



Metropolitan Cases

OHL USA, Inc. v. Metropolitan (Los Angeles Superior Court)

On August 7, 2019, OHL USA, Inc. (OHL) filed a breach of contract complaint against Metropolitan relating to the Palos Verdes Reservoir Cover and Liner Replacement project. OHL alleges that Metropolitan failed to compensate it for extra work

and costs incurred due to Metropolitan-caused delays and interference with project work. OHL also alleges that Metropolitan failed to provide complete and accurate plans and specifications and required OHL to accelerate project work without compensation. The complaint seeks damages in excess of \$8 million, plus interest and attorneys' fees. Metropolitan's answer to the complaint is due October 9.

Matters Impacting Metropolitan

Maui County Council Votes to Settle Clean Water Act Case Pending Before the U.S. Supreme Court

On September 20, 2019, the Maui County Council voted 5-4 to settle the Clean Water Act (CWA) case *County of Maui v. Hawaii Wildlife Fund* that is scheduled for oral argument before the U.S. Supreme Court on November 6, 2019. However, there is a dispute regarding whether the Council or the Mayor, who opposes settlement, has the authority to settle the case. Lawyers with the Office of Council Services say the Council alone can settle the case, but Corporation Counsel lawyers, who represent the Council and the Mayor, state that both the Council and the Mayor have to agree on whether to settle. On September 25, County Council Chairwoman Kelly King sent a memo to Corporation Counsel asking that they execute the settlement agreement and take other necessary steps, including filing papers with the U.S. Supreme Court, to resolve the case.

The terms of the settlement would require the County of Maui to invest \$2.5 million in wastewater

reuse systems, to pay a \$100,000 penalty, and to make good faith efforts to get a National Pollutant Discharge Elimination System (NPDES) permit or an equivalent control document for the injection wells. The Mayor asserts that the settlement could cost the County more than \$800 million in fines, required improvements, and legal fees.

The question raised in *County of Maui* is whether the CWA covers discharges of pollutants from a point source which reach navigable waters through groundwater. If the *County of Maui* case settles, the Supreme Court could decide to hear a similar issue in another case pending before the Court, *Kinder Morgan Energy Partners, L.P. v. Upstate Forever*. In April 2018, the Fourth Circuit in *Upstate Forever* relied on *County of Maui* to find that a discharge of pollutants which travels through groundwater and reaches navigable waters through a direct hydrological connection requires an NPDES permit. Metropolitan staff will continue to monitor these cases. (See General Counsel's February and July 2019 Activity Reports.)

Other Matters

Continuing Education

On September 26, the Legal Department hosted Dave Sanchez from the law firm Norton Rose to provide a training presentation on the legal requirements applicable to the preparation of

Metropolitan's financial disclosure documents and Appendix A. Metropolitan staff from Engineering, Environmental Planning, Finance, Information Security, Legal, Water Resources Management, and Water Systems Operations attended the session.



Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Action in which MWD is a party	1	Complaint for Breach of Contract, filed in Los Angeles County Superior Court, in the case <i>OHL USA, Inc. v. MWD</i> , Case No. 19STCV27689, relating to the Palos Verdes Reservoir Cover and Liner Replacement project, in which OHL alleges that Metropolitan failed to compensate it for extra work and costs incurred due to Metropolitan-caused delays and interference, and failed to provide complete and accurate plans and specifications and required OHL to accelerate project work without compensation	
Government Code Claims	1	Claim for damages from auto accident involving an MWD vehicle	
Requests Pursuant to the Public Records Act	15	<u>Requestor</u>	<u>Documents Requested</u>
		Center for Contract Compliance	Contract documents relating to the Skinner Water Treatment Plant Underground Tank Modifications
		Central Basin Municipal Water District	Data on rebates paid for commercial and residential devices in the Park Water/ Liberty Utilities service area from 2008 to the present
		City of Lynwood	Job title and salary information for water distribution operators with D5 certifications
		Deltek	Contract information relating to on-call information technology services
		FJS Cable Engineering	Underground maps for substructures in project area in the City of Inglewood
		IBE Digital	Contract documents for multi-function copiers/printers
		Law Office of Gideon Kracov	Requests and responses to four prior PRA requests relating to the Lower Basin Drought Contingency Plan (DCP), amount MWD paid for water purchased from the Bureau of Reclamation in 2012, debts owed by member agencies Eastern and Western, Statements of Economic Interest (Form 700s) for MWD contractors and former staff who performed investment management duties



	<u>Requestor</u>	<u>Documents Requested</u>
	Labor Management Compliance Council	Contract documents, inspector logs, and certified payroll records relating to the Orange County Regional Service Center project
	Private Citizens (3 requests)	(1) Records on active spring found during construction of the Bradbury Building in Los Angeles in 1892; (2) Board documents for meeting held on November 17, 1964; and (3) issues of the Colorado Aqueduct News published in the 1930s during the construction of the Colorado River Aqueduct
	California State Polytechnic University, Pomona Student	As-built drawings for underground utilities near Caltrans project near Devil's Creek Channel
	Systems Integrated (2 requests)	Documents relating to the Requests for Qualifications for the Control System Upgrade Program
	US Auctions	Contract for auctioneering services for vehicles and equipment and payments received from July 1, 2018 to present
Other Matters	1 Wage Garnishment	



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"> • Cases dismissed after DWR rescinded project approval, bond resolutions, decertified the EIR, and CDFW rescinded the CESA incidental take permit • January 10, 2020 – Hearing on 9 motions for attorneys' fees and costs
Breach of Contract <i>City of Antioch v. DWR</i> Sacramento County Superior Ct. (Judge De Alba)	<ul style="list-style-type: none"> • DWR's motion for summary judgment seeking dismissal was denied • Mandatory settlement conference held on Sept. 12 and 25, 2019 • Tentative settlement reached, pending Antioch City Council approval • Parties have applied to continue the October 21, 2019 trial date into 2020
COA Addendum/No-Harm Agreement <i>North Coast Rivers Alliance v. DWR</i> Sacramento County Superior Ct. (Judge Gevercer)	<ul style="list-style-type: none"> • Plaintiffs allege violations of CEQA, Delta Reform Act & public trust doctrine • Deadline to prepare administrative record extended to November 19, 2019 • Westlands Water District granted leave to intervene • Metropolitan & SWC Monitoring
Delta Plan Amendments and Program EIR 4 Consolidated Cases Sacramento County Superior Ct. (Judge Earl) <i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i> (lead case) <i>Central Delta Water Agency, et al. v. Delta Stewardship Council</i> <i>Friends of the River, et al. v. Delta Stewardship Council</i> <i>California Water Impact Network, et al. v. Delta Stewardship Council</i>	<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 November 22, 2019 • Answers or motions to dismiss due 30 days after administrative record is lodged • SWC granted leave to intervene



Subject	Status
<p>SWP Contract Extension Validation Action Sacramento County Superior Ct. (No judge assigned yet)</p> <p><i>DWR 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 7 other SWCs filed answers in support of validity to become parties • Four answers filed in opposition denying validity on multiple grounds raised in affirmative defenses • Case deemed related to the two CEQA cases, below and assigned to Judge Culhane
<p>SWP Contract Extension CEQA Cases Sacramento County Superior Ct. (Judges Sumner and Gevercer)</p> <p><i>North Coast Rivers Alliance, et al. v. DWf DWR</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 • Metropolitan preparing unopposed motions to intervene • Deemed related to DWR’s Contract Extension Validation Action and assigned to Judge Culhane • Deadline to prepare administrative record extended to November 11, 2019 • Answers due 30 days after administrative record is received