



Metropolitan Cases

Southern California Edison Company v. Lafred Lee Adams; MWD, et al. (San Bernardino Superior Court)

On February 13, 2018, Metropolitan was served with an eminent domain complaint to acquire an easement interest for electrical transmission lines. When property is sought for condemnation, Metropolitan verifies the existence of an interest to be condemned through geodetics staff. In this case, geodetics staff determined that Metropolitan

acquired an easement for the use and operation of electric transmission lines from Riverside Water Company on September 29, 1933. Metropolitan granted the same transmission line easement to Nevada-California Electric Corporation on December 1939. Metropolitan no longer has any interest in the property. Metropolitan will file a disclaimer of interest in the pending litigation, terminating eminent domain proceedings against Metropolitan.

Matters Impacting Metropolitan

Water Transfers Rule Litigation

On February 26, 2018, the U.S. Supreme Court denied petitions for certiorari that sought review of the U.S. Second Circuit Court of Appeals' 2017 decision in *Catskill Mountains Chapter of Trout Unlimited v. EPA* that reinstated the U.S. Environmental Protection Agency's (EPA) Water Transfers Rule.

The Water Transfers Rule is EPA's regulation (40 C.F.R. § 122.3(i)) that exempts transfers of water between water bodies that are subject to Clean Water Act (CWA) jurisdiction from the National Pollutant Discharge Elimination System (NPDES) permit requirements.

The Rule is important to Metropolitan and other water agencies. Metropolitan, in partnership with other western water providers and western states, has been active in defending the rule since 2002. The Supreme Court decision to deny the petition for certiorari concludes the 16 years of litigation in a manner favorable to the water users as the legality of the Rule can no longer be challenged.

The western water providers were represented in the case by Peter Nichols of Berg, Hill, Greenleaf & Ruscitti LLP of Boulder, Colorado.

EPA Seeks Comments on Whether Subsurface Discharges Which Reach WOTUS Require Clean Water Act Permits

On February 20, 2018, EPA requested comment on EPA's prior statements that pollutant discharges from point sources which reach surface waters

covered by the Clean Water Act (CWA) via groundwater or other subsurface flow with a direct hydrological connection may be subject to CWA permit requirements.

The CWA requires NPDES permits for discharges of pollutants to navigable waters (defined as "waters of the United States" (WOTUS)) from any point source. EPA has asked for comment on whether it should consider clarifying or revising its prior statements and, if so, how the clarification or revision should be provided.

Specifically, EPA seeks comment on whether subjecting such releases to CWA permitting is consistent with the text, structure, and purposes of the CWA or if those releases either are already or would be better addressed through other state or federal statutory authority.

EPA's request for comments is likely the result of the 9th Circuit's recent decision in *Hawaii Wildlife Fund v. Cty. of Maui*, 881 F.3d 754 (9th Cir. Feb. 1, 2018), which held that a CWA permit was required for a discharge of treated wastewater from a water treatment plant into wells. In the case, the County acknowledged that effluent from the wells reached the Pacific Ocean (a navigable water subject to the CWA). (See General Counsel's January 2018 Activity Report.) In comparison to the *County of Maui* case, other courts have concluded that a hydrological connection between groundwater and surface waters is insufficient to require a CWA permit. For example, in *Village of Oconomowoc Lake v. Dayton Hudson Corporation*, the 7th Circuit held that "[n]either the Clean Water Act nor the



EPA’s definition [of waters of the United States] asserts authority over ground waters, just because these may be hydrologically connected with surface waters.” 24 F.3d 962, 965 (7th Cir. 1994), *cert. denied*, 513 U.S. 930 (1994).

On March 1, the County of Maui asked the Ninth Circuit to reconsider their February decision. Maui argued that groundwater is not a navigable water

that is regulated by the CWA and that the decision is not consistent with prior decision in the 5th and 7th circuits.

Comments must be identified by Docket ID No. EPA–HQ–OW–2018–0063 and submitted at <http://www.regulations.gov> on or before May 21, 2018. Metropolitan staff will continue to monitor this issue.

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Action in which MWD is a party	1	Complaint in Eminent Domain filed in San Bernardino County Superior Court in the case, <i>Southern California Edison Company v. Alfred Lee Adams, et. al.</i> , in which Southern California Edison seeks to condemn and acquire an easement over property located in the City of Colton for Edison’s West of Devers Upgrade Project. Metropolitan is named as a defendant as holder of an easement in the project area.	
Government Code Claims	2	Claims for auto accidents involving MWD vehicles	
Requests Pursuant to the Public Records Act	19	<u>Requestor</u>	<u>Documents Requested</u>
		Anaheim Public Utilities Department	Data on MWD member agencies who use the Landscape Irrigation Survey Program
		DRC Engineering	MWD parcel records for property in City of Compton
		Earthjustice	Documents relating to the single tunnel alternative for the California WaterFix Project, or separation of the two tunnels into two phases
		Edge Point	List of uncashed checks and unclaimed funds that remain outstanding for 90 days or more
		Equity Office	Information about MWD’s project on Bristol Street in Costa Mesa



<u>Category</u>	<u>Received</u>	<u>Description</u>
	<u>Requestor</u>	<u>Documents Requested</u>
	Eurofins Eaton Analytical	Bid results and pricing submitted in response to the Request for Proposals for Analytical Laboratory Testing Services
	H2bid	MWD vendor and bidder list
	Private Citizens (5 requests)	Records relating to (1) performance evaluations (2) chemical deliveries, (3) excavation and shoring plan for work at Weymouth, (4) emergency level reached during the Oroville Dam crisis and Mello-Roos status of the Verbena property, (5) reference materials, fact sheets and presentations relating to MWD’s testing for and treatment of personal care products and pharmaceuticals in its water
	Project Partners	Contract information for contracts issued under the Request for Qualifications for Engineering Services for Water Treatment Facilities, Conveyance and Distribution Facilities, and Large Rotating Equipment
	San Diego County Water Authority	List of past member agency administered funded programs
	Voice of San Diego	List of tribal water that MWD wheels and/or has a supply because of transfers, forbearance, conservation or following
	West Basin Municipal Water District	Records retention schedule
	WestLAND Group	Winning proposals submitted in response to Request for Qualifications for On-Call Professional and Technical Services – Aerial Photogrammetry, Mapping and Survey



<u>Category</u>	<u>Received</u>	<u>Description</u>
		<u>Requestor</u>
		<u>Documents Requested</u>
		WestWater Research
		Report regarding the Palo Verde Following Program
		Wood
		Blend data for MWD water delivered to Orange County
Other Matters	1	Application to resolve a workers compensation claim



California WaterFix Litigation	
Subject	Status
Validation <i>DWR v. All Persons Interested</i> Sacramento County Superior Ct.	<ul style="list-style-type: none"> Hearing on DWR’s motion to dismiss/strike Westlands Water Dist.’s First Amended Cross-Complaint Mar. 6, 2018 Hearing on DWR’s motion to dismiss affirmative defense from Save the California Delta Alliance’s Answer Mar. 16, 2018
CEQA 17 cases/4 County Superior Courts: Sacramento (15), Alameda (1), Placer (1), San Joaquin (1)	<ul style="list-style-type: none"> Cases coordinated in Sacramento County Superior Court and assigned for all purposes to Hon. Judge Culhane DWR completing administrative record First Case Management Conference Mar. 23, 2018
ESA/BiOps <i>Golden Gate Salmon Ass’n v. Ross (NMFS)</i> <i>Bay.org v. Zinke (USFWS)</i> Eastern District of California (O’Neill)	<ul style="list-style-type: none"> <i>GGSA v. Ross (NMFS)</i> - Plaintiffs’ motion for summary judgment (MSJ) due July 27, 2018; Defendants’ opposition/cross-motion for MSJ due Aug. 29, 2018; replies due Sept. 19, 2018 and Oct. 10, 2018 <i>Bay.org v. Zinke (FWS)</i> - Plaintiffs’ MSJ due Oct. 10, 2018; Defendants’ opposition/cross-motion for MSJ due Nov. 9, 2018; replies due Nov. 30, 2018 and Dec. 21, 2018
CESA/Incidental Take Permit <i>Bay.org v. DFW</i> <i>North Delta Water Agency v. DFW***</i> Sacramento County Superior Ct.	<ul style="list-style-type: none"> Answers/Motions to Dismiss due 30 days after administrative record is lodged
Breach of Contract <i>City of Antioch v. DWR</i> Sacramento County Superior Ct.	<ul style="list-style-type: none"> Hearing on DWR’s Motion to Dismiss First Amended Complaint April 3, 2018
Change of Point of Diversion <i>County of Sacramento, et al. v. State Water Resources Control Bd.</i> Sacramento County Superior Ct.	<ul style="list-style-type: none"> On March 5, the court denied Petitioners’ ex parte application for a Temporary Restraining Order (TRO) seeking to halt the State Water Resources Control Bd. hearing on DWR’s and U.S. Bureau of Reclamation’s Petition for Change in Point of Diversion. Petitioner’s alleged improper ex parte communications with the SWRCB. The court ruled that petitioners failed to exhaust their administrative remedies by not raising the issue with the SWRCB prior to seeking a remedy in the courts.

***CESA claims also alleged in the CEQA petitions filed by County of San Joaquin, et al. and California Sportfishing Protection Alliance, et al.