



## Metropolitan Cases

**“Monterey Plus” Cases: *Central Delta Water Agency, et al. v. Department of Water Resources (Central Delta I)* (Sacramento County Superior Court and Third District Court of Appeal); *Rosedale-Rio Bravo Water Storage District, et al. v. Department of Water Resources (Rosedale)*, *Center for Food Safety, et al. v. Department of Water Resources* (Sacramento County Superior Court)**

This series of cases concerning the Monterey Amendments originates with litigation filed over two decades ago challenging a 1995 Environmental Impact Report (EIR) and approvals for this amendment to the State Water Project (SWP) delivery contracts.

The Monterey Amendments arose out of disputes between agricultural and urban SWP contractors principally over the allocation of SWP supplies in times of drought. To settle the disputes and avoid litigation, the SWP contractors and the Department of Water Resources (DWR) entered into mediation leading to a settlement agreement that called for certain revisions to the delivery contracts. The Monterey Amendments implement the settlement agreement and consist of three general types of contract provisions: (1) water management provisions that promote more efficient and flexible use of the SWP facilities, including facilitation of transfers and storage programs, (2) water allocation provisions that simplify the contracts and allocate water among both agricultural and urban contractors on the same basis, and (3) financial provisions. Included in these provisions is the transfer of lands from the state to the Kern County Water Agency for the development and operation of the Kern Water Bank.

The 1995 EIR was the subject of litigation filed by the Planning and Conservation League and two other petitioners. Although the trial court upheld the EIR, in 2000 the Third District Court of Appeal ruled the EIR process did not comply with the California Environmental Quality Act (CEQA) and the EIR was decertified. After several years of negotiations, a settlement was reached in 2003 that called for preparation of a new EIR for the Monterey Amendments, as well as more detailed reporting of the SWP’s delivery capability and

public participation on future contract amendments. The 2003 settlement and court order allowed DWR to continue to operate the SWP according to the provisions of the Monterey Amendments.

In 2010 DWR certified the new EIR and filed a notice of determination. A new round of litigation was then filed in Sacramento County Superior Court.

One of the 2010 lawsuits, referred to as “*Central Delta I*,” was brought against DWR by environmental organizations, including the Center for Biological Diversity and two Delta water agencies. This case raised multiple CEQA claims on wide-ranging aspects of the Monterey Amendments and also challenged the validity of underlying contracts. Metropolitan and the other SWP contractors were named as parties to this case because of the contractors’ interests in the delivery contracts. Another case, the “*Rosedale*” case, was brought by two Kern County water storage districts and focused its EIR challenges on the analysis of the Kern Water Bank. In 2014, the trial court ruled in both cases concluding that a portion of the EIR was defective in its analysis of the Kern Water Bank. All other claims were dismissed. The petitioners in *Central Delta I* appealed; that case has been fully briefed and is now awaiting oral argument in the Third District Court of Appeal.

Meanwhile, DWR settled with the *Rosedale* petitioners by agreeing to conclude the litigation, settle an attorney fee claim, and prepare a revised EIR for the Kern Water Bank component. In April 2016, DWR issued its Draft Revised EIR for the project. In September, DWR certified the Final Revised Draft EIR, recorded a Notice of Determination, and filed papers in the trial demonstrating compliance with the court’s order for remedial CEQA review.

Now, nearly 21 years since the original litigation was filed, a new lawsuit has been filed challenging this latest EIR for the Monterey Amendments. On October 21, essentially the same petitioner group from the *Central Delta I* case filed this CEQA lawsuit in Sacramento County against DWR and named Metropolitan and the other SWP contractors as respondent parties. Staff will



continue to participate with the State and the other SWP contractors in defending the Monterey Amendments.

## Cases to Watch

### EPA Has Agreed To Propose Perchlorate Regulations by October 2018

On October 18, 2016, a New York federal district court judge approved a Consent Decree between the U.S. Environmental Protection Agency (EPA) and the Natural Resources Defense Council (NRDC) resolving NRDC's lawsuit that sought to compel EPA to set a drinking water standard for perchlorate. According to the Consent Decree, the parties agreed to the following deadlines regarding perchlorate regulations: (1) EPA must complete the external peer review process by October 18, 2017; (2) EPA must propose a maximum contaminant level goal (MCLG) and national primary drinking water regulation (NPDWR) for perchlorate by October 31, 2018; and (3) EPA must issue a final MCLG and NPDWR for perchlorate by December 19, 2019. NRDC and

EPA may stipulate to extend any deadline in the Consent Decree and must notify the court of any such extension. EPA and NRDC will try to resolve informally NRDC's claim for litigation costs within 90 days of October 18, 2016. If they cannot, NRDC may file a motion for its litigation costs, including attorney's fees.

Previously on September 19, 2016, the court found that EPA had failed to meet the deadline to propose regulations for perchlorate in drinking water. EPA's February 11, 2011 determination to regulate perchlorate triggered a non-discretionary duty under the Safe Drinking Water Act for EPA to propose a MCLG and a NPDWR for perchlorate by February 11, 2013. Metropolitan staff will continue to monitor EPA's regulation of perchlorate and NRDC's claim for litigation costs. (See General Counsel's September 2016 Activity Report.)

## Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>				
Actions in which MWD is a party	1	Complaint filed in <i>Walters Wholesale Electric Co. v. Kana Engineering Group, Inc., Fidelity and Deposit Co., and MWD</i> , in Los Angeles County Superior Court, relating to monies owed to plaintiff by Kana Engineering for electrical materials furnished for the Weymouth solar project				
Government Code Claim	1	Claim submitted by individual for auto accident involving MWD vehicle				
Subpoenas	2	(1) Subpoena for records relating to certain turf removal rebates for a lawsuit unrelated to MWD, and (2) subpoena for employment-related records for a workers' compensation matter				
Requests Pursuant to the Public Records Act	20	<table border="1"> <thead> <tr> <th><u>Requestor</u></th> <th><u>Documents Requested</u></th> </tr> </thead> <tbody> <tr> <td>Action Transportation</td> <td>Contract information for MWD shipping or trucking department</td> </tr> </tbody> </table>	<u>Requestor</u>	<u>Documents Requested</u>	Action Transportation	Contract information for MWD shipping or trucking department
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Associated Press Reporter	Agreements, communications, and work product relating to consulting work on Bay-Delta issues, water projects, and the California WaterFix
Claremont Graduate University Professor	Turf removal rebate data for the period 2009-2013
Hardy Engineering	Substructure map for MWD water main along Sepulveda Boulevard
Individual Journalist	MWD staff emails and payments paid to and invoices submitted by Ron Gastelum
Macias Gini & O'Connell	2013 Proposals for external audit services
Orange County Water District	General mineral and physical analysis of MWD water supplies from the Diemer Treatment Plant for July 2015-June 2016
PlaceWorks	Average flow output for each of MWD's five water treatment plants in 2015
Ponderosa Advisors	GIS data for MWD conveyance system, including reservoirs, pipelines, and canals along the Colorado River Aqueduct
Private Citizen	Population in 1960 within MWD's service area
Restore the Delta	Records relating to MWD's presentation at the International Tunneling Conference in Los Angeles
Riverside County Fire Department	GIS data on MWD hydrant locations within Riverside County
San Diego County Water Authority	Appraisals and closing escrow statements for property purchased under the Purchase and Sale Agreement and Joint Escrow Instructions between Delta Wetlands Properties and MWD on 04/08/2016



		San Diego Union-Tribune Reporter	Turf removal rebate data for retail water agencies in San Diego County
		City and County of San Francisco	Road easement for Chino Hills State Park and 2008 temporary use permit for the mitigation contingency
		Santa Clara Valley Water District	Organizational charts for MWD procurement and contracting services
		SmartProcure	Data on MWD purchase orders from 06/09/2016-10/02/2016
		UC Santa Barbara Student	Sources of MWD supply and amounts of water supplied
		Xerox	Records on make and model and lease expiration for MWD copiers/printers
Other Matters	1	Wage garnishment	