Metropolitan Cases

***The Navajo Nation v. U.S. Department of the Interior* (U.S. District Court, District of Arizona)**

On August 23, 2019, the federal district court for the State of Arizona issued its order and judgment dismissing this long-running lawsuit brought by the Navajo Nation over rights to the Colorado River.

The Navajo originally filed this litigation in March 2003 seeking to overturn the Colorado River Interim Surplus Guidelines. The Navajo subsequently amended to also challenge the 2007 Shortage Guidelines. They alleged that in adopting the Guidelines, the Secretary violated NEPA and breached trust obligations owed to the Navajo from the United States in the form of a right to Colorado River water. When rights to the lower Colorado River were litigated in *Arizona v. California*, the interests of Native American Tribes were represented by the United States, which did not make a claim for the Navajo Nation.

The case was stayed in October 2004 to allow for settlement negotiations, which were conducted through May 2013, when a tentative settlement failed to gain the approval of the Navajo.

In July, the Navajo filed its first amended complaint and Metropolitan intervened along with other water agencies in California, Arizona, Nevada, and Colorado. In July 2014, the district court dismissed the action on the ground that the Navajo did not suffer an injury with respect to their NEPA claim (that they lacked "standing") and that their breach of trust claim was barred by the sovereign immunity of the United States. After the district court subsequently denied a motion by the Navajo to further amend their complaint, the Navajo appealed to the Ninth Circuit Court of Appeals.

In its December 2017 ruling, the Ninth Circuit agreed with the district court that the Navajo did not have "standing" to bring their NEPA claims because the Shortage and Surplus Guidelines did not result in an injury to potential Navajo water rights nor to the Navajo's needs for Colorado River water. As stated by the court, "[t]he Guidelines do not act directly upon the Navajo's unquantified water rights, nor could they. So how could the Guidelines injure these rights?"

On the breach of trust claims, the court held that the claim was not barred by sovereign immunity. In reaching this decision, the court resolved an apparent conflict between two Ninth Circuit opinions on the application of sovereign immunity. The matter was remanded to the district court in January 2018 to consider the Navajo's breach of trust claim on its merits.

In April, the Navajo moved for leave to file a third amended complaint. Metropolitan, Coachella Valley Water District, and Imperial Irrigation District opposed this motion, arguing that it sought to relitigate issues rejected by the Ninth Circuit. Metropolitan and the other interveners also joined in the United States' separate opposition. Oral argument was heard on this matter on November 14, and the court denied the motion, but provided the Navajo with one last chance to amend their complaint to avoid these deficiencies.

In January 2019, the Navajo filed a renewed motion to file a third amended complaint. Metropolitan and the other parties opposed the motion arguing that the Navajo continued to improperly seek a water right in the mainstream of the Colorado River. Additionally, the parties argued that the Navajo's allegations of a common law duty owed by the U.S. to secure a sufficient supply of water for the tribe was not sufficient to give rise to a breach of trust claim. Oral argument was heard on the matter on August 16.

On August 23, the district court issued its order denying the motion to amend, entered judgment against the Navajo, and dismissed the action. In reaching this decision, the court reasoned that the Navajo could not identify a specific statute or regulation that created any trust duty because, in part, it could not identify any specific duty breached by the United States. The court specifically rejected the Navajo's argument that a trust duty arose out of the implied water rights that attach to federal reservations. The court reasoned that reserved water rights can only apply to water appurtenant to the reservation and to the extent the Navajo based its claim on allegedly appurtenant rights in the mainstream of the Colorado River, the court has no jurisdiction to hear these claims since the U.S. Supreme Court retained continuing, exclusive jurisdiction in

Arizona v. California. Thus, the court dismissed the action.

The Navajo has 60 days, or until October 22, to appeal the matter to the Ninth Circuit Court of Appeals, which we expect it to do. As Metropolitan remains a party, Metropolitan will continue to participate in this case to protect its Colorado River water interests.

Matters Involving Metropolitan

EPA's Proposed Maximum Contaminant Levels for Perchlorate

On June 26, 2019, the EPA issued a notice of proposed rulemaking and sought public comment on a range of options for regulating perchlorate: a proposed MCLG/MCL of 56 ppb, alternative MCLG/MCL values of 18 ppb and 90 ppb, or whether to withdraw the 2011 determination to regulate perchlorate. On August 23, Metropolitan submitted its comments on EPA's proposed rulemaking. The attached chart summarizes Metropolitan's comments, as well as the comments submitted by other agencies, drinking water associations, and environmental groups.

Other Matters

Finance

Legal Department staff worked with finance staff, bank counsel, outside bond counsel, and disclosure counsel to prepare disclosure documents and to negotiate and provide the agreements, certifications, and opinions necessary for closing the following transactions:

- August 1, 2019, entered into an amended and restated note purchase and continuing covenant agreement with Bank of America, N.A. (BANA) for the purchase by BANA and sale by Metropolitan of $46,800,000 Short-Term Revenue Refunding Certificates, Series 2019 A; and
- August 8, 2019, entered into a note purchase and continuing covenant agreement with BANA for the purchase by BANA and the sale by Metropolitan, from time to time, of up to $39,200,000 Short-Term Revenue Certificates, Series 2019.

Matters Received by the Legal Department

Category	Received	Description	
Government Code Claims	4	(1) Three claims for three separate auto accidents involving MWD vehicles; and (2) a claim due to a tree from the Palos Verdes Reservoir falling onto a power line in April 2019 resulting in a power surge that damaged the claimants' air conditioning components	
Requests Pursuant to the Public Records Act	17	Requestor	Documents Requested
		Center for Contract Compliance	Certified payroll records and fringe benefit statement for General Contractor Minako America Corp. relating to work on the Electrical Upgrades at 15 Structures in Orange County
		Culver City Crosswords	Data on applications for turf removal rebates
		Dog Waste Depot	Invoices for dog waste bags from 2018-2019

Date of Report: September 4, 2019

Requestor	Documents Requested
JIG Consultants	As-built drawings for MWD underground utilities in the City of La Verne for work on Fulton Pump Back Facilities Study for Three Valleys MWD
Law Offices of Mark A. Spraic	Current agreements between MWD and Foothill Municipal Water District
Michael Baker International	Right-of-way maps or record of survey for MWD structures in the City of Anaheim relating to Edison easement
MPT Services	Remarketing agreements for MWD bond transactions from 1998-2017
Office of California Assembly Member Wendy Carrillo	Data on turf and device rebates that were paid in Assembly Member Carrillo's 51st Assembly District
Orbach Huff Suarez & Henderson	Records relating to sublease between Homan Enterprises and MWD, and related occupancy by J.F. Shea Construction
Pacific Southwest Biological Services	Weather data from Hayfield Pumping Station or the penstocks at Eagle Mountain for the past decade
Private Citizen	MWD Annual Reports for 1992-1995
Southern California Brick, Tile, Marble & Terrazzo Compliance Committee (2 requests)	Contract information relating to (1) MWD's Headquarters Building Improvements; and (2) Weymouth Water Treatment Plant Chlorination System Upgrades
The Alliance Group Consulting	Substructure records for project area within Cities of South El Monte and La Habra
Toshiba Business Solutions	Copier/printer contracts and service costs
WestWater Research	MWD's agricultural lease agreements

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 *DWR v. All Persons Interested* **CEQA** 17 cases **CESA/Incidental Take Permit** 2 cases	• Cases dismissed after DWR rescinded project approval, bond resolutions, decertified the EIR, and CDFW rescinded the CESA incidental take permit • January 10, 2020 – Hearing on 9 motions for attorneys' fees and costs
Breach of Contract *City of Antioch v. DWR* Sacramento County Superior Ct. (Judge De Alba)	• 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 *North Coast Rivers Alliance v. DWR* Sacramento County Superior Ct. (Judge Gevercer)	• 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
Delta Plan Amendments and Program EIR 4 Consolidated Cases Sacramento County Superior Ct. (Judge Earl) *North Coast Rivers Alliance, et al. v. Delta Stewardship Council* (lead case) *Central Delta Water Agency, et al. v. Delta Stewardship Council* *Friends of the River, et al. v. Delta Stewardship Council* *California Water Impact Network, et al. v. Delta Stewardship Council*	• 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 *North Coast Rivers Alliance, et al. v. Delta Stewardship Council* • 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 • SWC granted leave to intervene

Subject	Status
SWP Contract Extension Validation Action Sacramento County Superior Ct. (No judge assigned yet) *DWR v. All Persons Interested in the Matter, etc.*	• 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 and assigned to Judge Culhane
SWP Contract Extension CEQA Cases Sacramento County Superior Ct. (Judges Sumner and Gevercer) *North Coast Rivers Alliance, et al. v. DWf DWR*	• 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 and assigned to Judge Culhane • Deadline to prepare administrative record extended to September 10, 2019 • Answers due 30 days after administrative record is received

U.S. EPA's Proposed MCL for Perchlorate in Drinking Water

Docket ID No. EPA-HQ-OW-2018-0780

Summary of Written Comments of Drinking Water Associations, Agencies, and Environmental Groups

Association/Agency	Position	Recommendations
The Metropolitan Water District of Southern California	Metropolitan has concerns with EPA's underlying assumptions and analysis of national occurrence data for perchlorate, which excluded data from California and Massachusetts. The continuation of remediation at two chemical manufacturing facilities near Henderson, Nevada, is very important to the drinking water quality for the southwestern U.S. If EPA withdraws its determination to regulate perchlorate, it may impact the goals of the privately funded remediation. If remediation goals are changed, California drinking water utilities, which rely on Colorado River water, may not be able to comply with California's current and potential future MCL for perchlorate.	EPA should: (1) consider the health risk assessment process and rationale used by several states in setting MCLs and Advisory Levels for perchlorate; (2) reanalyze national occurrence data for perchlorate, including data from California and Massachusetts; (3) establish an MCL for perchlorate that supports ongoing remediation efforts and target cleanup goals at two chemical manufacturing sites near Henderson, Nevada; and (4) not withdraw its determination to regulate perchlorate in drinking water.
American Water Works Association (AWWA)	Regulation of chemical constituents should follow the criteria outlined in the Safe Drinking Water Act (SDWA). Perchlorate does not rise to this criteria because perchlorate does not exist in public water systems with a frequency and at levels of public health concern. Regulation of perchlorate does not present a meaningful opportunity for health risk reduction. The benefits of any proposed regulation would not justify the costs.	EPA should withdraw its determination to regulate perchlorate.
Association of Metropolitan Water Agencies (AMWA)	AMWA's analysis supports the overall position as outlined by AWWA. However, AMWA notes that EPA's conclusion that the benefits do not justify the costs do not preclude EPA from setting an MCL under the SDWA. AMWA supports EPA's use of occurrence data from the Unregulated Contaminant Monitoring Rule (UCMR), but data from UCMR 1 is over a decade old and may no longer be representative of nationwide occurrence; there might be less contamination at levels of health concern. However, AMWA suggests that regulation might be appropriate in the future based on new available science and data which can better inform the EPA on occurrence, health effects, feasibility, and costs.	EPA should withdraw its determination to regulate perchlorate.

Association/Agency	Position	Recommendations
Association of State Drinking Water Administrators (ASDWA)	EPA did not take into account the occurrence data for California and Massachusetts, which have developed their own MCLs for perchlorate. If EPA "continues to exclude states with state-level standards, future rules could be based on a smaller and smaller number of states with the inability to require monitoring or to establish state-level standards." Similar to Metropolitan's comments, some states have concerns with using occurrence data that are almost 20 years old. For example, some states have discovered high levels of perchlorate in small systems that were not required to monitor previously. The cost of federal regulation would pose a significant burden to individual states. A final decision on whether to regulate perchlorate is in the sole judgment of the Administrator.	ASDWA does not take a position on whether EPA should regulate perchlorate. However, if EPA does regulate perchlorate, EPA should adjust certain aspects of the rule relating to monitoring and notification requirements, as well as address cost concerns. If EPA decides not to regulate perchlorate, EPA should: (1) consider helping states to develop a state MCL for perchlorate; (2) consider options for the interim health advisory of 15 ug/L for perchlorate, which could create confusion; (3) develop additional guidance and/or re-publicize existing technical information on the appropriate management of hypochlorite, the degradation of which can contribute to perchlorate exposure.
Association of California Water Agencies (ACWA)	EPA should consider the health effects data and rationale used by states with MCLs or other cleanup goals for perchlorate. ACWA has two concerns with EPA's occurrence analysis: (1) the use of first Unregulated Contaminant Monitoring Rule data, which is outdated; and (2) EPA's exclusion of perchlorate data from California and Massachusetts, which falsely reduces the number of sites that would benefit from a federal MCL for perchlorate.	EPA should regulate perchlorate and set an MCL as close to California's MCL of 6 ug/L as possible. At a minimum, the MCL and MCLG should be set at 18 ug/L to preserve the cleanup of the Colorado River. EPA should coordinate with DOD, NASA, and other federal agencies to obtain the most current data on the distribution of perchlorate in groundwater.
National Resources Defense Council (NRDC) [NRDC had sued EPA and reached a settlement that required EPA to set an MCL.]	EPA's proposed MCL fails to meet the legal requirements of the SDWA and is unsupported by science. The best available science supports the conclusion that EPA's proposed MCL will cause harm at the population level. For example, EPA used a loss of 2 IQ points instead of 1 IQ point. EPA's proposed MCLG is improper because it does not include the "adequate margin of safety" mandated by the SDWA. EPA should not have reduced the uncertainty factor from 10 to 3. The most vulnerable subpopulations, pregnant women and their offspring, will be permanently injured. EPA would violate the SDWA and the court-approved Consent Decree if it reverses its regulatory determination and refuses to issue an MCL for perchlorate.	EPA should set the MCL for perchlorate at no higher than 2 ug/L and an MCLG at 0 ug/L.

Association/Agency	Position	Recommendations
California Environmental Protection Agency, Office of Environmental Health Hazard Assessment (OEHHA)	EPA's proposed MCL and MCLG for perchlorate are not adequately health-protective. EPA's model is complex, includes a number of assumptions, and is not reviewable without additional information. EPA should have used an uncertainty factor of 10 instead of 3. Also, EPA should not have based its MCL and MCLG on only IQ loss because it is unknown whether protecting against this particular outcome will help protect against all or most other potential adverse effects of perchlorate. Basing the MCL and MCLG on a 2 point loss in IQ is not health protective. EPA's risk assessment model has not been validated for the most sensitive subpopulations.	EPA should not use its model unless and until all parameters are well justified, it is more transparent, and it is appropriately calibrated and validated. These parameters and validation should be based on data from the most susceptible groups, including pregnant women, fetuses, and young infants. EPA should use an uncertainty factor of at least 10. If IQ is selected as a critical event, a 1 point loss should be used. Neonates and infants should be considered a susceptible group, and their very high water intake on a per body weight basis should be incorporated into any perchlorate risk assessment.
Massachusetts Department of Environmental Protection (MassDEP) [MassDEP adopted an MCL of 2 ug/L for perchlorate in 2006.]	MassDEP disagrees with all of EPA's options of: an MCL of 56 ug/L, basing the target of acceptable IQ loss on a 1% or 3% IQ loss, and no MCL for perchlorate. Of the options presented, a 1% IQ loss should be the maximum considered, which would be consistent with EPA guidance. IQ is an incomplete measure of neurotoxicity and does not reflect other adverse outcomes, including various behavioral effects associated with perchlorate exposure, such as ADHD, autism, and delayed cognitive development. EPA should have used an uncertainty factor of 10 instead of 3.	EPA should base an MCL for perchlorate on an assessment that fully addresses perchlorate's toxicity and uses appropriate health protective uncertainty factors in its derivation.
Environmental Protection Network (EPN) [EPN is an organization of over 450 EPA alumni volunteering their time to protect the integrity of the EPA, human health, and the environment.]	The uncertainty factor of 3 does not provide an adequate margin of safety and should be increased. EPA developed a new methodology to estimate the perchlorate dose that women of childbearing age in the U.S. are getting from food, but did not subject this analysis to external peer review. EPN has questions concerning EPA's assumptions about the extent and cost of the initial perchlorate monitoring required by the states and water systems. EPN has major concerns about the adequacy of EPA's cost-benefit analysis of the proposed MCL and with EPA's proposal to withdraw its determination to regulate perchlorate.	EPA should withdraw the current proposal and re-propose a more stringent perchlorate MCL with a new cost-benefit analysis. The new proposal should delete the option to withdraw from the 2011 regulatory determination.