

SDCWA V. METROPOLITAN, ET AL.

JUNE 2017 COURT OF APPEAL DECISION



In 2010 and 2012, the San Diego County Water Authority (SDCWA) sued The Metropolitan Water District of Southern California, challenging its rate structure and the price for the parties' exchange of water under a 2003 agreement in which Metropolitan delivers its water to San Diego in exchange for water SDCWA provides to Metropolitan at the Colorado River.

In June 2017, the Court of Appeal decided entirely in favor of Metropolitan on the central issue in the litigation, finding that it is reasonable and legal for Metropolitan to include in its transportation rates and wheeling rate the water transportation costs it incurs for its integrated system, which includes the State Water Project. In September 2017, the Supreme Court declined to review this case, reaffirming a major legal victory for Metropolitan and its member public agencies, that directly or through their own sub-agencies provide water to nearly 19 million residents throughout Southern California.

The following is a summary of the key rulings.

TOPIC	RULING	MWD'S FAVOR	SDCWA'S FAVOR	IMPACT
Judgment	"The judgment is reversed."	X		The Court of Appeal reversed the \$244,163,220 judgment that the trial court entered against Metropolitan. The judgment consisted of \$188,295,602 in damages; \$46,637,180 in prejudgment interest; \$8,910,354 in attorneys' fees; and \$320,084 in costs.
Writ	The rates writ of mandate is vacated.	X		The Court of Appeal vacated the writ that the trial court entered, which directed Metropolitan to set future rates in accordance with the trial court's decision.
State Water Project Transportation Costs	It is reasonable and legal for Metropolitan to include in its transportation rates (System Access Rate and System Power Rate), its wheeling rate, and the parties' Exchange Agreement price, the State Water Project transportation costs Metropolitan incurs for its integrated system, which "unquestionably" includes the State Water Project.	X		This is the central issue in the case and the most important ruling. It is a substantial victory for Metropolitan and its member public agencies. SDCWA has valued its loss on this issue at over \$6 billion.

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Demand Management (Conservation and Local Resource Development) Program Costs	Based on the record before the court concerning 2011-2014 rates, under the common law and Wheeling Statute, Metropolitan may not include demand management program costs in its transportation rates (Water Stewardship Rate), its wheeling rate, and the parties' Exchange Agreement price; and the inclusion breached the Exchange Agreement in 2011-2014.		X	The Court of Appeal remanded the case to the trial court for a redetermination of contract damages for 2011-2014. Potential damages on remand, if any, are less than \$25 million. The decision does not affect inclusion of these costs in later years, based on a different record. The court made no determination that the Water Stewardship Rate is a tax.
Full-Service Rate	Metropolitan's full-service rate was not at issue in the case, and "Metropolitan is correct in asserting that the holding here does not preclude it from including the water stewardship rate component in its full-service rate."	X		Most Metropolitan revenues are based on its full-service rate, which is not affected by the decision. Metropolitan's demand management program funding through its full-service rate is not affected.
Whether Proposition 26 Applies to Metropolitan's Rates In General	The Court of Appeal did not decide the issue, because it found the System Access Rate and System Power Rate complied with constitutional requirements that exempt the rates from Proposition 26, and thus they "are not tax levies subject to voter approval."	N/A	N/A	There is no decision that Proposition 26 applies to Metropolitan's rates in general. Metropolitan contends that Proposition 26 does not apply because its rates are not imposed, but instead are adopted by the voluntary cooperative of member agency customers that pay them.
Proposition 26 Analysis	As Metropolitan advocated, the Court of Appeal analyzed Proposition 26 consistently with its text. The court found the System Access Rate and System Power Rate "are service charges that do not exceed the reasonable costs to Metropolitan of providing water conveyance."	X		The Court of Appeal rejected SDCWA's proposed stricter analysis.
Whether Government Code Section 54999.7 Applies to Metropolitan's Rates In General	The Court of Appeal did not decide the issue, because it found "[w]hether or not the statute applies, it has not been violated."	N/A	N/A	There is no decision that Section 54999.7 applies to Metropolitan's rates in general. Metropolitan contends that it does not apply because Metropolitan is not a retail utility.
Timeliness	SDCWA's rate challenge was timely.		X	The Court of Appeal could address the rate challenge.

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Preferential Rights	Metropolitan must include SDCWA's Exchange Agreement payments in SDCWA's preferential rights calculation.		X	Preferential rights is not an ownership right in water, but a right to purchase a certain percentage of Metropolitan water at the full-service rate or such other rate as may be established during a water allocation. There is no other impact of this decision and it has no effect as a practical matter. There has never been a general limitation on the quantity of water a Metropolitan member agency can purchase. Member agencies have never used preferential rights; during periods of allocations, the members have always opted to follow other plans. In a water emergency, other state law would control.
Rate Structure Integrity (RSI) Provision	SDCWA has standing to bring its claim, and Metropolitan's RSI provision is invalid and unenforceable.		X	The RSI provision in certain demand management program contracts does not have legal effect. There is no other impact of this decision.
Prejudgment Interest	Statutory prejudgment interest applies, not a lesser contractual interest.		X	The Court of Appeal remanded the case to the trial court for a redetermination of prejudgment interest.
Scope of Attorneys' Fees Provision	The Exchange Agreement's attorneys' fees provision applies to the contract phase (the parties agreed it applies to the rates phase).		X	The prevailing party, if any, may seek attorneys' fees incurred in the trial court for the rates and contract phases.
Amount of Trial Court Attorneys' Fees	"Reversal of the judgment will necessitate a redetermination of the prevailing party . . . On remand, the trial court must determine if one of the parties 'recovered a greater relief in the action on the contract' than the other . . . or if the results of the litigation are sufficiently mixed that no party may be said to have prevailed."	N/A	N/A	The Court of Appeal remanded the case to the trial court for a redetermination of attorneys' fees, including a redetermination of the prevailing party, if any.

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Trial Court Costs	While reversal of the judgment included reversal of the costs awarded to SDCWA, the Court of Appeal did not otherwise address costs.	N/A	N/A	Costs incurred in the trial court may be available to the prevailing party, if any.
Appellate Attorneys' Fees and Costs	The parties are to bear their own fees and costs incurred on the appeal.	N/A	N/A	There will be no proceedings on appellate fees and costs.
SDCWA's Petition for Rehearing	The Court of Appeal denied SDCWA's petition to rehear the case.	X		The Court of Appeal declined to change its rulings.
SDCWA's Petition for Review	The California Supreme Court denied SDCWA's petition to review the case.	X		In September 2017, the Supreme Court declined to consider the State Water Project transportation costs issue. The June 2017 Court of Appeal decision is final.

San Diego County Water Authority v. Metropolitan Water District of Southern California, et al. (2017) 12 Cal. App. 5th 1124; modified and rehearing denied, 2017 Cal. App. LEXIS 627; and review denied, 2017 Cal. LEXIS 7719.



OUR MISSION

The mission of the Metropolitan Water District of Southern California is to provide its service area with adequate and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way.

ABOUT METROPOLITAN

The Metropolitan Water District of Southern California is a state-established cooperative of 26 member agencies – cities and public water agencies – that serve nearly 19 million people in six counties. Metropolitan imports water from the Colorado River and Northern California to supplement local supplies and helps its members develop increased water conservation, recycling, storage and other resource management programs.

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