

Water Authority Scores Significant Wins in Rate Litigation vs. MWD



DIVERSIFICATION

Enhancing Water Supply Reliability

Landmark litigation initiated by the San Diego County Water Authority has produced significant benefits for water ratepayers across the San Diego region. By challenging rates set by the Los Angeles-based Metropolitan Water District of Southern California that violate cost-of-service requirements of California law, including Proposition 26, the Water Authority secured major victories in 2017 that include:

- MWD must pay the Water Authority approximately \$51 million for so-called

“Water Stewardship” charges MWD added to the transportation rates it illegally charged the Water Authority from 2011-2014. MWD used this money to fund local supply and conservation projects for some MWD member agencies. The final amount of damages, including pre- and post-judgment interest, will be determined by the trial court on remand. The decision also prevents MWD from imposing more than \$20 million in illegal charges annually going

forward. Through 2047, those unlawful charges would have amounted to approximately \$1.1 billion.

- The Water Authority is entitled to approximately 100,000 acre-feet of additional MWD water annually – about twice the production of the \$1 billion Claude “Bud” Lewis Carlsbad Seawater Desalination Plant. The court determined that MWD unlawfully under-calculated the Water Authority’s statutory water right to MWD’s water supply and must now recalculate it.
- MWD must adopt legal rates following a ruling that the agency breached its contract with the Water Authority by not setting legal rates.

MWD Rate Litigation Outcome 2011-2014 Rates

Issue	Water Authority Win	MWD Win
1 State Water Project costs	✓	✗
2 Water Stewardship Rate	✓	✗
3 Preferential Rights	✓	✗
4 MWD’s “Rate Structure Integrity” clause	✓	✗
5 Applicability of Prop. 26 to MWD’s rates	✓	✗
6 Validity of 2003 Exchange Agreement	✓	✗
7 Validation and statute of limitations	✓	✗
8 Phase 1 attorneys’ fees	✓	✗
9 Phase 2 attorneys’ fees	✓	✗
10 Statutory interest rate (10% pre-, and 7% post-judgment)	✓	✗

- MWD must remove a contract clause it used to disqualify local water supply projects in San Diego County from receiving funding because the courts determined it was unconstitutional.
- The Water Authority believes it is entitled to recover attorneys' fees from MWD, the final amount of which will be determined on remand to the Superior Court.

The Water Authority's Board of Directors has already determined that any money returned to the Water Authority will be refunded to its 24 member agencies in proportion to their payment of MWD's illegal overcharges over the years in dispute, after deducting any litigation expenses that are not recovered.

The Water Authority also challenged MWD's allocation of its State Water Project supply cost to the transportation rate it charges to move the Water Authority's independent Colorado River supplies. While the trial court in 2015 found those rates to be illegal and invalid, that finding was overturned by the Court of Appeal in June 2017. The Water Authority's petition to the California Supreme Court to review the Court of Appeal ruling was denied in September 2017.

MWD owns the only large-scale conveyance facilities in Southern California for transporting water. By charging exorbitant rates for "wheeling" the Water Authority's water across the region, MWD

discourages efficient water use and water transfers that could decrease pressure on the Sacramento-San Joaquin Bay-Delta, in direct conflict with state laws and policies.

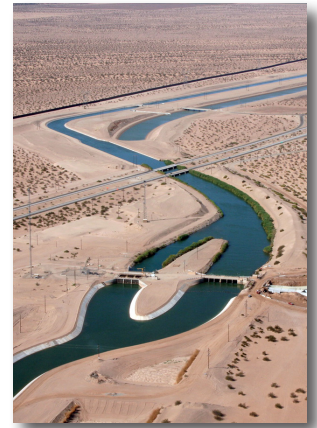
What is the case about?

More than 20 years ago, the Water Authority and its member agencies began improving the San Diego region's water supply reliability by lessening reliance on MWD, which at the time supplied about 95 percent of all the water used in San Diego County.

The cornerstone of that diversification strategy is a set of agreements signed in 2003 to secure independent water supplies from the Colorado River. To deliver these supplies to San Diego County, the Water Authority must use pipelines operated by MWD. Fearing the loss of revenue and its monopoly on imported water, MWD inflated the rates it set for transporting the Water Authority's independent Colorado River supplies.

The Water Authority filed suit in 2010 seeking to invalidate MWD's rates, and then filed additional suits in 2012, 2014 and 2016 because MWD kept adopting rates using the same formula.

For more information, including court documents, go to www.sdcwa.org/mwdrate-challenge. ■



Water conserved by the All-American Canal Lining Project is an important part of the Water Authority's Colorado River water transfer supplies.



**San Diego County
Water Authority**

4677 Overland Ave.
San Diego, California
92123-1233
858.522.6700

sdcwa.org



@sdcwa