



Metropolitan Cases

Jolene Fuentes v. Metropolitan (Riverside County Superior Court)

As previously reported, Metropolitan employee Jolene Fuentes filed a first amended complaint for damages on May 28, 2019, in Riverside County Superior Court against Metropolitan. The complaint alleges four causes of action based on the Fair Employment and Housing Act: sex discrimination/harassment; failure to maintain environment free from harassment; failure to take

preventative action; and retaliation. The complaint seeks general, economic and punitive damages, injunctive relief, and attorney's fees. After receiving correspondence from the Legal Department, plaintiff agreed to drop the cause of action for failure to maintain environment free from harassment, and the demand for punitive damages. Metropolitan will now answer the complaint and initiate discovery. The Legal Department is representing Metropolitan. (See General Counsel's June 2019 Monthly Report.)

Matters Impacting Metropolitan

The U.S. Supreme Court Schedules Oral Argument in the Clean Water Act Case, *County of Maui*

The U.S. Supreme Court has scheduled oral argument in the Clean Water Act (CWA) case *County of Maui v. Hawaii Wildlife Fund* for November 6, 2019, at 10:00 a.m. The question raised in *County of Maui* is whether the CWA covers discharges of pollutants from a point source which reach navigable waters through groundwater.

The County filed its brief on May 9, 2019, urging the Court to adopt a means-of-delivery test for National Pollutant Discharge Elimination System (NPDES) permits. Under this test, an NPDES permit is required when a point source delivers pollutants directly into navigable waters, not when pollutants originate at a point source and reach navigable waters. The County argued that because its wells (a point source) do not deliver pollutants directly to navigable waters, but instead inject treated effluent into groundwater before the effluent reaches the Pacific Ocean (a navigable water), the County does not need an NPDES permit for its wells. Alternatively, the County claimed that it does not need a permit because the U.S. Environmental Protection Agency's (EPA) recent Interpretive Statement provides that all releases of pollutants from a point source to

groundwater are excluded from the CWA. Some new members of the Maui County Council have indicated they might prefer to settle the case rather than win and potentially weaken the CWA.

On July 12, 2019, Respondents Hawaii Wildlife Fund, Sierra Club – Maui Group, Surfrider Foundation, and West Maui Preservation Association filed their brief. They contend that the CWA's "language, purpose, structure, and history all establish that Congress intended to regulate any pollution of navigable waters that is fairly traceable to, and the foreseeable result of, point-source discharges." In addition, the environmental groups asserted that the County's and EPA's views would "open a substantial loophole in the CWA, allowing polluters to achieve indirectly what they cannot do directly: discharge pollutants from point sources into navigable waters without a permit."

Several amicus briefs have been filed in support of both the County of Maui and the environmental groups. California, 12 other states, and the District of Columbia, as well as former EPA administrators and officials, filed amicus briefs in support of the environmental groups, while the United States, the Federal Water Quality Coalition, various trade associations, 20 other states, and the Governors of Kentucky and Mississippi filed amicus briefs in support of the County. Metropolitan staff will continue to monitor this case. (See General Counsel's January and February 2019 Activity Reports.)



Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Actions in which MWD is a party	2	<p>Complaint in Eminent Domain filed in Riverside County Superior Court, in the case <i>Southern California Edison Company v. Pardee Homes, San Diego County Water Authority, Metropolitan, French Valley Towne Center, et al.</i>, Case No. MCC1900620, in which Edison seeks to condemn and acquire portions of real property located in French Valley, County of Riverside, for the construction, maintenance and operation of the Valley South Subtransmission Project</p> <p>Complaint in Eminent Domain filed in San Bernardino County Superior Court, in the case <i>San Bernardino County Transportation Authority v. Gonzalez, Metropolitan, et al.</i>, Case No. CIVDS1918063, in which the County seeks to acquire interests in real property for the Interstate 10 Corridor Contract 1 Project, for the expansion of two express lanes in each direction from the Los Angeles/San Bernardino County line to the I-10/I-15 interchange</p>	
Government Code Claims	2	(1) Claim relating to damage to vehicle when security arm to entry gate closed on vehicle at Skinner Treatment Plant; and (2) claim for payment for the transfer of interest in property located in Riverside County	
Requests Pursuant to the Public Records Act	12	<u>Requestor</u>	<u>Documents Requested</u>
		AFSCME	Documents relating to employee evaluation rankings and guidelines provided to managers on completing evaluations
		Arup	Winning submittal and ranking information for Request for Proposal for Tunnel Design Services for Second Lower Feeder Reach 9 for PCCP Rehabilitation
		Bloomberg	Documents relating to payments made under the PVID land following agreement and payments made to lessees of land that MWD owns in PVID
		Cable Engineering Services	Underground utility information for project in the City of Gardena
		Student, Cal State University Los Angeles	MWD Annual Water Quality Report for 2017
		California Data Collaborative	Turf removal and device rebate data



		Cherokee Nation Businesses	Construction records for MWD's monitoring wells near March Air Force Base
		City of Torrance	Utility information for MWD facilities near sewer line replacement project in the City of Torrance
		Eastern Municipal Water District	MWD's emergency operations plan
		Law Offices of Michael A. Brodsky	Email communications between MWD's General Manager and California Resources Agency Deputy Secretary from March to May 2019
		Los Angeles County Audit Division	Audited financial statements for fiscal year ending June 30, 2018 for the Colorado River Joint Powers Authority
		Mead & Hunt	Record drawings for MWD's facilities near sewer project in the City of LaVerne
		Plan for the Win	Bid and contract documents relating to Request for Proposal for Security Services
		SmartProcure	Data on MWD's purchases from February 26, 2019 to July 12, 2019
		University of Southern California Graduate Student	Records relating to any tax incentives for participating in the turf replacement program
		Utility Design Services	Substructure information for project within the City of Lomita
		Valley-Wide Recreation & Park District	Draft and final environmental impact report for the DVL Sports Complex and Community Park
Other Matters	1	Notice to Metropolitan as a potential responsible agency under CEQA regarding the filing of a lawsuit, <i>Garcia v. City of Desert Hot Springs, Best Development Group, LLC (Real Party in Interest)</i> , Riverside County Superior Court, Case No. RIC1903260, pertaining to alleged violations of CEQA on a proposed project involving the construction of a discount grocery store and parking area in Desert Hot Springs by Best Development Group	



<u>Requestor</u>	<u>Documents Requested</u>
Downey Brand LLP	Final annual report for mitigation regarding the North Diemer Access Road pursuant to MWD's agreement with the California Department of Fish and Wildlife
Downey Brand LLP	Documents relating to MWD Board's approval of the Lower Basin Drought Contingency Plan on December 11, 2018 and March 12, 2019
Eastern Municipal Water District	MWD's emergency operations plan
Labor Management Compliance Council	Contract documents relating to Jensen Water Treatment Plant Modules 2 and 3 Flocculator Rehabilitation
Olivenhain Municipal Water District	LRP agreement between MWD and Carlsbad Municipal Water District and data on reclaimed water credits
Parsons Corporation	Award information for Tunnel Design services for Second Lower Feeder Reach 9 for Prestressed Concrete Cylinder Pipeline Rehabilitation
Private Citizen	Amount MWD paid for water purchased from the Bureau of Reclamation in 2012
PM Solutions	Award information relating to the Request for Proposal for Project Controls and Reporting System Implementation
Riverside Local Agency Formation Commission ("LAFCO")	Debts owed by Member Agencies Eastern Municipal Water District and Western Municipal Water District to MWD and service area maps relating to the Murrieta Window Area annexation
The Sutton Law Firm	Statements of Economic Interests (Form 700s) for MWD contractors and former staff who performed investment management duties



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"> • Cases dismissed after DWR rescinded project approval, bond resolutions, decertified the EIR, and CDFW rescinded the CESA incidental take permit • August 23, 2019 – Deadline for plaintiffs’ motions to recover costs and attorneys’ fees • January 10, 2020 – Hearing on motions for costs and attorneys’ fees
Breach of Contract <i>City of Antioch v. DWR</i> Sacramento County Superior Ct. (Judge De Alba)	<ul style="list-style-type: none"> • September 6, 2019 hearing on DWR’s motion for summary judgment seeking dismissal • September 12, 2019 mandatory settlement conference • October 21, 2019 Trial
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 September 20, 2019 • Westlands Water District granted leave to intervene • 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 September 23, 2019 • Answers or motions to dismiss due 30 days after administrative record is lodged • Hearing on SWC’s unopposed motion to intervene set for August 16, 2019
<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 7 other SWCs filed answers in support of validity to become parties • Four answers filed in opposition denying validity on multiple grounds raised in affirmative defenses • Case deemed related to the two CEQA cases, below • August 20, 2019 hearing on DWR’s motion to have all three contract extension cases assigned to Judge Culhane
<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 • Metropolitan preparing unopposed motions to intervene • Deemed related to DWR’s Contract Extension Validation Action • Deadline to prepare administrative record extended to September 10, 2019 • Answers due 30 days after administrative record is received • August 20, 2019 hearing on DWR’s motion to have all three contract extension cases assigned to Judge Culhane