

• General Counsel's August 2004 Monthly Report

Summary

This report discusses significant matters in which the Legal Department was involved during the month of August 2004.

Attachments

None.

Detailed Report

1. Litigation/Claims To Which Metropolitan Is A Party

a. *Shank/Balfour Beatty v. Metropolitan*

The claim by Shank/Balfour Beatty has been settled, but the pipe vendor Ameron continues to seek damages from Metropolitan. Ameron's motion for judgment on the pleadings, seeking dismissal of Metropolitan's cross-complaint for false claims, was heard by the court on August 13. The court issued a tentative ruling in Metropolitan's favor, heard argument and took the matter under advisement. No final ruling on this matter has been issued as yet.

2. Other Matters Not Involving Metropolitan

a. *In re Groundwater Cases – Judicial Council Coordination Proceeding No. 4135*

In a ruling favorable to both public and privately owned drinking water systems, Judge Carl West of the Los Angeles Superior Court recently dismissed all of the drinking water providers from the proceedings that included several cases alleging damage as a result of exposure to drinking water in the San Gabriel Valley. Judge West ruled that the court did not have jurisdiction to proceed against the water providers because plaintiffs could not allege or prove that the drinking water provided to them violated state or federal water quality standards. This ruling follows the 2002 California Supreme Court decision in *Hartwell v. Superior Court* where the court found that PUC-regulated water suppliers could not be held liable for damages unless the water they supplied to consumers failed to comply with applicable water quality standards. The industrial defendants remain parties to the litigation. Plaintiffs are expected to appeal the decision. <http://safedrinkingwater.com/community/2004/0811/FinalHartwellRuling.pdf>

b. *Natural Resources Defense Council v. Patterson*

On August 27, 2004, U.S. District Judge Karlton ruled that the Bureau of Reclamation is violating California Fish and Game Code § 5937 by failing to allow sufficient water to pass through Friant Dam on the San Joaquin River to maintain the historic salmon fishery in the upper San Joaquin River. The construction of Friant Dam and the Friant-Kern Canal as part of the Central Valley Project decades ago resulted in the dewatering of large stretches of the San Joaquin River below Friant Dam, and the loss of the salmon fishery on the upper River. Efforts at settling this long-running litigation failed several years ago, and led to the district court's ruling which was limited to liability issues only. A later phase of the litigation will address the difficult issue of an appropriate remedy which, the court noted, should take into account the fact that Central Valley farmers have relied upon the supply of Friant water for decades. <http://207.41.18.73/caed/DOCUMENTS/Opinions/Karlton/Naturalvspatterson.pdf>

3. Finances

Legal Department staff worked with Finance staff to extend the expiration dates of Standby Bond Purchase Agreements providing liquidity support for Metropolitan's Water Revenue Refunding Bonds, 2002 Series A and B. Both Standby Agreements would have expired September 10, 2004.