



Metropolitan Cases

The Metropolitan Water District of Southern California v. Desert Milling, Inc., et al. **(Los Angeles Superior Court)**

In March 2019, the Board authorized settlement of this breach of lease action. On April 29, the settlement was completed and case dismissed.

On March 29, 2017, Metropolitan executed an agricultural lease with Desert Milling, Inc. (Desert Milling) for approximately 3,843 acres of land that Metropolitan owns in the Palo Verde Valley. The annual rent under the lease was \$200 per irrigated acre per year, and the rent was to be paid in semi-annual installments. Desert Milling was also obligated to pay the water bills.

After failing to pay two rent payments and only a portion of the water bills, Metropolitan terminated the lease in October 2017. In December 2017, Metropolitan filed this breach of lease action in Los Angeles County Superior Court to recoup unpaid rent from Desert Milling. Metropolitan also named Desert Milling's Chief Executive Officer, John Frederick "Rick" Benson, as a defendant.

After conducting discovery and participating in a Mandatory Settlement Conference on January 30, 2019, before the assigned trial judge, the parties reached a settlement, which the Board approved in March. In exchange for dismissal of the complaint with prejudice, Desert Milling and Mr. Benson agreed to pay Metropolitan approximately \$175,000 in unpaid rent and for settlement of all claims related to the lease.

Payment was received on April 4, and the case was dismissed on April 29, 2019.

Imperial Irrigation District v. Metropolitan **(Los Angeles Superior Court)**

On April 16, the same day that the President signed the federal Drought Contingency Plan (DCP) legislation into law, the Imperial Irrigation District (IID) filed a petition for writ of mandate under the California Environmental Quality Act (CEQA) in Los Angeles County Superior Court against Metropolitan seeking to block implementation of the Lower Basin DCP. Specifically, IID asks the court to vacate Metropolitan's December 2018 and March 2019

approvals related to the Lower Basin DCP and seeks an injunction restraining Metropolitan from taking any action in furtherance of the Lower Basin DCP "pending full compliance with CEQA." The petition was served on Metropolitan on April 22, 2019. Once the administrative record is prepared, Metropolitan will have thirty days to respond to the petition.

Food & Water Watch, et al. v. Metropolitan, et al. **(Los Angeles Superior Court)**

In September 2018, Food & Water Watch and Center for Food Safety filed a reverse validation action challenging the Board's July 10, 2018 vote on California WaterFix. The complaint alleged that the authorization to fund up to 64.6% of WaterFix costs is unreasonable and disproportionate in violation of Proposition 26; authorizes a property tax outside of Proposition 13's parameters; exceeds Metropolitan's authority under the Burns-Porter Act and Metropolitan's State Water Project (SWP) contract; and is invalid because it is directed to a project that lacks required approvals and is the subject of pending legal challenges.

Metropolitan filed a demurrer (motion to dismiss) to all of the causes of action and SDCWA filed a demurrer only as to the Proposition 26 claim. Plaintiffs amended the complaint and Metropolitan and SDCWA again filed similar demurrers. A group of agricultural water districts that are either SWP contractors or member agencies of the Kern County Water Agency filed answers.

On March 15, 2019, the court sustained (granted) Metropolitan's entire demurrer, without granting plaintiffs leave to amend. The court also sustained SDCWA's demurrer to the first cause of action concluding the case at the trial court level.

On May 8, plaintiffs filed a notice of appeal, which will send the case to the Court of Appeal for the Second District. The record of the proceedings at the trial court must be transmitted to the appellate court before briefing starts. Staff will keep the Board advised of the schedule going forward.



Appeal of County of San Joaquin, et al. v. Metropolitan, et al. (San Joaquin County Superior Court Case No. STK-CV-UWM-2016-3597 in the Court of Appeal for the Third Appellate District Case No. C087640)

Following Metropolitan's March 2016 decision to purchase over 20,000 acres of land from Delta Wetlands Properties, San Joaquin and Contra Costa Counties, Central Delta Water Agency, Contra Costa County Water Agency, Planning and Conservation League, and Food & Water Watch sued in San Joaquin Superior Court on April 14, 2016, alleging that Metropolitan violated CEQA by approving the land acquisition without first

preparing an Environmental Impact Report. They named Delta Wetlands Properties, Semitropic, and the Reclamation Districts as real parties in interest.

Metropolitan ultimately prevailed on the merits after a non-jury "bench" trial on April 30, 2018. Plaintiffs appealed and filed their opening brief on March 5, 2019. On April 26, Metropolitan and Delta Wetlands Properties filed a joint opposition brief. Appellants' reply is due May 16.

Once fully briefed, the appellate court may set the matter for oral argument or rule without argument. Although the timing is not set by law, Metropolitan hopes for a ruling before the end of the year.

Cases to Watch

Orange County Superior Court Sets Aside Los Angeles County MS4 Permit

In July 2015, the cities of Duarte and Huntington Park and, in a separate action the City of Gardena, sued the Los Angeles Regional Water Quality Control Board (LA Regional Board) and the State Water Resources Control Board (State Board) to challenge conditions imposed by the LA Regional Board and the State Board in an MS4 (stormwater discharge) permit for LA County. MS4 permits have been issued by the LA Regional Board since 1990. Starting in 2012, the LA County permit included a condition requiring the Permittees (cities in Los Angeles County, the LA County Flood Control District, and LA County) to comply with

certain numeric effluent limitations. The cities challenged the new condition, alleging, among other things, that the new condition exceeded the requirements of the Clean Water Act (CWA) and, in order to impose such conditions, the LA Regional Board and the State Board needed to consider a number of factors including economic considerations. On April 19, 2019, the Orange County Superior Court set aside the challenged permits because the LA Regional Board and the State Board did not comply with the requirement to consider the range of possible costs to comply with the newly imposed numeric effluent limitations and the findings were inadequate to support compliance with the statute or demonstrate the facts essential to support its decision.

Other Matters

Continuing Legal Education

On April 25, the Legal Department provided a continuing education session titled, *Everything You Need to Know About the Revised California Rules*

of Professional Conduct. The one-hour webinar was presented by Susan Mitchell and Jae Park from the law firm of Denton's. Legal Department staff and staff from the Ethics Office and Environmental Planning attended.



Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Government Code Claims	7	(1) Three claims for three separate auto accidents involving two MWD vehicles and a rental car driven by an MWD annuitant; and (2) four claims due to a tree from the Palos Verdes Reservoir facility falling onto a power line resulting in a power surge that may have damaged the claimants' property, including appliances, electrical circuitry, garage door openers, televisions, and other items	
Subpoenas	1	Subpoena to Testify at a Deposition in a Civil Action served by plaintiff in <i>Principia Partners LLC v. Swap Financial Group, LLC</i> , United States District Court for the Southern District of New York, Case No. 18-7998-AT-DF, seeking documents and communications between MWD and defendant Swap Financial Group relating to post-trade valuations and pre-trade analytic services generated using Principia Analytics System	
Requests Pursuant to the Public Records Act	19	<u>Requestor</u>	<u>Documents Requested</u>
		AFSCME	Documents relating to Cal-OSHA inspection of Lake Mathews Building 26, and (2) documents and communications relating to safety issues at Lake Mathews
		Arizona State University Student	Data on the capacity of MWD's distribution system in the City of Los Angeles
		California Department of Finance, Office of State Audits and Evaluations	Audit reports for turf rebate and high efficiency toilet rebate programs
		California State University Northridge Student	Water usage for past 35 years for area around California State University Northridge
		Center for Contract Compliance	Contract documents relating to the Sepulveda Feeder PCCP Del Amo Boulevard Urgent Relining
		Interpersonal Frequency LLC	Proposal and contract documents relating to MWD's Website Redesign
		KCBS/KCAL TV (3 requests)	(1) Audit report on moneys refunded for water conservation; (2) audit report on turf removal rebate program; and (3) amount of conservation rebate to a homeowners' association



	<u>Requestor</u>	<u>Documents Requested</u>
	Private Citizens (3 requests)	(1) List of properties that have been connected to water for at least three months; (2) data on water quality sampling at Morris Dam; and (3) list of houses without connection to water for the past six months in Los Angeles County
	Public Policy Institute of California	Data from MWD’s groundwater banking and conjunctive use programs
	San Bernardino County Department of Public Works	Substructure maps along Institution Road in the City of San Bernardino
	Transparent California	MWD Employee Compensation Reports for calendar years 2017 and 2018
	Wilderrmuth Environmental, Inc.	Chino Basin Groundwater Storage Program Draft Environmental Impact Report dated June 1988
Other Matters	3	(1) Notice of Responsible Agencies Having Jurisdiction Over Natural Resources served by Petitioners in <i>Citizens for Responsible Wind Energy, et al. v. County of Riverside, Riverside County of Board of Supervisors</i> , Riverside County Superior Court, Case No. RIC1901829, in which MWD is identified as one of the responsible and/or public agencies that has jurisdiction over natural resources potentially affected by the Painted Hills Wind Repowering Project, located in an unincorporated area of Riverside County - Petitioners challenge the County of Riverside Planning Commission's approval of the project; and (2) two wage garnishments



California WaterFix Litigation	
Subject	Status
CDWR Environmental Impact Cases Sacramento Superior Ct. Case No. JCCP 4942 (20 Coordinated Cases – 1 Validation; 17 CEQA; 2 CESA) (Judge Culhane)	
Validation Action <i>DWR v. All Persons Interested</i> CEQA 17 cases CESA/Incidental Take Permit 2 cases	<ul style="list-style-type: none"> The stay of all 20 cases and the May 2, 2019 Case Management Conference and hearing on a DWR motion regarding the CEQA administrative record have been continued to May 23, 2019
ESA/BiOps 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"> Merits of cross-motions for summary judgment fully briefed Judge O’Neill ordered the hearing on the cross-motions off calendar and ordered DWR to file a report by June 14, 2019 regarding how it intends to proceed with the environmental permitting, planning, and document preparation process for the reconfigured WaterFix project Plaintiffs filed motion for summary judgment on January 15, 2019; Defendants’ opposition/cross-motion for summary judgment filed April 9, 2019; Plaintiffs’ opposition and reply due May 7, 2019; Defendants’ replies due: May 28, 2019 The hearing for this case was also taken off calendar pending DWR’s report due by June 14, 2019 Parties ordered to meet and confer after DWR’s report is filed and to file by June 28, 2019 a joint status report in both cases reflecting their respective positions on the update and its consequences for the pending claims
Breach of Contract <i>City of Antioch v. DWR</i> Sacramento County Superior Ct. (Judge De Alba)	<ul style="list-style-type: none"> Discovery temporarily stayed Settlement conference set for September 12, 2019 Trial set for October 21, 2019



Subject	Status
<p>Delta Plan Amendments and Program EIR 4 Cases Sacramento County Superior Ct. (Judge Earl)</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"> • Cases challenge, among other things, the Delta Plan Updates recommending dual conveyance as the best means to update the SWP Delta conveyance infrastructure to further the coequal goals • Allegations relating to “Delta pool” water rights theory and public trust doctrine raise concerns for SWP and CVP water supplies • Cases consolidated for pre-trial and trial under <i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i> • Parties stipulated to extend time to prepare the administrative record to May 24, 2019 • Answers or motions to dismiss due 30 days after administrative record is lodged
<p>SWP Contract Extension Validation Action Sacramento County Superior Ct. (No judge assigned yet)</p> <p><i>Cal. Dept. of Water Resources v. All Persons Interested in the Matter, etc.</i></p>	<ul style="list-style-type: none"> • DWR seeks a judgment that the Contract Extension amendments to the State Water Contracts are lawful • Metropolitan and 6 other SWCs filed answers in support of validity to become parties • Kern County Water Agency has until May 31, 2019 to file an answer • Four answers filed in opposition denying validity on multiple grounds raised in affirmative defenses • Court refused opponents’ request to relate the case to WaterFix Validation Action or coordinated cases
<p>SWP Contract Extension CEQA Cases 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"> • Petitions for writ of mandate alleging CEQA and Delta Reform Act violations filed on January 8 & 10, 2019 • NCRA stipulated to dismiss State Water Contractors without prejudice • 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 • Metropolitan preparing motions to intervene • DWR filed a notice that the CEQA cases are related to its Contract Extension Validation Action
<p>COA Addendum/No-Harm Agreement Sacramento County Superior Ct. (Judge Gevercer)</p> <p><i>North Coast Rivers Alliance, et al. v. Cal. Dept. of Water Resources</i></p>	<ul style="list-style-type: none"> • Plaintiffs allege violations of CEQA, Delta Reform Act & public trust doctrine • Deadline to prepare administrative record extended to July 22, 2019 • Metropolitan & SWC Monitoring • Westlands Water District’s motion to intervene scheduled for June 7, 2019