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15
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF SAN FRANCISCO

18
19 SAN DIEGO COUNTY WATER AUTHORITY,

No. CPF-10-510830

20 Petitioner and Plaintiff,

**METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA'S REPLY IN
SUPPORT OF ITS MOTION TO
BIFURCATE VALIDATION
PROCEEDING**

21 v.

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

Date: January 4, 2012
Time: 1:30 p.m.
Dept.: 304
Judge: Hon. Richard A. Kramer

26 Respondents and Defendants.
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1 **I. INTRODUCTION**

2 This lawsuit is the perfect candidate for bifurcation, as is shown in Metropolitan Water
3 District of Southern California (“MWD’s”) Memorandum of Points and Authorities in support of
4 its motion to bifurcate the validation proceeding from the newly added claims in San Diego
5 County Water Authority’s (“SDCWA’s”) First Amended Petition for Writ of Mandate and
6 Complaint for Damages and Declaratory Relief (“OB” or “Opening Brief”). The addition of
7 SDCWA’s new common law claims threatens to contravene the express goal of the statutes
8 governing the reverse validation action, namely, the swift resolution of challenges to agency
9 action. *See* Code Civ. Proc. § 867. Prompt resolution is important because it mitigates the
10 negative impacts to the agency and the public that prolonged uncertainty regarding the agency’s
11 action can cause. The surest and most efficient way to satisfy Section 867’s mandate is to
12 separate SDCWA’s first through third causes of action from SDCWA’s unrelated or derivative
13 claims using bifurcation, a tool authorized by Code Sections 598 and 1048(b), and which is
14 within the Court’s broad and inherent power of case management.

15 Trying the rate challenge first furthers the goals of efficiency, economy, and avoidance of
16 prejudice contained in Code Sections 598 and 1048(b). By separating the rate challenge, the
17 Court will remove any delay or confusion that could arise from adding the multiple unrelated
18 issues in SDCWA’s new claims to the single issue of the rates’ validity. Bifurcation will also
19 conserve the Court’s and the parties’ resources by avoiding time and money spent debating how
20 to manage the unrelated issues while litigating the rate challenge, and it will avoid the harm to
21 MWD’s member agencies (“MAs”) that protracted uncertainty over the rates’ validity would
22 cause.

23 SDCWA’s opposition, stripped of its colorful adjectives and vitriol, is a series of
24 arguments that misapprehend the law and/or the facts, and which fail to show why bifurcation is
25 inappropriate here.

26 The Court should grant MWD’s motion to bifurcate.

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1 **II. ARGUMENT**

2 **A. Bifurcation Is Not “Disfavored” When Non-Validation Claims**
3 **Are Joined With Validation Claims.**

4 SDCWA first contends that bifurcation is disfavored. Opposition to MWD’s Motion to
5 Bifurcate Validation Proceedings (“Opp.”) at 4. In support, SDCWA cites six federal patent
6 infringement cases and a California criminal case. Opp. at 4-5, 8 (citing, e.g., *Trading Tech.*
7 *Int’l, Inc. v. eSpeed, Inc.*, 431 F. Supp. 2d 834 (2006) and *People v. Ochoa*, 19 Cal. 4th 353
8 (1998)).

9 In so arguing, SDCWA cites no California civil case involving Code Sections 1048(b) or
10 598, or any involving validation actions wherein the court has discussed using bifurcation as a
11 tool to manage the case. As relevant *California* precedent shows, bifurcation is *not* a disfavored
12 remedy in validation actions, particularly where, as here, the plaintiff has added common law
13 claims to a validation proceeding. *See, e.g., County of Santa Clara v. Redev. Agency*, 18 Cal.
14 App. 4th 1008, 1013 (1993) (“*Santa Clara*”) (trial court severed causes of action for breach of
15 contract from validation claims).¹

16 **B. Bifurcation Will Further The Goals Of The Validation**
17 **Statutes.**

18 As explained in MWD’s moving papers, bifurcating the rate challenge from the fourth
19 through eighth causes of action will further the goals of the validation statutes by ensuring swift
20 resolution of a challenge to an agency action. OB at 8-9. The validation statutes require that
21 challenges to the validity of agency actions “shall be given preference over all other civil
22 actions” so that “such actions shall be speedily determined.” Code Civ. Proc. § 867. The goal of
23 this requirement is “to further the important public policy of speedy determination of the public
24 agency’s action.” *McLeod v. Vista Unified Sch. Dist.*, 158 Cal. App. 4th 1156, 1166 (2008).

25 ¹ *See also County of Orange v. Barratt Am., Inc.*, 150 Cal. App. 4th 420, 425 (2007) (court
26 bifurcated validation action regarding several city resolutions into three phases); *Metropolitan*
27 *Water Dist. of So. Cal. v. Imperial Irr. Dist.*, 80 Cal. App. 4th 1403, 1422 (2000) (trial court
28 bifurcated validation action in which SDCWA challenged MWD’s rates into two separate
proceedings, one to determine whether a particular rate could be set in a particular manner, the
other to determine whether the amount of that rate was reasonable).

1 *Santa Clara* is a good example of how bifurcation can efficiently order a case like this
2 one, involving a validation action and common law claims. There, the Court of Appeal affirmed
3 severance of breach of contract claims from a consolidated validation action challenging an
4 agency’s method of financing various redevelopment plans with tax revenue, holding that the
5 contract claims were “*completely unrelated*” to the validation action. *Santa Clara*, 18 Cal. App.
6 4th at 1016-17 (emphasis added). The court noted that the common law claims involved
7 *different issues* (the alleged breach was that the agency failed to pay the plaintiff a portion of tax
8 revenue under a “prior agreement between the parties”) and *different relief* (the contract claims
9 sought damages) than the validation action. *Id.* at 1012, 1016-17.

10 This case is just like *Santa Clara* because SDCWA’s fifth through eighth causes of action
11 – for the most part – involve *different issues* and *different relief* than the rate challenge. The
12 issue in the validation action is whether the rates are lawful. The issues in the newly-added
13 claims are as varied and unrelated as the legality of a provision in various conservation and
14 recycling incentive contracts (the RSI clause), an alleged secret cabal made up of MA staff, and
15 the calculation of preferential rights under MWD Act § 135. In the validation proceeding,
16 SDCWA seeks a determination that the rates are invalid and must be re-set (FAC, Prayer for
17 Relief, ¶¶ 1-3), whereas the newly-added claims seek relief ranging from contract damages to
18 declaratory relief (FAC, Prayer for Relief, ¶¶ 4-6).

19 SDCWA attempts to downplay *Santa Clara*’s applicability here by focusing on the fact
20 that the severed claims in *Santa Clara* were breach of contract claims and pointing out that *its*
21 breach of contract claim is very much related to the rate challenge. *Opp.* at 6. That argument
22 misses the point. SDCWA’s *other* claims are almost entirely unrelated to the validation
23 proceeding. MWD agrees that the fourth cause of action is related, and derivative of, the rate
24 challenge. The grounds for severing the breach of contract claim are different than those for
25 severing the rest of the newly-added claims. *See* OB at 12. As discussed below, that claim
26 should be severed because a resolution that the rates are valid will moot the breach of contract
27 claim.

28 Citing Section 865 of the validation statutes, SDCWA also contends that bifurcation of its

1 newly-added common law claims will actually *interfere* with the goals of the validation statutes,
2 which, SDCWA contends, emphasize the “need to settle promptly all questions about the validity
3 of its action.” Opp. at 4.² Section 865, SDCWA contends, requires that its validation claims and
4 common law claims all be litigated on the same track. *Id.*

5 SDCWA misstates the law. Section 865 requires consolidation of other validation
6 proceedings that are “similar” and that are “brought under this chapter.” Code Civ. Proc. § 865.
7 It does not require consolidation of *common law claims* with validation claims. Only one of the
8 three cases SDCWA cites on this point involves consolidation of multiple claims, and it
9 interprets Section 865 as it relates to multiple validation actions. *See Comm. for Responsible*
10 *Planning v. City of Indian Wells*, 225 Cal. App. 3d 191, 193, 196 (1990) (applying Section 865
11 to “five actions [that] were brought [by several parties] . . . under the procedures set forth in
12 Code of Civil Procedure, sections 860 et seq. (the validation statutes)”).

13 Under Section 865, if *other* entities had challenged the rates at issue here in multiple
14 validation proceedings under Code Sections 860 and 863, consolidation of those proceedings
15 would be required and may be the fastest and most efficient way to settle all questions about the
16 rates’ validity. But that has nothing to do with *this* case.

17 The Court should order bifurcation here as it will ensure prompt resolution of the rate
18 challenge and further the express goals of Section 867.

19 **C. Bifurcation Will Promote Efficiency And Avoid Delay.**

20 Under Code Sections 1048(b) and 598, expediency and economy are sufficient grounds
21 for bifurcation. *See* Code Civ. Proc. §§ 1048(b) and 598 (authorizing separation of claims or
22 issues for the sake of convenience, expediency, or economy). Bifurcation would further those
23 goals here.

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26 ² MWD’s reply brief is also intended to respond to Imperial Irrigation District’s (“IID’s”) Opposition to MWD’s Motion to Bifurcate, as IID echoes SDCWA’s argument about the
27 purpose behind the validation statutes and the alleged relation between SDCWA’s newly added
28 claims and the rate challenge. IID Opp. at 2.

1 **1. Bifurcation Would Avoid Delay.**

2 As explained in MWD’s Opening Brief, the rate challenge is a simple mandate and
3 validation action, with no witnesses, no traditional trial, and limited to the administrative record,
4 whereas the newly-added common law claims (to the extent they survive) may involve
5 discovery, witnesses, and trial on issues of contract interpretation, fiduciary duties, and MWD’s
6 process for allocating water to its MAs in times of emergency. OB at 9-10. To adjudicate all of
7 SDCWA’s claims in one trial means that the straightforward task of resolving the rate challenge
8 will be hindered by discovery disputes and factual disputes over unrelated topics like meetings
9 among MA staff members and interpretation of incentive contracts between MWD and MAs.
10 This delay would only be increased by the fact that some of the new claims may involve a
11 different standard of review and may require a trial. OB at 9-12.

12 SDCWA responds that all of its common law claims are factually related to its validation
13 claims. Opp. at 8. SDCWA provides absolutely no support for that assertion, and ignores
14 MWD’s arguments – set out at pages 10-12 of MWD’s Opening Brief – as to why most of its
15 common law claims involve entirely different facts.

16 SDCWA also responds that all of the claims – even the validation claims – will require
17 discovery, for two reasons. The first reason, SDCWA says, is that discovery is allowed for
18 claims under the Wheeling Statute. Opp. at 9. However, as stated in MWD’s Opposition to
19 IID’s Motion for Discovery (filed 12/20/2011) at 4-8 (“MWD Opp.”), discovery is not permitted
20 in proceedings like this one, i.e., involving reverse validation, traditional mandamus, and related
21 declaratory relief that challenge a quasi-legislative and discretionary agency decision, and the
22 Wheeling Statute contains no exception. *Id.* The second reason, SDCWA says, is that “where an
23 agency’s processes have broken down due to bias or corruption,” (an apt example of SDCWA’s
24 “colorful adjectives and vitriol,” *see supra*, Section I) evidence thereof – even outside the
25 administrative record – “is discoverable and admissible.” Opp. at 10. SDCWA is wrong. All
26 the cases SDCWA cites on this point apply an extra-record evidence rule that pertains
27 specifically to *administrative* mandamus, which is governed by a different section of the Code of
28 Civil Procedure – Section 1094.5 (Opp. at 10; *see also* MWD Opp. at 13-15) and in which

1 discovery regarding the bias of the administrative body is permitted. *See Clark v. City of*
2 *Hermosa Beach*, 48 Cal. App. 4th 1152, 1170 (1996). In an *ordinary* mandamus review of a
3 legislative or quasi-legislative decision – like this case – “courts decline to inquire into thought
4 processes or motives, but evaluate the decision on its face because legislative discretion is not
5 subject to judicial control and supervision.” *San Joaquin Local Agency Formation Comm’n v.*
6 *Super. Ct.*, 162 Cal. App. 4th 159, 171 (2008).

7 Bifurcation will avoid delay here.

8 **2. Bifurcation Could Avoid Litigation Of The Fourth**
9 **Cause Of Action, And Much Of The Sixth.**

10 Bifurcation is appropriate where disposal of one issue has the potential to moot other
11 issues in the case. *See, e.g., Equitable Life Assur. Soc’y v. Berry*, 212 Cal. App. 3d 832, 836
12 (1989) (A “classical case for severance under Code of Civil Procedure section 598” was one
13 where “the declaratory relief [claim] was scheduled to take two days to try, the bad faith action
14 would have consumed several weeks, [and] a declaratory judgment in favor of defendant would
15 end the lawsuit.”); *Bedolla v. Logan & Frazer*, 52 Cal. App. 3d 118, 135 (1975) (trial of statute
16 of limitations before other issues was “clearly justified” because “the objective of the bifurcation
17 of the issues is avoidance of waste of time and money caused by the trial of issues which *may* be
18 rendered *moot*”) (emphasis added).

19 Here, if the rates are found valid in the validation action, the fourth cause of action will
20 become moot, as will that portion of the sixth cause of action challenging MWD’s rate-setting,
21 thus eliminating further litigation of those claims. OB at 12.

22 Citing an unpublished decision from the Southern District of Ohio, SDCWA argues that
23 the “mere possibility” of mootness is not a sufficient basis for bifurcation. Opp. at 9 (citing
24 *Woods v. State Farm Fire & Cas. Co.*, No. 2:09-cv-482, 2010 WL 1032018, at *3 (S.D. Ohio
25 Mar. 16, 2010)). However, *California* cases like *Bedolla* hold that bifurcation *is* justified where
26 there is a possibility of disposing of other claims. Also, the chance that SDCWA’s breach of
27 contract claim, and that portion of their fiduciary duty claim challenging MWD’s rates, will
28 become moot is no “mere possibility.” SDCWA admits in its Opposition that the issue

1 underlying the breach of contract claim is identical to that in the rate challenge. Opp. at 6. So
2 too are the issues underlying much of SDCWA's breach of fiduciary duty claims. *Compare*
3 FAC, ¶ 26 with *id.*, ¶ 98. Thus, a finding that the rates are lawful will moot the fourth cause of
4 action, and much of the sixth.

5 Another reason to bifurcate, as noted in MWD's Opening Brief, is that a currently
6 pending federal action seeking to enjoin the water transfers underlying the Exchange Agreement
7 has the potential to affect resolution of SDCWA's fourth cause of action.³ *See* OB at 13. If the
8 injunction is granted, it could trigger the Exchange Agreement's force majeure clause, thereby
9 relieving MWD of future obligations to provide *any* water under the agreement. *See id.* Because
10 it seeks prospective relief in its fourth cause of action, i.e., that the Court set aside MWD's rates
11 and set new rates in accordance with the Exchange Agreement (FAC ¶ 85), SDCWA cannot
12 plausibly argue that the federal action has no bearing here.

13 **D. Bifurcation Will Avoid Prejudice.**

14 As noted in MWD's Opening Brief, absent bifurcation, resolution of the rate challenge
15 will be delayed, which would prejudice MWD's 26 MAs. OB at 14-15. These agencies are
16 public entities that set their budgets and water rates through budgetary and rate-making processes
17 with an eye to recovering what MWD charges them. *Id.* This process is affected if the validity
18 of MWD's rates is in dispute and protracted resolution of that validity will only prolong the
19 uncertainty. *Id.*

20 SDCWA responds, first, that bifurcation will delay resolution of the rate challenge, since
21 all of its claims will require discovery. Opp. at 12. However, as noted above, that is untrue. *See*
22 *supra*, Section C.

23 SDCWA next contends that MWD would not suffer prejudice even if the rate challenge is
24

25 ³ At the time of filing the Opening Brief, another litigation was pending that had the potential to
26 affect the breach of contract claim. Since then, however, as SDCWA points out in its brief, that
27 litigation has been resolved and no longer threatens resolution of issues in this case. Opp. at 11
28 (citing *In re Quantification Settlement Agreement Cases*, No. C064293, --- Cal. Rptr. 3d ---,
2011 WL 6091097 (Cal. Ct. App. Dec. 7, 2001)).

1 delayed, because, no matter when the rates are resolved, MWD will collect the same revenue.
2 Opp. at 13. That completely misses the point. Bifurcation is necessary to avoid prejudice to
3 MWD's MAs, who *will* be affected by continuing uncertainty as to what their rates will be.
4 OB at 14-15.

5 SDCWA next argues that bifurcation will not alleviate uncertainty, because, even if the
6 validation claims go forward first, they will not be resolved by April 2012. Opp. at 13. SDCWA
7 blames this on MWD, who "placed the validation proceeding in a holding pattern for months" by
8 challenging certain intervenors' right to standing and challenging SDCWA's expansion of its
9 complaint. *Id.* SDCWA even accuses MWD of further delaying resolution of the rate challenge
10 by submitting the administrative record in this court. *Id.*

11 That is, frankly, nonsense. First, MWD did not "place the validation proceedings in a
12 holding pattern." MWD has been trying to move them forward for nearly a year, concurrent with
13 litigating other aspects of the case, and nothing MWD did prevented their resolution. SDCWA
14 has completely ignored MWD's repeated efforts since June of 2011 to finalize the administrative
15 record. It is, moreover, difficult to see how MWD's filing the administrative record – which is
16 necessary for the validation proceeding to move forward – could *delay* resolution of the
17 validation proceeding. Finally, it is SDCWA, not MWD, that more than a year after the
18 validation action began made the strategic decision to tack on the several new, wide ranging and
19 unrelated common law causes of action that have triggered this round of briefing and threatened
20 to add discovery and other disputes to the simple resolution of the rate challenge.

21 Regardless of whether the case is finalized by April, 2012, bifurcation could still reduce
22 uncertainty to the MAs. While MWD's Administrative Code provides that its rates are generally
23 set in April to take effect the following January (MWD Admin. Code § 4304 (e)), the Board can
24 change rates at any time, provided there is sufficient notice given or MWD's board determines
25 that a rate change is urgently required. MWD Admin. Code § 4304 (h). Thus, regardless of
26 whether the rate challenge is resolved by April, 2012, the sooner it is resolved, the less time the
27 MAs will be uncertain about their costs to purchase MWD water and budgets.

28

1 **E. Bifurcation Will Not Prejudice SDCWA.**

2 SDCWA claims that bifurcation will prejudice it. That is incorrect.

3 SDCWA first contends that bifurcation will prevent it from presenting its claims in an
4 “organized, coherent fashion.” Opp. at 14. However, SDCWA does not explain why this is so,
5 and it is difficult to see why presenting a mass of claims involving entirely different sets of facts
6 would be anything but disorganized and incoherent.

7 SDCWA next suggests that the “master of the complaint” doctrine gives it the right to
8 determine how this case should move forward. Opp. at 14. However, the “master of the
9 complaint” doctrine provides that a plaintiff has control over crafting of the allegations in its
10 complaint. *See Moreau v. San Diego Transit Corp.*, 210 Cal. App. 3d 614, 620 (1989). That
11 rule does not allow a plaintiff to control the court’s management of a case, which is completely
12 vested in the court’s discretion. *See, e.g., Cottle v. Super. Ct.*, 3 Cal. App. 4th 1367, 1380 (1992)
13 (courts have broad power “in a complex litigation case to manage and control the case before
14 them”).

15 SDCWA also claims, citing to nothing, that bifurcation would force it to try the “same
16 issue on two alternative factual records.” Opp. at 14. For the reasons MWD has reiterated in its
17 moving papers and in this reply, the rate challenge, and most of the issues in the fifth through
18 eighth causes of action involve different issues. SDCWA will not have to try the same case, or
19 present the same evidence, twice. *See* OB at 10-12.

20 SDCWA also contends that bifurcation will prolong the “uncertainty that currently faces
21 SDCWA and all the other MWD member agencies.” Opp. at 14. SDCWA, however, presents
22 no facts, law or even argument to support this contention.

23 Bifurcation will not prejudice SDCWA.

24 **F. This Is An Opportune Time To Bifurcate**

25 Despite the fact that compelling reasons to bifurcate are present now, SDCWA urges the
26 Court to hold off on bifurcation, suggesting the Court can order it “at a later time.” Opp. at 15.
27 But, as stated in the reference book on complex litigation incorporated in this Court’s rules, it is
28 precisely in the early, pre-trial stage of a case that it makes most sense to decide the order in

1 which discovery and trial of issues will proceed. *See* Courtroom Rules, San Francisco County
2 Superior Court, Dept. 304, Judge Richard A. Kramer (“In general, cases assigned to the Complex
3 Litigation Department will be managed in accordance with the principles set forth in the
4 Deskbook on the Management of Complex Civil Litigation”); *see also* *Deskbook on the*
5 *Management of Complex Civil Litigation* (Judicial Council of California 2011), § 1.04 (The Case
6 Management Conference is a good time to “begin to structure the litigation, and establish a
7 management plan for later proceedings. The primary objective of the conference is to develop
8 ... a plan for the just, *speedy*, and economical determination of the litigation.”) (emphasis
9 added).

10 **G. SDCWA’s Attacks On The Factual Background Are Irrelevant**

11 SDCWA’s response to MWD’s “Factual Background” reads more like a recitation of its
12 sixth cause of action. *See* Opp. at 3. However, as SDCWA admits in its brief, the factual
13 background has “no bearing on any issue relevant to bifurcation.” Opp. at 2. Thus, rather than
14 spend limited space debating the existence of a fiduciary duty here, MWD addresses SDCWA’s
15 “Factual Background” arguments in its briefing on the reasons for dismissing the fourth, fifth,
16 sixth, and eighth causes of action.

17 **III. CONCLUSION**

18 MWD respectfully requests that the Court grant its motion to bifurcate.

19 DATED: December 27, 2011

20 BINGHAM MCCUTCHEN LLP

21
22
23 By: James J. Dragna / EBP
24 James J. Dragna
25 Attorneys for Respondent and Defendant
26 Metropolitan Water District of Southern California
27
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3 **PROOF OF SERVICE**

4 I am over eighteen years of age, not a party in this action, and employed in San
5 Francisco County, California at Three Embarcadero Center, San Francisco, California 94111-
6 4067. I am readily familiar with the practice of this office for collection and processing of
7 correspondence for mail/fax/hand delivery/next business day Federal Express delivery, and they
8 are deposited that same day in the ordinary course of business.

9 On December 27, 2011, I served the attached:

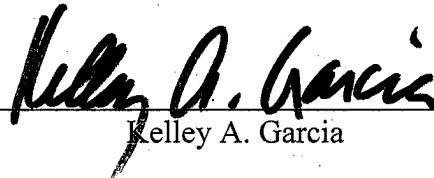
10 **METROPOLITAN WATER DISTRICT OF SOUTHERN**
11 **CALIFORNIA'S REPLY IN SUPPORT OF ITS MOTION TO**
12 **BIFURCATE VALIDATION PROCEEDING**

13 (VIA EMAIL) by transmitting a true and correct copy via email the document(s)
14 listed above on this date before 5:00 p.m. PST to the person(s) at the email
15 address(es) set forth below.

16 (BY MAIL) by causing a true and correct copy of the above to be placed in the
17 United States Mail at San Francisco, California in sealed envelope(s) with postage
18 prepaid, addressed as set forth below. I am readily familiar with this law firm's
19 practice for collection and processing of correspondence for mailing with the
20 United States Postal Service. Correspondence is deposited with the United States
21 Postal Service the same day it is left for collection and processing in the ordinary
22 course of business.

23 as indicated on the following **Service List**.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct and that this declaration was executed on December 27, 2011, at
26 San Francisco, California.

27
28

Kelley A. Garcia

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