



Metropolitan Cases

State Water Contractors, et al. v. Delta Stewardship Council, now coordinated with six other actions in the Delta Stewardship Council Cases (Sacramento County Superior Court)

On February 14, 2014, cross-motions regarding the administrative record were heard by Judge Kenny. The Judge ruled in favor of the Delta Stewardship Council's cross-motion, and ordered that the Council complete an administrative record that will serve as the evidence in all seven coordinated cases. The Council must lodge the record on or before the next pre-trial hearing, currently scheduled for May 16, 2014. Any issues regarding allocation of the cost for the administrative record are reserved until after trial, and would only be heard to the extent, if any, that the Council prevails. This is a favorable ruling for Metropolitan because it avoids the added cost and delay of having two records in the litigation, as well as a potentially costly (and potentially unnecessary) hearing on cost allocation before reaching the merits.

The Council anticipates that it will complete and circulate a draft of the administrative record by early March. It also proposes that the parties meet and confer regarding the adequacy of the record, and that any motions seeking to augment the record should be filed by April 25, 2014, so the court can hear them on May 16. The Council intends to file a motion to bifurcate trial of the CEQA claims from trial of the challenges to the Delta Plan policies and regulations that would be heard on May 16. All seven petitioner groups have expressed an intent to oppose bifurcation. (See General Counsel's December 2013 and January 2014 Activity Reports.)

Tehama-Colusa Canal Authority v. United States Department of the Interior (U.S. Court of Appeals, Ninth Circuit)

Plaintiffs have filed a petition to the United States Supreme Court seeking review of the Federal Ninth Circuit Court of Appeals' decision rejecting plaintiffs' claim that since they are located in the area of origin, they are entitled to a preferential right to water under their Central Valley Project contract. The Supreme Court's decision whether

to grant the petition—known as a writ of certiorari—is discretionary and such petitions rarely are granted. The Westlands Water District and San Luis & Delta-Mendota Water Authority, who intervened in the case in support of the Department of the Interior, filed a brief urging the Supreme Court to deny plaintiff's petition. The United States waived its right to respond to the petition. This case is similar to the State court litigation commonly referred to as the "Area of Origin Litigation" (*Solano County Water Agency v. State of California Department of Water Resources*) in which north-of-Delta State Water Project contractors made the same claims. As reported in the General Counsel's January 2014 Monthly Activity report, the parties in the State case have submitted a stipulated Settlement Agreement and Release to the court and anticipate the court will approve the settlement dismissing the case with prejudice.

Oscar Renda Contracting, Inc. v. Metropolitan (Riverside County Superior Court)

On September 5, 2012 Oscar Renda Contracting, Inc. (ORC) filed a complaint against Metropolitan seeking \$10 million plus interest for alleged breaches of contract related to the Perris Valley Pipeline, South project (Project). ORC alleged, among other things, that Metropolitan inaccurately calculated a credit for deleted work, failed to compensate ORC for Metropolitan-caused disruptions and delays, and improperly withheld liquidated damages.

The Project originally included the construction of over four miles of tunnels, fabricated steel pipelines, and appurtenant work, and ORC was awarded a \$22.3-million contract to perform Project work. Due to changes in operational needs, Metropolitan deleted two tunnels and connecting pipe. Because the parties were unable to agree upon the value of the deleted work, Metropolitan unilaterally credited \$5.8 million against the contract amount. ORC alleged in its complaint that this credit was overvalued by over \$4 million. ORC also alleged that (1) Metropolitan should release the \$1.2 million in liquidated damages that it withheld due to ORC's failure to meet the project completion date, and (2) Metropolitan was liable for



over \$4 million in costs that ORC incurred due to Metropolitan-imposed changes to its means and methods for performing Project work.

On September 10, 2013, the Board approved additional funding for consultant work needed to prepare for an October 2013 mediation. While the parties were unable to settle the lawsuit at the mediation, the mediation helped narrow the issues in the case and laid the groundwork for further negotiations. On February 11, 2014, the Board approved the General Counsel's request for a \$500,000 increase in contracting authority for outside counsel. On February 20, 2014, the parties executed a settlement agreement under which Metropolitan agreed to pay ORC \$1,925,000 out of remaining Project funds and ORC agreed to dismiss its complaint against Metropolitan with prejudice.

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

AFSCME Local 1902 filed an unfair practice charge on February 4, 2014, with the Public Employment Relations Board (PERB). The charge alleges Metropolitan violated the Myers-Milias-Brown Act (MMBA) by failing to meet and confer in good faith and making a unilateral change. As a remedy, AFSCME is seeking a salary increase for an AFSCME-represented classification. In response, Metropolitan will file a position statement

with PERB seeking a dismissal of the charge. The Legal Department is representing Metropolitan.

AFSCME Local 1902 v. Metropolitan
(MOU Hearing Officer Appeal)

On January 23, 2013, AFSCME Local 1902 began the grievance process on behalf of an employee who retired two days after she received the outcome of her job audit request on December 27, 2012. The job audit determined the employee had been properly classified. Metropolitan refused to process the grievance due to the intervening retirement. AFSCME brought that refusal before a hearing officer for review. By decision issued on February 5, 2014, Hearing Officer Barry Winograd determined the job audit challenge can move forward to a hearing on the merits. Accordingly, the parties will schedule an additional hearing so that a hearing officer can determine whether the job audit result is proper. The practical impact of Mr. Winograd's decision is that the timeframe for filing a grievance (30 days) does not abruptly end when an employee retires. The Legal Department represented Metropolitan in this matter.

Matters Involving Metropolitan

Pacific Gas & Electric Co.'s Topock Compressor Station, Needles, California

The California Department of Toxic Substances Control (DTSC) and the U.S. Department of the Interior (DOI), in coordination with Metropolitan, tribal governments, the Colorado River Board, and Pacific Gas & Electric Co. (PG&E), are expected to resolve soon more than 800 comments on the 60 percent design report for the Topock final groundwater remedy. The final groundwater remedy selected by DTSC and DOI involves creating an underground biological treatment zone where naturally occurring bacteria convert carcinogenic hexavalent chromium (chromium-6) in the groundwater to non-harmful trivalent chromium. DTSC and DOI will provide direction to PG&E in March 2014 for completion of the Pre-Final (90 percent) design report. The 90 percent design is scheduled to be finished by August 2014, and comments on the 90 percent design will be due by

October 13, 2014. If there are no California Environmental Quality Act (CEQA) or other delays, construction of the groundwater remedy is anticipated to start in February 2015.

In January 2013, PG&E submitted to DTSC and DOI the Revised Final Soil Resource Conservation and Recovery Act (RCRA) Facility Investigation/ Remedial Investigation (RFI/RI) Work Plan. The purpose of the Soil RFI/RI Work Plan is to define potential contaminants in the soil at the site. Pursuant to CEQA, DTSC is evaluating possible environmental impacts associated with the proposed soil sampling activities; the draft Environmental Impact Report (EIR) will be available for review in April 2014. After completion and certification of the EIR, PG&E will complete the investigation work within approximately one year.



As previously reported, PG&E owns and operates a natural gas compressor station located adjacent to the Colorado River near Needles, California. This site is approximately 42 miles up-river from Metropolitan's Whitsett Intake facility. From 1951 until 1985, the facility disposed of cooling tower water into percolation ponds or evaporation basins and by injection well. This disposal of the coolant water, which contained chromium-6 to prevent rust in the cooling towers, resulted in a plume of contaminated groundwater that has migrated toward the river. Environmental investigation and

cleanup activities have been ongoing at the site since 1997. Metropolitan will continue to monitor the remediation of PG&E's Topock Compressor Station to ensure that appropriate measures are taken to prevent groundwater containing chromium-6 from impairing Colorado River water quality. (See General Counsel's March 2011 Activity Report.)

Other Activities

Mingo Logan Coal Company v. United States Environmental Protection Agency (United States Supreme Court, No. 13-599)

On February 14, 2014, the Department of Justice (DoJ) filed a brief in opposition to Mingo Logan Coal Company's (Mingo Logan) petition for *writ of certiorari* (cert petition) to the United States Supreme Court. DoJ's arguments included: (1) the plain language of Clean Water Act (CWA) Section 404(c) authorizes the Environmental Protection Agency (EPA) to "withdraw" any disposal-site specification "whenever" EPA determines that discharges at the site will have "an unacceptable adverse effect" on particular kinds of resources, even after a Section 404 dredge-and-fill permit has been issued; (2) EPA's interpretation of Section 404(c) is reasonable and entitled to deference; (3) EPA's ability to withdraw the specification of a disposal site after a Section 404 permit has been issued will not chill private investment; (4) the court of appeals' decision does not conflict with any U.S. Supreme Court or other court of appeals' decision; and (5) the Supreme Court should not grant Mingo Logan's cert petition because the lower courts have not yet ruled on

Mingo Logan's alternative argument that EPA acted arbitrarily and capriciously. Mingo Logan's reply brief is due by March 4, 2014.

As previously reported, Mingo Logan filed a cert petition on November 13, 2013, asking the U.S. Supreme Court to review an appellate court decision that allowed EPA to withdraw portions of a CWA Section 404 permit four years after it had been issued by the U.S. Army Corps of Engineers. On December 13, 2013, Metropolitan, along with the Association of California Water Agencies and six other *amici*, filed an *amici curiae* brief in support of Mingo Logan's cert petition. (See General Counsel's October 2013 Activity Report.)

Legislation

Staff in the Legal Department provided assistance in preparation of analysis, comments and prepared amendments to a number of state and federal legislative proposals relating to BDCP and the drought.



Matters Received by the Legal Department

Category	Received	Description	
Subpoenas to MWD	1	Civil Subpoena to testify and produce documents at trial in the Antelope Valley Groundwater Litigation – Court granted MWD’s motion to quash subpoena	
Requests Pursuant to the Public Records Act	8	<u>Requestor</u>	<u>Documents Requested</u>
		Department of Water Resources	Reports on the geology of the Inland Feeder Pipeline
		Consultant	Lab data relating to Table D, trace metals and organic monitoring
		David Goldstein of KCCBS/KCAL TV	Two PRA Requests for (1) cost breakdowns and receipts for inspection trips from September through December 2013, and (2) statements for MWD issued credit cards and Executive and Director expense reports from January 2013 through the present
		Former MWD Employee	Follow-up to a request made in January 2014 for additional Work Tech records
		Consultant	Raw data used for modeling for sizing the Warren H. Brock Reservoir
		Counsel for MWD Contractor Shimmick Obayashi Joint Venture	Cost information regarding the pumps supplied by American Marsh for the Skinner Water Treatment Plant Oxidation Retrofit Program.
San Diego County Water Authority	Data and proposed methodology relating to establishing of rates, charges, surcharges, or fees for 2015 and 2016		
Other Matters	2	Chapter 11 Bankruptcy Proceeding by Debtor North America Power Partners, LLC (MWD is a potential creditor), and a wage garnishment	