



## 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 alleged 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) it is the subject of other pending legal actions challenging the legality of the WaterFix project.

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). SDCWA also filed a demurrer seeking dismissal of only the Proposition 26 cause of action.

A group of agricultural water districts that are either State Water Project contractors or member agencies of the Kern County Water Agency (the Kern Answering Parties) also filed an answer and a Notice of Related Case seeking to coordinate

DWR's WaterFix validation action. Metropolitan filed a response opposing any case coordination.

On January 3, plaintiffs filed a First Amended Complaint (FAC). The FAC contains the same legal grounds as the original and adds allegations that Metropolitan illegally authorized the issuance of revenue bonds through its July 10 action.

The court has set a deadline of February 15 for Metropolitan and other parties in the case to respond to the FAC and a March 15 hearing on any demurrer or motion filed by that deadline. (See General Counsel's November 2018 Activity Report.)

### ***Williams v. State of Arizona, Metropolitan, et al. (USDC, District of Arizona)***

As reported last month, on December 17, 2018, the federal court in Arizona granted Metropolitan's and other defendants' motions to dismiss this case, but gave the plaintiff, Mr. Williams, 30 days to attempt to file a viable complaint. In his original complaint, Mr. Williams alleged that the federal and state governments and Metropolitan were discriminating against him and other African American tenants and depriving them of their rights to own land and water on properties they lease near Yuma, Arizona. Mr. Williams did not file another complaint. As a result, on January 22, 2019, the court dismissed and closed the case, bringing final resolution to it. (See General Counsel's December 2018 Activity Report.)

## Matters Impacting Metropolitan

### **EPA Postpones Proposed Drinking Water Standards For Perchlorate To End Of May**

The U.S. Environmental Protection Agency (EPA) recently announced it will publish a proposed Maximum Contaminant Level Goal (MCLG) and a national primary drinking water regulation (NPDWR) for perchlorate in drinking water by May 28, 2019, instead of by April 30, 2019. EPA originally decided to regulate perchlorate in 2011, which started a two-year clock under the Safe Drinking Water Act (SDWA) for EPA to propose

drinking water standards. Five years later, when EPA had still not proposed an MCLG or a NPDWR for perchlorate, the Natural Resources Defense Council filed a lawsuit against EPA to compel it to regulate perchlorate. In October 2016, the parties agreed that EPA would propose drinking water standards for perchlorate by October 31, 2018. EPA then asked the court to extend the deadline to April 30, 2019 because of delays in the peer review process. The most recent extension is due to the government shutdown. Metropolitan staff will continue to monitor EPA's proposed drinking water standards for perchlorate.



## Cases to Watch

### Sixth Circuit Will Not Review Decision Limiting Reach Of Clean Water Act

On January 17, 2019, a split 6<sup>th</sup> Circuit in *Tennessee Clean Water Network v. Tennessee Valley Authority* denied a petition to review a prior decision that the Clean Water Act’s (CWA) permit requirements do not apply to discharges of pollutants that reach surface waters through groundwater. However, six of the 16 judges of the full court dissented. The dissenting judges disagreed with the majority’s ruling that, for the CWA to apply, pollution from coal ash ponds must discharge directly into a river. They reasoned that pollutants are discharged through groundwater “into navigable waters just as a rocket is launched from the ground into space or a path leads from a city into a forest—inevitably, but not immediately.” In their view, the majority’s opinion created a loophole that “a polluter can escape liability under

the CWA ‘by moving its drainage pipes a few feet from the river bank.’”

As previously reported, the 9<sup>th</sup> Circuit (*County of Maui*) and 4<sup>th</sup> Circuit (*Upstate Forever*) held that the CWA does cover discharges of pollutants from a point source which reach surface waters through groundwater. Those two cases are currently pending before the U.S. Supreme Court. The Court asked the U.S. Solicitor General to weigh in with its views. On January 3, the Solicitor General filed a brief supporting the County of Maui’s petition asking the Supreme Court to take the case and reverse the decision by the 9<sup>th</sup> Circuit that a “discharge of a pollutant” occurs when a pollutant is released from a point source and then travels through groundwater to reach navigable waters.

Metropolitan staff will continue to monitor these cases. (See General Counsel’s September 2018 Activity Report.)

## Other Matters

### Finance

The Legal Department worked with finance staff, outside bond counsel, and disclosure counsel to prepare the offering statements and other disclosure documents and to negotiate and provide the agreements, notices, certifications, and

opinions necessary for closing of the Waterworks General Obligation Refunding Bonds, 2019 Series A on January 30, 2019 to refund and defease outstanding Waterworks General Obligation Refunding Bonds originally issued in 2009.

## Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Government Code Claims	3	(1) Claim by MWD tenant for damages from water leak stemming from contractor installing hot water circulating pump in the ceiling; and (2) two claims for auto accidents involving MWD vehicles	
Requests Pursuant to the Public Records Act	18	<u>Requestor</u>	<u>Documents Requested</u>
		Atrix Design/Atrix Media	List of addresses covered by MWD
		Center for Biological Diversity	Contracts that allow Coachella Valley Water District to request turnouts on the Colorado River Aqueduct



<u>Category</u>	<u>Received</u>	<u>Description</u>
	<u>Requestor</u>	<u>Documents Requested</u>
	Center for Contract Compliance (3 requests)	(1) Contract documents for Eagle Mountain Pumping Plant Renovation-Houses 41 and 146; (2) contract documents for Colorado River Aqueduct Pumping Plants-Sump Rehab; and (3) certified payroll records and fringe benefit statement for work by subcontractor on electrical upgrades at 15 structures in Orange County
	Counter Group	Contract documents relating to installation of the Sepulveda Feeder by JF Shea Co. in November 1970
	Deltek	Contract documents for Colorado River Aqueduct Pumps Plants-Sump Rehabilitation
	Financial Investment News	Contract award information for 401(k) and 457(b) third-party administrator
	Linfield Christian School, High School Student	2018 Annual Drinking Water Quality Report covering the period January-December 2017
	Mark Thomas & Company	As-built maps showing MWD facilities and easements in project area in City of Los Angeles
	Newmeyer & Dillion LLP	Documents relating to property on Via Corona in Yorba Linda
	Orange County Water District	General Mineral and Physical Analysis of MWD's Water Supplies for July 2017-June 2018
	Praxair, Inc.	Bid packages for Bulk Liquid Oxygen (LOX) and LOX Maintenance Services rebid
	Reveal from the Center for Investigative Reporting	Calendars and meeting schedules for 2018 maintained by Jeffrey Kightlinger and Roger Patterson
	Schiff Hardin	Contract documents for work by JF Shea Co. on the Sepulveda Feeder in the later 1960's and early 1970's
	Senders Communications Group	Collective bargaining agreements or memoranda of understanding for MWD unions
	SMTD Law	Project documents relating to the Palos Verdes Reservoir Cover and Liner Replacement Project



<u>Category</u>	<u>Received</u>	<u>Requestor</u>	<u>Description</u>	<u>Documents Requested</u>
		UC Irvine Graduate Student		Residential water rates for past 10 years
Other Matters	2	Wage garnishments		



<b>California WaterFix Litigation</b>	
<b>Subject</b>	<b>Status</b>
<b>CDWR Environmental Impact Cases</b> <b>Sacramento Superior Ct. Case No. JCCP 4942</b> <b>(20 Coordinated Cases – 1 Validation; 17 CEQA; 2 CESA) (Judge Culhane)</b>	
<b>Validation Action</b> <i>DWR v. All Persons Interested</i> Sacramento County Superior Ct.	<ul style="list-style-type: none"> <li>• DWR motion to dismiss Clarksburg Fire Protection District's jurisdictional affirmative defenses set for hearing on February 28, 2019</li> <li>• Motions to augment the administrative record scheduled for hearing on June 5, 2019</li> </ul>
<b>CEQA</b> 17 cases Sacramento County Superior Ct.	<ul style="list-style-type: none"> <li>• Parties meeting and conferring on contents of administrative record</li> <li>• Answers/Motions to Dismiss due 30 days after administrative record is lodged</li> <li>• DWR motions to dismiss certain causes of action set for hearing on March 21, 2019</li> </ul>
<b>CESA/Incidental Take Permit</b> 2 cases Sacramento County Superior Ct.	<ul style="list-style-type: none"> <li>• Metropolitan's and SWC's motions to intervene as defendants/respondents granted</li> <li>• DFW anticipates completion of administrative record by early 2019</li> <li>• Answers/Motions to Dismiss due 30 days after administrative record is lodged</li> </ul>
<b>ESA/BiOps</b>  <i>Golden Gate Salmon Ass'n v. Ross (NMFS)</i>  <i>Bay.org v. Zinke (USFWS)</i>  Eastern District of California (Judge O'Neill)	<ul style="list-style-type: none"> <li>• <i>GGSA v. Ross (NMFS)</i> – Plaintiffs and Intervenor-Defendants have fully briefed cross-motions for summary judgment; federal defendants' final (reply) brief now due February 19, 2019 after federal funding restored</li> <li>• <i>Bay.org v. Zinke (FWS)</i> – Plaintiffs filed motion for summary judgment on January 15, 2019; Defendants' opposition/cross-motion for summary judgment due March 26, 2019; Plaintiffs' opposition and reply due April 23, 2019; Defendants' replies due: May 14, 2019</li> </ul>
<b>Breach of Contract</b> <i>City of Antioch v. DWR</i> Sacramento County Superior Ct. (Judge De Alba)	<ul style="list-style-type: none"> <li>• Discovery temporarily stayed</li> <li>• Settlement conference set for September 12, 2019</li> <li>• Trial set for October 21, 2019</li> </ul>



Subject	Status
<p><b>Delta Plan Amendments and Program EIR</b></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"> <li>• 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</li> <li>• Allegations relating to “Delta pool” water rights theory and public trust doctrine raise concerns for SWP and CVP water supplies</li> <li>• Parties stipulated to extend time to prepare the administrative record to March 25, 2019</li> <li>• Answers or motions to dismiss due 30 days after administrative record is lodged</li> </ul>
<p><b>SWP Contract Extension</b></p> <p><i>North Coast Rivers Alliance, et al. v. California Dept. of Water Resources</i></p> <p><i>Planning and Conservation League v. California Dept. of Water Resources</i></p> <p>Sacramento County Superior Ct. (Judges Sumner and Gevercer)</p>	<ul style="list-style-type: none"> <li>• Petitions for writ of mandate alleging CEQA and Delta Reform Act violations filed on January 8 &amp; 10, 2019</li> <li>• NCRA names State Water Contractors, but not individual contractors, as a real party in interest</li> <li>• Allege, among other things, that Contract Extension is part of California WaterFix, so DWR should have studied the impacts of both projects in a single EIR</li> </ul>