



## Metropolitan Cases

### ***The Metropolitan Water District of Southern California v. Barry Winograd (American Federation of State, County & Municipal Employees. Local 1902, AFL/CIO) (California Court of Appeal)***

As previously reported, Hearing Officer Barry Winograd issued his decision on February 20, 2015, sustaining a grievance by AFSCME Local 1902 that challenged Human Resources' use of comparative analysis testing for internal candidates during the recruitment and selection process for a specific job posting.

On May 20, 2015, Metropolitan filed a petition for writ of administrative mandamus seeking to overturn the decision. On June 16, 2016, Superior Court Judge Mary Strobel granted Metropolitan's petition on the basis that there was no underlying controversy since no AFSCME member was harmed by the specific job posting challenged and, because Mr. Winograd exceeded the scope of the issue before him by issuing a ruling that severely restricted Human Resources' future use of comparative analysis testing in recruitments.

On August 11, 2016, AFSCME appealed the superior court's judgment. The Court of Appeal rejected the appeal on May 23, 2018, with a non-published decision. The appellate court determined the following: (1) that a hearing officer's interpretation of a MOU is subject to independent review by the courts; (2) that the MOU contains a ripeness requirement for grievances; (3) that the hearing officer's authority is limited to the scope of the issue before him/her; and (4) that the hearing officer in this matter exceeded his

authority by modifying the terms and conditions of the MOU. On June 21, 2018, the Court of Appeal granted Metropolitan's request to publish the decision in the Official Reports. The Legal Department has represented Metropolitan throughout this matter. (See General Counsel's December 2017 Activity Report.)

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

As previously reported, AFSCME Local 1902 filed an unfair practice charge on February 27, 2018, with the Public Employment Relations Board (PERB). The charge alleges Metropolitan violated the Meyers-Milias-Brown Act (MMBA) by failing to provide all information requested by AFSCME Local 1902 in a written request for information dated May 22, 2017. As a remedy, AFSCME is seeking supplemental information responsive to its request, a cease and desist order, and a notice posting Metropolitan's purported violation of the MMBA. On April 2, 2018, Metropolitan filed a position statement seeking a dismissal of the charge on the basis that it has fully complied with the MMBA concerning its responses to the request for information, and that Metropolitan properly withheld limited information based on the privacy interests of the affected employees and Metropolitan's need to maintain confidentiality over certain test materials. Notwithstanding, PERB issued a complaint against Metropolitan on June 15, 2018. Metropolitan will file an answer denying any violation of the MMBA. The Legal Department is representing Metropolitan in this matter. (See General Counsel's March 2018 Activity Report.)

## Matters Impacting Metropolitan

### ***Janus v. American Federation of State, County, and Municipal Employee, Council 31 et al., (United States Supreme Court)***

The U.S. Supreme Court on June 27, 2018, reversed the Seventh Circuit Court of Appeals in *Janus*, and held that mandatory agency shop service fees are unconstitutional under the First Amendment of the U.S. Constitution. Under an

agency shop arrangement, employees within a designated bargaining unit who decline membership in the unit must pay a proportionate "fair share" agency shop fee to the unit. These agency shop fees are different from dues, which are voluntarily deducted through an employee authorization form. In theory, the agency shop fees are meant to cover the representation costs for collective bargaining activities conducted on



unit members' behalf. AFSCME Local 1902 is the only Metropolitan bargaining unit collecting agency shop service fees, and that unit met with Human Resources prior to the Supreme Court's decision to discuss how to proceed if such fees were declared unconstitutional. Consistent with those

discussions and the result in *Janus*, Metropolitan immediately ended all payroll deductions for agency shop fees. Approximately 170 rank-and-file employees have been impacted. The Legal Department assisted Human Resources in implementing the Supreme Court's decision.

## Other Matters

### Finance

Legal Department staff worked with finance staff, bank counsel, outside bond counsel and disclosure counsel to prepare the offering statements and other disclosure documents and to negotiate and provide the agreements, notices, certifications and opinions necessary for closing of the following transactions:

- June 27, 2018, remarketing of \$80,000,000 Subordinate Water Revenue Bonds, 2017 Series C, \$95,630,000 Subordinate Water Revenue Refunding Bonds, 2017 Series D and \$95,625,000 Subordinate Water Revenue Refunding Bonds, 2017 Series E;
- June 25, 2018, amendment of the Continuing Covenant Agreement with Bank of America, N.A. (extension to December 21, 2020) and amendment of the associated Paying Agent Agreement, both in connection with the direct purchase by the bank of the Subordinate Water Revenue Bonds, 2016 Authorization, Series A (Taxable);
- June 25, 2018 entering into a \$200,000,000 Revolving Credit Agreement with the Industrial and Commercial Bank of China to replace existing self-liquidity revolving credit agreements and enable borrowing to pay the purchase price of certain tendered bonds;

- June 27, 2018, issuance of \$210,040,000 Special Variable Rate Water Revenue Refunding Bonds, 2018 Series A to refund outstanding tax-exempt flexible rate revolving notes and to refund certain water revenue refunding bonds originally issued in 2014; and
- June 28, 2018, issuance of \$99,075,000 Subordinate Water Revenue Refunding Bonds, 2018 Series A and \$64,345,000 Subordinate Water Revenue Bonds, 2018 Series B to refund certain water revenue refunding bonds that were originally issued in 2008 and to pay a portion of Metropolitan's capital expenditures.

### Continuing Legal Education

The Legal Department arranged for a continuing education presentation on financial disclosure requirements. The one hour presentation was conducted on May 29 at the General Manager Breakfast with Colleagues. Group managers and executive management attended the presentation that was provided by Norton Rose Fulbright US LLP.

The Legal Department invited Gary Lucks of Beyond Compliance for a continuing legal education class on Legislative and Regulatory Updates re Environmental Laws (federal and California). The class was attended by staff from Legal, Real Property, the Environmental section of WSO, and the Ethics Office.



**Matters Received by the Legal Department**

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Actions in which MWD is a party	3	(1) Petition for Writ of Mandate and Complaint for Determination of Invalidity and Declaratory Relief filed by San Diego County Water Authority in Los Angeles County Superior Court, Case No. BS173868, challenging MWD’s rates and charges adopted on April 10, 2018, to be effective January 1, 2019 and January 1, 2020	
		(2) Complaint in Eminent Domain and Motion for Order for Prejudgment Possession filed by Southern California Edison Company ("Edison") in Riverside County Superior Court, Case No. RIC1805380	
		(3) Complaint in Eminent Domain filed by Edison in San Bernardino County Superior Court, Case No. CIVDS180654	
		In both actions, Edison seeks an easement encumbering certain parcels of Metropolitan’s land. Staff in Real Property and Legal are working with Edison regarding all property required for Edison’s West Devers Project to meet the growing need for electricity	
Government Code Claims	4	(1) Claim for auto accident involving MWD vehicle; (2) claim for damage from parking security gate arm coming down on claimant’s vehicle; and (3) two claims for loss of business revenue, sales, and customers due to construction project in Long Beach blocking businesses and parking	
Requests Pursuant to the Public Records Act	11	<u>Requestor</u>	<u>Documents Requested</u>
		Council for Watershed Health	GIS data for schools in MWD’s service area
		Long Beach Water Department	Job descriptions for Instrument and Control Technicians
		Plan for the Win	Current contract for security guard services and proposal documents
		Private Citizen (2 requests)	(1) GIS data for MWD boundaries; and (2) conservation rebate information for the past 4 years relating to certain homeowner associations
		San Diego Building Trades Family Housing Corporation	LRP application submitted by the City of San Diego for the Pure Water Program Phase I – North City Project
	Smith Law Offices	List of law firms, contract information and rate sheets for law firms that provide litigation services	



<u>Category</u>	<u>Received</u>	<u>Description</u>
	<u>Requestor</u>	<u>Documents Requested</u>
	Step toe & Johnson	Technical reports for the Lante Treatment Plant in Baldwin Park
	Voice of San Diego (2 requests)	(1) Pending PRA requests and responses relating to California WaterFix; and (2) Koenig & Dorsey letter relating to the Research Report on the Bass Brothers
	Wood	Report on tunnel construction during excavation for the Sepulveda Feeder Tunnel
Other Matters	5	(1) California Public Employment Relations Board (PERB) Complaint filed against MWD alleging unfair practices in violation of Government Code section 3500 <i>et seq.</i> relating to MWD's meet-and-confer process in responding to AFSCME's request for information on the planner/scheduler recruitment; (2) Demand Letter from Chora Young LLP to MWD regarding dispute arising from outstanding invoices from DMS Facility Services, LLS for providing building operating engineering services; (3) Los Angeles County District Attorney's Office Notice of Restitution Hearing for incident that occurred on or about May 27, 2018, in which the defendant hit MWD's fence at the LaVerne facility – damage was minimal, fence was bent back with no formal repairs required; and (4) two wage garnishments



CDWR Environmental Impact Cases  
JCCP 4942

<b>California WaterFix Litigation</b>	
Subject	Status
<p><b>Validation</b> <i>DWR v. All Persons Interested</i> Sacramento County Superior Ct.</p>	<ul style="list-style-type: none"> <li>Next case management conference for coordinated cases July 26, 2018</li> <li>Parties to meet and confer on scope of validation record</li> </ul>
<p><b>CEQA</b> Sacramento County Superior Ct. 17 cases originally filed in four counties</p>	<ul style="list-style-type: none"> <li>Metropolitan and State Water Contractors preparing motion to intervene in CEQA and CESA cases</li> <li>Draft index of administrative record anticipated by end of June</li> <li>Parties to meet and confer on administrative record</li> </ul>
<p><b>CESA/Incidental Take Permit</b> <i>Bay.org v. DFW</i> <i>North Delta Water Agency v. DFW</i> Sacramento County Superior Ct.</p>	<ul style="list-style-type: none"> <li>Answers/Motions to Dismiss due 30 days after administrative record is lodged</li> <li>Administrative record anticipated in late 2018/early 2019</li> </ul>
<p><b>ESA/BiOps</b> <i>Golden Gate Salmon Ass'n v. Ross (NMFS)</i> <i>Bay.org v. Zinke (USFWS)</i> Eastern District of California (O'Neill)</p>	<ul style="list-style-type: none"> <li><i>GGSA v. Ross (NMFS)</i> – NMFS lodged the administrative record. Plaintiffs' motion for summary judgment (MSJ) due July 27, 2018; Defendants' opposition/cross-motion for MSJ due August 29, 2018; replies due September 19, 2018 and October 10, 2018</li> <li><i>Bay.org v. Zinke (FWS)</i> – FWS lodged administrative record on June 20, 2018. Plaintiffs' MSJ due October 10, 2018; Defendants' opposition/cross-motion for MSJ due November 9, 2018; replies due November 30, 2018 and December 21, 2018</li> </ul>
<p><b>Breach of Contract</b> <i>City of Antioch v. DWR</i> Sacramento County Superior Ct.</p>	<ul style="list-style-type: none"> <li>DWR's motion to dismiss First Amended Complaint overruled</li> <li>DWR's answer filed April 20, 2018</li> </ul>
<p><b>Delta Plan Amendments and Program EIR</b> Sacramento County Superior Ct.</p> <p><i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i></p> <p><i>Central Delta Water Agency, et al. v. Delta Stewardship Council</i></p> <p><i>Friends of the River, et al. v. Delta Stewardship Council</i></p> <p><i>California Water Impact Network, et al. v. Delta Stewardship Council</i></p>	<ul style="list-style-type: none"> <li>Four petitions/complaints filed the week of May 21, 2018 alleging the Delta Stewardship Council violated CEQA, the Delta Reform Act, as well as certain water right and public trust doctrines by adopting amendments that allegedly "pave the way" for California WaterFix while allegedly failing to analyze alternatives to or mitigation for California WaterFix and placing limits on SWP/CVP diversions from the Delta</li> <li>Notices of related cases filed</li> <li>Notices of mandatory CEQA settlement meetings filed</li> </ul>