



Metropolitan Cases

San Luis & Delta Mendota Water Authority v. Jewell (U.S. Court of Appeals, Ninth Circuit) (Delta Smelt Litigation)

Metropolitan has worked jointly with the other State Water Contractors, the Kern County Water Agency and the Coalition for a Sustainable Delta to prepare a petition for a writ of certiorari asking the United States Supreme Court to review the judgment of the Ninth Circuit Court of Appeal and to seek amicus support. The petition was drafted by Tom Goldstein, a Supreme Court specialist. He was hired and his fees are being paid by the Kern/Coalition parties.

On September 30, The San Luis & Delta-Mendota Water Authority and Westlands Water District indicated their intent to join in the petition. Also on September 30, the Pacific Legal Foundation filed a separate petition for certiorari in this matter. (See General Counsel's August 2014 Activity Report.)

State QSA Case

On August 25, 2014, reply briefs were filed related to the cross-appeal in the state court proceeding. One joint reply was submitted by San Diego County Water Authority, Vista Irrigation District and the City of Escondido, and another joint brief was submitted by Coachella Valley Water District and Metropolitan. This completed the briefing by the actual parties to the appeal. However, at the beginning of September, South Coast Air Quality Management District and Environment Now, a non-profit environmental group, filed applications seeking leave to submit amicus briefs on issues related to the QSA's potential impacts on air quality and the Salton Sea. If the court of appeal accepts these applications, then the parties will have 20 days to respond to the amicus briefs. No date for oral argument has been set. Finally, on September 5, 2014, Imperial Irrigation District entered into a settlement agreement pursuant to which it agreed to pay a total of \$500,000 to Cuatro del Mar, Protect Our Water and Environmental Resources, and the Barioni/Krutsch parties in return for them dismissing their state court appeals and relinquishing all other claims they may have arising out of or related to the QSA. The court of appeal is not required to accept the

proposed settlement, but if it does, the only remaining Category 2 parties (QSA opponents) involved in the appellate proceeding will be the County of Imperial and the Imperial Air Pollution Control District. (See General Counsel's July 2014 Activity Report.)

"Monterey Plus" Cases: Central Delta Water Agency, et al. v. Department of Water Resources ("Central Delta I"); Rosedale-Rio Bravo Water Storage District, et al. v. Department of Water Resources ("Rosedale"); Central Delta Water Agency, et al. v. Kern County Water Agency ("Central Delta II") (Sacramento County Superior Court)

The "Monterey Plus Litigation" challenges the Monterey Amendments to the State Water Project (SWP) contracts. One of the lawsuits, *Central Delta Water Agency, et al. v. Department of Water Resources ("Central Delta I")*, was brought by environmental organizations, including the Center for Biological Diversity, and two Delta water agencies. Another, *Rosedale-Rio Bravo Water Storage District, et al. v. Department of Water Resources ("Rosedale")*, was brought by two Kern County water storage districts. At issue is compliance under the California Environmental Quality Act (CEQA) for the Department of Water Resources' (DWR) May 2010 completion of a new Environmental Impact Report (EIR) for the project. The Monterey Amendments themselves were authorized some 18 years ago and the original EIR was invalidated by the court of appeal in 2000.

In the *Rosedale* case, the petitioners' CEQA challenges to the EIR are strictly focused on the analysis of the Kern Water Bank. In the *Central Delta I* case, the petitioners raise multiple CEQA claims on wide-ranging aspects of the Monterey Amendments. The Central Delta Petitioners also included a reverse validation challenge to the validity of underlying contracts, but that challenge was earlier dismissed by the court as untimely.

After years of procedural wrangling and disputes over the administrative record, a trial on the merits of the CEQA challenges was held in January before Sacramento Superior Court Judge Timothy Frawley. In March, Judge Frawley issued his



rulings on the challenges raised in the *Central Delta I* and *Rosedale* cases.

The court concluded that a portion of the EIR was defective in that it fails to adequately analyze the potential impacts associated with the anticipated use and operation of the Kern Water Bank, particularly as to potential groundwater and water quality impacts. The court granted the petitions on this basis. In all other respects, the court denied the petitions. The court instructed the petitioners to notice an additional hearing to discuss an appropriate remedy for the CEQA violation.

The hearing on remedies was held on September 5. The parties generally agree that the focus of the remedial CEQA document is the Kern Water Bank. However, a major area of contention concerns the effect of the judgment on the underlying project approvals; that is, whether the project approvals remain in place or are set aside, and whether the remedial review has to analyze the prior transfer of the Kern Water Bank lands from the State to local ownership.

Judge Frawley took the matter under submission. His issuance of a final ruling will conclude the merits issues for these cases at the trial court level.

(See General Counsel's January 2014 Activity Report.)

Peter von Haam v. Metropolitan, et al.
(Los Angeles County Superior Court)

On September 3, 2014, Peter von Haam filed a complaint for damages and other relief in Los Angeles County Superior Court against Metropolitan and his former manager, the General Counsel. Plaintiff alleges ten causes of action, of which seven allege violations of the Fair Employment and Housing Act: discrimination based on disability; hostile work environment; failure to prevent discrimination; failure to accommodate; failure to engage in interactive process; and retaliation. The remaining three causes of action allege personal injury claims: intentional infliction of emotional distress; defamation; and invasion of privacy. Plaintiff filed a first amended complaint for damages and other relief on September 18. Metropolitan accepted service of the summons and first amended complaint on September 26, and the General Counsel accepted service on September 30. The Legal Department has retained the law firm of Seyfarth Shaw LLP to represent both defendants.

Matters Involving Metropolitan

Sacramento Regional County Sanitation District v. Regional Water Quality Control Board and State Water Resources Control Board (Sacramento Superior Court); Alameda County Water District, et al v. Sacramento Regional County Sanitation District (Sacramento Superior Court)

The Sacramento Regional Sanitation District's (Regional San) Treatment Plant has long been of significant concern to Metropolitan due to its discharge of nutrients, pathogens, and other constituents into the Bay-Delta. For many years, Metropolitan and several other water agencies that receive water through the Bay-Delta have advocated for treatment upgrades and pursued relief through several avenues, including CEQA proceedings, Clean Water Act permitting, and litigation. Those efforts have paid off, and all pending matters concerning the Treatment Plant have now been favorably resolved or are on the verge of final resolution.

By way of background, more stringent treatment requirements for Regional San's Treatment Plant were finally made necessary as a result of a new discharge permit adopted by the Central Valley Regional Water Quality Control Board (Regional Board) in 2010 and upheld by the State Water Resources Control Board in 2012. The permit calls for a dramatic reduction in the Treatment Plant's discharge of ammonia and nitrate by requiring full nitrification/denitrification treatment and tertiary filtration for pathogen removal. Regional San filed litigation challenging the permit and Metropolitan and the other participating water agencies intervened to defend it.

Last spring, the parties reached a partial settlement of the permit litigation, whereby Regional San agreed to dismiss its challenge to the ammonia and nitrate limits. That left a cause of action concerning the pathogen and filtration requirements still to be litigated.

Earlier this year, the parties reached a settlement on the filtration requirements. The settlement still requires Regional San to implement filtration, but



at a lower hydraulic capacity than originally required (217 million gallons per day instead of 325). The effect of this downsizing would be minimal, as it would only be on certain days during the high-flow winter months that a portion of the plant flow would not be filtered.

Implementation of the final settlement of the permit litigation required the Regional Board to issue an amended permit. Following publication of a draft permit, the Regional Board adopted the amended permit on August 8. In September, the parties to the litigation filed the necessary papers with the court to dismiss the case. We are now just awaiting issuance of final judgment.

In a related proceeding, Metropolitan, other state water contractors, and the Contra Costa Water District had earlier brought a successful CEQA challenge in response to significant, unmitigated water quality impacts that would occur from a planned expansion of the Treatment Plant. Regional San appealed the trial court ruling and

the case had been pending for several years in the Third District Court of Appeal awaiting oral argument. In January of this year, the court of appeal dismissed the appeal as moot, based on Regional San's representation that the expansion project is no longer planned. That left attorneys' fees for Metropolitan and the other prevailing parties as the only remaining issue in this CEQA case. In September, the parties to the CEQA cases reached agreement on proposed terms to settle the attorneys' fee issue. The potential settlement will be discussed in Legal and Claims Committee.

Finally, on September 24, Regional San completed its CEQA process and approved the Treatment Plant upgrades that are required to comply with the strict new discharge permit. Dubbed the EchoWater Project, the nearly \$2 billion upgrades are currently the Sacramento region's largest approved public infrastructure project. (See May and January 2014 Activity Reports.)

Other Activities

Finance

On September 10, 2014, Metropolitan remarketed its \$104,820,000 Special Variable Rate Water

Revenue Refunding Bonds, 2013 Series E. Legal Department staff attorneys prepared bond documents.

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>						
Actions in which MWD is a party	1	Complaint for Damages and Other Relief filed in Los Angeles County Superior Court by MWD employee						
Government Code Claims	2	Claims submitted for accident involving MWD vehicle and property damage due to corrosion of copper pipe						
Subpoenas	3	Subpoenas for employee records of MWD's former and current employees, and a matter before the Workers' Compensation Appeals Board						
Public Records Act Requests	13	<table border="0"> <thead> <tr> <th><u>Requestor</u></th> <th><u>Documents Requested</u></th> </tr> </thead> <tbody> <tr> <td>Earthjustice</td> <td>Documents relating to federal legislation intended to address California's drought</td> </tr> <tr> <td>2 Environmental Consultants (AECOM and Associates Environmental)</td> <td>(1) Water quality data for DVL, and (2) 1998 Dames & Moore report (unrelated to MWD)</td> </tr> </tbody> </table>	<u>Requestor</u>	<u>Documents Requested</u>	Earthjustice	Documents relating to federal legislation intended to address California's drought	2 Environmental Consultants (AECOM and Associates Environmental)	(1) Water quality data for DVL, and (2) 1998 Dames & Moore report (unrelated to MWD)
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	Irvine Ranch Water District	Monthly water quality data for Lake Mathews
	Los Angeles City Planning Department, Office of Historic Resources	Photographs of MWD former headquarters building on Sunset Boulevard
	Neumiller & Beardslee	Documents relating to transactions between MWD and Semitropic Water Storage District
	1 Private Citizen	History of building at Weymouth
	SDCWA	Agreements between MWD and LADWP
	2 Students from UCLA and Arizona State University	(1) Per capita water usage in Los Angeles County, and (2) water supply and demand data for past 30 years
	3 Vendors	Request for bid information provided in response to MWD requests for proposal
Other Matters	1	Charge filed with the California Public Employment Relations Board (PERB) relating to MWD's new evaluation system titled "My Performance"