## Metropolitan Cases

***Bruce Puckett v. Metropolitan; et al.*** **(Riverside County Superior Court)**

On December 26, 2018, plaintiff Bruce Puckett filed a complaint in Riverside County Superior Court against Metropolitan. Plaintiff alleges two causes of action against Metropolitan for dangerous condition of public property and negligence. Plaintiff was an employee of the DVL Marina concessionaire at the time of the incident and Metropolitan tendered the defense as an additional insured under the concessionaire's insurance policy. The insurer defended Metropolitan in the case, negotiated and paid to settle in the amount of $30,000. Due to court closures and delays related to the pandemic, the case was not finally dismissed until this month.

***Food & Water Watch, et al. v. Metropolitan, et al.*** **(Los Angeles Superior Court)**

In September 2018, Food & Water Watch and Center for Food Safety filed a reverse validation action challenging the Board's July 10, 2018 vote on California WaterFix. The complaint alleged that the authorization to fund up to 64.6% of WaterFix costs is unreasonable and disproportionate in violation of Proposition 26; authorizes a property tax outside of Proposition 13's parameters; exceeds Metropolitan's authority under the Burns-Porter Act and Metropolitan's State Water Project (SWP) contract; and is invalid because it is directed to a project that lacks required approvals and is the subject of pending legal challenges.

Metropolitan filed a demurrer (motion to dismiss) to all of the causes of action and SDCWA filed a demurrer only as to the Proposition 26 claim. Plaintiffs amended the complaint and Metropolitan and SDCWA again filed similar demurrers. A group of agricultural water districts that are either SWP contractors or member agencies of the Kern County Water Agency filed answers.

On March 15, 2019, the court sustained (granted) Metropolitan's entire demurrer, without granting plaintiffs leave to amend. The court also sustained SDCWA's demurrer to the first cause of action concluding the case at the trial court level.

Plaintiffs appealed and the case is now pending before the Second District of the Court of Appeal. Following Plaintiff's filing of the Notice of Appeal, DWR terminated California WaterFix. Plaintiffs refused to dismiss the appeal and therefore, briefing has continued. Metropolitan filed a motion to dismiss the appeal as moot. On August 5, 2020, the Court denied the motion, but the mootness issue may be addressed with the merits. Plaintiffs have not yet filed their Reply Brief. Oral argument may be set after briefing is complete. Staff will keep the Board advised going forward.

***Staar v. Metropolitan*** **(Los Angeles Superior Court)**

Former employee Greg Staar sued Metropolitan in Los Angeles County Superior Court, alleging whistleblower retaliation in violation of California Labor Code section 1102.5. Metropolitan denies the allegations and the parties are currently engaged in discovery. On September 2, 2020, the court held a case management conference and scheduled the case for jury trial to begin November 1, 2021. The trial date provides the parties with time to engage in mediation, as well as sufficient time for Metropolitan to file a motion for summary judgment before trial.

**Oroville Dam Litigation (Sacramento County Superior Court)**

Last month, the Board received a report on the status of the Oroville Dam Litigation, which is comprised of eight separate cases that are part of Coordinated Proceeding JCCP No. 4974 located in Sacramento County Superior Court.

One case, *The People of the State of California v. California Department of Water Resources et al*., Butte County Superior Court Case Number 18CV00415 (Butte County Case), alleges violations of the Fish and Game Code section 5650 by DWR. This case, originally filed in 2018, is unique in that the Butte County District Attorney is seeking between $34 and $51 billion in civil penalties against DWR. In public documents not related to the litigation, DWR has asserted that, if any such penalties are assessed, they will be billed to and paid by the State Water Contractors (SWCs). Metropolitan and the other SWCs vigorously disagree with this assertion. Accordingly, the General Counsel requested

authorization for Metropolitan to intervene in the Butte County Case to defend its contractual rights in the State Water Project (SWP) and to help protect the project's operational and financial integrity, which this Board granted.

Consistent with this authorization, Metropolitan moved to intervene in the Butte County Case. This motion was submitted on September 3, and was filed as a joint motion with State Water Contractors, Inc., Kern County Water Agency, Santa Clara Valley Water District and Mojave Water Agency (collectively, "Contractor Parties"). In conjunction with this motion to intervene, the Contractor Parties filed a demurrer seeking to have the Butte County Case dismissed in its entirety. The Contractor Parties believe that DWR is not subject to Fish and Game Code section 5650 and cannot be subject to penalties for any alleged violations. This conclusion is based on both the plain language of the statute and its legislative history. As required by applicable rules, the Contractor Parties also filed a proposed answer to the complaint in the Butte County Case, which would be accepted as the parties' responsive pleading if their demurrer is denied.

Although the case has been pending since 2018, on September 3, 2020, DWR filed a motion for summary adjudication seeking to have the Butte County Case dismissed. DWR's motion is based on various grounds including those raised by the Contractor Parties. The court has not yet set a date for any of these motions to be heard.

## Matters Received by the Legal Department

| Category | Received | Description | |
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| Action in which MWD is a party | 1 | Eastern Municipal Water District Cross-Complaint for (1) Equitable Indemnity, (2) Equitable Contribution and Apportionment, and (3) Declaratory Relief against MWD, filed in Riverside County Superior Court, relating to an incident on March 18, 2019 from the Perris Valley Siphon Leak Repair during the Colorado River Aqueduct shutdown that involved an unplanned flow of water from the member agency's facility into MWD's Perris Valley Siphon | |
| Government Code Claim | 2 | (1) Eastern Municipal Water District claim for indemnity for potential damages in lawsuit filed against Eastern relating to the March 18, 2019 incident during the Perris Valley Siphon Leak Repair, and (2) claim relating to an accident involving an MWD vehicle | |
| Requests Pursuant to the Public Records Act | 12 | Requestor | Documents Requested |
| | | Adkan Engineers | Plans showing existing pipelines or other facilities associated with Lake Skinner near residential development project |
| | | CCS Global Tech (2 requests) | Bid documents for (1) On-Call Information Technology Cyber Security Services and (2) Information Technology Database and Application |
| | | Center for Contract Compliance | Certified payroll records and fringe benefit statement for Rockforce Construction for its work on the CRA White Water Siphon Erosion Protection Project |

| | | Requestor | Documents Requested |
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| | | Hunsaker & Associates | Plans for MWD's 73" water line in the City of Covina |
| | | Los Angeles Department of Water and Power | Data on MWD's unrestricted reserves |
| | | North Bay Bohemian | Contracts, invoices, and correspondence between MWD and Sloat Higgins Jensen and Associates |
| | | Private Citizen (2 requests) | (1) Records relating to MWD employees who are either working from home or were laid off since March 15, 2020, and (2) Request for Qualifications for On-Call Design and Construction Management Services for Tunnel Projects |
| | | San Diego County Water Authority | MWD's Emergency Response Plan that references the use of Diamond Valley Lake for emergency purposes |
| | | S&P Global Market Intelligence | Records relating to gains or losses in August 2020 from energy trading activities |
| | | Graduate Student, University of California, Davis | Photos and records on Holmes Carob Orchard where Lake Mathews is now located |
| Other Matters | 1 | Letter from counsel requesting employment records pertaining to a former MWD employee | |

## Bay-Delta and SWP Litigation

| Subject | Status |
|---|---|
| **DCP Revenue Bond Validation Action**<br>*DWR v. All Persons Interested*<br>Sacramento County Superior Ct.<br>(Judge Wood) | • Filed Aug. 6, 2020<br>• Answers or cross-complaints due October 30, 2020<br>• Case Management Conference set for Feb. 11, 2021 |
| **SWP-CVP 2019 BiOp Cases**<br>*Pacific Coast Fed'n of Fishermen's Ass'ns, et al. v. Ross, et al.* (*PCFFA*)<br>*Calif. Natural Resources Agency, et al. v. Ross, et al.* (*CNRA*)<br>Federal District Court, Eastern Dist. of California, Fresno Division<br>(Judge Drozd) | • SWC intervened in both *PCFFA* and *CNRA* cases<br>• Briefing on federal defendants' motion to dismiss CNRA's California ESA claim is complete; no hearing date set and may be decided on the papers<br>• Parties stipulated to intervention by Friant Water Authority, Arvin-Edison Water Storage District, City of Folsom, City of Roseville, San Juan Water District, Oakdale Irrigation District, and South San Joaquin Irrigation District<br>• Parties meeting and conferring on briefing schedule on the merits |
| **CESA Incidental Take Permit Cases**<br>*Metropolitan & Mojave Water Agency v. Calif. Dept. of Fish & Wildlife, et al*.<br>(CESA/CEQA/Breach of Contract)<br>Fresno County Superior Ct.<br>(Judge Jeffrey Hamilton)<br>*State Water Contractors & Kern County Water Agency v. Calif. Dept. of Fish & Wildlife, et al*. (CESA/CEQA)<br>Fresno County Superior Ct.<br>(Judge Jeffrey Hamilton)<br>*Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources* (CEQA)<br>Fresno County Superior Ct.<br>(Judge Jeffrey Hamilton)<br>*San Bernardino Valley Municipal Water Dist. v. Calif. Dept. of Water Resources, et al.* (CEQA/CESA/ Breach of Contract/Takings)<br>Fresno County Superior Ct.<br>(Judge TBA)<br>*Sierra Club, et al. v. Calif. Dept. of Water Resources* (CEQA/Delta Reform Act/Public Trust)<br>San Francisco County Superior Ct.<br>(Judge TBA) | • Metropolitan, SWC, Tehama-Colusa Canal Auth., and San Bernardino Valley Municipal Water Dist. Case Management Conferences September 16, 2020<br>• North Coast Rivers Alliance and SF Baykeeper Case Management Conferences continued to Sept. 25, 2020<br>• Tehama-Colusa Canal Auth. and DWR each filed petitions to coordinate all 8 cases; DWR moved for a stay of all cases pending outcome of the petitions to coordinate; no hearing date set on petitions and motion<br>• SWC and Metropolitan have submitted Public Records Act requests seeking administrative record materials and other relevant information<br>• On September 8, the Judicial Council Chair ordered the Presiding Judge of San Francisco Superior Court to assign a coordination motion judge |

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| *North Coast Rivers Alliance, et al. v. Calif. Dept. of Water Resources*<br>(CEQA/Delta Reform Act/Public Trust)<br>San Francisco County Superior Ct.<br>(Judge Cynthia Lee)<br><br>*Central Delta Water Agency, et. al. v. Calif. Dept. of Water Resources*<br>(CEQA/Delta Reform Act/Public Trust/ Delta Protection Acts/Area of Origin)<br>Sacramento County Superior Ct.<br>(Judge James Arguelles)<br><br>*San Francisco Baykeeper, et al. v. Calif. Dept. of Water Resources, et al*.<br>(CEQA/CESA)<br>Alameda County Superior Ct.<br>(Judge Frank Roesch) | |

| ***CDWR Environmental Impact Cases***<br>**Sacramento Superior Ct. Case No. JCCP 4942**<br>**(20 Coordinated Cases – 1 Validation; 17 CEQA; 2 CESA) (Judge Culhane)** | |
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| **Subject** | **Status** |
| **Validation Action**<br>*DWR v. All Persons Interested*<br><br>**CEQA**<br>17 cases<br><br>**CESA/Incidental Take Permit**<br>2 cases | • Cases dismissed after DWR rescinded project approval, bond resolutions, decertified the EIR, and CDFW rescinded the CESA incidental take permit<br>• January 10, 2020 – Nine motions for attorneys' fees and costs denied in their entirety<br>• Parties have appealed attorneys' fees and costs rulings<br>• Parties preparing the record for appeal in advance of briefing the merits |
| **Breach of Contract**<br>*City of Antioch v. DWR*<br>Sacramento County Superior Ct. (Judge De Alba) | • Settlement reached to buy out the 1968 settlement agreement for $27 million<br>• Antioch City Council approved<br>• DWR received governor's office approval and executed the settlement on July 30, 2020<br>• Case dismissed based on Antioch's request to dismiss with prejudice on August 17, 2020 |

| Subject | Status |
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| **COA Addendum/ No-Harm Agreement**<br>*North Coast Rivers Alliance v. DWR*<br>Sacramento County Superior Ct. (Judge Gevercer) | • Plaintiffs allege violations of CEQA, Delta Reform Act & public trust doctrine<br>• USBR Statement of Non-Waiver of Sovereign Immunity filed September 2019<br>• Westlands Water District and North Delta Water Agency granted leave to intervene<br>• Metropolitan & SWC Monitoring<br>• Deadline to prepare administrative record extended September 23, 2020 |
| **Delta Plan Amendments and Program EIR**<br>4 Consolidated Cases Sacramento County Superior Ct. (Judge Earl)<br>*North Coast Rivers Alliance, et al. v. Delta Stewardship Council* (lead case)<br>*Central Delta Water Agency, et al. v. Delta Stewardship Council*<br>*Friends of the River, et al. v. Delta Stewardship Council*<br>*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<br>• Allegations relating to "Delta pool" water rights theory and public trust doctrine raise concerns for SWP and CVP water supplies<br>• Cases consolidated for pre-trial and trial under *North Coast Rivers Alliance v. Delta Stewardship Council*<br>• SWC granted leave to intervene<br>• Metropolitan supports SWC<br>• Parties stipulated to extend time to prepare the administrative record. Due to recent shutdown orders, date is uncertain.<br>• Parties stipulated that answers or motions to dismiss due 60 days after remittitur is issued in the Delta Stewardship Council Cases |
| **SWP Contract Extension Validation Action**<br>Sacramento County Superior Ct. (Judge Culhane)<br>*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<br>• Metropolitan and 7 other SWCs filed answers in support of validity to become parties<br>• Four answers filed in opposition denying validity on multiple grounds raised in affirmative defenses<br>• Case deemed related to the two CEQA cases below and assigned to Judge Culhane |
| **SWP Contract Extension CEQA Cases**<br>Sacramento County Superior Ct. (Judge Culhane)<br>*North Coast Rivers Alliance, et al. v. DWR*<br>*Planning & Conservation League, et al. v. DWR* | • Petitions for writ of mandate alleging CEQA and Delta Reform Act violations filed on January 8 & 10, 2019<br>• Deemed related to DWR's Contract Extension Validation Action and assigned to Judge Culhane<br>• Administrative Record completed<br>• Answers due 30 days after administrative record is received |

| Subject | Status |
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| **Delta Conveyance Project**<br><br>*Central Delta Water Agency, et al. v. DWR*<br>Sacramento County Superior Ct.<br>(Judge Chang) | • Filed Aug. 10, 2020<br>• Plaintiffs Central Delta Water Agency, South Delta Water Agency and Local Agencies of the North Delta<br><br>One cause of action alleging that DWR's adoption of an Initial Study/Mitigated Negative Declaration (IS/MND) for soil explorations needed for the Delta Conveyance Project violates CEQA |

| San Diego County Water Authority v. Metropolitan | | |
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| **Cases** | **Date** | **Status** |
| 2010, 2012 | July 30 | Hearing on proposed judgment. |
| | July 31 | Tentative judgment issued by the court. |
| | August 3 | Memo to Board transmitting tentative. |
| | August 13-14 | Final judgment issued and issuance of writ. Transmitted to the Board on August 17. |
| | August 28, Sept. 1 | SDCWA and Metropolitan file memoranda of costs for the 2010 and 2012 cases. |
| 2014, 2016 | August 25 | Hearing on SDCWA's motion to lift stay and file amended complaints. |
| | August 27 | Judge Massullo granted SDCWA's motions. Ruling transmitted to the Board on August 28. |
| | August 28 | SDCWA serves First Amended (2014) and Second Amended (2016) Petitions for Writ of Mandate and Complaints for Determination of Invalidity, Damages, and Declaratory Relief. |
| 2017 | August 11 | Dismissal entered. |
| 2018 | July 30 | Parties agree and stipulate to assign this case to Judge Massullo's court. |