analyze related legislation.



**Matters Received by the Legal Department**

Category	Received	Description	
Actions in which MWD is a party	1	Petition and Writ of Mandate filed by City of Chula Vista, et al., naming MWD as one of the real parties in interest, relating to the distribution of revenues to Petitioners from the Redevelopment Property Tax Trust Fund	
Government Code Claims	3	Claims relating to construction project at Julian Hinds Pumping Plant, employment matter, and accident involving an MWD vehicle	
Requests Pursuant to the Public Records Act	6	<u>Requestor</u>	<u>Documents Requested</u>
		Reporter, Radio Station KPCC	Costs and participant lists for MWD inspection trips November 2011 through May 2012
		Consultant	Water well data in Santa Ana
		New Mexico State University Graduate Student	Number of households relocated to construct DVL
		Former MWD Employee	Work Tech records
		UC Riverside Student	Data on MWD water sales and storage
		Imperial Irrigation District	Executive salary information and job descriptions
Other Matters	2	Wage garnishment and charge filed with the California Public Employment Relations Board (PERB) relating to the job classification of Senior Planner/Scheduler	