



## Metropolitan Cases

### ***Metropolitan v. Winograd (Management and Professional Employees Association)*** **(Los Angeles County Superior Court)**

Hearing Officer Barry Winograd issued his decision on November 30, 2016, sustaining a grievance by the Management and Professional Employees Association (MAPA), AFSCME Local 1001 that challenged the creation of the unrepresented Director of Information Technology classification. On February 27, 2017, Metropolitan filed a petition for writ of administrative mandamus seeking to overturn the decision. Metropolitan's position is that specific MAPA MOU provisions authorized the creation of the position at issue, and that Metropolitan complied with the MAPA MOU in all other regards. The Legal Department is representing Metropolitan in this matter.

### ***Central Delta Water Agency v. Delta Wetlands Properties, Contra Costa County Case*** **No. MSC16-01022**

In this litigation over Metropolitan's purchase of land in the Delta from Delta Wetlands Properties, Plaintiffs alleged that Delta Wetlands Properties breached two "protest dismissal and settlement

agreements (PDSAs)," and that Metropolitan intentionally interfered with those settlements.

As previously reported, on December 15, 2016, the trial court granted Metropolitan's demurrer, or motion to dismiss, on all four causes of action alleged against Metropolitan in Plaintiffs' second amended complaint. At that time, the trial court granted Plaintiffs an opportunity to amend their complaint to allege facts that, if true, would show that the PDSAs had not terminated prior to close of escrow and to state a cause of action against Metropolitan for intentional interference with contract and declaratory relief.

On January 23, 2017, the Plaintiffs filed a third amended complaint. In February, Metropolitan's attorneys fully briefed and filed a motion to dismiss the two causes of action alleged against it, as well as a motion to strike a claim for relief that would require Metropolitan to sign the two settlement agreements at issue. The hearing is set for May 4, 2017. A report on the outcome will be given in closed session once the trial court rules on the motions.

## Matters Involving Metropolitan

### ***The Navajo Nation v. United States Department of the Interior (U.S. Court of Appeals, Ninth Circuit)***

The Navajo Nation originally filed this litigation in March 2003 in federal district court in Arizona seeking to overturn Colorado River operating rules adopted by the Secretary of the Interior. The Navajo alleged that in adopting the rules, the Secretary violated the National Environmental Policy Act (NEPA) and breached trust obligations owed to the Navajo in the form of a right to Colorado River water. Settlement negotiations were conducted until May 2013 when a tentative settlement failed to gain approval of the Navajo.

In July 2013, the Navajo Nation filed its First Amended Complaint and Metropolitan intervened along with other water agencies in California, Arizona, Nevada, and Colorado. In July 2014, the district

court dismissed the action on the ground that the Navajo did not suffer an injury with respect to their NEPA claim (that they lacked "standing") and that their breach of trust claim was barred by the sovereign immunity of the United States. After the district court subsequently denied a motion by the Navajo to further amend their complaint, the Navajo filed a notice of appeal.

In December 2014, the Navajo filed their opening brief in the Ninth Circuit Court of Appeals. The briefing was completed in May 2015. As part of the briefing, Metropolitan filed a joint response brief with Coachella Valley Water District and Imperial Irrigation District. On February 14, 2017, argument was held in San Francisco before a panel consisting of Circuit Judges Ronald Gould, Marsha Berzon and District Judge Marvin Garbis of Maryland. Counsel for Arizona argued on behalf of all the state parties and Metropolitan staff



participated in preparing counsel for argument. The Court took the matter under submission.

## Matters Impacting Metropolitan

### **President Trump’s Executive Order Directs EPA and Army Corps to Review and Rescind or Revise the Clean Water Rule**

On February 28, 2017, President Trump issued an Executive Order directing the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) to review the Clean Water Rule (also known as the waters of the U.S. [WOTUS] rule) and publish for public notice and comment a proposed rule that either rescinds or revises the Rule. EPA and the Corps have stated that they intend to immediately implement the Executive Order and publish a Notice of Proposed Rulemaking to rescind or revise the Clean Water Rule.

The Clean Water Rule defines the scope of “navigable waters” governed by the Clean Water Act and was issued by EPA and the Corps in 2015. Numerous cases were filed challenging the rule and on October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the Clean Water Rule nationwide pending further action of the court. In January, the U.S. Supreme Court agreed to decide whether the federal district court or the federal court of appeal has jurisdiction to hear challenges to the Clean Water Rule. Opening briefs are due by March 29, 2017, and oral arguments will be held in the October session. The cases in the Sixth and Tenth Circuits have been stayed pending the Supreme Court’s decision. Metropolitan staff will continue to monitor the implementation of the Executive Order and the litigation regarding the Rule.

### **Oroville Facilities**

In early February, the main spillway at Oroville Dam experienced significant concrete damage, forcing the California Department of Water Resources (DWR) to shut down this spillway. Following a period of heavy rain and inflows to Lake Oroville, water began to flow over the emergency spillway causing significant erosion to the hillside below. This resulted in the temporary evacuation of the surrounding communities and ultimately led DWR to begin using the main spillway again to reduce lake levels. Currently, Lake Oroville is approximately 50 feet below its maximum capacity.

By letter dated February 13, FERC’s Division of Dam Safety and Inspections (D2SI) directed DWR to initiate immediate design of emergency repairs to minimize further degradation to the main and emergency spillways. D2SI also directed DWR to convene an Independent Board of Consultants (BOC) composed of five experts in various engineering disciplines and to retain an independent third party to: (1) conduct a forensic analysis of what caused the problems at the two spillways, (2) identify the corrective measures that should be implemented at these spillways, and (3) assess whether any long-term modifications to the project facilities or its operations are needed. By February 17, DWR had selected the experts to serve on the BOC, which D2SI approved on February 21. DWR is working on establishing the process for the independent forensic analysis requested by D2SI. While this analysis is expected to be conducted quickly, it nonetheless will take several weeks or longer to complete.

On February 15, Butte County submitted an emergency petition to FERC requesting that DWR correct alleged safety deficiencies and establish a public safety program for the Oroville facilities. The petition largely reiterates positions taken by the County in the context of the FERC relicensing proceedings for the hydroelectric facilities at the dam (referred to as the Hyatt-Thermalito Power Complex), positions that have been rejected, not only by FERC, but also in state and federal court. Chief among these is the argument that Butte County should be paid more for the public services it provides to the Oroville facilities. On March 2, DWR filed a response to Butte County’s petition. DWR noted that it “has rigorously adhered to the dam and project safety requirements of its license and the Commission’s regulations” and “is undertaking immediate repairs to the emergency spillway and developing a plan to permanently repair the main spillway and take any other actions necessary to ensure the integrity of the Project works and public safety.” Thus, DWR maintains that “there is no reason for the Commission to order DWR to develop a separate public safety plan.” FERC has not acted on Butte County’s petition, and there is no specific deadline for it to do so.



Lastly, as reported last month, 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. This action cleared the way for FERC to issue a new 50-year license for these hydroelectric

facilities. However, FERC is currently operating without a quorum and cannot issue any new licenses at this time. There are only two members on FERC's five-member board and there is no information as to when additional members will be appointed by the current administration.

## Cases to Watch

### ***Irvine Ranch Water District v. Orange County Water District (Transferred from Orange County to Los Angeles County Superior Court)***

On June 17, 2016, Irvine Ranch Water District (IRWD) filed a lawsuit against Orange County Water District (OCWD) challenging the method used to determine the quantity of groundwater each producer is allowed to pump and export from the OCWD service area without paying additional charges to OCWD. IRWD alleges that OCWD improperly excludes recycled water from the calculations used to determine: (1) the total amount of water a producer may pump without paying an additional assessment, and (2) the amount of water producers may export outside of OCWD's service area without incurring additional charges.

IRWD amended its Complaint on September 27, 2016, adding the claim that it has 4,500 acre-feet in groundwater rights pursuant to the judgment in a 1933 case, *Campbell v. The Irvine Company*, and that OCWD's statutory authority may not restrict those rights.

OCWD and seven OC basin groundwater producers have filed answers to the amended complaint. The seven producers are East Orange County Water District (WD), Yorba Linda WD, Mesa WD, Golden State Water Company, City of Anaheim, City of Buena Park, and City of Seal Beach. All responding producers, except City of Seal Beach, also filed cross-complaints against IRWD for declaratory relief (asking the court to declare OCWD's current treatment of IRWD's recycled water legal under OCWD's Act and to declare IRWD does not have rights pursuant to the 1933 *Campbell* judgment) and asking the court to enjoin/prohibit IRWD from pumping and exporting groundwater pursuant to that 1933 judgment.

The parties agreed that the case should be transferred to Los Angeles County Superior Court and on December 5, 2016, the court ordered the transfer.

### **Water Transfers Rule Litigation**

The Environmental Protection Agency's (EPA's) Water Transfers Rule, 40 C.F.R. section 122.3(i), excludes water transfers from the National Pollutant Discharge Elimination System (NPDES) requirements of the federal Clean Water Act (CWA).

In 2008 the rule was challenged by a number of environmental, sporting, state and tribal governments. In 2014 the district court ruled in favor of the plaintiffs finding that the Water Transfers Rule was based on an unreasonable interpretation of the CWA.

The trial court sent the rule back to the EPA for further assessment. On January 18, 2017, the U.S. Court of Appeals for the Second Circuit reversed the decision of the district court and upheld the Water Transfers Rule finding that the Rule is based on a reasonable interpretation of the CWA. This is consistent with the position taken by Metropolitan and the other Western Water Providers.

On March 6, 2017, the original plaintiffs and plaintiff-intervenors filed for en banc rehearing (by all of the judges on the bench) of the decision of the Court of Appeals. A majority vote of the 13-judge Circuit is necessary to grant rehearing en banc.

As previously reported, Metropolitan and the other Western Water Providers intervened in the consolidated cases in federal District Court for the Southern District of New York and also filed a reply brief in the Second Circuit Court of Appeals in support of the appeal. The Western Water Providers are represented in the case by Peter Nichols of Berg, Hill, Greenleaf & Ruscitti LLP of Boulder, Colorado. Metropolitan provided legal review of the Western Water Providers' opening and reply briefs.



## Other Matters

### Continuing Legal Education

On February 23, the Legal Department provided a continuing refresher session on the use of the online legal research tool “Lexis Advance” and the pleading preparation tool “Lexis for Microsoft

Office.” The one hour continuing legal education session was presented by Jessica Kraft and Andrew Stimson of LexisNexis. Staff attorneys, legal analysts and legal secretaries attended the session.

## Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Action in which MWD is a party	1	Complaint for product liability and negligence involving allegations of exposure to debris, dust, dirt and pollution during work on the Sepulveda feeder	
Subpoena	1	Subpoena served by plaintiffs in <i>Golf Properties Management, Inc. v. Kevin Hwang, et al.</i> , for records relating to the turf removal rebate program and Carmel Mountain Ranch Country Club and/or Pacs Enterprises, LLC	
Requests Pursuant to the Public Records Act	16	<u>Requestor</u>	<u>Documents Requested</u>
		Aon Risk Solutions	Proposals and award information for Insurance Brokerage Services
		Appraiser	Delta Islands purchase price allocations
		Center for Contract Compliance	Contract information for CRA Intake Pumping Plant Delivery Pipe Expansion Joint Rehab
		Cleaning Specialists	Bid results for Janitorial Services
		George Hills	Award information relating to contract for Third Party Administrator for Liability/Property Claims
		Hensley Law Group, acting as City Attorney for City of Chino Hills	Records relating to Tres Hermanos Ranch property in City of Industry
		Integrated Marketing Systems	Award information for On-Call Environmental Planning Services
		K&B Engineering	As-built drawings along Laurel Way and Laurel Lane in Beverly Hills
		Private Citizen	Records relating to San Diego Taxpayers Association
		Project Management Strategies Group	Award information for contracts for construction of MWD’s treatment and distribution systems
San Diego Union-Tribune	Web and electronic media use policies		
San Luis Rey Indian Water Authority	MWD’s Request for Qualifications for Investment Banking Team		
SmartProcure	Purchase order data from October 4, 2016 to February 27, 2017		



		State Labor Commissioner's Office, Public Works Unit	Notice of Completion for Chemical Unloading Facility, Chlorine Containment and Handling Facilities
		Yolo County Office of County Assessor	Information on purchase of water or land using the Philips factor for value
		York Risk Services Group	Evaluation and winning proposal for Third Party Administrator Liability/Property Claims
Other Matters	3	(1) Notice of Filing CEQA Litigation in the matter of <i>Sierra Club, et al. v. Riverside County, et al.</i> , challenging the County's approval of an amendment to the General Plan, that would allow more development, allegedly without adequately assessing the potentially significant environmental impacts; (2) State Water Resources Control Board Notice of Opportunity for Public Comment on proposed underground storage tank case closure by Exxonmobil on Sepulveda Boulevard in Culver City, and (3) wage garnishment	