



FILED
San Francisco County Superior Court

JUL 14 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 GRANTING IN PART AND
DENYING IN PART SAN DIEGO'S
MOTION TO STRIKE

At the Phase II closing arguments San Diego moved to strike several paragraphs from the Declaration of Jon C. Lambeck and the entire Expert Report of Christopher Woodcock (DTX-1151 and DTX-123, respectively).

A. Lambeck

San Diego moves to strike ¶¶ 12, 14-15, and 17 line 23-24 of the Lambeck Declaration.

Met contends that San Diego's motion is untimely. I admitted this during Lambeck's direct testimony. Motion, Ex. A at 1710:2-13. Before San Diego began its cross, San Diego moved to strike the Lambeck Declaration. Motion, Ex. B at 1759:18-25. I directed San Diego to file this motion. Motion, Ex. B at 1760:1-7; *see also* Motion, Ex. A at 1658:14-25. This motion is timely.

1 ¶ 12. Met offers Lambeck's testimony to prove that it could have charged different
2 power costs to San Diego. Opposition, 3-4. San Diego propounded discovery requests asking
3 Met to provide documents breaking out Met's costs of transporting Met water from its costs of
4 transporting non-Met water and documents evidencing Met's specific costs of delivering San
5 Diego's conserved water and canal-lining supplies to San Diego. Opposition, Exs. C-D. Met
6 argues that the interrogatories asked only for what Met charged San Diego, not what Met could
7 have charged San Diego. *Id.* at 3. While there is no indication that Met broke out the costs of
8 transporting non-Met water from the costs of transporting Met water, ¶ 12 of the Lambeck
9 Declaration clearly states the power costs of delivering any non-Met water, including San
10 Diego's non-Met water, through the Colorado River Aqueduct. *Compare* Motion, Ex. D at ¶ 12;
11 *with* Opposition, Ex. C at Interrogatory No. 20. Met should have disclosed this information as
12 "other information that detail or evidence MWD's specific costs of delivering, to SDCWA,
13 SDCWA's conserved water from IID and canal-lining water supplies." Opposition, Ex. C at
14 Interrogatory No. 20. San Diego's motion to strike ¶ 12 is granted for this reason.

17 ¶ 14. Lambeck does not have foundation for the statement that the Platt's Market
18 Report price index is indicative of the price that would be paid to pump non-Met water –
19 Lambeck knows that the index contains a "market price," but it is speculation to suggest this tells
20 me anything useful about the prices Met paid; Lambeck agrees he does not know whether the
21 price index in fact reflects Met's actual cost of buying or selling power. This material is not
22 relevant. The motion to strike ¶ 14 is granted.

24 ¶ 15. At trial, I sustained San Diego's objection to Met's attempt to elicit testimony
25 from Lambeck on the cost per hour of scheduling power. Motion, Ex. B at 1749:5-1752:13. ¶
26 15 differs from the trial testimony in that it does not contain any calculation performed by
27

1 Lambeck but (1) contains a general statement that Met incurs administrative costs to purchase
2 energy; (2) reports on a 2007 Met study concerning the amount of staff-time involved in
3 scheduling the transmission and delivery of supplemental power to pump non-Met water; and (3)
4 contains Lambeck's statement that the 2007 figure is conservative for the years 2011-2014
5 because the wholesale energy market is now more complex. *Id.*, Ex. D at ¶ 15. None of these
6 statements goes beyond Lambeck's percipient knowledge.
7

8 None of San Diego's cited discovery requests calls for documents from any year prior to
9 2008. Opposition, Exs. C-D. Accordingly, the 2007 Met study was not called for in the cited
10 requests. The motion to strike ¶ 15 is denied.
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12 ¶ 17 lines 23-24. Here Lambeck stated that the State Water Project's power sources
13 are sometimes insufficient to meet demand at times, such that the State must at those times
14 purchase additional power on the market. Motion, Ex. D at ¶ 17. At trial I sustained a
15 foundation objection and granted a motion to strike with respect to a billing statement created by
16 Met staff because Lambeck was only familiar with the document based on his preparation for
17 this litigation. *Id.*, Ex. B at 1752:15-1756:8. San Diego contends that this established that
18 Lambeck does not have foundation to offer the testimony in the challenged portion of ¶ 17.
19 Although the testimony at trial and the content of the declaration are different, nothing in
20 Lambeck's declaration or the opposition explains why Lambeck would have relevant percipient
21 knowledge or other foundation. Thus ¶ 17 lines 23-24 are stricken.
22

23 **B. Woodcock**

24 **a. Expert Report**

25 San Diego contends that the entire Woodcock Report {DTX-123} should be stricken as
26 hearsay, revisiting an earlier ruling. Motion, 5-6. Alternatively San Diego asks me to strike
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1 numerous passages from the Woodcock Report that it contends contain legal conclusions. Met
2 responds that San Diego's motion is untimely, that the parties were permitted to submit trial
3 testimony by declaration, and that Woodcock did not opine on questions of law. Opposition, 4-
4 5.

6 With respect to timeliness, Met argues that San Diego failed to move to strike the entire
7 report when it was admitted into evidence such that Met will be prejudiced if the report is now
8 stricken at a time when Met cannot fill any void by asking Woodcock more questions. San
9 Diego did object to the report on hearsay grounds when it was admitted. Motion, Ex. C at
10 1866:8-20. Later, San Diego renewed its hearsay objection, noting that one of the bases offered
11 by Met for admitting the report – that the Denham Report was also in evidence – was false. *Id.*,
12 Ex. C at 1895:7-23. At the same time, San Diego raised the additional concern that the report
13 contained legal conclusions, and moved to strike those legal conclusions. *Id.* I did not rule on
14 the renewed objection, but invited San Diego to file a motion. Met had a full opportunity to ask
15 Woodcock questions. I reject the timeliness objection.

17 I overruled the hearsay objection at trial. San Diego asks me to revisit that ruling to the
18 extent I was swayed by Met's representation, in offering the report, that the Denham Report was
19 already in evidence because the Denham Report is not in evidence. That was indeed my
20 rationale for admitting the Woodcock report: it was obviously hearsay, but it appeared the parties
21 were nevertheless content to have the other side's expert reports in evidence. This was not
22 correct. While it may be true that the parties offered some testimony by declaration, the report
23 was not offered as trial testimony or sworn under penalty of perjury. Opposition, 4; Reply, 5;
24 Motion, Ex. F. The motion is granted.
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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 **JUL 14 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: **JUL 14 2015**

T. Michael Yuen, Clerk

By:


DANIAL LEMIRE, Deputy Clerk