

10/10/2019

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

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SAN DIEGO, CALIFORNIA 92101

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

DAWN HEATH, an individual; NORMAN
HEATH, an individual,

Petitioners and Plaintiffs,

v.

WESTERN MUNICIPAL WATER
DISTRICT, a municipal water district; and
DOES 1-10,

Respondents and
Defendants.

Case No. RIC 1806580

*Assigned for all purposes to
Hon. Daniel A. Ottolia, Dept. 4*

**[PROPOSED] ORDER DENYING
PETITIONERS MOTION FOR WRIT
OF MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF**

Petition/Complaint Filed: April 6, 2018

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ORDER DENYING PETITIONERS' MOTION FOR WRIT OF MANDATE AND COMPL. FOR DEC. RELIEF

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1 **ORDER DENYING PETITIONERS MOTION FOR WRIT OF MANDATE AND**
2 **COMPLAINT FOR DECLARATORY RELIEF**

3 On September 13, 2019, in Department 4, the Honorable Daniel A. Ottolia presiding, the
4 Court heard the motion for writ of mandate and complaint for declaratory relief filed by
5 Petitioners Dawn and Norman Heath (collectively, "Petitioners") challenging the budget-based
6 water rates adopted by the Western Municipal Water District ("Respondent"). Appearances of
7 counsel were made on the record.

8 The Court, having considered all moving and opposing papers and having heard the
9 arguments of counsel at the hearing, ruled as follows:

10 In this writ petition, the Petitioners contends that the Respondent bases its fees on a water
11 budget assigned to each customer, which is inappropriately based on the number of individuals
12 living on the property, weather data, size of the irrigated area, and the type of landscaping to be
13 found on the property.

14 The Petitioners list two causes of action. The first is for a petition for writ of mandate, and
15 the second is declaratory relief. The Petitioners allege that Respondents are in violation of Section
16 6, Subdivision (b)(1) and (b)(3), of Article XIII D of the California Constitution; and that
17 Respondent can only charge Petitioners their proportional cost of the services provided to their
18 parcel. The Petitioners contend that these portions of the Constitution have been violated by the
19 Respondent because its budget-based tiered rate structure arbitrarily charges residential parcels
20 based on socially engineered norms, like the individual characteristics of the property and the size
21 of the family.

22 Based on the documents set forth in the Administrative Record, it appears to the Court
23 that the cost of services charged to Respondent's customers are proportional to the services
24 provided to their parcels. No fees or arbitrating costs have been passed on to the consumers under
25 the budget-based rate. Factors used by Respondent in calculating the budgets for indoor and
26 outdoor use fall in line with Water Code Section 370 and 372. The Court does not agree with
27 Petitioners that those code sections are unconstitutional.

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1 In addition, the Court will sustain Respondent's objection to Petitioners' notice of
2 lodgment of the Journal of American Water Works Association publications. And the Court finds
3 that these writings cannot be added to the record under the *Western States Petroleum* case.
4 (*Western States Petroleum Ass'n v Superior Court* (1995) 9 Cal.4th 559.)

5 In Petitioners' reply brief, they also raise new issues regarding the Tier 5 costs of water. In
6 particular, Petitioners raised three issues with respect to the Tier 5 ratepayers. First issue, that
7 Respondent's alleged failure to demonstrate that the Metropolitan Water District would be unable
8 to supply Respondent all necessary water for Tier 5 and thereby necessitating the capital-
9 improvement project.

10 Two, Petitioners assert that it is improper to pass on the cost of the capital-improvement
11 project (Chino Desalter Expansion / La Sierra Pipeline project) because the project is also
12 necessary to meet future demands.

13 And, three, the contention that Tier 5 charges include a five percent return fee, which is an
14 improper profit on the cost of the project.

15 The Court will address those three contentions. With respect to issue number one, the
16 Respondent points to its Comprehensive Water Rate Study Report, which indicates that the
17 capital project is necessary to have a reliable water source to accommodate Tier 5 ratepayers.
18 While the Petitioners dispute Respondent's justifications for the capital improvement, they point
19 to no evidence that these facts are not correct. They argue that it is unlikely that the City of
20 Riverside would terminate its contract with Respondent early and cites no evidence to support
21 this. They contend that if the City of Riverside terminates its contract with Respondent, it must
22 provide Respondent with a limited amount of water in emergency situations.

23 However, Petitioners ignore the fact that Respondent would not have use of that water
24 supply on a daily basis and would have to find a replacement. Petitioners cites no authority to
25 support the assertion that Respondent is precluded from preparing for such an event. Petitioners
26 argues that before Respondent passes on the cost of the capital improvement, it should be
27 required to quantify the supposed future deficit based on events that are more likely than not to
28 occur. However, it provides no authority to justify this requirement. The Court finds that

1 Respondent has provided a justification for the capital project and that Petitioners have failed to
2 establish this justification is improper. Therefore, the first argument by Petitioners fails.

3 Petitioners second argument is that Respondent is in violation of Article III X D,
4 Section (6), Subdivision (b)(4), which states, "No fee or charge may be imposed for a service
5 unless that service is actually used by, or immediately available to, the owner of the property in
6 question." Petitioners argues that fees or charges based upon potential or future use of a service
7 are not permitted. They argue that since the service will not be actually used by them, because
8 part of the capital improvement is needed for future use, and is not immediately available to them,
9 the charges for the capital improvements are improper.

10 However, based on the case of *Capistrano Taxpayers Association, Inc. v. City of San Juan*
11 *Capistrano* (2015) 235 Cal.App.4th, page 1493, these assertions are not correct. While Tier 5
12 customers may not have immediate access to any water produced under the capital improvement
13 project, they are being provided with water service, and that service is immediately available to
14 Respondent's customers. Under the reasoning in *Capistrano Taxpayers Association Inc.*, Tier 5
15 customers are being charged for services immediately available to them. Petitioners cite no
16 authority that a ratepayer cannot be charged for capital improvements that might benefit a future
17 ratepayer when the current ratepayer also benefits from those improvements.

18 Petitioners' third issue raised in the reply is the contention that a five percent charge
19 exceeds the fees required to construct the capital project and constitutes a profit. Based upon the
20 Comprehensive Water Study Rate Report, the five percent return is a return of the total capital
21 outlay and debt service obligation associated with the capital project.

22 Respondent contends that this is not a five percent profit, but is a portion of the \$89.1 million
23 spent on the project that will be paid by ratepayers each year. Water agencies can recover the
24 costs incurred in purchasing, capturing, storing, and distributing water. Petitioners provide no
25 evidence that Respondent will profit from the five percent fee. Therefore, Petitioners contention

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that the five percent charge amounts to a profit is not persuasive. For all those reasons, the Court denies the writ in its entirety.

IT IS SO ORDERED.

Dated: 10-16, 2019



DANIEL A. OTTOLIA
JUDGE OF THE SUPERIOR COURT

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[PROPOSED] JUDGMENT

Petition/Complaint Filed: April 6, 2018

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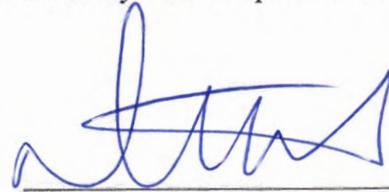
JUDGMENT

The Administrative Record having been lodged with and examined by the Court, all papers filed with the Court having been submitted and considered, arguments of counsel having been presented, and the Court having issued an order denying the Petition for Writ of Mandate and Complaint for Declaratory Relief,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petition for Writ of Mandate and Complaint for Declaratory Relief is DENIED in its entirety and judgment is entered against Petitioners Dawn and Norman Heath and in favor of the Respondent, Western Municipal Water District on all causes of action.

Respondent Western Municipal Water District is the prevailing party and shall recover its costs of suit from Petitioners as determined through the statutory cost bill procedure.

Dated: 10-16, 2019



DANIEL A. OTTOLIA
JUDGE OF THE SUPERIOR COURT