



Metropolitan Cases

Oroville Dam Litigation (Sacramento County Superior Court)

In July, the Board received a report on the status of the Oroville Dam Litigation, which is comprised of eight cases coordinated in Sacramento County Superior Court.

As discussed with the Board, one case filed by the Butte County District Attorney (*People of the State of California v. California Department of Water Resources, et al.*) alleges violations of the Fish and Game Code section 5650 and seeks up to \$51 billion in civil penalties against DWR. DWR has publicly stated that any such penalties, if assessed, would be billed to and paid by the State Water Contractors (SWCs).

Pursuant to the Board’s authorization, Metropolitan moved to intervene in the Butte County case to protect its interests in the SWP. The 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 the motion to intervene, the Contractor Parties filed a demurrer seeking to have the Butte County case dismissed in its entirety on the grounds that Section 5650 is not applicable to

government entities. On September 3, 2020, DWR filed a motion for summary adjudication seeking to have the Butte County Case dismissed on similar grounds. DWR’s motion for summary adjudication and the Contractor Parties’ motion to intervene were scheduled to be heard on November 20 and December 4, 2020, respectively. However, the court has requested further briefing from DWR and the Butte County District Attorney as to whether flood waters carrying debris or eroding materials into waters of the state constitutes a violation of Section 5650. In light of this, the court has rescheduled the hearing on DWR’s motion for summary adjudication for December 18, 2020, and the hearing on the Contractor Parties’ motion to intervene for January 8, 2021. (See General Counsel’s August 2020 Activity Report)

Imperial Irrigation District v. Metropolitan (Los Angeles Superior Court)

On April 18, 2019, Imperial Irrigation District filed a petition for writ of mandate challenging Metropolitan’s CEQA exemption determination for the March 2019 approvals regarding the Colorado River Drought Contingency Plan. Briefing was completed October 26, 2020, and the trial was scheduled for November 23, 2020. On November 13, 2020, the court continued the trial until January 4, 2021.

Other Matters

Finance

On November 20, Metropolitan extended the credit facility securing its \$175,000,000 Subordinate Water Revenue Bonds, 2016 Authorization, Series A. Legal Department staff attorneys worked with outside bond counsel with the drafting and negotiation of several contracts and closing certificates.

Continuing Education

On November 16, the Legal Department attended a remote legal training by Bloomberg to provide an introduction to their research tool “Bloomberg Law.”

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>
Government Code Claims	1	Claim relating to water leak from MWD pipeline going onto Claimant’s property



Requests Pursuant to the Public Records Act	20	<u>Requestor</u>	<u>Documents Requested</u>
		AECOM	As-built information for MWD facilities within the project area in the city of San Bernardino
		Caltrans District 8 (Riverside and San Bernardino Counties)	Records regarding MWD's rights-of-way along the Colorado River Aqueduct
		CCS Global Tech	Bid tabulation and winning proposals for: (1) Service Desk Application with Full Information Technology Management (ITSM); and (2) On-Call Consulting Services for Microsoft Azure Application
		Clearview Strategies (3 requests)	Winning proposals for (1) Environmental Planning Services (On-Call); (2) Geotechnical and Tunnel Design Engineering Consulting Services; (3) Environmental Planning Services for Prestressed Concrete Cylinder Pipe (PCCP) Program; (4) Design and Operation of Demonstration Facility for Potential Regional Recycled Water Supply Program; and (5) Climate Action Plan and CEQA Document
		Historic Preservation Consulting	Grading plans, site surveys or soils reports for former MWD building at 1111 Sunset Boulevard
		Los Angeles County Metropolitan Transportation Authority	Records management organizational chart and number of staff processing Public Records Act requests
		Los Angeles County Public Works	Request for Proposal for the sale of energy from MWD's small hydroelectric generators in August 2015
		Michael Baker International	As-built information showing MWD utilities near project area in the city of Rancho Cucamonga for work on a sewer siphon for Inland Empire Utilities Agency



<u>Requestor</u>	<u>Documents Requested</u>
Orange County Water District	General mineral and physical analysis of Metropolitan’s water supplies for the period July 2019 through June 2020
Private Citizens (4 requests)	(1) Winning proposal and contract for current janitorial services at Jensen Water Treatment Plant; (2) records relating to turf removal rebate paid to San Vicente Golf Course; (3) records relating to water sale by Madera Irrigation District in 2014; and (4) location of sewer connection to home in Anaheim
TAIT & Associates	As-built plans for MWD facilities near project in Yorba Linda
University of California, Berkeley Students (2 requests)	Records relating to MWD’s purchase of the Delta Islands and projects and development of facilities on the islands
Water/Wastewater Design Associates	Drawings showing MWD utilities in the area of the Bohert-Banyon Sewer Project
West Basin Municipal Water District	Letters received during last six months from MWD employees to MWD Board of Directors regarding harassment issues



PLEASE NOTE

- ADDITIONS ONLY IN THE FOLLOWING TABLES WILL BE SHOWN IN RED.
- ANY CHANGE IN CONTRACT AMOUNTS WILL BE SHOWN IN REDLINE FORM (I.E., ADDITIONS, REVISIONS, DELETIONS).



Bay-Delta and SWP Litigation	
Subject	Status
<p>DCP Revenue Bond Validation Action <i>DWR v. All Persons Interested</i> Sacramento County Superior Ct. (Judge Wood)</p>	<ul style="list-style-type: none"> • Filed Aug. 6, 2020 • Answers or cross-complaints were due October 30, 2020 • Metropolitan, Mojave Water Agency, Coachella Valley Water District, and Santa Clarita Valley Water Agency have filed answers in support • Kern County Water Agency, Tulare Lake Basin Water Storage District, Oak Flat Water District, County of Kings, Kern Member Units & Dudley Ridge Water District, and City of Yuba City filed answers in opposition • North Coast Rivers Alliance et al., Howard Jarvis Taxpayers Association, Sierra Club et al., County of Sacramento & Sacramento County Water Agency, CWIN et al., Clarksburg Fire Protection District, Delta Legacy Communities, Inc, and South Delta Water Agency & Central Delta Water Agency have filed answers in opposition
<p>DCP Revenue Bond CEQA Case <i>Sierra Club, et al. v. California Department of Water Resources</i> Sacramento County Superior Ct. (Judge Earl)</p>	<ul style="list-style-type: none"> • Sierra Club, Center for Biological Diversity, Planning and Conservation League, Restore the Delta, and Friends of Stone Lakes National Wildlife Refuge filed a stand-alone CEQA lawsuit challenging DWR’s adoption of the bond resolutions • Alleges DWR violated CEQA by adopting bond resolutions before certifying a Final EIR for the Delta Conveyance Project
<p>SWP-CVP 2019 BiOp Cases <i>Pacific Coast Fed’n of Fishermen’s Ass’ns, et al. v. Ross, et al. (PCFFA)</i> <i>Calif. Natural Resources Agency, et al. v. Ross, et al. (CNRA)</i> Federal District Court, Eastern Dist. of California, Fresno Division (Judge Drozd)</p>	<ul style="list-style-type: none"> • SWC intervened in both <i>PCFFA</i> and <i>CNRA</i> cases • 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 • Federal defendants circulated administrative records for each of the BiOps • Court entered an order giving the parties until December to resolve any record disputes and setting a briefing schedule on any unresolved record disputes with a hearing date of March 2, 2021
<p>CESA Incidental Take Permit Cases <i>Metropolitan & Mojave Water Agency v. Calif. Dept. of Fish & Wildlife, et al.</i> (CESA/CEQA/Breach of Contract) Fresno County Superior Ct. (Judge Jeffrey Hamilton)</p>	<ul style="list-style-type: none"> • All 8 cases ordered coordinated and pending assignment of a trial judge in Sacramento County Superior Court • Stay on discovery issued until coordination trial judge orders otherwise • SWC and Metropolitan have submitted Public Records Act requests seeking administrative record materials and other relevant information



State Water Contractors & Kern County Water Agency v. Calif. Dept. of Fish & Wildlife, et al. (CESA/CEQA)
Fresno County Superior Ct.
(Judge Jeffrey Hamilton)

Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources (CEQA)
Fresno County Superior Ct.
(Judge Jeffrey Hamilton)

San Bernardino Valley Municipal Water Dist. v. Calif. Dept. of Water Resources, et al. (CEQA/CESA/ Breach of Contract/Takings)
Fresno County Superior Ct.
(Judge TBA)

Sierra Club, et al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust)
San Francisco County Superior Ct.
(Judge TBA)

North Coast Rivers Alliance, et al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust)
San Francisco County Superior Ct.
(Judge Cynthia Lee)

Central Delta Water Agency, et. al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust/Delta Protection Acts/Area of Origin)
Sacramento County Superior Ct.
(Judge James Arguelles)

San Francisco Baykeeper, et al. v. Calif. Dept. of Water Resources, et al. (CEQA/CESA)
Alameda County Superior Ct.
(Judge Frank Roesch)



CDWR Environmental Impact Cases Sacramento Superior Ct. Case No. JCCP 4942 (20 Coordinated Cases – 1 Validation; 17 CEQA; 2 CESA) (Judge Culhane)	
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 • Parties preparing the record for appeal in advance of briefing the merits
<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 • USBR Statement of Non-Waiver of Sovereign Immunity filed September 2019 • Westlands Water District and North Delta Water Agency granted leave to intervene • Metropolitan & SWC Monitoring • Deadline to prepare administrative record extended to January 22, 2021
<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 v. Delta Stewardship Council</i> • SWC granted leave to intervene • Metropolitan supports SWC • Delta Stewardship Council has lodged the administrative record • Parties stipulated that answers or motions to dismiss due 60 days after remittitur is issued in the Delta Stewardship Council Cases



Subject	Status
<p>SWP Contract Extension Validation Action Sacramento County Superior Ct. (Judge Culhane)</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. (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 • Deemed related to DWR’s Contract Extension Validation Action and assigned to Judge Culhane • Administrative Record completed • DWR filed its answers on Sept. 28, 2020
<p>Delta Conveyance Project <i>Central Delta Water Agency, et al. v. DWR</i> Sacramento County Superior Ct. (Judge Chang)</p>	<ul style="list-style-type: none"> • Filed Aug. 10, 2020 • Plaintiffs Central Delta Water Agency, South Delta Water Agency and Local Agencies of the North Delta • 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
<p>Water Management Tools Contract Amendment <i>California Water Impact Network et al. v. DWR</i> Sacramento County Superior Ct. (Judge Arguelles)</p> <p><i>North Coast Rivers Alliance, et al. v. DWR</i> Sacramento County Super. Ct. (Judge Earl)</p>	<ul style="list-style-type: none"> • Filed Sept. 28, 2020 • CWIN and Aqualliance allege one cause of action for violation of CEQA • NCRA et al. allege four causes of action for violations of CEQA, the Delta Reform Act, Public Trust Doctrine and seeking declaratory relief



San Diego County Water Authority v. Metropolitan, et al.		
Cases	Date	Status
2010, 2012	August 13-14	Final judgment and writ issued. Transmitted to the Board on August 17.
	August 28, Sept. 1	SDCWA and Metropolitan filed memoranda of costs.
	Sept. 11	Metropolitan filed notice of appeal of judgment and writ.
	Sept. 14, 16	Metropolitan filed motion to strike SDCWA's costs memorandum, and SDCWA filed motion to strike or tax Metropolitan's costs memorandum.
	Oct. 9	Parties filed cross-motions on prevailing party, if any, as to attorneys' fees.
	Oct. 28	Court of Appeal issued order that the matter will be heard and decided on an expedited basis.
	Oct. 30	Parties filed responses to cross-motions on prevailing party, if any, as to attorneys' fees.
	Nov. 12	Hearing on cross-motion for prevailing parties in 2010-2012. Tentative in SDCWA's favor. No final ruling; matter continued to December 16.
	Nov. 25	Parties filed a joint statement on court's jurisdiction to determine prevailing party after appeal filed.
	Dec. 7	Responding briefs (if applicable) due on court's jurisdiction to determine prevailing party after appeal filed. Responding briefs are not necessary.
	Dec. 16	Hearing on prevailing party, if any, as to attorneys' fees (postponed from Nov. 12).
	Jan. 12, 2021	Hearing on motions to strike or tax costs memoranda.
2014, 2016	August 28	SDCWA served first amended (2014) and second amended (2016) petitions/complaints.
	Sept. 28	Metropolitan filed demurrers and motions to strike portions of the amended petitions/complaints.
	Sept. 28-29	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed joinders to the demurrers and motions to strike.



Cases	Date	Status
2014, 2016		
	Nov. 12	Case Management Conference on 2014, 2016 cases; no substantive action.
	Feb. 10, 2021	Hearing on demurrers and motions to strike.
	March 3	Case Management Conference on 2014, 2016 and 2018 cases.
2017	July 23	Dismissal without prejudice entered.
2018	July 28	Parties filed a stipulation and application to designate the case complex and related to the 2010-2017 cases, and to assign the case to Judge Massullo's court.
	Nov. 13	Court ordered case complex and assigned to Judge Massullo's court.



Outside Counsel Agreements				
Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Andrade Gonzalez LLP	MWD v DWR, CDFW and CDNR Incidental Take Permit (ITP) CESA/CEQA/Contract Litigation	185894	07/20	\$100,000
Aleshire & Wynder	Oil, Mineral and Gas Leasing	174613	08/18	\$50,000
Atkinson Andelson Loya Ruud & Romo	Employee Relations	59302	04/04	\$1,159,763
	MWD v. Collins	185892	06/20	\$60,000
	MWD Drone and Airspace Issues	193452	08/20	\$50,000
Best, Best & Krieger	Navajo Nation v. U.S. Department of the Interior, et al.	54332	05/03	\$185,000
	Iron Mountain SMARA (Surface Mining and Reclamation Act)	158043	07/17	\$250,000
	Bay-Delta Conservation Plan/Delta Conveyance Project (with SWCs)	170697	08/17	\$500,000
	Environmental Compliance Issues	185888	05/20	\$50,000
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP	FCC and Communications Matters	110227	11/10	\$100,000
Burke, Williams & Sorensen, LLP	Real Property - General	180192	01/19	\$100,000
	CA WaterFix Validation Litigation	180196	12/18	\$100,000
	Labor and Employment Matters	180207	04/19	\$50,000
	General Real Estate Matters	180209	08/19	\$50,000
	Delta Conveyance Project Validation Action	185893	07/20	\$100,000
Law Office of Alexis S.M. Chiu*	Bond Counsel	174595	07/18	N/A
Cislo & Thomas LLP	Intellectual Property	170703	08/17	\$75,000
Curls Bartling P.C.*	Bond Counsel	174596	07/18	N/A



Outside Counsel Agreements				
Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Duane Morris LLP	SWRCB Curtailment Process	138005	09/14	\$615,422
Duncan, Weinberg, Genzer & Pembroke PC	Power Issues	6255	09/95	\$3,175,000
Ellison, Schneider, Harris & Donlan	Colorado River Issues	69374	09/05	\$175,000
	Issues re SWRCB	84457	06/07	\$200,000
Haden Law Office	Real Property Matters re Agricultural Land	180194	01/19	\$50,000
Hanson Bridgett LLP	SDCWA v. MWD	124103	03/12	\$1,100,000
	Finance Advice	158024	12/16	\$100,000
	Deferred Compensation/HR	170706	10/17	\$300,000
	Food and Water Watch v. MWD	174612	09/18	\$200,000
	Tax Issues	180200	04/19	\$50,000
Hawkins Delafield & Wood LLP*	Bond Counsel	174601	07/18	N/A
Horvitz & Levy	SDCWA v. MWD	124100	02/12	\$600,000
	General Appellate Advice	146616	12/15	\$100,000
	Food and Water Watch v. MWD Appeal	185862	09/19	\$60,000
Hunt Ortmann Palfy Nieves Darling & Mah, Inc.	Construction Contracts/COVID-19 Emergency	185883	03/20	\$40,000
Internet Law Center	HR Matter	174603	05/18	\$60,000
Jackson Lewis P.C.	Employment: Department of Labor Office of Contract Compliance (OFCCP)	137992	02/14	\$45,000
Kegel, Tobin & Truce	Workers' Compensation	180206	06/19	\$100,000
Lesnick Prince & Pappas LLP	Topock/PG&E's Bankruptcy	185859	10/19	\$30,000



Outside Counsel Agreements				
Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Liebert Cassidy Whitmore	Labor and Employment	158032	02/17	\$201,444
	EEO Investigations	180193	01/19	\$100,000
	FLSA Audit	180199	02/19	\$50,000
	EEO Investigation	180205	05/19	\$50,000
Manatt, Phelps & Phillips	In Re Tronox Incorporated	103827	08/09	\$540,000
	SDCWA v. MWD rate litigation	146627	06/16	\$2,900,000
Meyers Nave Riback Silver & Wilson	OCWD v. Northrop Corporation	118445	07/11	\$2,300,000
	IID v. MWD	185900	08/20	\$100,000
Morgan, Lewis & Bockius	SDCWA v. MWD	110226	07/10	\$8,750,000
Musick, Peeler & Garrett LLP	Colorado River Aqueduct Electric Cables Repair/Contractor Claims	193461	11/20	\$100,000
Nixon Peabody LLP*	Bond Counsel	174600	07/18	N/A
Olson Remcho LLP	Government Law	131968	07/14	\$200,000
	Ethics Office	170714	01/18	\$350,000
Quinn Emanuel Urquhart & Sullivan	Appellate	174598	04/18	\$100,000
Ryan & Associates	Leasing Issues	43714	06/01	\$100,000
Seyfarth Shaw LLP	HR Litigation	185863	12/19	\$250,000
Stradling Yocca Carlson & Rauth*	Bond Counsel	174599	07/18	N/A
	Financial Disclosure	185880	06/21	N/A
Theodora Oringer PC	OHL USA, Inc. v. MWD	185854	09/19	\$700,000
	Construction Contracts - General Conditions Update	185896	07/20	\$50,000



Outside Counsel Agreements				
Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Thomas Law Group	MWD v. DWR, CDFW, CDNR – Incidental Take Permit (ITP) CESA/CEQA/Contract Litigation	185891	05/20	\$250,000
Thompson Coburn LLP	FERC Representation re Colorado River Aqueduct Electrical Transmission System	122465	12/11	\$100,000
Van Dermeyden Maddux Law Corperation	Climate Review/Investigation	193454	09/20	\$75,000
Van Ness Feldman, LLP	General Litigation	170704	07/18	\$50,000
	Colorado River MSHCP	180191	01/19	\$50,000

*Expenditures paid by Bond Proceeds/Finance