

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

MINUTES

Wednesday, January 04, 2012

Department: **304**

IN RE: SAN DIEGO COUNTY WATER
AUTHORITY

Case Number: **CPF-10-510830**

VS.

**DEMURRER TO PETITION FOR WRIT
OF MANDATE; MOTION AND
JOINDERS TO BIFURCATE; MOTION
TO ALLOW DISCOVERY; CASE
MANAGEMENT CONFERENCE**

METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA, et al.

Present:

Judge: RICHARD A. KRAMER

Clerk: JOSE RIOS-MERIDA

Reporter: KRIS A CASE, CSR# 13142

Bailiff: NOT PRESENT

Appearances:

John W. Kecker
Daniel Jackson
Warren Brannig
Dan Purcell
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(415) 391-5400
For San Diego County Water Authority

Mark J. Hattam
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San Diego, CA 92101-3541
(619) 233-1155
For Imperial Irrigation District

(No Appearance)
KIDMAN BEHRENS & TAGUE, LLP
650 Town Center Drive, Suite 100
(714) 755-3100
For def. Municipal Water District of Orange
County

Dorine Martirosian, Deputy City Attorney
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For City of Glendale

Jim Dragna
Thomas S. Hixson
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*For Metropolitan Water District of Southern
California*

(No Appearance)
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(213) 217-6517
*For Metropolitan Water District of Southern
California*

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SOUTHERN CALIFORNIA et al*

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Victor Sofelkanik
CITY OF LOS ANGELES DEPARTMENT OF
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*For def. Metropolitan Water District of Southern
California*

Stepven P. O'Neill (Court Call)
LEMIEUX & O'NEILL
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*For def. Foothill Municipal Water District, West
Basin Municipal Water District, and Las Virgenes
Municipal Water District*

(No Appearance)
CITY OF TORRANCE
(310) 618-5810
For def. City of Torrance

Robert Ames
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For Repondent Utility Consumers Action Network

Steven M. Kennedy (Court Call)
BRUNICK, MCELHANEY & BECKETT
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*For Respondent Three Valley Municipal Water
District*

James J. Brosnahan
MORRISON & FOERSTER
425 Market Street
San Francisco, CA 94105-2482
(415) 268-7189
For Metropolitan Water District of Southern CA.

1:51 PM: The above-entitled action is called for hearing of a motion for leave to file first amended petition/first amended complaint, requests for judicial notice and case management conference. Court and counsel are present as listed above.

Requests for Judicial Notice of certain 4 exhibits: (1) Excerpt of Metropolitan Water District Act, codified in California Water Code Appendix, (2) Excerpt of the County Water Authority Action, codified in the California Water Code Appendix, (3) MWD's Administrative Code Sections 9300-9310, and (4) MWD Board of Directors Ethics Guide are **GRANTED** under Sections 452(b) and 402(c), California Evidence Code.

Court issues tentative and hears argument as to Anti SLAPP motion & demurrer for 6th cause of action together. Tentative Ruling: (1) to Deny the anti-SLAPP motion for failure of defendant(s)/respondent(s) to satisfy the first prong of the anti-SLAPP statute. Court states reasons and findings as reflected in the record. The protections of the anti-SLAPP statute do not apply to public works entity except under special circumstances and are not applicable in this action.

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Motion for Attorneys' fees is DENIED.

Court issues tentative ruling to sustain the demurrer to 6th cause of action for breach of fiduciary duty without leave to amend. Court finds no authority that the MWD owes a fiduciary duty to its 26 member entities. The MWD Board of Directors Ethics Guide does not create such a fiduciary duty, but merely sets forth standards for conduct for individual directors and not the agency.

1:58 PM: Cause is argued by counsel for MWD, James Brosnahan.

2:13 PM: Cause is argued by counsel for San Diego County Water Authority, Daniel Jackson.

2:22 PM: Mr. Brosnahan argues in rebuttal.

2:27 PM: Mr. Jackson argues in rebuttal.

2:21 PM: Tentative ruling stands. Demurrer to 6th cause of action is **SUSTAINED** without leave to amend. Anti-SLAPP motion to strike is **DENIED** with prejudice. Findings and reasons are as set forth on the record and above.

Court issues tentative to overrule Demurrer to 4th cause of action, breach of contract. Court finds failure to respond to that claims as presented or point out its deficiencies is a waiver of such deficiencies. Plaintiff complied with government claims act requirement, per Government Code Section 911. The cause of action is appropriate in the sense that it was timely.

2:35 PM: Counsel for Metropolitan Water District of Southern California, Colin West argues the cause.

2:41 PM: Plaintiffs' counsel, Daniel Jackson, argues the cause.

2:43 PM: Mr. West argues in rebuttal.

2:47 PM: Court Rules: Tentative ruling stands. Demurrer 4th cause of action is **OVERRULED** for reasons set forth in record.

2:48 PM: Court issues tentative to sustain without leave the Demurrer to 5th cause of action. The question of whether or not the "RSI Clause is lawful or unconstitutional or whether it violates public policy will be determined at the appropriate time. Its enactment and decision are not a violation of a covenant of good faith and fair dealing.

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2:49 PM: Plaintiff counsel, Daniel Jackson argues the cause.

2:54 PM: Tentative ruling stands. Demurrer to 5th cause of action is **SUSTAINED** without leave to amend.

Court issues tentative to overrule Demurrer to 8th cause of action. Court states findings and reasons as set forth in the record.

2:56 PM: Counsel for Metropolitan Water District, Raj Chatterjee argues the cause.

3:01 PM: Plaintiff counsel, Daniel Jackson argues the cause.

3:02 PM: Mr. Chatterjee argues in rebuttal.

3:02 PM: Tentative ruling stands. Demurrer to 8th Cause of Action is **OVERRULED**. Court thinks this legal question should be reviewed further, taking a closer any other dispositive settings and at similarity and differences regarding the fact that water comes from different entities..

This action is continued to January 6, 2012 at 2:00 PM in Department 304 for continued hearing and case management conference.