



Matters Involving Metropolitan

Solano County Water Agency v. State of California Department of Water Resources (Sacramento Superior Court)

The Honorable Judge Robert C. Hight of the Sacramento Superior Court signed the “Stipulation for Entry of Order and Order Approving Settlement Agreements and for Dismissal of the Action with Prejudice” in this case on March 30, 2014. The case, commonly referred to as the “Area of Origin Litigation,” is now concluded for all purposes. Plaintiff north of Delta State Water Project contractors filed the action in 2008 alleging that since they are located in the watershed of origin of the State Water Project (SWP), they should have a preference for water and could not be subjected to shortages under their SWP contracts. Under the settlement, plaintiffs essentially concede that neither the SWP contract nor California water law gives them a preferential right to SWP water, and in return creative SWP management programs and operations were identified that will firm up supplies for the benefit of plaintiffs at a reasonable cost to other contractors. Due to the potential of significant reductions in SWP water available to other contractors, if plaintiffs were successful, Metropolitan had organized twelve other contractors to intervene in support of DWR and

which participated directly in all stages of the litigation, including the lengthy settlement negotiations. (See also General Counsel Activity Report for January 2014.)

Tehama-Colusa Canal Authority v. United States Department of the Interior (U.S. Supreme Court)

The United States Supreme Court has denied the Tehama-Colusa Canal Authority’s petition to review the decision of the Ninth Circuit Court of Appeal in this case dealing with California’s “Area of Origin” law. The Ninth Circuit had upheld the federal district court’s decision that plaintiffs did not have a preferential right to receive Central Valley Project (CVP) water under California’s so-called “Area of Origin Statutes” or their CVP water contracts. This case is now concluded. Plaintiffs in this case raised arguments similar to those raised by State Water Project north-of-Delta contractors in state litigation commonly referred to as the “Area of Origin Litigation” (*Solano County Water Agency v. State of California v. State of California Department of Water Resources*). As described above, the court approved the stipulated Settlement Agreement and Release and dismissed the case with prejudice. (See also General Counsel Activity Report for February 2014.)

Cases to Watch

CalPERS Files Amicus Court Brief in City of Detroit Bankruptcy Case

In response to a decision by the United States Bankruptcy Court for the Eastern District of Michigan, in The City of Detroit’s chapter 9 bankruptcy case, the California Public Employees’ Retirement System (CalPERS) filed an amicus brief on May 1, 2014. CalPERS’ brief supports appeals by the Committee of Retirees of the City of Detroit and others over the decision that the City of Detroit is eligible for bankruptcy. In its filing, CalPERS argues that the decision of the bankruptcy court is incorrect in saying that once a state authorizes its subdivisions to file bankruptcy, the state’s laws and constitution no longer control the actions of the municipal debtor. In addition,

CalPERS argues that this portion of the bankruptcy court’s decision is an improper advisory opinion since it was not necessary for the court to reach its decision that Detroit was eligible for bankruptcy. CalPERS’ brief also raises two other objections to the bankruptcy court’s decision: (1) the decision improperly nullifies section 903 of the Bankruptcy Code, which expressly preserves state laws governing municipalities notwithstanding bankruptcy; and (2) the bankruptcy court improperly created a presumption in favor of eligibility, which is not appropriate in the context of a chapter 9 bankruptcy. Finally, CalPERS’ brief seeks to distinguish state-administered systems such as CalPERS from city-administered systems such as Detroit’s, and the brief asks the court of



appeal to confine its decision to the latter. CalPERS has been involved in at least five chapter 9 bankruptcies in California, and is currently involved in the second and third largest municipal bankruptcies in United States history – the cities of Stockton and San Bernardino. (A copy of CalPERS’ amicus brief is at <http://www.calpers.ca.gov/eip-docs/about/pubs/detroit-brief.pdf>)

Administrative Law (OAL) the final proposed regulation establishing the first ever drinking water Maximum Contaminant Level (MCL) for hexavalent chromium of 10 parts per billion. DPH received more than 18,000 comments on the proposed MCL. The MCL will take effect after it has been reviewed and approved by the OAL, which has until May 28, 2014 to complete its review. If the regulation is approved as expected, the new drinking water standard for hexavalent chromium will become effective on July 1, 2014.

Maximum Contaminant Level for Hexavalent Chromium

On April 15, 2014, the California Department of Public Health (DPH) submitted to the Office of

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Government Code Claims	1	Subrogation claim relating to an accident involving MWD-owned vehicle	
Requests Pursuant to the Public Records Act	15	<u>Requestor</u>	
		<u>Documents Requested</u>	
		USGS	OC-59 diversions behind Prado Dam
		Coast Law Group LLP	Records relating to MWD’s conservation and local resource programs used by SDCWA
		Real Estate Developer and Wells Fargo Home Mortgage (2)	Water connection fees and water service
		Private Citizens (3) and Consultants (2)	MWD Annual Reports, information on MWD underground pipeline
		Vendor	Contract for MWD security system
		UCLA Postdoctoral Fellow	Groundwater Basins in Los Angeles County
		Coachella Valley Water District	Staffing of MWD control rooms
		Reporter David Goldstein of KCBS/KCAL TV	Receipts from attendance at the WateReuse California Annual Conference
		Reporter John Hrabe	Expense reports, credit card statements, and inspection trip records provided to other reporters
		Hill, Farrer & Burrill LLP	Information relating to tunnel easement in Granada Hills, CA
Subpoenas to MWD	3	Subpoenas requesting records relating to MWD employees for litigation unrelated to Metropolitan	