



Metropolitan Cases

Salmon Biological Opinion Litigation (*San Luis & Delta Mendota Water Authority, et al. v. Locke, et al.* and related cases) (U.S. Court of Appeals, Ninth Circuit)

In a decision issued on December 22, a three-judge panel of the Ninth Circuit Court of Appeals unanimously reversed the district court decision by Judge Wanger in the cases relating to the biological opinion (BiOp) for the Delta's endangered salmonid species. The ruling validates the BiOp and the Reasonable and Prudent Alternatives (RPAs) issued by the National Marine Fisheries Service (NMFS) in 2009. The RPAs include seasonal limits on export and river operations imposed to protect the salmonid species.

The ruling generally adopts the same justification and approach that the Ninth Circuit used in validating the 2008 Delta Smelt BiOp decision. The Ninth Circuit held that the district court did not give NMFS the substantial deference it was due under the Administrative Procedures Act and found that the components of the BiOp invalidated by the district court were reasonable and supported by the record. Specifically, the Ninth Circuit found that: (1) NMFS acted within its substantial discretion when it used raw salvage data instead of normalized data; (2) the Service's jeopardy opinion components were not arbitrary and capricious; and (3) the RPA actions were not arbitrary and capricious.

The matter is now remanded to the district court for further proceedings consistent with the Ninth Circuit opinion. The impacted parties will discuss possible next steps such as seeking further appellate review through a motion for reconsideration or a petition to the Supreme Court. The course of action will be informed by the Supreme Court's decision on the petition for certiorari in the Smelt BiOp Litigation, which is anticipated to be issued within a few weeks.

Update on Copper Pitting Cases

In January 2014, the General Counsel's Office reported that Metropolitan and other parties to the copper pitting litigation had agreed to a trial on threshold legal issues that are common to copper

pipe cases pending against the Irvine Ranch, Moulton Niguel and Metropolitan Water Districts (the "Districts"). Trial had been set for November 10, 2014. That trial date was taken off calendar due to illness experienced by the assigned trial judge. The cases are now being overseen by Judge Colaw in the Complex Division of the Orange County Superior Court.

At a court status conference on December 9, Judge Colaw formally consolidated the copper pipe cases that are pending against the Districts for trial of the threshold issues. The threshold issues trial will answer whether the Districts may be liable under either nuisance or inverse condemnation legal theories, despite their compliance with applicable state and federal water quality regulations. The parties exchanged expert witness declarations in September and October 2014. Judge Colaw will hear objections to the expert witness declarations on January 7, 2015. Rulings on the objections that may narrow the scope of threshold issues are expected in January. Judge Colaw set a June 1, 2015 trial date for the threshold legal issues. A trial on issues of causation and damages will not be set until after the threshold issues trial has concluded.

In January 2014, the General Counsel's Office reported that two new copper pipe Government Claims were made by the Law Offices of Robert A. Stutman ("Stutman"), one each in the Las Virgenes and Yorba Linda Water Districts ("LVWD" and "YLWD," respectively). LVWD and YLWD timely rejected the Stutman claims, and the Government Claims limitation for bringing judicial action lapsed in July 2014, barring further action. (See General Counsel's January 2014 Activity Report.)

***The Navajo Nation v. United States Department of the Interior* (U.S. District Court, District of Arizona)**

The Navajo Nation originally filed this litigation in March 2003 in federal district court in Arizona seeking to overturn Colorado River operation rules adopted by the Secretary of the Interior. Settlement negotiations were conducted until May 2013 when a tentative settlement failed to gain approval of the Navajo. During the settlement



discussions, Metropolitan and the other Colorado River agencies were authorized to observe but not directly participate in the settlement discussions.

In July 2013, the Navajo Nation filed its First Amended Complaint. Metropolitan jointly intervened with the Coachella Valley Water District (Coachella) and filed a motion to dismiss. Similar motions were filed by the federal government and other water agencies in California, Arizona, and Nevada. On July 22, 2014, the district court granted the federal motion to dismiss and denied the water agencies' motions as moot. The Navajo then filed a motion seeking leave to further amend their complaint to respond to the grounds on which the dismissal was granted. The motion to amend

was denied on October 1, 2014, and the Navajo filed a notice of appeal.

On December 24, 2014, the Navajo filed their opening brief in the Ninth Circuit Court of Appeals. The brief argues that the district court erred in concluding that the Navajo has no standing for its challenges to the Secretarial decisions on river operations and in ruling that the federal government had not waived its sovereign immunity for the Navajo Nation's claims for breach of fiduciary duty. Metropolitan and Coachella are coordinating with the intervenor-defendant water agencies to prepare opposition briefs. (See General Counsel's November 2014 Activity Report.)

Matters Involving Metropolitan

Center for Biological Diversity v. California Department of Fish and Wildlife (California Supreme Court)

Metropolitan is working with legal counsel for the State Water Contractors, Kern County Water Agency, and several regional transportation agencies to file a friend-of-the-court brief in *Center for Biological Diversity v. California Department of Fish and Wildlife*, a case pending before the

California Supreme Court. The issue of most concern to Metropolitan is the question whether it is permissible under California law to relocate fully protected species to avoid "take," or whether such relocation is itself a form of prohibited "take." The case also presents several important CEQA issues, including the scope of a lead agency's discretion to select a threshold of significance for greenhouse gas emissions.

Other Activities

Finance

On December 11, 2014, Metropolitan issued \$49,645,000 Waterworks General Obligation Refunding Bonds, 2014 Series A, to redeem outstanding general obligation bonds and produce debt service savings. Legal Department staff prepared Appendix A to the Official Statement and worked with Finance staff and outside bond counsel to prepare the Official Statement and other disclosure documents and provide the notices, certifications and opinions necessary for closing.

On December 18, 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.

Annual Information Filing

Legal Department staff posted Metropolitan's annual financial information filings for fiscal year 2013/14, pursuant to continuing disclosure requirements for outstanding bond issues. These filings include the Remarketing Statement for Metropolitan's Water Revenue Refunding Bonds, 2011 Series A-1 and 2011 Series A-3, the Official Statement for Metropolitan's Waterworks General Obligation Bonds, 2014 Series A, including Basic Financial Statements And Management's Discussion And Analysis As Of And For The Years Ended June 30, 2014 And 2013 and the Comprehensive Annual Financial Report For The Fiscal Years Ended June 30, 2014 and 2013. They are available at <http://emma.msrb.org> (the Electronic Municipal Market Access (EMMA) system established in 2009 by the Municipal Securities Rulemaking Board).



Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Government Code Claims	2	Claims submitted by (1) SimplexGrinnell relating to the power systems upgrade at Weymouth, and (2) individual relating to alleged damage to vehicle from MWD manhole cover	
Subpoenas	2	Subpoenas for (1) documents relating to work on the Sepulveda feeder in an employment case against contractor Minako America Corp., and (2) employee records for a matter unrelated to MWD	
Requests Pursuant to the Public Records Act	6	<u>Requestor</u>	<u>Documents Requested</u>
		C&V Consulting	Right-of-way maps
		Cement Masons Southern California Health and Welfare Fund	Certified payroll records for contractor's work at Weymouth
		Corona Department of Water & Power	Right-of-way maps
		Infosemantics	Proposal documents relating to Oracle EBS upgrade
		Inland Empire Utilities Agency	Job description and salary data for Records Management Department
Lincoln Financial Group	Proposal and contract documents relating to Third Party Administrator for MWD's 457(b) Deferred Compensation Plan		