



Metropolitan Cases

Central Delta Water Agency, et al. v. Delta Wetlands Properties, et al. (Contra Costa County Superior Court)

On December 15, 2016, a hearing was held on Metropolitan's motion to dismiss all causes of action against Metropolitan in the above-titled litigation. The trial court granted Metropolitan's motion - as well as similar motions by the other defendants, Delta Wetlands Properties, Semitropic Water Storage District, and four Reclamation Districts - ruling that plaintiffs failed to allege facts sufficient to support any viable causes of action. In the court's view, plaintiffs failed to allege facts sufficient to support either a breach of contract claim, as alleged against Delta Wetlands Properties, or an intentional interference with contract claim as alleged against Metropolitan with respect to two protest dismissal and settlement agreements that Delta Wetlands Properties, Semitropic, and the Reclamation Districts entered with plaintiffs Central Delta Water Agency and San Joaquin County in 2013. As is common at this early stage in the litigation, the court gave plaintiffs an opportunity to file an amended complaint by January 23, 2017. Metropolitan and the other defendants will have another opportunity to seek dismissal at that time. The Legal Department represented Metropolitan. A full report on the hearing will be given at Legal and Claims Committee. (See General Counsel's November 2016 Activity Report.)

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

As previously reported, former Metropolitan employee Bradley Nutt filed a complaint for damages against Metropolitan on July 8, 2014, in Los Angeles County Superior Court. An amended complaint was filed on September 8, 2014. The amended complaint alleged religious discrimination and retaliation in violation of the Fair Employment and Housing Act. Despite Metropolitan's effort to dismiss the complaint by filing a motion for summary judgment, this matter proceeded to trial. As reported to the Board by memorandum dated

June 1, 2016 and to the June 2016 Legal and Claims Committee, the jury issued its verdict on June 1 finding in favor of Metropolitan with regard to both allegations of religious discrimination and retaliation. Subsequently, Metropolitan submitted a request to recover its costs of trial. On December 12, 2016, the Hon. Gail Ruderman Feuer issued a tentative ruling awarding Metropolitan \$43,430 for its expert witness fees. However, Judge Feuer requested additional briefing on whether that amount should be lowered due to plaintiff's financial circumstances and set the matter for hearing on January 30, 2017. The Legal Department and Atkinson, Andelson, Loy, Rudd & Romo are representing Metropolitan. (See General Counsel's March 2016 Activity Report.)

Copper Pitting Cases (Court of Appeal, Fourth Appellate District)

On December 22, 2016, the Association of California Water Agencies, League of California Cities, San Diego County Water Authority, Las Virgenes Municipal Water District, Upper San Gabriel Valley Municipal Water District, Municipal Water District of Orange County, Foothill Municipal Water District, and West Basin Municipal Water District filed their amicus brief in support of Metropolitan, Moulton Niguel Water District, and Irvine Ranch Water District (collectively, "the Districts") in the appeal of several putative class action lawsuits in Orange County alleging that water treated with chloramines causes pinhole leaks in residential copper plumbing, giving rise to tort and inverse condemnation liability. Certain plaintiffs appealed the trial court's judgment in favor of the Districts, arguing that: (1) the federal and state Safe Drinking Water Acts do not preempt torts resulting in property damage; and (2) the service of treating and delivering water may be a constitutional "taking." The amicus brief addressed the unacceptable uncertainty and potential liability that would result if the appellate court overturns the trial court's judgment.



Matters Impacting Metropolitan

California WaterFix

On December 22, the California Department of Water Resources (DWR) and the U.S. Bureau of Reclamation announced the release of the final environmental documents for the California WaterFix. The Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) is the product of 10 years of study, analysis, and public input, and completes the environmental disclosure documentation required for the project under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). The EIR/EIS includes responses to and revisions based on more than 30,000 public comments. Legal Department staff assisted DWR in responding to certain public comments.

EPA Requires Monitoring For 30 Chemical Contaminants In Drinking Water

On December 20, 2016, the U.S. Environmental Protection Agency (EPA) announced revisions to the fourth Unregulated Contaminant Monitoring Rule (UCMR 4) for public water systems. The Safe Drinking Water Act requires that every five years, EPA must issue a new list of no more than 30 unregulated contaminants to be monitored by public water systems. UCMR 4, which becomes effective on January 19, 2017, requires public water systems to monitor for 30 chemical contaminants between 2018 and 2020 using certain analytical methods. The 30 contaminants include: ten cyanotoxins or groups of cyanotoxins, two metals, eight pesticides and one pesticide manufacturing byproduct, three brominated haloacetic acid groups of disinfection byproducts, three alcohols, and three semivolatile organic chemicals. These contaminants may be present in drinking water, but are not yet subject to EPA's drinking water standards set under the Safe Drinking Water Act. The monitoring data will provide a basis for future regulatory actions to protect public health.

EPA will hold a public meeting to discuss the final UCMR 4 requirements in Washington, D.C. on April 12, 2017, from 9:00 a.m. to 4:00 p.m. Eastern Time. Although the monitoring requirements imposed by UCMR 4 are generally applicable only to retail water agencies, Metropolitan staff will continue to monitor the process in the adoption of a final rule.

FERC Relicensing of the Oroville Facilities

On December 5, 2016, the National Marine Fisheries Service (NMFS) issued its long-awaited final Biological Opinion (Final BO) for the proposed relicensing of the Hyatt-Thermalito Power Complex, a group of generating facilities associated with Lake Oroville that produce approximately 2 gigawatts-hours of electricity each year as part of the ongoing operations of the State Water Project (SWP). This now clears the way for the Federal Energy Regulatory Commission (FERC) to issue a new 50-year license for these facilities.

Nearly two decades ago, DWR began the process of renewing its federal license for the Hyatt-Thermalito Power Complex. Utilizing FERC's Alternative Licensing Procedure, DWR engaged in a lengthy public process aimed at building consensus on the terms and conditions for a new license. This process culminated in a proposed settlement agreement that was signed on March 26, 2006, by over 50 stakeholders, including the key regulatory agencies. The settlement agreement commits DWR to spend nearly \$500 million (2005 dollars) over the term of the license in various resource areas, including approximately \$200 million on fisheries and approximately \$150 million on recreation. A significant portion of these costs ultimately will be borne by the state water contractors, including Metropolitan. That said, on a dollars per megawatt-hour basis, these costs are in line with other relicensings that have occurred in the past decade or so.

Subsequent to its execution, the Settlement Agreement was submitted to FERC as part of DWR's relicensing application, and became the preferred alternative for purposes of the federal and state environmental reviews conducted under the NEPA and CEQA, respectively. The final EIS for the proposed relicensing was issued by FERC in May 2007, and the final EIR was issued by DWR in July 2008. Likewise, the U.S. Fish and Wildlife Service issued its Final BO for terrestrial species in April 2007, and the State Water Resources Control Board issued its Water Quality Certification in December 2010. Thus, NMFS' issuance of the Final BO for anadromous fish represents the last major regulatory hurdle in the relicensing process. This Final BO is over 400 pages in length and, as such, is still being analyzed by staff. However, a preliminary review indicates that the Final BO



largely tracks the terms and conditions set forth in the Settlement Agreement. Accordingly, we anticipate that FERC will issue a new license for the Hyatt-Thermalito Power Complex soon.

Although the settlement agreement was signed by over 50 stakeholders and has widespread support, certain parties have asserted that it does not fully address their concerns. Chief among these are the Counties of Butte and Plumas (Counties), which have asserted numerous legal and non-legal challenges at various stages of the relicensing process. To date, these efforts have been unsuccessful. However, once FERC issues the

new license, the Counties will have another opportunity to challenge the Biological Opinions and the Water Quality Certification issued in conjunction with the relicensing. In addition, while the Counties were unsuccessful in challenging the Final EIR at the trial court level, they currently have an appeal pending before the Third Appellate District in Sacramento. That appeal has been fully briefed; however, no date has been set yet for oral argument. Under the settlement agreement, implementation of the new license terms and conditions is not required to begin until such legal challenges have been fully resolved.

Other Matters

Finance

On December 21, 2016, Metropolitan issued The Metropolitan Water District of Southern California, Subordinate Water Revenue Bonds, 2016 Authorization, Series A (Taxable). Legal Department staff attorneys assisted outside bond counsel with the bond documents and closing.

On December 22, 2016, Legal Department staff posted Metropolitan’s annual financial information filings for fiscal year 2015/16, pursuant to continuing disclosure requirements for outstanding bond issues. These filings include the Comprehensive Annual Financial Report For The Fiscal Years Ended June 30, 2016 and 2015, the Continuing Disclosure Information Statement – Revenue Bonds, and the Continuing Disclosure Information Statement – General Obligation Bonds.

They are available at <http://emma.msrb.org> (the Electronic Municipal Market Access (EMMA) system maintained by the Municipal Securities Rulemaking Board).

Continuing Legal Education

The Legal Department arranged for a continuing education webinar titled, “[Negotiating Service Level Agreement Key Terms: Scope of Work, Quality of Service, Customer and Vendor Responsibilities.](#)” The 90 minute continuing legal education session was conducted on December 21. Staff attorneys and legal analysts working on contracts, and staff from Contract Administration and Information Technology attended the session that was provided by Strafford Webinars.

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>
Actions in which MWD is a party	1	Petition for Writ of Mandate (CEQA Case) filed in <i>Center for Food Safety et al. v. DWR</i> , in Sacramento County Superior Court, naming MWD as one of the Real Parties in Interest as a State Water Project Contractor and signatory to the Monterey Amendments, challenging DWR’s certification of the Revised EIR and approval of the Kern Water Bank Development and Continued Use and Operation
Subpoenas	4	(1) Two subpoenas (one for production of business records and the other for personal appearance and production of documents) served in <i>Lily Chiang, et al. v. D.R. Horton, Inc., et al.</i> for MWD records relating to litigation alleging corrosion of residential copper water pipes; (2) subpoena served in <i>Hayman, et al. v. Dennis, et al.</i> , for



<u>Category</u>	<u>Received</u>	<u>Description</u>	
		records relating to certain turf removal rebates; and (3) subpoena for claims, medical and investigation files for a workers' compensation claim unrelated to MWD	
		<u>Requestor</u>	<u>Documents Requested</u>
Requests Pursuant to the Public Records Act	11	Civil Landworks	MWD substructures drawings
		DCA Civil Engineering Group	Drawings and information on MWD pipeline easement
		G3, Green Gardens Group	Winning bid for Residential Turf Removal Training
		HME, Inc.	Construction bond for Weymouth Water Treatment Plant Chlorine Scrubber Platform
		Kinsinger Environmental Consulting	Small mammal and burrowing owl surveys for MWD property in Rancho Cucamonga, CA
		Nossaman LLP	Range of hourly rates charged by outside counsel
		Onvia	List of MWD vendor contracts
		Rapport & Marston	Costs to wheel water, price of raw water, costs to construct water main
		San Diego County Water Authority (2 requests)	(1) Check issued for turf removal rebate, and (2) current operative leases relating to properties purchased by MWD under the Sale Agreement with Delta Wetlands Properties
		Walnut Valley Water District	Information and press releases on allegations of pitting of copper pipes due to chloramines added to drinking water