



Metropolitan Cases

Food & Water Watch, et al. v. Metropolitan, et al. (Los Angeles Superior Court)

On September 7, 2018, Food & Water Watch (FWW) and Center for Food Safety filed a reverse validation action naming Metropolitan as defendant. The complaint alleges that the Board's July 10, 2018 authorization to fund up to 64.6% of WaterFix costs is invalid because: (1) it is unreasonable and disproportionate to the benefits provided to Metropolitan's ratepayers in violation of Proposition 26; (2) it violates Proposition 13 because it authorizes a property tax in excess of 1% that has not been approved by the voters and is not authorized by the Burns-Porter Act; (3) it is inconsistent with Metropolitan's State Water Contract and other unspecified limitations on Metropolitan's authority; and (4) is the subject of other pending legal actions challenging the legality of the WaterFix project. The last date for any party to answer or respond to the complaint was Monday, November 26.

On November 26, Metropolitan filed a demurrer (motion to dismiss the case) and, alternatively, a motion to strike (seeking to delete portions of the complaint). Metropolitan seeks dismissal based on (1) lack of standing (the plaintiffs do not have a basis to sue Metropolitan because they do not pay Metropolitan's rates or charges), (2) failure as a matter of law because the complaint challenges the validity of rates and charges and no rates, charges, or tax was approved by the Board on July 10, and (3) failure to allege any other legally cognizable claim.

SDCWA also filed a demurrer seeking dismissal of only the Proposition 26 cause of action. SDCWA's demurrer argues the Proposition 26 allegation is not "ripe" for litigation (is premature) because the Board's action on July 10 did not "impose" any levy, charge, or exaction of any kind. Metropolitan's position is that Proposition 26 does not apply to Metropolitan because Metropolitan does not "impose" its rates on its voluntary member agencies.

A group of water districts filed an answer to the complaint. The answering parties are: Wheeler Ridge Maricopa Water Storage District, Semitropic Water Storage District, Semitropic Improvement

District of Semitropic Water Storage District, Buttonwillow Improvement District of Semitropic Water Storage District, Pond-Poso Improvement District of Semitropic Water Storage District, Oak Flat Water District, Beldridge Water Storage District, Berrenda Mesa Water District, Dudley Ridge Water District, Lost Hills Water District, Tulare Lake Basin Water Storage District, and Henry Miller Water District. These are agricultural districts that are either State Water Project contractors or member agencies of the Kern County Water Agency. The same parties also filed an answer in DWR's validation action.

In their answer to the FWW complaint, they raise a number of affirmative defenses to the complaint. They also assert that the complaint appears to raise issues similar to those in the validation action filed by DWR to validate its authority to issue bonds to finance a portion of the WaterFix project and ask the court to stay FWW's reverse validation pending a final determination of DWR's validation action; or, to transfer the FWW matter and consolidate it with the DWR action.

The answer also seeks relief for matters not raised by the complaint or relevant to the Board's July 10 action.

The hearing on Metropolitan's and SDCWA's demurrers and motion to strike has been set for January 16, 2019. (See General Counsel's September 2018 Activity Report)

AFSCME Local 1902 v. Metropolitan (Public Employment Relations Board)

As previously reported, AFSCME Local 1902 filed an unfair practice charge on February 27, 2018, with the Public Employment Relations Board (PERB). The charge alleges Metropolitan violated the Meyers-Milias-Brown Act (MMBA) by failing to provide all information requested by AFSCME Local 1902 in a written request for information dated May 22, 2017. As a remedy, AFSCME is seeking supplemental information responsive to its request, a cease and desist order, and a notice posting Metropolitan's purported violation of the MMBA. On April 2, 2018, Metropolitan filed a position statement seeking a dismissal of the



charge on the basis that it has fully complied with the MMBA concerning its responses to the request for information, and that Metropolitan properly withheld limited information based on the privacy interests of the affected employees and Metropolitan’s need to maintain confidentiality over certain test materials. Notwithstanding, PERB issued a complaint against Metropolitan on June 15, 2018 and in response Metropolitan filed an answer denying any violation of the MMBA. The parties reached an agreement to settle this matter on October 31, 2018. The agreement contains no admission of wrongdoing, and it provides for a mechanism for AFSCME to review the testing materials at issue in a manner that protects confidentiality. AFSCME will withdraw the charge with prejudice after its review. The Legal Department represented Metropolitan in this

matter. (See General Counsel’s March and June 2018 Activity Reports)

AFSCME Local 1902 v. Metropolitan (MOU Hearing Officer Appeal)

Hearing Officer Doug Collins issued his decision on November 20, 2018, sustaining the appeal by AFSCME Local 1902 of a decision to terminate an employee who was involved in an altercation at the workplace. The hearing officer reduced the disciplinary action to a three-week suspension as he believed that a termination was disproportionate to the discipline imposed on the other employee involved in the altercation, and the hearing officer was not convinced that the aggravating circumstances cited by Metropolitan warranted an enhancement of the discipline to a discharge. The Legal Department represented Metropolitan in this matter.

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>				
Actions in which MWD is a party	2	Complaint in Eminent Domain filed by the City of Brea against Olen Pointe Brea Corporation and other defendants, including MWD, in Orange County Superior Court, seeking permanent and temporary construction easements for the connection with the SR-57/Lambert Road Interchange Project				
		Complaint in Eminent Domain filed by the County of Riverside against Sameh Abdelmalek, and other defendants, including MWD, in Riverside County Superior Court, seeking to acquire property for its project known as the Cajalco Interim Safety Project				
Government Code Claims	3	(1) Claim for vehicle accident involving an MWD vehicle; (2) Claim for Damages and Losses Pursuant to MWD Administrative Code § 9302 and Government Code §§ 900 <i>et seq.</i> filed by the San Diego County Water Authority in connection with its 2018 lawsuit against MWD; (3) Late claim for fatal injuries to passenger in a vehicle that struck a metal swing gate that the claim asserts was open and extended into the roadway				
Requests Pursuant to the Public Records Act	14	<table border="0"> <thead> <tr> <th><u>Requestor</u></th> <th><u>Documents Requested</u></th> </tr> </thead> <tbody> <tr> <td>Burns & McDonnell</td> <td>Technical reports prepared by Burns & McDonnell from the 1920’s relating to outfall sewer, water supply improvements, and municipal power projects</td> </tr> </tbody> </table>	<u>Requestor</u>	<u>Documents Requested</u>	Burns & McDonnell	Technical reports prepared by Burns & McDonnell from the 1920’s relating to outfall sewer, water supply improvements, and municipal power projects
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	Center for Contract Compliance (2 requests)	(1) Contract records for Diemer Water Treatment Plant Administration Building Seismic Upgrades, and (2) certified payroll records on the same project for the General Contractor Woodcliff Corporation
	Claremont McKenna College Student	Mapping information on the route that water travels from its source to treatment facilities to the tap
	Iacobellis & Associates	Drawing showing MWD waterline in an area in South Gate
	Labib & Associates	Substructure records for an area in West Hollywood
	Meyers Fozi & Dwork LLP	Records relating to Palos Verdes High School's participation in MWD's 2017 Solar Cup
	Orange County Sanitation District	Scope of work contained in MWD's Request for Quotation to survey all easements
	PBLA Engineering	As-builts for underground facilities near a substation project in Orange County
	Roxborough, Pomerance, Nye & Adreani, LLP	Documents relating to the Drought Contingency Plan
	SmartProcure	Purchase order data from July 27, 2018 to November 8, 2018
	Teal Consulting Group	List of uncashed checks
	UC Berkeley Student	Annual Comprehensive Financial Reports for 2005-2016
	University of Virginia, Darden Business School, Global Water Initiative Professor	Data on yields from Palo Verde Irrigation District Land Fallowing Program
Other Matters	1	Wage garnishment



California WaterFix Litigation	
Subject	Status
<p>CDWR Environmental Impact Cases Sacramento Superior Ct. Case No. JCCP 4942 (20 Coordinated Cases – 1 Validation; 17 CEQA; 2 CESA) (Judge Culhane)</p>	
<p>Validation Action <i>DWR v. All Persons Interested</i> Sacramento County Superior Ct.</p>	<ul style="list-style-type: none"> • Parties meeting and conferring on list of purely legal issues that the Court can decide without waiting for the administrative record • Parties meeting and conferring on the contents of the administrative record • December 10, 2018 Joint CMC Statement due identifying “purely legal issues” after meeting and conferring • December 13, 2018 Fifth CMC 10:00 a.m.
<p>CEQA 17 cases Sacramento County Superior Court</p>	<ul style="list-style-type: none"> • DWR circulated draft 6000-page index of the administrative record (over 2.5 million pages in draft record) • Parties meeting and conferring on contents of administrative record • December 13, 2018 – 10:00 a.m. Hearing on Metropolitan and SWC motions to intervene
<p>CESA/Incidental Take Permit</p>	<ul style="list-style-type: none"> • Answers/Motions to Dismiss due 30 days after administrative record is lodged • DFW anticipates completion of administrative record by early 2019 • December 13, 2018 – 10:00 a.m. Hearing on Metropolitan and SWC motions to intervene
<p>ESA/BiOps <i>Golden Gate Salmon Ass’n v. Ross (NMFS)</i> <i>Bay.org v. Zinke (USFWS)</i> Eastern District of California (Judge O’Neill)</p>	<ul style="list-style-type: none"> • <i>GGSA v. Ross (NMFS)</i> - Plaintiffs and Defendants have filed cross-motions for summary judgment; replies due Dec. 11, 2018 and Jan. 15, 2019 • <i>Bay.org v. Zinke (FWS)</i> – Defendants filed motion to strike extra-record evidence and alternative motion to consider additional extra-record evidence on Nov. 30; Plaintiffs’ MSJ due Jan. 15, 2019; Defendants’ opposition/cross-motion for MSJ due Feb. 19, 2019; replies due March 12, 2019 and April 2, 2019
<p>Breach of Contract <i>City of Antioch v. DWR</i> Sacramento County Superior Ct. (Judge De Alba)</p>	<ul style="list-style-type: none"> • Parties’ joint motion to continue trial date and associated dates off calendar and reschedule granted in light of potential for settlement before trial • New trial date and mandatory settlement conference date TBD



Subject	Status
<p>Delta Plan Amendments and Program EIR</p> <p><i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i></p> <p><i>Central Delta Water Agency, et al. v. Delta Stewardship Council</i></p> <p><i>Friends of the River, et al. v. Delta Stewardship Council</i></p> <p><i>California Water Impact Network, et al. v. Delta Stewardship Council</i></p> <p>Sacramento County Superior Ct. (Judge Sumner)</p>	<ul style="list-style-type: none"> • Cases challenge, among other things, the Delta Plan Updates recommending dual conveyance as the best means to update the SWP Delta conveyance infrastructure to further the coequal goals • Allegations relating to “Delta pool” water rights theory and public trust doctrine raise concerns for SWP and CVP water supplies • Cases related and assigned to Judge Sumner • Parties stipulated to extend time to prepare the administrative record to Jan. 22, 2019 • San Luis & Delta Mendota Water Authority’s and Westlands Water District’s motion to intervene granted

***CESA claims also alleged in the CEQA petition filed by County of San Joaquin, et al.; California Sportfishing Protection Alliance, et al. allege violation of the fully protected species statutes.