SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

SAN DIEGO COUNTY WATER AUTHORITY, Plaintiff/Petitioner, vs. METROPOLITAN WATER DIST. OF SOUTHERN CALIFORNIA, et al. Defendants/Respondents.	Case No. CFP-10-510830 ORDER DENYING METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA'S MOTION FOR JUDGMENT ON THE PLEADINGS

I heard argument on September 18, 2013 on the captioned motion. For the reasons stated on the record in support of my oral tentative ruling, as supplemented here, the motion is denied.

1. Introduction

Respondent and Defendant Metropolitan Water District of Southern California is a public agency that imports, stores, and transports water in Southern California. Among its 26 member agencies is Petitioner and Plaintiff San Diego County Water Authority. Metropolitan sells water to member agencies such as San Diego and transports third party water. In this suit San Diego challenges Metropolitan's rates.

The pending motion attacks San Diego's theory of recovery based on the Proposition 26 amendments to Article XIII C of the California Constitution. The motion attacks each claim.

2. Procedural issues

The motion attacks one of the theories underlying the various claims in the complaint. There is some authority that I can strip out a theory of recovery, find in favor of defendant, and leave intact the rest of the claim, at least in the context of a motion for summary judgment.[1]

But generally speaking I may award summary adjudication, or judgment on the pleadings, or sustain demurrers, only if an entire 'cause of action' is adjudicated, and here it does not. A 'cause of action' in this State "is defined by the 'primary right' theory. The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action."[2] Sometimes, plaintiffs really do combine in a single denominated claim two causes of action in this "primary right" sense; that is, their draftsmanship is just that bad. The bad draftsmanship is no defense, and there is nothing wrong in granting judgment on one of those 'causes of action.'[3] But Metropolitan does not suggest, nor could it, that its motion disposes of a cause of action in this sense.

Nor do I think it wise, as a matter of discretion,[4] to eliminate the Proposition 26 issues without reviewing the evidence for other claims in this case. On the merits, it is likely that very similar issues are at stake whether the case turns on Proposition 26 or the other bases presented by the parties, in that at trial I will review the evidence that Metropolitan's rates bore an appropriate relationship to its costs.

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[1] *Mathieu v. Norrell Corp.*, 115 Cal.App.4th 1174, 1188 (2004). See also *Lilienthal & Fowler v. Superior Court*, 12 Cal.App.4th 1848, 1854-55 (1993). But see *Bagley v. TRW, Inc.*, 73 Cal.App.4th 1092, 1095 n.2 (1999).
[2] *Villacres v. ABM Indus. Inc.*, 189 Cal.App.4th 562, 575-76 (2010) (res judicata issues) (internal quotation marks removed).
[3] *E.g., Hindin v. Rust*, 118 Cal.App.4th 1247, 1257 (2004).
[4] Metropolitan says I have this discretion, citing *Fire Ins. Exch. v. Super Ct.*, 116 Cal.App.4th 446 (2004).

For these reasons, the motion is denied.

Nevertheless, I provide some words on the substantive bases presented, because they too suggest denial of this motion. I use the word 'suggest' advisedly; the fact that Metropolitan does not today convince me that the Proposition 26 issues must be excluded from the case does not imply Metropolitan will not convince me of that at trial.

3. Substantive issues

The motion depends on facts which I do not find in the pleadings or judicially noticeable materials.

There are three substantive issues: Whether the charges at issue were 'imposed," whether the charges relate solely to the lease or rent of governmental 'property,' and whether 2/3 of the "electorate" voted for the challenged rates.

First, Metropolitan argues that its rates are not a "tax" under Article XIII C §1(e) because they are not "imposed." Metropolitan asserts that the word "imposed" means to "establish or apply by authority or force."[5] But *Bighorn*[6] held that that water rates were "imposed" even if the charges were consumption-based (i.e., voluntary) verses property-based (i.e., compulsory).[7] It may be that facts adduced at trial will reveal the extent to which the rates are or are not "imposed," such as the choices available to San Diego for water and water transport, but I do not have that in the context of this motion.

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[5] *Ponderosa Homes, Inc. v. City of San Ramon*, 23 Cal.App.4th 1761, 1770 (1994).

[6] *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal.4th 205 (2006). At argument Metropolitan told me that *Bighorn* only applies to retail water, such as that provided to the end user, and not to wholesale water transfers and sales. The Court does focus on the delivery of "domestic water," *id.* at 213, but the opinion does not appear to rely on the distinction argued by Metropolitan.

[7] See also *California Farm Bureau Fed'n v. State Water Res. Control Bd.*, 51 Cal.4th 421, 442 (2011).

Second, Metropolitan argues that the water that it provides to member agencies is "property" under *Santa Clarity Water.*[8] But this sense of 'property' may not apply to the transported water here.[9] In any event, the charges at issue here appear to include more than those that are arguably for the purchase of water (or lease of other 'property' such as governmental facilities such as pipes and other infrastructure). These charges allegedly include overcharging for transportation and cost shifting such that some member agencies allegedly are forced to subsidize other members.

Finally, Metropolitan argues that it has not violated Proposition 26 because it obtained approval of the rates charged by two-thirds of the relevant electorate: i.e., the member agencies through their representatives on the Metropolitan Board. Although not defined under Article XIII C, under Article XIII D Section 6 (c), the "electorate" is defined as "all voters residing" in the affected areas, suggesting Metropolitan's reading is not correct. There is no direct authority on this issue, but it would be an odd reading indeed of the Proposition—designed to provide taxpayers with certain guarantees that no additional taxes be imposed by local governmental agencies—that it permits the rate-makers (the utilities' governing body) to unilaterally decide to impose the asserted tax.

4. Conclusion

The motion is denied.

Dated: September 19, 2013

Curtis E.A. Karnow
Judge of The Superior Court

[8] *Santa Clarity Water Co. v. Lyons*, 161 Cal.App.3d 450, 461 (1984) ("[w]hen severed from the realty, reduced to possession and placed in containers [water] becomes personal property.")
[9] E.g., *State v. Superior Court*, 78 Cal.App.4th 1019, 1028 (2000).