



Cases to Watch

Irvine Ranch Water District v. Orange County Water District (Orange County Superior Court)

On June 17, 2016, Irvine Ranch Water District (IRWD) filed a lawsuit against Orange County Water District (OCWD) seeking to invalidate OCWD's resolution, adopted in April 2016 establishing the method used to determine the quantity of water that each groundwater producer agency is allowed to pump without paying OCWD's Replenishment Assessments. Specifically, IRWD alleges that OCWD excludes recycled water demands from the calculations. IRWD asserts that this policy improperly and illegally increases IRWD's Annual Basin Assessment. IRWD further alleges OCWD illegally prohibits pumpers from exporting groundwater from OCWD's service area because OCWD lacks the statutory authority to impose such a restriction.

IRWD's petition challenges the validity of OCWD's April 20, 2016 resolution establishing the regulation and assessment and requests the court to issue a writ of mandate requiring OCWD to rescind the resolution.

11th Circuit to Hear Oral Arguments on Jurisdiction Issue for Clean Water Rule

The U.S. Court of Appeals for the Eleventh Circuit has scheduled oral argument for July 8, 2016 in Atlanta regarding whether the Eleventh Circuit should defer to the Sixth Circuit's ruling that federal courts of appeal have jurisdiction over challenges to the validity of the Clean Water Rule, also known as the Waters of the United States (WOTUS) Rule.

In June 2015, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) jointly published the Clean Water Rule which defines the scope of waters protected under the Clean Water Act. Lawsuits contesting the rule were filed in various federal district and appellate courts. The Sixth Circuit Court of Appeals ruled that it had jurisdiction to decide the merits without a prior hearing in district court. The Sixth Circuit has stayed implementation of the rule nationwide pending its decision on the merits.

A separate challenge brought by ten state attorneys general is pending before the Eleventh Circuit Court of Appeals. They argue that the Sixth Circuit incorrectly decided the jurisdictional question and have sought a ruling by the Eleventh Circuit that proper jurisdiction lies in the district court. Supplemental briefing on the jurisdiction issue was completed on June 7, 2016. Conflicting rulings by the Eleventh Circuit and the Sixth Circuit could allow lawsuits to continue in multiple federal courts unless the U. S. Supreme Court intervenes to resolve the jurisdiction issue.

While the Sixth and Eleventh Circuits consider these challenges, the nationwide stay of the rule which the Sixth Circuit issued in October 2015 remains in effect. Also, while the stay is in place, the prior WOTUS regulations still govern. Metropolitan staff will continue to track this litigation. (See General Counsel's May 2016 Activity Report.)

Matters Impacting Metropolitan

Pechanga Water Rights Settlement

In April 2016, the Metropolitan Board authorized the General Manager to enter into an agreement to extend the service areas of Metropolitan and Eastern Municipal Water District to provide water deliveries by Rancho California Water District to the reservation lands of the Pechanga Band of Luiseño Mission Indians. The extension of service area agreement is part of a larger settlement of longstanding water rights disputes between

Pechanga and Rancho California that are currently pending in federal court.

The settlement is conditioned on congressional approval. The Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act has been introduced in the Senate as S. 1983 (Boxer, D-CA). This bill was approved by the Senate Committee on Indian Affairs in February 2016, and is awaiting action by the full Senate.



In May 2016, a joint letter from the Departments of the Interior and Justice to Representative Rob Bishop, Chair of the House Committee on Natural Resources, expressed the agencies' support for the provisions in S. 1983. The letter paved the way for the House committee to consider the legislation under Chairman Bishop's policy requiring tribal settlements be ready before hearings will be held. Metropolitan, Eastern, and Rancho California submitted a joint letter on June 1 to Chairman Bishop and Ranking Member Raúl Grijalva supporting the legislation and urging consideration by the House committee. A hearing by the House Subcommittee on Water, Power and Oceans was then scheduled for June 23. Testimony in support of the legislation was given by Pechanga Tribal Chairman Mark Macarro and Department of the Interior Deputy Commissioner Dionne Thompson. Representatives Huffman (D-CA) and Calvert (R-CA) expressed support as well. Chairman Bishop indicated that final action will likely be delayed pending receipt of an ongoing review of the settlement terms by the Office of Management and Budget.

Recent Amendments to the Toxic Substances Control Act

On June 22, 2016, President Obama signed into law H.R. 2576, the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg Act), which amends the Toxic Substances Control Act (TSCA) for the first time in 40 years. Some of the key provisions of the new law include: (1) the U.S. Environmental Protection Agency (EPA) must evaluate the safety of existing chemicals in commerce with clear and enforceable deadlines; (2) EPA must evaluate new and existing chemicals against a new risk-based safety standard that includes explicit considerations for vulnerable populations; (3) increased public transparency for chemical information; and (4) a consistent source of funding for EPA to carry out its responsibilities under the new law. The Lautenberg Act took effect immediately upon signature by the President on June 22, 2016.

TSCA was enacted in 1976 and gave EPA the authority to require reporting, recordkeeping, and testing of chemical substances and/or mixtures, as well as to regulate the manufacture, use, and disposal of certain chemicals (including asbestos, radon, polychlorinated biphenyls (PCBs), and lead-based paint). TSCA required manufacturers to notify EPA 90 days before manufacturing a new

chemical. Unless EPA determined that the chemical posed an unreasonable risk within that 90-day period, the chemical could be manufactured and distributed in commerce. However, under the new law, EPA must affirm the safety of a new chemical before it may enter commerce.

Another change is that the Lautenberg Act makes it more difficult for companies to protect confidential business information (CBI) from disclosure. Under certain circumstances, CBI may be disclosed to states and to health and environmental professionals. In addition, manufacturers must now substantiate certain CBI claims. Even after CBI protection is granted, it lasts only 10 years unless the company requests and is granted an extension.

Although the new bill passed with bipartisan support, preemption was one of the most debated issues. In general, state action on a chemical is preempted when EPA has acted, either by finding a chemical to be safe or by regulating a chemical to address identified risks. However, state actions or requirements that were in place before April 22, 2016, and actions taken pursuant to state laws that were in effect as of August 31, 2003, will remain in effect. State action is temporarily "paused" when EPA is evaluating a chemical, although states can apply for waivers from the general and "pause" preemptions.

Lastly, EPA can now collect up to \$25 million annually in user fees from chemical manufacturers and processors when they take certain actions, including submitting test data for EPA review or requesting that EPA conduct a chemical risk evaluation. Before collecting fees, EPA is required to publish a proposed rule, obtain public comment, address the comments, and then finalize the rule. Prior to proposing a rule, EPA will consult with parties subject to the fees, as required by the Act.

Staff has been monitoring the progress of this legislation because of its potential impacts on California regulations (e.g., green chemistry, Proposition 65, chemical assessments, and other hazardous material regulations) due to its preemption provisions, its chemical assessment provisions and prioritization of chemicals selected for review, and its potential effects on certain federal regulations. Staff will continue to monitor EPA's implementation of the new law and its impacts in California.



Other Activities

Finance

On June 30, 2016, Metropolitan posted the official statement for \$239,455,000 Water Revenue Refunding Bonds, 2016 Series A to refund certain Water Revenue Bonds and Water Revenue Refunding Bonds that were originally issued in

2005 and 2006. Legal Department staff attorneys worked with finance, engineering and resources staff to prepare Appendix A to the official statement and assisted outside bond counsel with the bond documents and closing.

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>																		
Government Code Claims	3	Claims submitted by three individuals that claim (1) water from MWD aqueduct drained into claimant's planted field, (2) MWD repair work involved the use of heavy machinery and caused cracks in claimant's house, and (3) security arm in MWD parking garage came down and damaged vehicle																		
Requests Pursuant to the Public Records Act	17	<table border="1"> <thead> <tr> <th><u>Requestor</u></th> <th><u>Documents Requested</u></th> </tr> </thead> <tbody> <tr> <td>California Data Collaborative</td> <td>Rebate data for turf removal and water saving devices</td> </tr> <tr> <td>Center for Contract Compliance (2 requests)</td> <td>(1) Contract information for DVL East Marina Restroom Facility, and (2) Diemer Electrical Improvements-Stage 2</td> </tr> <tr> <td>CivilSource</td> <td>Information on MWD substructure facilities in Culver City</td> </tr> <tr> <td>Graduate Student, Colorado School of Mines</td> <td>Annual water supply data for all supply sources from 1990-2014</td> </tr> <tr> <td>eRepublic</td> <td>Award documents relating to MWD request for bids for enterprise security</td> </tr> <tr> <td>FionaHutton & Associates</td> <td>Proposals submitted in response to MWD request for proposals for Public Outreach Planning for the Potential Regional Recycled Water Supply Program</td> </tr> <tr> <td>Food & Water Watch</td> <td>Documents relating to MWD plans to purchase land from Delta Wetlands Properties</td> </tr> <tr> <td>Office of Assemblymember Jimmy Gomez</td> <td>Turf removal rebate data for addresses within the Assemblymember's district</td> </tr> </tbody> </table>	<u>Requestor</u>	<u>Documents Requested</u>	California Data Collaborative	Rebate data for turf removal and water saving devices	Center for Contract Compliance (2 requests)	(1) Contract information for DVL East Marina Restroom Facility, and (2) Diemer Electrical Improvements-Stage 2	CivilSource	Information on MWD substructure facilities in Culver City	Graduate Student, Colorado School of Mines	Annual water supply data for all supply sources from 1990-2014	eRepublic	Award documents relating to MWD request for bids for enterprise security	FionaHutton & Associates	Proposals submitted in response to MWD request for proposals for Public Outreach Planning for the Potential Regional Recycled Water Supply Program	Food & Water Watch	Documents relating to MWD plans to purchase land from Delta Wetlands Properties	Office of Assemblymember Jimmy Gomez	Turf removal rebate data for addresses within the Assemblymember's district
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	Planning and Conservation League	Documents regarding MWD's investigation and analysis of intake location, design or sizing alternatives to the WaterFix proposal
	Private Citizens (2)	(1) MWD letter regarding proposed equestrian trail over MWD pipeline, and (2) communications relating to a turf removal rebate application in Encinitas
	Sierra Club of California	Environmental Impact Reports and monitoring reports for the Foothill Feeder maintenance projects
	SmartProcure	Data on MWD purchase orders from 02/17/2016-present
	Three Valleys Municipal Water District	Inventory of enterprise systems
	United States Navy BRAC PMO West	Historical water service agreement and records for the former Marine Corps Air Station Tustin and El Toro
	Wood Smith Henning & Berman LLP	Procedures and chemicals for the treatment and disinfection of water purchased, sold and received by MWD
Subpoena	1	Workers' Compensation Appeals Board subpoena for employment records of former MWD employee for claims unrelated to MWD
Other Matters	2	(1) California Department of Fair Employment and Housing Notice of Filing of Discrimination Complaint against MWD, and (2) wage garnishment