



## Metropolitan Cases

### **AFSCME Local 1902 v. MWD (Public Employment Relations Board)**

AFSCME Local 1902 filed an unfair practice charge on November 4, 2013, with the Public Employment Relations Board (PERB), which AFSCME amended on June 5, 2015. The charges allege Metropolitan unilaterally changed a February 14, 2013, Memorandum of Agreement by not slotting three AFSCME-represented employees into Instrumentation and Control Technician Specialist (ICTS) positions at three District treatment plants, i.e., the Jensen, Skinner and Mills Treatment Plants. In addition, the charges allege Metropolitan entered into a subsequent related agreement and unilaterally changed the purported second agreement by similarly failing to slot an AFSCME-represented employee at a fourth facility, the Gene Pumping Plant. By the alleged conduct, the charges claim Metropolitan made unilateral changes without meeting and conferring with the Union on matters within the scope of bargaining. As explained in Metropolitan's position statements to PERB, the lack of employees meeting minimum qualifications is a valid reason for not fully slotting the ICTSs at every plant and in the Desert. Metropolitan also argued that the Charge lacked required detail and that AFSCME's challenge should have been pursued as a grievance rather than as an alleged unilateral change of the Fact-finding Agreement. On December 4, 2015, Local 1902 withdrew the unfair practice charge and PERB issued a notice of withdrawal and closure of the case. The Legal Department represented Metropolitan in this matter.

### **Copper Pitting Cases (Orange County Superior Court)**

On December 29, 2015, several plaintiffs in the "copper pitting cases" filed a Notice of Appeal from the September 25, 2015 judgment in favor of the water district defendants. Specifically, the plaintiffs in the *Williams*, *Caito*, *Eckert*, and *Shapell* cases jointly appealed the judgment; the plaintiffs in the *Briosa* and *Cantora* cases are not parties to the appeal. Metropolitan is named as a defendant in the *Williams*, *Caito*, and *Eckert* cases. The next step is for the plaintiffs to prepare the appellate

record, which usually consists of the documents filed in the trial court and a transcript of the oral proceedings. After the record is completed, the parties will submit their appellate briefs, followed by oral argument.

Multiple cases were filed naming Metropolitan and retail water agencies in Orange County (the Districts) as defendants. The plaintiffs alleged that the water delivered by retail agencies in Metropolitan's service area is corrosive due to the use of chloramines and damages residential copper pipes. The plaintiffs asserted several causes of action including nuisance, inverse condemnation, and negligence. The cases sought compensation for repairs to leaking pipes and other alleged damages. The cases were consolidated under the lead case, *Shapell Industries, Inc. v. Moulton Niguel Water District*.

A legal issues trial in the consolidated copper pitting cases was held in Orange County Superior Court, Complex Division, in July 2015, before Judge Colaw. The purpose of the legal issues trial was to obtain a ruling from the trial court on certain key legal theories and defenses asserted by the parties prior to litigating questions of causation and damages. The goal was to narrow the issues and to set the legal questions up for appeal and a final determination of the common issues, which could eliminate the need for further trial proceedings. The Districts jointly defended the cases. In the legal issues trial, the court addressed four legal questions. Judge Colaw ruled orally from the bench at the end of the trial, finding in favor of the Districts on each question. In September 2015, the court entered the final Judgment and Statement of Decision in favor of the Districts.

As the prevailing parties, the Districts seek to recover their costs from the plaintiffs. The plaintiffs have challenged Moulton Niguel Water District's (MNWD's) and Irvine Ranch Water District's (IRWD's) costs, but not Metropolitan's. On December 21, 2015, Judge Colaw granted plaintiffs' Motion to Tax and Strike IRWD's costs. The hearing on plaintiffs' Motion to Strike and Tax MNWD's costs is scheduled for January 29, 2016. The judge has also set a Status Conference for February 26, 2016.



## Matters Impacting Metropolitan

### **EPA Proposes Monitoring Rule for Cyanotoxins**

On December 11, 2015, the U.S. Environmental Protection Agency (EPA) proposed the fourth Unregulated Contaminant Monitoring Rule (UCMR 4) which includes monitoring for cyanotoxins. Cyanotoxins are associated with harmful algal blooms such as those that contaminated water supplies in Toledo, Ohio in August 2014. UCMR 4 requires public water systems to collect occurrence data between 2018 and 2020 for 30 unregulated contaminants that could be present in tap water using analytical methods developed by EPA and consensus organizations. It is unclear if wholesale water agencies will be required to conduct this monitoring. The proposed rule identifies 11 analytical methods to support water system monitoring for 30 contaminants including cyanotoxins, metals, pesticides disinfection byproducts, alcohols, and semivolatile organic chemicals. The monitoring will provide a basis for future regulatory determinations and, as warranted, actions to protect public health.

The 1996 Safe Drinking Water Act (SDWA) amendments established a stepwise, risk-based approach for determining which contaminants should become subject to drinking water standards. According to the first step, EPA is required to publish every five years a Contaminant

Candidate List (CCL), which is a list of contaminants that are not yet regulated, but are known or anticipated to occur in public water systems. EPA included a generic category for “cyanotoxins” in the draft fourth CCL (CCL4) published on February 4, 2015. For the second step, EPA must require public water systems every five years to monitor up to 30 unregulated contaminants to determine their occurrence in drinking water systems. The proposed UCMR 4 is part of this second step. Under the third step, EPA must determine every five years whether or not at least five contaminants from the CCL warrant regulation, based in part on the UCMR occurrence information.

A public webinar to discuss the proposed UCMR 4 will be held on January 13, 2016, from 10:00 a.m. to 1:30 p.m. PST. People wishing to participate in the webinar must register by January 10, 2016, at <https://attendee.gotowebinar.com/register/7326881974233959170>. Topics will include the proposed UCMR 4 monitoring requirements, selection of contaminants and rationale, analytical methods, the laboratory approval process, and groundwater representative monitoring plans. Comments on the proposed UCMR 4 are due on or before February 9, 2016. Metropolitan staff is tracking the proposed rule and will participate in the upcoming webinar.

## Other Matters

### **Finance**

On December 17, 2015, Metropolitan issued \$208,255,000 Water Revenue Bonds, 2015 Authorization Series A, to provide funding for and reimburse capital investments. Legal Department staff attorneys worked with finance staff, bond counsel and counsel to underwriters to prepare the Official Statement and closing documents.



## Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Government Code Claims	3	(1) Two accidents involving MWD vehicles, and (2) damage to Claimant's vehicle claimed to be caused by unmaintained road owned by MWD	
Requests Pursuant to the Public Records Act	8	<u>Requestor</u>	<u>Documents Requested</u>
		CBS San Diego	Status of turf removal rebate application for residence in Oceanside
		Ironworkers Local 433	Construction contract information for Weymouth Water Treatment Plant Chemical Upgrades
		KCBS/KCAL TV	Updated figures for turf removal rebates provided to Turf Terminators
		KPMG, LLP	Sources of water for the City of Long Beach Water Department
		Martinez & Schill LLP	Documents relating to design, construction, inspection, maintenance of Warren Road Bridge over Salt Creek Channel
		Private Citizen	Documents relating to MWD's request for proposal for Attitudinal and Awareness Survey – Public Perceptions and Conservation Awareness
		U.S. Bureau of Reclamation	Mean hourly flows for the intake pump plant on Lake Havasu
		Voice of San Diego	2015 SDCWA letters to MWD Board of Directors
Other Matters	1	Wage garnishment	