MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Report

Legal Department

• General Counsel's June 2005 Activity Report

Summary

This report discusses significant matters in which the Legal Department was involved during the month of June 2005.

Attachments

None.

Detailed Report

1. Litigation/Claims To Which Metropolitan Is A Party

a. *Cargill, et al. v. Metropolitan*

On June 14, 2005, Metropolitan and the petitioners agreed in principle to the resolution of the Administrative Code claim in the Cargill class action lawsuit. The parties are currently drafting a final settlement agreement for that claim.

b. *Shank/Balfour Beatty v. Metropolitan*

The court entered Judgment in the final piece of the *Shank/Balfour Beatty v. Metropolitan* case on June 14, 2005. The court rejected all of the pipe manufacturer Ameron's requests for modifications to the original Statement of Decision. The judgment stands as given in the original March 2005 Statement of Decision, which ruled in Metropolitan's favor. Ameron has indicated they intend to appeal, which would be due by mid-August.

c. *Villanueva v. Metropolitan, et al.*

At a final status conference of this case heard on June 25, 2005, the trial that was previously scheduled for July 8, 2005, was continued to September 6, 2005. The case, in which the plaintiff, a Metropolitan employee, alleges employment discrimination and retaliation, is estimated to be tried over several weeks and involve as many as two dozen witnesses.

2. Other Matters Involving Metropolitan

a. *Alameda County Water District v. SRCSD; Contra Costa County Water District v. SRCSD*

Last year, the Sacramento Regional County Sanitation District (SRCSD) approved a master plan and Environmental Impact Report (EIR) for an approximately $380 million expansion of their wastewater treatment plant. The expansion will increase plant discharges to the Sacramento River by about 40 percent by 2020 while providing only secondary treatment. Because of concerns about degraded Delta water quality from the project, last summer the Board authorized staff to coordinate with other urban water agencies in pursuing options to protect our interests. Metropolitan and several other agencies subsequently entered into an agreement with SRCSD to jointly study potential measures of offsetting the increased loading and to toll period for challenging the EIR while the study progressed.

As reported last month, the water agencies and SRCSD had been in discussions to settle the dispute by implementing offsetting measures but unable to reach agreement on funding. On June 22, the day the tolling agreement for challenging the EIR expired and with the negotiating parties unable to develop a mutually acceptable settlement proposal, the water agencies moved forward with litigation.

A petition was filed by Alameda County Water District; Alameda County Flood Control and Water Conservation District, Zone 7; Santa Clara Valley Water District; State Water Contractors; and Metropolitan in Sacramento County Superior Court alleging SRCSD violated CEQA in certifying the Final EIR for the plant expansion project. A separate petition alleging non-compliance with CEQA was also filed by the Contra Costa Water District.

b. *Lauren Ward v. Richvale Irrigation District*

This action has been dismissed. Plaintiff, a landowner in the Richvale Irrigation District, had alleged that Richvale's proposed water transfer to Metropolitan and a number of other state water contractors had not complied with CEQA. None of the potential buyers had exercised their option to buy the water this year so the action was moot.

c. *Natural Resources Defense Council, et al. v. Norton, et al.*

San Francisco Federal District Court trial Judge Claudia Wilkin denied the State Water Contractors' motion to intervene in this action on June 13, 2005. Plaintiffs allege that the United States Fish and Wildlife Service's Biological Opinion regarding the Central Valley Project operational plan violates the Federal Endangered Species Act. The Biological Opinion also includes State Water Project operations and gives both the CVP and SWP protection against incidental take of the Delta smelt. Judge Wilkin agreed that the State Water Contractors' interest in the litigation was sufficient to support intervention, but found that the Farm Bureau Federation, which was allowed to intervene, would adequately protect the State Water Contractors' interest. The State Water Contractors are preparing a motion for reconsideration and considering an appeal if the Judge does not reverse her decision.

3. Matters of Interest Not Involving Metropolitan

a. *Off, et al. v. United States, et al.*

The United States Supreme Court concluded on June 23, 2004 that the Reclamation Reform Act of 1982 did not waive the United States' sovereign immunity in a damages action for breach of contract based on reductions in water supply. Plaintiffs, individual farmers and farm entities receiving water from the Westlands Water District, had intervened in an action initially filed by Westlands in 1993 based on CVP delivery reductions stemming from environmental obligations. Westlands and all other parties subsequently stipulated to the dismissal of Westlands' case, but the Off plaintiffs continued the litigation. The federal trial court and Ninth Circuit Court of Appeals held that the Reclamation Reform Act waiver of sovereign immunity applied only to actions to adjudicate "contractual rights *of a contracting party*." Westlands, and not the individual farmers, was the contracting party here and the individual farmers could not be considered contracting parties based on their claimed interest as third party or trust beneficiaries under the contract.

The Supreme Court affirmed that the Reclamation Reform Act sovereign immunity waiver did not authorize plaintiffs' action, but on different and broader grounds. The Supreme Court focused on different language in the waiver statute providing that the United States could "be *joined* as a necessary party defendant to any suit to adjudicate" a CVP contract right. The Court held that the waiver only allowed a plaintiff to "join" the United States to an existing action between non-federal parties—such as two water districts—when the action requires construction of a CVP contract and the United States is necessary. However, the waiver does not allow a plaintiff to file an initial action against the United States as a defendant. This ruling would appear to apply to parties directly contracting with the United States as well. In a footnote, the Court recognized that a damage action in the Court of Federal Claims might have been available to plaintiffs, but they had not filed such an action.

4. Finances

The Legal Department worked with the Finance Department on two interest rate swap transactions totaling $112,000,000.