



Metropolitan Cases

Settlement of Delta Islands CEQA case: *North Coast Rivers Alliance v. Metropolitan Water District of Southern California, et al.* (Contra Costa County Superior Court)

On September 27, Metropolitan entered into a settlement agreement with petitioners North Coast Rivers Alliance (NCRA) and Pacific Coast Federation of Fishermen's Associations (PCFFA) to settle CEQA litigation challenging the adequacy of the CEQA analysis completed by Metropolitan for the purchase of land in the San Joaquin-Sacramento Delta (Delta Islands).

Three CEQA cases were filed after Metropolitan's Board approved the purchase. One is still pending in San Joaquin County. The two other cases were filed by the same legal counsel with NCRA, the petitioner in Contra Costa County and PCFFA in Solano County. The cases were essentially combined when the Solano County case was dismissed on July 15 and the Contra Costa case was amended to add PCFFA.

The petitioners in the third CEQA action are the County of San Joaquin, Central Delta Water Agency, County of Contra Costa, Contra Costa County Water Agency, Food & Water Watch, and Planning and Conservation League. After extensive proceedings in the San Joaquin action in the superior and appellate courts, on July 14, the California Supreme Court upheld the lower court rulings, refusing to enjoin the purchase. Metropolitan closed escrow and bought the Delta Islands on July 18, 2016.

On September 30, in accordance with the terms of the settlement, the Contra Costa case was dismissed with prejudice as to all parties. The primary settlement terms are:

1. Petitioners dismissed the petition with prejudice (it cannot be re-filed) and waived all claims relating to the Purchase and Sale Agreement.
2. The parties waived any claims for attorneys' fees or costs.
3. Metropolitan agreed that its notices of exemption for the purchase of the Delta Islands apply only to the land transaction. Metropolitan will not attempt to apply the prior CEQA action to any future projects involving the Delta Islands and will conduct further CEQA review, to the extent required by law, for any future projects involving the Delta Islands.
4. Metropolitan agreed to provide petitioners with notice of any future proposed Projects, as defined by CEQA, until September 27, 2018.

The San Joaquin action is the sole CEQA challenge still pending; no court dates are on calendar. The parties are waiting for petitioners to complete and file the administrative record. Metropolitan has offered to engage in discussions to settle this matter.

A contract case, *Central Delta Water Agency, et al. v. Delta Wetlands Properties, et al.*, Contra Costa County Superior Court Case No. C16-01022, is still pending. In that case, plaintiffs Central Delta Water Agency and the County of San Joaquin allege, among other claims, that Metropolitan intentionally interfered with the Protest Dismissal and Settlement Agreements between plaintiffs and Delta Wetlands Properties. Plaintiffs have amended their complaint twice, filing a Second Amended Complaint on September 23. The defendants' responses are due by October 25.

Cases to Watch

EPA and NRDC Reach Tentative Settlement of Perchlorate Lawsuit

On September 28, 2016, the U.S. Environmental Protection Agency (EPA) notified a New York federal district court that EPA and the Natural

Resources Defense Council (NRDC) had reached a tentative resolution of NRDC's lawsuit which seeks to compel EPA to set a drinking water standard for perchlorate. The settlement is subject to final government approval. Accordingly, the court granted the parties' request to extend the



deadline from October 5, 2016 to October 12, 2016, for NRDC to file a motion for summary judgment on the question of when EPA must issue a final rule for perchlorate regulations.

The terms of the proposed settlement have not been publicly released.

On September 19, 2016, the court found that EPA failed to meet the deadline to propose regulations for perchlorate in drinking water. The court ruled that EPA's February 11, 2011 determination to regulate perchlorate triggered a non-discretionary duty under the Safe Drinking Water Act (SDWA) for EPA to propose a maximum contaminant level goal and a national primary drinking water regulation for perchlorate by February 11, 2013.

EPA acknowledges missing the deadline to propose regulations. The dispute relates to the deadline for adopting final regulations.

NRDC claims that the regulations must be final 18 months after the 2-year deadline (February 2013) to propose the regulations. EPA says the 18 months to finalize the regulations starts when the regulations are proposed. Since they have not yet proposed regulations, EPA contends the time to approve final regulations has not yet started.

Metropolitan staff will continue to monitor NRDC's lawsuit against EPA. (See General Counsel's May 2016 Activity Report.)

Other Matters

Finance

On September 8, 2016, Metropolitan remarketed its \$104,820,000 Special Variable Rate Water Revenue Refunding Bonds, 2013 Series E. Legal Department staff attorneys prepared bond documents.

On September 14, Metropolitan posted the Official Statement for \$103,670,000 Special Variable Rate Water Revenue Refunding Bonds, 2016 Series B-1 and 2016 Series B-2, to issue bonds to refund Metropolitan's Water Revenue Refunding Bonds, 2008 Series A-2 and to refund outstanding Tax-Exempt Flexible Rate Revolving Notes, Series 2016 B-1. Legal Department staff attorneys assisted Finance staff and outside bond counsel with the preparation of the Official Statement, bond documents and closing.

Metropolitan and Landesbank Hessen-Thüringen Girozentrale executed Standby Bond Purchase Agreements, each dated September 1, 2016, to provide liquidity support for Metropolitan's Special Variable Rate Water Revenue Refunding Bonds 2016 Series B-1 and 2016 Series B-2. Legal

Department staff attorneys worked with Finance staff, bank counsel and outside bond counsel to negotiate and deliver the agreements.

Job Fair

On October 5, a Metropolitan staff attorney will attend Loyola Law School's Government Fair. The objective of Loyola's Government Fair is to educate students and new alumni about the variety of career opportunities available to attorneys in government and is attended by representatives from numerous federal, state, and local agencies.

Continuing Legal Education

On September 21, the Legal Department provided a continuing education session titled, "The Tale that Wags the Dog – Finding Your Most Persuasive Trial Story." The one and one-half hour continuing legal education session was presented by Sarah Murray of Trialcraft Inc., a jury consulting firm. Staff attorneys, legal analysts and attorneys from the Ethics Office attended the session.

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>
Government Code Claims	4	Claims submitted by individuals for auto accidents involving MWD vehicles



<u>Category</u>	<u>Received</u>	<u>Description</u>	
Subpoena	1	Subpoena for production of payroll records for matter unrelated to Metropolitan	
Requests Pursuant to the Public Records Act	9	<u>Requestor</u>	<u>Documents Requested</u>
		Abatti Companies	Lease agreements and renewals relating to HayDay Farms and River Valley Ranches
		Bloomberg Businessweek	Updated data on amounts paid to Turf Terminators for turf removal rebates
		Calichi Design Group	Map of any substructures near a location on Jamboree Road in Newport Beach
		Cerrell Associates	Any MWD contracts with Evolution Energy or Enovative Group
		Environment Now	Cost data for indoor and outdoor water saving devices
		GHD	Data on energy requirements to transport water from the State Water Project and Colorado River Aqueduct to Southern California
		Los Angeles County Department of Public Works	Easement records for MWD waterline on county property
		MC Consultants	Code of safety practices for MWD treatment facilities
Pace Analytical Services	Bid and pricing information relating to Request for Proposal for Laboratory Testing Services		