



## Metropolitan Cases

### ***Rachael Roberson v. Metropolitan Water District (Los Angeles Superior Court)***

On April 1, 2014 plaintiff Rachael Roberson filed a complaint for damages in Los Angeles Superior Court against Metropolitan. Plaintiff alleged one cause of action for negligence/premises liability arising from an accident in the Union Station courtyard. Metropolitan answered the complaint

and propounded discovery. Plaintiff's deposition was taken on May 13, 2015 and as a result, plaintiff resumed settlement negotiations. Metropolitan negotiated a settlement of \$21,000 for a full release and settlement of all claims subject to this lawsuit. Plaintiff filed a Notice of Settlement on June 5. On July 27, the court dismissed the entire case with prejudice. The Legal Department represented Metropolitan in this matter.

## Cases to Watch

### **Lawsuit Filed Over New Public Health Goal For Perchlorate**

On June 29, 2015, the California Manufacturers & Technology Association (CMTA), a trade coalition representing approximately 400 businesses from the manufacturing community, filed a lawsuit in Sacramento County Superior Court over the new Public Health Goal (PHG) of 1 part per billion (ppb) for perchlorate in drinking water. A PHG is not a regulatory standard, but is a level of drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The CMTA sued the Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency, which developed the updated PHG for perchlorate, claiming that OEHHA failed to comply with several requirements of the California Safe Drinking Water Act when it adopted the revised PHG. The CMTA asks the court to order OEHHA to withdraw the current PHG for perchlorate and to identify a new revised PHG for perchlorate in compliance with legal requirements.

OEHHA announced on February 27, 2015, that it was lowering the PHG for perchlorate from 6 ppb to 1 ppb. PHGs are used by the State Water Resources Control Board (State Board) to set drinking water standards (Maximum Contaminant Levels or MCLs). The current MCL for perchlorate was set at 6 ppb in 2007. Any revision to the current MCL will likely take several years. (See also General Counsel Monthly Activity Report for February 2015.)

### **BAY-DELTA RELATED MATTERS**

In the June 2015 update, we reported on 10 cases the Legal Department is tracking because they could impact State Water Project (SWP) water supplies. This month's report provides the most recent updates on several of those cases, as well as five related developments, namely, one new state case, two new complaints initiated at the State Board, and two enforcement actions taken by the State Board.

### **Curtailment Cases**

In the last two weeks of June, these five groups of water agencies and irrigation districts filed litigation and motions for temporary restraining orders challenging the State Board's authority to issue curtailment notices to senior water rights holders in the Sacramento and San Joaquin River watersheds, including the Bay-Delta. (Cases are listed in the June 2015 General Counsel Activity Report)

On July 10, a judge granted a temporary restraining order in the *West Side Irrigation District* (WSID) case, ruling that the curtailment notice included mandatory language requiring, among other things, immediate cessation of water diversions under post-1903 appropriate water rights, thus depriving petitioners of property without an opportunity to be heard.

In response, on July 15, the State Board issued a notice rescinding, in relevant part, all past curtailment notices, and issuing in their place a "notice of unavailability" of water for diversion under certain appropriate rights. On August 3,



the court denied petitioners' application for a preliminary injunction because the partial rescission of the curtailment notices removed any mandatory language the court previously found violated due process. A judge has been assigned to hear the State Board's motion to coordinate all related cases before a single judge, and the State Board has filed a motion to dismiss all claims attacking the validity of the now-rescinded curtailment notices.

Petitioners have filed an amended petition and complaint to add causes of action seeking a judicial declaration that they have the right to divert from south Delta channels regardless of natural or Central Valley Project (CVP)/SWP inflows from upstream. Thus, we will continue to closely monitor based on the case's potential to impact SWP water supplies.

**Enforcement Action ENF01949 – Draft Cease and Desist Order Regarding Unauthorized Diversions or Threatened Unauthorized Diversions of Water from Old River in San Joaquin County by West Side Irrigation District (Issued by State Board July 16, 2015)**

On July 16 the State Board issued a draft Cease and Desist Order (CDO) alleging that WSID has or threatens to: (1) unlawfully divert water under WSID's claimed pre-1914 (post-1903) appropriative rights because there is insufficient water flowing into the Delta for such diversions; (2) unlawfully divert tail water from farmers within that district's boundaries at a point downstream of the drain where farm tail water enters Old River; and (3) unlawfully divert treated wastewater from the City of Tracy's wastewater treatment plant on Old River. WSID has 20 days to request a hearing and is likely to do so. It has also amended its complaint in Sacramento Superior Court to challenge the State Board's authority to regulate (e.g., issue a CDO to) a diverter based on a pre-1914 appropriative water right.

**Administrative Civil Liability Complaint in the Matter of Unauthorized Diversion by Byron-Bethany Irrigation District (Issued by State Board July 16, 2015)**

The State Board's Division of Water Rights issued an ACL Complaint against Byron-Bethany Irrigation District seeking to impose over \$1.5 million in civil penalties for unlawful diversions in the south Delta during 13 days in June when there was insufficient water to support diversion under Byron-Bethany's

claimed appropriative water rights. The ACL Complaint imposes a \$1,553,250 penalty where the maximum liability for civil penalties is \$5,180,500. Byron-Bethany has 20 days from receipt of the ACL Complaint to request a hearing.

**TUCP Cases**

***California Sportfishing Protection Alliance v. U.S. Bureau of Reclamation, et al.***

As reported in the June General Counsel Activity Report, California Sportfishing Protection Alliance (CSPA) filed a federal court action challenging the State Board's granting Temporary Urgency Change Petitions (TUCPs). The lawsuit alleges that the Bureau of Reclamation is violating the federal Central Valley Project Improvement Act (CVPIA), the Clean Water Act, and state law because it is required to operate the CVP to meet all water quality standards in the Delta regardless of whether the State Board grants a TUCP that modifies those standards.

Since the June report, San Luis and Delta Mendota Water Authority, Westlands Water District, Oakdale Irrigation District, and San Joaquin Irrigation District have intervened; the State Board and DWR have moved to be dismissed from the case based on lack of jurisdiction over the parties (sovereign immunity) and claims for relief; and plaintiffs have filed a First Amended Complaint to include the State Board's order approving the March TUCP.

**California Sportfishing Protection Alliance – State Board Complaint (filed July 21, 2015)**

CSPA has submitted a complaint to the State Board that raises substantially the same issues it raises in its federal lawsuit, claiming that the State Board erred by granting the TUCPs to alter otherwise applicable water quality standards to mitigate drought impacts. If the State Board decides to hear the complaint, water contractors, including Metropolitan, must decide whether to seek party status because a decision in CSPA's favor could affect SWP deliveries in future water years.

CSPA has also filed a complaint on August 3 challenging the State Board's approval of the Bureau of Reclamation's most recent temperature management plan for the Sacramento River. Staff is determining whether that complaint could have any adverse impacts on SWP water supplies.



***California Sportfishing Protection Alliance, et al. v. State Water Resources Control Board, Case No. \_\_\_\_\_ (Alameda Superior Court, filed August 4, 2015)***

CSPA, C-WIN, and AquAlliance have filed a petition for writ of mandate and complaint in Alameda County Superior Court that duplicates most of the allegations against the State Board made in CSPA's federal lawsuit. It alleges that the State Board violated 20 provisions of law or regulatory standards by granting the most recent TUCP for coordinated operations of the CVP and SWP, and seeks declaratory and injunctive relief that petitioners claim is needed to avoid extinction of several listed fish species.

**Restore the Delta Protest-Petition re Temporary Urgency Change Petition from DWR and the Bureau of Reclamation, State Water Resources Control Board (submitted July 21, 2015)**

Restore the Delta objects to the July 3, 2015 order granting the most recent TUCP for drought operations of the SWP and CVP. Restore the Delta makes allegations similar to those in the CSPA lawsuits and administrative complaint. For instance, it alleges that the State Board violated the Water Code and public trust doctrine by granting the TUCP, it alleges that DWR and the Bureau of Reclamation have mismanaged SWP and CVP storage, but it goes further than CSPA by asking the State Board to require regions that rely on Delta water to reduce their reliance, and to reconsider water rights held by the Bureau of Reclamation and DWR.

## Matters Impacting Metropolitan

### **EPA Issues New Draft Selenium Criterion**

On July 27, 2015, the U.S. Environmental Protection Agency (EPA) opened the comment period on its draft national recommended chronic selenium water quality criterion. The criterion will be used to determine whether aquatic life is adequately protected from selenium discharges. Selenium is a naturally occurring element that can be toxic to aquatic life in high concentrations. In 1987, EPA published the current national chronic selenium water quality criterion for the protection of aquatic life of 5 ug/L. Colorado River water contains selenium at low levels which are under EPA's current chronic water quality criterion. For more than a decade, EPA has been working on new selenium limits. Most recently, EPA proposed in May 2014 to include two fish tissue-based and two water column-based elements for measuring selenium levels in an area, a change from solely water-column criteria. The draft criterion document contains a recommendation that states and authorized tribes adopt into their water quality standards a selenium criterion that includes all four elements. Because fish tissue-based concentration is a more direct measure of selenium toxicity to aquatic life than water column concentrations, EPA recommends in the July 2015

draft that fish tissue elements be given precedence over the water column elements when both types of data are available, except in certain situations. In its latest draft selenium criterion, EPA also increased most of its fish-tissue and water-column thresholds of selenium that should not be exceeded.

Under the Clean Water Act, EPA is required to develop, publish, and periodically revise criteria for the protection of water quality and human health. EPA develops water quality criteria based solely on data and scientific information about the relationship between pollutant concentrations and environmental and human health effects. EPA's recommended water quality criteria, once finalized, are not legally binding on the states. However, the criteria provide technical information to states and authorized tribes which must adopt scientifically defensible water quality criteria to protect designated uses, such as public water supply, aquatic life, recreational use, or industrial use. Comments on EPA's draft selenium criterion are due by September 25, 2015. Metropolitan staff will be participating in the Federal Water Quality Coalition work group to develop and provide comments to EPA.



**Matters Received by the Legal Department**

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Actions in which MWD is a party	2	Verified Complaint filed in <i>Carol Tounget v. Valley Wide Recreation and Parks, et al.</i> , in Riverside County Superior Court, relating to claims for alleged violations of the Americans with Disabilities Act at Valley Wide’s facilities at Diamond Valley Lake	
		First Amended Verified Complaint and Writ of Mandate for Declaratory and Injunctive Relief filed in <i>Los Angeles Department of Water and Power v. MWD</i> , in Los Angeles County Superior Court, relating to release of names and home addresses of LADWP customers who participated in MWD's Turf Removal Rebate Program to San Diego Union-Tribune in response to a PRA request	
Government Code Claims	2	Claims submitted by (1) customer of Otay Water District alleging payments for water service are unconstitutional tax, and (2) Mercury Insurance Group on behalf of its insured for automobile accident involving MWD vehicle	
Subpoena	1	Deposition Subpoena for Production of Business Records seeking copies of employee’s records	
Requests Pursuant to the Public Records Act	19	<u>Requestor</u>	<u>Documents Requested</u>
		California Association of Mutual Water Companies	Water consumption levels in MWD service area
		Deloitte Transactions and Business Analytics, LLP	MWD purchase and sale of water through water banks
		Imperial Irrigation District	Salary ranges and job descriptions for engineer series classification
		Inland Empire Utilities Agency	Contract between MWD and PlanetBids
		Laquer, Urban, Clifford & Hodge LLP	Records relating to completion of F.E. Weymouth Water Treatment Plant Oxidation Retrofit Program
		Main Graphics	MWD contract for promotional and marketing items
		Orange County	Comment letters on EIRs for the Cadiz project
Private Citizens	(1) MWD Board Resolution 9190 regarding the Governor’s call for 25% reduction in consumer water use, (2) turf removal		



<u>Category</u>	<u>Received</u>	<u>Description</u>
		application submitted by HOA in San Diego County
	Rothner, Segall & Greenstone	Records relating to consultants work on IT Strategic Plan Update
	Santa Clara Valley Water District	Number of MWD employees
Other Matters	3	<p>(1) Notice of Commencement of Proceeding received in the case <i>Cemex Construction Material Pacific, LLC v. Safeway Building Systems, Inc.</i>, filed in Riverside County Superior Court, relating to Cemex claims against Safeway for payment of materials, equipment and supplies for work at MWD's Chemical Unloading Facility, Perris</p> <p>(2) Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief filed in <i>The City of Fontana v. Michael Cohen, Director of the California Department of Finance, et al.</i>, in Sacramento County Superior Court, naming MWD as one of the real parties in interest, relating to the Department of Finance rejection of payment to the successor agency for the former Fontana Redevelopment Agency</p> <p>(3) Wage garnishment</p>