



# Report on Bay-Delta and State Water Project Litigation

Legal and Claims Committee

Item #7-a

May 14, 2019

# Overview

- 69 Cases
- Hundreds of parties
- Myriad claims and defenses
- MWD a party in 32
- Working with SWC in 8
- Monitoring & potentially intervening directly or through State Water Contractors in 29

# Overview

- Bay-Delta (54)
  - California WaterFix
  - Bay-Delta Water Quality Control Plan Update – Phase I
  - Delta Plan
  - Delta Islands Purchase
  - Drought Water Curtailment
  - Delta Plan Update
- State Water Project (15)
  - Oroville Dam Spillway Failure
  - SWP Contract Extension Amendment
  - COA Addendum/  
WaterFix-CVP No Harm Agreement
  - Oroville Hydroelectric Relicensing



# Bay-Delta Litigation

# 20 California WaterFix Coordinated Cases

Cases and Claims	Parties	Status
1 Validation Action to Confirm DWR's Authority to Issue Revenue Bonds	1 Plaintiff – DWR 4 Answering in Support (incl. MWD) 39 Answering in Opposition 3 Answering to raise issues of scope	Stayed until May 2, 2019
17 CEQA/Natural Resources	79 Plaintiffs Defendants – DWR & DFW MWD & SWC Intervenor Defendants	Stayed until May 2, 2019
2 California Endangered Species Act (CESA) Permit	13 Plaintiffs DFW & DWR Defendants MWD & SWC Intervenor Defendants	Stayed until May 2, 2019



# California WaterFix Cases (Cont.)

Cases and Claims	Parties	Status
<b>2 Federal Endangered Species Act Cases Challenging Validity of Biological Opinions</b>	<b>4 Plaintiffs</b> <b>NMFS &amp; FWS Defendants</b> <b>MWD, SWC &amp; DWR Intervenor-Defendants</b>	<b>NMFS/Salmon case fully briefed Jan. 2019</b> <b>FWS/Delta Smelt case fully briefed May 28, 2019</b>
<b>Alleged Breach of Antioch-DWR 1968 Settlement Agreement</b>	<b>Plaintiff – City of Antioch</b> <b>Defendant – DWR</b> <b>MWD &amp; SWC monitoring</b>	<b>Settlement conference Sept. 12, 2019</b> <b>Trial Oct. 21, 2019</b>





# 2018-2019 Bay-Delta Water Quality Control Plan – Phase I San Joaquin River Flows & Southern Delta Water Quality

- Main Issue: Are unimpaired flow criteria for San Joaquin River lawful?
- 12 cases filed alleging 50+ causes of action
- Impact of Voluntary Agreements unclear
- SWC & MWD closely monitoring

San Joaquin River 08/11/2018

46 004

## FINAL

Substitute Environmental Document in Support of  
Potential Changes to the Water Quality Control Plan  
for the San Francisco Bay-Sacramento-San Joaquin Delta Estuary

## San Joaquin River Flows and Southern Delta Water Quality

Water Quality Control Plan  
for the  
San Francisco Bay/Sacramento-San Joaquin Delta Estuary

December 12, 2018



State Water Resources Control Board

# Delta Stewardship Council Cases

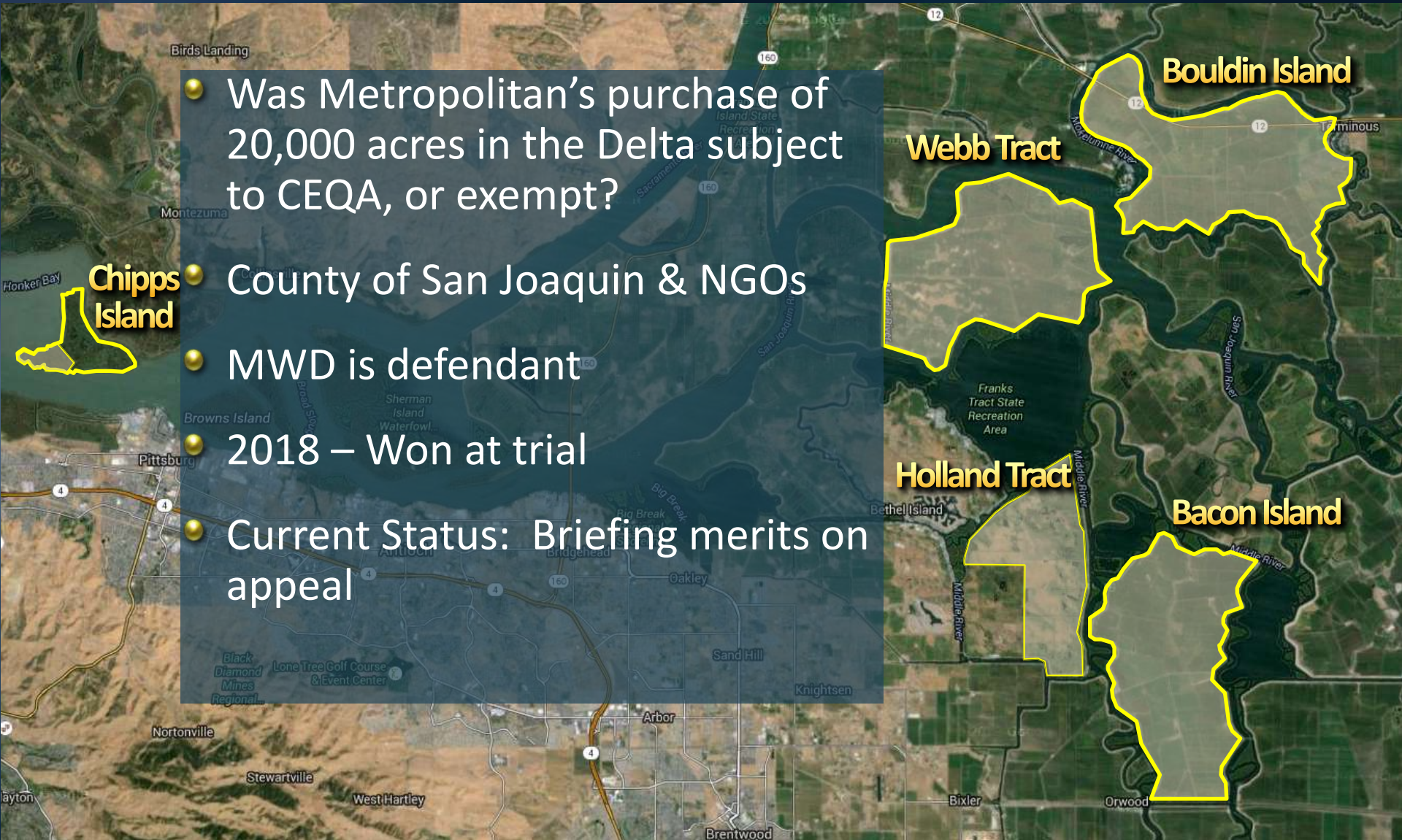
- 7 cases filed challenging Delta Plan and EIR
- Scope of the Council's authority over reduced reliance, Delta exports and appeals
- 2016 - 2-day trial
- Current status
  - 6 appeals fully briefed
  - Awaiting hearing date





# 2016 Delta Islands Purchase CEQA Case

- Was Metropolitan's purchase of 20,000 acres in the Delta subject to CEQA, or exempt?
- County of San Joaquin & NGOs
- MWD is defendant
- 2018 – Won at trial
- Current Status: Briefing merits on appeal



# 2015 California Water Curtailment Cases



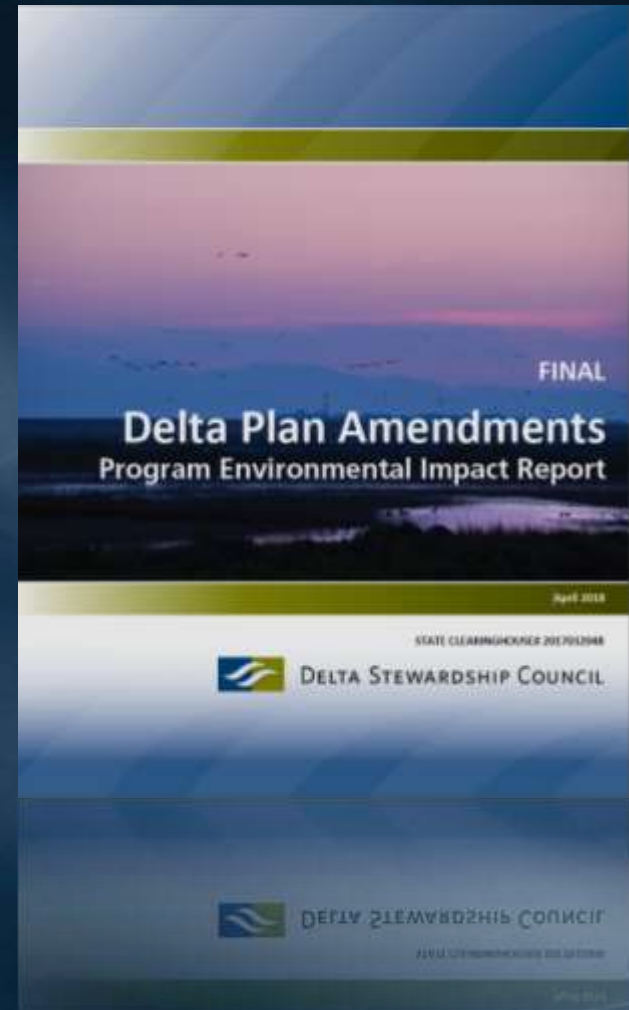
Lake Oroville's Bidwell Marina September 2014. Photo by Kelly M. Grow/California Department of Water Resources

- State Board's authority to order senior water rights holders to curtail water diversions in drought
- 8 coordinated cases
- SWC and DWR intervened to protect SWP water
- 2018 - Plaintiffs prevailed at trial
- Status: Awaiting entry of judgment



# 2018 Delta Plan Update Cases

- Allege Council violated CEQA, Delta Reform Act, public trust doctrine and human right to water
- 4 cases filed by in-Delta interests, NGOs, commercial fishing groups, and a tribe
- CVP contractors intervened
- SWC considering intervention



# State Water Project Litigation

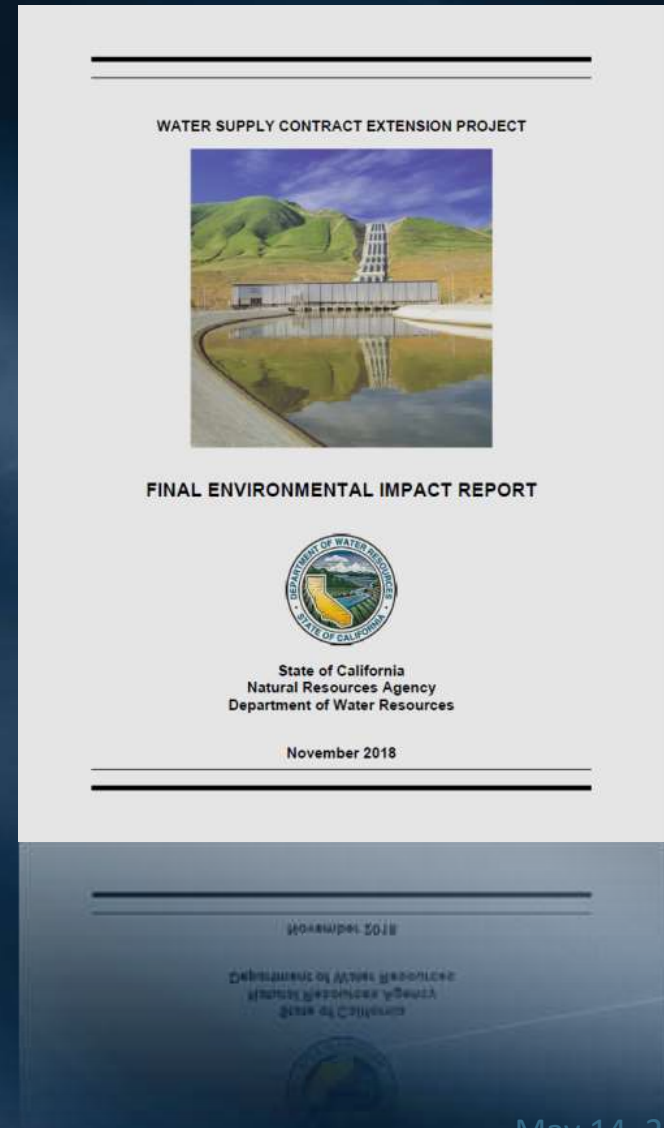
# 2017 Oroville Dam Cases

- 10 cases currently coordinated in Sacramento
- One case seeks up to \$51 billion in civil penalties
- Allegations include millions in damages
- Discovery underway
- Motion for class certification pending



# 2018-2019 SWP Contract Extension Cases

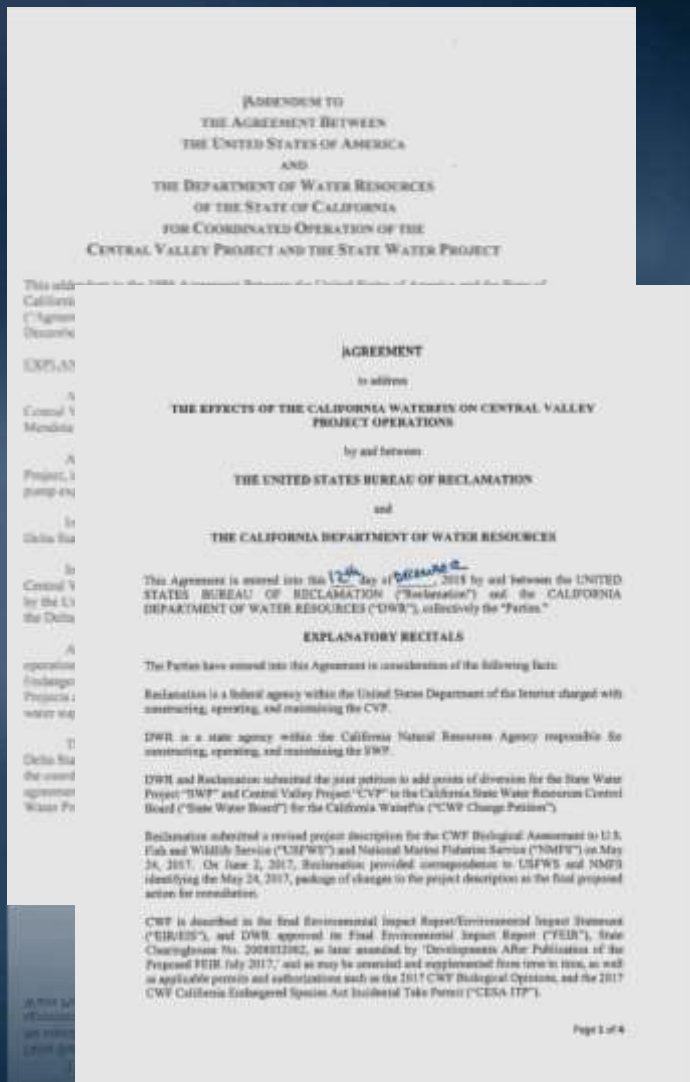
- 2018 - DWR Validation Action
  - MWD & 6 other SWCs answered in support
  - 4 answers in opposition alleging extension is for WaterFix
  - Kern County Water Agency tolling agreement
- 2019 - 2 cases allege DWR violated CEQA, Delta Reform Act, and public trust doctrine
- MWD considering intervention





# 2019 COA Addendum/CWF No Harm Case

- DWR and Reclamation entered agreements in December 2018
- Commercial fishing groups and tribe allege violations of CEQA, Delta Reform Act & public trust
- MWD & SWC Monitoring



# 2008 Oroville FERC Relicensing Case

- CEQA challenge to DWR's 2005 application to extend FERC license
- Butte & Plumas Counties and Plumas County Flood & Water Control Dist.
- MWD & SWC real parties in interest
- 2018 Appeal - CEQA claims preempted by federal law
- Petition for Supreme Court review pending

