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14 Environmental Defense Fund

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES

17 THE METROPOLITAN WATER)
18 DISTRICT OF SOUTHERN CALIFORNIA,)

19 Plaintiff,)

20 vs.)

21 ALL PERSONS INTERESTED IN THE)
22 MATTER of the Validity of the Fourth)
23 Supplemental Resolution for Commercial)
24 Paper and Revolving Notes, supplementing)
25 the security of the Metropolitan Water)
26 District's Commercial Paper with certain)
27 Wheeling Rates,)

28 Defendants.)

CASE NO. BC164076
(Assigned to Judge Laurence D. Kay,
Dept. 13, San Francisco Superior
Court, by Order of the Judicial Council)

DATE: September 16, 1997
TIME: 11:00 a.m.
DEPT: 13 (San Francisco Superior Crt.)
JUDGE: Laurence D. Kay

DECLARATION OF THOMAS J.
GRAFF IN SUPPORT OF EDF'S
MOTION TO SET ASIDE ENTRY
OF DEFAULT AND TO EITHER
DISMISS THE COMPLAINT OR
ALLOW FILING OF ANSWER

1 expressed interest in the opportunities for selling or leasing water. EDF expects that a growing
2 number of users will continue to express such interest unless deterred by high wheeling costs or
3 other artificial barriers. As part of the 1991 and 1992 Drought Water Banks, water users in the
4 Sacramento Valley, the Sacramento-San Joaquin Delta, and other regions of the State entered
5 into hundreds of individual contracts for the short-term transfer of water to Southern California
6 and elsewhere. Under the Central Valley Project Improvement Act of 1992—which EDF
7 supported along with MWD, San Diego, and other Southern California interests—water users
8 within the Central Valley Project ("CVP") are now entitled to lease CVP water to users
9 throughout California, including the Southern California coastal basin. MWD itself has
10 acquired water from both IID and the Palo Verde Irrigation District and has proposed long-term
11 transfers from various water users in the Central Valley.

12 4. EDF continues to actively promote water marketing in California. EDF believes that
13 water marketing is beneficial to California's environment for a number of reasons. First,
14 voluntary water purchases offer metropolitan areas like Los Angeles and San Diego an
15 alternative to conventional water development—such as dams, reservoirs, and diversion
16 projects—that historically have been destructive of the environment. EDF originally became
17 interested in the opportunity for transferring water from IID to Southern California coastal
18 communities because of EDF's opposition to the Peripheral Canal bill (which was defeated by a
19 statewide referendum in June 1982). In advocating that the Peripheral Canal and ancillary
20 facilities be built, MWD argued that the canal was needed to avoid future water shortages in
21 Southern California in part because MWD's future allotment of Colorado River water would be
22 drastically curtailed as other states and Indian tribes claimed their share of the river. By
23 promoting the transfer of Colorado River water IID is presently using to the coastal plain of
24 Southern California, on the other hand, EDF has hoped to meet Southern California's water
25 needs through the voluntary reallocation of existing water supplies and thus to avoid
26 construction of environmentally harmful water projects like the Peripheral Canal proposed in
27 1982.

28 5. Second, and in a similar fashion, water markets provide areas that have growing water

1 demands with a means of meeting those demands, without further depleting rivers and streams
2 elsewhere in the State. Rivers and streams throughout California have been dammed and their
3 waters diverted hundreds of miles from their watersheds of origin to the serious detriment of
4 the environment. By promoting the voluntary reallocation of water that is already being
5 consumed, EDF hopes to avoid further depletion of California's waterways.

6 6. Third, water markets encourage efficient water use by encouraging prospective water
7 sellers to husband their supplies (in order to profit from the sale of water they conserve) and
8 prospective water buyers to use water with care (so as to avoid purchasing more water than the
9 buyers actually "need"). Water markets can also supply water sellers with the significant
10 capital often needed to engage in substantial water conservation.

11 7. Finally, by providing agricultural users with the money and incentives necessary to
12 install new conservation systems, reduce water use, and engage in wastewater reuse and
13 cleanup, water transfers can reduce water pollution from agriculture. EDF is very concerned by
14 the significant contribution of irrigation waste water to water quality problems in California, as
15 best illustrated by the contamination of the Kesterson National Wildlife Refuge caused by
16 selenium mobilized by irrigation of crops on the west side of the San Joaquin Valley. Without
17 the opportunity for water transfers, many farmers will not likely make the investments
18 necessary to reduce their waste water.

19 8. As part of its efforts to promote the environment through water markets, EDF has
20 worked to promote competitive access to water conveyance facilities. For a water market to
21 operate optimally on a statewide basis, the entities who control major water transmission and
22 distribution systems cannot be permitted to use their monopoly control over those facilities
23 unfairly to inhibit the movement of water from willing sellers to willing buyers. For this
24 reason, EDF supported the 1986 "Katz" wheeling legislation. For the same reason, EDF has a
25 strong interest in ensuring that those entities with control over the State's major conveyance
26 systems comply with the Katz wheeling legislation and do not strangle water marketing
27 opportunities.

28 9. EDF seeks to set aside the default entered against it and participate in this validation

1 proceeding in order to ensure that environmental concerns are represented in this litigation. In
2 EDF's view, the high wheeling rates set by MWD threaten to make MWD's unused
3 conveyance capacity unaffordable and, by deterring water transfers, place greater pressure on
4 the environment. Unreasonably expensive wheeling rates, for example, are likely to result in
5 less water being transferred, as a result of conservation measures in the Imperial Valley, to
6 urban Southern California than would otherwise be the case. If there is less water to replace
7 MWD's declining share of Colorado River water, the principal alternative supply of water for
8 Southern California is likely to be imports from Northern California. To the extent these
9 imports too do not come from voluntary water transfers—a likely outcome if wheeling rates for
10 use of MWD's conveyance facilities are the same for Central Valley water deliveries as they
11 are for Colorado River Aqueduct use—the San Francisco Bay/Sacramento/San Joaquin Delta
12 Estuary is likely to suffer incremental environmental damage. For this reason alone, EDF
13 believes that it is crucial that it participate in this proceeding.

14 10. EDF has more than 25,000 members in California. Many of EDF's members live,
15 work, and enjoy recreational activities in areas that could be adversely affected by high
16 wheeling rates. For the reasons I have discussed above, their use of rivers, streams, and
17 waterways for fishing, tourism, recreation, and scientific research is potentially threatened by
18 MWD's wheeling policy.

19 11. EDF first heard in January 1997 of MWD's adoption of new wheeling rates, but
20 heard at the same time that MWD had agreed to suspend implementation of those rates pending
21 a negotiation MWD undertook with SDCWA.

22 12. I did not learn that MWD was attempting to proceed with the implementation of its
23 wheeling rates in the present validation action until after MWD had finished publishing notice
24 pursuant to the February 27, 1997 order of the Los Angeles Superior Court in this proceeding.
25 By the time EDF learned that MWD was proceeding with the present validation action, it was
26 too late for EDF to file an answer or otherwise respond by the date specified in the
27 summons—April 15, 1997.

28 13. In order for EDF to become involved in any litigation, including this validation

1 action, authorization from EDF's Litigation Review Committee is required. This process takes
2 several weeks from the time a litigation approval memorandum is prepared by an EDF staff
3 member and is submitted to the Committee. Once entry into this litigation was approved by the
4 Litigation Review Committee, I then needed to seek and retain outside counsel who would
5 represent EDF. Although I would have had time to complete these necessary preliminary steps
6 if EDF had received notice within the time period in which publication occurred, there was not
7 sufficient time to participate by the time I actually learned that MWD was proceeding forward.

8 14. EDF did not seek to file an answer or other response after April 15, 1997 for two
9 additional reasons. First, I believed that the summons in this action was defective and that the
10 validation procedure was inapplicable to MWD's water wheeling rates. I had read IID's
11 demurrer and believed that the court would either dismiss the action or order that a new and
12 adequate summons be published.

13 15. Second, by the time EDF's Litigation Review Committee had approved EDF's
14 participation in this action, it appeared to be too late to seek to enter the litigation in advance of
15 judicial rulings on the demurrers already filed in the matter. As it happened, the matter was
16 transferred to San Francisco Superior Court, and significant time elapsed before this Court
17 ruled on the demurrers. The demurrers, however, were originally scheduled for hearing by the
18 Superior Court in Los Angeles County before I received approval to join the litigation on behalf
19 of EDF.

20 16. EDF is concerned that, even if the default against EDF is set aside, all water
21 marketing interests will not be adequately represented in this proceeding. Many water districts
22 and users who might engage in future water transfers are not in Los Angeles, Orange,
23 Riverside, San Diego, or Ventura Counties and are unlikely to have seen the summons
24 published in the *Los Angeles Times* and the *San Diego Union-Tribune*. According to the
25 Summary of Draft Terms released by SDCWA and IID earlier this year, moreover, the

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1 contemplated transfer from IID to SDCWA would be for a minimum term of 50 years and
2 would not be covered by a wheeling rate adopted for short-term transfers.

3 Executed on August 28, 1997, at Oakland, California. I declare under penalty of perjury
4 under the laws of the State of California that the foregoing is true and correct.

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7 THOMAS J. GRAFF

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9-5-97

Ed. Petry 291 Shering Ave
Mendota CA, 93640 / ^{code} (209) 655-4340
In cover sheet

To Sharon Gross - 2 Pages
copy

Note Sharon would you please
send a copy to Roger P. &
Penny Howard

D.J. This should help.
H.C.P.
Thank's

Ed Petry
(209) 655-
4340

call if you have
questions