

May 2016 Legal Update

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

On April 29, 2016 Judge Barbara Kronlund in San Joaquin Superior Court declined to grant a temporary restraining order (TRO) to officials from San Joaquin and Contra Costa counties, who sued on April 14, 2016, to keep the Metropolitan Water District (MWD) from completing its \$175 million purchase of five islands in the South Delta. In their petition, the counties sought both a TRO and a preliminary injunction to stop the sale pending environmental review.

After hearing oral arguments from both parties, Judge Kronlund denied the preliminary injunction on May 19, 2016. The court found the Petitioners had not shown a likelihood of success on the merits, or irreparable injury – the standard required for a preliminary injunction to issue.

The court reasoned that there will be no effect on the environment caused by the transfer of title to the Delta Islands. The Judge found that the MWD Board had not approved any change in use to the property, so further environmental review could not be conducted into the unknown, speculative uses of the property. Judge Kronlund found “there is no defined project to implicate CEQA review at this time.” The Judge vacated the case management conference that was set for October, and we will continue to monitor the case docket to learn what the briefing schedule will be regarding the merits of the counties’ case.

In the meantime, escrow on the sale is expected to close on June 8, 2016. MWD’s senior Deputy General Counsel, Cathy Stites, indicated in press reports that the water agency will conduct the required environmental studies once specific plans for the islands are confirmed.

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

Last month (April 23, 2016), Natural Resources Defense Council, The Bay Institute and Defenders of Wildlife filed suit against the U.S. Environmental Protection Agency (U.S. EPA). Broadly, plaintiffs allege that Temporary Urgency Change Orders issued by the State Water Resources Control Board between 2014 and 2015: (1) amended water quality standards in the Bay-Delta and Central Valley Water Quality Control Plans, and (2) U.S. EPA’s failure to review the State Water Board’s approval of these Temporary Urgency Change Petitions is a violation of its oversight role under the Clean Water Act, which requires the EPA to review and approve changes to water quality standards.

On May 4, 2016, San Luis Delta Mendota Water Authority and Westlands Water District, moved to intervene in the case. They state a direct interest, on behalf of the private water right holders they represent, in the preservation of the U.S. Bureau of Reclamation’s ability to obtain temporary change orders from the State Water Board and that the relief sought by plaintiffs would delay, impede or eliminate the Bureau of Reclamation’s ability to obtain temporary change orders. A hearing on the Motion to Intervene has been set for July 7, 2016.

Of further note in the case is that U.S. EPA and the intervening parties declined consent for the case to be heard before a Magistrate Judge. The case, therefore, has been reassigned to Judge Jon Tigar, still in the United States District Court, Northern District of California. A case management conference has been scheduled for August 3, 2016.