



Metropolitan Cases

Colorado River QSA Coordinated Cases

As previously reported, in February 2010 the trial court held that the Quantification Settlement Agreement Joint Powers Authority (QSA JPA) agreement was invalid because it violated the state constitutional debt limitation. Under the QSA JPA agreement, Imperial Irrigation District (IID), Coachella Valley Water District (CVWD) and San Diego County Water Authority (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 December 7, 2011, the court of appeal issued its ruling reversing, in part, the trial court's ruling. In particular, the court of appeal held that while the State's commitment to fund mitigation costs in excess of \$163 million was unconditional, actual payment of such costs was subject to a valid appropriation by the Legislature, as required under the California Constitution. Moreover, the State's commitment did not create a present debt in excess of the State Constitution's \$300,000 debt limit. Thus, the QSA JPA agreement was held to be constitutional. The court of appeal also rejected other challenges to this agreement, including that it was beyond the IID's authority, there was no "meeting of the minds," and there was a conflict of interest. Subsequently, certain Category 2 parties filed petitions for review by the California Supreme Court and the United State Supreme Court, both of which were rejected. In light of the court of appeal's ruling, the matter was remanded back to the trial court for further proceedings on the claims that had been dismissed as moot.

A two-day bench trial was held on November 13, 2012 before the Honorable Lloyd Connelly. Judge Connelly spent the first day asking a myriad of questions relating exclusively to CEQA issues, almost all of which were directed at just four parties: IID, MWD, the County of Imperial

(County), and Imperial County Air Pollution Control District (ICAPCD). These included questions regarding the use of co-lead agencies, what was the proper baseline for this project, what constituted the appropriate no project alternative, whether the project was growth inducing, and the nature of the project's impacts on the Salton Sea. On the second day, Judge Connelly gave each of the parties several opportunities to speak about whatever issues they chose, though he encouraged everyone to focus their comments on those topics on which he had asked questions. To that end, he strongly discouraged people from speaking about certain parties' claims of Brown Act violations, ultra vires acts, trust/Water Code violations, lack of authority to contract, duress and undue influence, all of which relate to what the IID Board did or did not do in approving the QSA in October 2003, stating that these were already well plead. At the end of trial, Judge Connelly stated that he did not anticipate requesting any further briefing on the merits of the case. He also stated that whether he would need any further briefing on remedies would depend on how he rules on the various issues and claims. The judge indicated that he would rule within 90 days. (See General Counsel's August and October 2012 Activity Reports.)

Jena Minor v. Metropolitan (California Court of Appeal)

In a unanimous decision issued November 9, 2012, the California Court of Appeal affirmed the entry of summary judgment in Metropolitan's favor. The Court of Appeal ruled in favor of Metropolitan on all issues raised on appeal, including finding that plaintiff Jena Minor failed to establish any triable issue of material fact that she was retaliated against for protected activity. The Court of Appeal also held that Metropolitan is entitled to its costs incurred in defending the appeal.

As previously reported, in March 2010, plaintiff, a Metropolitan employee, filed a complaint in the Los Angeles County Superior Court against Metropolitan. Plaintiff alleged retaliation in violation of the Fair Employment and Housing Act for having engaged in the protected activity of complaining about gender and race discrimination



and sexual harassment, and for having complained about retaliation. In June 2011, the superior court granted Metropolitan's motion for summary judgment and in July, the court entered judgment in Metropolitan's favor. The court also awarded Metropolitan its costs incurred in defending the case. Metropolitan's Legal Department provided legal representation for Metropolitan through November 2010, when the law firm of Meserve, Mumper and Hughes LLP associated in as co-counsel. (See General Counsel's September 2012 Activity Report.)

San Luis Rey River Indian Water Authority v. Metropolitan Water District (JAMS Case No. 1400013202)

The arbitration of this contract dispute between Metropolitan and the San Luis Rey River Indian Water Authority (IWA) was resolved in Metropolitan's favor by a final award issued on September 21, 2012. The arbitration panel affirmed Metropolitan's interpretation of a disputed clause in the contract that requires payments in trust for the IWA for water that Metropolitan currently receives from the lining of the All-American and Coachella Canals. The arbitration panel rejected post-arbitration motions by the IWA seeking to overturn the award. Although Metropolitan anticipated that the IWA would

challenge the arbitration award in court, it decided not to do so. Instead, the IWA agreed to join Metropolitan in petitioning the California Superior Court to enter judgment confirming the award. Judgment was entered on October 30 in the San Diego County Superior Court. The award is now final and enforceable. (See General Counsel's August 2012 Activity Report.)

San Gabriel Basin Water Quality Authority v. Aerojet-General Corp., et al. (SEMOU matter) (U.S. District Court, Central District of California)

This case involves groundwater contamination in the San Gabriel basin, in the South El Monte area. Metropolitan was brought into the case in 2004 as an alleged source of perchlorate in the basin by virtue of deliveries of untreated Colorado River water to its member agencies. As reported in prior monthly reports, all claims have tentatively settled, including cross-claims against Metropolitan for contribution related to Colorado River water supplies. On November 7, the District Court entered the final order dismissing the claims of Art Weiss, Inc., the final party with perchlorate-related claims against Metropolitan. This case is now closed. (See General Counsel's July and October 2012 Activity Reports.)

Items of Interest

Finance

Metropolitan priced its \$111,890,000 Water Revenue Refunding Bonds, 2012 Series G on November 14, 2012. Legal Department staff attorneys prepared Appendix A to the Official Statement and assisted outside bond counsel with bond documents. The transaction is anticipated to close on December 27.