



## Metropolitan Cases

### ***Metropolitan v. R. Douglas Collins*** **(Los Angeles Superior Court)**

As previously reported, Hearing Officer Doug Collins issued his decision on November 20, 2018, sustaining the appeal by AFSCME Local 1902 of a decision to terminate an employee involved in an altercation at the workplace. The hearing officer reduced the disciplinary action to a three-week suspension as he believed the termination was disproportionate to the disciplinary imposed on the other employee involved in the altercation, and the hearing officer was not convinced that the aggravating circumstances cited by Metropolitan warranted an enhancement of the disciplinary action to a discharge. Metropolitan disagreed with Mr. Collins' assessment that there are no substantial aggravating circumstances present,

and on February 12, 2019, Metropolitan filed a petition for writ of administration mandamus seeking to overturn his decision. The petition alleges that Mr. Collins' findings are not supported by substantial evidence and that he did not proceed in the manner required by law. On December 19, 2019, the Honorable Mitchell Beckloff, Judge of the Superior Court, issued his tentative ruling denying Metropolitan's petition. However, Judge Beckloff decided to reconsider this ruling based on oral argument. On January 31, 2020, issued his final decision granting Metropolitan's petition in part and remanding the matter for reconsideration by Hearing Officer Doug Collins. The Legal Department represents Metropolitan. (See General Counsel's November 2018 & February 2019 Activity Reports.)

## Matters Impacting Metropolitan

### **U.S. EPA Announces Proposed Decision to Regulate PFOA and PFOS in Drinking Water**

On February 20, 2020, the U.S. Environmental Protection Agency (EPA) announced its preliminary determination to start the process of setting drinking water standards for perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA). PFOA and PFOS are the two most commonly used, studied, and regulated per- and polyfluoroalkyl substances (PFAS) in the nation. The EPA is proposing not to regulate six other contaminants: 1,1-dichloroethane, acetochlor, methyl bromide, metolachlor, nitrobenzene, and RDX. EPA is also seeking feedback on three potential regulatory approaches: (1) evaluate each additional PFAS on an individual basis; (2) evaluate additional PFAS by different grouping approaches; and (3) evaluate PFAS based on drinking water treatment

techniques, as well as alternative approaches to monitoring. After EPA's proposal is published in the Federal Register, there will be a 60-day public comment period.

The Safe Drinking Water Act requires EPA every five years to make regulatory determinations whether to develop a drinking water standard for at least five unregulated contaminants. A preliminary regulatory determination such as the one EPA announced for PFOA and PFOS lays out and takes comment on EPA's view about whether certain unregulated contaminants meet statutory criteria for regulation. After EPA considers public comment, it will make a final determination as to whether or not to regulate these contaminants. Metropolitan staff will monitor comments on EPA's preliminary determination and any drinking water standards EPA might propose for PFOA and PFOS.



## Other Matters

### Finance

On February 11, 2020, Metropolitan issued \$207,355,000 Water Revenue Bonds, 2020 Series A (Bonds). The Bonds priced at the historically lowest credit spreads for Metropolitan, and at the lowest spreads in California since 2002. Bond proceeds will fund the acquisition and construction of capital improvements to Metropolitan’s Water System, and prepay \$100,000,000 of outstanding RBC Short-Term Revolving Notes. During a 4-month process that began in early October 2019, Legal Department staff attorneys worked with Finance, Engineering and Water Resources staff to prepare the official

statement used to market the Bonds and assisted outside bond and disclosure counsel with the drafting and negotiation of several contracts and closing certificates.

### Continuing Education

On February 27, the Legal Department hosted Mitch Tilner and Shane McKenzie from the law firm of Horvitz & Levy to provide a training presentation on Appellate Strategy; Before, During, and After Trial and Writing Appellate Briefs. Metropolitan staff from Legal, Environmental Planning, Real Property and the Ethics Office attended the training.

## Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Government Code Claims	5	(1) Claim from Southern California Edison describing damage caused by an MWD contractor to Edison’s underground electrical facilities in the City of Orange; (2) claim for damage caused by a rock hitting the windshield of a rental car used by an MWD employee; and (3) total of three claims relating to accidents involving MWD vehicles	
Subpoenas	1	Subpoena for employment-related records for a matter before the Workers’ Compensation Appeals Board	
Requests Pursuant to the Public Records Act	8	<u>Requestor</u>	<u>Documents Requested</u>
		Integrated Marketing Systems	Names of firms awarded contracts for past solicitations in response to requests for proposals or requests for quotations
		Los Angeles Department of Water and Power	Statement of Work for agreement with Quigley-Simpson & Heppelwhite for Water Awareness and Conservation Advertising Services
		Michael Baker International	As-built information for any MWD facilities on Nicolas Road in the City of Temecula
		Private Citizen	Data on applicants who received a rebate under the turf removal rebate program in 2015



<u>Requestor</u>	<u>Documents Requested</u>
Public Policy Institute of California	MWD and member agencies expenditures on conservation programs during the period 2012-2019
Reveal from the Center for Investigative Reporting	Documents relating to meetings held in Tahoe City, CA in August 2018 on California water issues
Systems Integrated	Documents relating to the Requests for Qualifications for Control System Upgrade Program
UC Hastings School of Law	Templates for MWD requests for qualifications/proposals and contracts, and copies of contract manuals



<b>Bay-Delta and SWP 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>  <b>CEQA</b> 17 cases  <b>CESA/Incidental Take Permit</b> 2 cases	<ul style="list-style-type: none"> <li>• Cases dismissed after DWR rescinded project approval, bond resolutions, decertified the EIR, and CDFW rescinded the CESA incidental take permit</li> <li>• January 10, 2020 – Nine motions for attorneys’ fees and costs denied in their entirety</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>• Tentative settlement in principle reached</li> <li>• October 21, 2019 trial date vacated to accommodate formal settlement agreement negotiations</li> <li>• Mandatory settlement conference Aug. 20, 2020</li> <li>• New trial date Sept. 28, 2020</li> </ul>
<b>COA Addendum/No-Harm Agreement</b> <i>North Coast Rivers Alliance v. DWR</i> Sacramento County Superior Ct. (Judge Gevercer)	<ul style="list-style-type: none"> <li>• Plaintiffs allege violations of CEQA, Delta Reform Act &amp; public trust doctrine</li> <li>• Deadline to prepare administrative record extended to March 17, 2020</li> <li>• USBR Statement of Non-Waiver of Sovereign Immunity filed Sept. 2019</li> <li>• Westlands Water District and North Delta Water Agency granted leave to intervene</li> <li>• Metropolitan &amp; SWC Monitoring</li> </ul>
<b>Delta Plan Amendments and Program EIR</b> 4 Consolidated Cases Sacramento County Superior Ct. (Judge Earl)  <i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i> (lead case)  <i>Central Delta Water Agency, et al. v. Delta Stewardship Council</i>  <i>Friends of the River, et al. v. Delta Stewardship Council</i>  <i>California Water Impact Network, et al. v. Delta Stewardship Council</i>	<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>• Cases consolidated for pre-trial and trial under <i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i></li> <li>• Time to prepare the administrative record extended to March 23, 2020</li> <li>• Answers or motions to dismiss due 30 days after administrative record is lodged</li> <li>• SWC granted leave to intervene</li> <li>• Metropolitan supporting SWC</li> </ul>



Subject	Status
<p><b>SWP Contract Extension Validation Action</b>            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"> <li>• DWR seeks a judgment that the Contract Extension amendments to the State Water Contracts are lawful</li> <li>• Metropolitan and 7 other SWCs filed answers in support of validity to become parties</li> <li>• Four answers filed in opposition denying validity on multiple grounds raised in affirmative defenses</li> <li>• Case deemed related to the two CEQA cases, below and assigned to Judge Culhane</li> </ul>
<p><b>SWP Contract Extension CEQA Cases</b>            Sacramento County Superior Ct.            (Judge Culhane)</p> <p><i>North Coast Rivers Alliance, et al. v. DWR</i></p> <p><i>Planning &amp; Conservation League, et al. v. DWR</i></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>• Metropolitan preparing unopposed motions to intervene</li> <li>• Deemed related to DWR’s Contract Extension Validation Action and assigned to Judge Culhane</li> <li>• 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</li> <li>• Answers due 30 days after administrative record is received</li> </ul>