



## Metropolitan Cases

### ***Steven Pettit, as personal representative of Brian Pettit, deceased v. Metropolitan, et al.*** **(Los Angeles Superior Court)**

As previously reported, Steven Pettit, the son of deceased Metropolitan employee Brian Pettit, filed a complaint in the Los Angeles Superior Court against Metropolitan, the OC Medical Center, Thomas Parsa, M.D., Amanda Paranda, PA-C, Brian Kutsunai, M.D., and John Yong, M.D. Brian Pettit died on February 5, 2017, as the result of an acute cardiac event that occurred while he was en route to a Metropolitan work location.

The lawsuit, filed on May 4, 2018, alleged causes of action against Metropolitan under the Fair Employment and Housing Act for disability discrimination, failure to accommodate, and failure to engage in interactive process. The lawsuit also alleged medical malpractice against the remaining healthcare provider defendants, who Metropolitan contracted with to perform the mandatory annual physicals of employees required to wear respirators during emergencies or due to exposure to dangerous substances like lead and asbestos. Plaintiff is seeking attorney's fees and unspecified damages from Metropolitan and the other defendants.

Metropolitan demurred to the original complaint, which the court sustained and plaintiff filed a first amended complaint. Metropolitan demurred to the amended complaint and on March 27, 2019, the Honorable Dalila C. Lyons, Judge, sustained Metropolitan's demurrer and, in addition, ordered the lawsuit dismissed against Metropolitan.

The court agreed the complaint did not adequately allege an adverse employment action and that plaintiff could not establish decedent made any request for a reasonable accommodation. The court noted that Metropolitan, by administering a medical examination program in accordance with Cal OSHA regulations, could not be faulted for following the recommendations of healthcare professionals. Those doctors cleared decedent to perform his job duties, although decedent's laboratory results showed signs and symptoms of cardiovascular disease and decedent exhibited risk factors such as obesity, a history of smoking and having a family history of heart disease.

While the lawsuit will continue against the other defendants as a medical malpractice action, Metropolitan will be dropped from the lawsuit as a result of Judge Lyons' ruling and order. The Legal Department represented Metropolitan. (See General Counsel's December 2018 Activity Report.)

## Cases to Watch

### **Department of Interior sues State Water Resources Control Board in federal and state courts challenging environmental review for the Phase 1 Water Quality Control Plan**

#### ***United States of America v. State Water Resources Control Board, et al.*** (United States District Court, Eastern District)

#### ***United States of America v. State Water Resources Control Board*** (Sacramento Superior Court)

The Department of Interior, through its Bureau of Reclamation (Reclamation), filed a lawsuit against the State Water Resources Control Board (State Board) challenging the California Environmental

Quality Act (CEQA) for the State Board's December 12, 2018 decision to approve and adopt amendments to the 2006 Water Quality Control Plan for the lower San Joaquin River and its tributaries. The lawsuit was filed in both federal and state courts. Both actions clarify that the state court filing was done concurrently and in an abundance of caution but note that Reclamation intends to proceed in federal court.

The State Board has been in a lengthy review of the existing 2006 Water Quality Control Plan. The process was phased. Phase 1 decision updates the regulations applicable to the San Joaquin River and its tributaries. Phase 2 will review and adopt new regulations for the Sacramento River and



Delta. The Phase 1 decision was based on an impaired flow concept and requires increased outflow. This will impact Phase 2 because State Board staff has been recommending the same unimpaired outflow approach for Phase 2.

If implemented, the State Board's recommendations will cause a significant decrease in water available for water users, including the State and Federal water projects.

Reclamation's lawsuits solely challenge the CEQA review and seek declaratory and injunctive relief. There are three causes of action in each lawsuit. All causes of action center around the allegation that the State Board's modeling included carry-over storage requirements at New Melones

reservoir but carry-over storage was not part of the project description. Reclamation alleges that this omission causes the following CEQA violations: (1) the State Board failed to provide an accurate, stable and finite project description; (2) the State Board combined project impacts and mitigation; and (3) the State Board failed to adequately evaluate impacts.

This lawsuit follows ten prior lawsuits filed challenging the December 12, 2018 State Board decision based on the State Board's authority and environmental review. The lawsuits have been filed in several counties and are likely to be coordinated.

### Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Government Code Claims	1	Claim for damages to vehicle from rodents while vehicle was parked at Diamond Valley Lake parking lot	
Requests Pursuant to the Public Records Act	14	<u>Requestor</u>	<u>Documents Requested</u>
		Caltrans District 8 (Riverside and San Bernardino Counties)	Title documents for lands owned by MWD in San Bernardino County
		Center for Contract Compliance (2 requests)	(1) Contract documents relating to the Carbon Creek Pressure Control Structure PCB Abatement, and (2) contract documents relating to Skinner Concrete Maintenance
		Financial Investment News	Documents relating to the request for proposal for investment managers to manage MWD's short-term liquidity portfolio
		Friends of Harbors, Beaches and Parks	Environmental documents relating to the Diemer Water Treatment Plant access road
		Green Media Creations	Documents relating to the winning proposal for Landscape Training and Transformation Program Workshops
		Orange County Water District	GIS data for MWD's pipelines and related facilities
Palo Verde Irrigation District	2019 Operation and Management Agreement for northern properties in Palo Verde		



<u>Requestor</u>	<u>Documents Requested</u>
Rancho California Water District	Inundation maps for Diamond Valley Lake and Lake Skinner
Santa Clara Valley Water District	Agreement and billing rates for MWD's financial audit services consultant
Status Not Quo	Documents relating to the winning proposal for Website Redesign
Thrifty Oil Co.	Location of drinking water well on Anaheim Street in Long Beach
University of Southern California Graduate Student	GIS data on water use per household in Los Angeles
Voice of San Diego	Documents relating to the Delta Islands and Palo Verde land purchases



<b>California WaterFix Litigation</b>	
<b>Subject</b>	<b>Status</b>
<b>CDWR Environmental Impact Cases</b> <b>Sacramento Superior Ct. Case No. JCCP 4942</b> <b>(20 Coordinated Cases – 1 Validation; 17 CEQA; 2 CESA) (Judge Culhane)</b>	
<b>Validation Action</b> <i>DWR v. All Persons Interested</i>	<ul style="list-style-type: none"> <li>Parties briefing two issues Court ordered to assist the Court in determining whether to temporarily stay the validation action in light of Governor Newsome’s support of single-tunnel project</li> </ul>
<b>CEQA</b> 17 cases	<ul style="list-style-type: none"> <li>DWR agreed to a partial stay for 60 days, but asked to complete the court-ordered meet-and-confer process on contents of administrative record</li> <li>Answers/Motions to Dismiss due 30 days after administrative record is lodged</li> </ul>
<b>CESA/Incidental Take Permit</b> 2 cases	<ul style="list-style-type: none"> <li>DFW is not opposed to a 60-day stay, but plans to complete the administrative record, which is estimated at 430,000 pages</li> <li>Answers/Motions to Dismiss due 30 days after administrative record is lodged</li> </ul>
<b>ESA/BiOps</b> 2 Cases Eastern District of California (Judge O’Neill)  <i>Golden Gate Salmon Ass’n v. Ross (NMFS)</i>  <i>Bay.org v. Zinke (USFWS)</i>	<ul style="list-style-type: none"> <li>Merits of cross-motions for summary judgment fully briefed.</li> <li>DWR’s motion for a 90-day stay in light of Governor Newsome’s remarks granted</li> <li>Plaintiffs filed motion for summary judgment on January 15, 2019; Defendants’ opposition/cross-motion for summary judgment due April 9, 2019; Plaintiffs’ opposition and reply due May 7, 2019; Defendants’ replies due: May 28, 2019</li> </ul>
<b>Breach of Contract</b> <i>City of Antioch v. DWR</i> Sacramento County Superior Ct. (Judge De Alba)	<ul style="list-style-type: none"> <li>Discovery temporarily stayed</li> <li>Settlement conference set for September 12, 2019</li> <li>Trial set for October 21, 2019</li> </ul>
<b>Subject</b>	<b>Status</b>
<b>Delta Plan Amendments and Program EIR</b> 4 Cases Sacramento County Superior Ct. (Judge Earl)	<ul style="list-style-type: none"> <li>Cases challenge, among other things, the Delta Plan Updates recommending dual conveyance as the best means to update the SWP Delta conveyance infrastructure</li> </ul>



<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>	<p>to further the coequal goals</p> <ul style="list-style-type: none"> <li>• Allegations relating to “Delta pool” water rights theory and public trust doctrine raise concerns for SWP and CVP water supplies</li> <li>• Cases consolidated for pre-trial and trial under <i>North Coast Rivers Alliance et al. v. Delta Stewardship Council</i></li> <li>• Parties stipulated to extend time to prepare the administrative record to May 24, 2019</li> <li>• Answers or motions to dismiss due 30 days after administrative record is lodged</li> </ul>
<p><b>SWP Contract Extension</b>          Sacramento County Superior Ct.          (Judges Sumner and Gevercer)</p> <p><i>North Coast Rivers Alliance, et al. v. California Dept. of Water Resources</i></p> <p><i>Planning and Conservation League v. California Dept. of Water Resources</i></p>	<ul style="list-style-type: none"> <li>• Petitions for writ of mandate alleging CEQA and Delta Reform Act violations filed on January 8 &amp; 10, 2019</li> <li>• NCRA names State Water Contractors, but not individual contractors, as a real party in interest</li> <li>• Allege, among other things, that Contract Extension is part of California WaterFix, so DWR should have studied the impacts of both projects in a single EIR</li> <li>• Metropolitan preparing motions to intervene</li> </ul>