



Metropolitan Cases

Los Angeles Department of Water & Power v. Metropolitan (Los Angeles Superior Court)

When Judge Chalfant issued his decision on January 15 authorizing the release of the names and addresses of recipients of rebates for turf removal, the Union-Tribune requested immediate release of all remaining information (names and addresses) subject to the court's Temporary Restraining Order (TRO). It was unclear from the decision whether the TRO remained in place or not. There was a hearing before Judge Chalfant on Monday, January 25, to obtain guidance from the court. Judge Chalfant clarified that the TRO remains in place, and no additional information can be released until the final judgment. The final judgment is expected to be issued in late February. The next hearing is scheduled for Thursday, February 25.

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

As previously reported, plaintiff filed a complaint, a first amended complaint, and a second amended complaint (SAC) in this lawsuit. By the end of the demurrer stage, the number of causes of action had been reduced to seven from ten, and plaintiff dismissed the individually named defendant leaving Metropolitan as the sole defendant. On October 13, 2015, Metropolitan answered the SAC with a general denial to the causes of action for disability discrimination, hostile work environment, failure to prevent discrimination, failure to accommodate, failure to engage in interactive process, retaliation, and intentional infliction of emotional distress. Metropolitan continued to conduct discovery and scheduled a hearing date for a motion for summary adjudication. Prior to Metropolitan filing its motion, plaintiff agreed to dismiss the litigation. The agreement to dismiss includes no admission of discrimination or wrongdoing by Metropolitan. There is no monetary payment to plaintiff. Plaintiff provided a general release, and Metropolitan agreed to not pursue recovery of either its attorneys' fees or costs. The Legal Department retained Seyfarth Shaw to

represent defendants. (See General Counsel's May 2015 Activity Report.)

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

As previously reported, AFSCME Local 1902 filed an Unfair Practice Charge with the Public Employment Relations Board (PERB) on August 26, 2014. The charge alleges Metropolitan failed to fully implement a September 2013 PERB settlement concerning the then newly implemented MyPerformance employee evaluation process. That settlement required Human Resources to review the evaluations of 404 AFSCME employees to determine whether a documented basis existed for any drop-off in performance for those employees who received a lower rating for fiscal year 2012/2013 when compared to the prior fiscal year. For those evaluations that did not document any drop off in performance, the settlement required Human Resources to make merit-step adjustments. The charge sought an increased performance rating and corresponding merit salary adjustment for twelve AFSCME members. On May 1, 2015, PERB issued a complaint and on June 2 an informal conference took place. The parties were unable to reach a settlement, and a formal hearing was set for September 29 and 30, 2015. On August 26, 2015, Metropolitan filed a motion to dismiss the complaint, and the hearing was taken off calendar to allow full briefing and consideration by the assigned administrative law judge (ALJ). On January 4, 2016, ALJ Shawn P. Cloughesy granted Metropolitan's motion and dismissed the complaint. The ALJ agreed with Metropolitan's position that the underlying dispute did not constitute an unfair practice charge since Metropolitan did not repudiate the earlier PERB settlement. In so doing, the ALJ determined that AFSCME should have challenged Human Resources' action as a grievance, and not before PERB. The Legal Department represented Metropolitan. (See, June 2015 Monthly Activity Report.)



Matters Involving Metropolitan

Coziahr, et al. v. Otay Water District, et al. **(San Diego County Superior Court)**

On July 2, 2015, Mark Coziahr, a retail water service customer of Otay Water District, submitted a claim to Metropolitan demanding: (1) a refund of all amounts paid in violation of Proposition 218 plus interest on behalf of himself and all customers of Metropolitan who received water service after July 1, 1997; (2) a detailed explanation of Metropolitan's costs and expenses for each year since July 1, 1997; and (3) a declaration of the amounts he and the purported class should have paid for water service since July 1, 1997.

On July 14, 2015, Coziahr submitted an amended claim, expressly alleging violations of Articles XIII C and XIII D of the California Constitution (Proposition 218), and again requesting a refund of amounts he alleges he has indirectly paid to Metropolitan. Meanwhile, on July 6, 2015, Coziahr had already filed a class action complaint for declaratory and injunctive relief in San Diego Superior Court against Otay Water District, SDCWA, and Metropolitan.

On August 21, Daniel Patz, a retail water service customer of the San Diego Public Utilities Department, submitted a class action claim to Metropolitan similar to Coziahr's claim.

On August 26, Metropolitan rejected the Coziahr Claim and also rejected the Patz claim on October 5.

Coziahr amended his Class Action Complaint on November 2 to add Patz, and the class of persons similarly situated, as plaintiffs and San Diego Public Utilities Department as a defendant. Coziahr also added a demand for compensatory damages for the alleged "excessive and unconstitutional fees, charges or taxes paid to Defendants." The court issued a summons on November 18 and Metropolitan received the First Amended Complaint on November 24.

Otay Water District filed an answer on December 14, 2015. On January 22, 2016, Metropolitan timely filed a demurrer to the entire complaint and an alternative motion to strike. On the same day, SDCWA also filed a demurrer to the entire complaint. San Diego Public Utilities was not served until January 22, 2016 and its response is due 30 days thereafter.

A Case Management Conference is scheduled for March 18, 2016 and a hearing on the demurrers and motion to strike is scheduled for July 22, 2016. (See General Counsel's November 2015 Activity Report.)

Negotiation of Extension of Service Area Agreement with the Eastern Municipal Water District and Pechanga Band of Luiseño Mission Indians

The Pechanga Band of Luiseño Mission Indians (Pechanga) is a federally recognized tribe with reservation lands located in western Riverside County. The reservation falls within the watershed of the Santa Margarita River, which is the subject of a water rights adjudication action filed by the United States in 1951. The federal district court entered an interlocutory judgment in 1962 that held the tribal lands were entitled to reserved water rights, including rights to use groundwater, from the time the reservation was established in 1882. The court reserved jurisdiction to determine the quantity of those water rights in the future.

In 1974, the Pechanga intervened in the adjudication proceedings and filed a complaint alleging that upstream use of water was interfering with its water rights, including rights to the groundwater basin underlying the reservation. The Pechanga are seeking a declaration of the amount of its water rights. Negotiations have been ongoing ever since. These negotiations have focused on the Rancho California Water District (Rancho), which abuts the reservation and shares the use of the groundwater basin.

Greater urgency in resolving the dispute arose in 2002 when the Pechanga began improvements on the reservation, with the need for reliable water supplies to serve the new development. Metropolitan became involved in the negotiations in 2008 when the Pechanga proposed to acquire Colorado River water from the Colorado River Indian Tribes and wheel the water through Metropolitan's Colorado River Aqueduct. In response to this proposal, in 2008, Metropolitan's Board approved a counter-proposal to provide supplemental water supplies to the Pechanga pursuant to a water supply contract with the United States. The Pechanga rejected this approach, but agreed to consider incorporation of the reservation



lands within the service areas of Metropolitan, Eastern, and Rancho, so that the tribal lands would be served like any other customer.

Metropolitan staff has since worked with a multi-agency team to develop a comprehensive water rights settlement that includes service of imported water to the Pechanga reservation. This team includes Pechanga, Eastern Municipal Water District (Eastern), Rancho, and the U.S. Department of the Interior. The team recently concluded negotiation of the terms of agreements to implement a complete settlement of Pechanga water right claims.

The agreements include an Extension of Service Area Agreement (ESAA) among Metropolitan, Eastern, and Pechanga that would allow for the delivery of imported water through Rancho service connections on existing Metropolitan and Eastern pipelines for use on the reservation lands. To the extent possible, the ESAA endeavors to treat Pechanga like any other customer. Because the reservation lands are owned in trust by the United

States and are exempt from taxation under California law, the ESAA provides a contractual basis for the payment of fees and charges that would otherwise be collected on property tax bills.

Approval of settlement of the water right claims and the related agreements, including the ESAA, requires congressional approval via federal legislation. In August 2015, Senator Boxer introduced S. 1983, the Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act. The Senate Committee on Indian Affairs approved a markup of this bill on February 3, 2016. Following Senate approval, the bill will be sent to the House of Representatives, where it should be assigned to the Natural Resources Committee. The committee chair requires that Indian water rights settlements have received approval of all parties before consideration in his committee. Eastern anticipates that its board will consider approval of the settlement-related agreements in March 2016, and Metropolitan staff would bring them to the Board in April 2016.

Other Matters

Finance

On January 7, 2016, Metropolitan remarketed its \$104,820,000 Special Variable Rate Water Revenue Refunding Bonds, 2013 Series E. Legal Department staff attorneys prepared bond documents.

On December 22, 2015, Legal Department staff posted Metropolitan's annual financial information filings for fiscal year 2014/15, pursuant to continuing disclosure requirements for outstanding bond issues. These filings include the Official

Statement for Metropolitan's Water Revenue Bonds, 2015 Series A, including Basic Financial Statements And Management's Discussion And Analysis As Of And For The Years Ended June 30, 2015 And 2014, the Comprehensive Annual Financial Report For The Fiscal Years Ended June 30, 2015 and 2014, and the Annual Financial Information Supplement Waterworks General Obligation Bonds for Fiscal Year ended June 30, 2015. They are available at <http://emma.msrb.org> (the Electronic Municipal Market Access (EMMA) system established in 2009 by the Municipal Securities Rulemaking Board).

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>
Requests Pursuant to the Public Records Act	17	
		<u>Requestor</u>
		<u>Documents Requested</u>
	Bloomberg Businessweek	Data on Turf Terminators
	Coast Community College District	Contact information for conservation programs provided by City of Huntington Beach



<u>Category</u>	<u>Received</u>	<u>Description</u>
	County of Yolo, Office of the County Counsel	MWD agreements that relate to the transfer of water from Conaway Ranch
	Delane Engineering	Utility map information for area in Bellflower, CA
	GEI Consultants	Water quality data for Table D, trace metals and organic compounds for 2014-2015
	NBC San Diego	Data on rain barrel rebates and any other rebate programs besides turf removal rebates
	Orange County Water District	Water quality data for Diemer Treatment Plant
	Pacific Advocates	Documents relating to draft Design and Construction Enterprise agreement to manage the California WaterFix
	Private Citizens (3)	(1) Names of MWD employees who worked on the San Jacinto Tunnel during the 1930s, (2) information on award given to first female certified flow control operator, (3) records and MWD communications relating to rebates provided to Turf Terminators
	Riverside County Transportation and Land Management, Survey Division	Easement for Colorado River Aqueduct Val Verde Tunnel
	RKAA Architects	Information on MWD air rights relating to MWD easement
	San Diego County Citizen's Water Academy	Information on S-bearing compounds in water from the Skinner Treatment Plant
	Santec	Yearly reports for water sales for city of Beverly Hills
	Walsworth Franklin Bevins & McCall	Pipe work performed for MWD by Holt & Bartlett in 1977



<u>Category</u>	<u>Received</u>	<u>Description</u>
		Wohlner Kaplon Cutler Halford & Rosenfeld Contract information on La Verne Water Quality Lab Chiller Replacement project
Subpoena	1	Subpoena for production of personnel and payroll records for matter unrelated to Metropolitan