



Matters Impacting Metropolitan

EPA Proposes to Rescind Clean Water Rule and Recodify Previous Regulation

On July 27, 2017, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) published a proposed rule to initiate the first step in a two-step process intended to review and revise the definition of “waters of the United States” (WOTUS). The action was taken to comply with President Trump’s February 28, 2017 Executive Order to rescind or revise the Clean Water Rule.

This first step proposes to rescind the definition of WOTUS, which the agencies promulgated as the “Clean Water Rule” in 2015, and to recodify the prior definition of WOTUS.

As previously reported, multiple cases were filed challenging the 2015 rule. Pursuant to a stay issued by the U.S. Court of Appeals for the Sixth Circuit, the pre-2015 definition currently governs administration of the Clean Water Act.

Comments on the process are due on or before August 28, 2017. Comments on the scope of the proposed definition of WOTUS will be requested as the second step of the process.

The U.S. Supreme Court announced that it will hear oral argument on October 11, 2017 regarding the Sixth Circuit’s nationwide stay of the Clean Water Rule. On appeal is the issue of whether district or circuit courts have jurisdiction to hear challenges to WOTUS rulemaking. The Clean Water Rule’s merits are not at issue. Metropolitan staff will continue to monitor the proposed rule and the litigation regarding the Clean Water Rule. (See

General Counsel’s April and June 2017 Activity Reports.)

State Water Resources Control Board to Withdraw MCL for Hexavalent Chromium

In May 2017, the superior court in the County of Sacramento issued a writ of mandate ordering the State Water Resources Control Board (State Board) to withdraw the regulations establishing the maximum contaminant level (MCL) of 10 parts per billion (ppb) for hexavalent chromium. The court ruled that the regulation is invalid because the California Department of Public Health (the responsible entity at the time the regulation was adopted) failed to properly consider the economic feasibility of complying with the MCL.

The State Board decided not to appeal the court’s ruling and on August 1 adopted a resolution to withdraw the regulation. After the Office of Administrative Law approves the State Board’s proposal to delete the hexavalent chromium MCL regulations, the removal of those regulations will be effective in late September. The State Board will then develop a new MCL for hexavalent chromium. In doing so, the trial court ordered the State Board to comply with the Legislature’s directive to consider the economic feasibility of compliance, with particular attention to the cost for small water systems and their users. In the meantime, the MCL for total chromium of 50 ppb will remain in place. Metropolitan staff will continue to monitor the withdrawal of the current hexavalent chromium MCL and the development of a new MCL.

Cases to Watch

The Sixth Circuit Finds Two Flint Lawsuits Are Not Preempted

On July 28, 2017, the Sixth Circuit Court of Appeals held that the federal Safe Drinking Water Act (SDWA) does not preempt certain claims by Flint residents’ relating to water contamination alleging violations of their constitutional rights under 42 U.S.C. § 1983. In reversing the district

court rulings, the Sixth Circuit reasoned that the constitutional claims could be heard on the merits because: (1) the allegedly harmful constituents are not regulated by the SDWA thus the SDWA does not provide protection to the plaintiffs; (2) the allegations include discriminatory misconduct that is not subject to the SDWA and there is no evidence of Congressional intent to preclude the



Constitutional right to equal protection; (3) the alleged affirmative act put plaintiffs, but not the general public, specifically at risk, and the state knew or should have known that its actions specifically endangered the plaintiffs.

However, the Sixth Circuit affirmed the district court's dismissal of the plaintiffs' claims against the State of Michigan, Governor Snyder, the Michigan Department of Environmental Quality, and the

Michigan Department of Health and Human Services because 11th Amendment sovereign immunity protects states and state officials (but not counties or municipalities) from federal suits.

The court did not rule on the merits of the claims. The ruling was limited to reversing the district court's dismissal of certain claims as precluded by the SDWA. Metropolitan staff will continue to monitor this litigation.

Other Matters

Finance

On June 1, 2017, Metropolitan issued \$238,015,000 Subordinate Water Revenue Refunding Bonds, 2017 Series A to refund certain Water Revenue Bonds and Water Revenue Refunding Bonds that were originally issued in 2006, 2009, 2011 and 2013 and to prepay a California Safe Drinking Water Revolving Fund Loan. On July 3, Metropolitan issued \$80,000,000 Subordinate Water Revenue Bonds, 2017 Series C to pay a portion of Metropolitan's capital expenditures. Also on July 3, Metropolitan issued \$178,220,000 Subordinate Water Revenue

Refunding Bonds, 2017 Series B, \$95,630,000 Subordinate Water Revenue Refunding Bonds, 2017 Series D, and \$95,625,000 Subordinate Water Revenue Refunding Bonds, 2017 Series E, collectively to refund certain Water Revenue Bonds and Water Revenue Refunding Bonds that were originally issued in 2006, 2009, 2011 and 2014 and to refund certain notes under revolving credit facilities. Legal Department staff worked with finance staff, bank counsel, outside bond counsel and disclosure counsel to prepare the Official Statements and other disclosure documents and to negotiate and provide the agreements, notices, certifications and opinions necessary for closing.

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Government Code Claim	1	Claim for erosion of seeded areas on golf course fairway during a dewatering event at Orange County feeder	
Subpoenas	1	Subpoena for records for a workers' compensation matter unrelated to any MWD employee	
Requests Pursuant to the Public Records Act	13	<u>Requestor</u>	<u>Documents Requested</u>
		Albert A. Webb Associates	Utility drawings for area in City of Perris
		American Transparency	MWD employees' salaries in 2016
		GEOSCIENCE Support Services	Operations data from Lake Mathews relating to water release points and quantity of water released from 1996-2016



	<u>Requestor</u>	<u>Documents Requested</u>
	Integro	Proposal documents submitted in response to Digital Asset Optimization request for proposal, relating to software and services to optimize electronic file storage
	Jay Ryan Resources	Utility maps for improvements on 61st Street in Los Angeles
	KCET-TV (3 Requests)	(1) Records relating to MWD's desert housing facilities, final investigation report by Ethics Office, and contract to review Ethics Office, (2) emails to or from Mayor Garcetti or his staff during 2017, (3) second request for contract to review Ethics Office
	Las Vegas Valley Water District	Average monthly residential water use and water bills
	Liberty Utilities	Data on meter calibration for 2016
	Private Citizens (2 Requests)	(1) Diamond Valley Lake hazard mitigation plan; (2) water savings data from MWD's radio and social media campaigns in 2015
	UC Berkeley Student	Counties served by MWD
Other Matters	3	(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 vehicle accident involving an MWD vehicle; and (2) two wage garnishments