

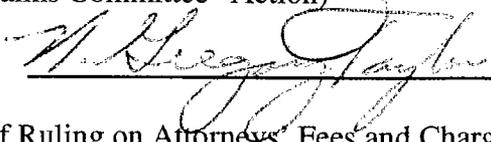


MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

7-13

April 24, 1998

To: Board of Directors (Legal and Claims Committee--Action)
From: General Counsel 
Subject: Ratification of Notice of Appeal of Ruling on Attorneys' Fees and Charges in Wheeling Rates Validation Action

RECOMMENDATION(S)

That your Board ratify the General Counsel's filing of an appeal of the ruling on attorneys' fees and other costs to defendants in the wheeling rates validation action (*Metropolitan Water District of Southern California v. All Persons Interested*, Los Angeles Superior Court Case No. BC164076). On the advice of counsel handling Metropolitan's appeal of Judge Kay's wheeling decision, General Counsel appealed the decisions to protect Metropolitan's position by deferring payment until there is a ruling on the merits of the wheeling case. Should Metropolitan prevail on appeal, these fees would not be payable. Failure to appeal would require payment at this time.

EXECUTIVE SUMMARY

As part of his decision in the wheeling rates validation action (*Metropolitan Water District of Southern California v. All Persons Interested*, Los Angeles Superior Court Case No. BC164076), Judge Laurence D. Kay awarded costs to the defendants.

The parties joining in the validation action, in addition to costs, sought attorneys' fees under the "private attorney general" statute (Code of Civil Procedure Section 1021.5). To recover under this statute, a party must show conference of a public benefit and lack of personal pecuniary benefit. Judge Kay found a public benefit but denied fees because of the pecuniary benefit of all but CPIL. CPIL was awarded \$70,600 in attorneys' fees, although it had requested that its hourly charges be multiplied by a factor of 2.5. Metropolitan challenged the award of fees on all grounds. See Attachment 1 for a list of the fees and costs sought by these defendants and the amounts awarded.

While the ruling generally was favorable to Metropolitan, unless it is appealed the issue of costs will not remain open. Only a party which ultimately prevails on the merits is entitled to receive costs, and the prevailing party or parties will not be finally determined until after appeal of the substantive issues is concluded.

Under the procedural rules applicable to validation actions, both Metropolitan and the defendants have until May 9 (thirty days from the date of Judge Kay's ruling) to appeal this ruling. This deadline required the General Counsel to act prior to the May meeting of your Board. This letter requests that your Board ratify the General Counsel's appeal of Judge Kay's ruling on fees and costs.

DETAILED REPORT

As part of his decision in the wheeling rates validation action, Judge Laurence D. Kay awarded costs to the defendants. The cost bills filed by defendants Imperial Irrigation District, Center for Public Interest Law, San Diego County Water Authority, Chemehuevi Indian Tribe and Quechan Indian Tribe claimed attorneys' fees and other charges not generally awarded as "costs."

Under the California Code of Civil Procedure, the prevailing parties in litigation are entitled to their costs, but attorneys' fees and other charges are payable to the prevailing parties only if specifically provided by statute. Metropolitan did not oppose the payment of costs submitted by defendants in the approximate amount of \$31,500 (including filing fees, costs of depositions, expenses for service of process and transcripts of court proceedings ordered by the court), but defendants requested the award of another \$750,000 in attorneys' fees and other charges. Additionally, CPIL requested that its actual attorneys' fees be increased by a multiplier of 2.5 times its actual attorneys' fees. Metropolitan opposed the payment of attorneys' fees and additional charges for these defendants.

A hearing on defendants' ability to recover these fees and charges was held before Judge Kay in San Francisco on March 13, 1998. Judge Kay ruled on April 9, 1998, limiting the costs payable to defendants and declining to award fees to defendants other than CPIL. Judge Kay awarded CPIL only the attorneys' fees incurred, and did not multiply the amount of those fees as CPIL had requested. See Attachment 1 for a list of the fees and costs sought by these defendants and the amounts awarded.

Both Metropolitan and the defendants have until May 9 (thirty days from the date of Judge Kay's ruling) to appeal this ruling. If no appeal of this decision is filed, Metropolitan will be required to pay costs in accordance with the ruling. While the ruling generally was favorable to Metropolitan, unless this issue is appealed the issue of costs will not remain open. Only a party which ultimately prevails on the merits is entitled to receive costs, and the prevailing party or parties will not be finally determined until after appeal of the substantive issues is concluded. Therefore to protect Metropolitan's position the General Counsel was advised by counsel handling its appeal of the wheeling rate proceedings that an appeal of Judge Kay's latest decision is required.

This letter requests that your Board ratify the General Counsel's appeal of Judge Kay's ruling on fees and costs. Such appeal is likely to be consolidated with Metropolitan's appeal of Judge Kay's decision declining to validate Metropolitan's uniform wheeling rates.

Attachment 1

SUMMARY OF FEES AND COSTS

<u>Defendant</u>	<u>Amount Sought</u>	<u>Amount Awarded</u>
Imperial Irrigation District	\$396,080.78	\$28,889.94
San Diego County Water Authority	250,863.51	16,813.72
Center for Public Interest Law	180,842.50 ¹	70,600.00
Quechan Indian Tribe	43,213.85	2,926.01
Chemehuevi Indian Tribe	<u>15,494.80</u>	<u>594.80</u>
TOTAL	\$886,495.44	\$119,824.47

sbb/#10108

¹ CPIL's actual fees amounted to \$70,600 but CPIL requested that the court award 2.5 times this amount.