



FILED
San Francisco County Superior Court

AUG 13 2020

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 304

SAN DIEGO COUNTY WATER AUTHORITY

Petitioner and Plaintiff,

v.

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

Respondents and Defendant.

Lead Case No. CPF-10-510830
Consolidated with Case No. CPF-12-512466

JUDGMENT

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

Plaintiff San Diego County Water Authority ("the Water Authority") filed its Petition/Complaint in the 2010 Case on June 11, 2010. The Petition/Complaint raised three causes of action challenging Defendant Metropolitan Water District of Southern California's ("Metropolitan") rates set for calendar

1 years 2011 and 2012: a First Cause of Action for Writ of Mandate, a Second Cause of Action for
2 Declaratory Relief, and a Third Cause of Action for Determination of Invalidity pursuant to Code of
3 Civil Procedure § 860 et seq. and Government Code §§ 53511 and 66022.

4 The First Amended Petition/Complaint, filed October 27, 2011, added five additional causes of
5 action: a Fourth Cause of Action for Breach of Contract, a Fifth Cause of Action for Breach of the
6 Implied Covenant of Good Faith and Fair Dealing, a Sixth Cause of Action for Breach of Fiduciary Duty,
7 a Seventh Cause of Action for Declaratory Relief re: Metropolitan's Rate Structure Integrity ("RSI")
8 Clause, and an Eighth Cause of Action for Declaratory Relief re: Preferential Rights Calculation. On
9 January 4, 2012, the Court sustained, without leave to amend, Metropolitan's demurrer to the Water
10 Authority's Fifth Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing,
11 and Sixth Cause of Action for Breach of Fiduciary Duty.

12 The operative Third Amended Petition/Complaint, filed January 23, 2013, contained a First Cause
13 of Action for Writ of Mandate, a Second Cause of Action for Declaratory Relief, a Third Cause of Action
14 for Determination of Invalidity pursuant to Code of Civil Procedure § 860 et seq. and Government Code
15 §§ 53511 and 66022, a Fourth Cause of Action for Breach of Contract, a Fifth Cause of Action for
16 Declaratory Relief re: Metropolitan's RSI Clause, and a Sixth Cause of Action for Declaratory Relief re:
17 Preferential Rights Calculation.

18 The Petition/Complaint in the 2012 Case was filed on June 8, 2012, and included three causes of
19 action challenging Metropolitan's calendar year 2013 and 2014 rates—a First Cause of Action for Writ
20 of Mandate, a Second Cause of Action for Declaratory Relief, and a Third Cause of Action for
21 Determination of Invalidity pursuant to Code of Civil Procedure § 860 et seq. and Government Code §§
22 53511 and 66022—as well as a Fourth Cause of Action for Breach of Contract.

23 Metropolitan answered the various petitions/complaints.¹

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

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

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

7 After issuing a tentative Statement of Decision and giving the parties the opportunity to file
8 objections, the Court issued a final Statement of Decision on the Rate Setting Challenges on April 24,
9 2014. The Court ruled in the Water Authority's favor on each of the First, Second and Third Causes of
10 Action, and invalidated each of Metropolitan's System Access Rate, System Power Rate, Water
11 Stewardship Rate, and wheeling rate for both the 2011-2012 and 2013-2014 rate cycles. *Id.*

12 The Court then held the second phase of the bifurcated bench trial on the Fourth and Sixth Causes
13 of Action in the 2010 Case, and the Fourth Cause of Action in the 2012 Case, on March 30, April 1-2 and
14 April 27-29, 2015, with closing argument on June 5, 2015. After issuing a tentative Statement of
15 Decision and allowing the parties an opportunity to object, the Court issued a final Statement of Decision
16 on August 28, 2015. As to the breach of contract claims (the Fourth Cause of Action in both the 2010
17 and 2012 Cases), the Court found Metropolitan liable for breach of contract and concluded that the Water
18 Authority "is entitled to \$188,295,602 plus interest." Aug. 28, 2015 SOD at 29. As to the preferential
19 rights claim (the Sixth Cause of Action in the 2010 Case), the Court concluded that the Water Authority
20 "is entitled to a judicial declaration (a) that [Metropolitan's] current methodology for calculating [the
21 Water Authority's] preferential rights violates § 135 of the Metropolitan Water District Act; and (b)
22 directing [Metropolitan] to include [the Water Authority's] payments for the transportation of water
23 under the Exchange Agreement³ in [Metropolitan's] calculation of [the Water Authority's] preferential
24

Eastern Municipal Water District and Western Municipal Water District answered the first three causes of
25 action in the Petition/Complaint in the 2012 Case, also siding with Metropolitan.

26 ² The Court first informally coordinated the cases and they were tried together in this Court. Following
remand from the Court of Appeal, the Court formally consolidated the cases.

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

rights.” *Id.*

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

Both parties appealed aspects of the Court’s rulings. On June 21, 2017, Division Three of the First Appellate District of the Court of Appeal issued an Opinion affirming in part, reversing in part, and vacating the original judgment and peremptory writ of mandate. *See San Diego Cty. Water Auth. v. Metropolitan Water Dist. of S. Cal.*, 12 Cal. App. 5th 1124, 1166 (2017), *as modified on denial of reh’g* (July 18, 2017), *review denied* (Sept. 27, 2017) [hereinafter, “*SDCWA v. MWD*”]. The Court of Appeal remanded the matter “to the trial court for recalculation of damages, entry of declaratory relief on the Rate Structure Integrity clause, redetermination of the prevailing party, and other proceedings consistent with the views expressed in this opinion.” *Id.* Thereafter, on July 25, 2018, this Court issued an Order re Scope of Proceedings Following Remand. On February 28, 2020, the Water Authority informed the Court that it would no longer seek restitution on the Fifth Cause of Action in the 2010 Case regarding the RSI Clause. Both the Court of Appeal Opinion and this Court’s July 25, 2018 Order are incorporated herein by reference. Following the proceedings in this Court on remand, final judgment is now entered, fully and finally adjudicating all causes of action pending before this Court in the above-captioned cases.

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

1. Final judgment is ENTERED in favor of Petitioner and Plaintiff San Diego County Water Authority (the “Water Authority”) and against Respondent and Defendant Metropolitan Water District of Southern California (“Metropolitan”) on the First Cause of Action in the 2010 and 2012 Actions, for writ of mandate, because Metropolitan’s inclusion of the Water Stewardship Rate in the wheeling rate and the transportation rates charged under the Exchange Agreement⁴ is unlawful. *See SDCWA v. MWD*, 12

⁴ The “Exchange Agreement” refers herein to the October 10, 2003 Amended and Restated Agreement Between the Metropolitan Water District of Southern California and the San Diego County Water Authority for the Exchange of Water. The Exchange Agreement is the source of the Water Authority’s breach of contract claims.

1 Cal.App.5th at 1130, 1138–39, 1150–52, 1154–55. A peremptory writ of mandate shall issue, under seal
2 of this Court, commanding Metropolitan to enact only legal wheeling and transportation rates in the future
3 and to exclude the costs of conservation programs and other demand management programs, enacted in
4 these cases as the Water Stewardship Rate, from Metropolitan’s wheeling rate published in Section 4405
5 of Metropolitan’s Administrative Code and from the transportation rates charged under the Exchange
6 Agreement. *See id.*; *see also* Code Civ. Proc. § 1095 (providing that, when judgment in a writ of mandate
7 action is “given for the applicant, the applicant may recover the damages which the applicant has
8 sustained . . . and a peremptory mandate must also be awarded without delay”).

9 2. Final judgment is ENTERED in favor of the Water Authority and against Metropolitan on
10 the Second Cause of Action in the 2010 and 2012 Cases, for declaratory relief, because Metropolitan’s
11 inclusion of the Water Stewardship Rate in the wheeling rate and the transportation rates charged under
12 the Exchange Agreement is unlawful. *See SDCWA v. MWD*, 12 Cal.App.5th at 1130, 1138–39, 1150–52,
13 1154–55. In accordance with the Court of Appeal’s holding that it is “improper” to allocate to the
14 wheeling rate “‘water stewardship’ charges” for the recovery of the “costs of conservation programs and
15 other water management programs,” the Court hereby declares that the inclusion of the Water
16 Stewardship Rate in Metropolitan’s wheeling rate and the transportation rates charged under the
17 Exchange Agreement is unlawful and invalid and, further, that Section 4405 of Metropolitan’s
18 Administrative Code, entitled “Wheeling Service,” is unlawful and invalid because it includes the Water
19 Stewardship Rate in the rates charged for wheeling service. *Id.* at 1130, 1138; *see also id.* at 1138–39,
20 1150–52, 1154–55.

21 3. Final judgment is ENTERED in favor of the Water Authority and against Metropolitan,
22 and all other persons, on the Third Cause of Action in the 2010 and 2012 Actions, for determination of
23 invalidity, because Metropolitan’s inclusion of the Water Stewardship Rate in the wheeling rate and the
24 transportation rates charged under the Exchange Agreement is unlawful. *See SDCWA v. MWD*, 12
25 Cal.App.5th at 1130, 1138–39, 1150–52, 1154–55. In accordance with the Court of Appeal’s holding that
26 it is “improper” to allocate to the wheeling rate “‘water stewardship’ charges” for the recovery of the
27 “costs of conservation programs and other water management programs,” the Court hereby determines
28

1 that the inclusion of the Water Stewardship Rate in Metropolitan's wheeling rate and the transportation
2 rates charged under the Exchange Agreement is unlawful and invalid and, further, that Section 4405 of
3 Metropolitan's Administrative Code, entitled "Wheeling Service," is unlawful and invalid because it
4 includes the Water Stewardship Rate in the rates charged for wheeling service. *Id.* at 1130, 1138; *see also*
5 *id.* at 1138-39, 1150-52, 1154-55. This judgment, "if no appeal is taken, or if taken and the judgment is
6 affirmed, shall . . . be forever binding and conclusive, as to all matters [h]erein adjudicated or which at
7 that time could have been adjudicated, against [Metropolitan] and against all other persons, and the
8 judgment shall permanently enjoin the institution by any person of any action or proceeding raising any
9 issue as to which the judgment is binding and conclusive." Code Civ. Proc. § 870(a).

10 4. Final judgment is ENTERED in favor of the Water Authority and against Metropolitan on
11 the Fourth Cause of Action in the 2010 and 2012 Cases, for breach of contract, because Metropolitan
12 breached the Exchange Agreement by including the Water Stewardship Rate in the transportation rates
13 charged under the Exchange Agreement. *SDCWA v. MWD*, 12 Cal.App.5th at 1130, 1154-55. The
14 Court awards the Water Authority a total of \$44,373,872.29, comprised of: (A) \$28,678,190.90 in
15 damages for payments of the Water Stewardship Rate on exchanges in the years 2011-2014; (B)
16 prejudgment interest at the rate of 10 percent per annum through November 18, 2015 (the date of the
17 initial judgment), in the amount of \$7,484,315.54; and (C) post-judgment interest at the rate of 7 percent
18 per annum from November 19, 2015 until February 15, 2019 (the date of Metropolitan's tender of
19 \$44,373,872.29 to the Water Authority), in the amount of \$8,211,365.85.

20 5. Final judgment is ENTERED in favor of the Water Authority and against Metropolitan on
21 the Fifth Cause of Action in the 2010 Action for declaratory relief regarding Metropolitan's Rate
22 Structure Integrity ("RSI") Clause. *See SDCWA v. MWD*, 12 Cal.App.5th at 1159-64. The Court hereby
23 declares "the RSI clause invalid and unenforceable as an unconstitutional condition." *Id.* at 1164.
24 Metropolitan shall not impose or enforce the RSI Clause in any existing contracts or agreements, and is
25 specifically prohibited from including the RSI Clause in any future contracts or agreements.

26 6. Final judgment is ENTERED in favor of the Water Authority and against Metropolitan on
27 the Sixth Cause of Action in the 2010 Action for declaratory relief regarding Metropolitan's preferential
28

1 rights calculation. *See SDCWA v. MWD*, 12 Cal.App.5th at 1155–56. Metropolitan’s previous
2 methodology for calculating preferential rights, which was challenged in this litigation, violates § 135 of
3 the Metropolitan Water District Act. *See id.* Metropolitan shall include in its calculation of preferential
4 rights the Water Authority’s payments under the Exchange Agreement because such payments are not
5 payments for the “purchase of water.” *Id.*

6 7. Final judgment is ENTERED in favor of Metropolitan and against the Water Authority on
7 (i) the Fifth Cause of Action in the First Amended Petition/Complaint in the 2010 Action for breach of the
8 implied covenant of good faith and fair dealing; and (ii) the Sixth Cause of Action in the First Amended
9 Petition/Complaint in the 2010 Action for breach of fiduciary duty. This Court dismissed both of these
10 causes of action by sustaining Metropolitan’s demurrer without leave to amend on January 4, 2012, and
11 neither cause of action was the subject of the parties’ appeals or the Court of Appeal’s decision in
12 *SDCWA v. MWD*.

13 8. This Court will retain continuing jurisdiction over the 2010 and 2012 Actions.

14 9. This is the final judgment in the 2010 Action and 2012 Action.

15
16 IT IS SO ORDERED.

17
18 Dated: August 12, 2020



19 Anne-Christine Massullo
20 Judge of the Superior Court
21
22
23
24
25
26
27
28

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On **AUG 13 2020**, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **AUG 13 2020**

T Michael Yuen, Clerk

By:



DANIAL LEMIRE, Deputy Clerk