



Cases to Watch

Water Transfers Rule Litigation

On April 18, 2017, the U.S. Court of Appeals for the Second Circuit denied a petition to rehear its January 18, 2017 ruling on the Water Transfers Rule. As previously reported, on January 18, the Second Circuit upheld the Environmental Protection Agency's (EPA) Water Transfers Rule, reversing the trial court's prior decision to vacate the rule and remand to the EPA. The Water Transfers Rule is EPA's regulation that exempts transfers of water between water bodies that are subject to Clean Water Act jurisdiction from the National Pollutant Discharge Elimination System (NPDES) permit requirements. Metropolitan and

the other Western Water Providers intervened in the consolidated cases in federal District Court for the Southern District of New York and also filed a reply brief in the Second Circuit Court of Appeals in support of the appeal. Plaintiffs in this case may still seek review by the U.S. Supreme Court within 90 days of the denial of the petition for rehearing. The Western Water Providers are represented in the case by Peter Nichols of Berg, Hill, Greenleaf & Ruscitti LLP of Boulder, Colorado. Metropolitan provided legal review of the Western Water Providers' opening and reply briefs. (See General Counsel's February 2017 Activity Report.)

Matters Impacting Metropolitan

EPA Has Requested Comments on the Definition Of "Waters Of The U.S."

At a meeting on April 19, 2017, the EPA requested comments from state and local governments on how to rewrite the "Waters of the U.S." (WOTUS) rule. EPA and the U.S. Army Corps of Engineers (Corps) are reviewing the rule pursuant to President Trump's February 28, 2017 Executive Order which directed the agencies to review and either rescind or revise the rule. The Executive Order also instructed the agencies to consider interpreting the term "navigable waters" in a manner consistent with Justice Scalia's plurality opinion in *Rapanos*. Justice Scalia's opinion indicates Clean Water Act (CWA) jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

EPA and the Corps are implementing the Executive Order in two steps. First, they will withdraw the Clean Water Rule and reinstate the regulation that was in place before they issued the Clean Water Rule. Second, they will propose a new definition of WOTUS that reflects the principles in Justice Scalia's opinion. In its meeting presentation, EPA showed potential approaches to both: (1) "relatively permanent" waters, and

(2) wetlands with a "continuous surface connection." (EPA's presentation is available at: <http://src.bna.com/oal>.) EPA has also requested comments on four groups of questions, including, "How would you like to see the agencies interpret 'consistent with' Scalia?" and "[H]ow would a Scalia approach potentially affect the implementation of state programs under the CWA?" Comments are due by June 19, 2017, and should be sent to CWAwotus@epa.gov with a copy to Hanson.Andrew@epa.gov.

Meanwhile, litigation regarding the Clean Water Rule continues. On April 27, 2017, petitioner National Association of Manufacturers (NAM) filed its opening brief on the merits with the U.S. Supreme Court. NAM argued that the Sixth Circuit lacks jurisdiction to hear challenges to the Clean Water Rule based on the plain language of the CWA and policy considerations. States, industry groups, and the Utility Water Act Group filed briefs supporting NAM's position that federal district courts, not appellate courts, should hear challenges to the Clean Water Rule. The United States' response brief is due at the end of May. Metropolitan staff will continue to monitor EPA and the Corps' implementation of the Executive Order and litigation regarding the Clean Water Rule.



Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>																												
Government Code Claim	68	68 claims for possible bacterial infections and other injuries due to alleged exposure from contaminated water while claimants were treated at Children's Dental Group in Anaheim																												
Requests Pursuant to the Public Records Act	13	<table border="1"> <thead> <tr> <th><u>Requestor</u></th> <th><u>Documents Requested</u></th> </tr> </thead> <tbody> <tr> <td>AECOM</td> <td>Information on water service provided to addresses in the cities of Compton and Carson</td> </tr> <tr> <td>AFSCME</td> <td>Documents relating to MWD's Unmanned Aerial Vehicle/Drone Program</td> </tr> <tr> <td>CASC Engineering and Consulting</td> <td>Drawings of utilities near project in County of Riverside</td> </tr> <tr> <td>Center for Contract Compliance</td> <td>Contract information for Furnishing Discharge Line Isolation Couplings</td> </tr> <tr> <td>CHJ Consultants</td> <td>Testing, survey and geologic data relating to the Arrowhead Tunnel project</td> </tr> <tr> <td>Claremont Graduate University Student</td> <td>Data on turf removal rebate amounts paid by water providers above the MWD incentive of \$2 per square foot</td> </tr> <tr> <td>Correia-Xavier, Inc.</td> <td>Rates and assessments for agricultural parcels</td> </tr> <tr> <td>Harvey Mudd College, Claremont Fellow</td> <td>Documents relating to the hiring of Arthur D. Little, and the implementation of flavor profile analysis (taste and odor) in MWD's water monitoring practices in the late 1970s-1980s</td> </tr> <tr> <td>JCI Jones Chemicals, Inc.</td> <td>Bid Tabulations for Chlorine and Caustic Soda for Water Treatment</td> </tr> <tr> <td>Private Citizen</td> <td>Drawings for re-pipe work along street in Altadena</td> </tr> <tr> <td>San Diego Union-Tribune</td> <td>Web activity on MWD wireless network on 03/01/2017</td> </tr> <tr> <td>United Mechanical Contractors</td> <td>Documents relating to the Request for Bid for Ventilation Blower Trailer Mounted</td> </tr> <tr> <td>Velas Water</td> <td>Permission to use MWD published water rates & charges</td> </tr> </tbody> </table>	<u>Requestor</u>	<u>Documents Requested</u>	AECOM	Information on water service provided to addresses in the cities of Compton and Carson	AFSCME	Documents relating to MWD's Unmanned Aerial Vehicle/Drone Program	CASC Engineering and Consulting	Drawings of utilities near project in County of Riverside	Center for Contract Compliance	Contract information for Furnishing Discharge Line Isolation Couplings	CHJ Consultants	Testing, survey and geologic data relating to the Arrowhead Tunnel project	Claremont Graduate University Student	Data on turf removal rebate amounts paid by water providers above the MWD incentive of \$2 per square foot	Correia-Xavier, Inc.	Rates and assessments for agricultural parcels	Harvey Mudd College, Claremont Fellow	Documents relating to the hiring of Arthur D. Little, and the implementation of flavor profile analysis (taste and odor) in MWD's water monitoring practices in the late 1970s-1980s	JCI Jones Chemicals, Inc.	Bid Tabulations for Chlorine and Caustic Soda for Water Treatment	Private Citizen	Drawings for re-pipe work along street in Altadena	San Diego Union-Tribune	Web activity on MWD wireless network on 03/01/2017	United Mechanical Contractors	Documents relating to the Request for Bid for Ventilation Blower Trailer Mounted	Velas Water	Permission to use MWD published water rates & charges
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Other Matters	4	<p>(1) Notice of Hospital Lien for reimbursement for emergency and ongoing medical services provided to a patient at Loma Linda University Medical Center, relating to a multi-vehicle accident involving an MWD vehicle</p> <p>(2) Notice of Surface Mining Requirements from the San Bernardino County Land Use Services Department pertaining to MWD parcels near Iron Mountain Pumping Station</p> <p>(3) California Department of Industrial Relations, Division of Labor Standards Enforcement Request for contract and payroll information relating to MWD's procurement contract with Johnson Service Group, which provided skilled labor for work on the Colorado River Aqueduct</p> <p>(4) Complaint for Eminent Domain filed in <i>San Diego Gas & Electric Company ("SDG&E") v. Chikan Kwan and Vanessa Wai Mok, et al.</i>, filed in San Diego County Superior Court relating to SDG&E's permit for the replacement and/or removal of 2100 wood utility poles with new fire resistant, weatherized poles within and near the Cleveland National Forest.</p>