

**RECENT CASES CLARIFYING  
CALIFORNIA'S WHEELING LAW  
(Water Code §§ 1810 – 1814)\***

**BACKGROUND**

California's wheeling law was enacted in 1986 as Water Code Sections 1810-1814. The law requires generally that neither the state nor any local agency may deny a bona fide transferor of water access to unused capacity in the state's or agency's water conveyance facilities to wheel the water being transferred. The prohibition against denying access for wheeling transactions is subject to certain listed conditions and to the requirement that the bona fide transferor pay "fair compensation," as defined, for that use. Until recently, no recorded wheeling transactions had been proposed under the statute and no court had interpreted its terms. Recently, however, two published appellate court opinions did consider the law and have resolved a number of issues. These cases are:

*San Luis Coastal Unified School District v. City of Morro Bay*, 81 Cal.App.4<sup>th</sup> 1044 (2000). The wheeling law expressly provides access only to a "bona fide transferor" of water. In this case, a trial court agreed with the City of Morro Bay that it could deny access to its conveyance system because San Luis Coastal Unified School District (the party requesting access) was a "transferee" not a "transferor" of the water. The court of appeal reversed the trial court, holding that whether the person seeking wheeling access is a transferor or a transferee makes no practical difference and that the wheeling law should be read to provide access to both.

*Metropolitan Water District v. Imperial Irrigation District*, 80 Cal.App.4<sup>th</sup> 1403 (2000). The wheeling law requires a wheeling party to pay "fair compensation" for the use of the conveyance system. Metropolitan adopted a single wheeling rate set in advance and applying equally to any party who seeks access to its system. The rate included a proportionate share of the system-wide costs of its conveyance system on a postage stamp basis. A trial court held that Metropolitan's rate violated the wheeling law. The court of appeal reversed the trial court, holding that Metropolitan's determination of "fair compensation" was not incorrect as a matter of law.

**LEGAL ISSUES RESOLVED**

Both of these cases were returned to the trial court for additional proceedings on the facts. However, the appellate court opinions have resolved certain legal issues with respect to the wheeling law.

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\*James F. Roberts, Metropolitan Water District of Southern California  
Howard B. Golds, Best, Best & Krieger, Riverside, California

## **Access**

- ❖ Both sellers (“transferors”) and buyers (“transferees”) must be allowed wheeling access to public water systems if the conditions of the wheeling law are met.
- ❖ Wheeling access may not be limited to only those years in which there is a supply shortage.
- ❖ The conveyance system owner also may not *deny access* to its system simply because providing access would result in its losing a sale to the party seeking access.

## **Facilities Included**

- ❖ “Conveyance facilities” include storage facilities if the storage facilities are so integrated in the conveyance system that incidental use of the storage facilities is necessary to the *conveyance* of water.
- ❖ However, no public agency is required to allow a wheeling party to use the storage facilities to *store* water over a period of time greater than that necessary to convey the water through the system.
- ❖ “Conveyance facilities” include local distribution systems as well as large aqueducts and canals.

## **Fair Compensation**

- ❖ A conveyance system owner is not limited to recovering only the additional or incremental costs caused by the wheeling transaction, but may recover a proportionate share of the capital, operation and maintenance costs incurred to build and operate the conveyance system being used in the transaction.
- ❖ A conveyance system owner is not limited to recovering the costs of only those portions of its system actually used in the wheeling transaction, but may recover a proportionate share of appropriate system-wide conveyance-related costs.
- ❖ The conveyance system owner may establish a single, fixed (“postage stamp”) rate applicable equally to each person wishing to wheel on the system.
- ❖ While recovery of proportionate system-wide costs is authorized by law, whether the actual costs included in a particular wheeling rate are proper is reviewable under Water Code § 1813.

## **Agency Determination of Fair Compensation and other Conditions**

- ❖ The interpretation of the wheeling law and the determination of fair compensation and other conditions are within the discretion of the conveyance system owner and its determination is to be accorded great weight.
- ❖ Determination of a fixed wheeling rate in advance, rather than case-by-case in response to specific wheeling proposals, is appropriate and fosters timely determinations.

## **Financial Implications**

- ❖ A system owner may not *deny access* to its system simply because it wants to make more money through a water sale to the wheeling applicant.
- ❖ On the other hand, in return for being required to make unused capacity available for wheeling, system owners are entitled to recover their costs for the system.
- ❖ Conveyance system owners providing wheeling service are not required to suffer financial loss or to subsidize wheeling transactions.
- ❖ Wheeling charges are not required to be the lowest possible charge.

## **REMAINING ISSUES**

### **Factual Issues**

The Supreme Court denied petitions to review the appellate court opinions, making those opinions final and binding on all trial courts in the state. However, each of the appellate court opinions considered only the underlying legal criteria applicable to wheeling transactions. The relevant factual issues were not determined.

In the *Morro Bay* case, the City had simply denied access and had not made any of the findings required by Water Code Section 1812 (e.g. whether unused capacity was available or its calculation of fair compensation). Consequently, the appellate court ordered the matter returned to the City to make those determinations. In both the City's deliberations and any subsequent judicial review, the legal principles enunciated in the two appellate court opinions would apply. In the *Metropolitan Water District* case, Metropolitan had made the required determinations, including fair compensation. Therefore, the appellate court returned the matter to the trial court to review whether the specific system-wide costs included in Metropolitan's rate were proper. Subsequently, Metropolitan voluntarily dismissed the case since it is in the process of developing an entirely new rate structure, including a new access or wheeling charge, making the existing litigation moot.

### **Legal Issues**

- ❖ Existing provisions of law (E.g. Const. Art 11, § 9; Public Utility Code §§1501-1506) and water supply contracts often restrict an entity from serving water in another entity's service area without the latter entity's consent. Do the wheeling statutes affect these provisions?
- ❖ Are water treatment plants part of the "conveyance" system so that a bona fide transferor may demand access? If so, what is the bona fide transferor's payment obligations?
- ❖ Water management programs such as conservation and recycling (a) create, and reduce the costs of, unused *conveyance* space, (b) create water *supply* and (c) provide general public interest benefits. To what extent should these programs' costs be recovered as "fair compensation" for the use of the conveyance system.
- ❖ How should unused capacity in a conveyance system be allocated where requests to wheel through it exceed the available unused capacity?

- ❖ Water Code §1810(d) requires that a wheeling transaction shall not injure any legal user of water, unreasonably affect fish, wildlife, or other instream uses, or unreasonably affect the economy of the county that is the source of the water. However, the statute leaves open the question of who must make these determinations and through what process.
- ❖ A customer substituting wheeled water for water it would have purchased from the owner of the conveyance system can avoid paying costs the owner committed to in order to serve the customer. To what extent should the owner of the system recover those costs in order to avoid shifting them to its other customers?