



San Diego County Water Authority

4677 Overland Avenue • San Diego, California 92123-1233
(858) 522-6600 FAX (858) 522-6568 www.sdcwa.org

April 13, 2015

Randy Record and
Members of the Board of Directors
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

MEMBER AGENCIES

Carlsbad
Municipal Water District
City of Del Mar
City of Escondido
City of National City
City of Oceanside
City of Poway
City of San Diego
Fallbrook
Public Utility District
Helix Water District
Lakeside Water District
Olivenhain
Municipal Water District
Otay Water District
Padre Dam
Municipal Water District
Camp Pendleton
Marine Corps Base
Rainbow
Municipal Water District
Ramona
Municipal Water District
Rincon del Diablo
Municipal Water District
San Dieguito Water District
Santa Fe Irrigation District
South Bay Irrigation District
Vallecitos Water District
Valley Center
Municipal Water District
Vista Irrigation District
Yuima
Municipal Water District
**OTHER
REPRESENTATIVE**
County of San Diego

RE: Board Memo 8-1: Approve resolutions fixing and adopting a Readiness-to-Serve Charge and a Capacity Charge for calendar year 2016 - OPPOSE

Chair Record and Members of the Board,

Copies of the following letters (without attachments) are attached:

- 1) April 8, 2014 letter from Dennis Cushman to Dawn Chin, Clerk of the Board RE: Board Memo 8-1 - Approve proposed biennial budget for fiscal years 2014/15 and 2015/16, proposed ten-year forecast, proposed revenue requirements for fiscal years 2014/15 and 2015/16, and recommended water rates and charges to be effective on January 1, 2015 and January 1, 2016; and transmit the General Manager's Business Plan Strategic Priorities for FY 2014/15 and 2015/16 - COMMENTS ON PROPOSED WATER RATES AND CHARGES (FOR 2015 AND 2016); and
- 2) April 8, 2014 letter from Dennis Cushman to Jeff Kightlinger RE: April 8, 2014 Board Meeting, Board Memo 8-1 - Approve proposed biennial budget for fiscal years 2014/15 and 2015/16, proposed ten-year forecast, proposed revenue requirements for fiscal years 2014/15 and 2015/16, and recommended water rates and charges to be effective on January 1, 2015 and January 1, 2016; and transmit the General Manager's Business Plan Strategic Priorities for FY 2014/15 and 2015/16 - REQUEST TO CONTINUE BOARD ACTION ONE MONTH, UNTIL THE MAY BOARD MEETING, TO ALLOW AN OPPORTUNITY FOR REVIEW OF INFORMATION PROVIDED TO THE BOARD OF DIRECTORS ON APRIL 4, 2014, AT 4:03 PM; IN THE ALTERNATIVE - OPPOSE.

A public agency providing a safe and reliable water supply to the San Diego region

The Water Authority requests inclusion of this letter and the attached letters and each and every attachment provided to MWD on April 8, 2014, in the record of proceedings relating to the actions and resolutions to fix and adopt Readiness-to-Serve (RTS) Charge and a Capacity Charge effective January 1, 2016, based on the rates and charges adopted by the Board on April 8, 2014. MWD's Engineer's Report dated April 2015 and 2014 cost of service reports are lacking a reasonable basis to support the RTS and Capacity Charges being imposed on the Water Authority for calendar year 2016, in that they fail to identify either the benefit of each facility or project to be financed with RTS revenues or the recipient of that benefit. Declarations by the Chief Financial Officer and Board of Directors in resolutions are not a sufficient factual or legal basis for the assessment of the RTS and Capacity Charges and are, in fact, contrary to testimony provided by MWD itself in the Water Authority litigation presently pending against MWD, in which MWD's cost allocations and rates have already been determined to violate the common law, Govt. Code Section 54999.7(a), the Wheeling Statute and Proposition 26. The Water Authority also requests inclusion of the April 2, 2015 trial testimony of Devendra Upadhyay in the record of proceedings relating to the Board's actions and resolutions to fix and adopt the RTS and Capacity Charges.

For these reasons, we OPPOSE Board Memo 8-1.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director

Attachments:

1. Letter to Dawn Chin re: Board Memo 8-1, dated April 8, 2014
2. Letter to Jeff Kightlinger re: Board Memo 8-1, dated April 8, 2014
3. Trial testimony of Devendra Upadhyay, dated April 2, 2015



San Diego County Water Authority

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HAND DELIVERED

April 8, 2014

Dawn Chin, Clerk of the Board
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

MEMBER AGENCIES

Carlsbad
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook
Public Utility District

Helix Water District

Lakeside Water District

Oliverain
Municipal Water District

Otay Water District

Padre Dam
Municipal Water District

Camp Pendleton
Marine Corps Base

Rainbow
Municipal Water District

Ramona
Municipal Water District

Rincon del Diablo
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center
Municipal Water District

Viata Irrigation District

Yuima
Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

RE: April 7, 2014 Finance and Insurance Committee Meeting
Board Memo 8-1 – Approve proposed biennial budget for fiscal years 2014/15 and 2015/16, proposed ten-year forecast, proposed revenue requirements for fiscal years 2014/15 and 2015/16, and recommended water rates and charges to be effective on January 1, 2015 and January 1, 2016; adopt resolutions fixing and adopting water rates and charges for 2015 and 2016; and transmit the General Manager's Business Plan Strategic Priorities for FY 2014/15 and 2015/16 – **COMMENTS ON PROPOSED WATER RATES AND CHARGES (FOR 2015 AND 2016)**

Dear Ms. Chin:

Accompanying this letter are a CD containing a copy of all of the documents listed in the attached Index, "Documents San Diego County Water Authority Requests be Included in the Administrative Record for Setting of 2015-2016 MWD Rates, Part II" (a copy is marked as Attachment 1 to this letter). The documents on the CD are comprised solely of prior correspondence between the San Diego County Water Authority and MWD.

Also attached are copies of the following letters and information:

1. Letter from Marcia Scully to Dan Hentschke dated March 19, 2014 RE: Response to Request for Information Dated February 28, 2014 (a copy is marked as Attachment 2 to this letter).
2. Letter from Marcia Scully to Dan Hentschke dated April 4, 2014 RE: Further Response to Request for Information Dated February 28, 2014 (a copy is marked as Attachment 3 to this letter).
3. Email transmittal of the April 4, 2014 information to the MWD Board of Directors dated April 4, 2014, transmitted at 4:03 PM (a copy is marked as Attachment 4 to this letter).
4. Government Finance Officers Association, Best Practice, Long-Term Financial Planning (2008) (BUDGET) (a copy is marked as Attachment 5 to this letter) and Overview of the Characteristics of Effective Financial Planning Documents, which may be found at the following link:
http://www.gfoa.org/index.php?option=com_content&task=view&id=366.
5. Public meeting excerpt RE MWD's draft 2010 Integrated Resources Plan, August 10, 2010. (Attachment 6)

6. Audio files of the following MWD Finance and Insurance Committee (F&I) and Board meetings (Board), which may be found at the following links (discussions at the April 7 F&I and April 8 board meetings are not yet available from MWD but are requested to be made part of the record):
 - a. Feb 10, 2014 F&I meeting: Proposed biennial budget and rates; setting public hearings (8-1) http://mwdh2o.granicus.com/MediaPlayer.php?view_id=29&clip_id=3517
 - b. Feb 11, 2014 Board meeting: Proposed biennial budget and rates; setting public hearings (8-1) http://mwdh2o.granicus.com/MediaPlayer.php?view_id=12&clip_id=3515
 - c. Feb 25, 2014 F&I meeting: Proposed biennial budget and rates
http://mwdh2o.granicus.com/MediaPlayer.php?view_id=29&clip_id=3559
 - d. March 10, 2014 F&I meeting: Proposed biennial budget and rates
http://mwdh2o.granicus.com/MediaPlayer.php?view_id=29&clip_id=3620
 - e. March 11, 2014 Board meeting: public hearings
http://mwdh2o.granicus.com/MediaPlayer.php?view_id=12&clip_id=3583
 - f. April 7, 2014 F&I meeting: Approve biennial budget and rates (8-1)
 - g. April 8, 2014 Board meeting: Approve biennial budget and rates (8-1)

The Water Authority requests inclusion of this letter and its Attachments, including each and every document listed on the Index and included on the CD, in the record of the proceedings relating to the actions and resolutions for adoption and imposition of MWD's rates and charges for 2015 and 2016.

Sincerely,



Dennis A. Cushman
Assistant General Manager

Attachments

Documents San Diego County Water Authority Requests be Included in the Administrative Record for Setting of 2015-2016 MWD Rates, Part II

List of Contents

- Water Authority's Director Steiner letter re: Member Agency Willingness to Sign Take-or-Pay Contracts (August 16, 2011)
- Water Authority Delegation letter re: Board Memo 8-2: Authorize the execution and distribution of the Official Statement in connection with the issuance of the Water Revenue Refunding Bonds (April 9, 2012)
- Water Authority Delegation letter re: Agenda Item 8-8: Authorize the execution and distribution of Official Statements in connection with issuance of the Water Revenue Refunding Bonds (June 11, 2012)
- Water Authority Delegation letter re: Board Memo 8-1: Authorize the execution and distribution of the Remarketing Statement in connection with the remarketing of the Water Revenue Bonds (August 20, 2012)
- Water Authority's Director Wilson letter re: Comments on Appendix A and OS (August 29, 2012)
- Water Authority Delegation letter re: Your September 4, 2012 Letter - Comments on Appendix A to Remarketing Statement and Official Statement (October 8, 2012)
- Water Authority Delegation letter re: Board Memo 8-1: Authorize the Execution and Distribution of the Official Statement in Connection with the Issuance of the Water Revenue Refunding Bonds (November 5, 2012)
- Water Authority Delegation letter re: Board Memo 8-1: Authorize the execution and distribution of the Official Statement in connection with the issuance of the Water Revenue Refunding Bonds (February 11, 2013)
- Water Authority Delegation letter re: Board Memo 8-3: Authorize the execution and distribution of the Official Statement in connection with the issuance of the Special Variable Rate Water Revenue Refunding Bonds (May 13, 2013)
- Water Authority Delegation letter re: Board Memo 8-5: Authorize the execution and distribution of the Official Statement in connection with issuance of the Special Variable Rate Water Revenue Refunding Bonds (June 7, 2013)
- Water Authority Delegation letter re: Board Memo 8-1: Authorize the execution and distribution of Remarketing Statements in connection with the remarketing of the water Revenue Refunding Bonds (December 9, 2013)
- Water Authority letter re: Draft Long Range Finance Plan (January 5, 2011)
- Water Authority Delegation letter re: Update on Rate Refinement Discussions (Finance & Insurance Committee Item 7-a) (July 9, 2012)

- Water Authority's Director Wilson letter re: Rate Refinement Workshop (August 16, 2012)
- Water Authority Delegation letter re: Update on "Rate Refinement" (Board Information Item 7-b) (September 10, 2012)
- Water Authority Delegation letter re: Board Memo 8-3 – Approve the form of the amended and restated Purchase Order and authorize amendment of section 4122 of the Administrative Code (October 8, 2012)
- Water Authority letter re: Amended and Restated Purchase Order for System Water to be Provided by the Metropolitan Water District of Southern California ("Revised Purchase Order Form") (December 27, 2012)
- Water Authority letter re: Amended and Restated Purchase Order for System Water to be Provided by the Metropolitan Water District of Southern California (January 14, 2013)
- Water Authority Director Lewinger's letter re: Tracking Revenues from Rate Components Against Actual Expenditures (November 4, 2012)
- Water Authority Delegation letter re: Board Memo 8-1: Adopt resolutions imposing Readiness-to-Serve Charge and Capacity Charge effective January 1, 2014 – Request to Table or in the Alternative, Oppose (April 8, 2013)
- Water Authority Delegation letter re: Board Memo 8-1 – Set public hearing to consider suspending Section 124.5 of the Metropolitan Water District Act to maintain the current ad valorem tax rate (May 14, 2013)
- MWD letter re: Public Hearing scheduled pursuant to section 124.5 of the Metropolitan Water District Act (Stats. 1984, ch. 271) (May 29, 2013)
- MWD Board Memo 8-1 re: Mid-cycle Biennial Budget Review and Recommendations for Use of Reserves over Target signed by the general manager on May 30, 2013
- MWD Board Memo 8-2 re: Suspend the tax rate limitations in Section 124.5 of the Metropolitan Water District Act to maintain the ad valorem tax rate for fiscal year 2013/14 signed by the general manager on May 31, 2013
- Water Authority Delegation letter re 8-1 – Mid-cycle Biennial Budget Review and Recommendation for Use of Reserves over Target Water Rate Increases – Oppose and Request for Refund to Ratepayers of Excess Reserves and Board Memo 8-2 – Suspend the tax rate limitations in Section 124.5 of the Metropolitan Water District Act to maintain the ad valorem tax rate for fiscal years 2013/14 – Oppose (June 5, 2013)
- Water Authority Delegation letter re: Board Memo 5G-2: Adopt resolution maintaining the tax rate for fiscal year 2013/14 – Oppose (August 16, 2013)
- AFSCME letter re: October 8, 2013 Board Meeting (November 1, 2013)
- Water Authority letter re: Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (January 27, 2014)
- Mayors of 14 cities in San Diego Region letter re: MWD's calendar years 2015 and 2016 rate setting and fiscal years 2013 and 2014 over-collection (February 3, 2014)

- MWD's response letter re: Written Request for Notice Regarding Rate Setting (February 5, 2014)
- Water Authority response letter re: Renewed written request for data and proposed methodology for establishing rates and charges (February 28, 2014)
- Water Authority Delegation letter re: Metropolitan Water District Public Hearing on Suspension of Tax Rate Limitation (March 7, 2014)
- MWD response letter re: Response to Request for Information Dated February 28, 2014 (March 10, 2014)
- MWD letter re: Response to Request for Information Dated February 28, 2014 (March 19, 2014)
- MWD letter re: Further Response to Request for Information Dated February 28, 2014 (April 4, 2014)
- Water Authority Delegation letter re: KPMG Audit Report of MWD's Basic Statements for Years ended June 30, 2011 and 2010 (October 25, 2011)
- Water Authority letter re: San Diego County Water Authority's Annexation (March 13, 2012)
- Water Authority Delegation letter re: Adoption of 2010 Integrated Resources Plan - Oppose (October 11, 2010)
- Water Authority Delegation letter re: Board Memo 8-3 – Adjustments to Metropolitan's Water Supply Allocation Plan Formula; Request to Defer Action Pending Board Workshop (September 9, 2011)
- Water Authority Delegation letter re: Water Planning and Stewardship Committee items 6a, 6b, and 6d (October 7, 2011)
- Water Authority Delegation letter re: SB 60 Annual Public Hearing and Report to the Legislature Regarding Adequacy of MWD's Urban Water Management Plan; Request to Include Information in Report to Legislature (December 13, 2011)
- Water Authority Delegation letter re: Board Memo 7-2: Authorize execution of Memorandum of Understanding for the greater Los Angeles County Region Integrated Regional Water Management (IRWM) Plan leadership committee and join other IRWM groups in our service area if invited by member agencies (December 10, 2012)
- Water Authority Delegation Letter re: SB 60 Annual Public Hearing and Report to the Legislature Regarding Adequacy of MWD's UWMP; Request to Include Information in Report to Legislature (December 10, 2012)
- Water Authority Delegation Letter re: Board Item 9-1 – Proposed Foundational Actions Funding Program (March 7, 2013)
- Water Authority Delegation Letter re: Board Item 8-4: Approve Foundational Actions Funding Program -- OPPOSE (April 8, 2013)

- Water Authority Delegation letter re: Board Memo 7-3: Authorize entering into an exchange and purchase agreement with the San Gabriel Valley Municipal Water District (August 19, 2013)
- Water Authority Delegation letter re: Board Memo 8-2: Authorize staff to enter into funding agreements for Foundational Actions Funding Program proposals - Oppose (September 10, 2013)
- Residents for Sustainable Mojave Development letter re: Metropolitan Water District's Role in Approving the Cadiz Valley Water Conservation, Recovery and Storage Project (October 4, 2013)
- Water Authority Delegation letter re: Board Memo 8-3- Authorize (1) agreement with the State Water Contractors, Inc. to pursue 2014 Sacramento Valley water transfer supplies; and (2) \$5 per acre-foot initial administrative deposit not to exceed \$500,000 – Support with Reservation of Rights to object to cost allocation (October 4, 2013)
- Water Authority Delegation letter re : Board Letter 8-1 - Authorize amendment to Metropolitan's Cyclic Storage Agreement with Upper San Gabriel Valley Municipal Water District and the Main San Gabriel Basin Watermaster – Request to Table or in the Alternative to Oppose (October 8, 2013)
- Water Authority letter re: Foundational Actions Funding Program Agreement (November 13, 2013)
- Water Authority Delegation letter re: SB 60 Report – Water Planning and Stewardship Committee Public Hearing (December 9, 2013)
- Water Authority Delegation letter re: Board Memo 8-6 – Consolidated Agreement for Chino Basin Desalination Program – Oppose (June 13, 2011)
- Water Authority Delegation letter re: Board Item 8-3 –Oppose: Authorize entering into a Local Resources Program Agreement with Municipal Water District of Orange County and the city of San Clemente for the San Clemente Recycled Water System Expansion Project (June 11, 2012)
- Water Authority Delegation letter re: Board Item 7-1 –Oppose: Authorize entering into a Local Resources Program Agreement with Municipal Water District of Orange County and El Toro Water District for the El Toro Recycled Water System Expansion Project (August 20, 2012)
- Water Authority Delegation letter re: Board Item 7-1 –Oppose: Authorize entering into a Local Resources Program Agreement with Three Valleys Municipal Water District and California State Polytechnic University, Pomona, for the Cal Poly Pomona Water Treatment Plant (December 10, 2012)
- Water Authority Delegation letter re: Board Item 7-4 –Oppose: Authorize entering into a Local Resources Program Agreement with Calleguas Municipal Water District and Camrosa Water District for the Round Mountain Water Treatment Plant (February 11, 2013)

- Water Authority Delegation letter re: Board Item 7-2 –Oppose: Authorize entering into a Local Resources Program Agreement with the city of Long Beach and Water Replenishment District of Southern California for the Leo J. Vander Lands Water Treatment Facility Expansion Project (May 10, 2013)
- Water Authority Delegation letter re: Board Item 7-1 –Oppose: Authorize entering into a Local Resources Program Agreement with the city of Anaheim for the Anaheim Water Recycling Demonstration Project (July 5, 2013)
- Water Authority Delegation letter re: Board Item 7-4 –Oppose: Authorize entering into a Local Resources Program Agreement with Eastern Municipal Water District for the Perris II Brackish Groundwater Desalter (October 4, 2013)
- Water Authority Director Steiner letter re: August 2010 Board Memo 9-1, MWD Water Conservation Program (August 16, 2010)
- Water Authority letter re: Metropolitan’s Draft Long Term Conservation Plan (November 29, 2010)
- Water Authority letter re: Comments on Long Term Conservation Plan Working Draft Version 11 (July 20, 2011)
- Water Authority letter re: Turf Replacement Grant Programs (November 23, 2011)
- Water Authority Delegation letter re: Board Memo 8-4 – Oppose: Authorize changes to water conservation incentives (subsidies) as described (May 7, 2012)
- Water Authority Delegation statement re: Item 7-5: Adopt resolutions to (1) support applications and (2) authorize General manager to accept funding and enter into contracts with the Bureau of Reclamation for WaterSMART grant funding if awarded (February 11, 2013)
- Water Authority Delegation letter re: Board Memo 8-3 – Oppose: Authorization to implement New Conservation Program Initiatives (September 9, 2013)
- Water Authority Delegation letter re: Board Memo 8-2 – Authorize \$3 million for an On-Site Retrofit Pilot Program: Table Pending Development of Program Criteria and Cost of Service Analysis, or in the Alternative, Oppose and Board Memo 8-7 – Authorize an increase of \$20 million for conservation incentives and outreach: Oppose Unless Amended to Allow the Water Authority to Receive Program Benefits and Comply with Cost of Service Requirements (February 10, 2014)
- Water Authority Delegation letter re: Board Memo 8-3 – Table Pending Receipt of Additional Information or in the Alternative, Oppose: Authorize entering into a Water Savings Incentive Program (WSIP) Agreement with Altman’s Specialty Plants, Inc. to provide financial incentives for a water use efficiency project (March 10, 2014)
- Water Authority Delegation letter re: Board Memo 5-1 – Sale of discounted water Program (April 25, 2011)
- MWD response letter re: Response to April 25, 2011 letter on Board Memo 5-1 – Sale of Discounted Water (May 4, 2011)

- Water Authority Delegation letter re: Board Memo 5-1 Sale of Discounted Water (May 6, 2011)
- Water Authority Director Lewinger re: Comments and Questions on Board Memo 9-2 – Update on Replenishment Service Program (September 12, 2011)
- Water Authority Delegation letter re: Board Memo 8-8 - Approve Policy Principles for a Replenishment (Discounted Water) Program (November 4, 2011)
- Water Authority Delegation letter re: Board Memo 9-1 - Review Options for Updated Replenishment (Discounted Water) Program (December 12, 2011)
- Water Authority Delegation letter re: MWD Letters on Replenishment dated December 21, 2011 (January 5, 2012)
- MWD response letter re: Replenishment Workgroup Documentation (January 18, 2012)
- Water Authority Delegation letter re: Item 7-3 – Approve amendments to the Metropolitan Water District Administrative Code to current laws and practices and makes corrections (September 10, 2012)
- Testimony of Dennis Cushman, Water Authority assistant general manager, re: Water Planning and Stewardship Committee Item 6-c: oral report on QSA issues (October 9, 2012)
- Water Authority letter re: Record of September 10, 2013 Meeting of the Board of Directors of the Metropolitan Water District of Southern California - Item 8-2 (September 11, 2013)
- MWD response letter re: Record of September 10, 2013 MWD Board Meeting of the Board of Directors of the Metropolitan Water District of Southern California - Item 8-2 (September 16, 2013)
- MWD letter re: Responses to Director Questions re Ethics Workshops (November 14, 2013)
- Water Authority Delegation letter re: Applicability of MWD’s Administrative Code (December 9, 2013)
- MWD response letter re: Applicability of MWD’s Administrative Code (January 10, 2014)



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

VIA FEDERAL EXPRESS

March 19, 2014

Daniel Hentschke, Esq.
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123-1233

Re: Response to Request for Information Dated February 28, 2014

Dear Dan:

Enclosed is a DVD containing Metropolitan records provided in response to San Diego County Water Authority's (SDCWA) February 28, 2014 Public Records Act request for the "database, inputs, outputs, spreadsheets, and reports used or prepared by Metropolitan staff or consultants in the development of the recommended rates, charges, surcharges, or fees," to the extent that such material has not already been provided to Metropolitan's Board of Directors, including SDCWA's delegates. Proprietary formulas and programming code have been removed from spreadsheets, and employee names and identifying employee numbers have been redacted.

As stated in my March 10 letter, although Metropolitan disagrees with SDCWA's assertion that Government Code Section 54999.7 is applicable to Metropolitan (and SDCWA has agreed in the past that the Section does not apply to Metropolitan), Metropolitan has fully complied with Government Code Section 54999.7's requirements through the proposed budget and rates information that has been provided and will continue to be provided to the Board, member agencies and the public. As part of its regular budget-setting and rate-setting process, Metropolitan provides to the Board, member agencies and the public the detailed data and proposed methodology for the proposed rates and charges, through the budget and rate Board letters, proposed budget, costs of services studies for various rate proposals, presentations and discussions at the multiple committee and Board meetings and workshops.

The DVD contains Metropolitan Finance staff's working materials that underlie this detailed, previously-provided material. This includes drafts and calculations, and also includes materials concerning potential rate scenarios that were not presented to the Board. Metropolitan's budget-setting and rate-setting process is still in progress. The DVD contains materials through the February 25, 2014 Board budget and rate workshop and some subsequent underlying materials. As the staff continues to work on rate scenarios in response to requests from the Board and

Daniel Hentschke, Esq.
March 19, 2014
Page 2

direction from management until final adoption of the budget and rates, we will provide one or more additional productions with later records as well.

As noted in my March 10 letter, we will post this material on-line so it is available to all Metropolitan Board members, member agency staff and the public. If any Board member requests, we will also provide the material on a DVD.

Very truly yours,



Marcia Scully
General Counsel

MS:jmm

Enclosure

cc (without enclosure):

Members of the Metropolitan Board of Directors
Member Agency Managers
Jeffrey Kightlinger
Maureen Stapleton



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

April 4, 2014

Daniel Hentschke, Esq.
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123-1233

Re: Further Response to Request for Information Dated February 28, 2014

Dear Dan:

This follows up on my letter of March 19, 2014, which enclosed a DVD containing materials provided in response to San Diego County Water Authority's February 28, 2014 Public Records Act request. My March 19 letter noted that as Metropolitan's budget-setting and rate-setting process is still in progress, we would also provide one or more additional productions of later records. Enclosed is a DVD containing Metropolitan's second production of requested records. Proprietary formulas and programming code have been removed from spreadsheets.

As with Metropolitan's first production, we have posted this material on-line so it is available to all Metropolitan Board members, member agency staff and the public. If any Board member requests, we will also provide the material on a DVD.

Very truly yours,

A handwritten signature in cursive script that reads "Marcia".

Marcia Scully
General Counsel

MS:jmm

Enclosure

cc: (without enclosure)
Members of the Metropolitan Board of Directors
Member Agency Managers
Jeffrey Kightlinger
Maureen Stapleton

From: Office of the General Counsel
Sent: Friday, April 04, 2014 4:03:02 PM (UTC-08:00) Pacific Time (US & Canada)
Cc: Kightlinger, Jeffrey; Lichtenberger, Julia
Subject: Further Response to San Diego County Water Authority's Request for Information Dated February 28, 2014



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Date: April 4, 2014
To: Board of Directors
Member Agency Managers
From: Marcia Scully, General Counsel
Subject: Further Response to San Diego County Water Authority's Request for
Information Dated February 28, 2014

Attached is our further response to SDCWA's Request for Information dated February 28. If you have any questions, please feel free to contact me.

This communication, together with any attachments or embedded links, is for the sole use of the intended recipient(s) and may contain information that is confidential or legally protected. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, dissemination, distribution or use of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by return e-mail message and delete the original and all copies of the communication, along with any attachments or embedded links, from your system.



BEST PRACTICE

Long-Term Financial Planning (2008) (BUDGET)

Background. Long-term financial planning combines financial forecasting with strategizing. It is a highly collaborative process that considers future scenarios and helps governments navigate challenges. Long-term financial planning works best as part of an overall strategic plan.

Financial forecasting is the process of projecting revenues and expenditures over a long-term period, using assumptions about economic conditions, future spending scenarios, and other salient variables.

Long-term financial planning is the process of aligning financial capacity with long-term service objectives. Financial planning uses forecasts to provide insight into future financial capacity so that strategies can be developed to achieve long-term sustainability in light of the government's service objectives and financial challenges.

Many governments have a comprehensive long-term financial planning process because it stimulates discussion and engenders a long-range perspective for decision makers. It can be used as a tool to prevent financial challenges; it stimulates long-term and strategic thinking; it can give consensus on long-term financial direction; and it is useful for communications with internal and external stakeholders.

Recommendation. The Government Finance Officers Association (GFOA) recommends that all governments regularly engage in long-term financial planning that encompasses the following elements and essential steps.

A long-term financial plan should include these elements.

- (1) *Time Horizon.* A plan should look at least five to ten years into the future. Governments may elect to extend their planning horizon further if conditions warrant.
- (2) *Scope.* A plan should consider all appropriated funds, but especially those funds that are used to account for the issues of top concern to elected officials and the community.
- (3) *Frequency.* Governments should update long-term planning activities as needed in order to provide direction to the budget process, though not every element of the long-range plan must be repeated.
- (4) *Content.* A plan should include an analysis of the financial environment, revenue and expenditure forecasts, debt position and affordability analysis, strategies for achieving and maintaining financial balance, and plan monitoring mechanisms, such as scorecard of key indicators of financial health.
- (5) *Visibility.* The public and elected officials should be able to easily learn about the long-term financial prospects of the government and strategies for financial balance. Hence, governments should devise an effective means for communicating this information, through either separate plan documents or by integrating it with existing communication devices.

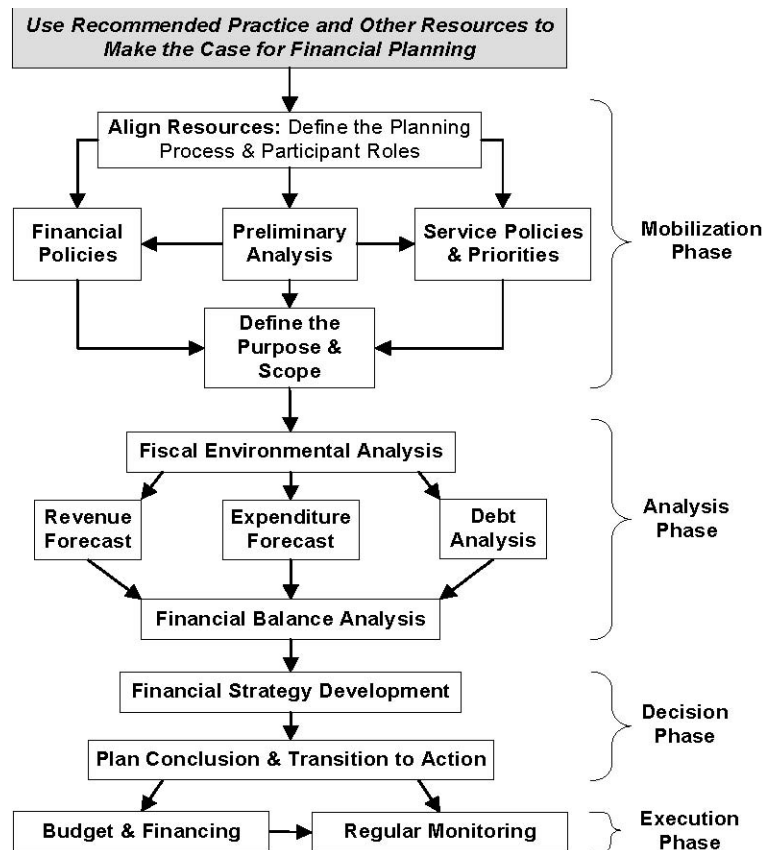
A long-term financial plan should include these steps.

- (1) *Mobilization Phase.* The mobilization phase prepares the organization for long-term planning by creating consensus on what the purpose and results of the planning process should be. The mobilization phase includes the following items.
 - a. *Alignment of Resources.* This step includes determining the composition of the project team, identifying the project sponsor, and formulating a strategy for involving other important stakeholders. This step also involves the creation of a high-level project plan to serve as a roadmap for the process.
 - b. *Preliminary Analysis.* This step helps raise awareness of special issues among planning participants, such as the board or non-financial executive staff. A scan of the financial environment is common at this point.
 - c. *Identification of Service Policies and Priorities.* Service policies and priorities have important implications on how resources will be spent and how revenues will be raised. A strategic plan or a priority setting session with elected officials could be useful in identifying service policies and priorities.
 - d. *Validation and Promulgation of Financial Policies.* Financial policies set baseline standards for financial stewardship and perpetuate structural balance, so a planning process must corroborate policies in place (as well as the organization's compliance with those policies) and also identify new policies that may be needed.
 - e. *Definition of Purpose and Scope of Planning.* The purpose and scope of the planning effort will become clear as a result of the foregoing activities, but the process should include a forum for developing and recognizing their explicit purpose and scope.

- (2) *Analysis Phase.* The analysis phase is designed to produce information that supports planning and strategizing. The analysis phase includes the projections and financial analysis commonly associated with long-term financial planning. The analysis phase involves information gathering, trend projection, and analysis as follows:
 - a. *Information Gathering.* This is where the government analyzes the environment in order to gain a better understanding of the forces that affect financial stability. Improved understanding of environmental factors should lead to better forecasting and strategizing.
 - b. *Trend Projection.* After the environment has been analyzed, the planners can project various elements of long-term revenue, expenditure, and debt trends.
 - c. *Analysis.* The forecasts can then be used to identify potential challenges to fiscal stability (e.g., "imbalances"). These could be fiscal deficits (e.g., expenditures outpacing revenues), environmental challenges (e.g., unfavorable trends in the environment), or policy weaknesses (e.g., weaknesses in the financial policy structure). Scenario analysis can be used to present both optimistic, base, and pessimistic cases.

- (3) *Decision Phase.* After the analysis phase is completed, the government must decide how to use the information provided. Key to the decision phase is a highly participative process that involves elected officials, staff, and the public. The decision phase also includes a culminating event where the stakeholders can assess the planning process to evaluate whether the purposes for the plan described in the mobilization phase were fulfilled and where a sense of closure and accomplishment can be generated. Finally, the decision phase should address the processes for executing the plan to ensure tangible results are realized.

(4) *Execution Phase*. After the plan is officially adopted, strategies must be put into action (e.g. funding required in achieving goals). The execution phase is where the strategies become operational through the budget, financial performance measures, and action plans. Regular monitoring should be part of this phase. The following diagram highlights the various long-term financial planning phases discussed in this recommended practice.



References

- GFOA Best Practice, “Financial Forecasting in the Budget Preparation Process,” 1999.
- GFOA Best Practice, “Adoption of Financial Policies,” 2001.
- GFOA Best Practice, “*Establishment of Strategic Plans*,” 2005.
- GFOA Best Practice, “*Budgeting for Results and Outcomes*,” 2007.
- GFOA Best Practice, “*Performance Management: Using Performance Measurement for Decision Making*,” 2002 and 2007.
- *Financing the Future Long-Term Financial Planning for Local Government*; GFOA, 2007.
- <http://www.gfoa.org/ltfp>. GFOA Web site containing a wealth of supporting materials for financial planning.
- <http://www.gfoa.org/services/nacslb/>. Best Practices in Budgeting Web site. See Element 9 –Develop and Evaluate Financial Options.

Approved by the GFOA’s Executive Board, February 22, 2008.

Comments by Jeffrey Kightlinger, General Manager, Metropolitan Water District of Southern California, during a public workshop held in San Diego on MWD's Integrated Resources Plan, Aug. 10, 2010.

“A quick comment on contracts. That is an interesting point. Metropolitan and all the State Water Contractors agreed to what are commonly referred to as ‘take-or-pay’ contracts. I’ve never understood the word ‘or,’ because the reality is, you pay regardless of what you take, to be honest. So it’s more like ‘pay’ and ‘sometimes take.’ But, these ‘take-or-pay’ Contractors, we have made a firm commitment to the State of California that we are going to pay half of the fixed costs of the State Water Project every single year, regardless of whether we get one drop of water from the project. There has been debate within Metropolitan that perhaps Member Agencies should do that same kind of commitment as well, so there is a certain base-load of funding and financing available for our projects. Because Member Agencies develop local resources on their own, and start using less and less of Metropolitan water. To date, that while staff thinks contracts are a terrific idea, to date, most of our board members have said ‘we’re not so sure about that.’ And, most of our Member Agencies have said ‘No. Thanks, but no thanks, because we prefer this the way it is.’ We do try to, though, keep a certain amount of our revenue stream in fixed costs, and a certain amount of our revenue stream in the water supply. But, right now it’s about 80% or more comes from the sale of water. We have about 15% in property taxes, and we’ve slowly but surely added to a fixed fee that everybody pays every single year. But that’s an ongoing debate within Metropolitan. Should people make those firm commitments going into the future? So far, the Member Agencies have opted not to. They prefer it the way it is. I think we’re going to continue to have that discussion at Metropolitan, particularly as costs increase. “Oh, and we’ll definitely take that into consideration, I definitely want to make sure that’s put into the Integrated Resources Plan.¹ Because I do believe, if we are successful – and this is something I keep telling people - if we are successful on the State Water Project – and success means a very expensive eco-system rehab project the size of what we’ve done in the Florida Everglades, and success means building a new tunnel or canal that we’re looking in the eight- to 12-billion-dollar range with the State of California - and Metropolitan coming on board to pay 25% of that cost – that’s a significant new cost that Metropolitan, the next generation of Metropolitan ratepayers will be paying. And we need to take a look at different financing mechanisms that everyone is comfortable with region-wide.”

¹Requirement for firm contractual commitments by Member Agencies to pay MWD’s State Water Project costs was not included in MWD’s adopted 2010 Integrated Resources Plan.



San Diego County Water Authority

4677 Overland Avenue • San Diego, California 92123-1233
(858) 522-6600 FAX (858) 522-6568 www.sdcwa.org

April 8, 2014

Jeff Kightlinger, General Manager and
Members of the Board of Directors
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

MEMBER AGENCIES

Carlsbad
Municipal Water District
City of Del Mar
City of Escondido
City of National City
City of Oceanside
City of Poway
City of San Diego
Fallbrook
Public Utility District
Helix Water District
Lakeside Water District
Olivenhain
Municipal Water District
Otay Water District
Padre Dam
Municipal Water District
Camp Pendleton
Marine Corps Base
Rainbow
Municipal Water District
Ramona
Municipal Water District
Rincon del Diablo
Municipal Water District
San Dieguito Water District
Santa Fe Irrigation District
South Bay Irrigation District
Vallecitos Water District
Valley Center
Municipal Water District
Vista Irrigation District
Yuima
Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

RE: April 8, 2014 Board Meeting Board Memo 8-1 – Approve proposed biennial budget for fiscal years 2014/15 and 2015/16, proposed ten-year forecast, proposed revenue requirements for fiscal years 2014/15 and 2015/16, and recommended water rates and charges to be effective on January 1, 2015 and January 1, 2016; adopt resolutions fixing and adopting water rates and charges for 2015 and 2016; and transmit the General Manager’s Business Plan Strategic Priorities for FY 2014/15 and 2015/16 – **REQUEST TO CONTINUE BOARD ACTION ONE MONTH, UNTIL THE MAY BOARD MEETING, TO ALLOW AN OPPORTUNITY FOR REVIEW OF INFORMATION PROVIDED TO THE BOARD OF DIRECTORS ON APRIL 4, 2014, AT 4:03 PM; IN THE ALTERNATIVE – OPPOSE**

Dear Mr. Kightlinger and Board Members:

We have reviewed Board Memo 8-1 and the supplemental information that was provided by MWD via Ms. Scully’s March 19, 2014 letter to Dan Hentschke and DVD, as the basis of its proposed rates and charges for 2015 and 2016. The Water Authority has not had an opportunity to review the additional information that was provided by Ms. Scully last Friday afternoon in her letter dated April 4, 2014 and an attached DVD, which states that it is in response to the Water Authority’s February 28, 2014 Public Records Act request.

Request to continue Board action one month, until the May Board meeting, to allow an opportunity for review of information provided to the Board of directors on April 4, 2014 at 4:03 PM

The information provided to the Water Authority last Friday afternoon was first requested more than two months ago, on January 27, 2014. Based upon a cursory review, there does not appear to be any reason why this information could not have been provided in a timely manner, which would have allowed for meaningful review and consideration of the information by MWD Board members, agency staff and the public. For this reason, we request that the Board continue action on the 2015 and 2016 rates (“the 2015/16 rates”) until the May 13 Board meeting.

Leaving aside for the moment that Judge Karnow has already ruled that Government Code § 54999.7 *does* apply to MWD, and leaving aside that your delivery of the data today is *not timely under the Public Records Act*, we do not understand why the MWD staff and Board of Directors would *not* want to make available all of the data and methodology MWD relies upon in setting its rates and charges. As stated earlier, in Mr. Hentschke's February 28, 2014 letter to Ms. Scully (RE: Renewed written request for data and proposed methodology for establishing rates and charges (Government Code §§54999.7 and 6250 et seq.)), we believe the "financial planning model" computer program MWD uses in setting its rates and charges should be provided in the interest of making review of the data and methodology easier to understand and more transparent. This would be a great service to the MWD member agencies and public we serve and enable it to meet the burden it now has under Proposition 26. Based upon the information that has been provided, it is not possible for MWD to meet its burden because there is insufficient data to determine the cause of the costs MWD is incurring or the relative benefits each of its member agencies and ratepayers is receiving.

The cost-of-service methodology used by MWD in support of its rates and charges violates Proposition 26, the California wheeling statute, Government Code § 54999.7 (a) and the common law

The cost-of-service methodology used to establish water rates and charges under the three rate options presented by MWD (which do not vary substantively but only provide for varying percentage increases in the proposed 2015/16 rates) in Board Memo 8-1 ("the Board Memo") is based on the very same rate structure and cost-of-service methodology that was at issue in the recent trial in San Francisco challenging the 2010-2014 rates and charges ("the rate litigation"). We are disappointed that the MWD Board has not taken a closer look at the issues and tentative decision by Judge Karnow in the rate litigation, as well as the reasons for his decision. MWD has not changed how it allocates State Water Project and Water Stewardship Rate costs; as a result, unless the trial court's ruling is reversed on appeal, the 2015/16 rates will suffer from exactly the same deficiencies as have already been determined to be unlawful in the rate litigation.

Although MWD has once again provided a lot of *paperwork* relating to the proposed rates and charges for 2015/16, it fails to present relevant or timely *factual data*, or, follow a cost-of-service process that allows costs to be allocated based on cost causation and according to the benefits received by its member agencies and ratepayers. Although the MWD Board has been told during this process that staff has allocated costs consistent with cost-of-service requirements, MWD has argued in court that *none of these requirements even applies to MWD*. This includes state constitution Article XIII C (Proposition 26), Government Code Section 54999.7 and the common law. In other words, MWD argues that all these legal requirements – *intended to ensure that ratepayers are charged fair rates for government services* – simply do not apply to MWD.

MWD's claim of immunity from cost causation requirements exposes its cost-of-service report for what it is – a pretense that portrays the impression that MWD follows cost causation principles, when it does not. Perhaps that is why MWD refuses to release its financial planning model, which would allow member agencies and the public to understand how MWD has allocated its costs. MWD's position is that its actions are subject only to the requirement that uniform rates be charged and approved by a majority of the MWD Board of Directors. This should be a cause of concern for all MWD Board members and the millions of ratepayers they collectively serve. MWD has offered no explanation why it would be in the public interest to allow MWD to charge ratepayers more than the actual cost of the services it provides.

MWD's newly created "full service exchange cost" is based on litigation strategies and "labels," not cost-of service requirements

MWD has added – without any substantive explanation or analysis – a new line item to its schedule of rates and charges for the 2015/16 rates, namely, a "Full Service Exchange Cost" (Table 2. Rates and Charges by Option, at page 5 of the Board Memo). MWD has not supported this new "rate" by any cost-of-service analysis, because none exists or could exist. In fact, until MWD's Board Memo was distributed, there was no such thing as a "Full Service Exchange Cost" rate.

The full service exchange cost rate is yet another litigation-driven invention designed to be consistent with MWD's most recent litigation theory, advanced for the first time in the objections to the court's tentative decision that MWD filed on March 27, 2014. MWD is now saying that its individual rates – which it had previously claimed were adopted for more transparency and were based on cost of service – are in fact, nothing more than "labels." It doesn't matter, MWD now argues, whether a dollar of costs or a hundred dollars of costs is assigned to any particular rate component. While obviously intended to salvage its position in the rate litigation, this argument by MWD actually supports what the Water Authority has been saying all along – that MWD's rates are arbitrary and capricious and not based on data or cost-of-service requirements.

MWD's "revenue requirements" are based on a false set of assumptions and purposely underestimate revenues, rather than on facts and data available to MWD

In the current budget and rate-setting process, MWD staff has abandoned any effort to estimate MWD's real revenue requirements. Instead, the budget and long term "projections" are based on an artificial water sales assumption of 1.75 million acre feet, which staff has said would be exceeded three out of every four years. In years when high demands are anticipated – such as during the current drought – this artificial assumption purposely under-estimates projected revenues. MWD has also purposely over-stated its costs by, for example, including costs associated with assumed delivery of State Water

Project water in volumes that MWD itself projects will not be delivered.

These budget and rate-setting practices do not conform to any industry or agency standard. To the contrary, these practices are purposely designed to put MWD in the same position it has been in over the last budget cycle: collecting hundreds of millions of dollars in revenues without any basis in cost of service and making budget and spending decisions *ex post facto*. The Board's budget and rate-setting process is broken. MWD should set its rates based on rational projections, rather than assumptions it knows are incorrect and will result in hundreds of millions of dollars in over- and under-collections.

Board Memo 8-1 shows on its face that suspension of the tax rate restriction is not now, and will not in August be "essential to the fiscal integrity of MWD"

Section 124.5 permits MWD to suspend the limitation on property tax collections if the MWD Board finds that tax revenue in excess of the restriction is "essential to the fiscal integrity" of MWD. The Board Memo states that, "if the Board decides to not suspend the tax rate restriction in August, any reduction in revenues will be made up from the R&R Fund, and projected rate increases in FY 2016/17 and 2017/18 will be 2 percent higher." Given this explanation and the massive over-collection of revenues MWD continues to plan for and impose on ratepayers through the adoption of the proposed budget and rates, suspension of the tax rate restriction cannot plausibly be "essential to the fiscal integrity" of MWD.

The General Manager's "Business Plan Strategic Priorities" include large spending priorities that have not been presented to policy committees or even to the Board as part of the budget deliberations

The Board should bring back the General Manager's "Business Plan Strategic Priorities," for discussion and deliberation by the Board of Directors. The Board has not yet voted on key issues that would be foundational to moving forward with the "priorities" being declared by the General Manager, for example, "developing procedures and structures to handle the mechanics and logistics of managing a mega-construction project." The General Manager's priorities should not exist separate and apart from the priorities that the Board establishes during the budget deliberations and in other long-range planning processes that have not yet occurred.

MWD's "10-year forecast" lacks the essential elements of long-term planning and does not constitute a long range finance plan

MWD's "10-year rate forecast" lacks both the substance and process of a long-range finance plan. The 10-year "forecast" is not based on any *data*, and does not include any planning scenarios, risk analysis or input and data from its member agencies. Instead, it describes a set of *assumed, static conditions*.

Mr. Kightlinger and Members of the Board of Directors

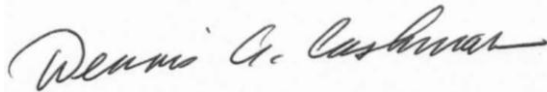
April 8, 2014

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Long range finance planning is a dynamic, fact-based process of aligning financial capacity with long-term service objectives. Forecasts of future financial capacity are used so strategies can be developed to achieve long-term sustainability in light of the stated *service objectives and financial challenges*. None of these key issues are discussed in the “projection” included in the budget, which has been unilaterally prepared and presented by MWD staff without any involvement whatsoever by the MWD Board of Directors or input or participation by the member agencies. Neither does the purported long term plan contain any scenarios and risk analyses that a real long range finance plan includes. The 10-year rate forecast that MWD labels a long range finance plan has the same attribute as its budget process – it is based on assumptions, rather than engaging in the more difficult and important process of financial planning based on best available data and articulation of service objectives.

In closing, MWD’s Board of directors is being asked by its staff to adopt a budget based upon data and assumptions it knows are incorrect, and two more years of rates based upon the same defective methodology that the court has ruled violates Proposition 26, the wheeling statutes, Government Code §54999.7 and the common law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis A. Cushman". The signature is written in dark ink on a light-colored background.

Dennis A. Cushman
Assistant General Manager

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE CURTIS E. A. KARNOW
DEPARTMENT 304

SAN DIEGO WATER AUTHORITY,)
)

Petitioner and Plaintiff,) Case No.
) CPF-10-510830 &
vs.) CPF-12-512466
)

METROPOLITAN WATER DISTRICT OF)
SOUTHERN CALIFORNIA; ALL)
PERSONS INTERESTED IN THE)
VALIDITY OF THE RATES ADOPTED BY)
THE METROPOLITAN WATER DISTRICT)
OF SOUTHERN CALIFORNIA ON APRIL)
10, 2012 TO BE EFFECTIVE JANUARY)
1, 2013 AND JANUARY 1, 2014, and)
DOES 1-10,) Pages 1 - 182
)

Respondents and Defendants.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
San Francisco Superior
San Francisco, California
Thursday, April 2, 2015

Reported By:
TARA SANDFORD, RPR, CSR #3374

JAN BROWN & ASSOCIATES
WORLDWIDE DEPOSITION & VIDEOGRAPHY SERVICES
701 Battery Street, 3rd Floor, San Francisco, CA 94111
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DEFENDANT'S WITNESSES DIRECT CROSS REDIRECT RECROSS
KIGHTLINGER, Jeff 6 30 --
(resumed)

UPADHYAH, Devendra 45 59 88 --

STAPLETON, Maureen 91 168 --

EXHIBITS

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169	5/3/10 letter	10 11
120	8/2/05 letter	68 68
175	6/30/10 letter	11 11
189	2/24/11 letter	14 14
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225	5/4/12 letter	12 13
229	10/2 letter from McCrae	15 15
230	10/15 letter from Breau	15 15
232	2/5/13 letter	17 17
234	2/15/13 letter	17 17
243	6/18/13 letter	17 17
302	7/3/06 email (EC54-547)	17 17

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EXHIBITS (continued)

358	7/7/10 letter	80	80
475	12/28/01 Draft Report Rates	95	95
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1 San Francisco, California
 2 Thursday, April 2, 2015
 3 10:00 a.m.
 4 Department 304 Hon. Curtis E. A. Karnow, Judge
 5
 6 THE COURT: Good morning.
 7 I had a chance to look at Metropolitan's motion
 8 brought at the conclusion of the Plaintiff's case. And
 9 I am going to defer this until the end of trial. I
 10 think I understand the differences in approaches here.
 11 We've got two views as to how it is proper to
 12 establish a breach and how it is proper to measure
 13 damages. I think the wisest course is to defer ruling
 14 until the end of this trial.
 15 So let's proceed with our witnesses.
 16
 17 JEFF KIGHTLINGER,
 18 resumed the stand and testified further as follows:
 19
 20 THE COURT: You recall you are still under
 21 oath?
 22 THE WITNESS: Yes, sir.
 23 /
 24 //
 25 ///

5

1 Q. I think you testified that San Diego during
 2 that five years didn't try to persuade Metropolitan to
 3 change the cost allocations that went into its rate
 4 structure; correct?
 5 A. Yes.
 6 MR. PURCELL: All right. I'd like to read from
 7 Brian Thomas's deposition again, the person most
 8 knowledgeable for Metropolitan, pages 144, line 18, to
 9 145, line 21.
 10 THE COURT: Is that something that I have?
 11 MR. PURCELL: We can get it up on the screen.
 12 THE COURT: Let's follow along on the screen.
 13 You don't have that?
 14 THE WITNESS: I am not aware if I have it.
 15 THE COURT: Let's follow along on the screen.
 16 You don't have that?
 17 THE WITNESS: I am not aware I have it. Maybe
 18 it is in one of these binders.
 19 MR. KEKER: 144, yes.
 20 MR. PURCELL: This is in evidence as PTX 516.
 21 May I proceed, your Honor?
 22 THE COURT: Please.
 23 MR. PURCELL: (Reading:)
 24 Starting at page 144, line 18 and going to page
 25 145 at line 21.

7

1 CROSS-EXAMINATION (resumed)
 2 BY MR. PURCELL:
 3 Q. Good morning, Mr. Kightlinger.
 4 A. Good morning, sir.
 5 Q. I would just like to clear one thing up to
 6 start with. There's a lot of testimony yesterday about
 7 the Metropolitan rate structure; correct?
 8 A. Yes.
 9 Q. Now, the rate structure is the buckets that Met
 10 arranges for the rates; right? There is a supply
 11 bucket; there's a power bucket, and there is a system
 12 access bucket?
 13 A. Yes.
 14 Q. San Diego's objections aren't to the buckets,
 15 really; they are to the allocation of costs that go into
 16 the buckets; correct?
 17 A. That is how I understand their objections, yes.
 18 Q. Okay, good.
 19 So I am going to talk about in terms of cost
 20 allocations, really, rather than the rate structure, and
 21 if there is any confusion, please let me know.
 22 You testified yesterday about the five-year
 23 period following the execution of the exchange
 24 agreement; correct?
 25 A. Yes.

6

1 "Q Okay. The Water Authority
 2 waited until beyond that
 3 five-year period before it
 4 filed this lawsuit; correct?
 5 "A Yes.
 6 "Q During the -- during the
 7 time between the filing of the
 8 exchange agreement or, rather,
 9 the signing of the exchange
 10 agreement and the filing of
 11 this lawsuit, the Water
 12 Authority participated in
 13 various Metropolitan processes
 14 related to the setting of Met's
 15 rates; right?
 16 "A Yes.
 17 "Q The Water Authority
 18 continued to advocate for
 19 changes to Met's rates in the
 20 boardroom and in committee
 21 meetings; right?
 22 "A Yes.
 23 "Q That was part of the rate
 24 -- for example, the rate
 25 refinement process?

8

1 "A Yes. Staff, as well. In
2 staff meetings, as well.
3 "Q And in staff meetings, as
4 well.
5 "And likewise, there was a cost
6 of service review process that
7 the Water Authority
8 participated in during that
9 process?
10 "A Yes.
11 "Q And as part of the cost of
12 service review process, the
13 Water Authority again advocated
14 in the boardroom, and in
15 committee meetings and in staff
16 meetings for changes to
17 Metropolitan's rates?
18 "A Yes."
19 Q. Mr. Kightlinger, was Mr. Thomas wrong?
20 A. No.
21 Q. We talked yesterday a little bit about the
22 dispute resolution process in Section 11.1 of the
23 exchange agreement.
24 Do you remember that discussion?
25 A. Yes.

9

1 Q. Prior to the Water Authority filing this
2 lawsuit, the Water Authority invoked that dispute
3 resolution process; correct?
4 A. Yes, they sent us a letter at some point,
5 around 2010, I believe.
6 Q. And Metropolitan responded with a letter of its
7 own?
8 A. I believe so. I don't think you showed it to
9 me yesterday. I think we did respond.
10 Q. I would just like to do that now and hopefully
11 we can do it quickly. Can I get PTX 169 up on the
12 screen?
13 Mr. Kightlinger, is this the letter the Water
14 Authority sent to you invoking paragraph 11.1?
15 A. Yes.
16 MR. PURCELL: I would like to move PTX 169 into
17 evidence, your Honor.
18 MR. EMANUEL: I really don't understand the
19 point of this.
20 THE COURT: What's your objection?
21 MR. EMANUEL: The objection is relevance, your
22 Honor.
23 THE COURT: Overruled.
24 PTX 169 is admitted.
25 (Exhibit PTX 169 was received into evidence.)

10

1 MR. PURCELL: Can I get PTX 175 up on the
2 screen?
3 Q. Mr. Kightlinger, is this a subsequent letter to
4 the Water Authority sent to Karen Tachiki, your
5 successor as Metropolitan general counsel, involving the
6 resolution dispute process in paragraph 11.1?
7 A. Yes, it looks like it.
8 Q. Did you get a copy of this letter when it was
9 sent to Ms. Tachiki?
10 A. Probably.
11 MR. PURCELL: Your Honor, I would like to move
12 PTX 175 into evidence.
13 MR. EMANUEL: I have an objection. This was
14 not part of Plaintiff's exhibit list in advance of
15 trial. I will not object to it being admitted, but I do
16 want it noted that it is not really playing by the
17 rules.
18 MR. PURCELL: It is on our list, your Honor.
19 We are happy to provide a copy of the list.
20 THE COURT: We can take care of that at one of
21 the convenient breaks today. In the meantime, PTX 175
22 is admitted.
23 (Exhibit 175 was received into evidence.)
24 MR. PURCELL: Can I have PTX 207 up on the
25 screen?

11

1 Q. Mr. Kightlinger, is this a letter that the
2 Water Authority sent to Metropolitan, to you
3 specifically, stating that all payments made to the
4 water stewardship rate after June 23, 2011, are made
5 under protest?
6 A. Yes.
7 MR. PURCELL: I would like to move PTX 207 into
8 evidence.
9 MR. EMANUEL: No objection, your Honor.
10 THE COURT: I am looking at the record. It
11 clearly reflects your position.
12 PTX 207 is admitted.
13 (PTX 207 was received into evidence.)
14 MR. PURCELL: Can I have PTX 225 up on the
15 screen?
16 Q. Mr. Kightlinger, is this a letter you sent in
17 response to the Water Authority's request for a
18 negotiation under paragraph 11.1 of the exchange
19 agreement?
20 A. I can't see the bottom. I don't know if I
21 signed it or Karen signed it, but this is certainly a
22 letter in response from Metropolitan, yes.
23 Q. I think PTX 225 is in the new binder I gave you
24 this morning, if you want to confirm that fact. It is
25 in fact.

12

1 Actually, Mr. Kightlinger, you can see on the
 2 screen, I pulled up the signature block.
 3 **A. That is my signature, yes.**
 4 MR. PURCELL: I would like to move 225 into
 5 evidence.
 6 MR. EMANUEL: No objection.
 7 THE COURT: PTX 225 is admitted.
 8 (Exhibit PTX 225 was received in evidence.)
 9 Q. BY MR. PURCELL: Mr. Kightlinger, Metropolitan
 10 has never contended that the Water Authority failed to
 11 satisfy the dispute resolution obligation in paragraph
 12 11.1 of the exchange agreement; correct?
 13 **A. That's correct.**
 14 Q. Similarly, there's a procedure under the
 15 exchange agreement for Metropolitan to set aside
 16 disputed amounts of payments under the exchange
 17 agreement when there's a price dispute; correct?
 18 **A. Yes.**
 19 Q. And the Water Authority sent some
 20 correspondence to Metropolitan invoking that set-aside
 21 procedure?
 22 **A. Yes.**
 23 Q. And Metropolitan responded to the Water
 24 Authority's letters?
 25 **A. Yes, they did.**

13

1 Q. In fact, money was set aside?
 2 **A. Yes, it was.**
 3 MR. PURCELL: I would like to show you a few
 4 letters on that. PTX 189, please.
 5 Q. Mr. Kightlinger, is this a letter that the
 6 Metropolitan general counsel sent to Dan Hentschke, San
 7 Diego general counsel, regarding payments under protest
 8 under the exchange agreement?
 9 **A. Yes, it is.**
 10 MR. PURCELL: I would like to move PTX 189 into
 11 evidence.
 12 MR. EMANUEL: No objection, your Honor,
 13 although the copy that is on the screen doesn't have a
 14 number on it. Is it there someplace else?
 15 MR. PURCELL: It is at the top.
 16 MR. EMANUEL: That's all I needed.
 17 THE COURT: PTX 189 is admitted.
 18 (Exhibit 189 is received in evidence.)
 19 MR. PURCELL: I am happy to do this one by one.
 20 We invited Metropolitan to stipulate to admission of
 21 these letters between the parties. I don't think there
 22 is any objection to the authenticity of any of them.
 23 MR. EMANUEL: I am a little put off that they
 24 asked for a stipulation. That is not really appropriate
 25 to argue in front of the Court. Right now I am just

14

1 asking they lay a foundation and let's go through it.
 2 THE COURT: All right. Let's go.
 3 MR. PURCELL: Let's just do it.
 4 PTX 229, next, please. I would like to move
 5 PTX 229 in evidence, your Honor.
 6 THE COURT: Any objection?
 7 MR. EMANUEL: No objection.
 8 THE COURT: PTX 229 is admitted.
 9 (Exhibit 229 was received in evidence.)
 10 MR. PURCELL: PTX 230 is the next exhibit. I
 11 would like to move PTX 230 into evidence.
 12 MR. EMANUEL: No objection.
 13 THE COURT: PTX 230 is admitted.
 14 (Exhibit 230 was received in evidence.)
 15 MR. PURCELL: PTX 232. I would like to move
 16 PTX 232 into evidence.
 17 MR. EMANUEL: No objection.
 18 THE COURT: PTX 232 is admitted.
 19 MR. PURCELL: PTX 234. I would like to move
 20 PTX 234 into evidence.
 21 MR. EMANUEL: No objection.
 22 THE COURT: PTX 234 is admitted.
 23 MR. PURCELL: PTX 243. I would like to move
 24 PTX 243 into evidence.
 25 THE COURT: I would like to ask whether these

15

1 are coming in to try to prove any disputed fact?
 2 MR. PURCELL: Your Honor, these are trying --
 3 these are being submitted for the purpose of proving the
 4 amounts that were set aside -- under the set-aside
 5 provision of the contract. We don't think there's a
 6 dispute about it.
 7 THE COURT: Is it part of your case that X
 8 dollars were set aside or that money was set aside?
 9 MR. PURCELL: It relates to the availability of
 10 interest under the damages calculation.
 11 THE COURT: Okay.
 12 MR. EMANUEL: Your Honor, if I may, these don't
 13 go to the amount that has been set aside.
 14 THE COURT: How many of these are there?
 15 MR. PURCELL: One more.
 16 THE WITNESS: This letter is about a bond.
 17 THE COURT: We will wait for a question. Is
 18 there an objection to PTX 243?
 19 MR. EMANUEL: No.
 20 THE COURT: PTX 243 is admitted.
 21 MR. PURCELL: The last one is DTX 624.
 22 THE COURT: This last one only is a D; correct?
 23 MR. EMANUEL: No objection, your Honor.
 24 THE COURT: DTX 624 is admitted.
 25 /

16

1 (Exhibits 232, 234, 243 and 624 were
 2 received in evidence.)
 3 Q. BY MR. PURCELL: Mr. Kightlinger, getting back
 4 to the substance of the case here for a second, one of
 5 the issues that San Diego objected to, I think you
 6 testified yesterday, was the inclusion of State Water
 7 Project costs in Metropolitan's transportation rates;
 8 correct?
 9 A. Yes. Going back to the late '90s, they
 10 protested that when we were doing the unbundling
 11 process.
 12 Q. Mr. Kightlinger, the State Water Project is not
 13 the start of the Metropolitan's facilities and
 14 infrastructure; correct?
 15 A. It is owned by the State of California.
 16 Q. I would like to put up PTX 302. Is this an
 17 e-mail that you sent to your board of directors in July
 18 of 2006 about the LADWP AVEK turnout agreement?
 19 A. It appears to be. I don't recall the issue.
 20 MR. PURCELL: I move Exhibit 302 into evidence.
 21 MR. EMANUEL: No objection.
 22 THE COURT: PTX 302 is admitted.
 23 (Exhibit 302 was received in evidence.)
 24 Q. BY MR. PURCELL: Going to the last paragraph on
 25 page one, the second sentence says, "Distilled to its

17

1 essence, this agreement permits AVEK to transport non
 2 State Water Project, SWP water, through the California
 3 aqueduct, and to deliver such water to LADWP at a
 4 turnout to be constructed within AVEK's service area."
 5 A. Yes.
 6 Q. This refers to the agreement that permits LADWP
 7 to obtain non State Water Project water through the
 8 State Water Project facilities without needing to move
 9 through Metropolitan's facilities; correct?
 10 A. Yes.
 11 Q. I would like to highlight the first paragraph
 12 under Authority for the turnout agreement, page three.
 13 This paragraph reads, "Another question that
 14 has been raised is whether the former CEO had the
 15 authority to execute the turnout agreement without
 16 obtaining prior approval from the board of directors.
 17 "As I explained at the meeting, Mr. Gastelum
 18 posed this question to me, as then general counsel, and
 19 it was my conclusion it was within his authority to
 20 execute the turnout agreement because it is, "one, was
 21 consistent with enforcement of Metropolitan's rights
 22 under the State water contract; two, did not require the
 23 use of Metropolitan's facilities or infrastructure;
 24 three, did not require any expenditure of Metropolitan's
 25 funds; and, four, did not conflict with any applicable

18

1 provisions of the Metropolitan Water District Act,
 2 Administrative Code or adopted board policies."
 3 Do you see that?
 4 A. I do.
 5 Q. One of the reasons that this agreement was
 6 within the authority of Mr. Gastelum to execute without
 7 submitting to the Metropolitan board of directors was
 8 because LADWP moving non State Water Project water
 9 through the State Water Project did not require the use
 10 of any Metropolitan facilities or infrastructure;
 11 correct?
 12 A. That's right.
 13 Q. Mr. Kightlinger, you are familiar with the rate
 14 structure integrity program; correct?
 15 A. Yes.
 16 Q. That was a program where Metropolitan included
 17 certain language within local resource program
 18 contracts; correct?
 19 A. Yes.
 20 Q. And that language that Metropolitan included in
 21 contracts permitted Metropolitan to terminate the
 22 contract if the recipient member agency mounted a
 23 challenge to Metropolitan's current rate structure;
 24 correct?
 25 A. Yes.

19

1 Q. It did not permit Metropolitan to terminate the
 2 contract if Metropolitan were to change its rate
 3 structure and then the agency were to mount a challenge
 4 to the new rate structure; correct?
 5 A. I don't recall that twist on it. That sounds
 6 right. I would have to take a look at it.
 7 Q. We can show you the documents and hopefully
 8 refresh you.
 9 Can we have PTX 80 to put on the screen. This
 10 is in evidence.
 11 This is a little bit of background. This is a
 12 memo, June 18, 2004, from Ron Gastelum, who was then the
 13 CEO and general manager of Metropolitan; correct?
 14 A. Yes.
 15 Q. Your predecessor. Not your immediate
 16 predecessor, but one of them in that role?
 17 A. Exactly.
 18 Q. It's the job you have today?
 19 A. Yes.
 20 Q. The first paragraph says, "For years we have
 21 been discussing the continuing financial risk to
 22 Metropolitan and the member agencies from the threat of
 23 legal or legislative actions undermining our rate
 24 structure. As in the past, some entities for their own
 25 gain may challenge the rate structure in order to convey

20

1 water at a lesser cost than as required to properly
 2 maintain the system's integrity and reliability. This
 3 challenge is not presented by deficiencies in the rate
 4 structure but by continuing economic attraction of lower
 5 cost based agricultural transfer water, if it can be
 6 conveyed into our service area at marginal cost."
 7 Do you see that?
 8 **A. I do.**
 9 Q. That accurately summarizes why Metropolitan
 10 wanted to put the rate structure integrity into place;
 11 correct?
 12 **A. Yes.**
 13 Q. And then in the second paragraph Mr. Gastelum
 14 writes: "One indication that such concern is still
 15 valid was the San Diego Water Authority's position in
 16 the QSA agreement reserving their right to challenge
 17 Metropolitan's uniform wheeling rates after five years
 18 from the date of execution of the QSA."
 19 Do you see that?
 20 **A. Yes.**
 21 Q. Mr. Gastelum is specifically referring to San
 22 Diego as a member agency that might litigate in the
 23 future; correct?
 24 **A. Yes.**
 25 Q. That reference to five years, that's a

21

1 clarifying at our July member agency managers' meeting
 2 that the San Diego County Water Authority has no plans
 3 to challenge Metropolitan's rate structure. At the same
 4 time, you suggested a meeting with me would be useful to
 5 address the reservation by the authority in the
 6 quantification settlement agreement, QSA, to challenge
 7 Metropolitan's rate structure after five years."
 8 Do you see that?
 9 **A. I do.**
 10 Q. Mr. Gastelum is summarizing a meeting he had
 11 with Miss Stapleton; correct?
 12 **A. Yes, I think so. A phone call, meeting,**
 13 **something.**
 14 Q. Mr. Gastelum is stating what his impression is
 15 of what Miss Stapleton told him; correct?
 16 **A. That's my understanding of this.**
 17 Q. Mr. Gastelum, when he talks about the
 18 reservation by the authority to challenge Metropolitan's
 19 rate structure after five years, he doesn't say anything
 20 about a new rate structure, does he?
 21 **A. Not in this sentence, no.**
 22 Q. He doesn't limit his understanding of San
 23 Diego's right to challenge Metropolitan's rate structure
 24 as to some material change in the cost allocation?
 25 **A. He doesn't go into that detail, no.**

23

1 reference to the five-year provision in paragraph 5.2 of
 2 the exchange agreement?
 3 **A. Yes.**
 4 Q. Mr. Gastelum doesn't say anything there about
 5 San Diego reserving its right only to challenge new cost
 6 allocations to Met's rate structure, does he?
 7 **A. No. He certainly knew what the intent was, but**
 8 **he also had his suspicions.**
 9 Q. There is nothing in this language that limits
 10 the concern about San Diego litigating -- to litigation
 11 over new rate structures; correct?
 12 **A. Not in this sentence, no.**
 13 Q. And let's take a look at DTX 909. This is a
 14 month-and-a-half later, July 30th, 2004. This is a
 15 letter from Mr. Gastelum to Miss Stapleton, his
 16 counterpart at the Water Authority.
 17 Do you see that?
 18 **A. Yes.**
 19 MR. PURCELL: I would like to move DTX 909 into
 20 evidence?
 21 MR. EMANUEL: No objection.
 22 THE COURT: 909 is admitted.
 23 (Exhibit 909 was received in evidence.)
 24 Q. BY MR. PURCELL: In the first paragraph
 25 Mr. Gastelum writes Miss Stapleton, "Thank you for

22

1 Q. I would like to show you PTX 95.
 2 Is this an August 17, 2004, fax from you to
 3 your then counterpart at the Water Authority, Dan
 4 Hentschke, the general counsel?
 5 **A. It looks like it, yes.**
 6 MR. PURCELL: I would like to move PTX 95 into
 7 evidence.
 8 MR. EMANUEL: Can we see all the pages?
 9 THE COURT: Of course. This is a one-page
 10 document?
 11 MR. PURCELL: I'm sorry. No, your Honor. It
 12 is a three-page letter attached to the cover page.
 13 MR. EMANUEL: Now they have handed me -- wait a
 14 minute. Part of the problem, it wasn't on the exhibit
 15 list. I am looking at it for the first time now.
 16 Can I have a minute?
 17 THE COURT: Of course.
 18 MR. EMANUEL: Your Honor, because it wasn't on
 19 the exhibit list and I haven't had a chance to prepare,
 20 I am going to object to its use and admission.
 21 THE COURT: Do you know if it was on the list
 22 or not?
 23 MR. PURCELL: I believe it was inadvertently
 24 omitted. It was on our Phase 1 exhibit list.
 25 MR. EMANUEL: It wasn't omitted in the Phase 1;

24

1 is that correct?
 2 THE COURT: PTX 95 is admitted.
 3 (Exhibit 95 was received in evidence.)
 4 Q. BY MR. PURCELL: If we could turn to page two
 5 of the letter itself, which is the third page of the
 6 document, the paragraph starting "likewise."
 7 This paragraph reads: "Likewise, member
 8 agencies are not being asked to forfeit any fundamental
 9 First Amendment rights in exchange for such funding.
 10 They are merely being asked to forego commencing a legal
 11 or legislative action challenging the district's
 12 existing rate structure. See Section 7, rate structure
 13 integrity language.
 14 "Paragraph 2: "Member agencies who accept such
 15 finding remain free to challenge Metropolitan's existing
 16 rate structure via the normal board process and
 17 challenge any material changes to the existing rate
 18 structure via whatever means are available. Such member
 19 agencies also remain free to commence a legal action
 20 against Metropolitan, quote, should Metropolitan in
 21 setting rates under existing rate structure fail to
 22 comply with public notice, open meeting or other legal
 23 requirements associated with the process of setting
 24 water rates and related taxes, fees and charges."
 25 Do you see that, Mr. Kightlinger?

25

1 MR. EMANUEL: I will object. The question was
 2 confusing. Could I ask it be rephrased?
 3 THE COURT: Could you start that again?
 4 Q. BY MR. PURCELL: You testified yesterday under
 5 the exchange agreement the intention of that, the
 6 bargain between the parties, was San Diego gave up the
 7 right to challenge the existing cost allocations in
 8 Metropolitan's rate structure; correct?
 9 A. **Within the term of the exchange agreement.**
 10 Q. Within the 45 years of the exchange agreement?
 11 A. **(Nods head affirmatively.)**
 12 Q. For 45 years they were agreeing not to
 13 challenge the existing cost allocations in the rate
 14 structure; correct?
 15 A. **Correct.**
 16 Q. And the rate structure integrity program only
 17 applies to the existing rate structure and not any
 18 future rate structures; correct?
 19 A. **That's right.**
 20 Q. You read Mr. Gastelum's e-mail or memo from
 21 June, which said that one of the reasons the rate
 22 structure integrity program was being adopted was
 23 because San Diego might sue later on?
 24 A. **I think he said that San Diego had expressly**
 25 **reserved a right to bring actions, as one of his reasons**

27

1 A. **Yes.**
 2 Q. This is your letter; correct?
 3 A. **Yes.**
 4 Q. You wrote this to Mr. Hentschke at the Water
 5 Authority?
 6 A. **And to Jerry Shoal at -- counsel, I believe at**
 7 **this time, to Eastern MWD, as well.**
 8 Q. This was in response to a letter they had
 9 written to you objecting to the rate structure integrity
 10 language as unconstitutional and objectionable in
 11 various other ways?
 12 A. **I don't remember exactly all their objections,**
 13 **but I do know they were upset with it.**
 14 Q. This accurately reflected your understanding of
 15 what the language covered; correct?
 16 A. **Yes.**
 17 Q. And you say pretty clearly there that "member
 18 agencies remain free to challenge any material change to
 19 the existing rate structure under the RSI language."
 20 Correct?
 21 A. **Yes.**
 22 Q. So if the RSA language limited only changes to
 23 the existing rate structure, your testimony yesterday
 24 was under the exchange agreement San Diego gave up the
 25 right to challenge the existing rate structure; correct?

26

1 **that we should be concerned about this.**
 2 Q. But if San Diego had already given up its right
 3 to challenge the existing rate structure under the
 4 exchange agreement, there would be no need to impose the
 5 RSI language on San Diego, would there?
 6 A. **As a need -- we have 26 member agencies. This**
 7 **letter came from two agencies. A number of agencies had**
 8 **concerns. When we adopted the rate structure. It was**
 9 **actually not 25 member agencies for it and San Diego**
 10 **against it. It was a fairly split vote.**
 11 **And a number of agencies had concerns. The**
 12 **whole point of the RSI language was that we were signing**
 13 **long-term program agreements. Some of these agreements**
 14 **would be we would provide subsidies to projects that**
 15 **would be 20 to 30 to 40 years. And the idea was to make**
 16 **sure there was some commitment to be able to collect**
 17 **those funds before we would sign those contracts. And**
 18 **that is what this was intended to address.**
 19 Q. Mr. Kightlinger, do you know the only agency
 20 being called out by name in Gastelum's memos in San
 21 Diego; correct?
 22 A. **He calls out entities. He calls out one of the**
 23 **basins that were attempted to sue -- if you go through**
 24 **the memo, he really talks about it is really a broad**
 25 **policy issue. There are a number of people that are**

28

1 **seeking low-cost water he does call out by name, but he**
2 **does talk about other entities and organizations.**

3 Q. He doesn't call out any other Met member agency
4 by name other than San Diego?

5 **A. Not in that memo, no.**

6 Q. As regarding San Diego, if San Diego had really
7 given up its right to sue under the exchange agreement
8 over the existing rate structure, there would be no need
9 for the rate structure integrity provision as against
10 San Diego, would there?

11 **A. That was the intent, yes.**

12 MR. PURCELL: Nothing further.

13 THE COURT: Thank you.

14 Redirect, sir?

15 MR. EMANUEL: Thank you.

16 THE COURT: If you need a break because of this
17 new document, let me know.

18 MR. EMANUEL: I appreciate that. I have my
19 team looking at it.

20 THE COURT: In a situation like that, if there
21 is something I can do to ameliorate the situation, let
22 me know.

23 MR. EMANUEL: I apologize. It got the better
24 of me. It is such a long document, single space, it was
25 a lot.

29

1 two organizations?

2 **A. Yes.**

3 Q. Which side of the equation would you say
4 Mr. Gastelum was on, trusting, not trusting, or trust
5 and verifying; how would you describe him?

6 **A. I would say I'm in the trust-but-verify mode as**
7 **the counsel. Mr. Gastelum was -- he came out of the**
8 **landfill industry, and he was a very not trusting person**
9 **in general.**

10 Q. You had involvement in creating this RSI
11 clause; correct?

12 **A. Yes. I went through and worked through with**
13 **Mr. Gastelum on the actual language of it, but the**
14 **policy proposal was his to the board.**

15 Q. Was it your understanding this RSI clause would
16 be a disincentive to file suit; right?

17 **A. Yes.**

18 MR. BRAUNIG: Objection. Leading.

19 THE COURT: I won't sustain the objection on
20 that one because it is so obvious. If we could avoid
21 leading questions.

22 MR. EMANUEL: Thank you. I will, your Honor.

23 THE COURT: That one is overruled.

24 Q. BY MR. EMANUEL: Would it apply to all
25 lawsuits?

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1 THE COURT: I understand.

2
3 REDIRECT EXAMINATION

4 BY MR. EMANUEL:

5 Q. Let's go back. Let's start with that last
6 point about there is an agreement under the exchange
7 that the -- limiting what San Diego could sue on.

8 Sir, isn't it true, or in your experience, San
9 Diego has found any number of reasons to sue
10 Metropolitan, isn't that true?

11 **A. In the last 15 years we've had probably four or**
12 **five different lawsuits over various issues with the**
13 **Water Authority.**

14 Q. Would it be accurate to say that your
15 understanding of the exchange agreement isn't a
16 guarantee that suit still couldn't be filed?

17 **A. No. It only dealt with the existing rate**
18 **structure. Their rate structure integrity language is**
19 **intended to sweep in all our member agencies as well,**
20 **but we've had lawsuits over the applicability of the**
21 **Brown Act. We've had lawsuits over preferential rights.**
22 **We've had lawsuits over point-to-point versus postage**
23 **stamp rates. So we had other challenges.**

24 Q. How can I put this question? It seems fair to
25 say that there is a certain lack of trust between these

30

1 **A. No. Simply challenges to the existing rate**
2 **structure.**

3 Q. Would it apply to ill-conceived or
4 non-meritorious lawsuits?

5 **A. I assume they were challenging the existing**
6 **rate structure, it would apply to that.**

7 Q. I want to go back to some exhibits that were
8 shown you yesterday.

9 Could you put up PTX 56, please. Zoom this on
10 the date.

11 Mr. Kightlinger, do you see the date on this?

12 **A. Yes.**

13 Q. You see how it is "for your information, San
14 Diego's latest proposal," do you see that?

15 **A. Yes.**

16 Q. Based on the date, would this proposal have
17 been the one we talked about yesterday, Option-1 and
18 Option-2?

19 **A. No. This predated that by some months.**

20 Q. Can you give me an estimate of when Option-1
21 and Option-2 was proposed?

22 **A. The late July, early August time frame of 2003.**
23 **No. This preceded that by some months.**

24 Q. Can you give me an estimate of when Option-1
25 and Option-2 was proposed?

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1 **A. The late July, early August time frame of 2003.**
 2 Q. Close enough. Give me PTX 57.
 3 Do you see the date?
 4 **A. Yes.**
 5 Q. Do you see the subject line?
 6 **A. "Getting to yes."**
 7 Q. This originated with an email from Mr. Slater;
 8 correct?
 9 **A. Yes.**
 10 Q. Was this part of that process after Option-1,
 11 Option-2, to work out the points and reach an agreement?
 12 **A. That's correct.**
 13 Q. I take it as of this point, just by the phrase
 14 "getting to yes," what was your understanding as to
 15 whether you had in fact reached yes?
 16 **A. No. We had a number of deal points that still**
 17 **had not yet been worked out.**
 18 Q. Can we go down to the bottom of this exhibit,
 19 item number five. Do you see that?
 20 **A. I do.**
 21 Q. Was that literally true?
 22 MR. PURCELL: Objection. Vague.
 23 THE COURT: I am not sure what that question
 24 means. The record will be a little bit easier if you
 25 just read that line into the record.

33

1 THE WITNESS: Certainly. "Item five, San Diego
 2 will draft an 'I love you MWD' reso." Reso meaning
 3 resolution.
 4 Q. BY MR. EMANUEL: How did you understand that?
 5 **A. We had talked about the intent was if we got to**
 6 **yes and our agencies agreed on this, that this was**
 7 **intended to start a new page and peace and harmony, et**
 8 **cetera, between our two agencies and put aside the**
 9 **lawsuits and the rancor. So they were going to draft a**
 10 **resolution to that effect.**
 11 Q. You were asked about the State Water Project?
 12 **A. Yes.**
 13 Q. Does Metropolitan consider it part of its
 14 conveyance system? Do you remember that question?
 15 **A. Yes.**
 16 Q. I think your answer didn't answer the question.
 17 You said, "The state owns it."
 18 The question was, sir, as asked by Mr. Purcell,
 19 does Metropolitan consider it part of its conveyance
 20 system?
 21 **A. We do not consider it part of our conveyance**
 22 **system, but we do consider our agency as having an**
 23 **ownership interest in the State Water Project based on**
 24 **the contract we entered into with the State of**
 25 **California and the way in which we make our payments on**

34

1 **that project.**
 2 Q. Please explain why you consider it to be a part
 3 owner of that system?
 4 **A. We have certain rights to use that facility.**
 5 **We have transportation rights. We have to pay for it**
 6 **every year, so a significant sum. But with that, even**
 7 **if we don't -- aren't getting water just from the State**
 8 **of California, if we wish to move water within it, we**
 9 **have capacity rights that enable us to move water,**
 10 **Metropolitan transfer water, in our ownership capacity**
 11 **rights. And in fact we can do so on behalf of our**
 12 **member agencies, and we have done so, including San**
 13 **Diego.**
 14 **They have purchased transfers in the past and**
 15 **they have moved that water within Metropolitan's**
 16 **capacity rights in the State Water Project system.**
 17 Q. When San Diego moved non-State Water Project,
 18 non-Metropolitan water through the conveyance system,
 19 did San Diego have to pay a wheeling rate to
 20 Metropolitan?
 21 **A. Only when it reached our system and then they**
 22 **had the ability to use the State system through our**
 23 **ownership capacity.**
 24 Q. Did they have to pay a wheeling rate through
 25 the State or could they use Metropolitan's?

35

1 **A. The latter. They used Metropolitan's capacity.**
 2 Q. Are you aware of any litigation involving
 3 whether the payments to the State for the State Water
 4 Project are payment of costs of the State or costs of
 5 the State water contract?
 6 MR. PURCELL: Objection. Vague.
 7 THE COURT: Do you understand that question?
 8 THE WITNESS: I understood the question. I
 9 believe I understand the question.
 10 THE COURT: We are going with this witness'
 11 understanding. This may be a legal issue, but go ahead
 12 and answer it.
 13 THE WITNESS: There were early validation
 14 actions to establish the rights under the -- and
 15 payments of the State Water Project. And so in that
 16 validation action it was determined these were
 17 obligations of the contractors for the State of
 18 California.
 19 Q. BY MR. EMANUEL: And Metropolitan is a State
 20 water contractor; correct?
 21 **A. Yes, sir.**
 22 Q. And it makes payments to the State that the
 23 State -- for the conveyance system and for the supply
 24 water; is that correct?
 25 **A. That's correct.**

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1 Q. What I'm asking you, have you ever heard or
 2 have an understanding that the payments to the State is
 3 the State's mere conduit?
 4 MR. PURCELL: Objection. Vague.
 5 THE COURT: Has he ever heard it? That's not
 6 vague.
 7 Have you ever heard that?
 8 THE WITNESS: I've not heard it actually
 9 expressed that way.
 10 MR. EMANUEL: Can you pull up the 2003 exchange
 11 agreement. Would you go to the paragraph just before
 12 5.2?
 13 THE COURT: For the record, the exhibit number
 14 is --
 15 MR. KEKER: 65 PTX and DTX 51, but they have 51
 16 up, I think.
 17 THE COURT: PTX 65 we will call it.
 18 Q. BY MR. EMANUEL: Do you see paragraph 5.1 and
 19 that deals with pricing? Do you see that, sir?
 20 A. I do.
 21 Q. Would you go to the paragraph above that? You
 22 see paragraph 4.2?
 23 A. I do.
 24 Q. Let's back up. So 4.1 deals with
 25 characterization of exchange water. Do you see that?

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1 A. Yes.
 2 Q. And for some purpose it is characterized as
 3 local water; is that right?
 4 A. Yes.
 5 Q. That has certain financial implications?
 6 A. Yes. **This is something San Diego wanted. It**
 7 **doesn't fit within the typical meaning of the word**
 8 **"local." It is coming from several hundred miles away.**
 9 **In our parlance, in our structure within Metropolitan,**
 10 **local water has certain benefits, how we do our drought**
 11 **management planning.**
 12 **Local water is not considered regional water to**
 13 **be shared. It is their own water, so it doesn't fit**
 14 **into something that we would then pull back in a**
 15 **drought, as part of drought management. So it is**
 16 **important to them that it becomes an independent local**
 17 **supply. It is also how we calculate a**
 18 **readiness-to-serve charge. If it's a local supply, it**
 19 **doesn't go into that calculation. So those were**
 20 **benefits, how they wanted this water, the IID transfer**
 21 **water to be treated.**
 22 Q. Let's look at 4.2., the entire paragraph,
 23 please.
 24 Notwithstanding provisions of 4.1, "The water
 25 delivered to SDCWA shall be characterized as

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1 Metropolitan water and not as local water."
 2 Do you see that?
 3 A. I do.
 4 Q. What is your understanding of that?
 5 A. **Notwithstanding for the purposes of drought**
 6 **management and the readiness-to-serve charges, at the --**
 7 **the way the exchange worked is that when the water hits**
 8 **our intake, it's Metropolitan's water. And then we take**
 9 **it and then what we exchange with San Diego is**
 10 **Metropolitan water.**
 11 Q. And when does it hit your intake?
 12 A. **In theory, when it's made available by IID to**
 13 **us, we order from the Bureau of Reclamation, and it**
 14 **comes to Lake Havasu, and that is where our intake is**
 15 **and that is where we pump the water.**
 16 Q. You are still on the Colorado River?
 17 A. Yes.
 18 Q. The location is the Colorado River?
 19 A. **Yes, it is a location on the Colorado River,**
 20 **yes.**
 21 MR. EMANUEL: Your Honor, if I could have a
 22 minute?
 23 THE COURT: Of course
 24 MR. QUINN: Would it be possible for us to have
 25 five minutes?

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1 THE COURT: See everybody in five minutes.
 2 (Recess.)
 3 THE COURT: Sir.
 4 MR. PURCELL: Your Honor, before we get
 5 started, we have a motion to strike.
 6 THE COURT: All right.
 7 MR. PURCELL: We move to strike
 8 Mr. Kightlinger's testimony about Metropolitan having an
 9 ownership interest in the State Water Project as being
 10 directly contrary to Metropolitan's response to Request
 11 for Admission 44, which is in evidence as PTX 237A.
 12 THE COURT: How does that read?
 13 MR. PURCELL: It reads, Request for Admission
 14 Number 44, "Admit that Metropolitan does not own the
 15 State Water Project."
 16 Response to Request for Admission Number
 17 44, "Admit."
 18 THE COURT: I will tell you that I actually
 19 made a note and he used the phrase "ownership interest"
 20 but I don't think -- I didn't interpret the answer
 21 actually to be that he says he has interest to certain
 22 rights. My sense is that Metropolitan is not contending
 23 they actually have any literal ownership interest in the
 24 State Water Project. Right?
 25 MR. EMANUEL: Right. And the witness said

40

1 that.
 2 THE COURT: I think it was a shorthand for --
 3 it's like having rights to a license more than anything
 4 else or rights to use, and that's how I interpreted it.
 5 I will deny the motion to strike with that
 6 understanding, that he really did not mean ownership in
 7 the literal sense. RFA 44 actually governs here, and
 8 let's proceed.
 9 MR. EMANUEL: Would the Court permit I get that
 10 on the record from the witness?
 11 THE COURT: You don't have to. RFA 44 is
 12 preclusive.
 13 MR. EMANUEL: Not that. I meant what he was
 14 referring to as those interests.
 15 THE COURT: If you think it matters. I think I
 16 understand that Metropolitan has certain rights to use
 17 the State Water Project. I understand that. We went
 18 through some of that in the first trial.
 19 MR. EMANUEL: Very well.
 20 THE COURT: And I recall that.
 21 Q. BY MR. EMANUEL: In that case, then, I'll go
 22 back to Exhibit DTX 51.
 23 Mr. Kightlinger, we were discussing this
 24 exception and --
 25 THE COURT: Again, this has also been named PTX

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1 56.
 2 MR. KEKER: Sixty-five.
 3 THE COURT: Sixty-five.
 4 Q. BY MR. EMANUEL: Unfortunately, it has two
 5 numbers.
 6 "The exchange water delivered to SDCWA shall be
 7 characterized as Metropolitan and not as local water
 8 only for the limited purposes of paragraph 5.2."
 9 Do you see that?
 10 A. I do.
 11 Q. Let's -- let's look at 5.2 so we know what
 12 we're talking about here.
 13 5.2 is the price that the Water Authority would
 14 pay; is that correct?
 15 A. That is correct.
 16 Q. Would you please explain, then, how 4.2 relates
 17 to 5.2?
 18 A. Yes. The Water Authority wanted this water to
 19 be considered local water, the water they were getting
 20 from IID, for purposes of how it would be dealt with in
 21 terms of drought and calculation of our
 22 readiness-to-serve charges.
 23 But for the purpose of the pricing, it was
 24 going to be treated as Metropolitan water and governed
 25 by 5.2, the pricing terms.

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1 Q. Was there an advantage to the Water Authority
 2 for the water to be considered Metropolitan water?
 3 A. Yes. One of the complications in their
 4 transfer with IID is the water from IID is Colorado
 5 River water. The only parties that can receive Colorado
 6 River water are parties that have what's called a
 7 Section 5 contract with the Bureau of Reclamation under
 8 the Boulder Canyon Project Act.
 9 The Water Authority, not being a Colorado River
 10 contractor, technically, unless it got such a contract
 11 with the United States, could not receive Colorado River
 12 water. So Metropolitan, by receiving that water as
 13 Metropolitan and then exchanging it, solved the issue of
 14 how to get delivery from the United States Bureau of
 15 Reclamation.
 16 Q. But explain, how did that solve that problem?
 17 A. It was deemed Metropolitan's water. And so we
 18 have a contract for delivery of Colorado River water
 19 with the United States and, therefore, the Water
 20 Authority wasn't deemed -- they were not getting a
 21 delivery of Colorado River water. Metropolitan was.
 22 Q. Thank you very much.
 23 Let's turn back to this rate structure
 24 integrity clause. I believe you testified this was a
 25 subject that was discussed at the board level of

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1 Metropolitan; is that correct?
 2 A. Yes.
 3 Q. And were there agencies in favor of it,
 4 agencies against it?
 5 A. Yes.
 6 No. It was a controversial proposal, and my
 7 recollection there were a number of amendments proposed
 8 by various board members on behalf of their agencies to
 9 be made to the policy before it was adopted.
 10 Q. Was the Water Authority for or against it?
 11 A. They were flat-out opposed to it from the
 12 get-go.
 13 Q. Do you have a recollection whether or not the
 14 Water Authority made an amendment that the rate
 15 structuring integrity clause should only be triggered if
 16 someone sued and lost?
 17 A. I don't recall the Water Authority proposing
 18 any suggested amendments to it. They felt it shouldn't
 19 be adopted at all. The amendments I recall being
 20 proposed were from agencies such as Orange County
 21 agencies and the Riverside County agencies having a
 22 number of concerns and proffering a number of
 23 amendments.
 24 MR. EMANUEL: Nothing more, your Honor.
 25 MR. PURCELL: No recross.

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1 THE COURT: Thank you very much, sir.
 2 You are excused.
 3 THE WITNESS: Thank you.
 4
 5 DEVENDRA UPADHYAH,
 6 called as a witness by the Defendant, was sworn and
 7 testified as follows:
 8
 9 THE COURT: You are calling?
 10 MR. EMANUEL: Mr. Upadhyah.
 11 THE WITNESS: I do.
 12 THE CLERK: Go ahead and be seated. Would you
 13 please state and spell your full name for the record.
 14 THE WITNESS: Devendra Upadhyah, and it's
 15 D-E-V-E-N-D-R-A, U-P-A-D-H-Y-A-H.
 16
 17 DIRECT EXAMINATION
 18 BY MR. EMANUEL:
 19 Q. By whom are you employed?
 20 A. **The Metropolitan Water District of Southern**
 21 **California.**
 22 Q. What is your position?
 23 A. **My position is the group manager for the water**
 24 **resources management group.**
 25 Q. What programs fall within the water resources

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1 management group?
 2 A. **Water resource management group manages demand**
 3 **management programs, conservation programs that provide**
 4 **incentives to consumers in Southern California, local**
 5 **resources program aimed at helping to develop supplies**
 6 **among the customer member agencies.**
 7 **We have a group that looks at forecasting for**
 8 **the needs of Southern California out in the future. We**
 9 **also manage our contracts with the State Water Project,**
 10 **the Department of Water Resources and with the U.S.**
 11 **Bureau of Reclamation for supplies that we receive on**
 12 **the Colorado River along with many other partners we**
 13 **have. We manage the contracts for those supplies.**
 14 MR. EMANUEL: In advance, and according to the
 15 Court's deadline, we prepared a declaration for
 16 Mr. Upadhyah that had been submitted to the other side
 17 and filed with the Court.
 18 Does the Court want a copy? I am not going to
 19 direct him on those questions.
 20 THE COURT: I would appreciate it if you have a
 21 spare copy.
 22 MR. EMANUEL: I will leave one for the witness
 23 in case it comes up on cross.
 24 Q. Sir, a topic not covered in your declaration
 25 has to do with the demand management programs.

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1 Can you tell me what's under those programs?
 2 A. **Sure. Demand management programs consist**
 3 **really of two different programs that Metropolitan runs.**
 4 **One of them is a conservation program. That program**
 5 **provides incentives through throughout Southern**
 6 **California for consumers to purchase water-efficient**
 7 **devices, things like, for example would be,**
 8 **high-efficiency clothes washers or high-efficiency**
 9 **toilets that reduce demands for water. We provide**
 10 **incentives that buy down the costs of those things for**
 11 **consumers. That's the conservation program.**
 12 **Another program is the local resources program.**
 13 **That program provides financial incentives for our local**
 14 **agencies to develop projects that fall into three major**
 15 **categories: Wastewater recycling, groundwater recovery**
 16 **and seawater desalination at some point in the future.**
 17 **These would be projects that would produce supplies that**
 18 **those local agencies are able to use to meet their**
 19 **customers' needs.**
 20 Q. You referred to incentives. Did you mean
 21 financial incentives? Are there other kinds of
 22 incentives?
 23 A. **Financial incentives.**
 24 Q. How long have you been the manager of the water
 25 resources management group?

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1 A. **Since the beginning of 2010.**
 2 Q. How long have you been an employee of
 3 Metropolitan?
 4 A. **I started with Met back in 1995, and there was**
 5 **a period for about three years there where I was working**
 6 **for another agency.**
 7 Q. Going back to the local resources program, who
 8 receives the dollars that are part of these financial
 9 incentives?
 10 A. **The local agencies, the member agencies and**
 11 **their subagencies that actually develop the projects.**
 12 Q. What are the benefits to local agencies for
 13 these local resource programs?
 14 A. **They are receiving a financial incentive from**
 15 **Metropolitan. But ultimately the benefit of those**
 16 **projects is that those projects produce supplies that**
 17 **they are able to use to meet the needs of their**
 18 **customers and they are able to sell those supplies to**
 19 **their customers.**
 20 Q. You used the word "they."
 21 A. **They receive supplies.**
 22 Q. What are the benefits to local agencies for
 23 these local resource programs?
 24 A. **They are receiving a financial incentive from**
 25 **Metropolitan. But ultimately the benefit of those**

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1 **projects is that those projects produce supplies that**
 2 **they are able to use to meet the needs of their**
 3 **customers and they are able to sell those supplies to**
 4 **their customers.**
 5 Q. You used the word "they." They receive
 6 supplies. Who is "they" referring to?
 7 **A. The member agencies or the local agency that**
 8 **develop the project.**
 9 Q. Is that also true for other demand management
 10 programs that these supply? Who owns the supplies that
 11 were produced through those other demand management
 12 programs?
 13 **A. That's correct. There are supplies that are**
 14 **produced by the local agencies. They are their**
 15 **supplies. They are able to use those to meet their**
 16 **customers' demands.**
 17 Q. What I am asking, there are conservation
 18 programs and there are other kinds of programs, all of
 19 which produce water, I take it?
 20 **A. Either produce water or reduce demand for**
 21 **water, right.**
 22 Q. And my point is, whose supply is it?
 23 **A. It's those local agencies.**
 24 Q. When this water is produced through these
 25 demand management programs, who has the title to that

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1 water? I'm just speaking loosely. I don't know what
 2 the word is in water law. Who owns the water?
 3 MR. BRAUNIG: I am going to object to the
 4 extent it calls for a legal conclusion.
 5 THE COURT: We will get his understanding. Do
 6 you know?
 7 THE WITNESS: To the extent it is water
 8 supplied that they are able to use through that project,
 9 it's theirs to sell to their customers.
 10 Q. BY MR. EMANUEL: From Metropolitan's point of
 11 view, does Metropolitan consider whether or not this is
 12 part of Metropolitan's supply?
 13 **A. It is not part of Metropolitan's supply. These**
 14 **aren't supplies that we have access to. It doesn't come**
 15 **into our system. We don't sell them to our member**
 16 **agencies. At no point is it a supply that Metropolitan**
 17 **has to provide to our customers. Rather, it is at the**
 18 **local level.**
 19 Q. Why does Metropolitan have these demand
 20 management programs?
 21 **A. These demand management programs provide a**
 22 **benefit to Metropolitan in that it reduces the demand**
 23 **for water to move through our system.**
 24 **But there's also a piece of legislation that**
 25 **was passed in 1999, we refer to it as Senate Bill 60,**

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1 **that requires that Metropolitan increase or focus on**
 2 **conservation, water recycling and groundwater recovery**
 3 **recharge.**
 4 Q. Are you familiar with the phrases "upstream"
 5 and "downstream"?
 6 **A. Yes, I am.**
 7 Q. Would you explain what "upstream" means and
 8 "downstream" means in the context of what we've been
 9 talking, conservation?
 10 **A. Sure. Metropolitan has service connections**
 11 **that demark the point of delivery between Metropolitan's**
 12 **distribution system into our member agencies'**
 13 **distribution systems. And so we refer to anything that**
 14 **is downstream of those service connections, that are**
 15 **then within our member agencies and their local**
 16 **agencies, as downstream.**
 17 **Anything that is above those service**
 18 **connections in Met's system and beyond is considered to**
 19 **be upstream.**
 20 Q. The demand management programs that you
 21 referred to, are they upstream or downstream?
 22 **A. They are downstream.**
 23 Q. What rate at Metropolitan generates the income
 24 that pays for demand management programs?
 25 **A. The cost of the demand management programs is**

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1 **recovered through our water stewardship rate.**
 2 Q. Are you aware of whether any part of that water
 3 stewardship rate -- let me back up.
 4 Does the entirety of the water stewardship rate
 5 go upstream, downstream or split between the two
 6 streams?
 7 MR. BRAUNIG: Objection. Vague.
 8 THE COURT: Overruled.
 9 THE WITNESS: Can you please restate the
 10 question?
 11 Q. BY MR. EMANUEL: Let me take it one at a time.
 12 So the costs that are paid through the water
 13 stewardship rate, are they paid to downstream users or
 14 upstream users or some combination?
 15 **A. It is all downstream.**
 16 Q. Has that been true -- how long has that been
 17 true?
 18 **A. To my knowledge, it's been true since the**
 19 **beginning of the water stewardship rate.**
 20 Q. Does Metropolitan have -- strike that.
 21 What benefits -- what benefits, if any, do
 22 wheelers enjoy because of demand management programs?
 23 **A. Demand management programs that we run reduce**
 24 **the need for water to move through Metropolitan's**
 25 **system. And as a result of that it is creating capacity**

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1 **within Metropolitan's system to move supplies, to the**
 2 **extent that a wheeler is acquiring a supply from another**
 3 **entity and moving that water through Metropolitan's**
 4 **system. Part of the reason the capacity is available to**
 5 **do that is because of the demand management programs.**
 6 Q. Mr. Upadhyah, are you aware of whether or not
 7 Metropolitan purchases back the supplies generated --
 8 purchases back from the local agencies the supplies
 9 generated by the demand management program?
 10 A. I'm not aware of a situation where that
 11 happens, no.
 12 Q. I would like to show you what has been marked
 13 for identification as DTX 979.
 14 Can you tell the Court what this is?
 15 A. Yes. This is the February 2011 version of what
 16 we refer to as our SB-60 report. I had mentioned
 17 earlier Senate Bill 60 that placed some requirements on
 18 Metropolitan, and one of those requirements was filing a
 19 report to the State legislature each year that showed
 20 some of the actions that we had taken in the areas of
 21 conservation, recycling, groundwater recovery and
 22 recharge.
 23 Q. Is the production of this report one of your
 24 duties and responsibilities, at least, to oversee?
 25 A. Yes, it is.

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1 Q. If you would turn to page 7 of this report,
 2 tell us what this achievement scorecard represents.
 3 A. This -- what you see on the screen is the
 4 scorecard that we include in the report that shows both
 5 the acre-feet associated with the demand management
 6 programs and the dollars associated with the demand
 7 management programs.
 8 This is a part of what we're reporting to the
 9 legislature that we've been able to do in combination
 10 with the member and local agencies.
 11 Q. If we look at the very first line under
 12 conservation, would you explain what that 15,500
 13 acre-feet are?
 14 A. Okay. So as part of the demand management
 15 programs, I mentioned one of the programs we run is a
 16 conservation program where we're providing incentives
 17 for consumers, businesses, residents in our service area
 18 to purchase devices that save water, are more efficient.
 19 That line is showing that in fiscal year
 20 2009-'10, which was the period that we were reporting on
 21 for this year in this report, those new conservation
 22 devices that were installed and funded by that program
 23 saved 15,500 acre-feet. That is the new savings from
 24 those actions.
 25 Q. How is that line different from the line below

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1 it?
 2 A. The line below it is showing that we've
 3 actually been doing this program for a number of years,
 4 and that devices that were installed in previous years
 5 are also still saving water.
 6 The first line is showing just the new things
 7 that were installed that year and their savings. But
 8 the next -- the second line, 147,000 acre-feet, depicts
 9 the savings associated with things that had been
 10 installed before that are still saving water in that
 11 year.
 12 Q. Now, if we look at the third line, what does
 13 that represent?
 14 A. The third line is showing that since the
 15 program's inception in the early 1990s, the cumulative
 16 water savings across all of those things that have been
 17 installed is estimated to be about 1.4 million
 18 acre-feet.
 19 Q. Let's move down the chart to under "recycled
 20 water." Look at the first line there.
 21 Please explain what that represents.
 22 A. The first line under "recycled water" is
 23 similarly showing for 2009-'10 the acre-feet that was
 24 produced in that year by wastewater recycling facilities
 25 that were funded, in part, by this program.

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1 Q. Could you give us an example of a wastewater
 2 recycling program or type of program?
 3 A. Sure. The -- an example there, and there are
 4 many different facilities that are funded that are
 5 producing as part of this, but an example would be an
 6 agency would take wastewater that is coming from the
 7 wastewater plant and treat that wastewater to a higher
 8 grade of treated supply, and then would pipe that to, as
 9 an example, outdoor irrigation on a park or on a golf
 10 course, so that they are able to use that treated
 11 wastewater to meet the needs of that irrigated
 12 territory.
 13 Q. If we look two lines below that, see where it
 14 says, "cumulative production." Please explain what that
 15 represents.
 16 A. The cumulative production line is showing that
 17 since this program's inception, the projects that were
 18 partially funded by these incentives for Metropolitan
 19 are producing or have produced about 1.3 million
 20 acre-feet.
 21 Q. Move down to "groundwater recovery," and
 22 looking at the first line. What is an example of a
 23 groundwater recovery program?
 24 A. Groundwater recovery refers to a situation
 25 where there is groundwater that is contaminated in some

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1 way or may have salt content that is high enough that in
2 order to be able to use that water, you have to put some
3 measure of treatment to be able to get rid of that
4 contaminant.

5 So groundwater recovery are programs where
6 we're providing incentives similar to the wastewater
7 recycling to be able to help an agency develop a
8 project, to help them pay for that project, so they can
9 clean up that groundwater and be able to use it to meet
10 their customers' demands.

11 Q. Does the 50,000 acre-feet represent the amount
12 of water produced through this program for that
13 particular fiscal year?

14 A. Right. For 2009-'10 the production for those
15 facilities was 50,000 acre-feet.

16 Q. And two lines below that, "the cumulative
17 production," is that the same as what you explained
18 before, the life of these programs, this is your
19 estimate?

20 A. That's correct. Over the life of the program,
21 it's produced 515,000 acre-feet.

22 Q. Let me ask you to turn in this document to page
23 8. Do you see that sentence?

24 A. I do.

25 Q. To whom is conserved water a source of supply?

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1 THE COURT: Exhibit 979.

2 MR. EMANUEL: DTX 979, your Honor, we move it
3 into evidence.

4 THE COURT: Are there more pages than the ones
5 we talked about that I'll be reading?

6 MR. EMANUEL: There are certainly more pages.
7 I don't know that you need to read them. Maybe we
8 should do a redacted.

9 THE COURT: Yes. Then remind me later on to
10 admit it as redacted.

11 (Exhibit 979 was marked for identification.)

12 THE COURT: Cross-examination.

13
14 CROSS-EXAMINATION

15 BY MR. BRAUNIG:

16 Q. Good morning, Mr. Upadhyah.

17 A. Good morning.

18 Q. I am Warren Braunig and we met at your
19 deposition.

20 You testified that the primary benefit of
21 the -- of the water stewardship rate in the demand
22 management programs is the creation of local supply for
23 use by -- by the local member agencies; correct?

24 A. The primary benefit to the local agencies is
25 the supply.

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1 A. This statement is showing that it is a source
2 of supply for Southern California. Specifically, it's a
3 source of supply for the local agencies that produce it
4 and they are able to take that supply and meet their
5 customers' demands.

6 Q. Would it be accurate to say not only -- when
7 you say use it, do they give it away or do they sell it
8 to their users?

9 A. To my knowledge, it's always sold to their
10 users. I'm not aware of a situation where it is simply
11 given away.

12 Q. Can you tell the Court whether or not conserved
13 water downstream is a source of supply for Metropolitan?

14 A. So, this -- these programs, they're not a
15 source of supply for Metropolitan. At no point are they
16 producing water that Metropolitan is able to take into
17 our system. We are not able to sell that water to our
18 customers. Rather, they are supplies that our member
19 agencies and local agencies are able to use to meet
20 their customer demands.

21 MR. EMANUEL: Thank you, your Honor. No more
22 questions.

23 THE COURT: Cross-examination. It looks like
24 maybe one more question.

25 MR. EMANUEL: I will move it into evidence.

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1 Q. It is also a benefit to Metropolitan, that
2 Metropolitan, by investing in these demand management
3 programs, doesn't have to import or buy supplies of its
4 own; correct?

5 A. The benefit to Metropolitan is the reduced
6 demand on our system.

7 Q. And that's a supply benefit?

8 A. I would not argue that's a supply benefit.

9 Q. Met's investments in local water grow the
10 supply of water for Metropolitan in the region; correct?

11 A. That's not correct.

12 Q. You have Tab 1 of your deposition, Tab 1 of the
13 binder one, Volume I is your deposition, and I would ask
14 you to turn to page 109, line 16.

15 MR. EMANUEL: It's Tab 2, Volume I.

16 THE COURT: The page is 109?

17 MR. BRAUNIG: Yes.

18 (Reading:)

19 "Q And my question is does
20 Metropolitan invest in local
21 resources in order to grow the
22 pie of supply?

23 "A That's -- yes, that's one
24 of the benefits we're investing
25 for, yes."

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1 MR. EMANUEL: Where were we?
 2 THE COURT: Sixteen through 20.
 3 Q. BY MR. BRAUNIG: That's correct, that's true
 4 testimony that you gave?
 5 **A. That's correct.**
 6 Q. The demand management programs also create a
 7 benefit for Metropolitan by not having to spend money on
 8 imported water supplies; correct?
 9 **A. The demand management programs reduce the need**
 10 **for the movement of water through the Metropolitan**
 11 **system. It may not be Metropolitan's imported supplies.**
 12 MR. BRAUNIG: Your deposition, page 109, line
 13 21 through page 110, line one.
 14 THE COURT: Go ahead.
 15 MR. BRAUNIG: (Reading:)
 16 "Q Okay. Is metropolitan's
 17 -- is one of the benefits that
 18 you articulated of these
 19 programs, that it creates a
 20 benefit of not having to spend
 21 money on other imported
 22 supplies?
 23 "A Yeah. That's part of the
 24 basis for the incentive."
 25 Q. That's true testimony?

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1 **A. Correct.**
 2 Q. Would you agree -- you testified in addition to
 3 creating local supplies, the demand management programs
 4 have regional benefits for Metropolitan; correct?
 5 **A. Correct.**
 6 Q. Met has never calculated the regional benefit
 7 of the aggregate group of water supply projects and
 8 desalination projects and conservation programs funded
 9 in a given calendar year, has it?
 10 **A. Metropolitan calculates the benefit of the**
 11 **water that's produced, and we report that each year in**
 12 **the SB-60 report.**
 13 Q. You calculate the number of acre-feet created?
 14 **A. Right.**
 15 Q. Met does not calculate the regional benefit
 16 beyond the calculation of acre-feet; it does not
 17 calculate the regional benefit of the group of programs
 18 that were funded in 2011, does it?
 19 **A. The SB-60 report we are producing is showing**
 20 **the supplies that are benefiting the local agencies as a**
 21 **result of those programs. It is a characterization of**
 22 **what's produced through those programs.**
 23 Q. I am asking you a specific question. I am
 24 asking you about the regional benefit. Met has not
 25 calculated the regional benefit of the programs Met

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1 invested in in 2011?
 2 MR. EMANUEL: I am going to object. It is
 3 ambiguous. We need to know what regional benefit.
 4 THE COURT: Aside from the calculation of
 5 conserved acre-feet, there is some other regional
 6 benefit that you have calculated?
 7 THE WITNESS: On an annual basis we are not
 8 calculating a separate benefit from what's being
 9 reported in SB-60. Although the development of the
 10 programs initially was based on a calculation of
 11 benefits to the region overall, and we continue those
 12 programs as a result of that.
 13 Q. BY MR. BRAUNIG: To be clear, just so the
 14 record is clear, for the programs that Met invested in
 15 through the water stewardship rate in 2011, Met has not
 16 gone in and said, here's what the -- in dollar terms --
 17 here's what the regional benefits are to the region?
 18 **A. No. I don't believe we've done it in dollar**
 19 **terms.**
 20 Q. You didn't do that in 2012, '13 or '14 either?
 21 **A. Not to my knowledge.**
 22 Q. Met doesn't do any regular calculation of the
 23 benefits to Metropolitan in terms of avoided capital or
 24 transportation costs associated with these programs,
 25 does it?

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1 **A. We did that initially when the program was set**
 2 **up, but we're not doing that on an annual basis, no.**
 3 Q. And you didn't do that for the money that was
 4 invested in 2011?
 5 **A. Not to my knowledge.**
 6 Q. Or 2012 through '14?
 7 **A. Again, not to my knowledge.**
 8 Q. On an ongoing basis the only thing that Met
 9 keeps track of is how many acre-feet of water are we
 10 creating for these programs?
 11 **A. The acre-feet that are produced by the local**
 12 **agencies and used by the local agencies.**
 13 Q. You don't know what percentage of the benefits
 14 to Metropolitan associated with these demand management
 15 programs are associated with avoiding supply costs
 16 versus what percentage are attributable to avoiding any
 17 other costs, do you?
 18 **A. We know that these programs are reducing the**
 19 **demand for water moving through our system, so we know**
 20 **that there is a benefit associated with that reduced**
 21 **flow in our system.**
 22 MR. BRAUNIG: I am going to use the deposition
 23 again. Page 126, lines four through ten.
 24 THE COURT: I really should do this the right
 25 way, which is to ask if there is any objection.

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1 MR. EMANUEL: I am reading it right now.
 2 Thank you, your Honor.
 3 No objection.
 4 THE COURT: Go ahead.
 5 MR. BRAUNIG: (Reading:)
 6 "Q Of the investment that
 7 Metropolitan is making in LRP
 8 programs, what percentage of
 9 the benefits are attributable
 10 to avoiding water supply costs
 11 and what percentage are
 12 attributable to avoiding some
 13 of these other costs that you
 14 described?
 15 "A I don't know."
 16 Q. That's true testimony?
 17 A. Yes.
 18 Q. When Met is deciding whether to invest in
 19 specific demand management programs, Met doesn't
 20 consider whether those specific programs will help Met
 21 avoid some future transportation or facility costs, does
 22 it?
 23 A. **The basis for the program is the avoidance of**
 24 **those costs and the reduced demand on our system and the**
 25 **specific programs we're trying to implement in order to**

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1 **meet that overall objective.**
 2 Q. On a project-by-project basis Met doesn't
 3 evaluate whether a specific project it invests in will
 4 have a transportation or facility benefit, does it?
 5 A. No.
 6 **Rather, we have overarching goals for the**
 7 **programs. They are articulated in our integrated**
 8 **resource plan in terms of goals. We are trying to put**
 9 **programs together that meet those goals.**
 10 Q. Water stewardship is not a service that is
 11 inherent to the delivery of water, is it?
 12 A. **A service that is inherent to the delivery of**
 13 **water?**
 14 Q. Met could supply and deliver water to its
 15 member agencies without charging for water stewardship;
 16 correct?
 17 A. **If by that you mean we could exist without**
 18 **running these programs, I think that's true.**
 19 Q. Met has made a policy decision that it wants to
 20 fund these demand management programs?
 21 A. **That's correct.**
 22 Q. And Met collects money from the water
 23 stewardship rate to fund the programs; correct?
 24 A. **That's correct. And one thing we're also doing**
 25 **is complying with SB-60. We are carrying out these**

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1 **duties.**
 2 Q. Met then, after it takes the money, after it
 3 collects the money, then distributes -- then distributes
 4 the demand management subsidies to its member agencies;
 5 right?
 6 A. **The conservation programs largely do not go**
 7 **directly to the member agencies. They are benefit to**
 8 **the consumers throughout Southern California. The local**
 9 **resources program financial incentives are provided to**
 10 **local agencies that enter into a contract with**
 11 **Metropolitan and produce supplies for their customers**
 12 **through those projects.**
 13 Q. Met makes the decision, though, about how those
 14 subsidies are going to be distributed out to the member
 15 agents; right?
 16 A. **To the extent member agencies are applying for**
 17 **or consumers are applying for those rebates, then they**
 18 **are ultimately going to be getting those benefits.**
 19 **There isn't a pre-decision distribution of funds.**
 20 Q. The decision about how these funds are going to
 21 be distributed out is a decision made by Met in response
 22 to applications made by the member agencies?
 23 A. **That's correct.**
 24 Q. That's created situations where some large
 25 member agencies receive a lot more in demand management

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1 subsidies than they pay into the water stewardship rate;
 2 right?
 3 A. **I'm not sure.**
 4 Q. You are not sure because Met hasn't done that
 5 analysis?
 6 A. **Because I know the projects that are pursued,**
 7 **but I can't say as to whether that compares with the**
 8 **amounts that agencies are paying in.**
 9 Q. So Met has the data to determine how much each
 10 agency contributes to the water stewardship rate; right?
 11 A. **Probably, yes.**
 12 Q. As far as you know, they would?
 13 A. **As far as I know.**
 14 Q. And Met also possesses data about how much it
 15 pays out in subsidies to each member agency; correct?
 16 A. **Correct.**
 17 Q. Met has never compiled that data in order to
 18 determine whether there's a proportional relationship
 19 between the amount of water stewardship rate monies that
 20 are contributed and the amount of subsidies that are
 21 going out to those member agencies?
 22 A. **Not to my knowledge, and, frankly, that's not**
 23 **the way our programs are measured. Our programs are**
 24 **measured against overall regional goals.**
 25 Q. But Met has never done that; Met has never

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1 tried to see if there is a proportional relationship
 2 between the funds that are created -- funds that are
 3 received through these charges and the benefits to the
 4 member agencies from the distribution of those funds as
 5 subsidies?
 6 **A. Not to my knowledge. And the reason for that**
 7 **is, frankly, these are programs meant to provide**
 8 **regional benefits. It's not designed to provide a**
 9 **specific amount of benefit to any specific agency.**
 10 Q. But they do provide a local benefit, don't
 11 they?
 12 **A. They do provide local benefit.**
 13 Q. That local benefit is cash in the form of
 14 subsidies; correct?
 15 **A. There is a financial incentive Metropolitan is**
 16 **providing.**
 17 Q. There is also the water created that is a
 18 benefit to the local member agency that is generated
 19 through these subsidies; right?
 20 **A. That is correct.**
 21 Q. You don't measure what the benefits are that
 22 are specific to those agencies compared to how much they
 23 are contributing through the water stewardship rate?
 24 **A. Not to my knowledge.**
 25 Q. You're familiar with the rate structuring

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1 integrity provision?
 2 **A. I am familiar with it, yes.**
 3 Q. Because of the rate structure integrity
 4 provision, San Diego isn't allowed to receive any new
 5 contracts for local resource projects or conservation;
 6 correct?
 7 **A. Can you rephrase it? I didn't catch the last**
 8 **part.**
 9 Q. Since 2011, when rate structure integrity was
 10 invoked, San Diego has not been allowed to participate
 11 in new local resource projects or conservation programs;
 12 correct?
 13 **A. That's not correct.**
 14 Q. Met has not entered into new contracts with San
 15 Diego for local resource projects since 2011, has it?
 16 **A. For local resources projects, I believe you're**
 17 **correct. The conservation program continues to provide**
 18 **incentives for consumers throughout Met's service area,**
 19 **including the water authorities.**
 20 Q. San Diego is no longer allowed to participate
 21 in the local resource programs since 2011? Or into new
 22 contracts?
 23 **A. Since 2011 the County Water Authority has taken**
 24 **actions that triggered the RSI provisions in the**
 25 **agreements we've had.**

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1 Q. And the actions that have been triggered are
 2 because San Diego filed this lawsuit, they are not
 3 allowed to participate in new local resource program
 4 projects?
 5 **A. That is a follow-on action that has occurred as**
 6 **a result of San Diego's litigation.**
 7 Q. That means no matter how good a program San
 8 Diego might have to generate supply of water, no matter
 9 how cost effective it is, no matter how shovel-ready it
 10 is, Met is not going to fund it because San Diego filed
 11 this lawsuit; correct?
 12 MR. EMANUEL: I am going to object. The
 13 question is argumentative and the Court may recall this
 14 was the subject of a motion in limine, as well.
 15 THE COURT: It is a little argumentative. I
 16 will allow it.
 17 Go ahead.
 18 THE WITNESS: What was the question?
 19 Q. BY MR. BRAUNIG: The question is no matter how
 20 good the project is that San Diego might have, Met is
 21 not going to fund it because of rate structure
 22 integrity?
 23 **A. To the extent that San Diego has a project, and**
 24 **I can't speak to how good a project is or isn't, a**
 25 **project that would be part of the LRP program, that**

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1 **contract would contain rate structure integrity language**
 2 **that would be triggered by the action San Diego has**
 3 **taken with this litigation.**
 4 Q. And therefore, Met wouldn't fund it?
 5 **A. Ultimately, our board would have to consider**
 6 **that but, yes, it would likely trigger that clause and**
 7 **until that's settled, we wouldn't be funding it.**
 8 Q. There have been some questions that have been
 9 asked about whether San Diego at any point tried to get
 10 Met to change the RSI provisions. In fact, San Diego
 11 did try to change the provisions at one point in time
 12 and Met said no. Correct?
 13 **A. I actually don't recall that.**
 14 Q. Can we go to Tab 17, please, PTX 120.
 15 Do you recognize Tab 17, PTX 120, as a letter
 16 from Metropolitan to San Diego County Water Authority
 17 about the rate structure integrity on August 2, 2005?
 18 **A. Yes, I recognize this as that letter.**
 19 MR. BRAUNIG: We would move PTX 120 into
 20 evidence.
 21 MR. EMANUEL: No objection.
 22 THE COURT: PTX 120 has the proposal as an
 23 attachment and you are moving that in, as well?
 24 MR. BRAUNIG: Yes.
 25 THE COURT: PTX 120 is admitted.

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1 (Exhibit 120 was received in evidence.)
 2 Q. BY MR. BRAUNIG: I want to draw your attention,
 3 please, to the second line of that first paragraph.
 4 "Metropolitan is unable to execute your agreement
 5 because your modified version departs from the uniform
 6 rate structure integrity provision required by
 7 Metropolitan's board of directors for all new incentive
 8 program agreements with the member agencies."
 9 Does this refresh your recollection that when
 10 attempted to modify the rate structure language, Met
 11 told you it can't enter into a program that doesn't have
 12 that specific language?
 13 MR. EMANUEL: I don't think there was a
 14 failure --
 15 THE COURT: Sustained.
 16 Q. BY MR. BRAUNIG: For member agencies the rate
 17 structure integrity language is nonnegotiable; right?
 18 **A. The process that we would consider or our board**
 19 **would consider would be their own board process to take**
 20 **a look at whether changes to the rate structure**
 21 **integrity provision are things they would want to**
 22 **undertake.**
 23 Q. The RSI language is nonnegotiable; correct?
 24 **A. Once the board has adopted the language, they**
 25 **then gave us direction to include that in all of our**

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1 **contracts.**
 2 THE COURT: Does that mean it's nonnegotiable?
 3 THE WITNESS: The negotiation that could occur
 4 would be at a board level.
 5 MR. BRAUNIG: I am going to use his deposition,
 6 please, your Honor.
 7 Page 34, line 21, through 35, line four.
 8 MR. EMANUEL: Give me a second, your Honor.
 9 THE WITNESS: This was Tab 2.
 10 MR. BRAUNIG: Tab 2. It will come up on the
 11 board for you.
 12 THE COURT: Any objection?
 13 MR. EMANUEL: No objection.
 14 MR. BRAUNIG: (Reading:)
 15 "Q Is it negotiable?
 16 "A No.
 17 "Q So as a member agency your
 18 choice is to sign an agreement
 19 that includes the rate
 20 structure integrity language or
 21 you're not eligible to obtain
 22 certain incentive benefits for
 23 local resources or conservation
 24 or desalination?
 25 "A You need to sign an

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1 agreement that has standard
 2 provisions."
 3 MR. EMANUEL: To be fair, you should read the
 4 question and answer above that.
 5 THE COURT: The question and answer above that,
 6 starting at line 13?
 7 MR. EMANUEL: Starting at line seven.
 8 THE COURT: Starting at line seven?
 9 MR. BRAUNIG: I think it is a different
 10 question. If he wants to read it in and spend his time
 11 doing it, he can do that.
 12 THE COURT: I don't think it changes the
 13 meaning. Let's go ahead at this time and read that in,
 14 line seven and ending at line 12.
 15 MR. EMANUEL: Yes.
 16 THE COURT: We can do that now.
 17 MR. BRAUNIG: (Reading:)
 18 "Q What if an agency -- what
 19 if a member agency refuses to
 20 sign an agreement with that
 21 language?
 22 "A To the extent that it's
 23 part of the standard language
 24 that the board has instructed
 25 to have in all of these

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1 contracts, then the agency
 2 would be agreeing to not
 3 participate in those programs."
 4 Q. You testified earlier when this program was
 5 initiated, the demand management programs were initiated
 6 back in the mid-1990s or so, Metropolitan evaluated the
 7 regional benefits or the benefits associated with doing
 8 these programs; correct?
 9 **A. That's correct.**
 10 Q. Metropolitan has never done a backward-looking
 11 analysis to determine if demand management programs are
 12 actually avoiding particular costs, has it?
 13 **A. Not to my knowledge.**
 14 Q. Since the mid-1990s Metropolitan has never done
 15 another forward look to see if additional demand
 16 management spending would avoid transportation facility
 17 costs, has it?
 18 **A. Additional demand management spending itself**
 19 **may not be analyzed, but I do believe we looked at the**
 20 **projected capital investment program at Metropolitan in**
 21 **the, maybe, mid-2000s to see if reductions in demand**
 22 **would help reduce the expenditures to our capital**
 23 **program in the future. But I don't think it was**
 24 **directly related to the incentive program itself.**
 25 Q. Changing gears a little bit, when a member

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1 agency chooses to wheel water, that fact, the wheeling,
 2 doesn't cause Met to need to spend more money on demand
 3 management programs, does it?
 4 **A. Does the wheeling itself cause Metropolitan to**
 5 **spend more money on demand management?**
 6 Q. That's right.
 7 **A. I don't think so.**
 8 Q. Likewise, the entry into the exchange agreement
 9 by San Diego and Metropolitan, that didn't cause
 10 Metropolitan to need to spend more money on local
 11 resource projects and conservation, did it?
 12 **A. That individual agreement may not, but when**
 13 **Metropolitan is looking at our programs, as I said**
 14 **before, you're looking back, say, the 1990s, we were**
 15 **considering in the future the needs for the system to be**
 16 **determined to be able to move water to meet customer**
 17 **demands.**
 18 **And that includes both supplies that**
 19 **Metropolitan is providing but supplies that would be**
 20 **wheeled by other parties through the system.**
 21 Q. You're not able to identify any specific
 22 wheeling transactions that are attributable to spending
 23 on demand management programs, are you?
 24 **A. What do you mean by attributable to spending?**
 25 **I'm not sure I understand.**

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1 Q. Your testimony is that spending this money
 2 frees up space that then makes wheeling possible; is
 3 that right?
 4 **A. It reduces demand for deliveries in our system.**
 5 Q. But you're not able to identify any specific
 6 wheeling transaction that's attributable to the spending
 7 that's been made on demand management programs, are you?
 8 **A. Again, I'm not sure what you mean by**
 9 **"attributable."**
 10 Q. It had been caused by or as a result of.
 11 **A. I don't know why a wheeling transaction would**
 12 **be caused by demand management programs.**
 13 Q. You have been a Met staffer for more than a
 14 decade; correct?
 15 **A. That's true.**
 16 Q. And you have been involved in a number of
 17 different rate refinement or rate-related initiatives;
 18 correct?
 19 **A. Yes, sir.**
 20 Q. Since 2003, when Met unbundled its rates, Met
 21 has not presented any rate structures to its board other
 22 than the one it's using today, has it?
 23 **A. Not to my knowledge.**
 24 Q. Met has not presented to its board any
 25 different cost allocations that would move all of the

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1 State Water Project costs off of transportation, has it?
 2 **A. Over the course of the years since the rate**
 3 **structure was adopted, we have discussed many different**
 4 **potential things with the board, but we've never made a**
 5 **recommendation for a wholesale rate structure change, if**
 6 **that's what you're getting at.**
 7 Q. There has never been presented to the board an
 8 option that would move State Water Project costs off of
 9 transportation?
 10 **A. In a -- as an option that the board would take**
 11 **action on, I'm not sure.**
 12 Q. You're not sure, or no?
 13 **A. Well, we've had many discussions over the years**
 14 **about different things that could be done. We've had**
 15 **board workshops related to what we called our long-range**
 16 **finance plans and things like that.**
 17 **So there were concepts that were discussed, but**
 18 **I don't know that there was ever a specific action to**
 19 **make significant changes to the rate structure that the**
 20 **board would have acted on.**
 21 Q. The same goes for the demand management
 22 programs, there's never been an option presented to the
 23 board that would take those demand management programs
 24 off of transportation and put them somewhere else?
 25 **A. Not to my knowledge.**

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1 Q. Over the years that you've been working on
 2 these rate initiatives, San Diego has frequently
 3 complained about the fact that State Water Project costs
 4 are on transportation, haven't they?
 5 **A. San Diego has voiced that opinion in many**
 6 **meetings.**
 7 Q. Over the course of many years?
 8 **A. That's correct.**
 9 Q. Since 2003?
 10 **A. I can't say the exact years, but yes.**
 11 Q. Likewise, with the demand management programs,
 12 they've been complaining for a decade or more that those
 13 programs shouldn't be on Metropolitan's transportation
 14 rates; correct?
 15 **A. I can't say a decade or more, but I do know**
 16 **that they have voiced that desire.**
 17 Q. You can't say that they have voiced that
 18 desire?
 19 **A. I can say that they have.**
 20 Q. Okay, thank you.
 21 And they've voiced that desire repeatedly?
 22 **A. Yes.**
 23 Q. Over the course of many years?
 24 **A. Yes.**
 25 Q. In your declaration that was submitted into --

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1 as part of your testimony, you note that Metropolitan
 2 and its member agencies have the right to wheel
 3 third-party water on the State Water Project; do you
 4 recall that?
 5 **A. Yes.**
 6 Q. Met has never attempted to put a financial
 7 value on the right of Metropolitan or its member
 8 agencies to wheel water on the State Water Project, has
 9 it?
 10 **A. A financial value on our right to wheel water?**
 11 Q. Uh-huh.
 12 **A. Metropolitan's right to wheel water?**
 13 Q. That's right.
 14 **A. Not to my knowledge. It is one of the benefits**
 15 **we get as State water contractor and part of the fees we**
 16 **pay under our State water contract allow us part of that**
 17 **right.**
 18 Q. But you've never attempted to put a financial
 19 value on that right, Metropolitan hasn't?
 20 **A. I don't believe that we put a financial value**
 21 **on it other than the fact that the bill we pay for the**
 22 **State Water Project is broken up into**
 23 **conservation/supply and transportation from the**
 24 **Department of Water Resources. We are getting that**
 25 **value for the transportation.**

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1 Q. Met still doesn't operate the State Water
 2 Project, does it?
 3 **A. We don't operate the State Water Project, to my**
 4 **knowledge.**
 5 Q. And the State Water Project still is not part
 6 of Met's conveyance system, is it?
 7 **A. It is included in our conveyance rates.**
 8 Q. With respect to this idea of State Water
 9 Project wheeling, there are many years where Met doesn't
 10 wheel any third-party water on the State Water Project;
 11 correct?
 12 **A. That's correct.**
 13 Q. And there are many years where Metropolitan
 14 member agencies don't wheel any water on the State Water
 15 Project; correct?
 16 **A. Correct.**
 17 Q. In fact, isn't it true that of the water that's
 18 been moved on the State Water Project over the last
 19 decade, less than five percent of that is wheeling by
 20 Metropolitan or its member agencies?
 21 **A. I think that's probably right. I don't know**
 22 **the exact statistic, but I would imagine that is a very**
 23 **small amount.**
 24 Q. Met makes decisions about whether a member
 25 agency like San Diego can stand in Met's shoes and wheel

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1 Q. Is it your opinion that the disaggregation of
 2 the DWR bill into conservation and conveyance that has
 3 -- that has legal meaning, that that -- that that,
 4 therefore, means that's the value to Metropolitan?
 5 MR. EMANUEL: I will object to the question.
 6 THE COURT: It is two different questions. I
 7 think you mean the latter.
 8 MR. BRAUNIG: I'll re-ask the question.
 9 Q. Your -- you were present during the first phase
 10 of this trial; correct?
 11 **A. Correct.**
 12 Q. Have you read the Court's statement of decision
 13 on the issue of whether or not DWR -- the fact that DWR
 14 disaggregates its bill means those are Met's
 15 transportation costs?
 16 **A. I have.**
 17 Q. You have, okay.
 18 Since 2013, since December of 2013, has the
 19 structure of DWR's billing to Met changed?
 20 **A. Not to my knowledge.**
 21 Q. DWR still breaks up its bill in the same way?
 22 **A. Correct.**
 23 Q. Met still doesn't own the State Water Project,
 24 does it?
 25 **A. Correct.**

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1 water on the State Water Project, doesn't it?
 2 **A. Can stand in Metropolitan's shoes and wheel**
 3 **water? If -- in a scenario where San Diego wants to**
 4 **execute a transfer that's purchasing supply from another**
 5 **entity?**
 6 Q. Right.
 7 **A. Then they could enter into an arrangement with**
 8 **Metropolitan to wheel the water, yes.**
 9 Q. And Metropolitan would have the discretion to
 10 decide whether or not San Diego is allowed to do that;
 11 correct?
 12 **A. Well, there are wheeling provisions that would**
 13 **apply in terms of the ability to move the water.**
 14 Q. Can we bring up PTX 358, please.
 15 This is Tab 24 in your binder. It's in the
 16 binder that's in the binder one.
 17 This is PTX 358. This is a letter from
 18 Metropolitan to San Diego concerning a proposed wheeling
 19 transaction?
 20 **A. Okay.**
 21 Q. The answer is yes, that's what this is?
 22 **A. Yes, it appears that way, yes.**
 23 MR. BRAUNIG: We would move PTX 358 into
 24 evidence.
 25 MR. EMANUEL: No objection.

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1 THE COURT: PTX 358 is admitted.
 2 (Exhibit 358 was received in evidence.)
 3 Q. BY MR. BRAUNIG: In PTX 357 San Diego had
 4 requested wheeling service on the State Water Project
 5 for water it was getting from the San Juan Water
 6 District? That's what is in the first paragraph.
 7 A. **That appears to be, yes.**
 8 Q. If you look on the third paragraph,
 9 Metropolitan was refusing to consent to wheel this water
 10 or to allow the State Water Project to wheel this water
 11 on San Diego's behalf; correct?
 12 A. **It -- yes, it appears we are not consenting to**
 13 **it.**
 14 Q. That is a decision that Metropolitan can make?
 15 A. **Right. There would be many considerations**
 16 **behind that, but yes.**
 17 MR. BRAUNIG: We are five minutes from noon and
 18 it is a good time.
 19 THE COURT: Do you have more questions after
 20 lunch?
 21 MR. BRAUNIG: I might have a little more.
 22 THE COURT: Why don't we get together again at
 23 1:30. Thank you very much.
 24 (Noon recess.)
 25

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1 San Francisco, California
 2 Thursday, April 2, 2015
 3 1:30 p.m.
 4 Department No. 304 Hon. Curtis E.A. Karnow, Judge
 5
 6 DEVENDRA UPADHYAH,
 7 resumed the stand and testified further as follows:
 8
 9 THE COURT: Shall we continue. Do we have a
 10 witness?
 11 Sir, if you'll join us.
 12
 13 MR. BRAUNIG: Your Honor, counsel for Met had
 14 sought to move in DTX 979, which is the SB-60 report, a
 15 30-page document, and you had asked them to prepare an
 16 excerpted version. We think for purposes of
 17 completeness the entire 979 should come in, and we don't
 18 object to it. Since he sought to move it in, we don't
 19 object, if the Court would allow it.
 20 MR. EMANUEL: I am withdrawing 979. I would
 21 ask to enter evidence 979A which is only the two pages
 22 we used. I think that would be more efficient.
 23 MR. BRAUNIG: Your Honor, I think, that putting
 24 in two pages of a 30-page document, it's not an enormous
 25 document.

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1 THE COURT: Is there something else that when
 2 you write the post-trial briefs you will be pointing me
 3 to some of the other pages?
 4 MR. BRAUNIG: Possibly. We would like to have
 5 the opportunity to do that.
 6 THE COURT: One of the requests -- I'll make it
 7 now -- when we finish the exhibits, you are going to be
 8 providing to me the courtesy copies, you are going to
 9 take everything out of this room and you are going to be
 10 providing me only the pages you will be relying on and
 11 you think I need to read afterwards.
 12 If you want the entire 979 in, I will admit the
 13 entire 979. It is hereby admitted. And I apologize to
 14 counsel for having gone to the trouble of doing what I
 15 asked you to do.
 16 MR. EMANUEL: No apologies necessary.
 17 MR. BRAUNIG: Your Honor, also there is some
 18 discrepancy as to whether or not I moved PTX 358 in.
 19 THE COURT: I have an indication that you did.
 20 MR. BRAUNIG: It's admitted.
 21 THE COURT: That's my indication. The clerk
 22 confirms.
 23 THE CLERK: I do not. I do confirm now that
 24 you saw it.
 25 THE COURT: Now he does.

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1 MR. BRAUNIG: With that, your Honor, I have
 2 nothing further.
 3 THE COURT: Any further questions of this
 4 witness, redirect?
 5
 6 REDIRECT EXAMINATION
 7 BY MR. EMANUEL:
 8 Q. We are going to look again at PTX 358.
 9 Mr. Upadhyah, do you have that in front of you?
 10 THE COURT: The July 7, 2010, letter under Tab
 11 24.
 12 THE WITNESS: Yes, I do.
 13 Q. BY MR. EMANUEL: Let's look into the third
 14 paragraph, and specifically, I think, to the third
 15 sentence of the third paragraph.
 16 For the record, "If SDCWA possesses a change in
 17 place of use from the State Water Resources Control
 18 Board for CVP supplies from SJWD, then Metropolitan will
 19 provide transportation for this water as non-SWP
 20 supplies."
 21 Sir, would you explain to us what that means?
 22 A. **Sure. When San Diego was proposing this**
 23 **transfer at the time, it was with a party that has**
 24 **rights on the Central Valley project, which in this**
 25 **paragraph is referred to as CVP. And there is a certain**

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1 **place of use defined for the Central Valley Project and**
 2 **contractors that are on the Central Valley Project, that**
 3 **is separate from the place of use for the State Water**
 4 **Project and contractors on the State Water Project.**
 5 Q. Let's stop you right there. Would you explain
 6 the importance of place of use?
 7 **A. Sure. It's defined that permanent operations**
 8 **of the CVP is for the benefit of contractors on the CVP**
 9 **and its use of water in the CVP area, that place of use,**
 10 **which is completely different than the State Water**
 11 **Project and the place of use within the State Water**
 12 **Project area.**
 13 **So what we were saying there is there is a**
 14 **process that is used to go to the State board and**
 15 **request a change in place of use. There was risk from**
 16 **Metropolitan if we were to agree to a wheeling**
 17 **arrangement for a transfer that does not have that**
 18 **approval, so we were saying if you are able to process**
 19 **that change in place of use through the State board then**
 20 **we'll move the water as nonproject water.**
 21 THE COURT: Do you need the permission of the
 22 State board to do any wheeling deal?
 23 THE WITNESS: If it's in this situation where
 24 there's the risk of not -- the State board not
 25 acknowledging the change of place of use, then there is

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1 a risk that, for example, if we had done that without
 2 that change in place of use, the State Board could look,
 3 after the fact, could look and say, you took delivery of
 4 your State Water Project allocation, we are not
 5 acknowledging that it was a transfer.
 6 Q. BY MR. EMANUEL: We were talking about the
 7 conservation and the demand management program.
 8 Do you have an estimate of how much water was
 9 produced through these demand management programs?
 10 **A. The number changes as we go through time, as**
 11 **the benefits increase. It is more than three million**
 12 **acre-feet over the life of the programs.**
 13 MR. EMANUEL: Thank you. Nothing more, your
 14 Honor.
 15 MR. BRAUNIG: Nothing further.
 16 THE COURT: Thank you. You are excused.
 17 MR. KEKER: Let me get Miss Stapleton who is
 18 next, your Honor.
 19 THE COURT: Thank you.
 20 MR. EMANUEL: Can we do administrative
 21 housekeeping? Do you remember there was the
 22 Administrative Code, the Court asked that only some
 23 portion of it, so we have -- what was the number --
 24 1149A, Metropolitan moves into evidence, your Honor.
 25 THE COURT: Does San Diego have a copy of that?

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1 MR. EMANUEL: Yes, I gave that at the break.
 2 MR. BRAUNIG: No objection.
 3 (Exhibit 1149A was received into evidence.)
 4 THE COURT: 1149A is admitted.
 5 MR. QUINN: Metropolitan calls Maureen
 6 Stapleton.
 7
 8 MAUREEN STAPLETON,
 9 called as a witness by the Defendant, was sworn and
 10 testified as follows:
 11
 12 THE WITNESS: I do.
 13 THE CLERK: Please be seated. Maureen
 14 Stapleton. M-A-U-R-E-E-N. S-T-A-P-L-E-T-O-N.
 15
 16 DIRECT EXAMINATION
 17 BY MR. QUINN:
 18 Q. Good afternoon, Miss Stapleton.
 19 **A. Good afternoon.**
 20 Q. My name is John Quinn. You are the general
 21 manager of the Water Authority in San Diego?
 22 **A. Correct.**
 23 Q. How long have you been the general manager?
 24 **A. Nineteen-and-a-half years.**
 25 Q. Did you work for the Water Authority before you

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1 became general manager?
 2 **A. No, I did not.**
 3 Q. What are the scope of your responsibilities as
 4 general manager of the San Diego Water Authority?
 5 **A. I am responsible for the overall management of**
 6 **the Water Authority and its 260 employees.**
 7 Q. Do you recall back in 2001 that Metropolitan
 8 went through a process of unbundling its rates?
 9 **A. Yes.**
 10 Q. Do you recall those unbundled rates went into
 11 effect January 1, 2003?
 12 **A. Yes.**
 13 Q. As early as 2001, when Metropolitan was
 14 considered unbundling its rates, you folks at the San
 15 Diego Water Authority understood that the system access
 16 rate was a component of the conveyance charges that Met
 17 was implementing for these unbundled rates; correct?
 18 **A. Yes.**
 19 Q. And certainly you knew that power was another
 20 component?
 21 **A. Yes.**
 22 Q. You knew the water stewardship rate was another
 23 component of this unbundled conveyance rate?
 24 **A. Yes.**
 25 MR. QUINN: If we could look at Defense Exhibit

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1 767. There has been no objection to this, your Honor,
 2 and I would offer it into evidence.
 3 MR. KEKER: No objection.
 4 MR. QUINN: You should have a binder up there
 5 that will have copies of all the exhibits I will refer
 6 to.
 7 THE COURT: Exhibit 767, I take it that's a
 8 DTX?
 9 MR. QUINN: DTX 767.
 10 THE COURT: It is admitted.
 11 (Exhibit 767 was received in evidence.)
 12 Q. BY MR. QUINN: Could you please identify this
 13 document for us?
 14 **A. It appears to be a PowerPoint presentation by**
 15 **the Water Authority, or it's referenced as the Water**
 16 **Authority.**
 17 Q. And it bears a date that we see on the first
 18 page of October 11, 2001?
 19 **A. Yes.**
 20 Q. And do you recall participating in a San Diego
 21 Water Authority workshop concerning Met's unbundling
 22 proposal back in October of 2001?
 23 **A. Yes. I don't remember this specific meeting**
 24 **per se, but I attended all of these workshops.**
 25 Q. This exhibit appears to be a PowerPoint

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1 presentation that was used in connection with one of
 2 those workshops in San Diego where you were considering
 3 this unbundled rate proposal?
 4 **A. It does.**
 5 Q. If you could turn to, I think it is, slide
 6 number five. It is page 28 of the document. It is the
 7 page entitled "Wheeling." We've got it up on the
 8 screen. If it is easier for you to look at the screen
 9 there, there is a screen -- you can also see it right in
 10 front of you on the left-hand side.
 11 **A. Oh, yes. Thank you.**
 12 Q. This slide, of course, shows that under this
 13 unbundled proposal for wheeling there be a system access
 14 rate and a water stewardship rate, an incremental power
 15 cost, and there is a question mark there. You see that?
 16 **A. Yes.**
 17 Q. San Diego knew that these components were going
 18 to be on this unbundled conveyance rate and also got
 19 information about what the charges would be?
 20 **A. Yes.**
 21 Q. In fact, San Diego received cost of service
 22 reports that specified, for example, the amount of the
 23 State Water Project costs that would go into, for
 24 example, the system access rate; do you recall that?
 25 **A. Yes.**

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1 MR. QUINN: If you could look, please, at DTX
 2 475. This has not been admitted, at least as marked,
 3 your Honor. It was previously part of the administrative
 4 record. There is no objection to it, as I understand
 5 it, and we will offer Defense Exhibit 475.
 6 MR. KEKER: No objection.
 7 THE COURT: DTX 475 is admitted.
 8 (Exhibit 475 was received into evidence.)
 9 THE COURT: If we could put that up on the
 10 screen.
 11 MR. KEKER: Again, this is a 200-page document.
 12 THE COURT: I think we're just going to have a
 13 general conversation about this at the end Of the trial.
 14 Q. BY MR. QUINN: Do you recognize this document,
 15 Miss Stapleton?
 16 **A. I do not.**
 17 Q. But you did -- you did get information -- you
 18 do recall receiving information from time to time about
 19 specifically -- prior to January 1, 2003, when these
 20 unbundled rates went into effect, you had very specific
 21 information about what the particular charges would be
 22 and what is contained in those charges.
 23 Is that fair to say?
 24 **A. Yes.**
 25 Q. And in March of 2002, the specific rates for

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1 the unbundled rate structure, including the conveyance
 2 rate, were considered and approved by the Met. But you
 3 did -- you did get information -- you do recall
 4 receiving information from time to time about
 5 specifically -- prior to January 1, 2003, when these
 6 unbundled rates went into effect, you had very specific
 7 information about what the particular charges would be
 8 and what was contained in those charges.
 9 Is that fair to say?
 10 **A. Yes.**
 11 Q. And in March of 2002 the specific rates for the
 12 unbundled rate structure, including the conveyance rate,
 13 were considered and approved by the Met board.
 14 Do you recall that?
 15 **A. Yes.**
 16 Q. If we can look at Defense Exhibit 129, which I
 17 understand is in evidence. This document is entitled
 18 "Delegate Votes at a Glance."
 19 Do you see that?
 20 **A. Yes, I do.**
 21 Q. This is a document you can see in the lower
 22 right-hand corner, depending -- if you hold it this way,
 23 the long way, it's in the lower right-hand corner, you
 24 can see a Bates number SDCWA, et cetera, which indicates
 25 this is a document that came from San Diego's files.

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1 You understand that?
 2 **A. Yes.**
 3 Q. Can you tell us what this document is?
 4 **A. This is an at-a-glance voting record of our MWD**
 5 **delegates from the Water Authority.**
 6 Q. So is it true, then, that in this document we
 7 can see how the delegates from the San Diego Water
 8 Authority, who sit on the Metropolitan board, how they
 9 vote on various issues?
 10 **A. Yes.**
 11 MR. QUINN: That's what this reflects. And
 12 then if we could turn, please, to Defense Exhibit 772,
 13 DTX 772, not yet admitted, your Honor. As I understand
 14 there is no objection to it. I am going to offer this,
 15 as well.
 16 (Exhibit 772 was received into evidence.)
 17 MR. KEKER: No objection.
 18 THE COURT: DTX 772 is admitted.
 19 Q. BY MR. QUINN: You see this exhibit, 772, these
 20 are minutes of a San Diego Water Authority board meeting
 21 on February 28, 2002?
 22 **A. Yes.**
 23 Q. And if you turn, please, to page 11, that's
 24 page 11 on the lower right-hand side. You can also see
 25 that on the screen. You see there in the first

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1 paragraph, but I would like to read that to you. The
 2 first paragraph under 1B it says, "Director of imported
 3 water has provided reasons why CWA staff --"
 4 What is CWA?
 5 **A. County Water Authority. That's our agency.**
 6 Q. -- "had recommended that the board take a
 7 position on MWD's proposed rates and charges. He
 8 reviewed the proposed rate structure and described rate
 9 structure components. He showed potential impact to CWA
 10 member agencies. Mr. Hess compared existing and
 11 proposed MWD rates and charges, and said the IID
 12 transfer would provide a benefit to the proposed MWD
 13 rate structure."
 14 You see that?
 15 **A. Yes, I do.**
 16 Q. The second paragraph says, "After a lengthy
 17 discussion, the staff recommendation was revised to
 18 read: "The board direct the Met delegates to support
 19 the proposed Met rates and charges for 2003, with the
 20 statement and understanding that the action is without
 21 prejudice to the continuation of the preferential rights
 22 lawsuit."
 23 You see that?
 24 **A. Yes, I do.**
 25 Q. Apparently there was some lawsuit then going on

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1 between San Diego and who?
 2 **A. And Metropolitan Water District.**
 3 Q. About this preferential rights issues?
 4 **A. Yes.**
 5 Q. After a discussion at San Diego about the
 6 unbundled rate structure and the components of it, the
 7 San Diego board, after looking at this, directed the San
 8 Diego delegates on the Met board to vote for the rates
 9 that went into effect January 1, 2003; is that correct?
 10 **A. Yes. To support the rate structure, correct.**
 11 Q. And to vote, you understand that?
 12 **A. Yes, to vote affirmative.**
 13 Q. The only reservation related to this other
 14 issue, which was the subject of a pending lawsuit
 15 regarding preferential rights, at least as reflected in
 16 the minutes?
 17 **A. Yes.**
 18 Q. There was no reservation, at least as reflected
 19 in the minutes, in terms of the vote on these unbundled
 20 rates with respect to either State Water Project costs
 21 or the water stewardship rate; correct?
 22 **A. Correct.**
 23 Q. In fact, San Diego delegates, if we go back and
 24 look at Defense Exhibit 129, San Diego's members on the
 25 Met board did, in fact, vote in favor of those unbundled

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1 rates; correct?
 2 **A. They voted in favor of the rate structure,**
 3 **correct.**
 4 Q. And those rates and that rate structure and the
 5 components of it, that's the same structure which San
 6 Diego maintains in this case is a breach of the 2003
 7 exchange agreement?
 8 **A. Yes.**
 9 Q. You are aware Mr. Slater has been -- Mr. Scott
 10 Slater was designated by San Diego as the person most
 11 knowledgeable to testify on various issues relating to
 12 damages, breach and mistake. You are aware of that?
 13 **A. Yes, I am. I would like to read to you from**
 14 **Mr. Slater's deposition as the person most**
 15 **knowledgeable, from page 216 to 217, 12.**
 16 MR. KEKER: No objection.
 17 Q. BY MR. QUINN: I will read to you Mr. Slater's
 18 testimony as the person most knowledgeable.
 19 "Q. You knew that at the time
 20 the October 2003 agreement was
 21 signed, that that \$235 charge
 22 included charges, costs
 23 relating to the State Water
 24 Project that were included in
 25 the system access rate, that

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1 were rolled up into the
2 wheeling rate. You knew that?
3 "A Yes, I did.
4 "Q And you thought it was
5 inappropriate to include those
6 charges; correct?
7 "A Correct.
8 "Q And you believe that was actually not
9 lawful to do that; correct?
10 "A Agreed.
11 "Q And, similarly, if I ask
12 you the same questions about
13 the costs associated with power
14 and the State Water Project,
15 you knew those were included,
16 too, and you thought it was
17 illegal to include those in
18 that rate; correct?
19 "A That's correct.
20 "Q And -- but you knew they were
21 in that 235-dollar rate?
22 "A That's correct."
23 Now, back in 2003, you heard Mr. Slater
24 emphatically express that opinion at the time the
25 exchange agreement was being negotiated; correct?

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1 **A. Yes. We believed that they were not lawfully**
2 **to be included.**
3 Q. And you heard him express that opinion and you
4 believed that also, even before the exchange agreement
5 was signed up; correct?
6 **A. Correct.**
7 Q. When, Miss Stapleton, did you first reach the
8 conclusion that the inclusion of State Water Project
9 costs in the unbundled conveyance rate was unlawful?
10 When did you first reach that conclusion?
11 **A. When Metropolitan started talking about**
12 **unbundling of the rates and of the cost allocation of**
13 **the State Water Project. That's when we believed that**
14 **was a misinterpretation of what was allowed by law.**
15 Q. You had that belief when you first heard that
16 Metropolitan had proposed to include those costs in the
17 unbundled conveyance rate?
18 **A. Correct.**
19 Q. That could have been in 2001, 2002, but
20 certainly by 2003; correct?
21 **A. Correct.**
22 Q. You believed that it was unlawful, based upon
23 the law as it existed then in 2003; correct?
24 **A. Yes. We believed that the interpretation by**
25 **Metropolitan was not correct.**

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1 Q. My point is you believed it was unlawful under
2 the law, as it existed in 2003, the existing law at that
3 time?
4 **A. Yes.**
5 Q. Now, on occasion over the years, you haven't
6 been bashful about writing to Metropolitan to express
7 concerns that the San Diego Water Authority had about
8 various issues. Would that be fair to say?
9 **A. Yes. That is fair to say. I am not a bashful**
10 **woman.**
11 Q. And if an issue is important enough, you would
12 put those concerns in writing?
13 **A. It depends on what forum we would be at and it**
14 **depends on what we're trying to achieve. So I wouldn't**
15 **say wholesale I would put something like that in**
16 **writing.**
17 Q. What I'm saying is, without regard to the
18 forum, you wouldn't wait -- if you had a particular
19 concern you thought it was important enough -- you
20 wouldn't necessarily wait until the next board meeting.
21 You might send off a letter or an email and document
22 your strongly held views?
23 **A. Or make a phone call to let my views be known;**
24 **correct.**
25 Q. And if an issue was important enough that you

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1 thought it ought to be documented, you wouldn't hesitate
2 to put San Diego's views in writing; is that fair to
3 say?
4 **A. I guess I am hesitating on documented. I am**
5 **not sure I understand the question.**
6 Q. Let me withdraw it again.
7 I am saying if you thought it was important
8 enough, if you thought an issue was important enough, I
9 mean, you've been a general manager for, you told me, 19
10 years?
11 **A. Correct.**
12 Q. And you understand the value sometimes of
13 negotiating things, of documenting things when it
14 relates to issues that are important; correct?
15 **A. Correct.**
16 Q. Including issues about illegal conduct?
17 **A. Yes.**
18 Q. So if an issue is important enough --
19 **A. Uh-huh.**
20 Q. -- to you, you wouldn't hesitate to put San
21 Diego's concerns in writing; correct?
22 **A. Yes. I would put them in writing from time to**
23 **time, if it was appropriate. Again, depending upon what**
24 **venue I'm using to try to make a change.**
25 Q. So in particular, in 2003, after Metropolitan

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1 unbundled its rates, and after the new rates went into
 2 effect, you wrote Mr. Gastelum --
 3 **A. Yes.**
 4 Q. -- your counterpart at Metropolitan at the
 5 time, about those rates and documented your concerns.
 6 Do you recall that?
 7 **A. Yes, I do.**
 8 Q. Let's take a look at DTX 794. This is in
 9 evidence.
 10 And you say in the first line of your letter
 11 that you have identified some issues in the setting and
 12 the adoption of Metropolitan's proposed rates.
 13 Do you see that?
 14 **A. I do see that.**
 15 Q. And then it goes on -- and I am not going to
 16 take the time to go through your three-page
 17 single-spaced letter -- but continuing in the second
 18 paragraph there, and on to the second paragraph, you
 19 list certain of these issues; correct?
 20 **A. Yes.**
 21 Q. And these include something called
 22 "pay-as-you-go funding." I'm not even going to ask you
 23 what that is.
 24 **A. Yes.**
 25 Q. "Excess revenue collection. The use of

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1 reserved funds."
 2 Do you see all that?
 3 **A. I do see that.**
 4 Q. And then on page two there is a -- you reach --
 5 in the first full paragraph on page two, in the last
 6 sentence, you refer to "rate stability." Do you see
 7 that?
 8 THE COURT: Can you say that one more time,
 9 Mr. Quinn?
 10 MR. QUINN: Yes.
 11 Q. On page two, last sentence of the first full
 12 paragraph on page two, if you look at the second-to-last
 13 maybe you can highlight that, "rate stability."
 14 This is in the second-to-last line of the
 15 paragraph.
 16 **A. Yes, I see it now.**
 17 Q. And that was an issue. You thought that rate
 18 stability was something that was important to
 19 Metropolitan's members, including San Diego. Fair to
 20 say?
 21 **A. Yes, it was the use of reserves.**
 22 Q. Okay. But the rate stability was something
 23 that you thought was important; correct?
 24 **A. Yes. That the use of the planned increase of**
 25 **reserves could be more properly applied to maintaining**

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1 **existing rates, in this case, system access and water**
 2 **stewardship. And that would provide rate stability to**
 3 **the member agency, right.**
 4 Q. So you say, "Thus providing overall rate
 5 stability to agencies."
 6 Just reading that I got the impression you
 7 thought that was a useful thing to do?
 8 **A. Yes.**
 9 Q. Further, further down the page, you actually
 10 discuss the system power rate. Do you see that? You
 11 have a numbered paragraph.
 12 **A. I do.**
 13 Q. What you say there about the system power rate,
 14 the only thing you say about it there is it is kind of
 15 positive. Would you agree?
 16 **A. Yes. It was the first time that we were able**
 17 **to distinguish with specificity the system power rate in**
 18 **its detail, so we thought that was -- we wanted to give**
 19 **kudos where we could for doing that.**
 20 Q. The answer to my question was, yes, it was a
 21 positive thing?
 22 **A. Yes, it was.**
 23 Q. You say, "it is an excellent example of rate
 24 component transparency." Is what you wrote?
 25 **A. Yes.**

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1 Q. You don't -- you didn't actually hear, say, by
 2 the way, we think it is unlawful; you don't see that in
 3 that paragraph?
 4 **A. Not in that paragraph.**
 5 Q. Or anywhere in that letter. You don't say that
 6 use of power, inclusion of power in the rate is
 7 unlawful?
 8 **A. Yes, that's true. We kind of reference State**
 9 **Water Project in the next section.**
 10 Q. Sure. We will come to that.
 11 You did not request or even suggest that the
 12 State Water Project costs come out of the power rate?
 13 **A. Not in this paragraph, no.**
 14 Q. In the next paragraph you write about water
 15 delivery costs. Do you see that?
 16 **A. Yes, I do.**
 17 Q. There you do say that, "San Diego objects to
 18 the inclusion of significant water supply costs, e.g.,
 19 State Water Project costs, as a component in
 20 Metropolitan's system access rate."
 21 Do you see that?
 22 **A. Yes, I do.**
 23 Q. That is part of what we're talking about, what
 24 this lawsuit is about; right?
 25 **A. Correct.**

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1 Q. You go on to explain why San Diego objects.
 2 You say, and I quote, "The inclusion of supply costs in
 3 the system access rate creates subsidies for
 4 Metropolitan's supplies and increased costs for water
 5 delivery. This result sends inappropriate economic
 6 signals on both the costs of alternative supplies and
 7 appropriate delivery costs."
 8 Do you see that?
 9 **A. I do.**
 10 Q. At that time you thought that those costs,
 11 actually, that it was unlawful, it was illegal?
 12 **A. Yes, we believed it was unlawful.**
 13 Q. But you decided not to put that in the letter?
 14 **A. Not in this letter.**
 15 Q. Well, let me ask you: Before this lawsuit was
 16 filed, are you aware of any written communication that
 17 you wrote to anyone at Metropolitan saying that any of
 18 these challenged rates were illegal or unlawful?
 19 **A. I cannot recall offhand a written letter that**
 20 **says, hello, these rates are unlawful.**
 21 Q. Are you aware of any written communication,
 22 prior to the filing of this lawsuit, at any time, where
 23 anybody at San Diego tells anybody at Metropolitan that
 24 the inclusion of these State Water Project costs and the
 25 water stewardship rate in the unbundled conveyance rate

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1 is illegal?
 2 **A. In writing?**
 3 Q. Yes.
 4 **A. No.**
 5 Q. That would be a pretty important thing,
 6 wouldn't it? I mean, these contracts involve millions
 7 and millions of -- the conveyance of water in these
 8 charges involve tens of millions of dollars, don't they?
 9 **A. Yes, sir, they do.**
 10 Q. If somebody thought it was illegal, they are
 11 illegally being charged tens of millions of dollars, or
 12 that a proposal was on the table that would contemplate
 13 illegally charging tens of millions of dollars, that
 14 would be something significant, wouldn't you agree?
 15 **A. It is something significant, yes.**
 16 Q. And there is nothing in this letter where you
 17 say that --
 18 Let me turn now to the water stewardship rate
 19 and what you write there. The last paragraph on that
 20 page, "The Water Authority" -- it says, "The Water
 21 Authority supports the goal of increasing the production
 22 of recycled water and increasing support for economic
 23 water conservation programs, requiring an increase in
 24 the water stewardship rate. The Water Authority would
 25 like to continue to support local resource management

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1 and development programs," and it goes on. You can read
 2 ahead and read it to yourself.
 3 There is nothing there where you say the water
 4 stewardship rate should not be included in the water
 5 delivery costs or the costs of conveyance, is there?
 6 **A. Well, it references that the Water Authority**
 7 **believes that these goals could be met without**
 8 **unnecessarily increasing the system access charge in the**
 9 **water stewardship rate this year.**
 10 **So that was our reference to they should not be**
 11 **in the transportation rates.**
 12 Q. There is nothing there where you indicate or
 13 even suggest that you thought that the inclusion of the
 14 water stewardship rate charges was actually unlawful or
 15 illegal?
 16 **A. Correct.**
 17 Q. Did you have any role in the negotiation and
 18 approval of the exchange agreement that ended up being
 19 signed in October of 2003?
 20 **A. Yes, I did.**
 21 Q. And what was your role?
 22 **A. I was the team leader of the negotiating team.**
 23 Q. And do you recall that, just kind of jumping
 24 into the middle of that, that around August of 2003, San
 25 Diego proposed to Metropolitan two different ways of

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1 entering into this conveyance arrangement for the water
 2 that San Diego had contracted to get; do you recall?
 3 **A. I do.**
 4 Q. And if we could take a look at DTX 8- -- just a
 5 second. DTX 829.
 6 MR. QUINN: This is not in evidence but there
 7 isn't an objection to it and I would offer this, your
 8 Honor.
 9 MR. KEKER: No objection.
 10 THE COURT: DTX 829 is admitted.
 11 (exhibit 829 was received into evidence.)
 12 Q. BY MR. QUINN: You are in the e-mail string
 13 down at the bottom, between you and Mr. Campbell, and
 14 Mr. Campbell refers it up to Lee Miller, I guess.
 15 **A. Yes.**
 16 THE COURT: Willer, W-I-L-L-E-R.
 17 MR. QUINN: Thank you, your Honor.
 18 Q. Who is Lee Willer?
 19 **A. She was an employee of the Water Authority who**
 20 **was a subordinate of Campbell.**
 21 Q. This is dated in -- your email is dated
 22 September 8. This is, I guess, kind of early on, not
 23 too long after the idea of these two different options
 24 have been put on the table; is that right?
 25 **A. Correct.**

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1 Q. In your email you ask Mr. Campbell to develop
 2 some written material for San Diego's board concerning
 3 the potential deal points for this exchange agreement?
 4 **A. Yes.**
 5 Q. Mr. Campbell then writes to Mr. Willer asking
 6 also, "How are you doing on the last canal lining
 7 analysis? We talked about comparing the exchange
 8 agreement versus wheeling rate differential and
 9 spreading the difference over canal lining water for 75
 10 years. I would like to do some escalation sensitivities
 11 on the MWD wheeling rate, two percent, three percent,
 12 four percent, to see the per AF" --
 13 I have come to learn that's acre-foot.
 14 **A. Yes, it is.**
 15 Q. -- "on the canal lining water."
 16 Do you see that?
 17 **A. I do.**
 18 Q. What was requested here was an analysis of the
 19 assumption that the MWD conveyance or wheeling rate
 20 would escalate over a 75-year period; correct?
 21 **A. Right. We were doing a range of escalations.**
 22 Q. Among the ranges you did, do you ever recall
 23 being a range of escalations done where you only looked
 24 at a five-year period, and assume those rates would only
 25 be in effect for five years?

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1 **A. No. We actually did it on a worst-case**
 2 **scenario.**
 3 Q. If you look at your e-mail, the second at the
 4 bottom, in the second sentence in the first paragraph,
 5 where it says, "The handout needs to articulate the deal
 6 points and identify the canal lining projects and its
 7 water as an alternative path that is at the sole
 8 discretion of the authority."
 9 Do you see that?
 10 **A. Yes.**
 11 Q. Do you recall that Metropolitan, when these two
 12 options were put on the table by San Diego, Metropolitan
 13 came back to San Diego and said, "They look roughly the
 14 same to us from an economic standpoint. San Diego, you
 15 can choose which one. You choose, Option-1 or
 16 Option-2." Do you recall that?
 17 **A. I do recall that Metropolitan said that they**
 18 **were okay with either Option-1 or Option-2.**
 19 Q. Right. I was interested in an answer you gave
 20 a moment ago. Are you telling us the reason you didn't
 21 run the numbers, the projections for five years, is
 22 you're only interested in a worst-case analysis?
 23 **A. Yes, a worst-case scenario to present to my**
 24 **board, so that they knew if, in fact, we were**
 25 **unsuccessful in negotiating what we thought was the**

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1 **lawful wheeling rate, that they knew what their exposure**
 2 **would be.**
 3 Q. You didn't think the board would be interested
 4 in knowing what the future scenarios might look like if
 5 the rate structure was only in place for five years?
 6 **A. No. They want to know what the worst case is.**
 7 **You hope for the best but you plan for the worst.**
 8 **So we did the worst-case scenario in a two to**
 9 **five percent, I believe it was, escalation, so we knew**
 10 **what our maximum exposure would be.**
 11 Q. So that's your experience in the business world
 12 when you're looking at a particular potential deal. You
 13 don't look at -- you only look at a worst case. You
 14 don't run the numbers for what the case is, for what you
 15 hope to achieve, it's not the worst case; you don't run
 16 those numbers?
 17 **A. We did not. We were under a very short time**
 18 **period. We were talking about a huge risk that we were**
 19 **taking on, and I would rather tell my board what I**
 20 **believed was the worst-case scenario so they wouldn't**
 21 **come back and say, why didn't you tell me what that**
 22 **maximum exposure was.**
 23 Q. I understand, ma'am, why you -- the board would
 24 want to know worst case, and I understand why you would
 25 want to tell them worst case. My question is a little

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1 different.
 2 Isn't it your experience in the business world,
 3 that decision makers also want to see a projection based
 4 on what you realistically think you can achieve,
 5 something that is not the worst case?
 6 MR. KEKER: Objection. Argumentative. No
 7 foundation. And I move to strike the speech at the
 8 beginning.
 9 THE COURT: Overruled.
 10 Go ahead.
 11 THE WITNESS: We had been on a monthly or twice
 12 or three times a month been talking to our board about
 13 the various options. The All-American Canal option was
 14 a new option, and that was the focus of what my board
 15 needed to look at, was whether to take Option-1, which
 16 was already out there, or Option-2, which was new. And,
 17 therefore, I directed staff to take the number that
 18 Metropolitan had, escalate it out, and assuming that it
 19 would not change over that 45 years, what was our
 20 exposure based on the escalation of two to five percent.
 21 That is what I wanted the board to know, what the
 22 maximum exposure would be so they could make the most
 23 informed decision.
 24 The worst thing for a manager is to have a
 25 board member come back and say why didn't you tell me

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1 that was possible.
 2 Q. You know with respect, I don't think that
 3 answered my question, which was directed to, in the real
 4 world, if you want to give them, I think you just said,
 5 you want to give them the best information, don't you
 6 also want to give them a projection, based not just on
 7 the worst case but by what you hoped to achieve in
 8 negotiating the agreement? Don't you want them also to
 9 have that information?
 10 **A. No. Because the exposure would be less than**
 11 **that maximum that you provided to the board. It would**
 12 **be nothing but better than what you gave to the board as**
 13 **the worst-case scenario. That would be a positive.**
 14 **They would be happy. So, no.**
 15 Q. So the way it works at San Diego is the board
 16 only wants to hear worst-case scenarios. They are not
 17 interested in hearing what you think is actually
 18 realistic or what you can achieve? Is that your
 19 experience at San Diego?
 20 **A. In this case it is.**
 21 Q. Is it your testimony that you had some
 22 discussion with some board members where they said to
 23 you, "No, don't present us with any scenarios reflecting
 24 what you really intend to achieve in this agreement or
 25 what you can think you can realistically do. We are not

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1 interested in that. All we want to see is the absolute
 2 worst case?" Did you have a conversation like that with
 3 anybody on the San Diego board?
 4 **A. No, I did not.**
 5 MR. QUINN: Let's take a look at DTX 830.
 6 I understand this is not in evidence and I
 7 understand there is no objection.
 8 THE COURT: The PowerPoint slides.
 9 MR. KEKER: No objection, your Honor.
 10 MR. QUINN: We have offered this.
 11 THE COURT: DTX 830 is admitted.
 12 (Exhibit 830 was received into evidence.)
 13 Q. BY MR. QUINN: Just so you know where I'm
 14 going, ma'am, I want to walk through the written records
 15 that exist leading up to the execution of the exchange
 16 agreement in October.
 17 What we're looking at here, the cover note is
 18 an e-mail from Amy Chen to some people, including
 19 yourself, and it is dated September 10, 2003; correct?
 20 **A. Correct.**
 21 Q. Who is Amy Chen?
 22 **A. She is one of my staff members who is assigned**
 23 **the MWD program and she's located in Los Angeles in the**
 24 **MWD building.**
 25 Q. She lives in enemy territory. It's a joke.

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1 I'm sorry.
 2 Does this appear to be -- maybe you can tell me
 3 what that presentation, these PowerPoints seem to
 4 reflect?
 5 **A. Right. Based upon the cover memo of Gil Ivey,**
 6 **who is an employee of Metropolitan was, sending to my**
 7 **staff member the presentation that was made at the MWD**
 8 **water planning quality and resources committee meeting**
 9 **on the QSA.**
 10 Q. This is a document generated by Metropolitan,
 11 to your understanding?
 12 **A. Yes.**
 13 Q. Do you have any understanding why it was sent
 14 to the folks at San Diego?
 15 **A. I don't have any specific knowledge. We were**
 16 **trying to keep each agency informed of what the other**
 17 **one was doing.**
 18 Q. If you thumb through, I think, four or five
 19 pages, you will see one slide that is entitled at the
 20 top "peace treaties." You see that?
 21 **A. Yes.**
 22 Q. It says, "Wheeling laws, no legislative change
 23 by San Diego and MWD."
 24 **A. Yes.**
 25 Q. Do you see that?

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1 **A. I do.**
 2 Q. And then if you skip forward a couple of pages
 3 there is a heading that says, "Alternate SDCWA
 4 Pathways." Two bullets. "Two options available. SDCWA
 5 to choose by October 1."
 6 **A. Yes.**
 7 Q. That is probably referring to that San Diego
 8 can choose which option?
 9 **A. Correct.**
 10 Q. The next slide at the top, it says, "SDCWA
 11 Option-1."
 12 And the second bullet there is "SDCWA pays
 13 discount wheeling rate for 35 years or 5.1 MAF."
 14 **A. Million acre-feet.**
 15 Q. So Option-1, that was -- this is we are going
 16 to continue just to go -- we will continue under that
 17 exchange agreement that we negotiated a few years ago;
 18 right?
 19 **A. Correct.**
 20 Q. Which had a discounted wheeling rate in it?
 21 **A. We would argue it's not discounted.**
 22 Q. If you look at the next slide on the top, SDCWA
 23 Option-2, the second option, what Met is saying is here,
 24 "SDCWA pays full wheeling rate for IID, SDCWA transfer
 25 water and canal lining conserved water."

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1 Do you see that?
 2 **A. I do.**
 3 Q. And you understood that was Met's position
 4 about what the proposal was?
 5 **A. Yes. It doesn't reference a year on this one.**
 6 **So I can't tell how long they thought that would be.**
 7 Q. It just says full wheeling rate?
 8 **A. Yes.**
 9 Q. You understood that was their understanding and
 10 expectation?
 11 **A. No, I did not know that full wheeling rate --**
 12 **it's not the same language we used, but I presume it**
 13 **referenced the \$253 rate.**
 14 Q. And that's what ultimately ended up going into
 15 the agreement?
 16 **A. It did.**
 17 MR. QUINN: And then if we could look at DTX
 18 837, which has not been admitted. I understand there is
 19 no objection to it. We would offer it, your Honor.
 20 MR. KEKER: No objection.
 21 THE COURT: DTX 837 is admitted.
 22 (Exhibit 837 was received into evidence.)
 23 MR. KEKER: It is also 846. You're right. No
 24 objection.
 25 Q. BY MR. QUINN: The top document is an email

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1 from you dated September 16, 2003?
 2 **A. Yes.**
 3 Q. And you sent this to all board members --
 4 **A. Yes.**
 5 Q. -- is that right? Concerning QSA update and
 6 attached fact sheet and Campbell memorandum, you
 7 attached those two documents; right?
 8 **A. I did.**
 9 Q. The first attachment, if we could look at that,
 10 the first page, it says, "Fact Sheet, September 16,
 11 2003." And this is a fact sheet that was prepared at
 12 San Diego outlining the two options; right?
 13 **A. Yes.**
 14 Q. And the second attachment is the memorandum
 15 from Bob Campbell outlining the financial analysis of
 16 the two options; correct?
 17 **A. Yes.**
 18 Q. So if we could just look first at the fact
 19 sheet.
 20 And if we could go to the second page, which
 21 says, "Option-2" at the top. If we would just enlarge,
 22 say, the top third. The second bullet, in describing
 23 the Option-2, it says "MWD assigns its canal lining
 24 rights to SDCWA. Canal lining water rights to SDCWA.
 25 Project yields 77,700 acre-feet annually for 110 years.

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1 8.5 million acre-feet of water." That's a lot of water?
 2 **A. It's a lot of water.**
 3 Q. Worth a lot?
 4 **A. Worth a lot.**
 5 Q. Worth billions, with a B, of dollars; correct?
 6 **A. I don't know. But it is worth a lot of -- it**
 7 **has high value.**
 8 Q. It is certainly worth -- 77,700 acre-feet
 9 annually for 110 years is certainly worth more than
 10 \$100 million?
 11 **A. Absolutely.**
 12 Q. Absolutely. Certainly worth more than
 13 \$500 million?
 14 **A. I don't know.**
 15 Q. You don't know?
 16 **A. I'd have to do a calculation of what it would**
 17 **be worth compared to other transfers.**
 18 Q. Would you dispute that that quantity of water
 19 is worth -- I understand you don't know whether it's
 20 worth billions. Are you in a position to dispute that?
 21 Would you dispute -- if somebody said that was worth \$2
 22 billion, with a B, would you dispute that?
 23 **A. I would not, no.**
 24 Q. You just don't know?
 25 **A. I wouldn't know what, you know, what the costs**

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1 **would be over 110 years and how to present value the**
 2 **cost of that water.**
 3 Q. How about just the current cost? Let's talk in
 4 terms of today. If you could get that much water
 5 today -- let's not worry about for now the
 6 discounting -- that would be worth billions of dollars?
 7 **A. Yes, it would be worth a lot of money.**
 8 Q. Billions?
 9 **A. Sir, I don't want to say what it's worth unless**
 10 **I had the ability to spend some time to calculate its**
 11 **value.**
 12 Q. Certainly anyone who said it might only be
 13 worth \$100,000, that would be flat-out wrong?
 14 **A. I would say it's worth much more than that.**
 15 Q. Let's go to the second attachment, the
 16 memorandum from Mr. Campbell. And I assume you would
 17 read this memo before you sent it -- before you attached
 18 it to your email to your board of directors?
 19 **A. Yes, I would have read it.**
 20 Q. And insofar as you know, everything that's in
 21 this memo is accurate?
 22 **A. Yes.**
 23 Q. And the description of Option-2, in this memo,
 24 there in that first paragraph, it says, "The assignment
 25 of Met's canal lining project water rights to SDCWA, in

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1 consideration for SDCWA's paying Met's wheeling rate, in
 2 lieu of the exchange agreement to transport the
 3 IID/SDCWA transfer water and canal lining water.
 4 Currently the Met wheeling rate is set at \$253 per
 5 acre-foot, including the system access and water
 6 stewardship rates and power cost."
 7 Do you see that?
 8 **A. I do.**
 9 Q. And then it says, where it says, "In
 10 consideration," what you understood that to mean was
 11 that Met would get what's stated there, Met's wheeling
 12 rate, instead of the rate under the 1998 exchange
 13 agreement, which is what the existing exchange agreement
 14 provided for; right?
 15 **A. Yes. That we would pay the \$253 instead of**
 16 **that 90-dollar rate.**
 17 Q. So you were going to pay a lot more?
 18 **A. Yes.**
 19 Q. You understood that \$253, probably beating the
 20 dead horse here, but it included that system access
 21 rate, the power rate with the State Water Project costs
 22 built into both of them, and the water stewardship rate;
 23 correct?
 24 **A. Yes. That would be included in that \$253 that**
 25 **we would pay for a minimum of the five years.**

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1 Q. In the next full paragraph Mr. Campbell writes
 2 about how the staff used two different approaches to
 3 evaluate the costs of the two options.
 4 **A. Yes.**
 5 Q. And in both approaches he assumed that under
 6 Option-2 Met's wheeling rate would escalate over the
 7 term of the contract; correct?
 8 **A. Correct.**
 9 Q. In the last paragraph on page one, third
 10 sentence he writes, "The Met wheeling rate is
 11 established annually by the Met board of directors and
 12 is assumed to escalate over time." Correct?
 13 **A. Correct.**
 14 Q. In this memorandum that you sent, you said we
 15 are anticipating that the wheeling rate, at least for
 16 purposes of trying to value this option, we assume the
 17 wheeling rate will include these components, will be
 18 starting at \$253, and there will be a factor for
 19 inflation over time; correct?
 20 **A. That -- I'm not sure about the way we would**
 21 **value this option. But that -- what the potential costs**
 22 **could be for this option.**
 23 Q. Right.
 24 **A. It would be done in this manner.**
 25 Q. Thank you. You are trying to compare the two,

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1 and in looking at the potential costs of the second
 2 option, the staff is looking at these two different
 3 ways, but they are assuming it is going to start at 253
 4 and escalate up over time; right?
 5 **A. Right. In this calculation or analysis, that**
 6 **is exactly what we're doing.**
 7 Q. Again, there is no numbers here run on just a
 8 five-year scenario. This only --
 9 **A. No.**
 10 Q. -- the 253 and escalator is only for five
 11 years?
 12 **A. No. Because the canal lining was for 110**
 13 **years.**
 14 Q. A week after that you helped prepare and
 15 approved a memorandum to the water policy committee?
 16 **A. Yes.**
 17 MR. QUINN: And let's take a look at DTX 856.
 18 Not admitted yet. No objection, as I understand it.
 19 We'd offer this, your Honor.
 20 MR. KEKER: No objection.
 21 THE COURT: DTX 856 is admitted.
 22 (Exhibit 856 was received into evidence.)
 23 Q. BY MR. QUINN: What is the water policy
 24 committee?
 25 **A. It is a committee made up of approximately 14**

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1 **members of my board of directors.**
 2 Q. If you go to the last page, you will see an
 3 indication there, I think it's the last lines on the
 4 page, this is a memorandum that was -- that you prepared
 5 and approved?
 6 **A. Yes.**
 7 Q. Also prepared by Mr. Campbell and
 8 Mr. Hentschke, the general counsel?
 9 **A. Correct.**
 10 Q. If you turn to page two in this memo that you
 11 wrote, you describe Option-1 and Option-2?
 12 **A. Yes.**
 13 Q. In particular to Option-2, if we can enlarge
 14 that paragraph, you wrote, "In consideration for Met's
 15 assignment of All-American and Coachella canal lining
 16 water rights to the authority, the authority would pay
 17 Met's lawful wheeling rate in lieu of the exchange
 18 agreement. The Met's current published wheeling rate is
 19 \$253 per acre-foot and is comprised of the system access
 20 charge, water stewardship charge and power cost."
 21 Do you see that?
 22 **A. I do.**
 23 Q. In this memo, at any point, do you tell the
 24 water policy committee when you're laying this out that
 25 you think those charges are unlawful?

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1 **A. In the public sessions we did not.**
 2 Q. Go back to my question. In this memo.
 3 **A. In the memo, no, we did not.**
 4 Q. Did you ever write a memo to your board, did
 5 you, considering these various proposals and leading up
 6 to the execution of the agreement, did you personally
 7 write a memo to your board at any point which indicates
 8 that any of these charges are unlawful?
 9 **A. We never provided any written documentation to**
 10 **our board related to this. It was never in writing.**
 11 Q. Related to this --
 12 **A. Related to our belief that Met's wheeling rate**
 13 **at that time was not lawful. We did not provide**
 14 **anything in writing to the board on that.**
 15 Q. It wasn't important enough to include in any of
 16 the documents?
 17 **A. Oh, not in the documents. It was absolutely**
 18 **important for the board to know that what our concerns**
 19 **were about Met's rates not being lawful and those -- and**
 20 **those discussions, and there were many of those**
 21 **discussions were held with our board.**
 22 Q. You don't have anything in writing that you can
 23 share with us?
 24 **A. We do not provide any written documentation to**
 25 **the board for closed session items.**

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1 Q. So this is something that -- this view about
 2 the illegality is something you wanted to keep in closed
 3 session?
 4 **A. Absolutely.**
 5 Q. You regarded that as something that was
 6 confidential?
 7 **A. Absolutely.**
 8 Q. You didn't want that to be publicly known, that
 9 you thought these rates were --
 10 **A. The discussions, it was not appropriate to have**
 11 **those discussions in open session.**
 12 THE COURT: Ma'am, you have to just let him
 13 finish his question. Just give it a beat and then
 14 answer.
 15 Q. BY MR. QUINN: I am not asking about the
 16 discussions. I am focusing on your view that these
 17 rates were illegal. You didn't want that to be publicly
 18 known.
 19 **A. No, that is not true.**
 20 Q. If you look at pages five and six, there is a
 21 discussion of the staff, two approaches to the analysis
 22 of the cost of Option-1 and -2.
 23 Do you see that?
 24 **A. Yes, I do.**
 25 Q. And, again, each of those approaches assumes

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1 the \$253 rate will escalate over time, using inflation
 2 factors ranging from two to five percent?
 3 **A. Yes.**
 4 Q. And, again, if we look in here, there's nothing
 5 in here about proposed -- any other proposed alternative
 6 scenario, like a five-year period, in terms of length of
 7 the wheeling deal?
 8 **A. There is not.**
 9 Q. At the bottom of page six there is a beginning
 10 of a summary in which you present various factors to
 11 assist the board in assessing the risks and benefits of
 12 Option-2. Do you see that?
 13 **A. I do.**
 14 Q. On the next page, page 7, you discuss supply
 15 reliability, saying "There is no other readily available
 16 water supply with the priority level, cost amount and
 17 duration of water supply resulting from the canal
 18 lining." Do you see that?
 19 **A. I do.**
 20 Q. How did you know that, that there wasn't other
 21 similar available water supply?
 22 **A. Because we had been negotiating for so long and**
 23 **were very familiar with the Colorado River and the**
 24 **availability of various supplies on the river.**
 25 Q. On page 7 you indicate how the marginal cost of

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1 the canal lining water compares favorably to other water
 2 transfers that range in supply costs alone --
 3 **A. Yes.**
 4 Q. -- between \$250 and \$300; do you see that?
 5 **A. I do see that.**
 6 Q. On page 8 under "Supply risks are significantly
 7 lower," you write, and I quote, "While choosing Option-2
 8 exposes the authority to higher wheeling costs,
 9 comprised of Met rate components and system access
 10 charge, stewardship and fluctuations of power costs, it
 11 protects the authority from even greater exposure
 12 associated with securing an alternative imported supply,
 13 whether or not that supply" -- I'm sorry -- "securing an
 14 alternative imported supply, whether or not that supply
 15 comes from Met or another seller."
 16 Did you believe that to be true at the time?
 17 **A. Yes.**
 18 Q. And you recommended that Option-2 be approved;
 19 right?
 20 **A. I did.**
 21 Q. Notwithstanding your view that these rates are
 22 illegal; correct?
 23 **A. Correct.**
 24 Q. And you concluded that this was a good deal for
 25 San Diego, to start with the wheeling rate -- it was a

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1 good deal even if, worst-case scenario, if you had to
 2 pay this illegal wheeling rate of \$253, with an
 3 inflation factor of up to five percent over the life of
 4 the contract, even at that scenario you were
 5 recommending that this was a good deal for San Diego?
 6 **A. Yes.**
 7 MR. QUINN: If we could turn now to DTX 221,
 8 which is not yet admitted, and to which the Plaintiff
 9 has objected on the grounds of relevance.
 10 THE COURT: Are you offering it now?
 11 MR. QUINN: I am offering it, your Honor.
 12 THE COURT: I am trying to figure out if you
 13 are going to ask the witness some questions to lay a
 14 foundation. Why don't you tell me what the relevance is
 15 and then they can tell me why it's not.
 16 MR. QUINN: This raises -- this addresses the
 17 same issues, your Honor, about the risk, the wheeling
 18 rate, the proposed exchange deal. It talks also about
 19 the other related agreements, the allocation, the
 20 quantification settlement agreement and identifies the
 21 various risks of Option-2.
 22 MR. KEKER: Your Honor, I think our
 23 objection -- I know our objection as to relevance is
 24 based on that portion that talks about everything but
 25 what this trial about, which is the terms of the

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1 exchange agreement. And this going back to the motive,
 2 the other benefits and so on is a complete red herring
 3 to the issue of what the parties agreed to in 2003 and
 4 5.2 of the agreement. We said before, we are all over
 5 the place with parole evidence; we get it. But our
 6 argument is going to be read the contract and follow it,
 7 and none of this atmosphere and the earth cooled and
 8 then land was formed and canals were dug and so on is
 9 useful to making that decision.
 10 So that's our objection, and I'll sit down.
 11 THE COURT: I understand. I do understand your
 12 position, you should look at the other contracts. And
 13 part of the defense is that we should, and so it is
 14 admissible on that basis. DTX 221 is admitted.
 15 (Exhibit 221 was received in evidence.)
 16 Q. BY MR. QUINN: Do you recall this -- we are now
 17 up to September 25, 2003, just a few days, a couple of
 18 weeks before the exchange agreement is actually signed?
 19 **A. Yes, a few days before the deadline, where we**
 20 **had to make a decision.**
 21 Q. It actually was signed -- somebody help me --
 22 do you remember the date of the exchange agreement?
 23 **A. I want to say October 10.**
 24 Q. I am hearing a chorus of October 10, so I think
 25 you're right.

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1 You recall this PowerPoint presentation here,
 2 DTX 221, was presented to the board at San Diego?
 3 **A. Yes. This is our public PowerPoint**
 4 **presentation.**
 5 Q. You thought this was accurate?
 6 **A. Yes.**
 7 Q. You wouldn't have submitted it otherwise?
 8 **A. Yes.**
 9 Q. If you turn, please, to slide 2.
 10 Fair to say that this shows that San Diego --
 11 this pie here shows that San Diego was fairly dependent
 12 on Metropolitan for their water supply?
 13 **A. In 1991 we were 95 percent dependent.**
 14 Q. Do you know what that was in 2003?
 15 **A. In 2003 we had reduced it to maybe -- I am**
 16 **going to say maybe 75 percent or so, 80 percent.**
 17 Q. Would it be true to say that San Diego had, for
 18 a long time, sought to secure its own independent supply
 19 of water?
 20 **A. Yes.**
 21 Q. And if you turn, please, to slide 21, the
 22 heading at the top is "Option-2, Financial
 23 Risk/Benefit."
 24 Here you identify the risk under Option-2,
 25 risk: "Exposure to MWD wheeling rate."

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1 Do you see that?
 2 **A. Yes.**
 3 Q. Under that exchange agreement that had already
 4 been in place, which would have been Option-1, for at
 5 least 30 years you knew what the wheeling charges were
 6 going to be; correct?
 7 **A. Correct.**
 8 Q. Because there was -- that starts out at a
 9 certain number, \$80 and \$90, and then an index to
 10 increases; right?
 11 **A. Yes.**
 12 Q. But you didn't have that under the proposal
 13 under Option-2?
 14 **A. Correct.**
 15 Q. The risk was, it says here, "Exposure to the
 16 MWD wheeling rate." You mean for the term of the
 17 contract; right?
 18 **A. Certainly for the first five years we were**
 19 **exposed to it -- to Met's wheeling rate. And then after**
 20 **five years, depending on what the Water Authority chose**
 21 **to do, we were exposed to the lawful wheeling rate.**
 22 Q. I mean, even under San Diego's interpretation,
 23 if we look at that exchange agreement, we won't see
 24 anything in there specifying what the price would be for
 25 any year, you know, years two to five or after five?

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1 **A. We have -- yes, there's nothing in the**
 2 **agreement that talks about what a specific dollar amount**
 3 **would be after year five.**
 4 Q. Or what the increases would be?
 5 **A. Correct.**
 6 Q. There was no index, in other words, like there
 7 was under the previous exchange agreement?
 8 **A. Correct.**
 9 THE COURT: Whenever you get to a good point in
 10 the next five minutes or so, just pick a time and take a
 11 break.
 12 MR. QUINN: Why don't I finish this exhibit.
 13 It won't take long.
 14 THE COURT: Sure.
 15 Q. BY MR. QUINN: And then you say, you describe
 16 here the cost for benefit received from canal lining.
 17 You describe that as, "The present value difference
 18 between the 1998 exchange agreement cost and the MWD
 19 wheeling rate cost for 35 years." Do you see that?
 20 **A. I do.**
 21 Q. And it refers there, below that, to "Inflation
 22 sensitivity for the wheeling rate." Do you see that?
 23 **A. I do.**
 24 Q. That is something that needs to be considered?
 25 **A. Yes.**

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1 Q. So it is still anticipated that San Diego would
 2 pay the MWD wheeling rate for 35 years and that rate
 3 would increase over time; correct?
 4 **A. Yes. As I explained earlier, we had a range of**
 5 **escalations that we used to determine what we felt was**
 6 **the maximum wheeling rate that we would be exposed to.**
 7 Q. So if we look at the present value analysis
 8 that's done here, and you are kind of summarizing here,
 9 that present value analysis, again, was based on an
 10 assumption that the Met wheeling rate would escalate
 11 over the existing rate of the life term of the contract?
 12 **A. Correct.**
 13 Q. If we turn to slide 22, "Option-2, financial
 14 risk analysis," that identifies what we have been
 15 talking about, the price under the 1998 agreement as \$97
 16 an acre-foot for 2003. Do you see that?
 17 **A. Yes.**
 18 Q. It goes on to say, "Risk is in difference
 19 between Met wheeling rate cost and wheeling rate cost
 20 under the exchange agreement." And using the numbers in
 21 the slide the risk was the difference between \$253 and
 22 \$97 per acre-foot or \$156 per acre-foot with an
 23 inflation factor for each?
 24 **A. Yes.**
 25 Q. That was the important information that you

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1 were presenting to the board in making this decision;
 2 correct?
 3 **A. Absolutely.**
 4 Q. It says, "The present value of differential is
 5 the cost of getting the canal lining water benefit."
 6 Right?
 7 **A. Right.**
 8 Q. So the board understood that the canal lining
 9 water was a trade-off for the payment of the existing
 10 Met wheeling rate plus an inflation factor?
 11 **A. I don't think that's exactly correct.**
 12 **I think that they felt that the canal lining**
 13 **project was a trade for giving up the 1998 exchange**
 14 **agreement for the exchange agreement that was proposed**
 15 **in -- that now is the 2003. It is not correct that we**
 16 **traded absolutely the canal lining project for the Met**
 17 **determined wheeling rate for 45 years.**
 18 Q. In terms of the analysis that was presented to
 19 the board --
 20 **A. Yes. In terms of the analysis, yes.**
 21 Q. -- it was presented to the board, and what you
 22 were asking the board to make its decision based on, you
 23 were presenting them this present value analysis and
 24 comparing the cost.
 25 In terms of the analysis that was presented to

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1 the board --
 2 **A. Yes. In terms of the analysis, yes.**
 3 Q. It was presented to the board, and what you
 4 were asking the board to make its decision based on, you
 5 were presenting them this present value analysis and
 6 comparing the cost; correct?
 7 **A. Right. We were comparing the costs and the**
 8 **maximum exposure of costs.**
 9 Q. And we looked earlier at Mr. -- is it
 10 Campbell's memorandum? -- where he talked in terms
 11 about the consideration for the canal lining water
 12 paying the wheeling rate; do you recall that?
 13 **A. Yes.**
 14 Q. You understand that -- I mean, you don't have
 15 any disagreement with that? That was part of the
 16 consideration, forgetting this huge volume of water for
 17 110 years was agreeing to pay this much increased
 18 wheeling rate; correct?
 19 **A. Yes, yes. For that five years.**
 20 Q. And that was -- those were key points in the
 21 deal; fair?
 22 **A. Yes.**
 23 Q. They are reflected in the -- that deal, those
 24 key points of this deal are reflected in different
 25 documents, the exchange agreement and the allocation

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1 agreement; correct?
 2 **A. Yes.**
 3 Q. You can't just read one of those documents to
 4 have an understanding of what the deal was; correct?
 5 **A. The total deal?**
 6 Q. Yes.
 7 **A. It would be -- you would have to look at all**
 8 **30-some documents in the QSA to actually understand the**
 9 **total deal, not just one or two.**
 10 Q. So, again, after considering all this and the
 11 risk and benefits described in the information you gave
 12 the board, the San Diego board approved Option-2;
 13 correct?
 14 **A. Yes.**
 15 MR. QUINN: This would be a good time, your
 16 Honor.
 17 THE COURT: I will see everybody in 15 minutes.
 18 Thank you very much.
 19 (Recess.)
 20 MR. KEKER: Your Honor, could I raise a point
 21 that I was going to raise at the end of the day but I am
 22 afraid if I wait it will be in a rush for 4:00 and we
 23 should do it now. And that is the question of time.
 24 When we -- we have used about four hours to
 25 present our direct case, as promised. Your order says

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1 we get nine hours and they get 12 hours, and just
 2 basically we don't think that's fair. We had three
 3 witnesses. They've got seven witnesses. I'm not sure
 4 our clocks and your chess clock are a little bit
 5 different. The clerk let us look at your chess clock.
 6 We basically used, we think, us about 4:45 and
 7 them about 5:14. What I am suggesting is you give us
 8 equal time and we use three days in the week that you
 9 set aside four days, and we get in 12 hours of testimony
 10 split evenly with the rest of the witnesses, rather than
 11 have us at a three-hour disadvantage, for what we don't
 12 think there is any good reason.
 13 THE COURT: Would you like to be heard?
 14 MR. QUINN: If the Court is going to consider
 15 that, yes. Otherwise we -- we want some more time, too.
 16 Remember, they were telling us this could all be done
 17 this week. We cut witnesses. Told them to send Amy
 18 Chen home, for example. We scrambled and cut
 19 examinations and tried to squeeze in the time we had.
 20 They just had a damages case to put on. They say
 21 everything else has been decided. We have affirmative
 22 defenses. I think the Court had good reasons for not
 23 giving both sides, at this point, the same amount of
 24 time.
 25 THE COURT: I have actually already -- I spent

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1 quite a bit of time trying to figure this out, coming up
 2 with some rules of thumb about how to deal with the
 3 amount of time people need on direct and cross. I don't
 4 think anything's changed. So I'm not going to grant the
 5 motion. I am just going to live with the time we set.
 6 MR. KEKER: The second request, your Honor, is
 7 that in the back of the courtroom Jessica Fromm, who is
 8 an 8th grade teacher from Denver, is here and she wanted
 9 to take a picture of the courtroom to show her students,
 10 and we wondered if you had any objection to her doing
 11 that.
 12 THE COURT: Of course not.
 13 MR. QUINN: I object. Mr. Kecker is going to be
 14 in the photo.
 15 THE COURT: That I understand. I appreciate it
 16 if you don't take pictures of someone who is on the
 17 witness stand. We will arrange the room. Because the
 18 witness might object to that. You can always take a
 19 picture of everybody after the witness has stepped down,
 20 if you want. If anybody else has any objection to being
 21 in a picture, please just make that known and move when
 22 the picture is being taken.
 23 Let's proceed.
 24 Q. BY MR. QUINN: Miss Stapleton, I would like to
 25 read to you again some testimony from Mr. Slater, San

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1 Diego's person most knowledgeable. And this will be
 2 from page 64 of his deposition, lines 14 to 25.
 3 "Q I want to jump back to the
 4 2003 agreement for a second.
 5 I'm jumping back here like
 6 Marty McFly. I'm jumping
 7 between time frames here.
 8 "A I'm not Marty McFly.
 9 "Q Okay. Get that on the
 10 record. 2003, the negotiations
 11 for the 2003 agreement, was it
 12 ever discussed excluding -- did
 13 any party ever propose
 14 excluding State Water Project
 15 costs from the price -- from
 16 the price, the contract price
 17 to be charged under that
 18 agreement?
 19 "A I do not recall that, no."
 20 Was Mr. Slater wrong about that?
 21 **A. He was not. We did not propose a lower price.**
 22 Q. And you also -- at no point did San Diego in
 23 negotiations for that agreement, Mr. Slater, the person
 24 most knowledgeable testified, never proposed taking out
 25 the State Water Project costs from the wheeling rate, in

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1 connection with the negotiation of that agreement;
 2 correct?
 3 **A. For the price that started, that we started**
 4 **within the exchange agreement?**
 5 Q. At no point, did any party ever propose
 6 excluding State Water Project costs from the price, the
 7 contract price to be charged under that agreement; is
 8 that true?
 9 **A. That is true.**
 10 Q. So is it your testimony, just reading between
 11 the lines, Miss Stapleton, are you saying that you
 12 brought up with Met excluding State Water Project costs
 13 in year two?
 14 **A. No.**
 15 Q. Year three?
 16 **A. No.**
 17 Q. Four?
 18 **A. No.**
 19 Q. For any year?
 20 **A. Yes.**
 21 Q. What year did you propose backing out the State
 22 Water Project costs on, you personally?
 23 **A. Yes. In year six or beyond, that we had to**
 24 **come to some agreement in that we believed the State**
 25 **water projects were not lawfully included in the rates.**

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1 Q. And who did you propose that to on the Met
 2 side?
 3 **A. Dennis Underwood.**
 4 Q. Anyone else?
 5 **A. I believe it was referenced among the group,**
 6 **which would be the Met team and the Water Authority**
 7 **team.**
 8 Q. I am trying to find out who, other than
 9 Mr. Underwood, you say you proposed taking State Water
 10 Project costs out after the five years you identified --
 11 **A. I personally?**
 12 Q. Yes.
 13 **A. I personally?**
 14 Q. Yes.
 15 **A. No. It would be just Mr. Underwood.**
 16 Q. And sadly he's deceased?
 17 **A. Yes, unfortunately.**
 18 Q. By 2005 the 2003 exchange agreement had been in
 19 effect for over a year?
 20 **A. Correct.**
 21 Q. Met initially billed San Diego for conveyance
 22 charges at that initial price of \$253?
 23 **A. Yes.**
 24 Q. And over the next five years that price
 25 escalated, just as San Diego had anticipated in those

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1 projections that you presented to the board?
 2 **A. It escalated. I can't tell you if it escalated**
 3 **between the two and five percent. I do not recall.**
 4 Q. But it did escalate every year?
 5 **A. Yes, it did.**
 6 Q. In 2005, it's true to say that San Diego did
 7 not write to Metropolitan saying that the rates were
 8 unlawful?
 9 **A. Correct.**
 10 Q. And in 2005, San Diego did not make any claim
 11 with Met that charging a price based on these unlawful
 12 rates was a breach of contract?
 13 **A. Correct.**
 14 Q. And San Diego, in 2005, did not object in
 15 writing to the price or to any invoice; true?
 16 **A. Correct.**
 17 Q. And that would be true if I asked you those
 18 same questions for 2006, 2007, 2008, 2009, your answers
 19 would be the same? Do you want me to go through them?
 20 **A. I believe we started some dialogue and there**
 21 **may be in writing some references to us beginning --**
 22 **wanting to talk about the negotiations for the wheeling**
 23 **rate.**
 24 Q. Is there any writing that you can point us to
 25 in any of those years where San Diego wrote to Met,

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1 prior to 2010, stating that the rates being charged were
 2 unlawful?
 3 **A. I cannot go to any specific document. I cannot**
 4 **recall any right now.**
 5 Q. You cannot recall, can't identify for us any
 6 document in any of those years where San Diego made a
 7 claim with Met that it was charging a price that was in
 8 breach of contract?
 9 **A. No.**
 10 Q. Or even objecting in writing to the price being
 11 charged or to any invoice before 2010?
 12 **A. I don't recall any.**
 13 Q. If you'd look at -- if we could turn to the
 14 exchange agreement itself, DTX 55, PTX 65, and turn to
 15 page 26, there is a Section 12.4(c), if you would take a
 16 look at that.
 17 And you recall this provision here that says,
 18 "In the event of a dispute over the price, SDCWA shall
 19 pay, whenever due, the full amount claimed by
 20 Metropolitan, provided, however, during the pendency of
 21 the dispute, Metropolitan shall deposit . . ."
 22 You know the provision I'm referring to?
 23 **A. I do.**
 24 Q. Unless you want me to, I won't read the whole
 25 paragraph.

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1 **A. I do know that provision.**
 2 Q. You understood since -- at any time after 2003,
 3 if San Diego disputed a price, it could deposit money
 4 with Met and Met would have to keep that money in an
 5 account until the dispute was resolved?
 6 **A. Yes.**
 7 Q. The first time that San Diego did that was in
 8 February of 2011; right?
 9 **A. Yes.**
 10 MR. QUINN: Let's look at DTX 624, not yet
 11 admitted. I understand there is no objection, and I
 12 would offer it, February 10, 2010, letter from
 13 Mr. Hentschke to Mr. Kightlinger.
 14 MR. KEKER: No objection.
 15 THE COURT: DTX 624 is admitted.
 16 (Exhibit 624 was received in evidence.)
 17 Q. BY MR. QUINN: You recognize this as a letter
 18 from San Diego's general counsel to Mr. Kightlinger?
 19 **A. Yes.**
 20 Q. This is the first time San Diego asked Met to
 21 set aside money under that Section 12.4 (c); correct?
 22 **A. Correct.**
 23 Q. There is nothing in that five-year provision,
 24 sometimes referred to as a standstill or year of good
 25 feelings, whatever -- there is nothing in that that

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1 prevented San Diego during that time from invoking this
 2 deposit procedure under 12.4 (c), was there?
 3 **A. I believe we could not challenge the rate for**
 4 **the first five years. So unless they were charging more**
 5 **than the Met established rate, we could not -- we**
 6 **couldn't dispute it.**
 7 Q. Let's take a look at that section and see what
 8 it provides that you couldn't do in the first five
 9 years, Section 5.2, pages 16 and 17.
 10 I think you will see in the second line there,
 11 it says, "For the term of this agreement neither San
 12 Diego nor Met shall seek or support in any legislative,
 13 administrative or judicial forum any change in the form,
 14 substance or interpretation of any applicable law or
 15 regulation."
 16 Do you see that?
 17 **A. I do.**
 18 Q. It refers to not taking actions in legislative,
 19 administrative or judicial forums; correct?
 20 **A. Yes.**
 21 Q. Does that refresh your recollection there was
 22 nothing that prevented San Diego from invoking this 12.4
 23 (c) procedure even during the first five years?
 24 **A. I see that.**
 25 Q. You are aware that from 2000 -- during this

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1 time frame, 2005 through 2009, Met every single year,
 2 Metropolitan's conveyance rates were submitted for
 3 approval by the Met board every year; correct?
 4 **A. Yes.**
 5 Q. You recall, if we can look at DTX 129, I think
 6 we looked at this already, in 2005 San Diego's members
 7 of the Met board voted for the wheeling rate which
 8 included the State Water Project costs and the water
 9 stewardship rate; correct?
 10 **A. Correct.**
 11 Q. As we discussed earlier, San Diego's delegates
 12 to the Met board received direction from the San Diego
 13 board as to how to vote on certain matters; right?
 14 **A. Only -- the only one I see is the one you**
 15 **referenced earlier. That's the only one that I have**
 16 **seen.**
 17 Q. Let me ask, is it generally a custom and
 18 practice on the issue of rates that San Diego's
 19 delegates will be instructed how to vote?
 20 **A. No. It's actually opposite of that. They are**
 21 **not instructed by our board of directors on how to vote.**
 22 Q. In any event, we can see here, this is a record
 23 of how in fact they did vote; right?
 24 **A. Yes.**
 25 Q. And as part of that, you know that when these

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1 rates and rate structures come up for vote, there's a
 2 whole package that goes to the whole members of the
 3 board to support the requested action; correct?
 4 **A. Correct.**
 5 Q. And that includes a cost of service breakdown
 6 which specifically identifies the components of the
 7 rates that the delegates are being asked to vote on;
 8 correct?
 9 **A. Correct.**
 10 Q. So it would not be true to say, would it, that
 11 when these things come up for vote at the Met board, the
 12 only thing the board members can vote on is whether the
 13 rates should be increased?
 14 **A. That is the primary issue. But in addition, it**
 15 **is they are aware of how the costs are allocated.**
 16 Q. Ma'am, it would not be true to say, that when
 17 these packages come up for review, that the only thing
 18 the board members have an opportunity to approve is an
 19 increase in the rates; that they have no ability to
 20 address the rate structures?
 21 **A. I do not know what that specific package is. I**
 22 **don't know what the resolution is. So I don't believe I**
 23 **can answer that accurately.**
 24 Q. As far as you know --
 25 **A. I do not know.**

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1 THE COURT: She's still talking, Mr. Quinn.
 2 MR. QUINN: Sorry.
 3 THE WITNESS: I just don't know. I haven't
 4 viewed it.
 5 Q. BY MR. QUINN: You attend some of the
 6 Metropolitan board meetings?
 7 A. Rarely.
 8 Q. You know that those -- there are recordings
 9 made of those meetings?
 10 A. Yes.
 11 Q. As there are recordings made of the San Diego
 12 meetings; right?
 13 A. Correct.
 14 Q. So far as you are aware, did any of the San
 15 Diego delegates to the Met board ever disclose to the
 16 Met board that San Diego believed any of these rates
 17 that were being voted on were unlawful?
 18 A. During what period of time?
 19 Q. Prior to the filing of this lawsuit.
 20 A. I believe that they did indicate that they did
 21 not support, did not believe that the costs were
 22 allocated correctly.
 23 Q. At any time -- my question -- I'm not sure --
 24 I might have misspoken and maybe you misheard
 25 my question.

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1 My question is, when these votes -- when these
 2 rates came up annually, at any time did any -- so far as
 3 you know, did any of the San Diego delegates inform the
 4 Met board that the rates on the table submitted for
 5 voting were illegal or unlawful?
 6 A. No.
 7 Q. Is it your understanding the board members have
 8 fiduciary duties to other board members?
 9 A. To other board members?
 10 Q. To the board. To the board as a whole.
 11 A. To the agency, yes.
 12 Q. As members of the board they are fiduciaries?
 13 A. Yes.
 14 Q. It is true, isn't it, that San Diego's
 15 delegates to the Met board also voted to approve these
 16 conveyance rates in 2006, 2007, 2008 and 2009?
 17 A. Yes.
 18 Q. During the period we've been talking about,
 19 prior to 2010, San Diego requested, on occasion, that
 20 Met wheel water, wheel water on San Diego's behalf,
 21 isn't that correct?
 22 A. Yes.
 23 Q. And San Diego wanted water wheeled through the
 24 State Water Project facilities under Met's contract with
 25 the State; correct?

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1 A. Yes.
 2 Q. For example, if we could look at DTX 75 -- this
 3 is in evidence -- December 1, 2008, letter to
 4 Mr. Kightlinger from you, this is an example of a -- one
 5 instance where San Diego was requesting that water be
 6 wheeled through Met -- through State Water Project
 7 facilities under Met's contract with the State; is that
 8 correct?
 9 A. That is correct.
 10 Q. And San Diego requested that Met -- San Diego
 11 knew that Met had this ability, this right to use the
 12 State Water Project facilities for that purpose; right?
 13 A. Yes.
 14 Q. And San Diego knew that Met pays for those
 15 facilities through its contract with the State; correct?
 16 A. Yes.
 17 Q. And San Diego, when it did that, when it
 18 wheeled water through the State Water Project
 19 facilities, it would pay the full Met wheeling rate for
 20 those services without objection; correct?
 21 A. I don't know.
 22 Q. You don't know whether or not the wheeling rate
 23 that San Diego was charged for wheeling through the
 24 State Water Project facilities included the system
 25 access rate, power rate and including the State water

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1 costs, you just don't know?
 2 A. I am aware that they included that. I am not
 3 aware if it included other costs.
 4 Q. Okay. You are aware when you request wheeling,
 5 transportation of water, you are going to be paying
 6 system access rate, power rate, including the State
 7 Water Project costs; correct?
 8 A. Correct.
 9 Q. And San Diego pays those charges without
 10 objections?
 11 A. Correct.
 12 Q. No objection to paying those costs when you are
 13 wheeling water through the State Water Project?
 14 A. We did not object when we moved this water in,
 15 it looks like, probably 2009 when we moved this water.
 16 Q. Similarly, if the State Water Project was being
 17 used to perform under the exchange agreement, San Diego
 18 would have no objection to paying those costs related to
 19 use of the State Water Project?
 20 A. Could you explain what "objection" is?
 21 Q. San Diego would have no issue with being
 22 charged for use of State Water Project facilities if
 23 they had to be used to perform the exchange agreement;
 24 correct?
 25 A. I don't know.

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1 Q. Well, the use of -- it's true, isn't it, that
 2 the use of the State Water Project facilities was
 3 essential to Met's performance under the exchange
 4 agreement; it had to be done? Correct?
 5 **A. Not necessarily.**
 6 Q. Is it your understanding that Met could perform
 7 the exchange agreement simply by using the Colorado
 8 River Aqueduct exclusively?
 9 **A. Yes.**
 10 Q. Well, you knew, in fact, that the State Water
 11 Project facilities would be used to deliver water under
 12 the exchange agreement; you knew that at the time the
 13 exchange agreement was negotiated and signed; correct?
 14 **A. No. I knew it could be used, but I did not**
 15 **know it would be used.**
 16 Q. In fact, San Diego understood, at the time that
 17 the agreement was negotiated and signed, that even a
 18 temporary inability to use the State Water Project
 19 facilities could cause a change in the delivery of water
 20 to San Diego under the exchange agreement?
 21 **A. Yes, it could.**
 22 Q. So if we look at DTX 51, Section -- this is the
 23 exchange agreement -- Section 3.3, pages 13 to 14. You
 24 see where it says, "SDCWA understands that any number of
 25 factors, including emergencies, inspection, maintenance

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1 or repair of Metropolitan facilities or the State Water
 2 Project facilities may result in a temporary and
 3 incidental modification of the delivery schedule
 4 contemplated in paragraph 3.2." Correct?
 5 **A. Correct.**
 6 Q. The parties clearly contemplated that the use
 7 of the State Water Project facilities were an essential
 8 aspect under the exchange agreement?
 9 **A. I don't see that. "They may result." It**
 10 **doesn't say "they shall result."**
 11 Q. You understood if there were a shutdown of the
 12 State Water Project facilities, that might have certain
 13 consequences for the schedule of the deliveries?
 14 **A. Yes, it might.**
 15 Q. So you understood from that that Met might well
 16 be using the State Water Project facilities to perform
 17 under the exchange agreement?
 18 **A. Yes, they might.**
 19 Q. And as a historical fact, you know that a large
 20 portion of the water that has been delivered under the
 21 exchange agreement has come through the State Water
 22 Project; you know that?
 23 **A. Yes.**
 24 Q. Do you know how much?
 25 **A. I do not.**

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1 Q. Is it more than 50 percent of the water that's
 2 been exchanged?
 3 **A. I don't believe so.**
 4 Q. Is it more than a third of the water that's
 5 been exchanged?
 6 **A. I don't know.**
 7 Q. Can you give us an order of magnitude?
 8 **A. I cannot. Sorry.**
 9 MR. QUINN: I would like to read you another
 10 passage of Mr. Slater's deposition, Volume II, page 243,
 11 line 20, to 244, eight.
 12 MR. KEKER: No objection, your Honor.
 13 THE COURT: Go ahead, please.
 14 MR. QUINN: (Reading:)
 15 "Q So would it be true to say
 16 that, as of 2007, San Diego
 17 would sue if Met did not change
 18 the way it calculated its
 19 wheeling rate upon -- it would
 20 sue upon the exp- -- sometime
 21 between the expiration of the
 22 five-year period and ten years
 23 after that?
 24 "A Correct.
 25 "Q And that was San Diego's

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1 state of mind as of 2007?
 2 "A Yes.
 3 "Q And that if I ask you that
 4 same question about 2006, 2005,
 5 2004, your answer would be the
 6 same"
 7 "A Yes.
 8 "Q And 2008?
 9 "A Yes."
 10 Q. That is flatly not true, isn't it? Correct?
 11 **A. No. We had every intention to negotiate an**
 12 **acceptable rate with Met and knew if we were unable to**
 13 **do so that our only alternative was lawsuit.**
 14 Q. Mr. Slater says as of 2007 they intend -- there
 15 would be an intention to sue.
 16 That is simply not true as of 2007?
 17 **A. An intention to sue, no. We did not in 2007**
 18 **intend to sue.**
 19 Q. When he says that San Diego's state of mind as
 20 of 2007 that it intended to sue upon expiration of the
 21 five-year period, that's simply wrong?
 22 MR. KEKER: Objection, your Honor.
 23 THE COURT: Sustained.
 24 Q. BY MR. QUINN: Let's take a look at DTX 555,
 25 which is admitted. This is an April 18, 2007, memo to

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1 the imported water committee.
 2 **A. Yes.**
 3 Q. On the second page, this is a memorandum
 4 prepared by Daniel Hentschke?
 5 **A. Yes.**
 6 Q. Approved by you?
 7 **A. Yes.**
 8 Q. The last sentence reads, "The Water Authority
 9 does not intend to litigate Met's current rate structure
 10 but it cannot know what future actions the Met board may
 11 take since the Met rates are established annually and
 12 are subject to change by Met's board of directors."
 13 Do you see that?
 14 **A. I do.**
 15 Q. That is language you approved?
 16 **A. Yes.**
 17 Q. In 2007 there was no intention to sue; correct?
 18 **A. Correct. We did not intend to litigate.**
 19 Q. And this was --
 20 Q. It was 2008 that five-year period expired?
 21 **A. Yes.**
 22 MR. QUINN: And then if we can look at DTX
 23 1114. This is not yet admitted and I understand there
 24 is no objection. I would offer it.
 25 MR. KEKER: No objection.

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1 THE COURT: DTX 1114 is admitted.
 2 (Exhibit 1114 was received into evidence.)
 3 Q. BY MR. QUINN: Can you identify this document?
 4 **A. This is a PowerPoint related to the MWD's work**
 5 **plan.**
 6 Q. If you turn to page 11, there is a reference to
 7 "Transportation Issues re SDCWA Transfers."
 8 **A. Yes.**
 9 Q. And it says, "Approval of canal lining option
 10 brought additional reliable water supplies for 110
 11 years."
 12 Do you see that?
 13 **A. Yes.**
 14 Q. After that it says, "No expectation of
 15 litigation."
 16 Do you see that?
 17 **A. I do.**
 18 Q. If you turn to page 12, "2007 Objectives," do
 19 you see, "work in partnership with MWD" and below that
 20 "peace treaty' expired - no litigation"?
 21 Do you see that?
 22 **A. Yes.**
 23 Q. Again, as of 2007, the state of mind at San
 24 Diego is there is no intention to sue?
 25 **A. Correct.**

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1 Q. Since 2003 San Diego has received the benefits
 2 it expected to get under the exchange agreement?
 3 **A. Yes.**
 4 Q. It has received that assignment of the water
 5 and the water -- you have no criticisms of Met's
 6 performance other than these charges which are the
 7 subject of this case; is that true?
 8 **A. That's true.**
 9 Q. And San Diego has received and accepted the
 10 benefits and Met has performed; correct?
 11 **A. Correct.**
 12 Q. Option-2 had that initial price of \$253 which
 13 was assumed to escalate from there?
 14 **A. Yes.**
 15 Q. And the price that San Diego contends it should
 16 pay for 2011, for example, according to your expert,
 17 Mr. Denham is \$136 per square foot?
 18 **A. Per acre-foot.**
 19 Q. Per acre-foot.
 20 **A. Yes.**
 21 Q. So is it your understanding of the exchange
 22 agreement San Diego is entitled to the benefits of
 23 Option-2, the canal lining water, for 110 years and the
 24 \$235 million, and the other thing it gets but should pay
 25 about half of what San Diego assumed it would pay under

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1 option two when it was running those analyses?
 2 **A. No. We assumed we would pay a lawful wheeling**
 3 **rate, and we would get the benefit of the exchange**
 4 **agreement by a lawful wheeling rate.**
 5 Q. If I understand correctly what you're telling
 6 us is you believe that Mr. Denham is right, that for
 7 2011, for example, you can get all those same benefits
 8 and only pay the \$136; correct?
 9 **A. The benefits derived were not directly related**
 10 **to the exchange agreement number. The benefits, the**
 11 **totality of benefits of the QSA related to the exchange**
 12 **agreement, the \$253.**
 13 Q. I mean, again, not to gild the lily, I hope,
 14 we've seen these memos that say the consideration for
 15 the canal lining water was the wheeling rate, which
 16 starts out \$238; right? I'm sorry. \$253?
 17 **A. Correct.**
 18 Q. And so San Diego's position now is it should be
 19 able to get all those benefits anticipated under the
 20 exchange agreement but actually it should only have to
 21 pay much, much less than what that initial year's price
 22 was?
 23 **A. We should only have to pay the lawful wheeling**
 24 **rate.**
 25 Q. Your testimony, Miss Stapleton, was -- I was

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1 asking about whether you brought up taking out the State
 2 Water Project costs, you personally brought it up with
 3 anyone on the Met side. And you said that you did that
 4 in -- I have 2009.
 5 **A. About the State Water Project costs?**
 6 Q. Yes.
 7 **A. We raised that issue way before 2009.**
 8 Q. I'm talking about the conversation with
 9 Mr. Underwood.
 10 **A. I raised that conversation with Dennis all the**
 11 **way back to -- I mean, we were having conversations in**
 12 **1999 or 2000, 2001, 2002, all the way up to the**
 13 **execution of the exchange agreement.**
 14 Q. I asked you what year did you propose backing
 15 out the State Water Project costs on, you personally,
 16 and you said, yes, in year six or beyond --
 17 **A. Right.**
 18 Q. Right?
 19 **A. After the execution of the exchange agreement.**
 20 Q. You did that with Mr. Underwood?
 21 **A. No, no. Mr. Underwood had passed since then.**
 22 Q. That is what I was going to ask. He passed in
 23 2005?
 24 **A. Yes. I'm sorry. I misunderstood.**
 25 **I had ongoing discussions with Dennis Underwood**

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1 **in 2000, 2001, 2002, 2003. The 2009 is when the Water**
 2 **Authority or I actually issued formal objections to the**
 3 **State Water Project costs being included in the Met**
 4 **rate.**
 5 Q. Wasn't it your testimony that you said that you
 6 did not bring -- you were asked, just reading between
 7 the lines:
 8 "Q Miss Stapleton, are you
 9 saying you brought up with Met
 10 excluding State Water Project
 11 costs in year two?
 12 "A No.
 13 "Q Year three?
 14 "A No.
 15 "Q Year four?
 16 "A. No.
 17 "Q For any year?
 18 "A Yes.
 19 "Q What year did you propose
 20 backing out the State Water
 21 Project costs on you
 22 personally?
 23 "A Yes. In year six or
 24 beyond. We had come to know --
 25 come to some agreement and that

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1 we believed the State Water
 2 Project costs were not lawfully
 3 included in the rates.
 4 "Q Who did you propose that
 5 to on the Met side?
 6 "A Dennis Underwood."
 7 Was that your testimony?
 8 **A. I'm sorry. I misunderstood then.**
 9 **Basically my conversations with Dennis were**
 10 **during the negotiations to 2003 and beyond, and I**
 11 **continued those conversations with Dennis until he**
 12 **passed in 2005.**
 13 **The issue about 2009 was when we had formal**
 14 **conversations about -- in 2009 we were raising the issue**
 15 **in a much more public way.**
 16 MR. QUINN: Can I have just a moment, your
 17 Honor?
 18 THE COURT: Of course.
 19 MR. QUINN: Nothing further.
 20
 21 CROSS-EXAMINATION
 22 BY MR. KEKER:
 23 Q. With speed, Miss Stapleton, because of time.
 24 When did San Diego raise with Met the problem
 25 with cost allocation of the State Water Project costs?

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1 **A. Our first concerns regarding wheeling were in**
 2 **1996 and they were -- we continued those dialogues for a**
 3 **number of years.**
 4 Q. Did -- did people that you talked to at Met
 5 understand that you believed it was improper to allocate
 6 State Water Project costs to the transportation rate?
 7 MR. QUINN: Objection. Speculation.
 8 Foundation.
 9 THE COURT: Sustained.
 10 Q. BY MR. KEKER: Did you talk to somebody at Met
 11 about your objection to including State Water Project
 12 costs in the transportation rates?
 13 MR. QUINN: Objection. Vague. Time, as to
 14 time.
 15 THE COURT: Overruled.
 16 THE WITNESS: Yes, I did.
 17 Q. BY MR. KEKER: When?
 18 **A. I had continuing conversations about this issue**
 19 **with Dennis Underwood beginning in about 2000 and**
 20 **continuing on.**
 21 Q. To your knowledge, did San Diego staff have
 22 similar conversations with people on Met staff objecting
 23 to the inclusion of State Water Project costs in the
 24 transportation rates?
 25 **A. Yes.**

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1 MR. QUINN: Objection. Foundation.
 2 Q. BY MR. KEKER: When --
 3 THE COURT: Overruled. Give me a shot to rule
 4 on it.
 5 MR. KEKER: Sorry.
 6 THE WITNESS: Yes, they did.
 7 Q. BY MR. KEKER: When? Starting when?
 8 MR. QUINN: Objection. Foundation.
 9 THE COURT: Overruled.
 10 THE WITNESS: In approximately 1997, '98, and
 11 it continued through the execution of the exchange
 12 agreement.
 13 Q. BY MR. KEKER: To your knowledge did anybody at
 14 the Water Authority ever stop saying that they believed
 15 the State Water Project costs should not be in the
 16 transportation rates?
 17 A. No.
 18 Q. What language did you use when you talked to
 19 Vice President Underwood at Met in these many
 20 conversations that you had about what was wrong with
 21 including State Water Project costs in the
 22 transportation rates?
 23 A. I indicated to Dennis that I didn't believe
 24 they were lawful, that it was improper to put the State
 25 Water Project costs on transportation in lieu of supply;

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1 that I thought it was inconsistent with the wheeling
 2 statute.
 3 Q. What wheeling statute are you referring to?
 4 A. The Katz wheeling statute.
 5 Q. Do you know if that has a Water Code
 6 designation?
 7 A. Yes. 1810.
 8 Q. Who is Mr. Katz?
 9 A. Mr. Katz was in the legislature and he was the
 10 author of the wheeling statute.
 11 Q. Was Mr. Katz the author of the wheeling statute
 12 involved in the negotiations -- in 2003, what was his
 13 role in 2003?
 14 A. In 2003 Richard Katz actually was a -- was on
 15 the Governor's staff and he and another individual on
 16 behalf of Governor Davis participated and facilitated
 17 the negotiations in 2003.
 18 Q. Did Mr. Katz, for example, understand there was
 19 a dispute between San Diego and Met about how to
 20 calculate the wheeling rate?
 21 A. Yes, he was aware.
 22 MR. QUINN: Objection. Foundation.
 23 THE COURT: I'll sustain. We are probably
 24 going off a little bit.
 25 Q. BY MR. KEKER: Just generally, had this been a

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1 subject of a great deal of discussion and objection and
 2 contention between San Diego and Met since the rates
 3 were unbundled?
 4 A. Yes. We had many, many conversations with Met
 5 staff and during this period of time trying to come to
 6 resolution.
 7 Q. Could anybody in these agencies or involved in
 8 this process not understand that there was a dispute
 9 about where to allocate these State Water Project costs?
 10 MR. QUINN: Objection. Foundation.
 11 THE COURT: Sustained. It is argumentative.
 12 Q. BY MR. KEKER: You mentioned something about
 13 closed sessions and so on. Was San Diego's position
 14 prior to 2003 about the proper allocation of State Water
 15 Project costs, was it public or private? Was it
 16 publicly known, publicly discussed?
 17 A. Yes. It was known by MWD and the member
 18 agencies at Metropolitan that we disputed the inclusion
 19 of the State Water Project in the wheeling rate.
 20 Q. When you talked about closed sessions during
 21 Mr. Quinn's examination, what was your point about the
 22 closed sessions?
 23 A. Was that we had repeated and frequent closed
 24 sessions with our board of directors during the
 25 negotiations of the QSA, and a huge amount of the

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1 information and the analysis were done in closed session
 2 with the board as we continued to try to reach
 3 agreement.
 4 Q. What about the water stewardship rate? When
 5 had you directly begun communicating your concern about
 6 the placement of the water stewardship rate costs on
 7 transportation to anybody at Met?
 8 A. In about the year 2000.
 9 Q. And to whom did you communicate that concern
 10 and what did you say about it?
 11 A. For me, it was to Dennis Underwood who was my
 12 counterpart on the negotiating team of Met. And, again,
 13 I indicated the water stewardship charge was directly
 14 related to supply development and it didn't belong on
 15 the transportation charge. I didn't believe it was
 16 consistent, again, with the wheeling law.
 17 Q. And did you say -- did you tell him it was
 18 improper, invalid or anything like that?
 19 A. Yes. The language I would use is it's improper
 20 or that it's not consistent with the law or that it --
 21 that is not a valid charge to the transportation or
 22 system access rate.
 23 Q. To your knowledge did Met staff -- excuse me.
 24 San Diego Water Authority staff communicate similar
 25 concerns to their contemporaries at Met?

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1 MR. QUINN: Objection; foundation.
 2 THE COURT: Did you overhear these
 3 communications?
 4 THE WITNESS: I did in some cases.
 5 THE COURT: Tell us about what you heard.
 6 THE WITNESS: I heard both Scott Slater, my
 7 special counsel, and Bob Campbell, one of my staff
 8 members, having discussions with either Brian Thomas,
 9 who was an employee of Metropolitan, or Jeff
 10 Kightlinger, the general counsel, about the wheeling
 11 rate and our objections to the inclusion of certain
 12 charges in that wheeling rate.
 13 Q. BY MR. KEKER: By the way, was Mr. Gastelum,
 14 who was the general manager in 2003, is he still around
 15 and available to Met as a witness?
 16 A. **Yes, he is around.**
 17 Q. Miss Stapleton why did the Water Authority
 18 agree -- let me back up. You said the \$253 wheeling
 19 rate made up of the current system access rate, water
 20 stewardship rate and system power rate, adding to \$253.
 21 You said you believed at the time of the exchange
 22 agreement that rate was not -- was illegal, was not
 23 properly calculated. Do you remember that?
 24 A. **Correct.**
 25 Q. Why did San Diego agree in the exchange

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1 agreement to pay that rate for the initial year?
 2 A. **For a couple reasons. We needed to make**
 3 **modifications in the exchange agreement from 1998. We**
 4 **had to solve some problems, which is the exchange**
 5 **agreement term was shorter than our water transfer term**
 6 **and we had 15 years of exposure.**
 7 **The second issue was there was some conditions**
 8 **precedent that we had been told by Ron Gastelum that**
 9 **would invalidate the 1998 agreement.**
 10 **So we decided if we could put boundaries on our**
 11 **exposure to Met's wheeling rate and had the opportunity**
 12 **to either negotiate something we both could live with**
 13 **and that it was lawful, that that was worth -- that was**
 14 **worth the risk.**
 15 Q. You said you agreed as part of the exchange
 16 agreement to pay Met's wheeling rate, whatever they
 17 said, for five years?
 18 A. **Correct.**
 19 Q. And thereafter, what wheeling rate did you
 20 agree to pay?
 21 A. **The lawful wheeling rate.**
 22 Q. Did you make sure that the agreement reflected
 23 that agreement?
 24 A. **Yes.**
 25 Q. Could we look at Plaintiff's 65 and put up 5.2,

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1 please?
 2 A. **I don't think I have 65.**
 3 Q. Sorry, Miss Stapleton, I am rushing. Let's put
 4 up 5.2 on the screen.
 5 This is an agreement for exchange water, and in
 6 5.2 it says the price on the date of execution is \$253;
 7 right?
 8 A. **Correct.**
 9 Q. At the time was there a dispute between Met and
 10 San Diego about whether or not that was a lawful
 11 wheeling rate?
 12 A. **Yes, that was.**
 13 Q. Did Mr. Underwood understand there was a
 14 dispute?
 15 A. **Absolutely.**
 16 Q. Did you understand there was a dispute?
 17 A. **Yes.**
 18 Q. Did anybody at Met not understand that there
 19 was a dispute?
 20 A. **No.**
 21 MR. QUINN: I object. Move to strike.
 22 THE COURT: Sustained.
 23 Q. BY MR. KEKER: And it says, "Thereafter, the
 24 price shall be equal to the charge or charges set by the
 25 Met board of directors pursuant to applicable law and

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1 regulation."
 2 What did that mean to you?
 3 A. **That meant thereafter Met -- that the price**
 4 **would be a lawful wheeling rate that was set by MWD.**
 5 Q. And had there been some discussion about how
 6 long San Diego would sit still if Met didn't change its
 7 ways about cost allocation?
 8 A. **Yes.**
 9 Q. And what did the discussion lead to?
 10 A. **It led to that we could not challenge the MWD**
 11 **established rate for the first five years.**
 12 Q. And what was the purpose for you, for San
 13 Diego, to agree to a wheeling rate that you thought was
 14 higher than the law permitted and to agree to it, to pay
 15 it for five years?
 16 A. **Because it provided an exchange agreement that**
 17 **matched our water transfer agreement in the length of**
 18 **time. And it got rid of the conditions precedent. So**
 19 **we knew we would have a firm capacity within the**
 20 **aqueduct in this exchange agreement, and we were willing**
 21 **to take the risk.**
 22 Q. During the negotiations, as Mr. Kightlinger
 23 told us, did Met say we want you to agree to whatever we
 24 say the wheeling rate is for the next 45 and maybe 75
 25 years?

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1 **A. That was their initial offer to us.**
 2 Q. And did San Diego agree to eat whatever they
 3 wanted to call the wheel rate, whatever number they
 4 wanted to put on it, for 45 to 75 years?
 5 **A. Absolutely not.**
 6 Q. What did the negotiation yield in that regard?
 7 **A. We finally got down to a five-year time period**
 8 **where we agreed to pay the MWD established rate, and**
 9 **after five years we had the opportunity to seek either**
 10 **administrative or judicial remedy.**
 11 Q. Let's look at the next term. It says, still in
 12 5.2, "For the term of this agreement neither San Diego
 13 nor Met shall seek or support in any legislative,
 14 administrative or judicial forum."
 15 Does administrative include Met?
 16 **A. Yes.**
 17 Q. So you are promising you are not going to go to
 18 Met, you are not going to go to the legislature and you
 19 are not going to go to court for the life of this
 20 agreement --
 21 **A. Yes.**
 22 Q. -- pertaining to the charge or charges set by
 23 the board of directors. That's what that says; right?
 24 **A. Correct.**
 25 Q. And then it comes down and it says, "Provided

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1 further that, A, after the conclusion of the first five
 2 years" --
 3 What are the next two words?
 4 **A. "Nothing herein."**
 5 Q. -- "shall preclude San Diego from contesting in
 6 an administrative or judicial forum," blah, blah, blah.
 7 What did you understand that to mean about this
 8 five-year period?
 9 **A. After five years, if we were unsuccessful**
 10 **reaching an agreement on what would be considered the**
 11 **lawful rate, the Water Authority had the ability to**
 12 **contest the wheeling rate that Met had established in**
 13 **either an administrative or judicial manner.**
 14 Q. After the five years with respect to what the
 15 subject matter of your lawsuit could be, did you
 16 understand that there was any condition about only
 17 procedural or only something that didn't exist when we
 18 started or anything, any limitation on that?
 19 **A. Absolutely not.**
 20 Q. Did you expect there was a possible -- did you
 21 anticipate there was a possibility the law might change
 22 or develop and make the wheeling situation work more
 23 plain over the next five years?
 24 **A. Yes. That there were some court cases**
 25 **regarding wheeling during this period of time, and we**

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1 **thought that there may be additional court decisions**
 2 **that might have an influence on -- an influence to help**
 3 **clarify what a lawful wheeling rate might be.**
 4 Q. In San Diego's mind did the term "lawful
 5 wheeling rate" have meaning?
 6 **A. It had essential meaning.**
 7 Q. Was there any part of California or
 8 constitutional law that was excluded from the term
 9 "lawful"?
 10 **A. No.**
 11 Q. And in your discussions with Mr. Underwood, did
 12 he seem to understand that, as well?
 13 **A. He did.**
 14 Q. Would you look at 11.1, please. 11.1 says you
 15 have to negotiate if you have a problem, but it also
 16 says, "San Diego shall not dispute whether the price
 17 determined pursuant to paragraph 5.2 for the first five
 18 years of this agreement was determined in accordance
 19 with applicable law or regulation ('a price dispute')."
 20 What price did you think they were talking
 21 about that you couldn't dispute for five years?
 22 **A. Met's wheeling rate as selected or as set by**
 23 **the board of directors.**
 24 Q. Where the parentheses are around "price
 25 dispute," look over at 12.4, please, and 12.4(c), which

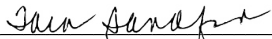
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1 says, "In the event of a dispute over the price, San
 2 Diego shall pay when due. . ."
 3 And then it goes and talks about the escrow
 4 accounts?
 5 **A. Right.**
 6 Q. Was there anything in this agreement that
 7 limited San Diego's ability to complain about any aspect
 8 whatsoever of the price it was being charged by Met
 9 after five years were over?
 10 **A. No.**
 11 Q. Was that something that was negotiated for
 12 hard?
 13 **A. Very hard.**
 14 Q. And was that contrary to the position that Met
 15 wanted, which is you can never challenge our prices?
 16 **A. Yes.**
 17 Q. That was the compromise?
 18 **A. This was the compromise.**
 19 Q. For five years you couldn't challenge --
 20 THE COURT: I have to interrupt. I have
 21 another case coming in at 4:00. I have a ferocious
 22 amount of work to do.
 23 Can we pick this up on our next trial date?
 24 MR. KEKER: Yes, sir.
 25 THE COURT: I do have some other cases. Thank

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1 you. I will see you next time we get together.
 2 (Evening recess was taken.)
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1 REPORTER'S CERTIFICATE
 2
 3 STATE OF CALIFORNIA,)
 4) ss
 5 COUNTY OF SANTA BARBARA.)
 6
 7 I, TARA ANN SANDFORD, CSR #3374, Certified Shorthand
 8 Reporter, in the County of Santa Barbara, State of
 9 California, hereby certify:
 10 That the court proceedings were taken down by me in
 11 stenotype at the time and place herein named and
 12 thereafter reduced to typewriting by computer-aided
 13 transcription under my direction.
 14 I further certify that I am not interested in the
 15 event of the action.
 16 WITNESS my hand this 3rd day of April,
 17 2015, at San Francisco, California.
 18
 19
 20
 21 
 22 TARA SANDFORD, RPR, CSR No. 3374
 23 Certified Shorthand Reporter
 24 State of California
 25

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