



FILED
San Francisco County Superior Court

OCT 30 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 ON POST TRIAL ISSUES, FORM
OF JUDGMENT AND WRIT, SAN
DIEGO'S MOTION TO CORRECT
OCTOBER 9, 2015 ORDER ON
PREJUDGMENT INTEREST

I heard argument on a variety of post trial issues October 30, 2015, specifically on the form and contents of the judgment and writ of mandate, stays, San Diego's motion to correct my October 9, 2015 order on prejudgment interest, and Met's objections to San Diego's use of new evidence in connection with these post trial issues. I provided the parties with an informal written tentative the day before.

Discussion

A. Peremptory Writ of Mandate

Code of Civil Procedure § 1095 provides that when judgment in a writ of mandate action is "given for the applicant, the applicant may recover the damages which the applicant has sustained . . . and a peremptory mandate must also be awarded without delay." San Diego correctly contends that, because the underlying action was for writ of mandate, and because

1 judgment was entered in its favor, a peremptory writ of mandate, too, should now issue.

2 *California Assn. for Health Servs. at Home v. State Dep't of Health Care Servs.*, 204 Cal.App.4th
3 676 (2012).

4 Met argues that it should not be forced to comply "in perpetuity" with the Court's
5 Statements of Decision, since those only concerned the records from 2010 and 2012, and that the
6 reference to "all future rates and charges" should be eliminated, because the Court only
7 invalidated certain rates. This is so as far as it goes, but the Statements of Decision also hold that
8 Met's rates were in certain respects illegal, and it is appropriate to direct Met to enact only legal
9 rates in the future, and, specifically, not to do the things I held were illegal. To ensure there is as
10 little ambiguity as possible in the scope of that direction, and in an effort to avoid future
11 litigation over the scope of Met's obligations, the parties will confer on appropriate specific
12 language and provide the results (with any objections) to me not later than November 16, 2015,¹
13 at which time the matter will be deemed submitted. Because the delay to then will increase the
14 sum of prejudgment interest, a further proposed judgment will be submitted to me at that time as
15 well, to account for that interest as well as the issues discussed below.²
16
17
18
19
20
21
22

23 ¹ Together with electronic Word-editable versions of the proposals.

24 ² Met has other objections now, such as that the proposed writ is, in fact, an injunction preventing Met from
25 "collecting its future rates," and thus improper. Specifically, it contends that the Court agreed with San Diego's
26 argument at trial that the rates were "taxes," and that "[n]o court can enjoin tax collection." *Id.* It should go without
27 saying that San Diego is not seeking to enjoin tax collection. Met also suggest the writ improperly directs the
discretion of the Met board. The writ will only constrain Met not to violate the law. *See, e.g., California Assn. for
Health Servs.*, 204 Cal.App.4th at 683 ("While mandamus will not lie to control an exercise of discretion, i.e. to
compel an official to exercise discretion in a particular manner, mandamus may issue to compel an official both to
exercise his or her discretion (if he or she is required by law to do so) and to exercise it under a proper interpretation
of the applicable law.").

1 **B. Proposed Judgment**

2 In accordance with these rulings San Diego will prepare a new proposed judgement and
3 provide it to me not later than November 16, 2015, having provided Met a draft at least 48 hours
4 in advance.

5 **a. Footnote 1**

6 The parties have reached an agreement on the contents of this.

7 **b. Paragraph 1**

8 Met suggests the judgment ought to list the *claims* on which it prevailed, e.g.,
9 “Proposition 26 (2010 complaint), Proposition 13, Government Code Section 66013, the
10 Metropolitan Water District Act and ‘dry year peaking’ (2012 complaint),” but the judgment
11 should under C.C.P. § 577 reflect the “final determination of the rights of the parties in an action
12 or proceeding,” which disposes of “all the *causes of action* pending between the parties.” San
13 Diego is correct to list the causes of action only.

14 **c. Paragraph 4**

15 Met suggests that “breach of the covenant of good faith ...” should be changed to “breach
16 of the *implied* covenant of good faith ...,” that Met should be referred to either as “Met” or
17 “MWD” but not both, and that the phrase “cause of action” is redundant because it appears
18 twice. Objections, 3. Met is correct.

19 **d. Paragraph 5**

20 Paragraph 5 of San Diego’s proposed judgment includes a “prohibitory injunction” to
21 compel Met to comply with § 12.4(c) of the parties agreement by maintaining the disputed funds
22 in a “separate account” and prohibit Met from using or commingling those funds until the
23
24
25
26
27

1 completion of an appeal. Met notes San Diego did not allege a breach of this section and that we
2 have not litigated it. I agree. This should not be in the judgment.

3
4 **e. Paragraph 6**

5 San Diego seeks to ensure that it will not be required to pay any part of the judgment
6 through raised rates.³ Here too San Diego asks for relief in the judgment which has not been
7 specifically litigated. This should not be in the judgment.

8
9 **f. Paragraph 7**

10 This calls for this Court's "continuing jurisdiction." Continuing jurisdiction is required
11 where a writ issues, *City of Carmel-By-The-Sea v. Bd. of Supervisors*, 137 Cal.App.3d 964, 971
12 (1982), and should be included here.

13
14 **g. Paragraph 8**

15 San Diego is correct that that the judgment should specify that, as the prevailing
16 party, it is entitled to attorneys' fees and costs.

17
18 **C. Prejudgment Interest**

19 San Diego contends I erred in awarding prejudgment interest in the amount of
20 \$43,414,802, instead of \$44,139,469. This is true. The confusion stems from the following
21 sentence in San Diego's Reply brief to its motion for prejudgment interest: "Because Met admits
22 that interest began to accrue, at the latest, when San Diego filed its contract claim on October 27,
23 2011, it is *undisputed* that, at the 10% rate, the *minimum* 'resulting total interest would be
24 \$43,415,802.'" 10/1/2015 San Diego Reply at 10; *see also* 9/14/2015 San Diego MPA at 5, n.1

25
26 ³ Thus San Diego proposes this language: "Met shall first transfer to San Diego the money deposited in the separate
27 account pursuant to Section 12.4(c) of the Exchange Agreement and associated with calendar years 2011-2014" and
that "[t]he remainder of the judgment amount—including prejudgment interest—as well as post-judgment interest,
shall be satisfied by Met in a manner that does not cause San Diego to pay any portion of its own judgment, or the
interest on its judgment."

1 (“Even if the Court concludes that damages here were unliquidated, the Court should still award
2 prejudgment interest of 10% per annum—just starting a few months later.”)

3 But the lower amount would have been proper only if § 12.4(c) of the Exchange
4 Agreement did not set the interest rate *and* San Diego’s damages were “uncertain and
5 unliquidated.” In fact San Diego’s damages were “capable of being made certain” at the time of
6 the breach, and the correct amount of interest is \$44,139,469. The issue of liquidated damages
7 did not turn on which date one selects (at the time the suit was filed, or when first payment was
8 made).
9

10 And because at least an additional month has passed, further prejudgment interest must
11 be added to the judgment.⁴
12

13 **D. Stays**

14 Under the February 19, 2014 Order, the 2014 case “is stayed for the present time, with
15 each party reserving its right to move to lift the stay at a later date.” Order at 1. The parties
16 agree on this generally, but San Diego wishes me to direct Met to prepare the administrative
17 records now. The new record, San Diego says, will help it decide whether the stay should as a
18 general matter be lifted. At today’s argument there was some disagreement on the nature and
19 extent of the burden this would impose of Met; whether the record actually would differ
20 depending on which issues are in play,⁵ as Met suggests; the extent to which prompt attention to
21 the creation of the record is necessary to ensure it is complete; and how it is that San Diego
22 might for example have a basis for summary judgment depending on what it finds in the record,
23 but determined before the Court of Appeal has ruled in the present cases.
24

25
26 ⁴ By way of either a cover letter or parenthetical in the new proposed judgment (which I will delete before signing
27 it), San Diego should indicate the daily sum which should be added if the judgment is not signed November 16,
2015.

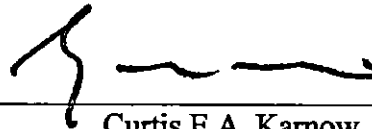
⁵ The relevant issues are likely to depend on the Court of Appeal decision in the present cases.

1 I will not lift the stay now. San Diego may make a motion for a [e.g., partial] lift of the
2 stay, which will allow the parties to make a record on these issues.

3 **E. Met's Objections to San Diego's Exhibits B-E In Support of Statement re**
4 **Judgment**

5 Met objects to evidence San Diego presents in support of certain language San Diego
6 desires in the judgement. The objections are sustained; the judgment should reflect matters
7 previously adjudicated, and not rely on new evidence.
8

9
10 Dated: October 30, 2015



11 Curtis E.A. Karnow
12 Judge Of The Superior Court
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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 **October 30, 2015**, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **October 30, 2015**

T. Michael Yuen, Clerk

By:


DANIAL LEMIRE, Deputy Clerk