



Matters Impacting Metropolitan

EPA Close to Deciding Whether to Regulate Perchlorate

The U.S. Environmental Protection Agency (EPA) recently sent to the White House Office of Management and Budget a final rule regarding whether to regulate perchlorate.

On May 14, 2020, EPA released information regarding the reduction of perchlorate in drinking water since EPA had published a final determination to regulate perchlorate in 2011.

Among the main factors EPA identified as contributing to the decrease in perchlorate levels are: (1) drinking water regulations for perchlorate in California and Massachusetts, and (2) ongoing remediation efforts to address perchlorate contamination in groundwater near former manufacturing facilities in Henderson, Nevada.

Last June, EPA proposed setting the Maximum Contaminant Level (MCL) and Maximum Contaminant Level Goal (MCLG) for perchlorate at 56 micrograms per liter ($\mu\text{g/L}$). EPA also sought comment on three alternative regulatory options: (1) setting an MCL and MCLG for perchlorate at 18 $\mu\text{g/L}$; (2) setting an MCL and MCLG for perchlorate at 90 $\mu\text{g/L}$; or (3) withdrawing EPA's 2011 determination to regulate perchlorate in drinking water.

Metropolitan submitted a comment letter expressing various concerns, including that EPA did not have an up-to-date accounting of perchlorate contamination and that EPA had excluded perchlorate data from California and Massachusetts. Also, Metropolitan asked EPA not to withdraw its determination to regulate perchlorate in drinking water. If remediation efforts in the Henderson area slow down in the absence of a federal regulation, drinking water utilities in

Nevada and Arizona that rely on Colorado River water could then have higher levels of perchlorate in their source water. In addition, California drinking water utilities (including some of Metropolitan's member agencies) would be challenged to comply with California's MCL for perchlorate of 6 $\mu\text{g/L}$.

According to the Consent Decree between the Natural Resources Defense Council (NRDC) and EPA in the lawsuit NRDC filed to compel EPA to regulate perchlorate, EPA must issue a final MCL and MCLG for perchlorate by June 19, 2020.

California is also reviewing its MCL for perchlorate in light of a revised Public Health Goal (PHG) of 1 $\mu\text{g/L}$ adopted in February 2015. The State Water Resources Control Board (SWRCB) is required to set an MCL for a chemical as close to the PHG as is technologically and economically feasible. As part of this process, the SWRCB held a public hearing on April 28, 2020, to consider lowering the detection limit for purposes of reporting (DLR) for perchlorate from 4 $\mu\text{g/L}$ to 2 $\mu\text{g/L}$. Data collected from monitoring using the lower DLR will allow the SWRCB to evaluate the technological and economic feasibility of water treatment to reduce perchlorate levels to concentrations less than the current DLR. Written comments on this proposal were due by May 1, 2020. On April 30, 2020, Metropolitan submitted a comment letter to the SWRCB supporting the lower perchlorate DLR which is consistent with laboratory capabilities and will allow for a more accurate and complete assessment of perchlorate occurrence across the state.

Metropolitan staff will continue to monitor and comment on both EPA's and California's proposed drinking water standards for perchlorate.

Cases to Watch

***California Natural Resources Agency v. Wilbur Ross; Pacific Coast Federation of Fishermen's Associations v. Wilbur Ross* (U.S. District Court)**

The Attorney General for the State of California (with the California Natural Resources Agency, and

the California Environmental Protection Agency) and the Pacific Coast Federation of Fishermen's Associations (with several other nonprofit organizations), herein PCFFA, sued the federal government (U.S. Department of Commerce, specifically National Marine Fisheries Service



(NMFS), and the Department of the Interior, specifically U.S. Fish and Wildlife Service (FWS) and the U.S. Bureau of Reclamation (Reclamation)) challenging the NMFS' and the FWS' 2019 biological opinions and Reclamation's Environmental Impact Statement, all issued to permit the continued operation of the federal Central Valley Project and the State Water Project under federal law.

On March 5, PCFFA filed a motion for a preliminary injunction seeking to enjoin the continued operation of the CVP under the 2019 biological opinions until the merits of the case are resolved. On April 21, the Attorney General filed a motion for a preliminary injunction seeking to enjoin the continued operation of the CVP under the 2019 biological opinions from May 10 to May 31, seeking instead the imposition of the so-called inflow:export ratio, which is a component of the rescinded 2009 NMFS biological opinion that was operational from April-May.

On May 8, the court conducted an all-day telephonic hearing to consider both motions for preliminary injunctions. On May 11, the court ordered Reclamation to operate to the inflow:export ratio for the remainder of May, based on concerns regarding San Joaquin origin steelhead (a federally listed species). This ruling has no direct impact on the operation of the SWP because DWR is not a defendant in this case and

DWR was already operating to the inflow:export ratio as required by its California Endangered Species Act incidental take permit.

After the hearing, the court sought additional information from the parties to inform its pending decision on PCFFA's motion for a preliminary injunction. The court's request to Reclamation focused on Reclamation's final temperature management plan, the discretionary and non-discretionary operations of the CVP, and the modeling of alternatives for temperature compliance at Shasta Reservoir. Reclamation has provided the requested additional information.

The court's request to PCFFA included a description of requested injunctive relief, description of how the species would benefit from requested relief, potential negative impacts on other species that could result from the requested relief, and an explanation of how the requested injunctive relief is within the discretionary authority of Reclamation. PCFFA has responded to the court.

The federal government and all intervenors, including Metropolitan, must reply to the PCFFA submittal by June 7. As the PCFFA motion is focused on temperature management at Shasta Reservoir, the court's ruling is not likely to have a direct operational impact on the SWP.

Other Matters

Finance

On May 22, 2020, Metropolitan remarketed its \$80,000,000 Subordinate Water Revenue Bonds, 2017 Series C, \$95,630,000 Subordinate Water Revenue Refunding Bonds, 2017 Series D, and

\$95,625,000 Subordinate Water Revenue Refunding Bonds, 2017 Series E. Legal Department staff attorneys worked with Finance, Engineering, and Water Resources staff and disclosure counsel to prepare Appendix A and with bond counsel to prepare bond documents.

Matters Received by the Legal Department

| <u>Category</u> | <u>Received</u> | <u>Description</u> | |
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| Subpoenas | 1 | Subpoenas for employment-related records for a matter before the Workers' Compensation Appeals Board | |
| Requests Pursuant to the Public Records Act | 16 | <u>Requestor</u> | <u>Documents Requested</u> |
| | | Center for Contact Compliance (7 requests) | (1) Contract information for the purchase of bulk sulfuric acid, (2) certified payroll records and fringe benefit statement for work |



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| | on the West Valley Feeder, Structure Replacement by subcontractor Performance Abatement Services, and (3) five requests for certified payroll records and fringe benefit statements for weed abatement, trash removal, tree trimming, herbicide application, and landscape maintenance at MWD facilities by Ron Ubrun Farms |
| CST Investments | List of properties that have had the water shut off in the past six months |
| EPC Consultants | Name of firm awarded contract for On-Site Construction Inspection and Administrative Services |
| Finch, Thornton & Baird | Construction documents relating to the Colorado River Aqueduct Pumping Plants 6.9kV Power Cable Replacement Project |
| Hardy & Hardy | Notice of Completion for Palos Verdes Reservoir Cover and Liner Replacement |
| Law Offices of Jordan R. Sisson | Records showing reimbursement of expenses, calendars, and staff time records relating to MWD Board Chairwoman Gloria Gray |
| Private Citizens (2 requests) | (1) Job title, salary and work location for MWD employees who were laid off or furloughed due to COVID-19; and (2) records relating to Los Angeles attorney David Frederick Klein who may have been involved in MWD's formation |
| Public Policy Institute of California | GIS data on MWD infrastructure and treatment plants |
| Schneider Wallace Cottrell Konecky | Documents relating to remarketing services for variable rate bonds issued by MWD |



| Bay-Delta and SWP Litigation | |
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| Subject | Status |
| <p>SWP-CVP 2019 BiOp Cases</p> <p><i>Pacific Coast Fed'n of Fishermen's Ass'ns, et al. v. Ross, et al. (PCFFA)</i></p> <p><i>Calif. Natural Resources Agency, et al. v. Ross, et al. (CNRA)</i></p> <p>Federal District Court, Eastern Dist. of California, Fresno Division (Judge Drozd)</p> | <ul style="list-style-type: none"> • SWC intervened in both PCFFA and CNRA cases • PCFFA's application for TRO denied April 7, 2020 • Both PCFFA and CNRA have moved for preliminary injunctions seeking to order the CVP to operate to the 2008/2009 BiOps • On May 11, 2020, the court granted, in part, the motions for preliminary injunction, requiring the Central Valley Project to operate to the San Joaquin River "inflow-to-export ratio" in the 2009 biological opinion through May 31, 2020 • The Court has requested additional information regarding CVP Shasta operations before it will rule on the remaining aspects of PCFFA's motion |
| <p>CESA Incidental Take Permit Cases</p> <p><i>Metropolitan Water Dist. & Mojave Water Agency v. Calif. Dept. of Fish & Wildlife, et al. (CESA/CEQA/Breach of Contract)</i></p> <p>Fresno County Superior Ct. (Judge Jeffrey Hamilton)</p> <p><i>State Water Contractors & Kern County Water Agency v. Calif. Dept. of Fish & Wildlife, et al. (CESA/CEQA)</i></p> <p>Fresno County Superior Ct. (Judge Jeffrey Hamilton)</p> <p><i>Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources (CEQA)</i></p> <p>Fresno County Superior Ct. (Judge Jeffrey Hamilton)</p> <p><i>San Bernardino Valley Municipal Water Dist. v. Calif. Dept. of Water Resources, et al. (CEQA/CESA/Breach of Contract/Takings)</i></p> <p>Fresno County Superior Ct. (Judge TBA)</p> <p><i>Sierra Club, et al. v. Calif. Dept. of Water Resources (CEQA, Delta Reform Act, Public Trust)</i></p> <p>San Francisco County Superior Ct. (Judge TBA)</p> | <ul style="list-style-type: none"> • Metropolitan, SWC, and Tehama-Colusa Canal Authority filed on April 28, 2020 in Fresno • North Coast Rivers Alliance, Institute for Fisheries Research, Pacific Coast Federation of Fishermen's Associations, San Francisco Crab Boat Owners Association, and Winnemem Wintu Tribe filed on April 28, 2020 in San Francisco • Sierra Club, Center for Biological Diversity, Planning & Conservation League, and Restore the Delta on April 29, 2020 in San Francisco • Only Metropolitan and SWC allege CESA violations • Only Metropolitan and Mojave have alleged breach of SWP contract and the implied covenant of good faith and fair dealing against DWR, naming California Natural Resources Agency as a real party in interest in those causes of action • July 17, 2020 - First Case Management Conference in <i>North Coast Rivers Alliance, et al. v. DWR</i> • Sept. 9, 2020 – First Case Management Conference in <i>Metropolitan v. CDFW</i> • Sept. 13, 2020 – First Case Management Conference in <i>Tehama-Colusa Canal Auth. v. DWR</i> • Sept. 16, 2020 – First Case Management Conference in <i>SWC v. CDFW</i> |



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| <p><i>North Coast Rivers Alliance, et al. v. Calif. Dept. of Water Resources</i> (CEQA, Delta Reform Act, Public Trust) San Francisco County Superior Ct. (Judge Cynthia Lee)</p> <p><i>Central Delta Water Agency, et. al. v. Calif. Dept. of Water Resources</i> (CEQA, Delta Reform Act, Public Trust, Delta Protection Acts/Area of Origin) Sacramento County Superior Ct. (Judge James Arguelles)</p> | |
| <p>CDWR Environmental Impact Cases Sacramento Superior Ct. Case No. JCCP 4942 (20 Coordinated Cases – 1 Validation; 17 CEQA; 2 CESA) (Judge Culhane)</p> | |
| Subject | Status |
| <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 • Parties have appealed attorneys’ fees and costs rulings |
| <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"> • Settlement reached to buy out the 1968 settlement agreement for \$27 million • Antioch City Council approved • DWR awaiting Governor’s approval |
| <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 July 25, 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> | <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 |



| <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 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 May 22, 2020, but likely extended to June 15, 2020 by court emergency order • Answers or motions to dismiss due 30 days after administrative record is lodged • SWC granted leave to intervene • Metropolitan supporting SWC |
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| Subject | Status |
| <p>SWP Contract Extension Validation Action</p> <p>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</p> <p>Sacramento County Superior Ct. (Judge Culhane)</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 began that may last up to 5 months • Answers due 30 days after administrative record is received |