



Metropolitan Cases

Bruce Puckett v. Metropolitan; et al. (Riverside County Superior Court)

On December 26, 2018, plaintiff Bruce Puckett filed a complaint in Riverside County Superior Court against Metropolitan. Plaintiff alleges two causes of action against Metropolitan for dangerous condition of public property and

negligence. Plaintiff was an employee of the DVL Marina concessionaire at the time of the incident and Metropolitan tendered the defense as an additional insured under the concessionaire's insurance policy. The insurer is providing Metropolitan with a defense.

Matters Impacting Metropolitan

EPA Issues Proposed Drinking Water Standards for Perchlorate

On May 23, 2019, the EPA issued a pre-publication notice proposing to set the Maximum Contaminant Level (MCL) and Maximum Contaminant Level Goal (MCLG) for perchlorate at 56 micrograms per liter ($\mu\text{g/L}$ or, parts per billion (ppb)). In addition, EPA seeks comment on three alternative regulatory options: (1) setting an MCL and MCLG for perchlorate at 18 $\mu\text{g/L}$; (2) setting an MCL and MCLG for perchlorate at 90 $\mu\text{g/L}$; or (3) withdrawing EPA's 2011 determination to regulate perchlorate in drinking water.

According to EPA, new information indicates that perchlorate does not occur in public water systems with a frequency and at levels sufficient to be a public health concern, so there may not be a meaningful opportunity for health risk reduction through drinking water regulation. Perchlorate is not currently subject to federal regulation. If EPA's 2011 determination to regulate perchlorate is withdrawn, there will be no federal MCL or MCLG for perchlorate in the foreseeable future.

EPA originally decided to regulate perchlorate in 2011, which started a two-year clock ticking under the Safe Drinking Water Act (SDWA) for EPA to propose drinking water standards. Five years later, when EPA had still not proposed an MCL or an MCLG for perchlorate, the Natural Resources Defense Council (NRDC) filed a lawsuit against EPA to compel it to regulate perchlorate. Subsequently, in October 2016, the parties agreed that EPA would propose drinking water standards for perchlorate by October 31, 2018. EPA asked the court to extend the deadline first to April 30, 2019 because of delays in the peer review process

and then to May 28, 2019 due to the government shutdown.

California has already adopted an MCL for perchlorate. In 2007, California established an MCL of 6 $\mu\text{g/L}$, which is the same as the public health goal (PHG) for perchlorate. The PHG is the concentration of a drinking water contaminant that does not pose a significant risk to human health if ingested in drinking water. In California, an MCL is to be set as close as possible to the PHG, while considering cost and technical feasibility of treatment. In 2015, the PHG for perchlorate was lowered from 6 $\mu\text{g/L}$ to 1 $\mu\text{g/L}$. Accordingly, California is now considering whether to lower the MCL for perchlorate from 6 $\mu\text{g/L}$ to a new MCL as close to the 1 $\mu\text{g/L}$ PHG as is technologically and economically feasible.

Comments on EPA's proposal are due 60 days after publication in the Federal Register. Metropolitan staff will continue to monitor and comment on both EPA's and California's proposed drinking water standards for perchlorate.

Agua Caliente Band v. Coachella Valley Water District (United States District Court, Central District of California)

In May 2013, the Agua Caliente Band of Indians (Tribe) filed suit in federal court alleging that Coachella Valley Water District (CVWD) and Desert Water Agency (DWA) have been interfering with tribal rights to the groundwater underlying the tribal reservation. The complaint also challenges the importation of Colorado River water for groundwater recharge on the grounds that it is adversely affecting water quality, and claims that the Tribe has ownership and control over the



physical groundwater storage underlying the Tribe’s reservation. The United States intervened on behalf of the Tribe. (See General Counsel’s May 2013, June 2014, March 2015, and February 2016 Monthly Activity Reports.)

The case is being tried in phases. Phase I was limited to whether the Tribe has reserved or aboriginal rights to groundwater. In March 2015, the trial court issued its ruling that the Tribe has reserved rights, but not aboriginal rights, to groundwater based on the *Winters* doctrine that reservations of land for federal use include appurtenant water rights. The Ninth Circuit Court of Appeals granted an interlocutory appeal to decide the important issue of the applicability of the *Winters* doctrine to groundwater. The Ninth Circuit issued its opinion in March 2017, upholding the trial court’s decision.

The case returned to the district court to proceed with Phase II issues related to the legal standards that the court should apply to determine the scope of tribal groundwater rights and whether those rights include a water quality element and ownership of groundwater storage space.

In October 2017, the parties filed cross-motions for summary judgment on these legal issues. In addition to addressing the legal merits of each issue, CVWD also raised the defense that the Tribe had failed to show any injury to its claimed groundwater rights and therefore, did not have standing to pursue the litigation further.

Because of the potential effect of the Phase II legal issues on the storage of Colorado River Water in the basin, Metropolitan requested leave of court to file an amicus brief in the proceedings. Permission was granted and Metropolitan’s brief was filed in January 2018. The amicus brief explained Metropolitan’s interest in the use of the Coachella Valley groundwater basin in connection with its exchange agreements with CVWD and DWA. These programs allow Metropolitan to deliver

Colorado River water to those agencies, including advance deliveries, in exchange for delivery of their State Water Project water supplies. Storage of the Colorado River water in the Coachella Valley groundwater basin is part of this program. Metropolitan also noted that the interpretation of the scope of the *Winters* doctrine applied to groundwater basins throughout the West would potentially impact many other water management programs. Metropolitan argued against recognizing a water quality element as part of the federal reservation of water rights on the grounds that water quality is sufficiently protected under federal and state water quality laws. Further, Metropolitan argued that storage space in groundwater basins is a shared public benefit under state laws and the court should not recognize a conflicting federal ownership interest that would make groundwater management more difficult.

The trial court heard argument in April 2018 on CVWD’s position that the Tribe had failed to show any injury to its groundwater rights. The Tribe subsequently sought to provide supplemental evidence to support its position and the court allowed limited discovery and further briefing on this issue. A second hearing was held on February 25, 2019 and the court issued its ruling on April 19. The court held that the Tribe failed to present sufficient evidence that its use of groundwater for the needs of the reservation had been affected or that the recharge of the basin with Colorado River water had impaired the groundwater quality for reservation purposes. Finally, the court held that the Tribe’s claim to ownership of groundwater storage space as a part of its reserved groundwater right is justiciable. That issue will be addressed in Phase III of the litigation.

Scheduling of the Phase III proceedings has not yet occurred. Metropolitan will continue to monitor the litigation.

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>
Actions in which MWD is a party	1	Cross-complaint filed by Integrated Power & Lighting against contractor Sol Construction, The Guarantee Company of North America USA, and MWD, Los Angeles County Superior Court Case No. 19STCV01895, for work on the Jensen Water Treatment Plant Solar Facility



Requests Pursuant to the Public Records Act	16	<u>Requestor</u>	<u>Documents Requested</u>
		AFSCME	Communications relating to former MWD employee
		Brayton Purcell LLP	Contract and insurance documents relating to C.F. Bolster Company, plastering contractor for construction of the Jensen Water Treatment Plant in 1972/1973
		Center for Contract Compliance	Contract documents relating to Diemer Water Treatment Plant Treatment Basins
		City of Corona	As-built engineering plans for MWD pipeline in Corona
		City of Escondido	Sanitary Surveys
		Elsinore Valley Municipal Water District	Reservoir water storage data for Lake Mathews and Lake Skinner
		Friends of Harbors, Beaches and Parks	Annual mitigation and monitoring reports for the Diemer Treatment Plant Access Road Project
		KCBS/KCAL TV (2 requests)	Data for high efficiency nozzle rebates for water sprinklers provided to Brightview Landscape Services
		Krieger & Stewart	As-built drawings for MWD facilities near project in Lake Skinner Recreation Area
		SmartProcure	Contact information for MWD employees
		Studio H ²	Winning proposal and contract for On-Call and Project Specific Architectural Consulting Services
		The Burks Company (2 requests)	Turf removal rebate data
		U.S. Geological Survey	2007 Groundwater Assessment Study Report
		Visionary Investors	Data on households who are delinquent in paying for water service
Other Matters	1	California Department of Fair Employment and Housing Notice of Filing of Discrimination Complaint against MWD during hiring process	



California WaterFix Litigation	
Subject	Status
CDWR Environmental Impact Cases Sacramento Superior Ct. Case No. JCCP 4942 (20 Coordinated Cases – 1 Validation; 17 CEQA; 2 CESA) (Judge Culhane)	
Validation Action <i>DWR v. All Persons Interested</i> CEQA 17 cases CESA/Incidental Take Permit 2 cases	<ul style="list-style-type: none"> • Validation Action dismissed at DWR’s request • Plaintiffs in the 17 CEQA and 2 CESA cases anticipate dismissing by end of June • Plaintiffs plan to file motions to recover costs and fees (no hearing date yet)
ESA/BiOps 2 Cases Eastern District of California (Judge O’Neill) <i>Golden Gate Salmon Ass’n v. Ross (NMFS)</i> <i>Bay.org v. Zinke (USFWS)</i>	<ul style="list-style-type: none"> • Both cases dismissed by stipulation in May 2019 after NMFS and the USFWS withdrew the Biological Opinions at DWR’s and Reclamation’s request
Breach of Contract <i>City of Antioch v. DWR</i> Sacramento County Superior Ct. (Judge De Alba)	<ul style="list-style-type: none"> • Settlement conference set for September 12, 2019 • Trial set for October 21, 2019
COA Addendum/No-Harm Agreement <i>North Coast Rivers Alliance v. DWR</i> Sacramento County Superior Ct. (Judge Gevercer)	<ul style="list-style-type: none"> • Plaintiffs allege violations of CEQA, Delta Reform Act & public trust doctrine • Deadline to prepare administrative record extended to July 22, 2019 • Westlands Water District’s motion to intervene June 7, 2019 • Metropolitan & SWC Monitoring



Subject	Status
<p>Delta Plan Amendments and Program EIR 4 Consolidated Cases Sacramento County Superior Ct. (Judge Earl)</p> <p><i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i> (lead case)</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>	<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 consolidated for pre-trial and trial under <i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i> • Parties stipulated to extend time to prepare the administrative record to July 23, 2019 • Answers or motions to dismiss due 30 days after administrative record is lodged • SWC preparing motion to intervene
<p>SWP Contract Extension Validation Action Sacramento County Superior Ct. (No judge assigned yet)</p> <p><i>DWR v. All Persons Interested in the Matter, etc.</i></p>	<ul style="list-style-type: none"> • DWR seeks a judgment that the Contract Extension amendments to the State Water Contracts are lawful • Metropolitan and 6 other SWCs filed answers in support of validity to become parties • Kern County Water Agency has until May 31, 2019 to file an answer • Four answers filed in opposition denying validity on multiple grounds raised in affirmative defenses • Court refused opponents’ request to relate the case to WaterFix Validation Action or coordinated cases
<p>SWP Contract Extension CEQA Cases Sacramento County Superior Ct. (Judges Sumner and Gevercer)</p> <p><i>North Coast Rivers Alliance, et al. v. DWR</i></p> <p><i>Planning and Conservation League v. DWR</i></p>	<ul style="list-style-type: none"> • Petitions for writ of mandate alleging CEQA and Delta Reform Act violations filed on January 8 & 10, 2019 • NCRA stipulated to dismiss State Water Contractors without prejudice • 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 • Metropolitan preparing motions to intervene • DWR filed a notice that the CEQA cases are related to its Contract Extension Validation Action