

Water Authority Scores Significant Wins in Rate Litigation vs. MWD



DIVERSIFICATION

Enhancing Water Supply Reliability

Landmark litigation initiated by the San Diego County Water Authority has produced significant benefits for water ratepayers across the San Diego region. By challenging rates set by the Los Angeles-based Metropolitan Water District of Southern California that violate cost-of-service requirements of California law, including Proposition 26, the Water Authority secured major victories in 2017 that include:

- MWD must pay the Water Authority approximately \$44 million for so-

called “Water Stewardship” charges MWD added to the transportation rates it illegally charged the Water Authority from 2011-2014. MWD used this money to fund local supply and conservation projects for some other MWD member agencies. The final amount of damages, including pre- and post-judgment interest, will be determined by the trial court on remand. The decision also prevents MWD from imposing more than \$20

million in illegal charges annually when the Water Authority’s independent Colorado River supplies are fully implemented. Through 2047, those unlawful charges would have amounted to approximately \$1.1 billion.

■ The Water Authority is entitled to approximately 100,000 acre-feet of additional MWD water annually – about twice the production of the \$1 billion Claude “Bud” Lewis Carlsbad Seawater Desalination Plant. The court determined that MWD unlawfully under-calculated the Water Authority’s statutory water right to MWD’s water supply. As a result of the recalculation, the Water Authority’s preferential right to

2010 & 2012 Litigation Recap	
Issue	Outcome
1 State Water Project costs	Water Authority Win
2 Water Stewardship Rate	Water Authority Win
3 Preferential Rights	Water Authority Win
4 MWD’s “Rate Structure Integrity” clause	Water Authority Win
5 Applicability of Prop. 26 to MWD’s rates	Water Authority Win
6 Validity of 2003 Exchange Agreement	Water Authority Win
7 Validation and statute of limitations	Water Authority Win
8 Statutory interest rate on damages (10% pre- and 7% post-judgment)	Water Authority Win
9 Attorneys’ fees	TBD
10 Offsetting benefits under the wheeling statute	TBD

MWD water increased from 18.53 percent to 24.22 percent in fiscal year 2018.

- A determination that MWD breached its contract with the Water Authority by not setting legal rates.
- MWD cannot enforce a contract clause it used to disqualify local water supply projects in San Diego County from receiving funding because the courts determined it was unconstitutional.

The Water Authority also challenged MWD's allocation of its State Water Project supply cost to the transportation rate it charges to transport, or "wheel," the Water Authority's independent Colorado River supplies. While the trial court in 2015 found those rates to be supply costs, that finding was overturned by the Court of Appeal in June 2017. The Water Authority's petition to the California Supreme Court to review the Court of Appeal ruling on this single issue was denied in September 2017.

The Water Authority's Board of Directors has already determined that any money returned to the Water Authority will be refunded to its 24 member agencies in proportion to their payment of MWD's illegal overcharges over the years in dispute, after deducting any litigation expenses that are not recovered from MWD.

In fact, wholesale water rates adopted by the Water Authority's Board of Directors for 2019 included some of the smallest increases in the past 15 years due in part to successes in the rate litigation. The court decision netted the Water Authority about \$15 million to \$17 million in savings in 2019 by forcing MWD to stop charging its Water Stewardship Rate on the Water Authority's independent Colorado River water supplies transported by MWD. The 2019 rates also highlight a historic shift in water costs: The unit cost of the

Water Authority's independent and highly reliable supplies from the 2003 Colorado River Quantification Settlement Agreement are now less expensive for the region than supplies from MWD, and that difference will grow in the years ahead.

What is the case about?

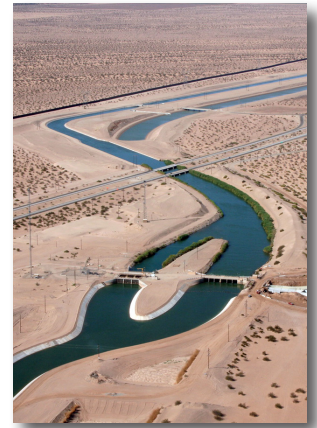
More than 20 years ago, the Water Authority and its member agencies began improving the San Diego region's water supply reliability by lessening reliance on MWD, which at the time supplied about 95 percent of all the water used in San Diego County.

The cornerstone of that diversification strategy is a set of agreements signed in 2003 to secure independent water supplies from the Colorado River. To deliver these supplies to San Diego County, the Water Authority must use pipelines operated by MWD because MWD owns the only large-scale conveyance facilities in Southern California for transporting water.

The litigation is about whether or not MWD can charge the Water Authority more than the costs associated with the services MWD provides. The Water Authority filed suit in 2010 seeking to invalidate MWD's rates, and then filed additional suits in 2012, 2014 and 2016 because MWD kept adopting rates using the same methodology and flawed cost allocations. The Court of Appeal decision applied Proposition 26 and other California laws to invalidate MWD's Water Stewardship Rate on transportation, thus rejecting MWD's claim that those laws do not apply to MWD's rates and charges.

The Water Authority is currently exploring all options for the cost-effective long-term conveyance of its Colorado River water.

For more information, including court documents, go to www.sdcwa.org/mwdrate-challenge. ■



Water conserved by the All-American Canal Lining Project is an important part of the Water Authority's Colorado River water transfer supplies.



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