



## Metropolitan Cases

### **Williams v. State of Arizona, USDC, District of Arizona; U.S. Court of Appeals for the Ninth Circuit**

In October 2017, Mr. Williams, who is representing himself, filed a complaint alleging that the federal government, the States of Arizona and California, and Metropolitan were discriminating against him and other African American tenants and depriving them of their right to own land and water rights on property they lease near Yuma, Arizona.

In December 2018, the federal court in Arizona granted Metropolitan's and other defendants' motions to dismiss this case. The district court held that the case could not proceed without the States, and that the States properly exercised their sovereign immunity when they refused to consent to be sued in federal court. The district court gave Mr. Williams 30 days to file a viable complaint without the States. He did not and the action was dismissed.

Mr. Williams appealed this decision to the Ninth Circuit in February 2019. After another round of briefs by the parties, the Ninth Circuit issued its ruling on October 21, 2019, affirming the district court's decision noting, "the questions raised in this appeal are so insubstantial as not to require further argument." Mr. Williams asked the full court to reconsider this decision.

On March 17, 2020, the Ninth Circuit denied Mr. Williams' motion to reconsider its dismissal of his appeal before the full Court. Following this decision, on March 25, 2020, the Ninth Circuit issued a mandate to the district court making its ruling final.

The March 17 and 25 rulings by the Ninth Circuit foreclose any further relief in this Court. However,

Mr. Williams may petition the U.S. Supreme Court to review the Ninth Circuit's decision. Staff will continue to monitor the matter.

### **Delta Islands Litigation Concluded**

The last of the four cases challenging Metropolitan's decision to purchase property known as the "Delta Islands" concluded with the final ruling in *County of San Joaquin, et al. v. Metropolitan, et al.*, San Joaquin County Superior Court Case No. STK-CV-UWM-2016-3597 in the Court of Appeal for the Third Appellate District Case No. C087640.

Following Metropolitan's March 2016 decision to purchase over 20,000 acres of land from Delta Wetlands Properties, known as the "Delta Islands," San Joaquin and Contra Costa Counties, Central Delta Water Agency, Contra Costa County Water Agency, Planning and Conservation League, and Food & Water Watch sued Metropolitan in San Joaquin Superior Court in April 2016, alleging that Metropolitan violated CEQA by approving the land acquisition without first preparing an Environmental Impact Report. They named Delta Wetlands Properties, Semitropic, and the Reclamation Districts as real parties in interest.

Metropolitan prevailed on the merits in the trial court and the court of appeal. In December 2019, the appellate court affirmed the trial court decision finding that Metropolitan's approval of the purchase of the Islands was not the approval of a project. Petitioners did not petition the California Supreme Court for review of this decision. As a result, on March 3, 2020, the appellate court ordered its ruling final. This concludes this action and concludes all litigation challenging Metropolitan's purchase of the Delta Islands.

## Matters Impacting Metropolitan

### **California's Office of Environmental Health Hazard Assessment to Set Public Health Goals for 1,4-Dioxane and NDMA**

California's Office of Environmental Health Hazard Assessment (OEHHA) recently announced that it will develop a public health goal (PHG) for

1,4-dioxane and will update the PHG for n-nitrosodimethylamine (NDMA). A PHG is the level of a chemical in drinking water that does not pose a significant risk to health. PHGs are used as the health basis to develop California's primary drinking water standards (maximum contaminant levels or MCLs). Both 1,4-dioxane and NDMA are



considered emerging contaminants. 1,4-dioxane currently has a notification level (NL) of 1 µg/L or 1 part per billion (ppb) based on cancer risk, and NDMA has an NL of 0.01 ppb. (An NL is a non-regulatory, health-based advisory level that the State Water Resources Control Board (State Water Board) establishes as a precautionary measure for a chemical that does not have a regulatory standard.) OEHHA set a PHG of 0.003 ppb for NDMA in 2006, also based on cancer risk.

1,4-dioxane is used in a variety of industrial and commercial applications, including as a solvent for products such as paints, resins, varnishes, fumigants, and dyes; as a stabilizer for chlorinated solvents; and in some cleaning and personal care products. 1,4-dioxane was listed as a carcinogen by California's Proposition 65 program in 1988. Although public water systems are not required to monitor for 1,4-dioxane, systems that have monitored voluntarily have reported numerous detections above the NL in the last 5 years, with the highest concentration at 32 ppb. In January 2019, the State Water Board asked OEHHA to establish a PHG for 1,4-dioxane in order to start the process for setting an MCL.

NDMA is formed in both industrial and natural processes. It is a byproduct of water treatment and is also created from nitrates and nitrites in the human gastrointestinal tract. NDMA was listed as a carcinogen by California's Proposition 65 program in 1987. NDMA is not currently produced or used commercially in the United States. Within the last five years, NDMA has been detected in several California public drinking water supply wells above the NL of 0.01 ppb.

OEHHA is asking for information about NDMA and 1,4-dioxane that could assist in conducting the risk assessments and in calculating the PHGs. The deadline to submit information to OEHHA is April 27, 2020. Metropolitan staff will monitor the development of PHGs and subsequent drinking water regulatory actions for these two chemicals.

### **State Water Board Proposes New Definition of "Microplastics in Drinking Water"**

The State Water Board recently proposed a new definition of "microplastics in drinking water." According to the proposed definition, "microplastics in drinking water" are "solid polymeric materials to

which chemical additives or other substances may have been added, which are particles which have at least two dimensions that are greater than 1 and less than 5,000 micrometers (µm). Polymers that are derived in nature that have not been chemically modified (other than by hydrolysis) are excluded." The State Water Board will be the first regulatory agency in the world to define "microplastics in drinking water," although other governmental agencies have defined "microplastics" in other contexts. The State Water Board cautions that its proposed definition is subject to change in response to new information, advances in analytical techniques, and/or the standardization of analytical methods.

California Health and Safety Code Section 116376 requires the State Water Board to adopt a definition of "microplastics in drinking water" by July 1, 2020. On January 31, 2020, the State Water Board submitted the proposed definition of "microplastics in drinking water" to the Southern California Coastal Water Research Project, which then facilitated a peer review of the scientific basis of the definition through an external panel of experts. By July 1, 2021, the State Water Board must also: (1) adopt a standard methodology to be used in the testing of drinking water for microplastics; (2) adopt requirements for four years of testing and reporting of microplastics in drinking water, including public disclosure of those results; (3) consider issuing a notification level or other guidance to help consumer interpretation of the test results; and (4) accredit qualified laboratories in California to analyze microplastics. The State Water Board may implement these requirements by adopting a policy handbook.

The State Water Board will hold a workshop on April 7, 2020 (by video and teleconference only) to receive information and solicit public input on the draft definition. Written comments on the proposed definition are due by 12:00 noon on April 24, 2020. The State Water Board will consider adopting the definition of "microplastics in drinking water" at its meeting on June 16, 2020. Metropolitan staff will monitor comments on the proposed definition and any subsequent testing methodology, testing and reporting requirements, notification level, and laboratory accreditation.



## Other Matters

### Continuing Education

During the month of March, the Legal Department coordinated two webinar trainings that were attended remotely:

1. On March 25, the Association of Women in Water, Energy and Environment hosted a webinar presentation titled, *PFAS Update: The “Forever Chemical” in the News, in the Movies and in the Courts*. The webinar was presented by the law firm of Meyers Nave. Metropolitan staff from Legal, Environmental Planning, Water Systems Operation, External Affairs and the Ethics Office attended the training.
2. On March 26, the law firm of Best Best & Krieger provided a webinar presentation on Electronic Records: Considerations for Public Agencies to Ensure State Law Compliance. Metropolitan staff from Legal, Administrative Services, Engineering, Real Property, External Affairs and the Ethics Office attended the training.

## Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>								
Actions in which MWD is a party	1	Complaint for (1) Breach of Contract, (2) on Common Counts, (3) Enforcement of Claim on Stop Payment Notice, (4) Enforcement of Claim on Public Works Payment Bond, and (5) Enforcement of Claims on Contractor's License Bonds, filed in Los Angeles County Superior Court, in the case <i>Walters Wholesale Electric Co. v. U.S. Controls, Inc., MWD, Mladen Buntich Construction Co., et al.</i> , in which plaintiff alleges that U.S. Controls failed to pay plaintiff for materials it furnished to U.S. Controls for work on the Weymouth Water Treatment Plant Domestic Water Systems Improvement. Metropolitan is named because of withholding funds pursuant to a stop payment notice filed by Walters.								
Government Code Claims	1	Claim relating to accident involving an MWD vehicle								
Subpoenas	2	Subpoenas for employment-related records for two matters before the Workers' Compensation Appeals Board								
Requests Pursuant to the Public Records Act	15	<table border="1"> <thead> <tr> <th><u>Requestor</u></th> <th><u>Documents Requested</u></th> </tr> </thead> <tbody> <tr> <td>(1) AAA Oil, (2) Merrimac Petroleum, Inc., and (3) Mansfield Oil Company of Gainesville</td> <td>Current invoices for bulk fuel supplied by Pinnacle Petroleum</td> </tr> <tr> <td>Adams Broadwell Joseph &amp; Cardozo</td> <td>Documents relating to the Advanced Water Treatment Facility proposed by MWD and Los Angeles County Sanitation Districts</td> </tr> <tr> <td>Coppertop Enterprises</td> <td>Construction records, including inspector daily reports, submittal logs, and escrow documents, relating to the modular homes at MWD desert facilities</td> </tr> </tbody> </table>	<u>Requestor</u>	<u>Documents Requested</u>	(1) AAA Oil, (2) Merrimac Petroleum, Inc., and (3) Mansfield Oil Company of Gainesville	Current invoices for bulk fuel supplied by Pinnacle Petroleum	Adams Broadwell Joseph & Cardozo	Documents relating to the Advanced Water Treatment Facility proposed by MWD and Los Angeles County Sanitation Districts	Coppertop Enterprises	Construction records, including inspector daily reports, submittal logs, and escrow documents, relating to the modular homes at MWD desert facilities
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	<u>Requestor</u>	<u>Documents Requested</u>
	Center for Contract Compliance (4 requests)	Contract document relating to (1) contractor furnishing bulk liquid oxygen (LOX), and system maintenance, repair, inspection and reporting requirements for the Jensen Water Treatment Plant, (2) landscape pesticide and rodent control services, (3) landscape maintenance and tree trimming, and (4) certified payroll records and fringe benefit statement for work on the Garvey Reservoir Drainage and Erosion Improvements by Pride Construction Engineering Services
	Costell & Adelson Law Corporation	Contracts, invoices, records of payment, communications, and other documents relating to the transfer of water between MWD and Coachella Valley Water District
	Guardian Asset Management	Account history for utility bills for address on Rex Street in Sylmar
	Law Office of Abraham Tang	Procedure for obtaining requests for proposals and contracts
	Santa Clara Valley Water District	Lease agreement with a farmer in the Palo Verde Irrigation District that includes a provision for fallowing fields, and December 2019 agreement with Bard Water District that included farmers fallowing their fields for part of the year
	Transparent California	MWD Employee Compensation Report for 2019
	WestWater Research	Water transfer agreements for the Delta Wetlands transfers
Other Matters	1 California Public Employment Relations Board (PERB) Unfair Practice Charge filed by AFSCME against MWD	



<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> <li>• Parties have appealed attorneys’ fees and costs rulings</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 began that may last up to 5 months</li> <li>• Answers due 30 days after administrative record is received</li> </ul>