



San Diego County Water Authority

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August 12, 2016

Randy Record and
Members of the Board of Directors
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

MEMBER AGENCIES

- Carlsbad Municipal Water District
- City of Del Mar
- City of Escondido
- City of National City
- City of Oceanside
- City of Poway
- City of San Diego
- Fallbrook Public Utility District
- Helix Water District
- Lakeside Water District
- Olivenhain Municipal Water District
- Otay Water District
- Padre Dam Municipal Water District
- Camp Pendleton Marine Corps Base
- Rainbow Municipal Water District
- Ramona Municipal Water District
- Rincon del Diablo Municipal Water District
- San Dieguito Water District
- Santa Fe Irrigation District
- South Bay Irrigation District
- Vallecitos Water District
- Valley Center Municipal Water District
- Vista Irrigation District
- Yuima Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

RE: Board Memo 8-1: Adopt CEQA determination and authorize entering into Water Savings Incentive Plan Agreements with Dye Finishing Companies -- **OPPOSE**

Chairman Record and Members of the Board:

The Water Authority and its member agencies have a strong record of leadership in water conservation planning, programs, and policy implementation. Since the early 1990s, the San Diego region’s per capita water use has dropped by almost 40 percent. We recently launched a “Live WaterSmart” public outreach campaign to ensure the San Diego region continues water use efficiency as a positive and permanent ethic.

While we strongly support water conservation, we must oppose Board Memo 8-1, because the proposed source of funding for these projects, MWD's Water Stewardship Rate, has been ruled illegal and invalidated by the San Francisco Superior Court. General Counsel Marcia Scully’s characterization of Judge Karnow’s ruling on the Water Stewardship Rate as being limited to “the context of wheeling,” is simply false, as the Court's November 18, 2015 Final Judgment and Writ of Mandate make clear (copies are attached to this letter):

From the Final Judgment:

- “...the Court issued a final Statement of Decision on the Rate Setting Challenges on April 24, 2014. The Court ruled in San Diego’s favor on each of the First, Second and Third Causes of Action, and **invalidated each of Met’s System Access Rate, System Power Rate, Water Stewardship Rate, and wheeling rate** for both the 2011-2012 and 2013-2014 rate cycles.” (Page 2, lines 11-14; emphasis added.)
- “**Met’s System Access Rate, System Power Rate, Water Stewardship Rate, and wheeling rate, for calendar years 2011, 2012, 2013 and 2014, are unlawful, unconstitutional (2013 and 2014 rates only) and invalid.** This judgment, ‘if no appeal is taken, or if taken and the judgment is affirmed, shall . . . be forever binding and conclusive, as to all matters [herein] adjudicated or which at that time could have been adjudicated, against [Met] and against all other persons, and the judgment shall permanently enjoin the institution by any person of any action or proceeding raising any issue as to which the judgment is binding and conclusive.’” (Page 3, line 20, to Page 4, line 2; emphasis added.)

From the Writ of Mandate:

- “Final judgment having been entered in the above-captioned actions declaring **Met’s System Access Rate, System Power Rate, Water Stewardship Rate, and wheeling rate** for calendar years 2011, 2012, 2013 and 2014 to be **unlawful, unconstitutional (2013 and 2014 rates only) and invalid.**” (Page 1, lines 4-7; emphasis added.)

It is clear from the proceedings in the trial court, final judgment and writ of mandate entered by Judge Karnow, that MWD's Water Stewardship Rate has, in addition to MWD's wheeling rate, been ruled illegal in its entirety. There is nothing in the final judgment that limits the invalidation of the Water Stewardship Rate to the context of wheeling. Moreover, while Board Memo 8-1 declares that these water conservation investments "increase regional water supply reliability within Metropolitan's entire service area," MWD offers no evidence of such a regional benefit. To the contrary, the Board memo identifies the specific member agencies that would benefit from these payments, namely, West Basin MWD, Upper San Gabriel Valley MWD and City of Fullerton. The fact that these programs would benefit only individual member agencies, and not the MWD service area generally, is consistent with arguments MWD made during the trial and now on appeal, denying that there are any regional water supply benefits and claiming that 100% of the water supply benefits of demand management subsidies flow to the member agencies that are paid subsidies.¹

As stated in previous letters, we believe MWD is capable of developing conservation programs that truly measure performance benefits and are paid for with a lawful funding source. While the Program described in Board Memo 8-1 is an improvement over the many MWD water conservation programs that do not measure and are not based on performance, MWD should consider further changes to the Program, particularly in light of the fact that these payments of public funds are being made to private business entities. Rather than making grants of public funds, MWD may wish to consider a revolving loan fund that provides the capital investment needed to make the conservation investments, but that is repaid over time so that even more investments may be made. In other words, the accounting equation should take into account the financial benefits the private sector parties receive in the form of substantially reduced water supply costs.

We would welcome a dialogue with Board members about this important subject, and an opportunity to work on implementing enhanced, lawful water conservation programs at MWD.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director

Attachment: November 18, 2015 Final Judgment and Write of Mandate

cc: San Diego County Water Authority Board of Directors

¹ ""Supplies' in the quoted statement refers to the local member agencies' water supplies, not a supply-related cost or benefit for Metropolitan. Conserving and developing the local member agencies' water supplies has nothing to do with Metropolitan's water supplies, which are imported from outside its service area. The superior court erred in confusing the two." Appellants' Opening Brief at pages 80-81.



FILED
San Francisco County Superior Court

NOV 18 2015

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

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EXEMPT FROM FILING FEES
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9 Attorneys for Petitioner and Plaintiff
10 SAN DIEGO COUNTY WATER AUTHORITY

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 IN AND FOR THE COUNTY OF SAN FRANCISCO

14 SAN DIEGO COUNTY WATER
15 AUTHORITY,

16 Petitioner and Plaintiff,

17 v.

18 METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA; ALL
19 PERSONS INTERESTED IN THE
VALIDITY OF THE RATES ADOPTED
20 BY THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA
21 ON APRIL 13, 2010 TO BE EFFECTIVE
JANUARY 2011; and DOES 1-10,

22 Respondents and Defendants.
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Case No. CPF-10-510830
Case No. CPF-12-512466

JUDGMENT

Judge: Hon. Curtis E.A. Karnow

Date Filed: June 11, 2010
June 8, 2012

Trial Date: December 17-23, 2013; March 30,
April 1-2, April 27-29, 2015.

1 This final judgment resolves two cases pending in this Court: *San Diego County Water*
2 *Authority v. Metropolitan Water District of Southern California et al.*, Case No. CPF-10-510830
3 (“the 2010 Case”), and *San Diego County Water Authority v. Metropolitan Water District of*
4 *Southern California et al.*, Case No. CPF-12-512466 (“the 2012 Case”).

5 Plaintiff San Diego County Water Authority (“San Diego”) filed its Petition/Complaint in
6 the 2010 Case on June 11, 2010. The Petition/Complaint raised three causes of action
7 challenging Defendant Metropolitan Water District of Southern California’s (“Met”) rates set for
8 calendar years 2011 and 2012: a First Cause of Action for Writ of Mandate, a Second Cause of
9 Action for Declaratory Relief, and a Third Cause of Action for Determination of Invalidity
10 pursuant to Code of Civil Procedure § 860 et seq. and Government Code §§ 53511 and 66022.

11 The First Amended Petition/Complaint, filed October 27, 2011, added five additional
12 causes of action: a Fourth Cause of Action for Breach of Contract, a Fifth Cause of Action for
13 Breach of the Implied Covenant of Good Faith and Fair Dealing, a Sixth Cause of Action for
14 Breach of Fiduciary Duty, a Seventh Cause of Action for Declaratory Relief re: Met’s Rate
15 Structure Integrity (“RSI”) Clause, and an Eighth Cause of Action for Declaratory Relief re:
16 Preferential Rights Calculation. On January 4, 2012, the Court sustained, without leave to
17 amend, Met’s demurrer to San Diego’s Fifth Cause of Action for Breach of the Implied Covenant
18 of Good Faith and Fair Dealing, and Sixth Cause of Action for Breach of Fiduciary Duty.

19 The operative Third Amended Petition/Complaint, filed January 23, 2013, contained a
20 First Cause of Action for Writ of Mandate, a Second Cause of Action for Declaratory Relief, a
21 Third Cause of Action for Determination of Invalidity pursuant to Code of Civil Procedure § 860
22 et seq. and Government Code §§ 53511 and 66022, a Fourth Cause of Action for Breach of
23 Contract, a Fifth Cause of Action for Declaratory Relief re: Met’s RSI Clause, and a Sixth Cause
24 of Action for Declaratory Relief re: Preferential Rights Calculation.

25 The Petition/Complaint in the 2012 Case was filed on June 8, 2012, and included three
26 causes of action challenging Met’s calendar year 2013 and 2014 rates—a First Cause of Action
27 for Writ of Mandate, a Second Cause of Action for Declaratory Relief, and a Third Cause of
28 Action for Determination of Invalidity pursuant to Code of Civil Procedure § 860 et seq. and

1 Government Code §§ 53511 and 66022—as well as a Fourth Cause of Action for Breach of
2 Contract.

3 Met answered the various petitions/complaints.¹

4 The Court coordinated the 2010 and 2012 Cases for discovery and trial,² and bifurcated
5 the bench trial. On December 4, 2013, the Court granted summary adjudication in Met's favor on
6 the Fifth Cause of Action in the 2010 Case for Declaratory Relief re: Met's RSI Clause.

7 The first phase of the bifurcated bench trial, on the First, Second, and Third Causes of
8 Action in both the 2010 and 2012 Cases (the "Rate-Setting Challenges"), was held on December
9 17-23, 2013, with closing argument on January 23, 2014.

10 After issuing a tentative Statement of Decision and giving the parties the opportunity to
11 file objections, the Court issued a final Statement of Decision on the Rate Setting Challenges on
12 April 24, 2014. The Court ruled in San Diego's favor on each of the First, Second and Third
13 Causes of Action, and invalidated each of Met's System Access Rate, System Power Rate, Water
14 Stewardship Rate, and wheeling rate for both the 2011-2012 and 2013-2014 rate cycles. *Id.* The
15 April 24, 2014 Statement of Decision on the Rate Setting Challenges is incorporated herein by
16 reference.

17 The Court then held the second phase of the bifurcated bench trial on the Fourth and Sixth
18 Causes of Action in the 2010 Case, and the Fourth Cause of Action in the 2012 Case, on March
19 30, April 1-2 and April 27-29, 2015, with closing argument on June 5, 2015. After issuing a
20 tentative Statement of Decision and allowing the parties an opportunity to object, the Court issued

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22 ¹ Imperial Irrigation District answered the first three causes of action in the operative
23 Petitions/Complaints in both cases, siding with San Diego, and at its request was later dismissed
24 from both cases. Utility Consumers' Action Network answered the first three causes of action in
25 the original Petition/Complaint in the 2010 Case, also siding with San Diego, but not the
26 operative Petition/Complaint in either case. The City of Glendale, Municipal Water District of
27 Orange County, City of Torrance, Las Virgenes Municipal Water District, West Basin Municipal
28 Water District, Foothill Municipal Water District, City of Los Angeles, and Three Valleys
Municipal Water District answered the first three causes of action in the operative
Petitions/Complaints in both cases, siding with Met. Eastern Municipal Water District and
Western Municipal Water District answered the first three causes of action in the
Petition/Complaint in the 2012 Case, also siding with Met.

² The Court informally coordinated the cases and they retain separate court files. The cases were
not coordinated formally pursuant to Code of Civil Procedure § 404.

1 a final Statement of Decision on August 28, 2015. As to the breach of contract claims (the Fourth
 2 Cause of Action in both the 2010 and 2012 Cases), the Court found Met liable for breach of
 3 contract and concluded that "San Diego is entitled to \$188,295,602 plus interest." Aug. 28, 2015
 4 SOD at 29. As to the preferential rights claim (the Sixth Cause of Action in the 2010 Case), the
 5 Court concluded that "San Diego is entitled to a judicial declaration (a) that Met's current
 6 methodology for calculating San Diego's preferential rights violates § 135 of the Metropolitan
 7 Water District Act; and (b) directing Met to include San Diego's payments for the transportation
 8 of water under the Exchange Agreement³ in Met's calculation of San Diego's preferential rights."
 9 *Id.* The August 28, 2015 Statement of Decision is also incorporated here by reference.

10 On October 8, 2015, a hearing was held on San Diego's Motion for Prejudgment Interest.
 11 An Order Granting San Diego's Motion for Prejudgment Interest was entered on October 9, 2015.
 12 A further hearing was held on October 30, 2015, on San Diego's Motion to Correct the October 9
 13 Order. The Court ultimately awarded San Diego \$46,637,180 in prejudgment interest on its
 14 breach of contract causes of action in the 2010 and 2012 Cases.

15 All claims and causes of action pending before this Court in this action have now been
 16 fully and finally adjudicated.

17 **ACCORDINGLY**, it is **HEREBY ORDERED** that:

18 1. Final judgment is **ENTERED** in favor of San Diego and against Met, and all other
 19 persons, on the First, Second, and Third Causes of Action in the 2010 and 2012 Cases, for the
 20 reasons stated in the April 24, 2014 Statement of Decision. Met's System Access Rate, System
 21 Power Rate, Water Stewardship Rate, and Met's wheeling rate, for calendar years 2011, 2012,
 22 2013 and 2014, are unlawful, unconstitutional (2013 and 2014 rates only) and invalid. This
 23 judgment, "if no appeal is taken, or if taken and the judgment is affirmed, shall . . . be forever
 24 binding and conclusive, as to all matters [herein] adjudicated or which at that time could have
 25 been adjudicated, against [Met] and against all other persons, and the judgment shall permanently

26 ³ The "Exchange Agreement" refers herein to the October 10, 2003 Amended and Restated
 27 Agreement Between the Metropolitan Water District of Southern California and the San Diego
 28 County Water Authority for the Exchange of Water. The Exchange Agreement was the source of
 San Diego's breach of contract claims.

1 enjoin the institution by any person of any action or proceeding raising any issue as to which the
2 judgment is binding and conclusive.” Code Civ. Proc. § 870(a). A peremptory writ of mandate
3 shall issue under seal of this Court, commanding Met to set its future transportation and wheeling
4 rates in a manner consistent with the Court’s Statement of Decision, as specifically directed by
5 the writ.

6 2. Final judgment is ENTERED in favor of San Diego and against Met on the Fourth
7 Cause of Action in the 2010 and 2012 Cases. Met shall pay to San Diego damages in the amount
8 of \$188,295,602 on the breach of contract claims, plus prejudgment interest in the amount of
9 \$46,637,180 for a total judgment of \$234,932,782.00. All sums awarded herein shall accrue
10 interest at the rate of 7 percent per annum (simple interest), from the date of entry of this
11 judgment until paid.

12 3. Final judgment is ENTERED in favor of San Diego and against Met on the Sixth
13 Cause of Action in the 2010 Case. Met’s current methodology for calculating preferential rights
14 violates § 135 of the Metropolitan Water District Act. Met shall include in its calculation of
15 preferential rights San Diego’s payments under the Exchange Agreement, because such payments
16 are not payments for the “purchase of water.”

17 4. Final judgment is ENTERED in favor of Met and against San Diego on: (i) the
18 Fifth Cause of Action in the First Amended Petition/Complaint in the 2010 Case for breach of the
19 implied covenant of good faith and fair dealing; (ii) the Sixth Cause of Action in the First
20 Amended Petition/Complaint in the 2010 Case for breach of fiduciary duty; and (iii) the Fifth
21 Cause of Action in the operative Third Amended Petition/Complaint in the 2010 Case, for
22 declaratory relief re: Met’s RSI clause.

23 5. This Court will retain continuing jurisdiction over these cases.

24 6. As the prevailing party, San Diego is entitled to costs and attorneys’ fees as
25 permitted by statute and/or the Exchange Agreement. San Diego may submit a memorandum for
26 costs and a motion for an award of attorneys’ fees following entry of judgment.

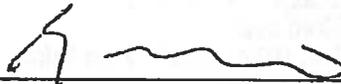
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7. This is a final judgment in these actions.

IT IS SO ORDERED.

Dated: November 18, 2015



CURTIS E.A. KARNOW
JUDGE OF THE SUPERIOR COURT



FILED
San Francisco County Superior Court

NOV 18 2015

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

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10 Attorneys for Petitioner and Plaintiff
SAN DIEGO COUNTY WATER AUTHORITY

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF SAN FRANCISCO

15 SAN DIEGO COUNTY WATER
AUTHORITY,

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18 METROPOLITAN WATER DISTRICT OF
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20 BY THE METROPOLITAN WATER
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21 ON APRIL 13, 2010 TO BE EFFECTIVE
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22

23 Respondents and Defendants.

Case No. CPF-10-510830
Case No. CPF-12-512466

PEREMPTORY WRIT OF MANDATE

Dept.: 304
Judge: Hon. Curtis E.A. Karnow

Date Filed: June 11, 2010
June 8, 2012

1
2 **TO RESPONDENT METROPOLITAN WATER DISTRICT OF SOUTHERN**
3 **CALIFORNIA ("Met"):**

4 Final judgment having been entered in the above-captioned actions declaring Met's
5 System Access Rate, System Power Rate, Water Stewardship Rate, and wheeling rate for
6 calendar years 2011, 2012, 2013 and 2014 to be unlawful, unconstitutional (2013 and 2014 rates
7 only) and invalid, **MET IS HEREBY COMMANDED** to enact only legal transportation and
8 wheeling rates in the future, and, specifically, not to do the things this Court held were illegal
9 and/or unconstitutional in the Court's April 24, 2014 Statement of Decision ("SOD"), which is
10 incorporated here by reference.

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13 **MET IS HEREBY SPECIFICALLY COMMANDED** to do, or not do, the following in
14 setting its transportation and wheeling rates in the future:

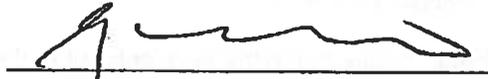
15 1. Met is hereby commanded to henceforth set its rates based on cost causation—that
16 is, Met must charge for its services based only on what it costs to provide them. *See* SOD at 47,
17 52.

18 2. Met is hereby commanded not to include in its future transportation or wheeling
19 rates costs that are not attributable to Met's own conveyance system or to its actual costs in
20 conveying water. *See* SOD at 57. Met does not own or operate the State Water Project (SWP) or
21 the SWP transportation facilities, nor does Met transport SWP water from Northern California to
22 the terminal reservoirs at Castaic Lake and Lake Perris. *Id.* at 5, 53. The SWP is not part of Met's
23 conveyance system, and the SWP conveyance facilities are not a part of Met's conveyance
24 facilities. *See id.* at 57.

25 3. Met is hereby commanded to allocate its costs associated with local water supply
26 development, water reclamation, desalination, and conservation programs to Met's rates and
27 charges based on cost causation. The costs of such programs may be included in Met's wheeling
28

1 rate only to the extent that the costs of transporting wheeled (*i.e.*, non-Met) water are a function
2 of the costs of such programs. See SOD at 58-61.

3
4 Dated: November 18, 2015



5 CURTIS E.A. KARNOW
6 JUDGE OF THE SUPERIOR COURT
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PROOF OF SERVICE BY ELECTRONIC TRANSMISSION

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Kecker & Van Nest LLP, 633 Battery Street, San Francisco, CA 94111-1809.

On November 19, 2015, I served the following documents described as:

NOTICE OF ENTRY OF JUDGMENT OR ORDER

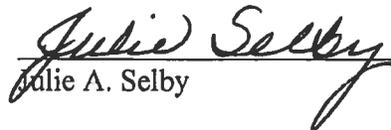
by serving a true copy of the above-described documents in the following manner:

BY LEXIS NEXIS® FILE & SERVE

On the date executed below, I electronically served the documents described above via Lexis Nexis® File & Serve on the recipients designated on the Transaction Receipt located on the via Lexis Nexis® File & Serve website.

Executed on November 19, 2015, at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Julie A. Selby

STATE OF TEXAS

County of _____

Know all men by these presents, that _____ of the County of _____ State of Texas, for and in consideration of the sum of _____ Dollars, to _____ in hand paid by _____ the receipt of which is hereby acknowledged, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said _____ of the County of _____ State of Texas, all that certain _____
