



MAR 24 2016

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 FOR ATTORNEYS' FEES

As the prevailing party San Diego County Water Authority now seeks compensation for its attorney's fees expended in these cases. I heard argument March 18, 2016.

Entitlement to the fees is provided by § 5.2 of the Exchange Agreement. San Diego now seeks, "conservative[ly]," \$17,291,646.60 in attorneys' fees. MPA, 1, 5

San Diego seeks a 1.5x multiplier because of the complexity of the case and its efficiency in handling it. Met does not challenge the reasonableness of the rates nor time spent on the case; rather, it argues that (1) the multiplier is not warranted and (2) San Diego cannot recover fees associated with Phase II because Phase II did not concern the lawfulness of rates. Opposition, 1-2.

So Met contends that attorneys' fees should not exceed \$8,910,354.20. While San Diego disagrees with Met on the legal issues discussed in this Order it does not contest the mathematical calculation of that figure.

1 **Multiplier**

2 San Diego argues that multipliers are sometimes available in non-contingency cases.  
3 citing *In Re Lugo*, 164 Cal.App.4th 1522, 1546 (2008). San Diego notes the importance of the  
4 case, the need for counsel’s skill, and the novel issues. MPA, 12-14. It also notes that the award  
5 it seeks will not go to lawyers, but the client, a nonprofit public agency. Reply, 14.  
6

7 As Met observes, the lodestar based on San Diego’s high hourly rates (ranging from  
8 \$440/hour to \$1150/hour), already accounts for the complexity of the case and the skill required  
9 to litigate it. Fee enhancements typically compensate attorneys for the risk involved in the case.  
10 *Ketchum*, 24 Cal.4th at 1138. Not only were there no risks here—aside from the risk every party  
11 in every case has of losing—but the reward for the [non-existent] risk would go to the client, not  
12 lawyers. Compare, *In re Lugo*, 164 Cal.App.4th 1522, 1546 (2008) (fees awarded to Prison Law  
13 Office).  
14

15  
16 **Phase II Fees**

17 Section 5.2 of the Exchange Agreement entitles the prevailing party to “contest[] in an  
18 administrative or judicial forum whether [Met’s] charge or charges have been set in accordance  
19 with applicable law and regulation,” and provides that if San Diego “contests a matter pursuant  
20 to the foregoing sentence, the prevailing Party shall be entitled to recovery of reasonable costs  
21 and attorneys fees incurred in prosecuting or defending against such contest.” PTX-65 § 5.2.  
22

23 San Diego may only recover attorneys’ fees for Phase I of the case, which dealt  
24 specifically with rates. Phase II, by contrast, did not address whether Met’s rates were “set in  
25 accordance with law,” but whether Met had breached its contract. The fees clause here is highly  
26 idiosyncratic; it is not a general “prevailing party” clause. It is narrowly drafted to cover  
27

1 attorneys' fees in cases challenging rates. So the cases relied on by San Diego, which address far  
2 broader language, aren't much help now.<sup>1</sup>

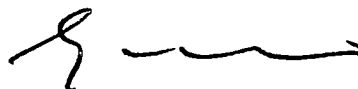
3 To be sure, Met had previously noted that Phase II was "wholly predicated on SDCWA's  
4 challenge to MWD's water rates," and that "if MWD prevails on the validity of its rates in Phase  
5 1, there would be no breach of the 2003 Exchange Agreement under SDCWA's own allegations  
6 and theory of breach," Reply, 6, citing July 16, 2013 Joint CMC Statement at 11.

7  
8 But the possible resolution of Phase II consequent on Phase I does not imply that Phase II  
9 treated the Phase I issues. Phase II was not a contest about the lawfulness of rates.

10  
11 **Conclusion**

12 Attorney's fees in the sum of \$8,910,354.20 are awarded to San Diego.

13  
14  
15 Dated: March 24, 2016



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17 \_\_\_\_\_  
18 Curtis E.A. Karnow  
19 Judge Of The Superior Court  
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25

26  
27 <sup>1</sup> Because of the bifurcation of phases in this case, nor is it useful to cite authority on the "intertwined" issue, which address situations where a given block of time cannot be teased apart, i.e., attributed to compensable and non-compensable tasks. E.g., *Thompson Pac. Const., Inc. v. City of Sunnyvale*, 155 Cal.App.4th 525, 556 (2007); *Bell v. Vista Unified Sch. Dist.*, 82 Cal.App.4th 672, 687 (2000).

**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 **MAR 24 2016**, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **MAR 24 2016**

T. Michael Yuen, Clerk

By: 

DANIAL LEMIRE, Deputy Clerk