



Metropolitan Cases

***SDCWA v. MWD, et al. I and II* (San Francisco County Superior Court)**

Testimony in the Phase 2 trial on the breach of contract and preferential rights causes of action in *SDCWA v. MWD I and II* concluded on April 29. Post-trial briefs are due May 22. The court has set a hearing on the briefs and trial-related motions for June 5. The trial court's decision on breach of contract and preferential rights is expected in summer 2015.

In June 2010, the San Diego County Water Authority (SDCWA) filed a petition/complaint challenging rates adopted by Metropolitan's Board of Directors in April 2010 (*SDCWA v. MWD I*). In October 2011, SDCWA filed a first amended petition/complaint with additional causes of action: breach of contract, breach of fiduciary duty, breach of the covenant of good faith and fair dealing, and declaratory relief concerning preferential rights and a Rate Structure Integrity (RSI) provision contained in demand management contracts. In January 2013, SDCWA filed a third amended petition/complaint alleging Metropolitan's rates violate Proposition 26. Metropolitan filed successful motions between 2011 and 2013 that resulted in dismissal of the breach of fiduciary duty, breach of the covenant of good faith and fair dealing, RSI, and Proposition 26 claims.

In June 2012, SDCWA filed a second petition/complaint challenging rates adopted by Metropolitan's Board in April 2012, and alleging breach of contract (*SDCWA v. MWD II*). The allegations are similar to *SDCWA v. MWD I*, with an additional claim that Metropolitan's rates do not account for "dry year peaking." The two cases are being heard together in San Francisco County Superior Court as complex litigation. Several of Metropolitan's member agencies have joined the cases as interested parties in support of Metropolitan.

The Phase 1 trial on the rate challenges in *SDCWA I and II* occurred in December 2013. The trial court issued its Statement of Decision in April 2014. The court found that Metropolitan is legally obligated to comply with Proposition 26 (for rates adopted in 2012), Government Code Section 54999.7, the Wheeling Statute, and the common law when setting rates and had not done so. It found that Proposition 13, Government Code Section 66013, and the MWD Act are not applicable to Metropolitan's rates. The court found that there was not sufficient evidence in the record to support Metropolitan's inclusion in its transportation rates, and hence in its wheeling rate, of either (1) payments it makes to the California Department of Water Resources (DWR) for the State Water Project, or (2) all of the costs incurred by Metropolitan for conservation and local water supply development programs recovered through the Water Stewardship Rate. The court found in Metropolitan's favor on the "dry year peaking" claim.

Metropolitan will appeal the rulings that have been adverse to it, and anticipates that SDCWA will appeal the rulings against it. Metropolitan is represented by Quinn Emanuel Urquhart & Sullivan and Morgan Lewis & Bockius.

***SDCWA v. MWD, et al. III* (San Francisco County Superior Court)**

In May 2014, SDCWA filed a petition/complaint challenging rates adopted by Metropolitan's Board of Directors in April 2014, and alleging breach of contract (*SDCWA v. MWD III*). The allegations are similar to *SDCWA v. MWD I and II*. The case is assigned to San Francisco County Superior Court as complex litigation. Several of Metropolitan's member agencies have joined the case as interested parties in support of Metropolitan. The parties have agreed to stay *SDCWA v. MWD III* so it will not be litigated at this time. Metropolitan is represented by Quinn Emanuel Urquhart & Sullivan and Morgan Lewis & Bockius.



Matters Impacting Metropolitan

Emergency Drought Barrier Project

On May 4, 2015, the State Water Resources Control Board issued a Clean Water Act section 401 Certification for DWR's proposed Emergency Drought Barrier Project. This clears the way for the U.S. Army Corps of Engineers to issue the required section 404 permit so DWR can begin construction of a saltwater barrier in waters of the U.S.

Under this year's project, DWR will install a single emergency salinity barrier across West False River in early May and remove it six months later by

November 15. The barrier will help limit the tidal push of saltwater from San Francisco Bay into the central Delta and help minimize the amount of fresh water that must be released this summer from upstream reservoirs to repel saltwater, conserving water for potential delivery to State Water Contractors.

On May 5, DWR was notified by the Center for Environmental Science, Accuracy & Reliability that they intend to file papers on May 6 in Sacramento Superior Court seeking a restraining order to prevent DWR from installing the barrier.

Cases to Watch

***Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano* (California Court of Appeal, Fourth District)**

On April 20, 2015, the Fourth District Court of Appeal issued its decision in *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano*, Case No. G048969. The court ruled that the City of San Juan Capistrano's (the City) conservation-based tiered water rates violate California Proposition 218. The court ruled that tiered water rates do not always violate Proposition 218, but such rates must correspond to the actual cost of providing water service at given levels of usage. In response to the court's request for additional briefing on the cost basis for its tiered rate, the City stated that there does not have to be a correlation between tiered water prices and the cost of service. The court disagreed.

The appellate court also overruled a portion of the trial court's decision and held that a public water agency may pass on to their customers the capital costs of improvements necessary to provide new or additional water, such as the cost to construct a water recycling plant without violating Proposition 218. However, the court noted that Proposition 218 does protect lower-than-average water users from paying rates that include capital investments for such new water projects that are necessary to meet demands from above-average water users. The court remanded the case back to the trial court for further findings to determine whether low usage

customers were paying for the recycling operation made necessary only because of high usage customers.

On May 5, the City filed a request with the appellate court for a rehearing. The request states that the court's opinion did not fully address all of the City's arguments and seeks further clarification in the event the Supreme Court grants review.

***First Amendment Coalition v. Coachella Valley Water District* (Riverside Superior Court)**

On April 10, 2015, the Riverside Superior Court in the case of *First Amendment Coalition v. Coachella Valley Water District* (CVWD), Case No. PSC 1404387, held that a Public Records Act (PRA) exemption from disclosure of utility customer names and utility usage was not limited to natural persons, and included the names of business and corporate utility customers. The case arose out of a request to CVWD for the names and amount of water usage of all CVWD groundwater customers for the current fiscal year. In previous years, CVWD had publicly released reports with a table showing water usage by name, showing that businesses, including golf courses and farms, were the top water customers. However, in 2014, the report was issued without the table, and the court held that, under the PRA exemption, CVWD was not required to release the names and groundwater usage of its business and corporate customers.



Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Government Code Claims	2	Claims submitted by: (1) individual for several claims including alleged violations of the Americans with Disabilities Act at Diamond Valley Lake ball fields; and (2) individual for alleged damage from MWD vehicle striking claimant's vehicle	
Requests Pursuant to the Public Records Act	12	<u>Requestor</u>	<u>Documents Requested</u>
		BidClerk/iSqFt	Records relating to MWD request for quotation to replace discharge valves at Copper Basin and Gene Wash Reservoirs
		Center for Contract Compliance	Contract documents relating to MWD's request for quotation for asbestos abatement services
		Hunsaker & Associates Irvine, Inc.	Drawings for MWD lines along Leon Road in Riverside County
		iHeart Media California and Fraser Communications	Winning proposal for MWD's water awareness and conservation advertising services
		Pensions & Investments and Empower Retirement	Records relating to MWD request for proposal for third party administrator for MWD's 401(k) and 457(b) plans
		Private Citizens	(1) Request for source of water in Menifee, CA, (2) information on rain barrels, and (3) records relating to MWD connections and pressure reducing valves
		Property Owners	Data from historical well readings for wells near Diamond Valley Lake
		Washington Suburban Sanitary Commission	Specifications and data concerning MWD valves pipes, and service area
Other Matter	3	Wage garnishments, including one that was not relevant to MWD	