

1 Bingham McCutchen LLP
JAMES J. DRAGNA (SBN 91492)
2 COLIN C. WEST (SBN 184095)
THOMAS S. HIXSON (SBN 193033)
3 Three Embarcadero Center
San Francisco, California 94111-4067
4 Telephone: 415.393.2000
Facsimile: 415.393.2286

5 Morrison & Foerster LLP
6 SOMNATH RAJ CHATTERJEE (SBN 177019)
425 Market Street
7 San Francisco, California 94105-2482
Telephone: 415.268.7000
8 Facsimile: 415.268.7522

9 MARCIA SCULLY (SBN 80648)
SYDNEY B. BENNION (SBN 106749)
10 HEATHER C. BEATTY (SBN 161907)
The Metropolitan Water District Of Southern California
11 700 North Alameda Street
Los Angeles, California 90012-2944
12 Telephone: 213.217.6000
Facsimile: 213.217.6980

13 Attorneys for Respondent and Defendant Metropolitan Water
14 District of Southern California

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN FRANCISCO

17 SAN DIEGO COUNTY WATER AUTHORITY,
18
Petitioner and Plaintiff,

19 v.

20 METROPOLITAN WATER DISTRICT OF
21 SOUTHERN CALIFORNIA; et al.,
22 Respondents and Defendants

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

**RESPONDENT/DEFENDANT'S
MOTION *IN LIMINE* NO. 4**

**METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA'S NOTICE OF
MOTION AND MOTION *IN LIMINE*
NO. 4 TO EXCLUDE ALL
REQUESTED EVIDENCE NOT
DISCLOSED IN DISCOVERY**

Date: November 4, 2013

Time: 9:00 a.m.

Dept: 304

Judge: Hon. Curtis E. A. Karnow

Action Filed: June 11, 2010; June 8, 2012

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF AND MOTION *IN LIMINE* NO. 4

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:


PLEASE TAKE NOTICE that on November 4, 2013, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 304 of the Superior Court of California, County of San Francisco, located at 400 McAllister St., San Francisco, California, 94102, Respondent and Defendant Metropolitan Water District of Southern California (“MWD”) will and hereby does move the Court for an order *in limine* to exclude any evidence that was not timely disclosed in response to discovery requests served by MWD in the *2010 Action* (Case No. CPF-10-510830) and the *2012 Action* (Case No. CPF-12-512466).

This motion is made on the grounds that it would be unfair and violate California law for the San Diego County Water Authority or the Imperial Irrigation District to rely upon evidence at trial that they refused to produce or identify in response to discovery requests. *See* Cal. Evid. Code §§ 210, 350, and 352.

This motion will be and hereby is based on this Notice, the Memorandum of Points and Authorities in support thereof filed herewith, MWD’s concurrently filed First Pre-Trial Brief, all pleadings and papers on file in this action, and such argument as may be presented at the hearing.

Dated: October 18, 2013

MORRISON & FOERSTER LLP



SOMNATH RAJ CHATTERJEE

Attorneys for Respondent and Defendant
METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Respondent and Defendant Metropolitan Water District of Southern California (“MWD”)
3 respectfully submits this Motion *In Limine* to exclude at the final hearing/trial in both the 2010
4 *Action* (Case No. CPF-10-510830) and the 2012 *Action* (Case No. CPF-12-512466) all evidence
5 that was requested but not disclosed in discovery.

6 **I. INTRODUCTION**

7 MWD hereby moves *in limine* for an order precluding Petitioner and Plaintiff San Diego
8 County Water Authority (“SDCWA”) and Defendant Imperial Irrigation District (“IID”) from
9 introducing at the final hearing/trial any evidence that was requested but was not timely disclosed
10 in response to discovery requests served by MWD in the 2010 and 2012 *Actions*. This exclusion
11 should cover documents and witnesses, whether percipient or expert, that SDCWA and/or IID
12 failed to disclose.

13 **II. FACTUAL SUMMARY**

14 On July 22, 2013 this Court issued a scheduling order setting the final hearing/trial for
15 December 17, 2013, with pre-trial hearings to take place on November 4, 2013 and December 10,
16 2013. The Court’s Order provided that the parties may “seek rulings on other *in limine* issues” at
17 the first pre-trial hearing “if this would be more convenient than handling them at the second
18 pretrial hearing.” (July 22, 2013 Case Management Order at 3.)

19 **III. ARGUMENT**

20 SDCWA and IID should be precluded from offering evidence at the final hearing/trial that
21 MWD requested, but that either failed to disclose in the course of discovery in the 2010 and 2012
22 *Actions* or in related responses to Public Records Act requests.¹ Discovery is designed to “make a
23 trial less a game of blindman’s bluff and more a fair contest with the basic issues and facts
24 disclosed to the fullest possible extent.” *Greyhound Corp. v. Super. Ct.*, 56 Cal. 2d 355, 376
25 (1961).

26 _____
27 ¹ Both SDCWA and MWD served Public Records Act requests on each other seeking documents
28 on matters related to these actions. The parties agreed that documents served in response to the
Public Record Act requests need not be produced again in response to discovery requests.

1 Here, MWD served document requests, requests for admission, and interrogatories on
2 SDCWA and IID, including contention interrogatories asking SDCWA and IID to identify all the
3 facts, documents, and witnesses that they contend support their allegations in these actions and to
4 produce the pertinent documents. To effectuate the purpose of discovery, the Court should
5 exclude at the final hearing/trial all requested evidence that was not previously produced or
6 disclosed in the course of discovery or in response to related Public Records Act requests. *See*
7 *Estate of Luke*, 194 Cal. App. 3d 1006, 1021 (1987) (removing issues in case that were not
8 identified in response to contention interrogatories because by answering interrogatories “in the
9 negative, no issue ... remained to be determined at the hearing”); *Thoren v. Johnston & Washer*,
10 29 Cal. App. 3d 270, 275 (1972) (barring testimony of witness whose identity was not disclosed
11 in answers to interrogatories); *Deeter v. Angus*, 179 Cal. App. 3d 241 (1986) (excluding audio
12 tape that was not produced or identified in interrogatories); *Campain v. Safeway Stores, Inc.*, 29
13 Cal. App. 3d 362 (1972) (reversing trial court’s ruling admitting plaintiff’s testimony that
14 contradicted her interrogatory responses). It would be unfair for SDCWA or IID to rely upon
15 evidence at trial that they refused to produce or identify in discovery. Any such evidence should
16 be excluded.

17
18 Dated: October 18, 2013

MORRISON & FOERSTER LLP

19 
20 SOMNATH RAJ CHATTERJEE

21 Attorneys for Respondent and Defendant
22 METROPOLITAN WATER DISTRICT
23 OF SOUTHERN CALIFORNIA
24
25
26
27
28