

# Daily Journal

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## TOP VERDICTS OF 2015

The largest and most significant verdicts and appellate reversals handed down in California in 2015

### TOP PLAINTIFFS' VERDICTS BY DOLLAR

## \$235 million

## San Diego County Water Authority v. Metropolitan Water District

### CASE INFO

#### Breach of contract

San Francisco County  
Superior Court Judge Curtis E.A. Karnow

**Plaintiffs' attorneys:** Brownstein Hyatt  
Farber Schreck LLP, Christine M. Frahm

Keker & Van Nest LLP, John W. Keker,  
Daniel E. Purcell, Warren A. Braunig, Dan-  
iel E. Jackson, Audrey H. Walton-Hadlock,  
Nicholas S. Goldberg;

**Defense attorneys:** Quinn Emanuel Urqu-  
hart & Sullivan LLP, JohnB. Quinn, Eric J.  
Emanuel; Morgan, Lewis & Bockius LLP,  
James J. Dragna, Colin C. West, Thomas  
S. Hixon; Morrison & Foerster LLP, S. Raj  
Chatterjee; Metropolitan Water District  
of Southern California, Marcia L. Scully,  
Heather C. Beatty, Joseph A. Vanderhorst,  
John D. Schlotterbeck

**K**eker & Van Nest LLP litigator John W. Keker acted as a rainmaker despite California's historic drought when he brought in nearly \$235 million for client San Diego County Water Authority.

The sum, representing the largest plaintiff's award in 2015, included \$188.3 million in damages plus \$44.6 million in prejudgment interest against defendant Metropolitan Water District of Southern California.

The big win was a key installment in California's ongoing water wars, made increasingly urgent by four dry years. A San Diego water manager, Dennis Cushman, termed Metropolitan the 800-pound gorilla of the state's water supply and said it would no longer be able to

treat San Diego like a "cash cow."

The Keker team alleged, and a San Francisco County Superior Court judge agreed, that the defendant's unfair rate structure forced San Diego County to subsidize other Southern California water users for more than a decade. *San Diego County Water Authority v. Metropolitan Water District*, CPF-10-510830 (S.F. Super. Ct., filed June 11, 2010).

The San Diego district bought large volumes of water from Metropolitan, which it then resold to 24 water agencies in the San Diego region. San Diego alleged that Metropolitan was charging exorbitant fees to use pipelines and other transport facilities that are actually owned by California's State Water Project.

San Francisco County Superior Court Judge Curtis E.A. Karnow held that Keker and San Diego had it right. He ruled on the bench that Metropolitan's fees were invalid.

"Met does not own or operate the State Water Project or SWP transportation facilities," the judge said, and therefore cannot charge for their use.

That part of the ruling could resonate beyond San Diego because it clarified that water districts may not charge for the use of state-owned water transport equipment.

In addition, Metropolitan under-calculated the San Diego district's so-called "preferential rights" to its water from the Colorado River by tens of thousands of acre-feet per year for more than a decade, Karnow held. He ordered Metropolitan to refigure San Diego's statutory right to Metropolitan's water supply.

He noted in his ruling that his damages calculation was "just math."

"Here I awarded exactly the amount of damages requested by San Diego," Karnow wrote. "The calculation was as San Diego suggested, a simple deduction of some sums from others."



CHRIS FRAHM

It may have been simple, but the impact of the ruling during a time of water crisis was profound, Keker told The Daily Journal, especially the preferential rights and water transportation aspects. It will save San Diego water customers as much as \$2 billion over the next several years, he said.

The client agreed. "That's a very, very important victory for San Diego because it's a key part of our long term water resource planning," Cushman said.

In December, Karnow denied Metropolitan's motion for a new trial. Metropolitan and San Diego have filed dueling appeals and cross-appeals.

— John Roemer