



Matters Impacting Metropolitan

EPA and Army Corps of Engineers Publish New Proposed Definition of “Waters of the United States”

On January 23, 2020, the U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) (collectively, the Agencies) jointly issued new final regulations to define the term “waters of the United States” (WOTUS) under the Clean Water Act (CWA). The definition of this term is used to determine the scope of federal jurisdiction and permitting authority under the CWA. The new regulations are titled the “Navigable Waters Protection Rule.” The new Navigable Waters Protection Rule replaces the 2015 Clean Water Rule (the 2015 Rule), which in turn replaced the regulatory definition adopted in 1986 (the 1986 Regulations). The Navigable Waters Protection Rule incorporates many of the provisions from the previous regulations, but would narrow the scope of the CWA, particularly with respect to ephemeral streams and wetlands.

The Navigable Waters Protection Rule defines WOTUS to include four categories of jurisdictional waters: (1) territorial seas and traditional navigable waters; (2) tributaries of such waters that contribute surface flow to a navigable water in a “typical year”; (3) certain lakes, ponds, and

impoundments of jurisdictional waters; and (4) wetlands adjacent to other jurisdictional waters (other than waters that are themselves wetlands) that are inundated in a “typical year.”

The Rule excludes from the definition of WOTUS twelve categories of waters/features, including groundwater, waste treatment systems, ephemeral features, ditches, and diffuse stormwater run-off and directional sheet flow over uplands.

As previously reported, Executive Order 13778 was signed in February 2017, and directed the Agencies to propose new regulations to rescind or revise the 2015 Rule. The Agencies initiated a two-step rulemaking process, first to repeal the 2015 Rule and then to replace it. On December 23, 2019, the Agencies completed “step one” by repealing the 2015 Rule reinstating the 1986 Regulations. The Agencies completed “step two” by issuing the Navigable Waters Protection Rule.

The new rule will become effective in late March, 60 days after publication in the Federal Register. Litigation challenging the new rule is expected, and lawsuits challenging both the 2019 repeal rule and the 2015 Rule are ongoing. Metropolitan staff is evaluating the impacts of the new rule and will continue to track ongoing and future litigation.

Other Matters

Finance

Legal Department staff worked with Finance staff to prepare and post Metropolitan’s annual financial information filings for fiscal year ended June 30, 2019, pursuant to continuing disclosure requirements for all of Metropolitan’s outstanding revenue and general obligation bonds. The annual

filings include certain financial and operational disclosures and the Comprehensive Annual Financial Report for Fiscal Years Ended June 30, 2019 and 2018. The annual filings are available at <http://emma.msrb.org> (the Electronic Municipal Market Access system) maintained by the Municipal Securities Rulemaking Board.



Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Action in which MWD is a party	1	Complaint in Eminent Domain, filed in Los Angeles County Superior Court, in the case <i>California Department of Transportation v. MWD</i> , Case No. 19STCV44370, in which the Department of Transportation seeks use of parcels located in the City of Pomona to be used for temporary grading purposes in connection with the construction of the Route 71 freeway project	
Government Code Claims	5	(1) Claim from Imperial Irrigation District alleging that MWD's actions and inactions relating to storage of IID's conserved water in MWD's system during 2018 resulted in injury to IID in the amount of \$20,896,640 through the loss of 87,594 acre-feet of water; and (2) four claims relating to accidents involving MWD vehicles	
Requests Pursuant to the Public Records Act	10	<u>Requestor</u>	<u>Documents Requested</u>
		Anaheim Public Utilities	Colorado River Watershed Sanitary Survey
		CDM Smith	MWD report on Alternative Solution to the South Delta Temporary Barriers, Pre-Feasibility Study
		Center for Contract Compliance	Contract documents relating to the CRA White Water Siphon Erosion Protection
		NorthSouth GIS LLC	GIS data for MWD canals and connections
		Packwood Landscape Maintenance	Contract for landscape maintenance service at the Jensen Treatment Plant
		Private Citizen	Maps, photographs, or sketches of historical pipelines and camps during the late 1930s and early 1940s in the Indio area
		LPGas Systems	Lease for postage equipment in MWD's Sacramento office
		Santa Clara Valley Water District	Template for MWD's service contracts for boilerplate language
		Tritech Engineering Associates	Record elevation for MWD benchmark on Monterey Road in South Pasadena
Walnut High School Student	Data on water quality, recycled water, and well maintenance in the City of Walnut		
Other Matters	2	Wage garnishments	



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)	
<p>Validation Action <i>DWR v. All Persons Interested</i></p> <p>CEQA 17 cases</p> <p>CESA/Incidental Take Permit 2 cases</p>	<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 • January 10, 2020 – Nine motions for attorneys’ fees and costs denied in their entirety
<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"> • Tentative settlement in principle reached • October 21, 2019 trial date vacated to accommodate formal settlement agreement negotiations • Mandatory settlement conference Aug. 20, 2020 • New trial date Sept. 28, 2020
<p>COA Addendum/No-Harm Agreement <i>North Coast Rivers Alliance v. DWR</i> Sacramento County Superior Ct. (Judge Gevercer)</p>	<ul style="list-style-type: none"> • Plaintiffs allege violations of CEQA, Delta Reform Act & public trust doctrine • Deadline to prepare administrative record extended to March 17, 2020 • USBR Statement of Non-Waiver of Sovereign Immunity filed Sept. 2019 • Westlands Water District and North Delta Water Agency granted leave to intervene • Metropolitan & SWC Monitoring
<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> • Time to prepare the administrative record extended to March 23, 2020 • Answers or motions to dismiss due 30 days after administrative record is lodged • SWC granted leave to intervene • Metropolitan supporting SWC



Subject	Status
<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 and 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 & Conservation League, et al. 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 and assigned to Judge Culhane • Parties stipulated to DWR preparing the administrative record by Feb. 28, 2020, after which a meet-and-confer process begins that may last up to 5 months • Answers due 30 days after administrative record is received