

**FILED**  
San Francisco County Superior Court



FEB 6 - 2015

CLERK OF THE COURT  
BY: [Signature]  
Deputy Clerk

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  
Case No. CFP-12-512466

ORDER RE: METROPOLITAN'S MOTION  
TO DISMISS FOR LACK OF SUBJECT  
MATTER JURISDICTION  
  
AND  
  
THE PARTIES' MOTIONS IN LIMINE

On February 5<sup>th</sup> 2015 I heard argument on Metropolitan's motion to dismiss for lack of subject matter jurisdiction and the parties' motions in limine. On the record, I first provided oral tentative rulings and then heard argument. The tentative rulings are adopted as briefly explained here.

*Metropolitan's Motion to dismiss*

Denied. Metropolitan argues the court lacks subject matter jurisdiction over San Diego's breach of contract claims because I must necessarily engage in hypothetical ratemaking—a legislative role not given over to the courts. I am not convinced the court cannot review rates and determine damages based on various scenarios, and neither is Metropolitan (see below, discussion of San Diego's motion in limine No.1). But for this motion, it doesn't matter. San

1 Diego does not ask me to undertake hypothetical ratemaking — it alleges and seeks to prove  
2 damages on a different basis and I will not, in limine, hold it cannot do so.  
3  
4

5 *Metropolitan's Motion in Limine*

6 Granted. The motion seeks to exclude special damages, and San Diego agrees. But San  
7 Diego says the evidence of special damages (such as enforcement of the RSI provision) will help  
8 prove the fact of direct damages. San Diego has not demonstrated that.

9 A review of the papers here suggests that San Diego's position is simply to guard against  
10 the possibility that it may be hamstrung in an attempt to counter an argument from Metropolitan  
11 that San Diego would be unjustly enriched by recovery of the Water Stewardship Rate because  
12 San Diego enjoyed the use of funds collected by that rate; San Diego may wish to rebut that  
13 showing with evidence that Metropolitan's enforcement of the RSI provision limited San  
14 Diego's ability to use such funds. Nothing in this order precludes that.  
15  
16

17 *San Diego Motions in Limine*

18 1. Exclude evidence re: rate structures, etc.

19 Denied. I do not now resolve competing readings of what the contract may permit as  
20 damages, but need only find, as I do, that Metropolitan's proposal might generate a reasonable  
21 means of calculating damages, and Metropolitan should be allowed to try. I cannot tell from  
22 what is now before me that this necessarily involves speculation: what Metropolitan might as  
23 matter of fact have decided the rates to be (had they done so lawfully) may be a matter of  
24 speculation, but there may be no speculation in determining what a lawful spectrum of rates is.  
25  
26  
27


1 2. Exclude evidence of benefits to San Diego.

2 Denied. Metropolitan will state the benefits in its trial brief, and all parties, and I, will  
3 then have a better sense of which benefits are truly at issue and the purposes for which they are  
4 to be introduced. As I cautioned at argument, the only benefits likely to be relevant are those that  
5 flowed from the contract at issue. Metropolitan has suggested that a *series* of agreements are  
6 linked and benefits which, strictly speaking, are those of another contract my thusly be relevant  
7 here (under, e.g., a waiver theory). Metropolitan has not yet shown that. I will provide some  
8 limited room for this sort of evidence,<sup>1</sup> and rely on overall time limitations to ensure that we do  
9 not waste time on benefits which, in fact, are tangential to the Exchange Agreement now sued  
10 on.  
11

12  
13  
14 3. Preclude further evidence re: waiver, estoppel, consent.

15 Denied. I will not enter the equivalent of summary adjudication on these issues in the  
16 context of an *in limine* motion. Whether evidence is cumulative or not is impossible to determine  
17 at this point; again, time limits will encourage the parties to dispense with what is in fact  
18 cumulative material.  
19

20  
21 Dated: February 6, 2015

  
\_\_\_\_\_  
Curtis E.A. Karnow  
Judge Of The Superior Court

22  
23  
24  
25  
26  
27 <sup>1</sup> That is, without prejudging today whether waivers must be express, and the extent to which such a standard is met by the proffered evidence.

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

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On **FEB 6 - 2015** I electronically served THE ATTACHED ORDER via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **FEB 6 - 2015**

T. Michael Yuen, Clerk

By: 

DANIAL LEMIRE, Deputy Clerk