



Metropolitan Cases

The Navajo Nation v. United States Department of the Interior (U.S. District Court, District of Arizona)

The Navajo Nation originally filed this litigation March 2003 in federal district court in Arizona seeking to overturn Colorado River operation rules adopted by the Secretary of the Interior. Settlement negotiations were conducted until May 2013 when a tentative settlement failed to gain approval of the Navajo. During the settlement discussions, Metropolitan and the other Colorado River agencies were authorized to observe but not directly participate in the settlement discussions.

In July 2013, the Navajo Nation filed its First Amended Complaint. Metropolitan jointly intervened with the Coachella Valley Water District and filed a motion to dismiss. Similar motions were filed by the federal government and other water agencies in California, Arizona, and Nevada. On July 22, the district court granted the federal motion to dismiss and denied the water agencies' motions as moot. The Navajo then filed a motion seeking leave to further amend their complaint to respond to the grounds on which the dismissal was granted. The motion to amend was denied on October 1, 2014. The case will now move to the Ninth Circuit Court of Appeals pursuant to a notice of appeal filed by the Navajo. (See General Counsel's June 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)

In October the court issued its final ruling on the *Rosedale* and *Central Delta* cases, which challenge CEQA compliance for the Monterey Amendments to the State Water Contracts. This ruling followed a remedies hearing held in September. Earlier this year, the court ruled on the merits of the CEQA claims. In that earlier ruling, the court rejected all CEQA claims except one: it found that a portion of the EIR was defective for

failing to adequately analyze the potential future impacts associated with future operation of the Kern Water Bank.

The final ruling is generally favorable for DWR and the SWP Contractors. The ruling calls for a limited scope remedial CEQA review that is focused on the Kern Water Bank. It also allows operation under Monterey to continue while the remedial review is prepared. Most importantly, the ruling leaves in place the underlying project approvals while DWR prepares the remedial CEQA review.

On November 25 the court entered judgment and issued a writ commanding DWR to decertify the current EIR and commence the remedial review. Except for the issue of attorneys' fees, this finalizes the trial court proceedings for the main challenges to the Monterey Amendments and triggers a 60-day period for filing an appeal. There is, however, one remaining case still pending in the trial court that is a redundant challenge to the validity of the Monterey Amendment agreements. This remaining case is anticipated to be quickly dismissed on procedural grounds. (See General Counsel's September 2014 Activity Report.)

Foli v. Metropolitan (United States Court of Appeals for the Ninth Circuit)

The Ninth Circuit Court of Appeals recently scheduled this case for oral argument on February 12, 2015 in Pasadena, California. As previously reported, plaintiffs are appealing the January 2013 Order which granted Metropolitan's Motion to Dismiss plaintiffs' First Amended Complaint, as well as the April 2012 Order which granted Metropolitan's Motion to Dismiss plaintiffs' original Complaint. Plaintiffs filed their original Complaint in August 2011 alleging that Metropolitan's fluoridation process is an unlawful and unconstitutional medication of the plaintiffs.

Bradley Nutt v. Metropolitan, et al. (Los Angeles County Superior Court)

As previously reported, former Metropolitan employee Bradley Nutt filed a complaint for damages on July 8, 2014, in Los Angeles County Superior Court against Metropolitan. An amended complaint was filed on September 8, 2014. The



amended complaint alleges religious discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA). A Case Management Conference was held on November 12. This matter is now set for trial starting January 20, 2016, with a Final Status Conference scheduled for January 8, 2016. The Legal Department is representing Metropolitan. (See General Counsel's August 2014 Activity Report.)

Retired Employees v. Metropolitan (Public Employment Relations Board)

As previously reported, AFSCME Local 1902 and Metropolitan resolved a Public Employment Relations Board (PERB) charge and grievance involving a group of planner/schedulers. The PERB charge and grievance sought retroactive wages and promotions going back several years. The matter was settled on January 15, 2014. Key terms of the settlement include AFSCME's withdrawal of the charge and the grievance, and the retroactive temporary promotion of ten planner/schedulers for a period of up to eighteen months. A former planner/scheduler, who retired well before the settlement was achieved, requested and received a copy of the settlement. Thereafter, he asked Metropolitan to engage in new negotiations with him concerning the same subject matters addressed by the settlement. Metropolitan respectfully declined that request. In response, the retiree lodged a PERB unfair practice charge against Metropolitan on January 23, 2014. His charge alleges Metropolitan violated the Meyers-Milias-Brown Act (MMBA) by not including retired employees in the settlement

described above. Metropolitan filed position statements opposing the charge. On November 5, 2014, PERB agreed with Metropolitan's objections and issued a formal letter dismissing the charge. The Legal Department represents Metropolitan in this matter. (See General Counsel's January and August 2014 Activity Reports.)

Management and Professional Employees Association v. Metropolitan (Public Employment Relations Board)

The Management and Professional Employees Association (MAPA) filed an unfair practice charge with PERB in April 2012. The charge alleges Metropolitan violated the MMBA by creating and posting the Manager of Administrative Services classification, an unrepresented position that recently was filled. Previously, several of the job duties now performed by the Manager of Administrative Services were assigned to the Business Services Section Manager, a classification within the MAPA bargaining unit. However, as a result of a vacancy created by a retirement, a new classification was established based on the addition of new job duties placing a greater emphasis on personnel issues, including employee relations matters. As a result of the changes, Metropolitan designated the new classification as unrepresented. On May 2, 2014, MAPA placed the charge in abeyance. On November 21, PERB closed this matter based on MAPA's withdrawal of the charge. The Legal Department represented Metropolitan in this matter. (See General Counsel's April 2012 Activity Report.)

Matters Involving Metropolitan

The State Water Resources Control Board's Safe Drinking Water Plan For California

On November 21, 2014, the fourth of six public workshops on the State Water Resources Control Board's (State Board) October 6, 2014 draft Safe Drinking Water Plan for California took place at Metropolitan's Headquarters. The Safe Drinking Water Plan for California includes the State Board's assessment of the overall quality of the state's drinking water, the identification of specific water quality problems, an analysis of the known and potential health risks that may be associated with drinking water contamination in California, and specific recommendations for improving drinking

water quality. During the workshop, the State Board indicated that the current Division of Drinking Water program is not adequately funded or staffed to implement many of the proposed changes in the Plan. Also, some of the recommended changes would require revising existing California law. For example, the State Board recommends legislation that would require a small public water system that is within the sphere of influence of a larger water system to annex to the larger system.

Several years ago in 1993, the California Department of Health Services (now the California Department of Public Health (DPH)) submitted to the Legislature the original Plan, a report titled,



“Drinking Water Into the 21st Century: Safe Drinking Water Plan for California.” In 1996, Senate Bill 1307 amended California Health and Safety Code Section 116355 to require periodic updates to the original Plan. However, no updates to the 1993 Plan have been issued until now. Metropolitan staff are preparing comments on the draft Safe Drinking Water Plan. Comments must be received by the State Board by 12:00 noon on December 15, 2014.

Garvey Reservoir

As reported to the Board in February 2014, Legal Department staff has been assisting Engineering and Water System Operations to work with the City of Monterey Park (City) to remove long-term operational restrictions on the reservoir. This matter was successfully resolved in November.

Located in the City, the Garvey Reservoir is an important part of Metropolitan’s operations. It provides for storage of treated water for flow regulation and emergency purposes, and provides a reserve supply of treated water which can be utilized to meet demands during periods when portions of Metropolitan’s system must be taken out of service. In late 1989, seepage was discovered in areas adjacent to the Garvey Reservoir. As a result of ensuing legal challenges, Metropolitan entered into a Settlement Agreement with the City in September 1993, agreeing to operational restrictions on the use of the reservoir, including reducing the elevation of the reservoir from a maximum of 573 feet to a maximum of 561 feet. The Settlement Agreement provided for a mechanism under which Metropolitan could request removal of this restriction after ten years. The ten-year window expired in May 2009. In anticipation of this milestone, Metropolitan staff requested removal of the restriction in 2008 and has been working with the City since that time on this issue. The parties reached an agreement earlier this year, which was approved by the Board in February and completed in November 2014. In exchange for the City’s agreement to forgo any further objection to Metropolitan raising the

elevation of the reservoir, Metropolitan added an additional approximately 0.2 acres to its existing recreational lease and provided the City with \$50,000 for improvements to the existing leased property. Successful resolution of this matter provides Metropolitan with operational flexibility going forward, particularly in light of current drought conditions.

EPA To Issue New Health Advisory for Harmful Algal Blooms

The U.S. Environmental Protection Agency (EPA) plans to issue a new drinking water health advisory for cyanotoxins, the harmful algal blooms that contaminated water supplies in Toledo, Ohio in August. Health advisories are not enforceable standards, but are guidance values based on non-cancer health effects for different durations of exposure (such as one day, ten days, and lifetime). The new guidelines will explain what a safe level of cyanotoxins in drinking water is and how to treat them. According to Dr. Peter Grevatt, Director of EPA’s Office of Groundwater and Drinking Water, EPA will finalize a new drinking water health advisory for cyanotoxins sometime in spring 2015. Only Ohio, Oregon, Minnesota, Florida, and Oklahoma have their own drinking water standards for microcystin, one of the most widespread forms of cyanotoxins.

Cyanotoxins are also on EPA’s Contaminant Candidate List, which is a list of drinking water contaminants that are known or anticipated to occur in public water systems and are not currently subject to EPA drinking water regulations. EPA collects data and encourages further research on listed contaminants to better understand potential health effects and the levels at which they occur in drinking water. For example, cyanotoxins are likely to be included in the Unregulated Contaminant Monitoring Rule to be issued in 2016, with required monitoring for cyanotoxins expected to begin in 2018. Based on such data and research, EPA then periodically decides whether to regulate certain listed contaminants.

Other Activities

Finance

On November 24, 2014, Metropolitan posted the remarketing statement for \$128,875,000 Water Revenue Refunding Bonds, 2011 Series A-1 and

2011 Series A-3 (Index Mode). Legal Department staff attorneys worked with bond counsel to prepare bond documents.



Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>																								
Government Code Claims	1	Claim brought to recover for injury to crops relating to the application of chemical and herbicides by Semitropic Water Storage District																								
Subpoenas	1	Subpoena for the deposition of the Person Most Qualified at Metropolitan and records relating to appropriation of water rights from wells that service the North Perris Water System. The subpoenaing party also submitted a Public Records Act request on the same subjects.																								
Requests Pursuant to the Public Records Act	15	<table border="1"> <thead> <tr> <th><u>Requestor</u></th> <th><u>Documents Requested</u></th> </tr> </thead> <tbody> <tr> <td>ACE Environmental Consultants</td> <td>Winning proposal for asbestos and lead surveys</td> </tr> <tr> <td>Coachella Valley Water District</td> <td>MWD's warehouse policies and procedures</td> </tr> <tr> <td>Correia-Xavier Inc.</td> <td>Cost of water delivered and allocation to a parcel identified by APN number</td> </tr> <tr> <td>Feldman & Associates on behalf of Unique Performance Construction, Inc.</td> <td>Construction/inspection records relating to the West Valley Feeder No. 2</td> </tr> <tr> <td>Jamul Action Committee</td> <td>Annexation and environmental documents relating to parcels located in San Diego</td> </tr> <tr> <td>Los Angeles Times</td> <td>Companies who have received incentives of more than \$100,000 for turf replacement</td> </tr> <tr> <td>Newmeyer & Dillion LLP on behalf of BAI Investor, LLC</td> <td>Records relating to appropriation of water rights from wells that service the North Perris Water System</td> </tr> <tr> <td>3 Private Citizens</td> <td>(1) Emails and calendar of Thomas Miller, (2) Board documents relating to land/mineral rights in Riverside County, and (3) facts relating to water conservation in Buena Park</td> </tr> <tr> <td>PVS Minibulk</td> <td>Information on sulfuric acid to be supplied under Request for Bid</td> </tr> <tr> <td>2 Graduate Students from UC Santa Barbara</td> <td>Water purchases, in-lieu deliveries, allocations, and spending on rebate and conservation programs by Member Agency</td> </tr> <tr> <td>2 Requestors from York Risk Services</td> <td>(1) Evaluation and scoring and (2) proposals relating to RFP No. 1061 for workers' compensation claims administration</td> </tr> </tbody> </table>	<u>Requestor</u>	<u>Documents Requested</u>	ACE Environmental Consultants	Winning proposal for asbestos and lead surveys	Coachella Valley Water District	MWD's warehouse policies and procedures	Correia-Xavier Inc.	Cost of water delivered and allocation to a parcel identified by APN number	Feldman & Associates on behalf of Unique Performance Construction, Inc.	Construction/inspection records relating to the West Valley Feeder No. 2	Jamul Action Committee	Annexation and environmental documents relating to parcels located in San Diego	Los Angeles Times	Companies who have received incentives of more than \$100,000 for turf replacement	Newmeyer & Dillion LLP on behalf of BAI Investor, LLC	Records relating to appropriation of water rights from wells that service the North Perris Water System	3 Private Citizens	(1) Emails and calendar of Thomas Miller, (2) Board documents relating to land/mineral rights in Riverside County, and (3) facts relating to water conservation in Buena Park	PVS Minibulk	Information on sulfuric acid to be supplied under Request for Bid	2 Graduate Students from UC Santa Barbara	Water purchases, in-lieu deliveries, allocations, and spending on rebate and conservation programs by Member Agency	2 Requestors from York Risk Services	(1) Evaluation and scoring and (2) proposals relating to RFP No. 1061 for workers' compensation claims administration
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