



## Metropolitan Cases

### ***Delta Stewardship Council Cases (Sacramento Superior Court)***

Shortly after the Delta Stewardship Council certified its EIR and adopted the Delta Plan in May 2013, Metropolitan, the State Water Contractors, and several other state and federal water contractors filed litigation challenging the validity of the EIR and some of the policies and regulations adopted as part of the Delta Plan that could threaten the reliability of State Water Project and Central Valley Project water supplies. Their cases, as well as cases brought by in-Delta and non-governmental interests, have been coordinated in Sacramento Superior Court as the Delta Stewardship Council Cases (JCCP 4758). On January 15, 2015, Metropolitan, the State Water Contractors, and other state and federal water contractor agencies jointly filed motions to intervene in the five non-water contractor cases.

Pursuant to the court's scheduling order, the motions to intervene will be heard before the hearing on the merits, likely sometime in the summer of 2015. Intervention in the non-water contractor cases would ensure the right to appeal an adverse ruling in any of the coordinated cases.

As an update on the case status, on April 6, 2015, the Delta Stewardship Council will file its opposition brief, which may run up to 280 pages in length. It is anticipated that on April 13, the Department of Water Resources will file an amicus brief in support of certain parts of the Council's brief that oppose some of the arguments raised by non-water contractor parties. The water contractor parties will file a combined reply brief on May 21. Thereafter, the court will set a date for the hearing on the merits and calendar any pre-hearing motions, including the water contractors' joint motions to intervene in the non-water contractor cases.

## Matters Involving Metropolitan

### ***Sierra Club v. County of Fresno (California Supreme Court)***

Metropolitan worked with ACWA to review, edit, and join a friend-of-the-court brief with the League of California Cities (League), California State Association of Counties (CSAC), and the California Special Districts Association (CSDA). The public agencies are weighing in on the proper standard of judicial review of the scope and level of detail in an Environmental Impact Report's analysis of a significant impact. Under an independent judgment standard, a court may decide for itself how much detail or what scope of analysis is "sufficient" under CEQA, and need not defer to the lead agency's discretion. Under the substantial evidence standard of review, a court must uphold the lead agency's decisions and determinations in an EIR if there is any substantial evidence in the record to support it, even if another conclusion could be reached on the same or conflicting evidence in the record. In *Sierra Club v. County of Fresno*, the court of appeal held that a reviewing court must exercise its independent judgment

when deciding whether an EIR's impact analysis is sufficiently detailed. This is in contrast with a majority of courts of appeal that have held such questions must be reviewed and upheld so long as there is any substantial evidence in the record.

ACWA, the League, CSAC, and CSDA argue that the independent judgment standard is inconsistent with CEQA, the CEQA Guidelines, and case law, which all support applying the substantial evidence standard to the predominantly factual question of how much detail is required in any given EIR impact analysis to satisfy CEQA. If courts are required to decide questions of scope and detail in the analysis of a significant impact based on the non-deferential independent judgment standard of review, it will give project opponents greater incentive to file litigation, and lead agencies will add more detail to EIRs in an attempt to reduce litigation risks.

The brief is to be filed with the California Supreme Court on April 3. Absent an extension of time, the parties will have 20 days to respond to friend-of-the-court briefs, at which time the case will be fully



briefed. There are no deadlines for the Court to schedule oral argument or issue an opinion. Given the foundational nature of the case, a relatively speedy hearing and opinion is likely.

***Agua Caliente Band v. Coachella Valley Water District (United States District Court, Central District of California)***

In May 2013, the Agua Caliente Band of Indians filed suit in federal court alleging that Coachella Valley Water District (CVWD) and Desert Water Agency (DWA) have been interfering with tribal rights to the groundwater underlying the tribal reservation. In addition, the complaint challenges the importation of Colorado River water for groundwater recharge on the grounds that it is adversely affecting water quality. The United States intervened on behalf of the tribe. The lawsuit has the potential to affect Metropolitan's contractual arrangements for the exchange of those agencies' State Water Project supplies for Colorado River water.

Pursuant to stipulation among the parties, the case is being tried in phases. The first phase was limited to whether the tribe has reserved rights or aboriginal rights to groundwater. On March 20, the court issued its ruling that the tribe has reserved rights to groundwater based on the *Winters* doctrine that reservations of land for federal use include appurtenant water rights. The court rejected CVWD's and DWA's argument that the *Winters* doctrine is limited to surface waters. However, the court rejected the tribe's claim that the groundwater rights are aboriginal water rights with a priority date of "time immemorial."

The court's ruling does not resolve the remaining issues in the case, and would not normally be appealable. In this case the court certified its order as appropriate for interlocutory appeal because there is a split of authority among state and federal courts on the issue of whether the *Winters* doctrine extends to groundwater. The court's certification allows CVWD and DWA to seek immediate review by the Ninth Circuit Court of Appeals. (See General Counsel's June 2014 Activity Report.)

**Other Matters**

**Finance**

On March 18, 2015, Metropolitan posted the remarketing statements for \$100,000,000 Water Revenue Refunding Bonds, 2011 Series A-2 and 2011 Series A-4 (Index Mode) and \$98,585,000 Water Revenue Refunding Bonds, 2012 Series B-1 and 2012 Series B-2 (Index Mode). In addition, the first remarketing of the 2012 Series B-1 and 2012 Series B-2 Bonds and the remarketing of the

2011 Series A-2 and 2011 Series A-4 Bonds occurred on March 27, 2015. These bonds bear interest at a rate that is reset through remarketing of the bonds. Legal Department staff attorneys worked with finance, engineering and resources staff to prepare Appendix A for the Remarketing Statements and worked with bond counsel to prepare bond documents.

**Matters Received by the Legal Department**

<u>Category</u>	<u>Received</u>	<u>Description</u>
Government Code Claims	3	Claims submitted by (1) Frulla, Inc. and Rainbow Art Gardens, Inc. for alleged damage caused by overflow of water out of an MWD pipeline vent stack, and (2) individual for damage allegedly caused by a MWD vehicle striking the awning on homeowner's property
Subpoenas	2	Subpoenas for matters before the Workers' Compensation Appeals Board



Requests Pursuant to the Public Records Act	21	<u>Requestor</u>	<u>Documents Requested</u>
		Cal Poly Pomona Student	Process for funding under California Proposition 1 on the Water Bond
		CRM-CRM Group in Belgium	1981 Report prepared for MWD titled, "Corrosive Effect of Dissolved Copper on Galvanized Steel, Phase II, Internal Report"
		Friends of the River	Documents relating to communications with list of five public affairs firms
		Investigative Producer John August of San Diego NBC 7	Expenses paid for San Diego County employees and Supervisors for 10/03/2014 trip to Delta and 01/24/2015 trip to Colorado Aqueduct
		Los Angeles Engineering, Inc.	MWD as-built drawing for area near Tujunga Wash Bridge
		Miyamoto International, Inc. and Mercury LLC	Requests for proposal-related documents: (1) MWD score sheet for evaluating responses to 2012 RFQ for engineering services for seismic evaluations, and (2) winning proposal for Water Awareness and Conservation Advertising Services
		MWDOC	Diemer water quality data
		Private Citizen	Number of units within HOAs by zip code
		Reporter David Goldstein of KCBS/KCAL TV	4 PRA Requests for (1) list of borrowers from the TAC Loan Pool, (2) TAC credit card statements, (3) Director-related expenses, benefits and technology provided, (4) billing statements for cell phones issued to Directors
		Residents for Responsible Desalination	LRP agreement relating to Poseidon Water LLC in Orange County
		Spain Consulting	2 PRA Requests for data to calculate CRA evaporation rates



Requests Pursuant to the Public Records Act (continued)	<u>Requestor</u>	<u>Documents Requested</u>
	UC Irvine Professor	Historical data back to the 1970s on amounts of water in storage and amounts of water delivered
	Wire Investment Group and Chandler Ventures	2 PRA Requests for addresses of properties not receiving service within MWD service area
	Yeungnam University in South Korea	Price that MWD pays for Colorado River water and contract terms
Other Matter	1	First Amended Unfair Practice Charge filed with the California Public Employment Relations Board (PERB) relating to MWD's evaluation system titled, "My Performance"