



Metropolitan Cases

San Diego County Water Authority v. MWD (Los Angeles County Superior Court)

As reported last month, the Imperial Irrigation District (IID) and Utility Consumers Action Network (UCAN; a San Diego-based consumer advocacy group) filed answers in support of the San Diego County Water Authority's (SDCWA) complaint that Metropolitan's rates are invalid and on September 1, 2010, Metropolitan filed a motion challenging IID's and UCAN's standing to file answers as "persons interested" in Metropolitan's rates. IID and UCAN have filed oppositions to Metropolitan's motion to dismiss their answers. In addition, IID filed a motion to dismiss the answers of Metropolitan and the eight member agencies (Foothill MWD, Glendale, Las Virgenes MWD, Los Angeles DWP, MWD of Orange County, Three Valleys MWD, Torrance and West Basin MWD) that responded to SDCWA's complaint. IID's motion argues that the "general denial" of the Authority's allegations contained in Metropolitan's and the member agencies' answers is insufficient and Metropolitan and the member agencies must specifically respond to each of the allegations in detail. If IID's motion is granted, Metropolitan and the member agencies will simply be required to amend their answers. The parties also filed their stipulation to transfer the case to the San Francisco Superior Court. As part of the stipulation, the hearings scheduled on the pending motions will be taken off calendar and rescheduled once the case is officially transferred. (See General Counsel's July and August 2010 Monthly Activity Reports)

Colorado River QSA Coordinated Cases

On October 1, Metropolitan, Coachella Valley Water District (Coachella) and SDCWA filed a 140-page joint opening brief with the Third District Court of Appeal in Sacramento. The brief asserts that numerous errors were made by the trial court in rendering its judgment regarding the validity of the Quantification Settlement Agreement Joint Powers Authority (QSA JPA) agreement. IID, Vista Irrigation District and the City of Escondido, and the State also filed opening briefs as appellants.

As previously reported, the trial court held that the QSA JPA agreement was invalid because it

violated the State constitutional debt limitation. Under the QSA JPA agreement, IID, Coachella and SDCWA have agreed to contribute \$163 million toward Salton Sea mitigation and restoration costs and the State has agreed to pay for any costs in excess of that amount. The court also held that 11 other agreements, including the QSA itself, were invalid because they were inextricably linked to the QSA JPA agreement. The trial court's decision was appealed by many parties, both in favor of (Category 1) and opposed to (Category 2) the QSA. On May 7, the court of appeal granted a joint request by Metropolitan, IID, Coachella and SDCWA to stay the trial court's judgment during the pendency of the appeal.

The County of Imperial (County), Imperial County Air Pollution Control District (ICAPCD), Cuatro Del Mar and other Category 2 parties have up to 45 days to file their opening/responsive briefs. Once these opening/responsive briefs are filed, the Category 1 parties will have 35 days to submit their responsive/reply briefs. The Category 2 parties then will have 20 days to submit their final reply briefs. Therefore, all briefing for this appeal should be completed by the end of the year.

Lastly, the County and ICAPCD filed a federal lawsuit in October 2009 asserting that the Department of Interior, Bureau of Reclamation and other federal parties (Federal Defendants) failed to comply with the Clean Air Act and National Environmental Policy Act in approving the Colorado River Water Delivery Agreement. That lawsuit also named Metropolitan, IID, Coachella and SDCWA as "real parties in interest," a designation that is not recognized in federal court. Accordingly, on August 23, Metropolitan, IID, Coachella and SDCWA were permitted to intervene as additional defendants. On September 9, the Federal Defendants lodged the administrative record with the court. A status conference has been set for October 21, which most likely will focus on establishing a schedule for motions and trial.



AFSCME Local 1902 v. Metropolitan (Public Employment Relations Board)

On September 14, 2010, AFSCME filed a Public Employment Relations Board (PERB) unfair practice charge against Metropolitan. The charge seeks to lift the moratorium on the processing of employee job audit requests that is contained in the March 15, 2007 AFSCME Classification and Compensation Study Project Plan. The charge alleges the moratorium expired during September 2008, and by not lifting the moratorium, Metropolitan has unilaterally changed its policies and agreement without providing notice to AFSCME and the opportunity to bargain. The charge seeks an order requiring the District to recommence conducting job audits and to post a notice describing the relief ordered by PERB. The Legal Department represents Metropolitan in this matter and will file a position statement seeking a dismissal of the charge.

AFSCME Local 1902 v. Metropolitan (Public Employment Relations Board)

On September 24, 2010, AFSCME filed a PERB unfair practice charge against Metropolitan. The charge alleges Metropolitan violated the Meyers-Milias-Brown Act (MMBA) and PERB regulations by issuing disciplinary actions against employees in the O & M classifications based on a new policy governing cell phone usage that was implemented without going through the meet and confer process. The charge seeks an order mandating: (1) rescission of Metropolitan's new policy on cell phone usage; (2) that any and all disciplines issued to AFSCME members pursuant to the changed cell phone policy be reversed and annulled; (3) that Metropolitan be prohibited from promulgating and enacting new policies affecting the terms and conditions of employment of AFSCME employees without first providing notice and meeting and conferring with Local 1902; and (4) the posting of a notice describing the relief ordered by PERB. The Legal Department represents Metropolitan in this matter and will file a

position statement seeking a dismissal of the charge.

Susan Robinson v. Metropolitan (Los Angeles County Superior Court)

On September 23, 2010, Metropolitan filed a demurrer and motion to strike to the first amended petition for writ of mandate, on the grounds that the statute of limitations to name the indispensable party had passed and petitioner failed to exhaust administrative remedies as to alleged violation of pre-discharge due process. The demurrer and motion are scheduled for hearing on November 19, 2010. The court also continued the September 29 Trial Setting Conference to November 19.

As previously reported, in January 2010, Hearing Officer Robert Bergeson issued his decision sustaining petitioner's discharge from employment, following an appeal hearing pursuant to the Supervisors Association MOU. On April 22, petitioner filed a petition for writ of mandate (Cal. Code of Civil Procedure Section 1094.5) and complaint in Los Angeles County Superior Court against Metropolitan. On May 20, petitioner served her summons, petition, and complaint on Metropolitan. Metropolitan filed a demurrer on June 21 as to all causes of action. On August 9, the court sustained the demurrer to the two complaint causes of action without leave to amend for failure to state a viable cause of action, and sustained the demurrer to the petition for writ cause of action with leave to amend for failure to name an indispensable party. On August 19, petitioner filed and served the first amended petition, which contains one cause of action alleging that the Hearing Officer should have applied an adverse inference against Metropolitan, the evidence did not support the findings, the findings did not support discharge, and there was a violation of pre-discharge due process. Metropolitan's Legal Department is providing legal representation for Metropolitan. (See General Counsel's June and August 2010 Activity Reports)

Items of Interest

Finances

Metropolitan and JPMorgan Chase Bank, N.A. executed the Amended and Restated Standby Bond Purchase Agreement on September 14, 2010, that provides liquidity support for Metropolitan's Water Revenue Refunding Bonds,

2004 Series A-1 and A-2. Among other things, this amended agreement extended the termination date of the existing agreement to September 30, 2010. The legal work for Metropolitan was performed by Legal Department staff attorneys.