



## Metropolitan Cases

### **State and Federal QSA Cases**

In the state court appellate proceeding, the County of Imperial (County) and the Imperial County Air Pollution Control District (Air District) filed their reply and cross-respondents' briefs on July 14, 2014, which were the last briefs submitted by any of the Category 2 parties (QSA opponents). The Barioni/Krutzsch parties filed a reply in late June; Cuatro del Mar and POWER did not file replies, which are optional. The deadline for the Category 1 parties (QSA supporters) to file reply briefs in their cross-appeal is therefore August 25. This will complete the briefing in the state court appeal. No date for oral argument has been set.

In the lower court proceeding, Metropolitan received payment on July 17 for all costs (\$5,153.98) awarded by the court in the validation proceeding, Case No. 1649. Accordingly, Metropolitan will file a satisfaction of judgment and release of claims as to all parties to that case. Metropolitan has not yet received payment for costs (\$200) awarded by the court in the CEQA litigation, Case No. 1653.

Finally, with respect to the federal QSA litigation, the Ninth Circuit issued a final order and amended opinion on August 1 affirming the district court's judgment, which held that the federal government complied with the National Environmental Policy Act and the Clean Air Act in approving the

Colorado River Water Delivery Agreement, sometimes referred to as the "federal QSA." The Ninth Circuit had issued an order and opinion on May 27; however, that opinion was revised at the request of the federal and intervenor defendants (Metropolitan, Imperial Irrigation District, Coachella Valley Water District and San Diego County Water Authority) to clarify certain misstatements made by the court regarding the allocation and use of Colorado River water. As part of its order, the Ninth Circuit denied the County and Air District petitions for rehearing and rehearing en banc. The County and Air District have 90 days to seek review by the United States Supreme Court. (See General Counsel's September 2013 Activity Report.)

### ***Rachael Roberson v. Metropolitan Water District (Los Angeles County Superior Court)***

On April 1, 2014, Rachael Roberson filed a complaint with one cause of action for negligence/premises liability. Metropolitan was served on April 30. The plaintiff alleges injury sustained by a patio umbrella in the Metropolitan courtyard. Plaintiff's counsel and Metropolitan agreed to extend the time for Metropolitan to answer the complaint in order to discuss potential resolution. On July 31, Metropolitan answered the complaint, but further discussions regarding potential resolution will continue.

## Cases to Watch

### ***Friant Water Authority v. Sally Jewell, the Secretary of the U.S. Dept. of Interior (U.S. District Court, Eastern District of California)***

On July 30, 2014, Friant Water Authority and its member districts ("plaintiffs") filed a corrected first amended complaint in its lawsuit challenging the legality of certain water deliveries made by the Bureau of Reclamation (Bureau) from the Central Valley Project (CVP). The amended complaint focuses on CVP deliveries to the Exchange Contractors and Grasslands Entities, and no longer asserts that the Bureau improperly shared CVP water with the State Water Project (SWP). The amended complaint asserts two claims for breach

of contract and one claim for unlawful taking and, in contrast to the original filing, mainly seeks monetary relief. In conjunction with these amendments, plaintiffs have stated that they will move to have the case transferred to the Court of Federal Claims, which has jurisdiction over breach of contract claims asserted against the federal government where the amount sought exceeds \$10,000. Here, plaintiffs allege they have suffered damages in excess of \$1 billion.

As previously reported, on May 20, plaintiffs filed a lawsuit against the United States, the Department of Interior and the Bureau asserting that water stored in Millerton Reservoir was being improperly



delivered to the Exchange Contractors, which are agricultural interests that hold pre-1914 appropriative rights on the San Joaquin River. Plaintiffs asserted that the Bureau could and should have provided the Exchange Contractors with “substitute water” from the Delta, specifically, Sacramento River water released from Shasta Lake and stored in San Luis Reservoir. Instead, the Bureau used this water to meet the needs of certain conservation districts located southwest of the Delta, referred to as the Grasslands Entities, as well as those of the SWP. Plaintiffs alleged that these deliveries violated the terms and conditions of its water supply contracts with the Bureau, as well as federal and state laws governing the priority of use. The complaint sought declaratory, injunctive and other equitable relief, but did not seek money damages. In conjunction with its complaint, plaintiffs requested a temporary restraining order (TRO) halting further releases of CVP water from Friant Dam and Millerton Reservoir.

On May 27, the federal district court denied the request for a TRO, finding that the plaintiffs were unlikely to succeed on the merits of their claims. The court held that both the United States and the State of California, (an unnamed, but indispensable party) were immune from suit and that none of the statutes cited by plaintiffs provided the court with jurisdiction to adjudicate their equitable claims. The court also noted that plaintiffs had not provided sufficient factual support for their claims, particularly with respect to the alleged sharing of CVP water.

The amended complaint attempts to address these jurisdictional defects by seeking damages rather than equitable relief. The underlying factual assertions remain largely the same. However, the amended complaint does not contain any allegations of improper sharing between the CVP and the SWP, and does not seek any relief that, if granted, would directly affect SWP operations. The Legal Department will continue to monitor this case as it progresses.

## Other Activities

### Other Activities

On July 30, 2014, Metropolitan executed an agreement with the U.S. Bureau of Reclamation, Central Arizona Water Conservation District, Southern Nevada Water Authority, and Denver Water to conduct a System Conservation Pilot Program. Under the two-year program, the four municipal water agencies agreed to contribute up to \$2 million each, along with a contribution from the federal government of up to \$3 million. The program will fund voluntary reductions in water use in order to create conserved water for storage in Lakes Powell and Mead. The goal is to determine whether a program of voluntary compensated reductions in use is a feasible method to mitigate ongoing drought impacts on the Colorado River System. Metropolitan’s participation was approved by Board action at its March 2014 meeting.

Joe Vanderhorst and Carol Nagai have been working with the other Hoover Power Contractors in preparation for negotiation of a new Hoover power contract to implement the provisions of the

Allocation Act approved by Congress in 2011. The Western Area Power Administration has tentatively allocated a portion of the Hoover power to 58 new entities, including the San Diego County Water Authority, Imperial Irrigation District, the California Department of Water Resources and 23 Indian Tribes. These new contractors will share five percent of the Hoover power pool, and the existing contractors will retain 95% of their current contract allocations. The current contract expires in September 2017.

Heather Beatty, Henry Torres and Bryan Otake prepared a summary of 2013-2014 employment law case summaries for inclusion in ACWA’s annual summary of appellate cases.

On July 31, staff from Operations and Legal presented an educational program titled “Water Supply and Extraordinary Drought Actions,” which described Metropolitan’s Distribution System and the operational challenges due to the drought.

Staff attended training on the legal research tool, Lexis Advance, provided by Lexis Nexis.



**Matters Received by the Legal Department**

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Actions in which MWD is a party	2	Complaints for Damages filed in Los Angeles County Superior Court by two former MWD employees	
Subpoena	1	State Court subpoena requesting employment records of a Metropolitan employee for a matter unrelated to Metropolitan	
Public Records Act Requests	13	<u>Requestor</u>	<u>Documents Requested</u>
		Arbiter Partners	Average amount of water delivered per day in 2013
		DWR	Daily storage data for DVL
		Hews Media Group	Documents provided by a member of the public during the public comment period at the July 8, 2014 Board meeting
		Mazel Equities National Associates	List of unclaimed checks
		ProPublica	GIS files for MWD's service area map
		SmartProcure	List of MWD purchase orders from January 2008 to the present
		UC Santa Barbara Graduate Student	Data on capital payments to MWD by each member agency, preferential rights, and conservation-related expenditures
		Union Tribune (U-T San Diego)	Special District's Reimbursement Report mandated by Government Code Section 53065.5 for FY2013/14
Other Matters	5	Wage garnishments and documents relating to qualified domestic relation orders (QDROs)	