

# Water Authority Wins Landmark Rate and Water Rights Case

## Fourth Lawsuit Filed to Protect Region's Ratepayers



### DIVERSIFICATION

Enhancing Water Supply Reliability

The San Diego County Water Authority in April 2016 filed its fourth lawsuit against the Los Angeles-based Metropolitan Water District of Southern California, alleging that MWD's rates for 2017 and 2018 violate California law, the state Constitution and common law that all require rates to be set based upon cost of service.

Superior Court Judge Curtis E.A. Karnow issued a final judgment in November 2015 that combined rulings he issued in 2014 and 2015, and said MWD's rates for 2011-2014 were illegal. The judge directed MWD to pay the Water Authority more than \$243 million in damages, costs, pre-judgment interest and attorneys' fees. (Post-judgment interest is expected to grow the total to more than \$275 million over two years.) In his November 2015 ruling, Judge Karnow also ordered MWD to only set legal rates in future years.

Ignoring the judge's ruling and order to set only lawful rates, MWD's board of directors

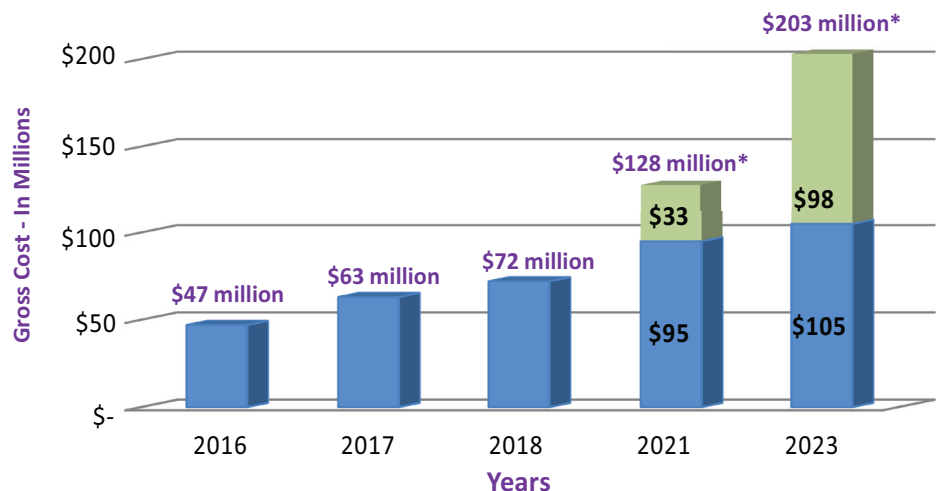
in April 2016 approved rates and charges for 2017 and 2018 using the same illegal methodology that it used in 2011-2014. MWD charges an illegally high rate to transport the Water Authority's independent Colorado River supplies.

MWD's overcharges of the Water Authority for 2017 and 2018 are expected to be more than \$134 million, and overcharges for the eight years contested by the Water Authority are approximately \$524 million (not counting the interest, court costs and attorney's fees from 2015-2018). If allowed to stand, overcharges by MWD could exceed \$7.4 billion over 45 years.

MWD is appealing Judge Karnow's final judgment. The 1<sup>st</sup> District Court of Appeal has set a date of May 10 for oral arguments. Under state law, the Court of Appeal must issue its decision no more than 90 days from oral argument. The Water Authority's Board of Directors has already determined that any

### Estimated Impact of MWD Overcharges to Water Authority Ratepayers

*MWD charges an illegally high rate to transport the Water Authority's independent Colorado River supplies. As the Water Authority's Colorado River water supplies reach the maximum annual amount those overcharges could grow to as much as \$203 million annually by 2023.*



- Overcharge from existing MWD rates
- Additional overcharge as a result of implementation of the proposed twin tunnels project in the Bay Delta under the existing rate methodology

\*Includes an estimated Bay-Delta fix.

Assumes costs to fix Bay-Delta start in 2021 and full costs are realized in 2023.

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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 is appealing one adverse ruling on the validity of the MWD's Rate Structure Integrity provision, which was designed to prevent agencies that challenge MWD's rates in court or the state Legislature from participating in MWD's local water supply development and conservation programs. The Water Authority is asking the court to declare the RSI provision illegal and prohibit MWD from enforcing it. The trial court judge ruled that the Water Authority lacks standing to challenge the RSI clause; however, except for this technical obstacle, the judge said the Water Authority would prevail on the merits and the RSI clause would be invalidated.

### 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 illegally inflated the rates it set for transporting the Water Authority's independent Colorado River supplies.

The Water Authority is the only MWD member agency that uses MWD facilities to transport a large volume of third-party water supplies each year. That means MWD's illegal rates have forced San Diego County ratepayers to subsidize other water ratepayers across Southern California by

tens of millions of dollars annually.

The Water Authority filed suit in 2010 seeking to invalidate MWD's rates, and then filed additional suits in 2012 and 2014 because MWD kept adopting rates using the same illegal formula. The 2014 case is on hold pending the outcome of the first two suits, which were coordinated for the trial.

### What happened in court?

The judge's final decision affirmed the Water Authority's long-standing position that MWD's rates must be based on the actual costs of providing its services and must reflect the proportionate burdens imposed on MWD by its member agencies and the benefits they receive from MWD.

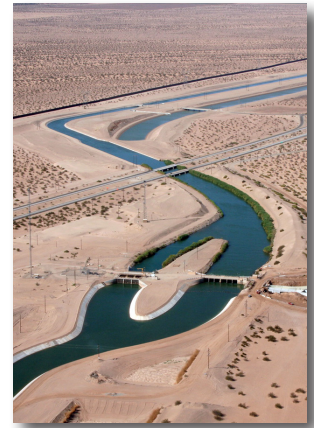
Specifically, the judge ruled that MWD's rates for 2011, 2012, 2013 and 2014 violate:

- California Wheeling Law, which governs what water agencies can charge to transport – or wheel – water through its facilities;
- Government Code Section 54999.7(a),

a provision of state law that limits water agency rates to the cost of providing the service for which that rate is charged;

- Common law rules that limit rates to cost-of-service.
- Proposition 26, approved by California voters in November 2010 (applies to 2013 and 2014 rates). That proposition, now embodied in the California Constitution, shifted the burden to public agencies to prove they are not charging more than the actual cost of the services they provide. MWD contended in court that it is exempt from Proposition 26 as well as other constitutional and statutory provisions of California law.

For more information about the Water Authority's lawsuits, including the court rulings, go to [sdcwa.org/mwdrate-challenge](http://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.

### Appeals Will Delay Payment

May-October 2016: Briefing Schedule

First Quarter 2017: Oral Argument

Second/Third Quarter 2017:

Decision from First Appellate District Court of Appeal

- Potential for California Supreme Court review, which would delay a final decision for up to two years.



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