



# OFFICE OF THE COUNTY COUNSEL CONTRA COSTA COUNTY

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August 30, 2017

Chief Justice Tani Cantil-Sakauye  
and the Associate Justices of the California Supreme Court  
350 MacAllister Street  
San Francisco, California 94102

Re: *San Diego County Water Authority v. Metropolitan Water District of Southern California*, Supreme Court Case No. S243500 (Cal. App. 1st Case Nos. A146901 & A148266)

Contra Costa County and Contra Costa County Water Agency's Amicus Curiae Letter in Support of Supreme Court Review

To the Honorable Chief Justice and the Honorable Associate Justices:

Contra Costa County ("County") and the Contra Costa County Water Agency ("Water Agency") submit this amicus curiae letter pursuant to California Rules of Court, Rule 8.500(g). For the reasons explained below, the County and Water Agency respectfully urge this Honorable Court to grant San Diego County Water Authority's ("SDCWA") petition for review of the First District Court of Appeal's decision in the above-titled litigation. If the decision is left to stand, it will undermine established State water law that requires regions of the state that export water from the Sacramento-San Joaquin Delta to develop local and regional water supply and conservation projects and to reduce their reliance on exported Delta water. The final outcome of this litigation will have long-term, statewide impacts on established State water law and policy. This Honorable Court is best positioned to determine the appropriate outcome of this case after considering the merits argued by the parties and the requirements of the Delta Reform Act of 2009.

## A. Interest of the Amicus Curiae

The Delta is "a critically important natural resource for California and the nation," and "the most valuable estuary and wetland ecosystem on the west coast of North and South America."<sup>1</sup> Its waters support the largest nursery for California fisheries, the largest Pacific

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<sup>1</sup> Wat. Code, § 85002; see also Pub. Res. Code, § 29703.

Coast fly-over stop for migrating waterfowl, over 500,000 acres of prime farmland, and an urban community of 4 million people.

The County is a political subdivision of the State of California and is home to more than one million people, many of whom live, work, and recreate within the Delta. The Water Agency is a separate legal entity governed by the Contra Costa County Board of Supervisors. The Water Agency's enabling legislation empowers it "to do all things necessary" to ensure the availability of water for beneficial uses within the agency's jurisdiction, including but not limited to preventing waste, salinity intrusion, and interference or diminution of the natural flows of rivers and streams within the agency's jurisdiction.<sup>2</sup>

The County's and the Water Agency's jurisdictional boundaries include portions of the Delta. The County's entire northern waterfront borders San Pablo and Suisun Bays, the Carquinez Strait, New York Slough, and the western reach of the San Joaquin River. A portion of the County's eastern boundary borders Old River. Persons living within the County and the Water Agency boundaries rely on the Delta for urban and agricultural water supplies. Agriculture within the County contributes approximately \$225 million to the local economy, and supports more than 2,000 jobs.<sup>3</sup>

**B. SDCWA's Water Conservation and Supply Project is Consistent with the Delta Reform Act's Requirement to Reduce Reliance on Delta Water**

In 2009, the California Legislature enacted the Delta Reform Act.<sup>4</sup> The Delta Reform Act recognizes the fragile health of the Delta ecosystem and the ecological impacts of increased water export demands for Delta waters.<sup>5</sup> Through the Delta Reform Act, the Legislature made it "[t]he policy of the State of California to reduce reliance on the Delta through a statewide strategy of investing in improved regional supplies, conservation and water use efficiency."<sup>6</sup> The State proposed to effectuate this policy of reduced reliance on the Delta by requiring "each region that depends on water from the Delta watershed" to invest in, among other things, water conservation and local and regional water supply projects.<sup>7</sup>

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<sup>2</sup> West's Wat. Code Appen., § 80-11(2), (5).

<sup>3</sup> See Contra Costa County Dept. of Agric., *Economic Contributions of Contra Costa County Agriculture*, available at <http://www.co.contra-costa.ca.us/DocumentCenter/View/39556> (last visited Aug. 9, 2017).

<sup>4</sup> Stats. 2010, 7th Ex. Ses. 2009, ch. 5, § 39.

<sup>5</sup> Wat. Code, §§ 85001-85004.

<sup>6</sup> Wat. Code, § 85021.

<sup>7</sup> Wat. Code, § 85021.

SDCWA's water conservation effort within the Imperial Irrigation District ("Imperial") is an example of the type of conservation and regional water supply project that the Delta Reform Act requires. SDCWA paid to implement water conservation measures within Imperial's service area and acquired water conserved through those measures to help meet SDCWA's water supply needs. That regional conservation and water supply project reduces SDCWA's reliance on imported State Water Project, *i.e.*, water exported from the Delta.

**C. The Court of Appeal's Decision is Inconsistent with the Delta Reform Act of 2009**

This litigation concerns water wheeling rates that MWD charged SDCWA for SDCWA's transfer of conserved Imperial water to SDCWA's service area via the Colorado River Aqueduct. The Water Code's water wheeling statutes<sup>8</sup> limit MWD to charging only "fair compensation" for wheeling SDCWA's water through the Colorado River Aqueduct.<sup>9</sup> "Fair compensation" means "the reasonable charges incurred by the owner of the conveyance system, including capital, operation, maintenance, and replacement costs, increased costs from any necessitated purchase of supplemental power, and including reasonable credit for any offsetting benefits for the use of the conveyance system."<sup>10</sup> The Court of Appeal reversed the trial court and upheld MWD's water wheeling rates, which recovered not only MWD's costs of transporting SDCWA's conserved Imperial water through the Colorado River Aqueduct, but also MWD's water supply and operating costs for conveying State Water Project water through the California Aqueduct.<sup>11</sup> Under MWD's water wheeling rates upheld by the Court of Appeal, the cost to SDCWA of wheeling Imperial water through the Colorado River Aqueduct to be almost double the cost of purchasing State Water Project water from MWD, according to SDCWA.<sup>12</sup>

Delta-dependent communities and businesses within the County and Water Agency would be harmed if the Court of Appeal's decision is allowed to stand. The Court of Appeal's decision jeopardizes SDCWA's efforts to reduce its reliance on imported Delta water to meet its water supply needs, as required by the Delta Reform Act. If MWD's calculation of its water wheeling rates remains unchanged following the Court of Appeal's decision, SDCWA will face a difficult economic and policy decision: SDCWA can either (1) pay MWD's high water-wheeling rates to transport conserved Imperial water to its service area via the Colorado River Aqueduct, or (2) pay almost half as much to buy an equal amount of State Water Project water (*i.e.*, Delta

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<sup>8</sup> Wat. Code, §§ 1810-1814.

<sup>9</sup> Wat. Code, § 1810.

<sup>10</sup> Wat. Code, § 1811, subd. (c); *Met. Wat. Dist. of So. Calif. v. Imperial Irr. Dist.* (2000) 80 Cal.App.4th 1403, 1431.

<sup>11</sup> See *San Diego Co. Wat. Auth. v. Met. Wat. Dist. of So. Calif.* (2017) 12 Cal.App.5th 1124, 1146-1147; Petition for Review, filed July 31, 2017, *San Diego Co. Wat. Auth. v. Met. Wat. Dist. of So. Calif.* (Cal. Supreme Court Case No. S243500) ("SDCWA Petition"), at p. 10.

<sup>12</sup> SDCWA Petition, at pp. 20-21


tributary water) from MWD, which would be delivered via the California Aqueduct.<sup>13</sup> SDCWA would be in the unfortunate position of having to weigh whether its obligation to responsibly manage public funds demands foregoing prudent local and regional water conservation projects, even if doing so would contravenes statutes in the Delta Reform Act that require the development of local and regional water supply projects. Moreover, Water Code section 85021 would be rendered ineffective if MWD, the state's largest and most powerful water wholesaler, can calculate its water wheeling rates in a manner that provides financial incentives for its member agencies to continue relying on the Delta.

**D. Conclusion: This Court Should Grant Review Because Any Decision Will Have Long-Term, Statewide Impacts**

A final decision in this litigation will have long-term statewide impacts, including impacts on the health of the Delta ecosystem. If the Court of Appeal's decision is left to stand, it will enable MWD to continue to set water wheeling rates that discourage its member agencies' development of local and regional water supplies. This result undermines the Delta Reform Act's requirement that Delta-water exporters develop local and regional water supply and conservation projects and reduce their reliance on water exported from the Delta. For these reasons, Contra Costa County and the Contra Costa County Water Agency respectfully request that this Honorable Court review the Court of Appeal's decision.

Very truly yours,

Sharon L. Anderson  
County Counsel

By:   
Stephen M. Siptroth  
Deputy County Counsel

SMS:es

cc: See attached service list

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<sup>13</sup> SDCWA Petition, at pp. 20-21.

**PROOF OF SERVICE BY MAIL**

(Code Civ. Proc., §§ 1012, 1013a, 2015.5)

**Re: San Diego County Water Authority v. Metropolitan Water District of Southern California**  
**California Supreme Court Case No. S243500**  
**First Appellate District, Division Three, Case No. A146901**  
**(City & County of San Francisco Superior Court Case No. CFP-10-510830)**  
**First Appellate District, Division Three, Case No. A148266**  
**(City & County of San Francisco Superior Court Case No. CFP-12-512466)**

I declare that my business address is the County Counsel's Office of Contra Costa County, Administration Building, 651 Pine Street, 9<sup>th</sup> Floor, Martinez, CA 94553; that I am a citizen of the United States, over 18 years of age, employed by the County of Contra Costa and not a party to the within action; and, that I am readily familiar with the County Counsel's office business practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of the County Counsel's office business practice the document described below will be deposited with the United States Postal Service on the same date that it is sealed and placed at the County Counsel's office with fully prepaid postage thereon.

I further declare that I served a true copy of the

CONTRA COSTA COUNTY AND CONTRA COSTA COUNTY WATER AGENCY'S  
AMICUS CURIAE LETTER IN SUPPORT OF SUPREME COURT REVIEW, dated  
August 30, 2017


by placing said copy in an envelope(s) addressed as follows:

[see attached SERVICE LIST]

which place(s) has(have) mail service, which envelope(s) was(were) then sealed, postage fully prepaid thereon, and deposited today for mailing either by directly depositing said envelope in the United States Mail or by following ordinary business practices of the County Counsel's office for collection for processing in the United States Mail at Martinez/Concord, Contra Costa County, California.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Martinez, California on August 30, 2017.

  
Eric Suitos

**PROOF OF SERVICE BY MAIL**



**SERVICE LIST**

**San Diego County Water Authority v. Metropolitan Water District of Southern California  
Supreme Court Case No. S243500  
(Cal. App. 1<sup>st</sup> Case Nos. A146901 & A148266)**

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