



## Matters Impacting Metropolitan

### ***Property Reserve, Inc. v. Superior Court (Dept. of Water Resources) (California Supreme Court)***

This case involves the constitutionality and applicability of provisions in the eminent domain law that authorize public agencies to enter private property for purposes of performing investigations, surveys, and testing, including borings, that are reasonably related to the potential acquisition of the property for public use. The Department of Water Resources sought to use these statutes to perform geological and environmental studies both for gathering environmental information and determining whether properties were appropriate for acquisition for the Bay Delta Conservation Plan/California WaterFix.

The trial court authorized the environmental studies to proceed with detailed criteria, but prohibited drilling to obtain geological information. Both DWR and the property owners appealed. In a split decision, the court of appeal held that the pre-condemnation statutes are facially unconstitutional under California's Just Compensation clause because they allow a "taking" of property without first bringing an eminent domain action. DWR's petition for review by the California Supreme Court was granted.

On July 21, the Supreme Court issued its decision reversing the court of appeal in its entirety. The Supreme Court held that the pre-condemnation provisions of the eminent domain law are legally sufficient to authorize both the geological and environmental activities.

The Court determined that the judicial procedures established in the statutes provide the constitutionally required means for the property owner to have a hearing and recover "just compensation" for the use of, and any damage to, the property, provided that the owner is entitled to have the amount of compensation decided by a jury. However, the Court rejected the court of appeal's ruling that the owner is entitled to fair market rent for the period that DWR is allowed entry on the property.

The Supreme Court's decision will allow DWR to proceed with its investigatory activities on private property subject to payment of such compensation as may be awarded to the owners. The ruling will also benefit other public agencies that use the pre-condemnation procedures to investigate potential property acquisitions for public projects. Metropolitan's attorneys assisted the State Water Contractors in preparing amicus briefs in support of DWR in both the court of appeal and Supreme Court. (See May 2014 Activity Report.)

## Cases to Watch

### ***Pacific Coast Federation of Fishermen's Associations v. U.S. Bureau of Reclamation (United States Court of Appeals, Ninth Circuit)***

On July 25, 2016, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit issued an unpublished opinion holding that the U.S. Bureau of Reclamation's Environmental Assessment/FONSI (Finding of No Significant Impact) of eight interim 2-year contract extensions for Central Valley Project (CVP) contracts violated the National Environmental Policy Act (NEPA).

The court based its ruling on two flaws in the EA/FONSI. First, it held that the no action

alternative should have assumed that the contracts would not be renewed because under the Central Valley Project Improvement Act (CVPIA), the interim renewals are discretionary, not mandatory. Second, the panel ruled that: "Reclamation's decision not to give full and meaningful consideration to the alternative of a reduction in maximum interim contract water deliveries [in the EA] was an abuse of discretion, and the agency did not adequately explain why it eliminated this alternative from detailed study."

There is no immediate impact on water deliveries because the amendments at issue in the case were completed in 2014. The court found the matter is not moot because of on-going contract extensions. The court did not expressly require the Bureau to prepare a full



Environmental Impact Statement (EIS) for the contract amendments. The Bureau may be able to revise the EA/Fonsi to meet legal requirements.

Because the panel's opinion is unpublished, it cannot be cited as precedent in any other context outside this particular case, or any

related cases involving CVP interim contract renewals. Thus, the case does not call into question the environmental analysis for the BDCP/California WaterFix. Nor does it suggest that Delta conveyance must be reduced to comply with NEPA generally.

## Other Activities

### Finance

On July 26, 2016, Metropolitan posted the remarketing statements for \$104,180,000 Water Revenue Refunding Bonds, 2009 Series A-2 and \$128,605,000 Water Revenue Refunding Bonds, 2011 Series A-1 and 2011 Series A-3. Legal Department staff attorneys worked with Finance staff and bond counsel to prepare the remarketing statements.

### Continuing Legal Education

In its continuing effort to provide staff with updated relevant training, the Legal Department invited Kiko Korn of Legal Writing Works. The three hour continuing legal education workshop on legal writing titled, "Writing That Shines: Advanced Editing Strategies for Litigators" was conducted on July 27. Staff attorneys and legal analysts attended the workshop.

## Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Government Code Claims	2	Claims submitted by Progressive Insurance and State Farm on behalf of their insureds for damages from accidents involving MWD vehicles	
Requests Pursuant to the Public Records Act	18	<u>Requestor</u>	<u>Documents Requested</u>
		Alpine Technical Services	Bid tabulation for bulk liquid ferric chloride
		Armstrong & Brooks Consulting Engineers	Location of any MWD structures along South Figueroa Street, Los Angeles
		Associated Press Reporter	Turf removal rebate data
		Carnegie Mellon University, Master's Candidate	Sources of water in the Sylmar Basin
		Claremont Graduate University, Research Associate Professor	Turf removal rebate data
		Corona Department of Water & Power	GIS files for MWD pipeline in Corona, CA
		Corona Police Department	Contract award documents for on-call services for environmental, safety, technical and operations training
		Donahoo & Associates	Contract, inspection and payment records relating to the Sepulveda Feeder Stray Current Mitigation Project



<u>Category</u>	<u>Received</u>	<u>Description</u>
	eRepublic	Contract award documents for safety data sheet management services
	Imperial Irrigation District	Salary and benefits data and job descriptions for MWD professional and supervisory classes
	Las Virgenes Municipal Water District	Commercial and industrial conservation rebate data for recipients within the Las Virgenes service area
	Office of Assemblymember Adrin Nazarian	Turf removal rebate data for addresses within the Assemblymember's district
	Phillips & Rickards	Video footage from MWD Union Station headquarters parking level
	Private Citizen	Status of turf removal rebate application in Encinitas, CA
	Ventura Water	MWD Technical Memo-Conservation Savings Model: Methodology and Assumptions
	Weck Laboratories	Cost schedule for awarded contract for Analytical Laboratory Testing Services
	WestWater Research	Documents relating to the 2001 transfer agreement between Arvin Edison Water District and MWD
	Yale University, Doctoral Candidate	Percentage of turf removal rebates paid to customers versus contractors under the contractor direct rebate option
Subpoena	2	Subpoenas for payroll records for matters unrelated to MWD
Other Matters	4	(1) Request from the Orange County District Attorney's Office for documents on the Second Lower Feeder Stray Current Mitigation project, (2) two wage garnishments, and (3) request for verification of income and benefits for matter unrelated to MWD