



Metropolitan Cases

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

The State and Federal Contractors filed their petition for a writ of certiorari in the U.S. Supreme Court in the Delta smelt Biological Opinion case on October 6, 2014. Certain farm and agricultural parties also filed their own petition for a writ of certiorari in the case.

Amicus briefs in support of the Federal and State Contractors' petition were filed on November 6, 2014. These amicus briefs include: 1) a "States" brief prepared by Nebraska and joined by the States of Arizona, Alaska, Oklahoma, Utah, Wyoming, South Dakota, Kansas, Arkansas, and South Carolina; 2) a brief prepared by the Association of California Water Agencies and joined by the Southern California Water Committee, Northern California Water Association, California Building Industry Association, California Forestry Association, Central Arizona Water Conservation District, National Association of Homebuilders, and the Southern Nevada Water Authority; 3) a "farm organization" brief submitted on behalf of Farm Credit West, ACA; Farm Credit Services of America; Farm Credit Mid-America, ACA; Northwest Farm Credit Services; Greenstone Farm Credit Services; Farm Credit East; 1st Farm Credit Services; American AgCredit; AgStar Financial Services, ACA; Farm Credit Illinois; United FCS, ACA; Yosemite Farm Credit, ACA; CoBank, ACB; National Council of Farmer Cooperatives; American Farm Bureau Federation; Western Growers Association and California Farm Bureau Federation; 4) a "hydropower organization" brief submitted by the National Hydropower Association, Northwest Hydroelectric Association, and Northwest RiverPartners; 5) a brief from the U.S. Chamber of Commerce and the California Chamber of Commerce; and 6) a brief from the National Federation of Independent Business and the Cato Institute.

The State of California and Department of Water Resources filed a waiver stating that they do not intend to respond to the petitions for certiorari unless directed by the Supreme Court to do so.

The Federal Government has been granted an extension of time to December 8, 2014 to respond to the State and Federal Contractor's petition for a writ of certiorari. (See General Counsel's August and September 2014 Activity Reports.)

Shimmick/Obayashi, Joint Venture v. Metropolitan (Los Angeles Superior Court)

Shimmick Construction Co./Obayashi Corp. Joint Venture (SOJV) filed a complaint against Metropolitan in Los Angeles County Superior Court on October 6, 2014 (Case No. BC 559603), alleging breach of contract and breach of the covenant of good faith and fair dealing. The complaint stems from work that SOJV performed on the Diemer Oxidation Retrofit Program (Specifications No. 1500) pursuant to a \$188-million construction contract awarded by Metropolitan's Board on July 8, 2008. SOJV alleges that it was damaged by Metropolitan's project changes, delays, disruption, and interference and that Metropolitan improperly withheld \$2.5 million in liquidated damages from contract payments. The complaint seeks monetary and equitable relief in excess of \$10 million plus interest. The parties are currently attempting to schedule a formal mediation in an effort to resolve the dispute. At its September meeting, the Board authorized a \$150,000 increase to an existing \$100,000 professional services agreement with Pacific Construction Consultants, Inc. to assist the General Counsel and Engineering staff with the anticipated mediation.

Cora Constructors, Inc. v. Metropolitan, et al. (San Bernardino Superior Court)

Cora Constructors, Inc. (Cora) filed a cross-complaint against Metropolitan in San Bernardino Superior Court on October 15, 2014 (Case No. CIVDS 1411824), alleging breach of contract and breach of the implied warranty of correctness. The original complaint in the case was filed by Davis Electric, Inc. (Davis) against Cora for Cora's alleged failure to pay Davis for work that Davis performed as a subcontractor to Cora on Metropolitan's Copper Basin Reservoir Outlet Structure Rehabilitation Project (Specifications



No. 1662) (Project). Cora's cross-complaint alleges that Metropolitan failed to pay Cora for extra work on the Project, wrongfully withheld liquidated damages, supplied Cora with faulty specifications, and delayed Cora's performance on the Project. The cross-complaint does not specify the amount of damages sought, but in its predicate Government Code claim (Gov. Code § 910 et seq.), Cora sought \$1.8 million. Metropolitan's answer to the cross-complaint is due November 26.

Tronox, Inc. v. Kerr McGee Corp.
(U.S. Bankruptcy Court, Southern District of New York)

On May 30, 2014, a New York bankruptcy judge issued his proposed findings of fact and conclusions of law and recommended that the district court approve the \$5.15 billion settlement in the *Tronox, Inc. v. Kerr McGee Corp.* adversary

proceeding (Adversary Action). Two objections were filed, claiming that the defendants should be paying more than \$5.15 billion and that certain tort claimants should receive a greater share of the settlement proceeds.

On November 10, 2014, a district court judge in New York approved the \$5.15 billion settlement. Payment will be made after court approval of the settlement is final and no longer appealable, which is expected to be by early next year. The district court judge also issued a permanent injunction which prevents certain parties from asserting any claims that could have been asserted against Anadarko or its affiliates in the Adversary Action or Tronox's bankruptcy. Under the terms of the settlement, the Nevada Environmental Response Trust will receive approximately \$1.1 billion, which will be used to clean up the Tronox site in Henderson, Nevada. (See May 2014 Activity Report.)

Cases to Watch

EPA Announces Preliminary Determination to Regulate Strontium in Drinking Water

On October 20, 2014, the U.S. Environmental Protection Agency (EPA) issued its preliminary determination to regulate strontium in the country's drinking water. Strontium is a naturally occurring element which, at elevated levels, can impact bone strength in people who do not consume enough calcium. According to EPA's press release, strontium has been detected in 99 percent of public water systems and at levels of concern in seven percent of public water systems in the nation. After the comment period on EPA's preliminary determination ends on December 19, 2014, EPA will decide whether to issue a final determination to regulate strontium. If so, EPA will begin the process of developing the proposed rule,

with the goal of publishing the final regulation in 2015.

California EPA's Office of Environmental Health Hazard Assessment (OEHHA) also recently announced that it is updating the Public Health Goal (PHG) of 0.35 pCi/L for strontium-90. Strontium-90 is a radioactive isotope released as fallout from atmospheric testing of nuclear weapons and incidental events at nuclear processing facilities. PHGs are concentrations of chemicals in drinking water that are not anticipated to cause adverse health effects. PHGs are not regulatory, but are used as the health basis to develop California's primary drinking water standards. The deadline to send OEHHA information on strontium-90 that could assist in updating the risk assessment and potentially calculating a revised PHG is November 17, 2014.

Other Activities

Tronox Site Tour

On October 27, the General Counsel and Jill Teraoka, along with staff from Water Quality, attended a tour of the Tronox site in Henderson, Nevada. The tour was jointly organized by the Nevada Environmental Response Trust (which is now the owner of the Tronox site and responsible for the remediation of the site) and the Nevada

Division of Environmental Protection (NDEP), the regulatory agency that oversees the remediation. Staff from the Southern Nevada Water Authority and the Central Arizona Project were also on the tour. The tour was conducted by Envirogen and Tetra Tech, the firms that operate the water treatment facilities and are preparing the final work plan for remediation of the site.



The group also toured the groundwater remediation facility at the adjacent AMPAC site, which is another source of perchlorate in the area.

EPA’s Proposed Regulation Defining “Waters of the United States” (WOTUS)

On April 21, 2014, the EPA and the Army Corps of Engineers published a proposed rule regarding the definition of “waters of the United States” under the Clean Water Act (CWA). Metropolitan’s Environmental Planning Team is authoring a comment letter on the proposed rule, with input from Legal staff, to be submitted on or before the deadline of November 14, 2014. Staff from Legal have also provided input on comment letters prepared by various industry association groups, including letters authored by the Association of

California Water Agencies (ACWA), the Western Urban Water Coalition (WUWC), American Water Works Association (AWWA), and the Federal Water Quality Coalition (FWQC). The definition set forth in the Proposed Rule would be used to determine which water bodies are subject to the CWA and could affect Metropolitan’s permitting requirements under the CWA.

Bond Counsel

The Legal Department has issued an RFP for firms to serve as bond counsel. In 2011 the Legal Department qualified a pool of bond counsel firms for three years, terminating in December 2014. Staff from Legal and Finance will interview respondents to qualify a new pool of firms.

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Actions in which MWD is a party	2	Complaint for Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, and Breach of Implied Warranty of Correctness of the Drawings and Specs filed in Los Angeles County Superior Court by Shimmick Construction Company, Inc./Obayashi Corporation, a Joint Venture relating to the construction of the Diemer Water Treatment Plant Oxidation Retrofit Program	
		Cross-Complaint for Breach of Contract, Breach of Implied Warranty of Correctness, Negligence, Express Indemnity, Implied Equitable Indemnity, Contribution and Partial Indemnity filed in San Bernardino County Superior Court by Cora Constructors, Inc. relating to the Copper Basin Reservoir Outlet Structure Rehabilitation	
Government Code Claims	2	Claims submitted by driver and passenger for accident involving MWD vehicle	
Requests Pursuant to the Public Records Act	10	<u>Requestor</u>	<u>Documents Requested</u>
		Edge Point Contracting	List of uncashed checks and unclaimed funds for \$1,000 or more
		Joseph C. Truxaw and Associates	Plans for MWD’s concrete water main on east side of Poplar Avenue
		JRP Historical Consulting	Original drawings for transmission towers on Hoover Mead No. 4 transmission line
		Main Graphics	Printing, mailing, and promotional products purchased by MWD in 2013



<u>Category</u>	<u>Received</u>	<u>Description</u>
	Private Citizen	MWD easement agreement in Monterey Park
	Santa Margarita Watermaster	Documents relating to Lake Skinner and DVL
	SmartProcure	List of MWD purchase orders from January 2008 to the present
	UC Berkeley Student	Percentage of MWD water from SWP, CRA, and other sources
	1. Unisource Discovery; and 2. York Risk Services Group	Proposal and contract information for MWD's current provider of workers' compensation third party administrative services
Other Matter	1	Wage garnishment