Metropolitan Cases

State and Federal QSA Cases

On September 11, the trial court issued an order rejecting the request by the County of Imperial and the Imperial County Air Pollution Control District to stay all post-judgment proceedings and deadlines until final resolution of the various appeals and cross-appeals filed by the parties. However, the court did extend the time to file and oppose any attorneys' fees motions to January 2 and 31, 2014, respectively. Subsequently, the parties entered into a stipulated schedule coordinating the briefing for and hearing on all cost- or fee-related motions. Under this schedule, all such motions will be fully briefed by February 24 and will be heard on March 4 before Judge Kevin Culhane, who was assigned to the case after Judge Connelly retired.

With respect to the state court appeals, the parties were notified on September 9 that this case was not suitable for mediation and, therefore, would proceed under the normal rules of appellate procedures. Under such rules, briefing of appeals and cross-appeals typically occur within a very compressed timeframe. However, given the size and scope of the appeals and cross-appeal in the case, all parties have agreed that more time is warranted and are seeking approval from the court of appeal for an extended briefing schedule. Under the proposed schedule, briefing is anticipated to be completed by late spring 2014.

Finally, with respect to the federal QSA, the Ninth Circuit has scheduled oral argument on the appeal and cross-appeal for December 4 at 9:00 a.m. in Pasadena. (See General Counsel's June and July 2013 Activity Reports.)

John Del Toro v. Metropolitan Water District (Los Angeles Superior Court)

As previously reported, Plaintiff John Del Toro, a former employee, filed a complaint on April 4, 2012, in Los Angeles County Superior Court against Metropolitan alleging retaliation in violation of the Fair Employment and Housing Act. Metropolitan had terminated plaintiff because two investigations in combination found that plaintiff had engaged in misconduct. On February 7, 2013, Metropolitan filed a motion for summary judgment seeking a dismissal of the lawsuit on the basis that plaintiff was terminated for legitimate, non-retaliatory reasons and that the evidence was insufficient to establish pretext. The motion was heard by the court on April 23. While the court's tentative ruling was to deny Metropolitan's motion, the court after hearing oral argument took the motion under submission for further review. The court issued a final ruling granting summary judgment on June 3. It determined that Metropolitan validly terminated plaintiff based on a reasonable and good faith reliance on the underlying investigations. On July 15, the court entered judgment in favor of Metropolitan and awarded Metropolitan its costs of suit.

On September 9, the parties entered into an agreement under which plaintiff waived his right to appeal the dismissal of the lawsuit and provided Metropolitan with a general release. In exchange, Metropolitan waived its right to recover costs from plaintiff. The Legal Department and the law firm of Atkinson Andelson, Loya, Ruud & Romo represented Metropolitan. (See General Counsel's April and September 2012 Activity Reports.)

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

As previously reported, AFSCME Local 1902 filed an unfair practice charge on September 27, 2012, with the Public Employment Relations Board (PERB). The charge alleges Metropolitan violated the Meyers-Milias-Brown Act (MMBA) by updating the employee evaluation form and deploying two new *MyPerformance* forms, one for evaluating employees, and the other for evaluating managers. AFSCME alleges that by this conduct, Metropolitan violated its obligation to meet and confer with respect to issues within the scope of representation. On January 18, 2013, PERB issued a complaint in this matter and Metropolitan thereafter filed an answer denying the allegations of an unfair labor practice. On May 25, this matter was set for a formal hearing on August 12 and 13. On August 12, the hearing was placed in abeyance due to settlement discussions. A settlement agreement was signed on September 24. The agreement provides, *inter alia*: (a) that AFSCME employees will be placed on a common evaluation date per the parties' memorandum of

understanding (MOU); (b) that the MyPerformance forms can continue to be used as agreed to by the parties; (c) that the existing MOU performance rating categories and merit increase schedule will remain unchanged; and (d) that the workforce will receive a mutually acceptable memorandum reporting on the agreement as it pertains to the employee evaluation process. In addition, the agreement provides for AFSCME to withdraw the unfair practice charge and a related grievance and hearing officer appeal similarly challenging the implementation of the MyPerformance evaluation forms. The Legal Department represented Metropolitan. (See General Counsel's January and May 2013 Activity Reports.)

***Management and Professional Employees Association (MAPA) v. Metropolitan* (Public Employment Relations Board)**

As previously reported, MAPA filed an unfair practice charge with PERB on March 22, 2013. The charge alleges Metropolitan violated the MMBA by creating job descriptions and salary grades for seven new WSO section manager positions without implementing MAPA's request to increase the salary grade for all other MAPA classifications by one salary grade. While MAPA did agree to the changes to the descriptions and salary grades for the new section managers, the charge alleges that Metropolitan refused to meet and confer in good faith by creating salary disparities within MAPA and by implementing the proposed changes without following Metropolitan's impasse procedures. On August 6, PERB issued a complaint in this matter alleging Metropolitan acted improperly by not affording MAPA the opportunity to meet and confer to impasse over the decision to change job descriptions and salary grades. An informal conference held on September 18 did not resolve this matter. Accordingly, a formal hearing has been scheduled for January 23, 2014. The Legal Department will continue to represent Metropolitan in this matter. (See General Counsel's March and July 2013 Activity Reports.)

***Association of Confidential Employees (ACE) v. Metropolitan* (Public Employment Relations Board)**

ACE filed an unfair practice charge with PERB on May 14, 2013. The charge alleges Metropolitan violated the MMBA by disciplining an employee for engaging in association activities and for issuing a corrective action plan in connection with the disciplinary action. On July 18, Metropolitan lodged a position statement with PERB seeking a dismissal of the charge on the basis that the employee was disciplined for violating District policies, and because the discipline was issued in compliance with the ACE MOU. On August 13, ACE filed an amended unfair practice charge in an effort to bolster its argument that the employee was disciplined for engaging in association activities. Metropolitan filed a second position statement on September 20, further supporting its position that the disciplined employee was not engaged in protected activity, that the discipline is supported by legitimate business reasons, and that there has been no violation of the MOU. The law firm of Liebert Cassidy Whitmore is representing Metropolitan.

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

On September 23, Metropolitan and Coachella Valley Water District (CVWD) filed a joint motion to dismiss this action brought by The Navajo Nation seeking to overturn federal river management decisions governing the lower Colorado River. The motion is brought on the grounds that the Navajo do not have, and cannot obtain in federal district court, any water rights in the mainstream of the Colorado River. The River has been fully adjudicated by the United States Supreme Court in the case of *Arizona v. California*, including all tribal water rights. No rights were claimed or recognized for the Navajo Reservation, and therefore, the Navajo do not have standing to challenge operations of the Colorado River. Nor can the district court in Arizona exercise jurisdiction over Colorado River water rights, because the Supreme Court has retained jurisdiction.

Similar motions to dismiss were filed by the federal government and the other water agencies in Arizona and Nevada with Colorado River water rights. The Imperial Irrigation District filed a motion to dismiss that joins in the arguments made by Metropolitan and CVWD, but also asserts its own present perfected rights and the authority to use those rights for any purpose authorized under California state law. The Hopi Tribe, whose reservation lands are within the Navajo Reservation, also brought a motion to dismiss on the grounds that they are an indispensable party because they also claim water rights in the Colorado River, but cannot be joined to the lawsuit due to their tribal sovereign immunity.

Opposing briefs are due from the Navajo on November 14, with reply briefs to be filed by December 16. Due to the federal government shutdown, there may be delays in the Navajo Nation litigation. (See General Counsel's May and August 2013 Activity Reports.)

Cases to Watch

***The Moapa Band of Paiute Indians v. Nevada Power Co.* (United States District Court, District of Nevada)**

On August 8, 2013, the Moapa Band of Paiute Indians (Paiutes) and the Sierra Club filed a citizen's suit in federal court in Nevada against Nevada Power Co. dba Nevada Energy (NV Energy) and the California Department of Water Resources (DWR) for alleged violations of the Clean Water Act and the Resource Conservation and Recovery Act (RCRA) at the coal-fired power plant located in the Moapa Valley, 60 miles northeast of Las Vegas, and known as the Reid Gardner Power Station (plant). The Muddy River, a tributary to the Colorado River and Lake Mead, crosses the site. The Paiutes, who have 314 tribal members, own agricultural lands and residences to the west of the plant site, located on the Moapa River Reservation.

NV Energy operates the plant, which was placed in service in 1965. Since approximately 1983, DWR purchased power generated at the plant under a participation agreement that was set to terminate on July 25, 2013. Under the participation agreement, DWR received up to 235 megawatts while NV Energy got the remainder of the power generated. The agreement has not terminated yet because the parties are awaiting approval by the Federal Energy Regulatory Commission, but DWR ceased taking power from the plant and the parties agreed that DWR is not responsible for any new operating costs after July 25, 2013. NV Energy and DWR have entered into several agreements to address termination issues and proportional responsibility for existing environmental cleanup obligations.

In the complaint, the Paiutes and Sierra Club allege that NV Energy and DWR have illegally disposed of hazardous wastes and discharged contaminants to surface and ground waters. They allege that the conditions present an imminent and substantial endangerment to human health and the environment. They allege that neither the State of Nevada nor the U.S. Environmental Protection Agency is diligently prosecuting these alleged violations, despite an ongoing cleanup effort overseen by the Nevada Division of Environmental Protection. The Paiutes and Sierra Club are seeking temporary and permanent injunctive relief, civil penalties and costs, including attorney and expert witness fees. DWR acknowledged service of the complaint on September 25 and has until October 16 to respond.

Legal Department staff has been monitoring DWR's efforts to negotiate the termination of the participation agreement, and will continue to monitor this new lawsuit.

Other Activities

Finance

Assistant General Counsel Sydney Bennion participated on the Issuer's Counsel panel at the Bond Attorneys' Workshop sponsored by the National Association of Bond Lawyers in Chicago September 25-27, 2013. Her presentation focused on disclosure matters, including disclosure of obligations for pensions and other post-employment benefits, voluntary secondary market disclosure about bank loans and other secondary market disclosures.

***Re Tronox Incorporated, et al.*, Chapter 11, Case No. 09-10156 (ALG) (U.S. Bankruptcy Court, Southern District of New York)**

Jill Teraoka, Mickey Chaudhuri and other General Manager staff, with the other Colorado River stakeholders (the Central Arizona Project and Southern Nevada Water Authority) have been working with the Nevada Department of the Environment and the Environmental Trust on issues relating to the Tronox site.

As previously reported, the Groundwater Extraction and Treatment System (GWETS) at the site has not been operating properly since at least

June 2013. For a period of time, the extracted groundwater was diverted to an onsite holding pond instead of being treated and discharged to the Las Vegas Wash (Wash). Also during this time, there was a planned change in the operator at the site, and the new operator has been working on fixing the GWETS while the system has remained in operation. The main repairs are expected to be done by the end of November. The situation seems to have stabilized now, and all the treated groundwater is going to the Wash, not to the holding pond. The Trust plans on responding to comments on the Remedial Investigation/ Feasibility Study Work Plan and submitting a Community Involvement Plan by October 4.

Bay-Delta

Several members of the Legal Department have been working on issues relating to the completion of the BDCP and EIR and submission of the permit application to the federal government. Robert Horton is also working on issues relating to acquisition of required habitat; Bryan Otake has been participating in discussions regarding governance issues.