



## Cases to Watch

### ***NRDC, et al. v. McCarthy, et al. (EPA) (United States District Court, Northern District of California)***

On April 22, 2016, NRDC, Defenders of Wildlife, and The Bay Institute filed a complaint in the San Francisco division of the U.S. District Court for the Northern District of California alleging that EPA has failed to carry out its mandatory duty to review the State Water Quality Control Board's orders granting Temporary Urgency Change Petitions in 2014, 2015, and 2016 modifying water quality standards in D-1641 (governing State Water Project/Central Valley Project coordinated operations) and D-1422 (Stanislaus River) to mitigate the drought emergency.

According to the complaint, modifying D-1641 and D-1422 is tantamount to modifying the water quality standards in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan (Bay-Delta Plan), which forms the basis for D-1641, and the Water Quality Control Plan for the Central Valley Region, Sacramento River Basin and San Joaquin River Basin (Central Valley Plan), which forms the basis for D-1422. The complaint seeks a declaration that EPA has violated Clean Water Act section 303(c) and seeks an order requiring EPA to review the modified water quality standards and take appropriate action.

EPA review of either the Bay-Delta Plan or D-1641 could affect SWP water supplies. Thus, Metropolitan will closely monitor the litigation.

### **Sixth Circuit Denies Rehearing of Challenges to the Clean Water Rule**

On April 21, 2016, the U.S. Court of Appeals for the Sixth Circuit issued an order denying requests

by several industry groups for en banc rehearing of the court's decision that the Clean Water Rule (also known as "the Waters of the U.S. Rule" or "WOTUS") is subject to review at the circuit court level and not by district courts. The next step is for the Sixth Circuit to rule on the merits of plaintiffs' claims and decide whether the Clean Water Rule is valid and lawful. While it does so, the nationwide stay of the rule, which the court issued in October 2015, remains in effect. Also, while the stay is in place, the prior WOTUS regulations still govern.

Although numerous petitions challenging the Clean Water Rule have been filed in eight different appellate courts and consolidated in the Sixth Circuit, one case remains in the Eleventh Circuit. On April 25, 2016, the Eleventh Circuit requested supplemental briefing from the parties on the following issues given the Sixth Circuit's decision: (1) Is the appeal in the Eleventh Circuit moot in light of the nationwide stay? (2) Should the case in the Eleventh Circuit be stayed while the Sixth Circuit's stay order remains in effect? (3) Should the Eleventh Circuit hold the appeal in abeyance until the Sixth Circuit issues its decision? (4) Is the Eleventh Circuit bound to follow the Sixth Circuit's decision? (5) Does the Sixth Circuit's decision that federal courts of appeals have jurisdiction over challenges to the Clean Water Rule have preclusive effect on that issue? (6) If the answer to each of the preceding questions is "no," what persuasive weight should the Eleventh Circuit give to the Sixth Circuit's decision?

The appellants' opening supplemental brief is due by May 16, 2016; the appellees' responsive supplemental brief is due by May 31; and the appellant's supplemental reply brief is due by June 7. Metropolitan staff will continue to track this litigation. (See General Counsel's February 2016 Activity Report.)

## Other Activities

### **Finance**

On April 6, 2016 Metropolitan issued \$125,000,000 Flexible Rate Revolving Notes, Series 2016 B (Taxable) and \$125,000,000 Index Notes, Series

2016, Subseries B (Taxable). Legal Department staff attorneys worked with finance staff and bond counsel to prepare the purchase agreements and closing documents.



**Continuing Legal Education**

The Legal Department invited Gary Lucks of Environmental Resources Management for a continuing legal education class on Environmental

Regulatory Developments and Trends (Federal and California). The class was attended by staff from Legal, RPDM and the Environmental section of WSO.

**Matters Received by the Legal Department**

<u>Category</u>	<u>Received</u>	<u>Description</u>
Actions in which MWD is a party	7	<p>1. Petition for Writ of Mandate and Complaint for Determination of Invalidity and Declaratory Relief filed in <i>SDCWA v. MWD</i> in Los Angeles County Superior Court, challenging MWD's rates and charges adopted on April 12, 2016 to be effective January 1, 2017 and January 1, 2018</p> <p>2. One Petition for Writ of Mandate and two Petitions for Writ of Mandate and Complaints for Declaratory and Injunctive Relief and Attorneys' Fees filed in (a) <i>County of San Joaquin v. MWD</i>, (b) <i>North Coast Rivers Alliance v. MWD</i>, and (c) <i>Pacific Coast Federation of Fishermen's Associations v. MWD</i> in San Joaquin County, Contra Costa County, and Solano County Superior Courts, respectively, relating to challenges to MWD's compliance with CEQA in approving the purchase of over 20,000 acres of land from Delta Wetlands Properties</p> <p>3. Complaint for Breach of Contract, Common Counts, Enforcement of Stop Payment Notice, Enforcement of Payment Bond filed in <i>Walters Wholesale Electric Co. v. Safeway Building Systems, Inc., Tim Rezendes, MWD, Federal Insurance Co.</i> in San Bernardino County Superior Court, relating to work on the chemical unloading facility through MWD's contract with S.J. Amoroso Construction</p> <p>4. Complaint filed in <i>Alma Rosa Arroyo, Alfredo Perez v. Lamont D. Steele, MWD</i> filed in Los Angeles County Superior Court, relating to claims for personal injury and property damage stemming from an auto accident involving an MWD vehicle</p> <p>5. Complaint, Notice of Related Cases, and Notice of Lodging of Proposed Consent Decree filed in <i>United States of America, State of California v. Abex Aerospace, et. al.</i>, in U.S. District Court for the Central District of California, relating to the recovery of costs for the cleanup at the Omega site. The filing of the complaint is part of U.S. EPA's procedure in obtaining the court's approval of the proposed settlement and consent decree.</p>
Subpoenas	1	Subpoena for production of injury-related records of a former MWD employee for a matter unrelated to Metropolitan



<u>Category</u>	<u>Received</u>	<u>Requestor</u>	<u>Description</u>
Requests Pursuant to the Public Records Act	13	Center for Contract Compliance	Contractor's certified payroll records for the LADWP Lagoon Refurbishment at Jensen Water Treatment Plant
		Coachella Valley Water District	Information on MWD's SCADA system
		Environment Now	Data on existing and additional projected local supplies incorporated into the total demand or supply numbers in the draft Urban Water Management Plan
		Kennedy/Jenks Consultants	Historical documents on the Newhall Tunnel construction from 1969-1970
		(1) Neumiller & Beardslee, (2) Central Delta Water Agency	Documents relating to the transfer, sale, or conveyance of land to MWD in the Sacramento-San Joaquin Delta from Delta Wetlands Properties
		Onvia	Contract documents for fabrication inspection services
		Private Citizens (4)	MWD list of vendors and bidders, including their contact information
		SDCWA (2)	(1) Agreement for the water awareness and conservation advertising campaign with Quigley-Simpson & Hepplewhite; and (2) MWD salary-related agreements with its unions
Other Matters	1	Wage garnishment	