

LEGAL UPDATE

Below are summaries of legal issues that we are monitoring.

1. *County of San Joaquin, et al. v. Metropolitan Water Dist. of Southern Cal.*

On April 14, 2016, San Joaquin and Contra Costa Counties, along with the Central Delta and Contra Costa County Water Agencies, Food and Water Watch, and the Planning and Conservation League filed a petition for writ of mandate in San Joaquin Superior Court. Petitioners are asking Judge Kronlund to enjoin the \$175M purchase of five South Delta islands and tracts¹ (encompassing over 20,000 acres) by the Metropolitan Water District of Southern California (MWD), and to order MWD to rescind its CEQA-exemption findings related to the purchase of the islands.

Petitioners also want the court to order MWD to prepare an EIR, studying the impacts of the purchase *and* proposed uses of the islands. In public statements discussing the proposed purchase, MWD officials noted that Bouldin and Bacon Islands are located within the path of the proposed California WaterFix project, and that such islands may be used, in part, to facilitate WaterFix construction. MWD officials have discussed additional uses for the islands, including ecosystem restoration projects.

The current owner of the land, Delta Wetlands Properties, a subsidiary of Zurich Insurance Group, has for years tried to develop water storage and mitigating wildlife habitat projects on the properties, which development efforts have been subjects of separate litigation and settlement agreements. MWD officials have not committed to those development plans. In fact, in response to the filing of the petition, MWD's spokesperson stated that the agency's CEQA exemption finding was based on the fact that at this point in time, MWD's Board of Directors hasn't decided on a use for the islands. The exemption finding was therefore appropriate for the agency's decision to simply purchase the islands without any changes to the existing land use. The spokesperson stated that any potential future uses, which at this point are speculative in nature, would be subjected to environmental analysis if and when MWD plans to change existing land uses.

Escrow for the purchase and sale of the islands is scheduled to close on June 8, 2016. The first proceeding in the case is a case management conference (CMC) scheduled for October 11, 2016. Since petitioners are seeking a temporary restraining order and preliminary injunction pending environmental review, an earlier hearing date on those matters will likely be scheduled prior to the October CMC. We will monitor and update the Council as warranted on administrative and litigation developments on the purchase and sale of these islands.

2. *NRDC, et al. v. U.S. EPA*

After filing a notice of intent to sue in October 2015, three conservation groups (the Natural Resources Defense Council, The Bay Institute and Defenders of Wildlife) filed suit against the U.S. Environmental Protection Agency (U.S. EPA) on April 23, 2016 (i.e., Earth Day) for its alleged failure to protect water quality in the San Francisco Bay-Delta to the detriment of ecosystems, endangered and threatened species, and the commercial salmon industry. Plaintiffs are seeking declaratory and injunctive relief for alleged violations of the Clean Water Act, relating to U.S. EPA's alleged failure to oversee the State Water Resources Control Board (State Water Board) loosening of flow and other water quality standards in order to keep more water available in upstream reservoirs for later use.

¹ Chipps, Bouldin, and Bacon Islands, and Webb and Holland Tracts (collectively, the islands).

Under the Clean Water Act, state decisions to alter water quality standards must be approved by U.S. EPA before the changes go into effect. Plaintiffs allege that the State Water Board, since January 2014, has approved roughly 20 revisions to water quality standards in the Bay-Delta and Central Valley Water Quality Control Plans by approving temporary urgency change petitions requested by water rights holders, including the Department of Water Resources (DWR) and Bureau of Reclamation (Reclamation). Specifically, the plaintiffs allege that these approvals allowed DWR and Reclamation to: reduce river flows below minimum allowable levels in order to increase the amount of water exports; move salinity compliance locations to allow higher salinity water to enter the Delta; and weaken restrictions on when the Delta Cross Channel gates may be opened. Plaintiffs allege that under the Clean Water Act, these approvals should have been, but never were, reviewed and approved by U.S. EPA.

The case has been assigned to U.S. Magistrate Judge Donna Ryu, in Oakland, California. No matters have been scheduled in the case to date, but the Legal office will track key developments and report back to the Council as appropriate.