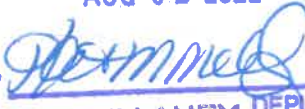


AUG 02 2022

BY 
KATHLEEN MULLANEY DEPUTY

SUPERIOR COURT
COUNTY OF SAN BERNARDINO
247 West Third Street, Department S23
San Bernardino, California 92415

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

TOWN OF APPLE VALLEY.

Plaintiff,
vs.

APPLE VALLEY RANCHOS WATER
COMPANY; et al.

Defendant,

Case No.: CIVDS1600180

RULING ON DEFENDANT LIBERTY
UTILITIES MOTION FOR AWARD OF
LITIGATION EXPENSES

This matter has come before the court for a hearing on a motion by Defendant Liberty Utilities for an award of litigation expenses. The court has reviewed and considered the briefs of the parties, as well as, the arguments of counsel and issues its ruling as follows.

FACTUAL AND/OR PROCEDURAL CONTEXT

On January 7, 2016, Plaintiff Town of Apple Valley filed an eminent domain action against Apple Valley Ranchos Water Company, now Liberty Utilities (Apple Valley Ranchos Water Corp. (hereinafter Liberty), to obtain the water company's water supply and distribution system within the boundaries of the Town and County.

On November 12, 2021, the court entered an Order of Dismissal and Judgment. The court

1 found the Town did not have the right to take any property from Liberty and dismissed the Town's
2 Complaint. The Order/Judgment also stated that under Code of Civil Procedure sections 1032 and
3 1268.610, Liberty shall recover its costs and litigation expenses in an amount to be determined.

4 On December 10, 2021, Liberty filed a Memorandum of Costs seeking \$15,131,051.89 in total
5 costs. Liberty's request includes \$14,240,911.60 for attorney and expert fees, and \$536,748.38 for
6 models, enlargements and photocopies of exhibits. With the Memorandum of Costs, Liberty also filed
7 a motion for an award of litigation expenses under Code of Civil Procedure section 1268.610. It seeks
8 attorney's fees of \$11,164,563.50, and reimbursement of expert witness fees of \$3,076,348.10. With
9 its reply, Liberty submits its adjusted lodestar amount that includes fees incurred since December 1,
10 2021, and seeks total attorney's fees of \$11,336,224.50. It states it incurred an additional \$171,661 in
11 fees from December 1, 2021.
12

13 **In total, Liberty seeks litigation expenses of \$14,412,572.60, comprised of attorney's fees**
14 **of \$11,336,224.50 (including fees incurred since December 1, 2021) and expert witness fees of**
15 **\$3,076,348.10, costs of \$890,140.29, for a total of \$15,302,712.89.**
16

17 Liberty's motion goes through the history of the case, including that it involved a 70-day bench
18 trial, discovery, discovery motions, and briefing related to the trial. It offers argument in support of
19 the hourly rates, including the four primary attorneys and paralegal billing in the case. As part of the
20 evidence, it submits the declaration of Gary Greenfield, a fee expert, that is offered primarily in support
21 of hourly rates.
22

23 The Town's opposition does not take issue with the reasonableness of hourly rates charged by
24 timekeepers. When the hourly rates and evidence offered in support are considered, as well as the
25 court's observation of Liberty's counsel's lawyering skills, the court finds the hourly rates reasonable.

26 Liberty also discusses the *City of Claremont* case and fees awarded in that case. The Town
27 objects to this evidence to the extent Liberty cites the case as binding legal authority and precedent and
28

1 for any purpose other than as guidance on the reasonableness of fees. Liberty responds that it does not
2 cite the *Claremont* decision as “binding legal authority.” The court overrules the Town’s objection.
3 The ruling is treated as an example of fees awarded counsel in a similar eminent domain case and is
4 not cited as precedent. In addition, the Town’s fee expert John D. O’Connor relies on this decision in
5 support of his opinion that the fees were not reasonably and necessarily incurred. (O’Connor Decl. ¶¶
6 30, 51-52, 204-223.)

7
8 The Town also filed evidentiary objections to statements in the declaration of David W. Sosa
9 that Liberty submitted in support of its expert fees. Sosa is a Principal of Analysis Group, Inc., an
10 economic consulting firm. Sosa states Analysis Group was retained to support experts Michael
11 Hanemann, W. Bartley Hildreth, On Amir, and Stephen Peters. Liberty responds to the evidentiary
12 objections. The Town’s objections to the Sosa declaration are addressed in the section evaluating
13 Liberty’s expert fees.

14
15 In opposing the motion, the Town does not dispute that Liberty is entitled to recover its
16 litigation expenses and costs. The Town submits the declaration of its fee expert, who opines that the
17 percentage method provides the simplest method to determine reasonable fees. He recommends
18 percentage reductions in fees during various stages of the case (pre-trial, trial, and post-trial),
19 concluding the percentage method yields \$7,300,308.68 in reasonable fees.¹ (O’Connor Decl. ¶¶ 52,
20 185, 231, 270.) He also recommends reducing the expert fees to no more than 50 percent of the fees
21 sought, or \$1,531,575.55. (*Id.* at ¶¶ 232-263, 272.) Finally, he opines costs for exhibit graphics should
22 be reduced to \$125,000. (O’Connor Decl. ¶¶ 83, 264-269, 273.)

23
24 On reply, Liberty argues that the Town basically requests a cut of Liberty’s attorneys’ and
25 expert witness fees by 37.98 percent. It argues reasons such reductions are not proper.

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¹ O’Connor offers other methods as a “cross-check,” including the budget method, resulting in estimated fees of \$7,557,584.80; *Claremont* fee comparison, resulting in fees between \$7,133,535.15 and \$7,879,455.15; and the Town fee comparison method, resulting in fees of \$7,670,826.20. (O’Connor Decl. ¶¶ 51-52, 271-3)

1 On May 13, 2022, the matter came before the court for hearing on Liberty's motion for
2 litigation expenses.

3 DISCUSSION

4 Legal Standard

5 "It is well settled that the judicial determination of 'reasonable' attorney fees in an eminent
6 domain action does not depend solely upon hourly rates and the number of hours devoted to the case.
7 While these two factors are 'the starting point of every fee award' [citation], numerous other factors
8 must also be considered, including the novelty and difficulty of the issues presented, the quality of
9 counsel's services, the time limitations imposed by the litigation, the amount at stake, and the result
10 obtained by counsel. [Citations.] (*City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78,
11 83.)
12

13 In addition, "[w]hen confronted with hundreds of pages of legal bills, trial courts are not
14 required to identify each charge they find to be reasonable or unreasonable, necessary or unnecessary.
15 The party opposing the fee award can be expected to identify the particular charges it considers
16 objectionable. A reduced award might be fully justified by a general observation that an attorney
17 overlitigated a case or submitted a padded bill or that the opposing party has stated valid objections."
18 (*Gorman v. Tassajara Development Co.* (2009) 178 Cal.App.4th 44, 101.)
19

20 Reasonableness of Liberty's Attorney's Fees

21 Liberty's request for attorney fees are based on the hours Manatt Phelps & Phillips, LLP
22 (Manatt) attorneys, paralegals, and support staff billed. The primary timekeepers were partners George
23 Soneff (\$675), Edward Burg (\$675), David T. Moran (\$585), associate Lauren Fried (\$525), and
24 paralegal Sharlean Perez (\$275). Up to December 1, 2021, they spent 19,081.30 hours for total fees
25 of \$10,794,404. Up to December 1, 2021, other Manatt attorneys expended 366.10 hours for a total of
26 \$175,056.50 in fees, and finally other support staff timekeepers expended 812.70 hours for a total of
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1 \$209,941. The total of \$11,179,401.50 was adjusted to exclude \$14,838 in fees for time erroneously
2 billed and amounts the Town reimbursed Liberty for fees, for a total of \$11,164,563.50 in attorney's
3 fees up to December 1, 2021. (Soneff Decl. ¶¶ 18, 537.) With its reply, Liberty seeks an additional
4 \$171,661 in attorney's fees for an additional 119.6 hours of work since December 1, 2021 through
5 March 21, 2022. (Soneff Supp. Decl. ¶¶ 44-50.) Again, the Town does not challenge the
6 reasonableness of the hourly rates charged by timekeepers.

7
8 As an initial observation, it is without dispute that the issues presented in this eminent domain
9 action were complex and the case was not a run-of-the-mill eminent domain action. Even the Town's
10 expert acknowledges that this is only the second California case that has been tried in the context of
11 Code of Civil Procedure section 1240.650, subdivision (c), on the issue of the rebuttable presumption
12 that applies in an eminent domain action involving a water utility. (O'Connor Decl. ¶¶ 35-36.)

13
14 This case presented the court with novel and difficult eminent domain issues. As the court's
15 ruling discussed, at issue was whether Liberty had rebutted the following presumptions: (1) the public
16 interest and necessity require the Town's project; (2) the Town's project is planned in the manner that
17 will be most compatible with the greatest public good and the least private injury; and (3) the use for
18 which the Town seeks to take Liberty's property is a more necessary public use than the use to which
19 Liberty's property is presently devoted. Issues the court considered included the history of Apple
20 Valley Ranchos Water Company and Liberty's operation, water quality and conservation, how the
21 Town planned to operate the utility, water system operation expenses, operational standards, including
22 those imposed by the Public Utilities Commission (PUC) and Proposition 218, water system capacity
23 demands, customer service, comparison of other nearby public agencies' water utility operations,
24 valuation and purchase price considerations and effect on the Town's proposed operation, effects of
25 the Town's operation on the Town's property and income tax revenue, effect of the Town's operation
26 on low-income customers, and economies of scale, including Liberty's operation of the nearby Yermo
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1 water district. This eminent domain proceeding involved significant issue to Town's residents
2 regarding operation of the local water utility.

3 As for the quality of counsel's services, it is without dispute that eminent domain law presents
4 novel and difficult question "and that the knowledge and skill necessary to protect a property's owner's
5 interest require extraordinary abilities not possessed by most practicing attorneys without considerable
6 research and preparation." (*Glendora Community Redevelopment Agency v. Demeter* (1984) 155
7 Cal.App.3d 465, 475.) Liberty's counsel presented sufficient evidence in support of its counsel's skill
8 to perform the service properly. As Liberty's general counsel Wiley attests, both lead counsel Soneff
9 and Burg had successfully litigated several high-profile, high-value eminent domain cases, including
10 other utilities, and represented Golden State Water Company in the *Claremont* case, a water utility
11 case that ultimately was decided in that utility's favor. (Wiley Decl. ¶ 7.) Contrary to the Town's
12 arguments, the court does not find that Liberty's counsel caused the case and trial to expand
13 unnecessarily or unreasonably. The court also does not find the length of the trial from an estimated
14 30 days to 70 days through closing argument to be a reflection of either party engaging in unreasonable
15 litigation strategies or tactics. The court reemphasizes that in terms of an eminent domain action, the
16 issues were novel, multifaceted, significant, and complex.

17
18
19 Considering the time limitation on counsel, amount involved, and results obtained, it is without
20 dispute that complex issues were involved and that at issue was a water utility in which the parties
21 argued valuations of the water utility were between \$70 and \$243 million, although this court's
22 decision gave little weight to the Town's \$70 million valuation. (Ruling, pp. 59:22-60:7.) The Town
23 argues that "extraordinary fees" were incurred because Liberty considered this a "lose the company"
24 case, referring to Liberty's Vice President, Associate General Counsel's statements in support of the
25 motion. (Wiley Decl. ¶ 4.) Liberty responds that as a percentage of value, the fees sought are less than
26 15 percent of its estimated value.
27
28

1 The Town asserts that when the water company was purchased, Liberty and its parent company
2 knew it was involving itself in an eminent domain proceeding. It complains about the high percentage
3 the fees represents in terms of Liberty's 2016 operating revenues and its reported 2016 rate base.
4 (MacVey Decl. ¶ 30 and Exh. K.)

5 But the Town's argument fails to consider that the fee request spans over six years of litigation.
6 In addition, the legislative scheme allows for Liberty's recovery of litigation expenses and costs when
7 the final judgment is that plaintiff cannot acquire the property. (Code Civ. Proc., § 1268.610, subd.
8 (a)(2).) The statutes do not provide that fees are not recoverable because a defendant purchased the
9 property during the eminent domain proceeding or has a corporate parent. The Town does not take
10 into account that resolution of this litigation saved it from both the cost of further litigation and
11 potential obligation to pay Liberty upward of \$100 million for its property. (See *Temple City*
12 *Redevelopment Agency v. Bayside Drive Limited Partnership* (2022) 146 Cal.App.4th 1555, 1561-
13 1562.) The court also does not see a market developing for corporate purchases of utilities in the midst
14 of condemnation proceedings for the purpose of a new buyer recovering attorney fees and costs in
15 defending the eminent domain action. (See *id.* at p. 1562 [discussion in terms of an owner selling
16 property during an eminent domain action, but applicable to the buyer of the property].)

17 At issue was an important eminent domain proceeding involving a water utility and
18 consideration of issues impacting the public in terms of whether the public's interest and necessity
19 required the project, the project was planned in the manner most consistent with the greatest public
20 good and least private injury, and whether the Town's use was a more necessary use.

21 With these general observations of the difficulty, novelty, time limitations, amount involved,
22 results, and quality of work, the court considers the Town's objections to Liberty's fees and costs,
23 which touch upon several of these factors.

24 ///

1 **A. Redactions and Block Billing**

2 The Town complains about Manatt's billing records, arguing they are "opaque" and not
3 appropriately documented. Arguments are directed to invoices being redacted and block-billing. The
4 Town seeks a 20 percent reduction in the total amount of Liberty's fees as a result. When the argument
5 is considered, the Town's claim that redactions and block billing are issues that require a 20 percent
6 reduction in the attorney's fees is not demonstrated.

7 **Redactions.** With respect to redactions, the Town claims 47 percent of Soneff's billing entries
8 totaling \$3,309,795, are redacted, making evaluation impractical. (O'Connor Decl. ¶¶ 67, 71 and Exh.
9 K.) O'Connor attaches examples of heavily redacted entries. (*Id.* at ¶ 71 and Exh. L.) The Town also
10 complains about not having a privilege log.

11 But when O'Connor's Exhibit L is reviewed, many of the pages include entries that were
12 redacted in their entirety because these entries are related to the \$9,148 in fees that Liberty concedes
13 were billed in error and deducted from the total fees sought. (Soneff Decl. ¶ 537.) Nonetheless, a
14 redacted entry exists in which the timekeeper and hours are redacted in the amount of \$1,485, billed
15 for January 5, 2016. The unredacted portion of the entry refers to a discussion between with Burg
16 about "Big Bear and Felton acquisitions." (O'Connor Decl. Exh. L.) This work is not demonstrated
17 to be related to this litigation. Therefore, the court denies fees of \$1,485.

18 As for redactions, Liberty responds that submission of detailed time records is not required and
19 attorney testimony can suffice. It argues that Soneff's declaration adequately supports the fee award
20 and the Town's objections to counsel's invoices should not be used to reduce the award. As for entries
21 with redacted privileged information, Liberty argues that the case is pending on appeal and that it
22 should not be required to waive the privilege that may result in disclosure of litigation strategy. Liberty
23 provides a supplemental declaration of its in-house counsel Todd Wiley who explains the invoices
24 were regularly reviewed and he found the billing entries both sufficiently informative and consistent
25 with other law firms. (Wiley Supp. Decl. ¶ 6.)
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1 Testimony by an attorney of the number of hours worked on a particular case is sufficient
2 evidence to support an award of fees, even where detailed time records are not submitted. (*Martino v.*
3 *Denevi* (1986) 182 Cal.App.3d 553, 559 (*Martino*)). “To enable the trial court to determine whether
4 attorney fees should be awarded and in what amount, an attorney should present ‘(1) evidence,
5 documentary and oral, of the services actually performed; and (2) expert opinion, by [the applicant]
6 and other lawyers, as to what would be reasonable fees for such services.’ [Citations.] ‘In many cases
7 the trial court will be aware of the nature and extent of the attorney’s services from its observation of
8 the trial proceedings and the pretrial and discovery proceedings reflected in the file.’ [Citation.]” (*Id.*
9 at pp. 558-559.)

11 The Town’s general argument regarding redactions does not provide reason to reduce Liberty’s
12 fees by 20 percent. The Soneff Declaration provides a detailed monthly narrative of the type of issues
13 worked on and summary of billings for each monthly period. (Soneff Decl. ¶¶ 35-536.) For example,
14 O’Connor takes issue with a redaction by Soneff on March 13, 2017 that states, “review draft analysis
15 from [redacted].” O’Connor states that given the redactions, he cannot discern what Soneff was
16 working on during a fifteen-day period from March 8, 2017 to March 22, 2017. (O’Connor Decl. ¶
17 71.) O’Connor complains that the Soneff Declaration “conceals more than it reveals, and refrains from
18 any attempt to isolate and justify the amount of billings for any particular activity,” and only provides
19 vague and general descriptions of activities. (O’Connor Decl. ¶ 125.)

21 The court disagrees with O’Connor’s assessment. As O’Connor notes, Liberty’s counsel
22 employed ABA approved billing task codes. (O’Connor Decl. ¶ 60.) The billing entries from March
23 18, 2017 through March 22, 2017 that the Town complains of are under the category analysis/strategy.
24 Soneff’s Declaration discussion of work in March 2017 states that on March 8, 2017, Liberty received
25 notice from the Town that it intended to call a special election to finance the acquisition. Soneff states
26 that in preparation for the June 6, 2017 special election, counsel conferred with expert economic and
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1 finance consultants regarding a Financial Feasibility Analysis produced by Urban Futures on behalf of
2 the Town and analyzed the impact the Town's acquisition of the water system would likely have on
3 customer's water rates. (Soneff Decl. ¶¶ 111, 117.) The Town's ability to finance the acquisition
4 through a bond issuance and effect of debt servicing on the Town's ownership was considered as part
5 of the court's ruling.

6 In light of the Soneff Declaration and the billing provided, Liberty provided sufficient
7 information demonstrating the number of hours worked, billing rates, types of issues dealt with and
8 appearances made on the client's behalf, such that this court is not left to guess at the value of counsel's
9 services. (*See Martino, supra*, 182 Cal.App.3d at p. 559.)

11 **Block Billing.** The Town also argues that block billing compounds the redaction issue.
12 O'Connor takes particular issue with block billing by Attorneys Soneff and Burg. (O'Connor Decl. ¶¶
13 62, 73.) In response, Liberty's general counsel Wiley states he reviewed the invoices and found the
14 entries sufficiently informative. (Wiley Supp. Decl. ¶¶ 5-6.)

16 Block billing is not objectionable per se. "Trial courts retain discretion to penalize block billing
17 when the practice prevents the court from discerning which tasks are compensable and which are not."
18 (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1010 (*Heritage*)). In
19 *Heritage*, the Court discussed *Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 689, in
20 which the *Bell* Court reversed an attorney fee award because block billing made it impossible for the
21 court to apportion fees between a cause of action for which fees were recoverable and other causes of
22 action for which they were not. (*Heritage, supra*, 215 Cal.App.4th at p. 1010.) The Town fails to
23 demonstrate a general reduction in fees is warranted because block-billed entries include
24 noncompensable time.

26 Nonetheless, even though the court concludes that block billing and redactions do not warrant
27 the general reduction the Town requested (O'Connor Decl. ¶ 73), the court reserves consideration of
28 block billing where relevant to the Town's other objections.

1 **B. Town's Objection to Pre-Trial, Trial, and Post-Trial Fees**

2 The Town's expert argues reason Liberty's fees should be reduced, offering different
3 methodologies for reduction, but recommending the court reduce fees to \$7,300,308.68 based on the
4 percentage method. (O'Connor Decl. ¶¶ 52 and 270.) He recommends a 20 percent reduction in fees
5 during the pre-trial period (November 16, 2015 through August 2019); 40 percent reduction in
6 requested fees during the trial period (September 1, 2019 through February 11, 2021); and a 75 percent
7 reduction in fees sought during the post-trial phase (February 12, 2021 through November 30, 2021),
8 which includes time spent on preparation of Liberty's fee motion. (O'Connor Decl. ¶ 50.) O'Connor
9 asserts that approximately \$9.3 million was spent during the pre-trial and trial phases, presenting a
10 question of whether such fees are reasonable. (O'Connor Decl. ¶ 17.)

11 As a comment on the Town's fees comparison method, Liberty's motion stated that the Town
12 revealed in a letter in response to Liberty's Public Record Act request that the Town incurred
13 \$5,770,826.20 in attorney's fees through October 28, 2021, and costs of \$2,682,761. (Soneff Decl. ¶¶
14 16-17 and Exh. O.)

15 The Town responds that its fees were largely a reaction to Liberty's litigation actions and its
16 fees also concerned matters outside the scope of the right-to-take litigation, such as for other phases of
17 litigation and acquisition, including valuation, acquisition financing, rate setting, system transition, and
18 system integration. It also asserts that its expert fees are half those of Liberty's. (MacVey Decl. ¶ 10-
19 16.) The Town's expert makes similar claims about the basis for the Town's fees and opines that with
20 adjusting for rates, it demonstrates \$8,770,826.20 in comparable fees, which he adjusts downward to
21 a comparative fee of \$7,670,826.20. (O'Connor Decl. ¶¶ 52 and 224-230.)

22 In reply, Liberty provides portions of the Town's billings it obtained for the period from
23 January 2019 through June 2019, arguing that the difference in amounts is explained by the difference
24 in the parties' hourly rates and such comparison demonstrates the rates sought by Liberty are
25 reasonable. (Soneff Supp. Decl. ¶¶ 37-40 and Exh. B.)

1 At the hearing on the motion, both parties argued reason the comparison method supported
2 their respective positions. The Town again argued that its work involved issues beyond the right-to-
3 take and included issues such as valuation, Proposition 218 proceeding for setting rates, and financing.
4 It also argued that time records from January 2019 through June 2019 demonstrate that it used
5 significantly more paralegal hours than attorney hours when compared to Manatt.

6 The issue, however, is that in the Town asserting its legal fees are comparable for purposes of
7 supporting a reduction in fees, the Town does not submit sufficient evidence to support its assertion
8 that much of its fees were spent in reaction to Liberty's litigation actions and also on issues not related
9 to the right-to-take, such as valuation, financing, and rate setting. The court's final ruling demonstrates
10 that these issues the Town asserts are unrelated were at issue during the trial and were considered as
11 part of the court's ruling.
12

13 **Pre-Trial Phase.** O'Connor treated the pre-trial period as ending August 30, 2019. Liberty
14 does not dispute the Town's calculation that during this time, Liberty incurred \$4,181,156 in fees.
15 (O'Connor Decl. ¶¶ 50, 63, 136 and Exh. H.) O'Connor recommends that these fees be reduced 20
16 percent. (O'Connor Decl. ¶¶ 149, 161.) He opines that during this period, out of almost \$4.2 million
17 in fees billed, approximately \$3.0 million was related to case development and trial preparation, which
18 included the deposition of 19 lay witnesses expected to testify at trial. (O'Connor Decl. ¶ 136 and Exh.
19 H.) O'Connor concludes that an "abnormally high proportion of case development and trial
20 preparation activities" cannot be attributed to an unusually high amount of deposition days. (O'Connor
21 Decl. ¶ 138.) He opines that trial preparation/strategy/case development, along with deposition
22 activity, normally takes one-third to one-half of pre-trial billings, instead of the three-fourths sought
23 here. (O'Connor Decl. ¶ 139.)
24

25 O'Connor also asserts that more time should have been billed by lower level associates and
26 paralegals. He opines that case strategy and trial preparation work performed by Soneff, Burg, and
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1 Moran was excessive in proportion to other work. The basis for his conclusion is that the pre-trial
2 stage did not involve “massive document discovery work from multiple sources, wrangling and motion
3 work re same, intensive legal research on multiple motions, demurrers, and amended pleadings,
4 followed by massive summary judgment motions.” (O’Connor Decl. ¶ 143.) He contends that Liberty
5 only produced 160,000 “pedestrian” documents that did not require unusual dispute resolution or other
6 efforts. He also contends that the pre-trial period featured preparation of redundant and duplicative
7 testimony, involving many witnesses on the same topic, and included preparation of marginal issues
8 such as Proposition 218, finances of neighboring cities, and water quality. He opines the pre-trial
9 period involved primarily trial preparation, finding that only \$363,168.50 was spent on motion
10 practice, including \$72,702 on unfiled motions. (O’Connor Decl. ¶¶ 141-148, 153-156, 162-164 and
11 Exh. O.)
12

13 The court agrees with the Town’s position that at issue is the reasonableness of the billings
14 overall, as opposed to analysis of entries in isolation. Nonetheless, the court disagrees with O’Connor’s
15 conclusion that excessive time and excessive work by partners warrants a 20 percent reduction in pre-
16 trial fees. The court also rejects O’Connor’s contention that an unreasonable amount of time was spent
17 on development of unnecessary redundant and duplicative witnesses directed to various categories.
18 (O’Connor Decl. ¶¶ 148, 153-155.)
19

20 It is noted that O’Connor does not demonstrate prior experience in eminent domain litigation.
21 His opinion is based on review of the motion, declarations, study of appendices filed by each party,
22 the court’s decision and order, and post-trial filings regarding the same. He states that he skimmed
23 trial transcripts, studying testimony he thought pertinent, the *Claremont* fee petition, exhibits and
24 Order, the Town’s objections to the decision, and an interview of the Town’s counsel MacVey and
25 Frias. (O’Connor Decl. ¶ 30.)
26

27 But as already discussed, eminent domain law presents novel and difficult questions.
28

1 (*Glendora Community Redevelopment Agency v. Demeter*, *supra*, 155 Cal.App.3d at p. 475.) In
2 addition, “the judicial determination of ‘reasonable’ attorney fees in an eminent domain action does
3 not depend solely upon hourly rates and the number of hours devoted to the case;” the court also
4 considers issues such as the novelty and difficulty of the issues presented. (*City of Oakland v. Oakland*
5 *Raiders*, *supra*, 203 Cal.App.3d at p. 83.) As only the second litigated case on the rebuttable
6 presumptions of a public agency’s right to take a utility, this litigation presented novel and difficult
7 issues for consideration.
8

9 One of the categories the Town asserts involved redundant and duplicative witnesses is the
10 issue of water quality. The Town complains that offers were made to see if the parties could stipulate
11 on matters of fact and law, but Liberty did not respond to the Town’s offer. The evidence offered in
12 support is that in May and November 2018, the Town represented in case management conference that
13 the parties meet and confer “at some stage” to see if they could stipulate to matters of fact or law.
14 (MacVey Decl. ¶ 6 and Exhs. A and B.) On the issue of water quality, O’Connor states that he is told
15 by MacVey that the Town was not making it an issue. (O’Connor Decl. ¶ 153-154.)
16

17 But MacVey’s declaration does not demonstrate evidence of the Town conceding this issue.
18 For example, in the Town’s Post-Trial Brief, its argument in support of high customer dissatisfaction
19 cited the results of Liberty’s J.D. Power surveys, arguing Liberty’s scores were below that of Western
20 water utilities averages in over 30 categories, including “quality of water.” (Town Post-Trial Br. p.
21 46:6-9.) It also cited to its expert Craig Close’s testimony in support of potentially serious
22 environmental contamination issues, despite Liberty “touting its lack of water quality violations.” (*Id.*
23 at pp. 53:24-54:6.) It cited to academic studies relied upon or in Liberty’s expert Michael Hanemann’s
24 file in support of the Town’s argument that water quality improved under public versus private
25 ownership and that the rate of drinking water health quality violations in California is higher for
26 regulated private water systems than municipal systems. (*Id.* at pp. 68:15-19, 80:12-14.) The court’s
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1 ruling included a discussion of Liberty's water quality record and the Town's attempt to put it in
2 question. The issue of water quality served as a basis for the court finding that Liberty had proven that
3 the public interest and necessity do not require acquisition and acquisition would not be a "more
4 necessary" public use. (Ruling pp. 21:3-22:21.)

5 As for the other topics O'Connor asserts involved redundant and duplicative witnesses, such
6 as that involving Liberty's operations/highly trained staff; GIS; PUC; customer service, employee
7 benefits, infrastructure requirements, water conservation, General Order 103A, fireflow, and risk
8 management and safety, many of these issues were considered in the court's ruling. For example in
9 discussing the lack of water quality violations, the court discussed that such efforts appear supported
10 by a highly skilled contingent of employees that had worked at the utility for decades, going to the
11 issue of operations/highly trained staff. (Ruling p. 21:8-24.)

13 As for testimony regarding the PUC and its oversight, the Town takes particular exception to
14 the testimony of Liberty's designated expert, former PUC Commissioner Catherine Sandoval. It also
15 complains about testimony directed to the PUC's General Order-103A. But the Town's trial brief
16 discussed its intent to present evidence on PUC governance in contrast to rate setting under Proposition
17 218 in an effort to demonstrate the level of public participation in setting rates. (Town Trial Br. pp.
18 14:21-17:20.) The court's final ruling discussed PUC oversight in relation to many issues, including
19 Liberty's compliance with operational standards, water conservation, water system capacity being met,
20 customer service, reason replacement of PUC oversight was not in the public interest, and effect of
21 low-income customers, which included citation to the testimony of Jackson, Sorensen, and Sandoval
22 on particular issues of PUC oversight and regulation. (Ruling pp. 25:25-26:21; 28:14-29; 30:14-24;
23 32:9-17; 37:1-54:8, 77:22-79:24.)

26 In general, a party may recover attorney's fees based on preparing matters that ultimately prove
27 unsuccessful or unwarranted in a particular case, to the extent those matters led to a successful claim.
28

1 (*Akins v. Enterprise Rent-A-Car Co. of San Francisco* (2000) 79 Cal.App.4th 1127, 1133-1134.) This
2 is the situation presented here in this highly-contested, complex litigation involved consideration of
3 the water utility's operation and regulation when privately owned and under the Town's proposed
4 ownership. The Town attempts to dissect particular witness testimony on specific issue in support of
5 its argument. But the Town's arguments that particular witness testimony overlapped does not
6 demonstrate witness testimony overall was redundant or unnecessary.

7
8 The Town's argument that pre-trial fees should be reduced by 20 percent is not demonstrated.
9 The court finds the fees and hourly rates reasonable for the pre-trial period given the complexity of the
10 litigation and issues involved.

11 **Trial Phase.** The Town's expert asserts that despite over \$4 million for trial preparation, an
12 additional \$5.7 million was billed from October 1, 2017 through closing arguments on February 11,
13 2021. (O'Connor Decl. ¶ 167.) Based on amounts set forth in the Soneff Declaration and considering
14 the fee entries through February 11, 2021, the amount of time totals \$5,750,539.50. (Soneff Decl. ¶¶
15 416-501 and Exh. L)

16
17 O'Connor breaks up the time during this period as time for trial and in-trial work, and time
18 spent on closing briefing and closing presentation. O'Connor excludes time billed in September 2019
19 (\$551,810.50 (Soneff Decl. ¶ 415)), a time when 14 experts were prepared and estimates \$440,000
20 would have been more than sufficient for this month. (O'Connor Decl. ¶¶ 120-122.) O'Connor opines
21 that given the level of pre-trial preparation, a reasonable time for 70 trial days is to estimate 8-hour
22 trial days and 8-hours of preparation outside of court for each trial date. He concludes that at a blended
23 rate of \$547 per hour for the five professionals present, a reasonable amount of time for in-trial and in-
24 trial preparation is \$3,063,200 (70 days x \$43,760 blended rate of 70, 16-hour hour days). He also
25 estimates 1,000 hours of preparation for post-trial activity is reasonable, even if some occurred during
26 trial, and estimates \$547,000 is a reasonable amount of time from the close of testimony on July 16,
27
28

1 2020 through the end of closing argument on February 11, 2021. Therefore, he opines \$3,610,200 is
2 the total reasonable amount of time for fees from October 1, 2019 through February 11, 2021. In
3 addition, if the additional \$440,000 he estimates as reasonable for September 2019 is considered, he
4 recommends total trial fees of \$4,050,200 as reasonable fees for this period. He concludes \$2,252,150
5 in fees is unreasonable. But under the percentage method he recommends, a 40 percent reduction of
6 \$2,520,940, and a net award of fees in the amount of \$3,781,410. (O'Connor Decl. ¶¶ 90-123, 176-
7 186.)

8
9 Again, to the extent the Town and its expert assert that the litigation was driven by Liberty's
10 ever-expanding case-in chief, the court disagrees. A litigant should not be penalized "unless the
11 unsuccessful forays address discrete unrelated claims, are pursued in bad faith, or are pursued
12 incompetently, i.e., are such that a reasonably competent lawyer would not have pursued them. (*City*
13 *of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1303.) None of these exceptions is demonstrated
14 to apply to the issues that the Town contends was spent on duplicative and irrelevant witnesses and
15 evidence. In addition in response to the Town's argument, Liberty demonstrates that the Town's time
16 spent on argument and examination of witnesses largely matched that of Liberty's. (Soneff Supp.
17 Decl. ¶¶ 33-35.) The court did not view the testimony as cumulative or surplus given the complexity
18 of the case; the court's ruling reflects the breadth of issues considered.

19
20 Nonetheless, when the court considers the amount of time spent for billing entries from the
21 beginning of October 2019 through the last witness on July 15, 2020 that are directed to closing
22 activities by making reference to "closing," post-trial briefing, and "findings of fact memorandum," as
23 well as all entries under the category Post-Trial Motions and Submissions, the court calculates
24 \$493,597.50 in fees were incurred for such entries. The court also notes that entries for Soneff, Burg,
25 and Moran included in these calculations include the entire amount of block-billed entries. This is a
26 situation in which block billing precluded the court from assessing the exact time spent on the closing-
27 related task, so the court included the entire amount billed. (Soneff Decl. Exh. L.)
28

1 With respect to the time of the COVID closure, from March 17, 2020 and June 15, 2020, the
2 Town had four witnesses remaining (DeShazo, Close, Koorn, and Robertson) and Liberty's rebuttal
3 involved three witnesses (Lent, Dalton, and Thomas-Keefer). (Soneff Supp. Decl. ¶ 33.) O'Connor
4 estimates that during the COVID break, \$682,811.50 was billed. By the court's estimates, fees of
5 \$392,375.50 were billed for closing-related tasks during the COVID closure.²

6 For the remainder of July 2020, for which the same terms and category were considered, the
7 court calculates an additional \$120,615.50 in fees incurred. Therefore, from the beginning of October
8 2019 through the end of July 2020, the court estimates 1,045.3 hours, \$614,213, were spent on closing-
9 related activities.

10 In light of Soneff's Declaration discussion of work performed from August 2020 through
11 February 2021 being directed to post-trial briefing, appendix of evidence, closing argument, and some
12 other post-trial related tasks, such as updating the exhibit list, an additional \$1,068,289 in fees were
13 incurred. (Soneff Decl. ¶¶ 477-501.) Between the months of August 2020 and February 2021, an
14 additional 1,992.8 hours were billed for time related to the post-trial brief, appendix, proposed
15 statement of decision, and closing argument, including 539.60 hours in August 2020 under the
16 Category "Post-Trial Motions and Submissions."

17 Therefore, in total, this amounts to \$1,682,502 in fees for closing-related tasks. While the court
18 appreciates the complexity and novelty of the issues presented, it finds excessive the amount of fees
19

20
21
22
23 ² Again the court's calculations include block-billed entries in which the description included work on "closing,"
24 "post-trial," "findings of fact memorandum," and all entries in the category "Post-Trial Motions and Submissions." The
25 amount calculated during the COVID closure is comprised of:

- 26 • March 2020 after March 16, 2020, 139.3 hours of time that totals \$80,467.50
27 (blended rate of \$577.66);
- 28 • April 2020, 250.3 hours of time that totals \$149,565.50 (blended rate of \$597.54);
- May 2020, 185.7 of hours of time that totals \$108,902.50 (blended rate of \$586.44);
and
- June 2020 up to June 15, 2020, 85.80 hours of time that totals \$52,440 (blended
rate of \$611.18).

1 billed. On this task, three partners and an associate, billing at rates above \$500 per hour, billed a
2 substantial amount of time on what appeared to be overlapping tasks of research and drafting,
3 reviewing and analyzing testimony, and communications among each other. Between August 2020
4 and February 2021, Soneff billed 526.9 hours (equivalent of 13.17 work weeks), Burg billed 455.6
5 hours (11.39 work weeks), Moran billed 203.4 hours (5.09 work weeks), Fried billed 273.9 hours (6.85
6 work weeks), and Perez billed 460.1 hours (11.5 work weeks). (Soneff Decl. ¶¶ 477-501.) Again, this
7 time does not account for the approximately 1,000 hours spent on closing-related tasks during the trial,
8 COVID break, and through the end of July 2020. In considering the evidence presented and time
9 involved, there appears to have been inefficient and duplicative efforts by Liberty's counsel with
10 respect to closing-related tasks and argument. As a result, the court reduces the total time calculated
11 for closing-related tasks, \$1,682,502, by 40 percent and disallows \$673,000.80 in fees to account for
12 what appears to be excessive and duplicative time spent on closing-related tasks beginning in October
13 2019 through closing argument in February 2021.
14

15
16 In reviewing these entries, it also raises the issue of whether excessive time was spent on
17 continued trial preparation during the COVID closure from March 17, 2020 to June 15, 2020.
18 Evaluating entries between this time, and excluding time the Court already considered as part of
19 closing-related tasks, the following amounts were billed:
20

Date	Hours	Amount Billed
March 2020 (from March 17)	67.1	\$ 30,642.50
April 2020	84.6	\$ 40,300.00
May 2020	196.6	\$102,442.50
June 202 (through June 14)	192.3	\$101,019.00
TOTAL	540.6 hours	\$274,404.00

27 In light of the witnesses remaining, a review of entries demonstrates duplicative and inefficient
28

1 billings related to trial strategies, rebuttal, witness examination preparation, as well as non-legal related
2 entries to address matters such as COVID protocols. Given the pre-COVID closure entries related to
3 preparing for trial, the court reduces these non-closing-related fees incurred during the COVID closure
4 by 40 percent and disallows \$109,761.60 in fees.

5 As for the remainder of trial-related fees that the Town takes issue with, the court does not find
6 a further reduction is warranted. Therefore, related to trial-related fees, including closing-related
7 activities, the court disallows \$782,762.40

8
9 **Post-Trial Phase.** The Town classifies the time from February 12, 2021 through November
10 30, 2021 as the post-trial period. Its expert O'Connor states that \$695,895.50 is sought after the closing
11 argument. He estimates \$527,524.50 was spent on the fee motion, \$162,161 is related to the Statement
12 of Decision and post-trial hearings, and \$6,210 is related to other post-trial billings. (O'Connor Decl.
13 ¶¶ 124-125, 130.) O'Connor notes that for these post-trial tasks, the majority of work was performed
14 by partners. (O'Connor Decl. ¶¶ 131-132 and Exhs. D and M.)

15
16 With its reply, Liberty seeks an additional \$171,661 in fees from December 1, 2021 through
17 March 21, 2022. (Soneff Supp. Decl. ¶¶ 43-50.) At the hearing, Liberty argued that as a percentage
18 of fees, the amount sought for the fee motion is not excessive. At the hearing the Town recognized the
19 additional \$171,661 in fees being sought, offered argument, and did not request an opportunity to
20 submit additional briefing on the issue.

21
22 Starting with the time spent on the Town's objections to the statement of decision, O'Connor
23 estimates that responding to the Town's objections should not have taken more than 100 hours, or
24 \$62,500 at a partner blended rate of \$625. (O'Connor Decl. ¶ 134.) But in reviewing the time entries
25 on the June 2021 invoices for the period after the Town filed its objection on June 1, 2021 to the time
26 Liberty responded on June 18, 2021, the court calculates total fees in the amount of \$68,021.50 directed
27 to responding to the Town's objections.³ (Soneff Exh. L.) This amount is within the range the Town's
28

³ In making this calculation, the court notes that several entries for Burg, one entry for Moran, and one entry for Soneff were block billed, in which time in these entries also was spent on the fee motion.

expert opines is reasonable to respond to the Town's objections. The court finds reasonable the time Liberty's counsel spent on responding to the Town's objections.

As for the time spent on the attorney's fees motion, starting after the court issued its Tentative Statement of Decision on May 7, 2021, Liberty's counsel began preparing a motion for litigation expenses and a Memorandum of Costs. (Soneff Decl. ¶¶ 506-513.) Liberty does not dispute the Town's estimate of \$527,524.50 or 995.50 total hours related to the fee motion. (O'Connor Decl. Exhs. J and M.) On review of the time records from May through November 2021, the court agrees that an unreasonable amount of time was spent by the three partners (Burg, Soneff, and Moran) and associate (Fried). An inordinate amount of entries for these partners and associate involve reviewing, analyzing, and redacting invoices, conferences among each other regarding the fee motion, and drafting and revising the motion for attorney's fees and Memorandum of Costs. After beginning these tasks in May 2021, the supplemental time sought beginning December 1, 2021 continues to include fee entries related to drafting and revising the Soneff Declaration, reviewing and analyzing the motion, and similar entries related to the fee motion. (Soneff Supp. Decl. Exh. D.) Further, the December 2021 billing uses a paralegal (McArn) to complete redactions at a lower hourly rate than the partners/attorney. Before this time, redactions primarily were handled by partners and the associate billing between \$675 and \$525 per hour. For the period from March 1-21, 2022 for work on the reply, the Town seeks an additional \$102,889 in fees, but no invoices or a breakdown of hours billed is provided. (Soneff Supp. Decl. ¶¶ 43, 48.)

In considering the amount of fees and time sought related to this attorney fees motion the court notes that the fee motion does not involve any novel or difficult questions on the issue of fees to warrant the number of hours billed by partners who bill at rates between \$675 and \$585 per hour. (*See Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) The amount sought here also is not reasonable given that inefficient and duplicative efforts are not subject to compensation. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.)

Therefore, in considering the estimate of time spent on the fee motion before December 1, 2021, \$527,524.50 representing 995.50 hours of timekeeper time (O'Connor Decl. Exhs. J & M), the court agrees that the amount sought is not reasonable. In considering what is at issue the court finds \$131,881.50 in total fees for work on the fee motion before December 2021 as reasonable and denies \$395,643.00 in fees (a reduction of approximately 75 percent).⁴

As for the post-motion fees sought, which total \$171,661, most of this amount, \$102,889, is related to fees incurred from March 1-21, 2022. (Soneff Supp. Decl. ¶¶ 43-49.) The time spent in March 2022 was directed to preparing the reply. (*Id.* at ¶ 48.) In light of the non-complex issue of attorney's fees and other matters related to entry of the judgment for the December 2021 to March 2022 period, the Court finds additional fees of \$50,000 to be reasonable for this period given what was at issue, and denies \$121,661 in fees.

Therefore the Court denies \$517,304 in post-trial fees.

Expert Fees

Liberty seeks a total of \$3,076,348.10 for expert witness fees, comprised of:

• Michael Hanemann, Ph.D.	\$1,637,165.54
• W. Bartley Hildreth, Ph.D.	\$ 794,119.86
• On Amir, Ph.D.	\$ 198,902.50
• Stephen Peters	\$ 188,521.59
• Catherine J.K.Sandoval, J.D.	\$ 126,064.75
• Jeanne-Marie Bruno, P.E.	\$ 118,376.86.

The above amounts are not simply comprised of the expert witnesses' hourly rates, but for experts Hanemann, Hildreth, Peters, and Amir, Liberty engaged Analysis Group, Inc. to provide support services for these experts. Expert witness Amir did not testify at trial. According to Liberty's counsel, this was the result of a strategic decision made during trial. (Soneff Decl. ¶ 14.)

⁴ This represents approximately 248.88 hours of time for the fee motion, a reasonable amount of time considering the hours compensated are mostly for the higher billing attorneys who are expected to complete non-complex, straightforward fee motion tasks in a timely and efficient manner.

1 In addition to the amounts for its expert witnesses, Liberty seeks an additional \$13,197 paid to
2 take the Town's expert witness depositions. (Soneff Decl. ¶ 13.)

3 The Town does not dispute that Liberty is entitled to recover expert witness costs under Code
4 of Civil Procedure section 1235.140, subdivision (b). Instead, it objects that the fees sought are
5 excessive, arguing that almost \$2.8 million in fees is attributed to the unverified work of Analysis
6 Group for the fees incurred by Hanemann, Hildreth, Amir, and Peters. It submits evidentiary objections
7 to the declaration of David Sosa of Analysis Group that Liberty submitted in support of work
8 performed by Analysis Group for experts Hanemann, Peters, Hildreth, and Amir. (Sosa Decl. ¶ 1.)
9 The Town asserts that no information is provided as to what dozen of billers at Analysis Group did. It
10 claims that in contrast, the Town's expert fees totaled \$1,602,114.69 (MacVey Decl. ¶ 16.)

12 The Town contends that when the amount sought is considered, the experts fees are
13 approximately 16.58 percent of the total hours that Analysis Group billed. (MacVey Decl. ¶ 19 and
14 Exh. E.) With respect to these experts, the Town makes specific arguments directed to the fees sought
15 by Hanemann and Amir. It does not provide argument related to the fees of Peters and Hildreth, beyond
16 its argument that the majority of fees for these experts are related to work billed by Analysis Group.

18 As for Liberty's experts Bruno and Sandoval, the Town complains that neither provides any
19 billings in support of over \$200,000 in fees sought.

20 The Town's fee expert recommends a reduction of expert fees to \$1,531,575.55, or a 50 percent
21 reduction because of the use of Analysis Group. (O'Connor Decl. ¶¶232-263.)

23 **Town's Evidentiary Objections to Sosa Declaration.** With respect to the Town's evidentiary
24 objections, Sosa holds a Ph.D. and M.S. in Agricultural and Resource Economics and has worked for
25 nearly 25 years in providing consulting to regulated utility and network industry clients on a broad
26 range of litigation, regulatory, and public policy issues. (Sosa Decl. ¶ 1.) Analysis Group is a private
27 economic consulting firm, providing expertise in economics, finance, health care analytics, and
28 strategy to law firms, Fortune 500 companies, and government agencies. (Sosa Decl. ¶ 3.)

1 Liberty responds to the Town's evidentiary objections. It asserts that its experts' fees should
2 not be reduced in this expert-driven case. It argues that detailed time records of expert witnesses are
3 not required and that Sosa and Soneff's declarations adequately describe its experts' work. It contends
4 Analysis Group provided support staff to several of the designated experts that allowed work to be
5 done at a lower billable rate than the experts' rates.

6 The court overrules the Town's objections to Sosa Declaration ¶¶ 2, 5, 6, 7, 8, 10, 12, 13, 14,
7 15, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32. The court sustains the Town's objections to
8 Sosa Declaration ¶¶ 9, 11, 16, 24, 31, 33.

9 **Peters.** Peters provided consultation and testimony on: "financing costs, terms, and restrictions
10 with regard to the Town of Apple Valley's proposed use of water revenue bonds to finance acquisition
11 of Liberty Utilities' Apple Valley water system; and (2) the Town's \$10 million line of credit." (Soneff
12 Decl. ¶ 553.) When the invoices related to Peters work and the work performed by Analysis Group as
13 outlined in the Sosa declaration is considered (Liberty Appendix Exh. B; Sosa Decl. ¶¶ 13, 17), Peters'
14 fees of \$178,305 are approved as reasonable.

15 **Hildreth.** Hildreth's work focuses on municipal finance and public management. Hildreth
16 "provided consultation and testimony on: "(1) the Town of Apple Valley's municipal finances, and (2)
17 the Town's historical and current management of the Town's general fund and enterprise funds."
18 (Soneff Decl. ¶¶ 549-550.) When the invoices related to Hildreth's work and the work performed by
19 Analysis Group as outlined in the Sosa declaration is considered (Liberty Appendix Exh. C; Sosa Decl.
20 ¶¶ 21, 25), Hildreth's fees of \$794,119.86 are approved as reasonable.

21 **Hanemann.** Hanemann's hourly billing rate is \$750. He provided consultation and testimony
22 on "(1) expected financial consequences to Apple Valley water customers and the Town of Apple
23 Valley in the event that Liberty Utilities Apple Valley water system is acquired by eminent domain;
24 (2) financial analyses conducted by the Town of Apple Valley concerning acquisition of Liberty's
25
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27
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1 water system; (3) reasonableness of Liberty Apple Valley's water rates and comparisons of the average
2 water service bill for Liberty Apple Valley customers and average water bills for customers of nearby
3 government-owned systems; and (4) comparison of economic regulation of investor-owned water
4 utilities." (Soneff Decl. ¶ 547.) Hanemann's time was billed through Analysis Group. (Sosa Decl. ¶
5 7; Liberty Appendix Exh. A.) Analysis Group provided support to Hanemann on tasks associated with
6 his analysis of economic issues related to the Apple Valley Water System. (Sosa Decl. ¶ 2.)

7
8 Of the \$1,629,558.50 sought for Hanemann's fees, the amount of time billed by Hanemann
9 totals \$433,125, and the remainder was billings by Analysis Group personnel. According to Sosa, he
10 led the team in support of Hanemann's work. Sosa billed \$685 per hour in 2018, \$700 per hour in
11 2019, and \$725 per hour in 2020. Tracy Offner also was a key member of this team, with an advanced
12 degree and more than 10 years' experience with Analysis Group, developing complex economic and
13 financial analysis for a variety of litigation matters, billing at \$455 per hour in 2018, \$480 per hour in
14 2019, and \$530 per hour in 2020. Also providing assistance was Senthuran Raveendranathan, a
15 manager with Analysis Group holding an advanced degree and nearly 10 years' experience, billing at
16 rates of \$390 in 2018, \$420 in 2019, and \$485 in 2020. Sosa generally states that also assisting
17 Hanemann were several analyst and senior analysis whose billing rates were between \$320 and \$290
18 per hour, depending on year and title. (Sosa Decl. ¶ 6.)

19
20 The Town discusses that the hours billed by Hanemann represent are 15.72 percent of the
21 3,674.4 hours Analysis Group billed as it relates to Hanemann. (MacVey Decl. ¶¶ 18-19 and Exh. E.)
22 At times, Analysis Group invoices show 12 billers in relation to Hanemann's work. (See, e.g., Liberty
23 Appendix Exh. A, Invoice for period ending September 30, 2019.)

24
25 In general, it is reasonable for an expert to rely on staff support where work can be done at a
26 lower, more cost efficient rate. While the court finds it reasonable for Hanemann to rely on support
27 staff in the development of his expert opinion, the amount of support staff and fees incurred as it relates
28

to Hanemann are not sufficiently supported. Hanemann's trial testimony submitted by the Town refers to working with three people at Analysis Group, but in the excerpted testimony provided he also discussed reliance on Analysis Group for putting together items such as spreadsheets and tables. (MacVey Decl. Exh. F.)

Even though it is reasonable to conclude that additional support was provided by senior and other analysts as part of a team, Sosa's declaration does not provide sufficient foundation in support of the number of senior analysts and analysts billing on particular invoices in light of the number of hours billed. In comparison, the Hildreth invoices often included Sosa, a manager, an associate, and a senior analyst, or if none, an analyst or two. The court concludes that Hanemann billings that include more than one associate beyond Raveendranathan, more than one senior analyst, and more than one analyst are not sufficiently supported to demonstrate the reasonableness and cost-effectiveness of the fees incurred. Therefore, for each Hanemann invoice in which more than one associate, senior analyst, and analyst is found, the court disallows the lowest billed amounts for each additional biller, resulting in the following reductions:

Invoice Date	Total Amount Disallowed	Specific Fees Cut
Invoice ending Oct. 31, 2018	\$5,874	\$5,874 (Pilgram)
Invoice ending May, 31, 2019	\$33,198	\$1,320 (Clowers) \$165 (Rijhsinghani) \$31,713 (Yin)
Invoice ending July 31, 2019	\$57,189	\$28,380 (Bowersox) \$28,809 (Yin)
Invoice ending Aug. 31, 2019	\$77,863.50	\$1,540.50 (Polley) \$1,050 (Rijhsinghani) \$36,003 (Dennis) \$5,148 (Krovetz) \$34,122 (Yin)

1 Invoice Sept. 30, 2019	\$126,122	\$20,698 (Polley) \$3,430 (Rijhsinghani) \$35,805 (Dennis) \$12,012 (Warchol) \$38,049 (Bowersox) \$9,120 (Conteh) \$7,008 (McKelvey Chavez)
8 Invoice ending Nov. 30, 2019	\$11,946	\$11,946 (Yin)
9 Invoice ending Dec. 31, 2019	\$2,128	\$553 (Polley) \$1,575 (Rijhsinghani)
11 Invoice ending Jan. 31, 2020	\$724.50	\$724.50 (Yin)
12 TOTAL	\$315,045	

13
14 The court disallows Hanemann's expert fees in the amount of \$315,045.

15 **Amir.** Amir's work focuses on consumer psychology, marketing, and customer decision-
16 making and behavior. He provided "consultation and testimony (at deposition) on his analysis and
17 evaluation of customer surveys conducted with respect to water service provided by Liberty to the
18 Town of Apple Valley." (Soneff Decl. ¶ 540.) According to Soneff, although Amir did not testify at
19 trial, Liberty used his analysis and evaluation of the customer surveys to prepare for trial and aid in its
20 cross-examination of the Town's expert witness J.R. DeShazo on that topic. (*Ibid.*)

22 Liberty seeks \$198,902.50 in expert fees for Amir. Sosa asserts that Amir was asked to
23 evaluate a series of customer satisfaction surveys conducted by J.D. Power relating to Liberty Apple
24 Valley water utility; evaluate the methodology, response levels, and results of the surveys; and evaluate
25 the reliability of customer perception results claimed by J.D. Power. (Sosa Decl. ¶ 30.) He states that
26 as part of this work, Amir and Analysis Group reviewed the J.D. Power Water Utilities Surveys and
27 relevant research in the marketing literature, including consumer perception and customer satisfaction.
28

1 “At Professor Amir’s direction, AGI collected qualitative and quantitative results from the J.D. Power
2 Surveys. Professor Amir and AGI reviewed the collected survey results. (Sosa Decl. ¶ 32.) The
3 Analysis Group invoices submitted include work related to research and analysis of J.D. Power
4 surveys, including development of such analysis at Amir’s direction. (Liberty Appendix Exh. D.)

5 But the Town presents evidence of Amir’s deposition testimony that supports a conclusion that
6 Amir’s knowledge of J.D. Powers was limited and that he could not offer an opinion one way or the
7 other on whether J.D. Power does a good job. He also admitted that he did not do any research on J.D.
8 Powers itself. (MacVey Decl. ¶¶ 22-23 and Exh. G.)

9
10 A designated expert who does not testify at trial may recovery fees “[s]o long as the expert
11 aided in the preparation for trial and the expert was a potential witness.” (*Evers v. Cornelson* (1984)
12 163 Cal.App.3d 310, 317.) When Amir’s deposition testimony is considered, Amir’s expertise
13 regarding customer surveys, in particular those by J.D. Power as outlined by Sosa, is without support.
14 Therefore, the court denies the expert witness fees of Amir in the amount of \$198,902.50, as without
15 reasonable support that this designated expert aided in the preparation for trial.
16

17 **Bruno and Sandoval.** Bruno has over 25 years’ experience in the water utility industry, and
18 prior to her retirement in 2017, was responsible for operational financial, and environmental
19 performance of three Liberty Utilities in California, including Liberty Utilities (Apple Valley Ranchos)
20 and Liberty Utilities (Park Water) Corp. (Soneff Decl. ¶¶ 542.) Bruno provided consultation and
21 testimony on: “(1) Liberty’s operations in Apple Valley, including water quality, customer service,
22 staffing, operations of the water system, and water system maintenance and replacement; (2) operations
23 and oversight of regulated (investor-owned) water utilities as compared to non-regulated (publicly-
24 owned) water utilities; and (3) industry standards and needs concerning maintenance and replacement
25 of water systems infrastructure.” (Soneff Decl. ¶ 543.) Soneff states that Liberty paid her \$118,376.86.
26
27 (*Ibid.*)
28

1 As for Sandoval, an Associate Law Professor at Santa Clara University School of Law and a
2 former commissioner of the PUC from 2011 to 2017, Sandoval provided consultation and testimony
3 “on the procedures of California Public Utilities Commission regulation of investor-owned water
4 companies, and the impacts and safeguards of such on the provision of utility services to customers
5 served by investor-owned utilities.” (Soneff Decl. ¶¶ 555-556.) Soneff states that Liberty paid her
6 \$126,064.75. (Soneff Decl. ¶ 556.)

7
8 The Town argues that no invoices are provided for these experts. It also raises the issue of
9 Bruno’s prior employment, contending her testimony was in part as a percipient witness and in part as
10 a designated expert. (MacVey Decl. ¶ 25.) As for Sandoval, the Town asserted a standing objection
11 to her testimony as not the proper subject of expert testimony. (MacVey Decl. ¶ 26 and Exh. I.)

12 In response, Liberty does not provide documentation or explanation in support of these fees.
13 From Soneff’s Declaration, Bruno charged \$300 per hour and Sandoval charged \$700 per hour.
14 (Soneff Decl. ¶ 409.) But insufficient information is provided in support of the 305 hours Bruno
15 appeared to bill and 180 hours that Sandoval appeared to bill given the amounts sought and hourly
16 rates charged. While detailed time records of expert are not required and an award may be based on
17 “less than perfect billing records, at the very least the declaration submitted in support of expert fees
18 should describe the hourly rate and work done. (*Michelson v. Camp* (1999) 72 Cal.App.4th 955, 976
19 [finding sufficient a declaration submitted in support of expert fees that explained witness’s hourly fee
20 and work done].)

21
22 But the court finds the information provided insufficient of demonstrating the work done in
23 support of the fees sought, aside from Soneff generally referring to these experts providing consultation
24 and testimony on the topics described. Therefore, the court awards these experts 40 hours for their
25 preparation and appearances at deposition and trial in the total amount of \$12,000 for Bruno and
26 \$28,000 for Sandoval. The court denies the Bruno expert fees in the amount of \$106,376.86, and the
27 Sandoval expert fees in the amount of \$98,064.75. Liberty failed to provide sufficient documentation
28

1 and explanation in support of the total amount of fees sought by these experts for the court to evaluate
2 the reasonableness of the amounts sought.

3 **Exhibit Costs**

4 On the Memorandum of Costs, Liberty seeks \$536,748.38 for Item 12, "Models, enlargements,
5 and photocopies of exhibits." As part of its opposition to Liberty's motion for litigation expenses, the
6 Town argues that of the amount, \$391,536.80 sought for exhibits is unreasonable (excluding
7 OnDemand Group, but including Magna Legal and Summit Reprographics). It argues that given
8 Liberty's exhibits admitted at trial, this represents a cost of \$776.86 per admitted exhibit. (MacVey
9 Decl. ¶ 27 and Exh. J.) Its expert O'Connor opines that only part of the electronic graphics used at
10 trial as billed by On Demand Group, LLC is reasonable and recommends \$75,000 for On Demand's
11 services. (O'Connor Decl. ¶ 267.) But the Town's opposition excluded On Demand Group from its
12 argument that exhibit costs are unreasonable. O'Connor also opines that \$125,000 is the upper amount
13 for the reasonableness of these costs (O'Connor Decl. ¶ 268), but the basis for his conclusion is unclear.
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16 With respect to costs, the Town did not file a motion to tax costs. In a footnote, the Town
17 asserts that by stipulation and order dated December 3, 2021, Liberty, the Town, and the court agreed
18 that the Town's opposition as a single filing would equate to a motion to tax costs under California
19 Rules of Court, rule 3.1700(b)(1). They also agreed that Liberty would only need to file a single reply.
20 (Opp. p. 5, fn. 1.)

21 On reply, Liberty argues that the Town's objection to exhibit costs cannot be considered
22 because the Town failed to file a motion to tax costs. It argues that the Town's footnote of reason it
23 was excused from filing a motion to tax costs is without merit. Liberty correctly points out that the
24 stipulation provided for the Town to file and serve opposition to Liberty's motion for litigation
25 expenses *and* a motion to tax costs. A singular filing was not contemplated.
26

27 At the hearing, the Town's counsel admitted that the stipulation provided for it to file a motion
28

1 to tax costs and the Town agreed it would not file a reply. The Town argued that if the court considers
2 what it filed, an opposition to Liberty's motion for litigation expenses and Memorandum of Costs,
3 Liberty's argument is one of form over substance, because the parties were contemplating one round
4 of filings and the Town was not going to reply to a motion to tax costs.

5 The Town's assessment of reason it did not separately file a motion to tax costs in light of its
6 agreement to waive a reply is reasonable under the circumstances. The Town asserted its objection to
7 the exhibit costs by the parties' February 28, 2022 deadline. The court views the issue as one of form
8 over substance and there is no showing Liberty was prejudiced by the Town's combined filing.
9 Therefore, the court considered the Town's objection to exhibit costs.

11 Code of Civil Procedure section 1033.5, subdivision (a)(13), provides costs for "[m]odels, the
12 enlargements of exhibits and photocopies of exhibits, and the electronic presentation of exhibits,
13 including costs of rental equipment and electronic formatting, may be allowed if they were reasonably
14 helpful to aid the trier of fact." The costs allowed under Code of Civil Procedure section 1267.710,
15 generally are limited to items recoverable as court costs in ordinary civil action under Code of Civil
16 Procedure section 1033.5. (*Ferrell v. County of San Diego* (2001) 90 Cal.App.4th 537, 543-544.)

18 On reply, Liberty argues that these costs are comprised of three parts: (1) actual photocopying
19 costs for exhibits \$47,759.46; (2) electronic presentation of exhibits at trial by On Demand Group
20 (\$145,211.58); and (3) trial graphics and blow-ups by Magna Legal Services (\$343,777.34). It states
21 the first two categories are explicitly permitted by statute and case law, citing *Bender v. County of Los*
22 *Angeles* (2013) 217 Cal.App.4th 968, 990 (approving trial technician costs). But in light of the Town's
23 opposition excluding the On Demand costs from this issue, the On Demand costs were not considered
24 at issue. As for \$47,759.46 for photocopying exhibits, given the court's observations of the number of
25 exhibits and binder copies, the amount of expenses for Summit Reprographics is not demonstrated to
26 be unreasonable.
27
28

1 For the Magna Legal Services costs, Liberty states the \$343,777.34 was included for trial
2 graphics and blow-ups. It contends that labor to create trial exhibits and electronic evidence is
3 recoverable. But the Town is not contesting whether the cost is recoverable, it contends the amount
4 sought is unreasonable when the number of exhibits is considered. In light of the court's observations
5 of the trial graphics and blow-ups, and considering the itemization of these costs on the Memorandum
6 of Costs, the court disallows \$61,209.84 in costs. Trial initially was set for September 30, 2019,
7 continued on September 16, 2019 to October 15, 2019, and again continued at various dates in October
8 to its eventual start date of October 22, 2022. Given the dates of the costs incurred, it is not
9 demonstrated that costs before August 30, 2019 or after February 19, 2021 are reasonably related to
10 expenses for trial graphics and blow-ups for the trial.

12 **Ruling**

13 Liberty Utilities (Apple Valley Ranchos Water) Corp.'s motion for litigation expenses is
14 granted in part. Liberty is entitled to recover litigation expenses in the total amount of \$12,392,632.09,
15 which consists of attorney's fees in the amount of \$10,034,673.10 (including fees sought through
16 March 21, 2022), plus expert witness fees in the amount of \$2,357,958.99. The court denies Liberty's
17 requested attorney's fees in the amount of \$1,301,551.40, and expert witness fees in the amount of
18 \$718,389.11 for the reasons explained above.

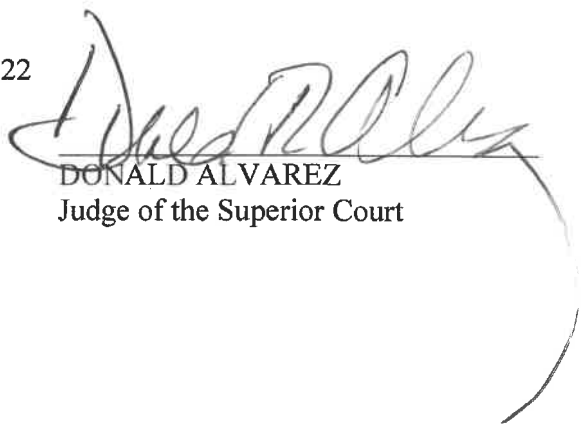
20 The court construes the Town of Apple Valley's opposition to include a motion to tax costs
21 related to Liberty's Memorandum of Costs seeking \$536,748.38 related to "Models, enlargements, and
22 photocopies of exhibits." Having observed the trial, number of exhibits, and use of trial graphics and
23 blowups at trial, the court grants the Town's motion in part and taxes costs in the total amount of
24 \$61,209.84. Therefore on the item of "models, enlargements, and photocopies of exhibits," the court
25 allows \$475,538.54.

28 ///

1 Therefore, the court awards Liberty litigation expenses and costs in the total amount of
2 \$13,221,562.54, consisting of:

3	Attorney's Fees	\$10,034,673.10
4	Expert Witness Fees	\$2,357,958.99
5	Costs	<u>\$ 828,930.45</u>
6	TOTAL	\$13,221,562.54

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15 Dated this 2ND day of AUGUST, 2022

16 
17 DONALD ALVAREZ
18 Judge of the Superior Court
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1 **SUPERIOR COURT OF CALIFORNIA**
2 **COUNTY OF SAN BERNARDINO, SAN BERNARDINO JUSTICE CENTER**

3 **IN THE MATTER OF:** TOWN OF APPLE VALLEY, Plaintiff
4 v

5 APPLE VALLEY RANCHOS WATER COMPANY; et al., Defendant

6 **CASE NO.:** CIVDS1600180

7 **PROOF OF SERVICE BY MAIL**

8 The undersigned hereby declares: I am a citizen of the United States of America, over the age of eighteen
9 years, employed in the above-named county, and not a party to nor interested in this proceeding. My
10 business address is 247 W. 3rd St., San Bernardino, California 92415. I am a Deputy Clerk of said County
and on the date shown below, served a copy of the following:

11 **RULING ON DEFENDANT LIBERTY UTILITIES MOTION FOR AWARD OF LITIGATION EXPENSES**

12 ☒ Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown
13 above, mailed to the interested parties addressed as shown below:

14 ☐ By Hand Delivery, I caused such document to be served on all parties to this action to the interested
parties addressed as shown below:

15 **CHRISTOPHER LEE CARPENTER,**
16 **ATTORNEY**
P.O. Box 1028
Riverside, CA 92502

SULLIVAN, WORKMAN & DEE
600 North Rosemead Blvd., Suite 209
Pasadena, CA 91107

17 **MANNAT, PHELPS & PHILLIPS, LLP**
18 11355 West Olympic Blvd.
Los Angeles, CA 90064

HILL, FARRER & BURRILL, LLP
300 S. Grand Ave., 37th Floor
1 California Plaza
Los Angeles, CA 90071-3147

19 **BEST BEST & KRIEGER**
20 3390 University Ave., 5th Floor
21 P.O. Box 1028
22 Riverside, CA 92502

23 At the time of mailing this notice there was regular communication between the place of mailing and the
place(s) to which this notice was addressed.

24 I declare under penalty of perjury the foregoing to be true and correct.

25 DATED: August 4, 2022

26 BY: 
Kathleen Mullaney, Administrative Assistant II