



F I L E D
Superior Court of California
County of San Francisco

JUL 25 2018

CLERK OF THE COURT
BY: *Alan Kone*
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 305

SAN DIEGO COUNTY WATER
AUTHORITY,

Petitioner and Plaintiff,

v.

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

Respondents and Defendants.

Case Nos. CPF-10-510830 & CPF-12-512466

ORDER RE SCOPE OF PROCEEDINGS
FOLLOWING REMAND

Following the Court of Appeal's decision in *San Diego County Water Authority v. Metropolitan Water District of Southern California* (2017) 12 Cal.App.5th 1124 ("SDCWA"), the parties in the above-referenced actions each submitted opening and response briefs to determine the scope of remand proceedings. The matter came on for hearing on July 18, 2018, and appearances are as noted on the record. Having duly considered the matter, the Court issues this Order.

1 **I. BACKGROUND¹**

2 The Metropolitan Water District of Southern California (“Metropolitan”) is the largest wholesale
3 water agency in California, selling water and other services to 26 member agencies, that in turn, sell the
4 water to the public throughout Southern California. It is authorized to, among other things, levy property
5 taxes within its service area, establish water rates, and impose charges for water standby and service
6 availability. San Diego County Water Authority (“Water Authority”) is one of Metropolitan’s member
7 agency customers, providing water to the residents of the County of San Diego.

8 In 1998, the parties entered into a 30-year “Exchange Agreement,” whereby Metropolitan agreed
9 to receive Colorado River Water intended for the Water Authority from a third-party, in exchange for
10 which Metropolitan would provide the Water Authority with a like quality and quantity of water.
11 *SDCWA, supra*, 12 Cal.App.5th at 1135. In 2003, the parties executed an Amended Exchange Agreement
12 that is the subject of the instant litigation. *Id.* at 1136. The Water Authority agreed to pay charges
13 “generally applicable to the conveyance of water by Metropolitan on behalf of its member agencies.” *Id.*
14 at 1138-39. Although the Water Authority agreed it would not challenge the conveyance charges set by
15 Metropolitan for the first five years following the execution of the Amended Exchange Agreement, it
16 reserved the right thereafter to contest the rates as contrary to “applicable law and regulation.” *Id.* at
17 1137.

18 In June 2010, the Water Authority filed its first action challenging Metropolitan’s 2011-2012 rates
19 (“2010 action”). *Id.* at 1139. In June 2012, the Water Authority filed its second action, challenging
20 Metropolitan’s 2013-2014 rates (“2012 action”). *Id.* at 1139-40. The Water Authority challenged two
21 specific aspects of Metropolitan’s rates: (1) the inclusion of State Water Project (“SWP”) transportation
22 costs, recovered through Metropolitan’s “system access rate” and “system power rate;” and (2) the
23 inclusion of a “water stewardship rate,” in Metropolitan’s “transportation” costs. *Id.* at 1145-51.
24 According to the Water Authority, Metropolitan’s “system access rate,” “system power rate,” and “water
25 stewardship rate” are related to “supply” not “transportation,” and therefore the inclusion of these charges
26

27 ¹ This is a brief summary of the relevant facts and procedural history surrounding this case for purposes of
28 this Order. *SDCWA* contains a more detailed recitation of the facts and procedural history which the
Court need not repeat here.

1 as “transportation” costs violates the general rule under California’s wheeling statutes (Wat. Code § 1810
2 et seq.), Proposition 26, Gov. Code § 54999.7, and the common law, that the costs of services be
3 reasonably related to the costs of providing those services. The Water Authority also sought damages for
4 breach of contract, asserting that because Metropolitan’s rates are not lawful conveyance rates, they are
5 not properly charged under the amended agreement, which required Metropolitan to set charges “pursuant
6 to applicable law and regulation.” *SDCWA, supra*, 12 Cal.App.5th at 1140.

7 On June 14, 2011, Metropolitan terminated two water conservation project contracts with the
8 Water Authority pursuant to the “Rate Structure Integrity” (“RSI”) clause found in those contracts. *Id.* at
9 1157. The RSI clause allows Metropolitan to terminate water conservation project contracts with member
10 agencies, including the Water Authority, in the event the member agency files or participates in litigation
11 to challenge Metropolitan’s rate structure. *Id.* The Water Authority amended their 2010 action to seek a
12 declaratory judgment that the RSI clause is invalid and unenforceable. *Id.*

13 The trial court, the Honorable Curtis E.A. Karnow presiding, granted Metropolitan’s motion for
14 summary adjudication with respect to the RSI clause. The trial court found that, although the RSI clause
15 imposed an unconstitutional condition on water conservation program funding, the Water Authority
16 lacked standing to challenge it. *Id.* at 1160. With respect to the water rate challenge, the trial court
17 informally consolidated the 2010 and 2012 cases, and bifurcated the bench trial to first determine the
18 validity of Metropolitan’s rates and then to decide the breach of contract claim. In phase one, the trial
19 court invalidated Metropolitan’s inclusion of the “system access rate,” “system power rate,” and “water
20 stewardship rate” in the transportation rates charged to the Water Authority for both the 2011-2012 and
21 2013-2014 rate cycles, finding that these charges are designed to recover costs that are attributable to
22 “supply,” not “transportation,” and are therefore unlawful based on Proposition 26, the wheeling statutes,
23 Gov. Code § 54999.7, and the common law. *Id.* at 1140-41. In phase two, the trial court found that
24 Metropolitan breached the price term of the Amended Exchange Agreement because it charged the Water
25 Authority “transportation” rates that were not consistent with the applicable laws and regulations. *Id.* at
26 1141. The trial court awarded the Water Authority damages in the amount of \$188,295,602, which is
27 equal to the total amount the Water Authority paid under the Amended Exchange Agreement from 2011
28

1 to 2014 for SWP costs and the water stewardship rate, and prejudgment interest, for a total judgment of
2 \$234,932,782. *Id.* The trial court also awarded the Water Authority attorney fees of almost \$9 million.
3 *Id.*

4 Both parties appealed the trial court's rulings. On June 21, 2017, the Court of Appeal held that the
5 inclusion of SWP transportation costs in the "transportation" rates charged to the Water Authority does
6 not violate the wheeling statutes, common law, Proposition 26, or Government Code § 54999.7, and that
7 there was no breach of the Amended Exchange Agreement in that respect. *Id.* at 1149-54. However, the
8 Court of Appeal held that the inclusion of a water stewardship rate component violated the wheeling
9 statutes, and therefore there was a breach of the Amended Exchange Agreement in that respect. *Id.* at
10 1152. With respect to the RSI issue, the Court of Appeal reversed the trial court's order on the parties'
11 motions for summary adjudication, finding that the Water Authority had standing to challenge the RSI
12 clause, and that the RSI clause was an unconstitutional condition on water conservation program funding.
13 *Id.* at 1159-60. The Court of Appeal further stated that a redetermination of the prevailing party and
14 attorney fees is necessary upon remand in light of the reversal of the judgment. *Id.* at 1164. Accordingly,
15 the Court of Appeal stated as follows: "The judgment is reversed and the peremptory writ of mandate
16 vacated. The matter is remanded to the trial court for recalculation of damages, entry of declaratory relief
17 on the Rate Structure Integrity clause, redetermination of the prevailing party, and other proceedings
18 consistent with the views expressed in this opinion." *Id.* at 1166.

19 **II. LEGAL STANDARD**

20 "Where a reviewing court reverses a judgment with directions to determine damages in
21 accordance with the rules set forth in its opinion and to enter judgment for the plaintiff, the trial court is
22 bound by the directions given and has no authority to retry any other issues or to make any other
23 findings." *Rice v. Schmid* (1944) 25 Cal.2d 259, 263. "Its authority is limited wholly and solely to
24 following the directions of the reviewing court." *Id.*

25 **III. DISCUSSION**

26 The parties disagree on the scope of remand proceedings following the *SDCWA* decision.
27 Metropolitan argues (1) that it is entitled to show what it could have lawfully charged the Water Authority
28

1 for recovery of its share of demand management costs, and that the amount of such charges must be
2 deducted from the Water Authority's damages; (2) that this Court must simply enter declaratory relief on
3 the RSI clause issue as requested by the Water Authority, and there is no need to examine any additional
4 issues in this regard; and (3) that this Court must redetermine the prevailing party and reasonable
5 attorneys fees. On the other hand, the Water Authority asserts (1) that this Court must simply award the
6 Water Authority \$28,678,191 in damages; (2) that in addition to its requested declaratory relief regarding
7 the RSI clause, the Water Authority is entitled to monetary restitution; (3) that this Court should direct
8 Metropolitan to determine the Water Authority's "reasonable credit for any offsetting benefits;" and (4)
9 that this Court must redetermine the prevailing party and reasonable attorneys fees. Each of these
10 contentions is discussed below.

11 First, the Court finds that it must award the Water Authority \$28,678,190.90 in damages, plus
12 prejudgment interest at 10 percent per annum. The Court of Appeal held that the Water Authority is
13 entitled to damages for "the overcharges attributable to the unlawful inclusion of the water stewardship
14 rate." *SDCWA, supra*, 12 Cal.App.5th at 1154. The Court agrees with the Water Authority that the
15 amount of such damages was already decided by the trial court and affirmed on appeal. In particular, the
16 trial court found that the Water Authority is entitled to damages in the amount of \$188,295,602, of which
17 \$28,678,190.90 is attributable to charges based on the water stewardship rate. *See* Statement of Decision
18 (Phase II SOD), filed August 28, 2015, at 18; Plaintiff Trial Exhibit ("PTX") No. 471. Although
19 Metropolitan argued on appeal that the trial court utilized an improper measure of damages, nothing in
20 *SDCWA* suggests that the Court of Appeal found the damages amount to be improper. *See* Metropolitan's
21 Appellate Opening Brief at 126-130. Indeed, if the Court of Appeal found that the damages calculation
22 was improper, it would have said so, but it did not. Based on this record, the Court awards the Water
23 Authority \$28,678,190.90 in damages plus prejudgment interest at 10 percent per annum.²

24 Second, Metropolitan is not entitled on remand to show what it could have lawfully charged the
25 Water Authority for demand management costs, and is not entitled to deduct that amount from the Water
26 Authority's damages. Indeed, the trial court had rejected Metropolitan's "alternative damages" argument

27 _____
28 ² Metropolitan does not dispute the fact that the Court of Appeal held that a 10 percent per year
prejudgment interest rate applies in this case. *See SDCWA, supra*, 12 Cal.App.5th at 1154-55.

1 in denying Metropolitan's motion to reopen expert discovery and motion for new trial.³ On appeal,
2 Metropolitan similarly argued that the trial court erred in refusing to reopen expert discovery regarding
3 "alternative lawful transportation rates," and that as a result, the trial court erred in finding that the Water
4 Authority suffered actual damages. See Metropolitan's Appellate Opening Brief at 116-123. The Court
5 of Appeal, however, rejected Metropolitan's arguments, stating as follows: "Metropolitan has made
6 several assertions on appeal denying an...actionable breach but none is persuasive...[C]ontrary to
7 Metropolitan's arguments, the evidence sufficiently establishes a violation of the contractual price term,
8 not just the wheeling rate, and actionable injury is shown by payment of a water stewardship rate
9 unrelated to the transportation services provided." *SDCWA, supra*, 12 Cal.App.5th at 1154. Thus,
10 Metropolitan's argument that it is entitled to show what it could have lawfully charged the Water
11 Authority for demand management costs, and that such amount must be deducted from the Water
12 Authority's damages, is inconsistent with *SDCWA*.

13 Third, the Court finds that the Water Authority's argument that this Court should issue a new writ
14 directing Metropolitan to determine a "reasonable credit for any offsetting benefits" is both outside the
15 scope of remand and waived. Although the Water Authority argued during Phase I trial and in post-trial
16 briefing that Metropolitan's rates are unlawful because Metropolitan failed to provide the Water Authority
17 with "offsetting benefits," the Water Authority did not request writ relief based on "offsetting benefits."
18 Moreover, the Water Authority did not raise the issue of "offsetting benefits" on appeal even though it
19 could have. The Court disagrees with the Water Authority that it was not required to raise the issue on
20 appeal because it prevailed at trial. The Water Authority may have prevailed at trial on the issues relating
21

22 ³ Following the trial court's issuance of its Statement of Decision on Phase I, Metropolitan moved to
23 reopen expert discovery for the limited purpose of presenting expert testimony regarding the amount
24 Metropolitan could have lawfully charged the Water Authority to recover SWP transportation costs and
25 demand management costs. See Metropolitan's Motion to Reopen Expert Discovery, filed July 2, 2014.
26 The trial court denied Metropolitan's motion, finding that any testimony from Metropolitan's proposed
27 expert would relate to "rate setting," an issue that the trial court lacks jurisdiction over and has no
28 relevance to the case. See Order Denying Metropolitan's Motion to Reopen Expert Discovery, filed
December 4, 2014. Metropolitan also moved for a new trial following the trial court's issuance of its
Phase II Statement of Decision, where it presented its own damages calculation for the first time and
argued that it was wrongfully prevented from pursuing expert discovery to rebut the Water Authority's
damages calculations. In denying this motion, the trial court cited its December 4, 2014 Order and stated
that Metropolitan's arguments on damages had been waived. See Order Denying Metropolitan's Motion
for New Trial, filed December 23, 2015.

1 to the inclusion of SWP transportation costs and demand management costs, but it did not prevail on its
2 claim that it was entitled to “offsetting benefits.” Indeed, the Water Authority stated that the trial court
3 never decided the issue. Because the Water Authority failed to raise the issue relating to “offsetting
4 benefits” on appeal, it cannot on remand claim in these proceedings that it is entitled to a writ directing
5 Metropolitan to determine offsetting benefits.

6 Fourth, the Court finds that the Water Authority is entitled to judgment on its declaratory relief
7 cause of action declaring the RSI clause invalid and unenforceable, and is entitled to both retroactive
8 equitable relief for the 2011 to 2014 period at issue and prospective relief. *See SDCWA, supra*, 12
9 Cal.App.5th at 1164 (the Water Authority is entitled to judgment on its declaratory relief cause of action
10 declaring the RSI clause invalid and unenforceable as an unconstitutional condition). The Water
11 Authority asserts it is entitled to retroactive relief in the form of monetary restitution for the 2011 to 2014
12 period that Metropolitan enforced the RSI clause and barred the Water Authority from receiving program
13 benefits associated with Metropolitan’s water stewardship rates. In connection with the Water
14 Authority’s RSI claim, the Third Amended Complaint (“TAC”) sought in addition to other relief “a
15 judicial declaration...(b) reinstating, *as of the date of the wrongful termination*, all Project Contracts
16 between the Water Authority and Metropolitan...[and] (c) reinstating, *as of the date of the wrongful*
17 *termination*, the Ramona Agreement.” Third Amended Complaint in 2010 action, filed January 13, 2013,
18 Prayer ¶ 5 (emphasis added). Because the two projects at issue were terminated in 2011, before the TAC
19 was filed, the quoted language from the TAC amounts to a request for retroactive equitable relief, but
20 only in relation to the two project contracts that were terminated. Although the TAC did not specifically
21 request retroactive equitable relief based upon Metropolitan’s 2011 declaration that the Water Authority is
22 ineligible to participate in any future subsidy programs, it sought “other and further relief as the Court
23 deems proper.” *Id.* ¶ 8. Metropolitan asserts that the Water Authority abandoned any requests for
24 retroactive relief, particularly restitution, by failing to include it in their summary adjudication motion or
25 Notice of Cross-Appeal. The Court disagrees with Metropolitan’s argument, and finds that the Water
26 Authority did not abandon any form of relief requested in its TAC.

27 In any event, however, trial courts have inherent authority to grant relief not specifically prayed
28

1 for if the complaint's allegations and the evidence support the relief, and the relief is necessary to afford
2 equity between the parties. Code Civ. Proc. § 580; *see also Wright v. Rogers* (1959) 172 Cal.App.2d 349,
3 367 (the jurisdiction of the court to grant any particular relief depends not on the prayer but on the issues
4 embraced within the complaint). Here, the TAC alleges as follows:

5 "In June 2011, Metropolitan actually terminated part or all of four contracts between
6 Metropolitan and the Water Authority...Metropolitan has gone further and declared the
7 Water Authority ineligible to receive any future subsidy contracts, which means that,
8 although the Water Authority must continue to fund Metropolitan's subsidy programs
9 through its substantial "Water Steward Rate" payments to Metropolitan, the Water
10 Authority will get nothing in return for those payments...Metropolitan's enforcements of
11 the RSI clause has already cost the Water Authority millions of dollars and will cost the
12 Water Authority tens of millions of dollars annually in the future."

13 TAC ¶ 5. Based on the above allegations, the Court finds that the issue of the Water Authority's
14 entitlement to retroactive equitable relief is embraced within the complaint. Because the declaratory relief
15 claim in connection with the RSI clause was summarily adjudicated in favor of Metropolitan, the trial
16 court did not reach the issue of what specific forms of relief the Water Authority may be entitled to. The
17 Court finds that the issue is now before this Court following remand and upon entry of a declaratory
18 judgment in favor of the Water Authority. Moreover, the Court finds that, pursuant to Code of Civil
19 Procedure section 1062, the Water Authority is not barred from now seeking by further proceedings in
20 this action retroactive equitable relief for the 2011 to 2014 period. Code Civ. Proc. § 1062; *see also Lortz*
21 *v. Connell* (1969) 273 Cal.App.2d 286, 300-01 (a plaintiff in a declaratory relief action who fails to seek
22 consequential or incidental relief is not barred from seeking such relief by further proceedings in the same
23 or new action to enforce his rights determined by a favorable judgment). Whether such retroactive
24 equitable relief may in fact be in the form of monetary restitution is subject to proof to be determined in
25 such further proceedings. The parties shall also litigate in such further proceedings the issue of what
26 prospective relief the Water Authority may be entitled to in connection with the declaratory judgment, i.e.
27 whether the Ramona project should be reinstated. *See* TAC, Prayer ¶ 5.

28 Finally, as the parties agree, this Court shall conduct further proceedings for a redetermination of
prevailing party and attorneys fees.

IV. CONCLUSION

For the foregoing reasons, the Court rules as follows:

1 (1) The Court shall award the Water Authority \$28,678,190.90 in damages, plus prejudgment
2 interest at 10 percent per annum;

3 (2) Metropolitan is not entitled on remand in these proceedings to show what it could have
4 lawfully charged the Water Authority for demand management costs, and is not entitled to deduct that
5 amount from the Water Authority's damages;

6 (3) The Water Authority is not entitled to litigate the issue of offsetting benefits on remand in
7 these proceedings;

8 (4) The Water Authority is entitled to judgment on its declaratory relief cause of action
9 declaring the RSI clause invalid and unenforceable, and is entitled to further proceedings to litigate the
10 issue of the Water Authority's entitlement to monetary restitution for the 2011 to 2014 period;

11 (5) No later than August 31, 2018, the parties must submit a proposed briefing and hearing
12 schedule for further proceedings with regard to the issue of the Water Authority's entitlement to
13 restitution; and

14 (6) A briefing and hearing schedule for the redetermination of prevailing party and attorneys
15 fees shall be determined after resolution of the restitution issue.

16
17 IT IS SO ORDERED.

18
19 Dated: July 25, 2018

20
21
22
23
24
25
26
27
28


Mary E. Wiss
Judge of the Superior Court

Superior Court of California
County of San Francisco

SAN DIEGO COUNTY WATER AUTHORITY,

Petitioner and Plaintiff,

vs.

METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA; ALL PERSONS
INTERESTED IN THE VALIDITY OF THE RATES
ADOPTED BY THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA ON
APRIL 10, 2012 TO BE EFFECTIVE JANUARY 1,
2012 AND JANUARY 1, 2014,; and DOES 1-10,

Respondents and Defendants.

Case Number: CPF-12-512466

**CERTIFICATE OF
ELECTRONIC SERVICE**
(CCP 1010.6(6) & CRC 2.260(g))

I, T. Michael Yuen, Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On July 25, 2018, I electronically served the ORDER RE SCOPE OF PROCEEDINGS FOLLOWING REMAND via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: July 25, 2018

T. MICHAEL YUEN, Clerk

By:



Sean Kane, Deputy Clerk