



Metropolitan Cases

Delta Stewardship Council Cases

On August 23, 2016, the Delta Stewardship Council filed and served notices of appeal in the four cases where the petitioners prevailed in part:

- *California Water Impact Network, et al.*
- *Central Delta Water Agency, et al.*
- *North Coast Rivers Alliance, et al.*
- *Save the California Delta Alliance*

The notices are not required to, and do not, state the specific grounds for the appeals. But it is clear from the Council's prior statements and position taken in its motion to clarify the trial court's ruling, it believes that although the Delta Reform Act gives it *discretion* to adopt quantified or otherwise measurable targets for reduced reliance, more natural functional flows, reduced impacts from invasive species, and more reliable water supplies, the Act does not *require* the Council to do so, as the trial court ruled.

Metropolitan and other state and federal water contractors are already parties to the four cases above because they successfully intervened. The state and federal water contractors will have the opportunity to file notices of appeal in their own cases once the judgments are entered.

All appeals in the coordinated cases will be heard in the Third District Court of Appeal in Sacramento. Absent an order from the Court of Appeal to the

contrary, the trial court's final judgments and orders are suspended pending the outcome of the appeals, meaning the Delta Plan and associated regulations will remain in effect pending the outcome on appeal.

Briefing should take several months, after which the Court of Appeal will hold oral argument and ultimately issue an opinion. Although there is no mandatory deadline for a decision, it would not be unusual if the opinion issued in late 2017 or early 2018.

San Diego County Water Authority v. MWD **(Los Angeles County Superior Court)**

On August 24, 2016, San Diego County Water Authority (SDCWA) filed in Los Angeles County Superior Court, and on August 25, 2016, it served, a Verified Petition for Writ of Mandate against Metropolitan. The Petition alleges Metropolitan violated the California Public Records Act (PRA) in providing to SDCWA the financial data used in and the output of Metropolitan's financial planning model, but not the computer software itself. Metropolitan developed the software, which consists of formulas and programming code, and contends it is proprietary and not disclosable under the PRA. On August 29, 2016, SDCWA served a motion to transfer the case to San Francisco Superior Court, which is set for hearing on November 15, 2016.

Cases to Watch

Navajo Nation Files Lawsuit Against EPA Over Gold King Mine Spill

The Navajo Nation filed a lawsuit in the U.S. District Court for the District of New Mexico against the U.S. Environmental Protection Agency (EPA), Environmental Restoration, LLC (EPA's contractor), Kinross Gold Corporation, and others for the August 2015 Gold King Mine spill.

EPA's contractors accidentally caused the spill when they were excavating collapsed debris at the entrance of the abandoned mine. As a result of

the spill, over 3 million gallons of acid mine drainage and 880,000 pounds of heavy metals, including lead, cadmium, copper, mercury, and zinc, were released into the Animas River which merges with the San Juan River in New Mexico. The San Juan River flows through the Navajo Reservation in New Mexico and Utah before reaching Lake Powell. The complaint includes causes of action for cost recovery and declaratory judgment under CERCLA (the federal Superfund law), and damages for negligence, trespass, and nuisance.



The *Navajo* lawsuit follows a similar action filed by the State of New Mexico. (See General Counsel’s May 2016 Activity Report.) Utah has also notified EPA of its intent to sue under RCRA (the federal hazardous waste management law) and the Clean Water Act. Metropolitan staff will continue to monitor the Navajo and New Mexico lawsuits and any other actions filed against EPA as a result of the Gold King Mine spill.

11th Circuit Stays Appeal of Clean Water Rule

On August 16, 2016, the U.S. Court of Appeals for the Eleventh Circuit decided to stay the appeal in that court pending a ruling by the Sixth Circuit on the validity of the Clean Water Rule (also known as the Waters of the United States (WOTUS) Rule) or until further order of the Eleventh Circuit. The Eleventh Circuit found that it would be “a colossal waste of judicial resources for both this Court and the Sixth Circuit to undertake to decide the same issues about the same rule presented by the same parties.” The Court stated that “[i]f there were an exhibition hall for prudential restraint on the exercise of judicial authority, this case could be an exemplar in the duplicative litigation wing.” In addition, the Eleventh Circuit believes the Sixth Circuit is “the obvious court” to decide the issue because it is “significantly farther along the decisional path” than the Eleventh Circuit. If the Sixth Circuit holds that the rule is invalid, that will end the matter, subject to the possibility of all the Sixth Circuit judges reconsidering the decision

(en banc review) and review by the U.S. Supreme Court. The Eleventh Circuit further reasoned that the Sixth Circuit’s decision will likely narrow and refine, if not make moot, at least some of the issues that the Eleventh Circuit had asked the parties to brief.

In June 2015, the EPA and the U.S. Army Corps of Engineers (Corps) jointly published revisions to the Clean Water Rule which defines the scope of waters protected under the Clean Water Act. Many cases contesting the new Rule were filed in various federal district courts and appellate courts. The federal appellate court cases were consolidated in the Sixth Circuit, except for one case in the Eleventh Circuit. Most of the challenges filed in federal district courts have been dismissed voluntarily by the parties or for lack of jurisdiction by the courts. Plaintiffs in two cases filed in the Northern District of Oklahoma have appealed the dismissal of their cases to the U.S. Court of Appeals for the Tenth Circuit. The parties are currently briefing that appeal.

The next step for the Sixth Circuit is to rule on the merits of plaintiffs’ claims and to decide whether the revised Clean Water Rule is valid and lawful. In the meantime, the nationwide stay of the rule which the Sixth Circuit issued in October 2015 remains in effect. While the stay is in place, the prior regulations still govern. Metropolitan staff will continue to track this litigation. (See General Counsel’s June 2016 Activity Report.)

Other Matters

Continuing Legal Education

The Legal Department held continuing education session titled, “Ethics in E-Discovery: Changing Standards in Competence, Confidentiality, and Cooperation.” The one-hour continuing legal

education session was conducted on August 24. Staff attorneys, legal analysts and attorneys from the Ethics Office attended the session that was provided by Driven, Inc.

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>
Actions in which MWD is a party	1	Verified Petition for Writ of Mandate, Injunctive and Declaratory Relief for Violations of the California Public Records Act filed in <i>San Diego County Water Authority v. MWD</i> , in Los Angeles County Superior Court, relating to San Diego’s Public Records Act request dated 02/18/2016



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Government Code Claims	3	Claim submitted by Central Delta Water Agency and County of San Joaquin for damages as a result of MWD's purchase of property from Delta Wetlands Properties, and claims submitted by AAA on behalf of their insured and by an individual for damages from accidents involving MWD vehicles																						
Subpoenas	2	Subpoena for exterior video from MWD headquarters building for criminal matter unrelated to MWD, and subpoena for employment-related records for workers' compensation matter unrelated to MWD																						
Requests Pursuant to the Public Records Act	22	<table border="1"> <thead> <tr> <th><u>Requestor</u></th> <th><u>Documents Requested</u></th> </tr> </thead> <tbody> <tr> <td>Chamieh Consulting & Industrial Group (2 requests)</td> <td>Statements of Qualifications for (1) Engineering Services for Water Treatment Facilities, Conveyance, Storage & Distribution Facilities, and Large Rotating Equipment, and (2) As-Needed Environmental Site Assessments</td> </tr> <tr> <td>Democratic National Committee</td> <td>Water usage data, charges, violations, complaints relating to properties owned by the Trump Organization</td> </tr> <tr> <td>EnviroMine</td> <td>Records relating to any leases or sales agreements for the extraction and sale of construction aggregate materials</td> </tr> <tr> <td>Fusco Engineering</td> <td>Explanation of ad valorem tax shown on property tax bill</td> </tr> <tr> <td>Integrated Marketing Systems (2 requests)</td> <td>Contract information for (1) On Call General Industrial Hygiene services and (2) Econometric, Statistical, and Water Resource Analysis</td> </tr> <tr> <td>Kemira</td> <td>Bid results for bulk liquid ferric chloride</td> </tr> <tr> <td>Kiewit Infrastructure West</td> <td>MWD construction permit (request withdrawn)</td> </tr> <tr> <td>Kimley-Horn</td> <td>As-built drawings for substructures near El Camino College</td> </tr> <tr> <td>Mayers & Associates Civil Engineering</td> <td>Existing water plans for location in City of Murrieta</td> </tr> <tr> <td>Office of City of San Diego Councilmember Chris Cate</td> <td>Data on rebates for weather-based irrigation controllers</td> </tr> </tbody> </table>	<u>Requestor</u>	<u>Documents Requested</u>	Chamieh Consulting & Industrial Group (2 requests)	Statements of Qualifications for (1) Engineering Services for Water Treatment Facilities, Conveyance, Storage & Distribution Facilities, and Large Rotating Equipment, and (2) As-Needed Environmental Site Assessments	Democratic National Committee	Water usage data, charges, violations, complaints relating to properties owned by the Trump Organization	EnviroMine	Records relating to any leases or sales agreements for the extraction and sale of construction aggregate materials	Fusco Engineering	Explanation of ad valorem tax shown on property tax bill	Integrated Marketing Systems (2 requests)	Contract information for (1) On Call General Industrial Hygiene services and (2) Econometric, Statistical, and Water Resource Analysis	Kemira	Bid results for bulk liquid ferric chloride	Kiewit Infrastructure West	MWD construction permit (request withdrawn)	Kimley-Horn	As-built drawings for substructures near El Camino College	Mayers & Associates Civil Engineering	Existing water plans for location in City of Murrieta	Office of City of San Diego Councilmember Chris Cate	Data on rebates for weather-based irrigation controllers
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	Planning and Conservation League	Records relating to MWD's consideration of alternative measures or efforts to ensure water reliability should the California WaterFix not go forward
	Polder Advisors	Budget and actual sales data on water charges
	Private Citizens (2 requests)	(1) Attendance, payment, expenditure records relating to Director Martinez, (2) data on properties owned by Metropolitan in the Oakridge Ranches Association
	Transparent California	MWD employee compensation report for 2015
	Graduate Student, UCLA Luskin School of Public Policy	Enterprise systems catalog (request withdrawn)
	United Storm Water	Bid results for removal and disposal service
	WestWater Research (2 requests)	Water purchase contracts and volumes of water purchased relating to Yuba County Water Agency and San Bernardino Valley Water District
	Xerox Corporation	Data on MWD leased copiers and printers
Other Matters	2	Letter and notice from Shasta Indian Nation to MWD regarding land purchase from Delta Wetlands Properties, and State Controller's Office request for records relating to the Riverside Orange Corridor Authority Joint Powers Agreement