



San Diego County Water Authority

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

November 4, 2016

Randy Record and
Members 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
- Hilix Water District
- Lakeview Water District
- Oranjestad Municipal Water District
- Olney Water District
- Padre Dam Municipal Water District
- Camp Pendleton Marine Corps Base
- Rainbow Municipal Water District
- Remona Municipal Water District
- Rincon del Diablo Municipal Water District
- San Diego Water District
- Santa Fe Irrigation District
- South Bay Irrigation District
- Vallecitos Water District
- Village Center Municipal Water District
- Vista Irrigation District
- Yuma Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

RE: Board Memo 9-2 - Compliance with Fund Requirements and Bond Indenture Provisions - OPPOSE UNLESS AMENDED

Dear Chairman Record and MWD Board Members,

We have reviewed Board Memo 9-2 and relevant sections of the MWD Administrative Code and MWD Act and find that there are two discrepancies between the MWD Act and Administrative Code provisions that should be addressed before compliance is certified under Code section 5204.

1) Administrative Code Section 4301(a) must be amended because it is inconsistent with and does not accurately describe the statutory limitations of Section 134 of the MWD Act.

Administrative Code Section 4301(a) provides as follows:

§ 4301. Cost of Service and Revenue Requirement.

(a) The District shall fix rates for water such that anticipated water sales revenues, together with anticipated revenues from any water standby or availability of service charge (such as the readiness-to-serve charge or capacity charge) or assessment, *ad valorem tax revenues, and other revenues* pay the expenses of the District, provide for repairs and maintenance, provide for payment of the purchase price or other charges for property or services or other rights acquired by the District, and provide for the payment of the interest and principal of the District's outstanding bonded debt. Subject to the foregoing, such rates and charges shall reflect the costs of the District's major service functions, including water supply, conveyance, power, storage, distribution and treatment to the greatest degree practicable. (emphasis added)

However, this language is not consistent with Section 134 of the MWD Act, which provides:

Sec. 134. [Adequacy of Water Rates; Uniformity of Rates]

The Board, so far as practicable, shall fix such rate or rates for water as will result in revenue which, together with revenue from any water stand-by or availability service

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

November 4, 2016

Chairman Record and Members of the Board

Page 2

charge or assessment, will pay the operating expenses of the district, provide for repairs and maintenance, provide for payment of the purchase price or other charges for property or services or other rights acquired by the district, and provide for the payment of the interest and principal of the bonded debt subject to the applicable provisions of this act authorizing the issuance and retirement of the bonds. Those rates, subject to the provisions of this chapter, shall be uniform for like classes of service throughout the district.

Administrative Code § 4301 fails to comply with the clear requirement of MWD Act Section 134 that the Board set water rates that, together with revenue from any water stand-by or availability service charge or assessment, will result in revenue sufficient to pay the operating and other expenses of the district. The legislative mandate of Section 134 does not include "ad valorem tax revenues, and other revenues," as stated in Administrative Code § 4301. Section 134 is a statutory limitation on how MWD meets its revenue requirement; ad valorem taxes may only be levied as specified in MWD Act Section 124.5.

2) Administrative Code Section 4301(b) contains language that is outdated and has no meaning separate and apart from the statutory limitations in Section 124.5 of the MWD Act; accordingly, this language should be deleted.

Administrative Code Section 4301(b) provides as follows:

(b) Notwithstanding the provisions in subsection (a) above, amounts raised by ad valorem property taxation shall not exceed the limitations established by section 124.5 of the Act *and, subject to those limitations, shall be not less than the approximate equivalent of the amounts levied for fiscal year 1990-91.* (emphasis added)

Section 124.5 of the MWD Act provides:

Sec. 124.5. [Ad valorem Tax Limitation]

Subject only to the exception in this section and notwithstanding any other provision of law, commencing with the 1990-91 fiscal year any ad valorem property tax levied by a district on taxable property in the district, other than special taxes levied and collected pursuant to annexation proceedings pursuant to Articles 1 (commencing with Section 350), 2 (commencing with Section 360), 3 (commencing with Section 370), and 6 (commencing with Section 405) of Chapter 1 of Part 7, shall not exceed the composite amount required to pay (1) the principal and interest on general obligation bonded indebtedness of the district and (2) that portion of the district's payment obligation under a water service contract with the state which is reasonably allocable, as determined by the district, to the payment by the state of principal and interest on bonds issued pursuant to the California Water Resources Development Bond Act as of the effective date of this section and used to finance construction of facilities for the benefit of the district. The restrictions contained in this section do not apply if the board of directors of the district, following a hearing held to consider that issue, finds that a tax in excess of these restrictions is essential to the fiscal integrity of the district, and written notice of the hearing is filed with the offices of

the Speaker of the Assembly and the President pro Tempore of the Senate at least 10 days prior to that date of the hearing.

Section 124.5 does not include any provision for a "minimum" tax levy as stated in the Administrative Code; indeed, Section 124.5 is clear that the only exception to the ad valorem tax limitation is the Board's determination that a tax in excess of the restrictions contained in Section 124.5 is "essential to the fiscal integrity of the district." While the Administrative Code states that the purported "minimum" tax levy (i.e., "not less than the approximate equivalent of the amounts levied for fiscal year 1990-91") is subject to the limitations of Section 124.5, no "minimum" tax levy is specified in Section 124.5 and none is permitted absent a finding by the Board that any given amount is essential to the fiscal integrity of the district. The legislative history is clear that the Legislature intended that MWD's reliance on ad valorem taxes would be completely eliminated over time under Section 124.5, not maintained at the equivalent of amounts levied for fiscal year 1990-91.¹

In order to certify compliance with fund requirements and bond indenture provisions, Administrative Code Section 4301(a) must be amended to delete the language that is inconsistent with Section 134 of the MWD Act (i.e., "*ad valorem tax revenues, and other revenues*"). MWD should also delete the outdated language in Administrative Code Section 4301(b) because it is outdated and superseded by Section 124.5 of the MWD Act (i.e., "*and, subject to those limitations, shall be not less than the approximate equivalent of the amounts levied for fiscal year 1990-91*").

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director

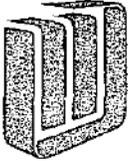


Elsa Saxod
Director



Fern Steiner
Director

¹As MWD staff and General Counsel are well aware, there is a long history associated with Sections 134 and 124.5 of the MWD Act resulting from litigation filed by the City of Los Angeles in 1975, claiming that MWD board actions violated Sections 134 and 307 of the MWD Act. The proposal to establish a minimum property tax levy equivalent to the amount levied in fiscal year 1990-91 in order to establish the allocation of revenue requirements between water sales and taxes was part of this history and discussion, all of which is now superseded by Section 124.5. For further background on this subject, see December 20, 1990 MWD Board Memo 8-7 RE Amendment of Proportionate Use Formula and Prospective Tax Revenues (Attachment 1). MWD's repeated improper use of the "essential to the fiscal integrity of the district" text in MWD Act Section 124.5 has been addressed in prior correspondence by the San Diego County Water Authority, and thus is not restated here.

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

December 20, 1990

To: Board of Directors (Finance and Insurance Committee--Action)
(Water Problems Committee--Information)

From: General Manager and General Counsel

Subject: Amendment of Proportionate Use Formula and Prospective Tax Revenues

Summary

Pursuant to the recommendations of the Finance and Insurance Committee at its December 1990 meeting, it is proposed that the proportionate use formula specified in sections 4301-4303 of the Administrative Code, which provides for the allocation of revenue requirements between water sales and taxes, be amended to establish a minimum property tax levy equivalent to the amount levied in fiscal year 1990-91. This minimum amount would necessarily be less than the maximum amount of taxes permitted by section 124.5 of the MWD Act. To the extent that additional capital expenditures in future years result in the proportionate use formula calling for future taxes greater than the minimum called for by this amendment, but less than the maximum permitted by the Act, that intermediate amount would be applicable. Staff's best estimate at this time is that the amount of taxes called for by the formula will reach the maximum permitted by the Act in about eleven years. The substantive change in the formula is indicated in new paragraph (b) of section 4301. The amendments proposed for section 4303 are nonsubstantive, for clarification only, and reflect more precisely the historical implementation of that section. Upon your approval, the affected code provisions would read as shown in Attachment A. The proposed revisions are shown by underscoring and strikeover in Attachment B.

Staff has made estimates of prospective tax revenues under several alternative tax policies. Graph No. 1, attached, shows actual and projected MWD taxes under the proportionate use formula, without amendment, compared to a revised formula including a minimum tax of approximately \$77 million, an amount equal to the 1990-91 tax levy, and the maximum allowed under section 124.5 of the MWD Act, as recommended by the Finance and

Board of Directors

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December 20, 1990

Insurance Committee at its December 1990 meeting. The Committee also requested data but did not select an alternative proposal which would have held the tax rate constant at the 1990-91 level (.0097 percent of assessed value). Graph No. 2, also attached, shows how tax revenues would be increased under that standard.

Recommendation

Pursuant to the recommendations of the Finance and Insurance Committee at its December 1990 meeting, it is proposed that the proportionate use formula specified in sections 4301-4303 of the Administrative Code, which provides for the allocation of revenue requirements between water sales and taxes, be amended to establish a minimum property tax levy equivalent to the amount levied in fiscal year 1990-91. This minimum amount would necessarily be less than the maximum amount of taxes permitted by section 124.5 of the MWD Act.

Detailed Report

Pursuant to the recommendations of the Finance and Insurance Committee at its December 1990 meeting, it is proposed that the proportionate use formula specified in sections 4301-4303 of the Administrative Code, which provides for the allocation of revenue requirements between water sales and taxes, be amended to establish a minimum property tax levy equivalent to the amount levied in fiscal year 1990-91. This minimum amount would necessarily be less than the maximum amount of taxes permitted by section 124.5 of the MWD Act. To the extent that additional capital expenditures in future years result in the proportionate use formula calling for future taxes greater than the minimum called for by this amendment, but less than the maximum permitted by the Act, that intermediate amount would be applicable. Staff's best estimate at this time is that the amount of taxes called for by the formula will reach the maximum permitted by the Act in about eleven years. The substantive change in the formula is indicated in new paragraph (b) of section 4301. The amendments proposed for section 4303 are nonsubstantive, for clarification only, and reflect more precisely the historical implementation of that section. Upon your approval, the affected code provisions would read as shown in Attachment A. The proposed revisions are shown by underscoring and strikeover in Attachment B.

Board of Directors

-3-

December 20, 1990

Staff has made estimates of prospective tax revenues under several alternative tax policies. Graph No. 1, attached, shows actual and projected MWD taxes under the proportionate use formula, without amendment, compared to a revised formula including a minimum tax of approximately \$77 million, an amount equal to the 1990-91 tax levy, and the maximum allowed under section 124.5 of the MWD Act, as recommended by the Finance and Insurance Committee at its December 1990 meeting. The maximum is determined as the annual debt service on voter-approved general obligation bonds issued by the District, together with the District's share of debt service on Burns-Porter general obligation bonds issued for construction of the State Water Project. This upper limit is \$98 million for 1991-92, and is projected to decrease to \$95 million by the year 2000.

Also included on Graph No. 1 is a 1984 projection of District taxes which served as the basis for establishing 1991 as the year in which the section 124.5 limit would take effect. As shown, actual MWD taxes have been significantly below the 1984 projection. This has occurred mainly due to lower capital costs being incurred by both the District and the State Water Project as planned facilities were deferred, and due to higher than anticipated MWD water sales. The increase in water sales is attributable to high population growth, loss of alternative supplies of the City of Los Angeles, and the 4-year drought that has pushed up water demands in Southern California. The high water sales have resulted in substantial, accelerated increases in the proportionate use numerator that have shifted the burden of capital costs to the water users at a faster rate than anticipated in 1984.

It is projected that taxes under the formula will begin to increase after 1993 as the District's capital improvement program moves forward. By about 1997 taxes under the formula should exceed the proposed \$77 million minimum amount. The projection indicates the taxes under the formula will reach the legal limit just after the turn of the century in about the year 2002. Projections indicate that the proposed floor of \$77 million per year will not exceed the section 124.5 limit until the year 2016 when general obligation bond debt service declines to that level.

The Committee requested data on but did not select an alternative proposal which would have held the tax rate constant at the 1990-91 level (.0097 percent of assessed value). Graph No. 2, also attached, shows how tax revenues

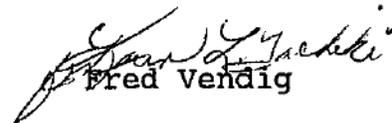
Board of Directors

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December 20, 1990

would be increased under that standard. The projection was made using two assumptions of future escalation in assessed values, 10 percent per year and 5 percent per year. The ten-year historical average annual increase has been 10 percent per year. However, since increases in assessed values are mostly attributable to new construction, improvements, and changes in ownership under Proposition 13 (regular increases are limited to 2 percent per year), the rate of escalation will be less during periods of slow real estate market activity. The range of 5 percent to 10 percent shown on Graph No. 2 should represent a reasonable approximation of how much tax revenue could be raised if the District's tax rate were held constant.


Carl Boronkay


Fred Vendig

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Attachments

ATTACHMENT A

§ 4301. Formula for Allocation of Water Revenues.

(a) The District shall fix water rates so that water sales revenues pay all of its annual operation and maintenance costs and that portion of its annual capital costs as the ratio of the quantity of water it has sold annually to its member public agencies bears to its total ultimate annual contractual entitlements to water. Tax and annexation charge revenues may be used to pay remaining costs. Other funds and revenues available and not provided for in this chapter may be allocated to reduce required water revenues or taxes as determined by the Board.

(b) Notwithstanding the provisions in subsection (a) above, amounts raised by ad valorem property taxation shall not exceed the limitations established by section 124.5 of the Act and, subject to those limitations, shall be not less than the approximate equivalent of the amounts levied for fiscal year 1990-91.

§ 4303. Capital Costs for Use in Allocation Formula.

(a) Capital costs referred to in Section 4301 shall include:

(1) Capital payments made to the State under the District's State water service contract and the Devil Canyon-Castaic contract.

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(2) Debt service on bonds issued by the District, including both principal and interest, excluding however, debt service attributable to bonds the proceeds of which were used to finance construction of treatment plants.

(3) Payments for the First San Diego Aqueduct.

(4) Increases in restricted funds and working capital pursuant to Sections 5201 and 5202 of the Administrative Code.

(5) The replacement portions of the minimum and variable operation, maintenance, power and replacement components of the Delta and Transportation Charges under the District's State water service contract and the Devil Canyon-Castaic contract.

(6) Purchases of operating equipment.

(7) Increases in appropriations for inventories of supplies.

-3-

(8) Expenditures for the cost of construction projects, property acquisition, and capital costs under the contract with Imperial Irrigation District, to the extent they are paid from the Pay-As-You-Go Fund or the General Fund.

All other costs shall be considered operation and maintenance costs.

(b) Income to the District other than from water sales and tax revenues shall be credited to the amounts allocated by Section 4301 for payment from water sales revenues and from tax revenues, as follows:

(1) Interest income shall be credited against water sales and tax revenues in proportion to total cash receipts from water sales and taxes, respectively, in the most recently completed fiscal year.

(2) Income received from sales and leases of the District's real property shall be credited one-half to water sales revenues and one-half to tax revenues.

(c) All computations necessary to implement the policy stated in Section 4301 shall be on a cash basis.

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(d) After the close of each fiscal year, the District shall conduct a review to determine the degree of actual compliance with the provision of this Chapter during the previous fiscal year. Based on such review, the District shall make an adjustment for the amount of any deficiency or surplus in the tax revenue calculations, which adjustment shall be made in the annual budget for the fiscal year next succeeding the year in which the review is made. In the event such adjustment would result in a severe fluctuation in the District's tax rates, such adjustment may be spread over a period not exceeding three fiscal years.

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ATTACHMENT B

§ 4301. Formula for Allocation of Water Revenues.

(a) The District shall fix water rates so that water sales revenues pay all of its annual operation and maintenance costs and that portion of its annual capital costs as the ratio of the quantity of water it has sold annually to its member public agencies bears to its total ultimate annual contractual entitlements to water. Tax and annexation charge revenues may be used to pay remaining costs. Other funds and revenues available and not provided for in this chapter may be allocated to reduce required water revenues or taxes as determined by the Board.

(b) Notwithstanding the provisions in subsection (a) above, amounts raised by ad valorem property taxation shall not exceed the limitations established by section 124.5 of the Act and, subject to those limitations, shall be not less than the approximate equivalent of the amounts levied for fiscal year 1990-91.

§ 4303. Capital Costs for Use in Allocation Formula.

(a) Capital costs referred to in Section 4301 shall

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include:

(1) Capital payments made to the State under the District's State water service contract and the Devil Canyon-Castaic contract.

(2) Debt service on bonds issued by the District, including both principal and interest, excluding however, debt service attributable to bonds ~~and~~ the proceeds of which were used to finance construction of treatment plants.

(3) Payments for the First San Diego Aqueduct.

(4) Increases in restricted funds and working capital pursuant to Sections 5201 and 5202 of the Administrative Code.

(5) The replacement portions of the minimum and variable operation, maintenance, power and replacement components of the Delta and Transportation Charges under the District's State water service contract and the Devil Canyon-Castaic contract.

(6) Increases/in Purchases of operating equipment inventories.

(7) Increases in appropriations for inventories of supplies.

(8) "Pay-As-You-Go"/Construction/Property Acquisition/Expenditures for the cost of construction projects, property acquisition, and capital costs under the contract with Imperial Irrigation District, to the extent they are paid from the Pay-As-You-Go Fund or the General Fund.

All other costs shall be considered operation and maintenance costs.

(b) Income to the District other than from water sales and tax revenues shall be credited to the amounts allocated by Section 4301 for payment from water sales revenues and from tax revenues, as follows:

(1) Interest income shall be credited against water sales and tax revenues in proportion to total cash receipts from water sales and taxes, respectively, in the most recently completed fiscal year.

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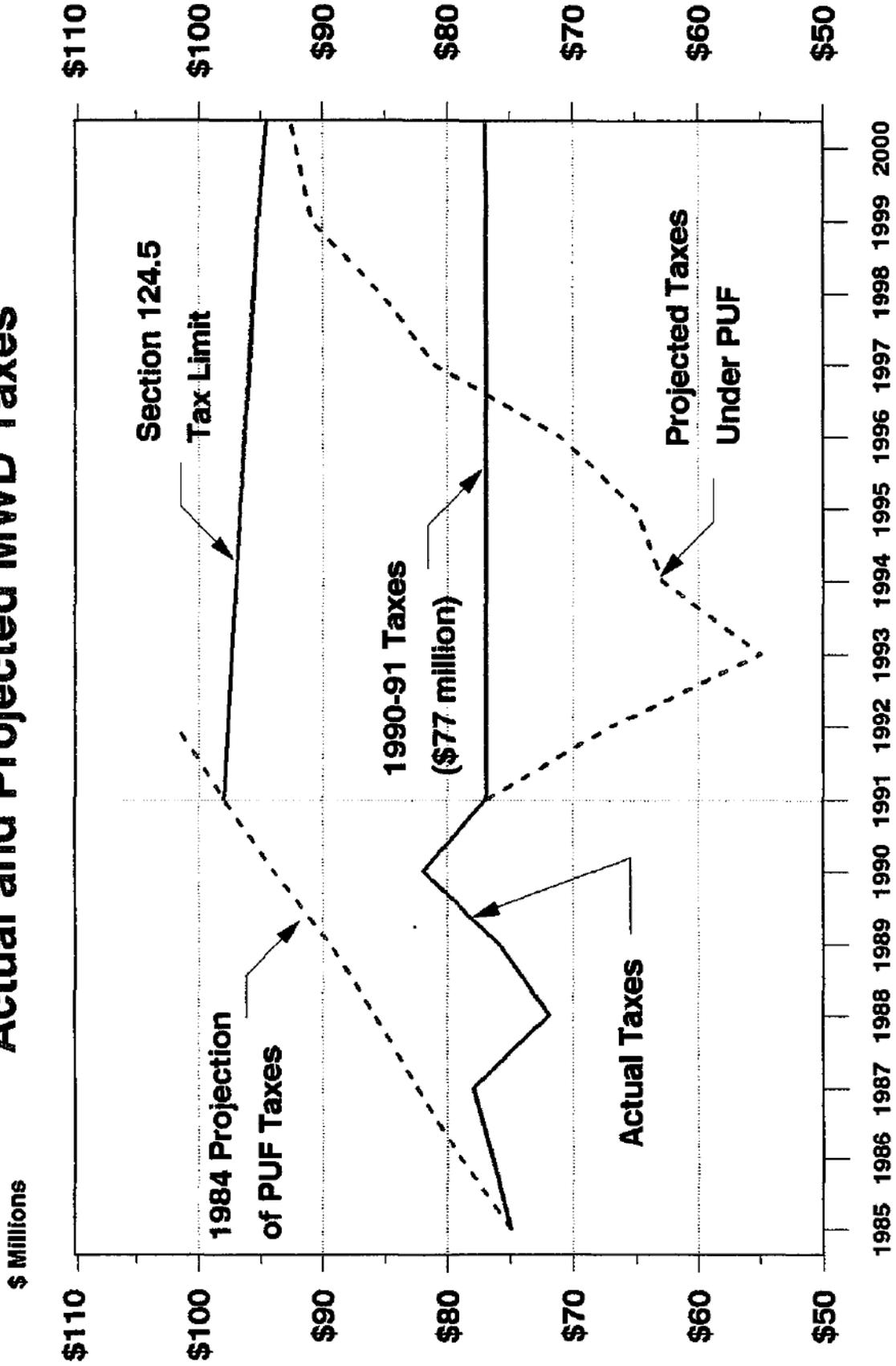
(2) Income received from sales and leases of the District's real property shall be credited one-half to water sales revenues and one-half to tax revenues.

(c) All computations necessary to implement the policy stated in Section 4301 shall be on a cash basis.

(d) After the close of each fiscal year, the District shall conduct a review to determine the degree of actual compliance with the provision of this Chapter during the previous fiscal year. Based on such review, the District shall make an adjustment for the amount of any deficiency or surplus in the tax revenue calculations, which adjustment shall be made in the annual budget for the fiscal year next succeeding the year in which the review is made. In the event such adjustment would result in a severe fluctuation in the District's tax rates, such adjustment may be spread over a period not exceeding three fiscal years.

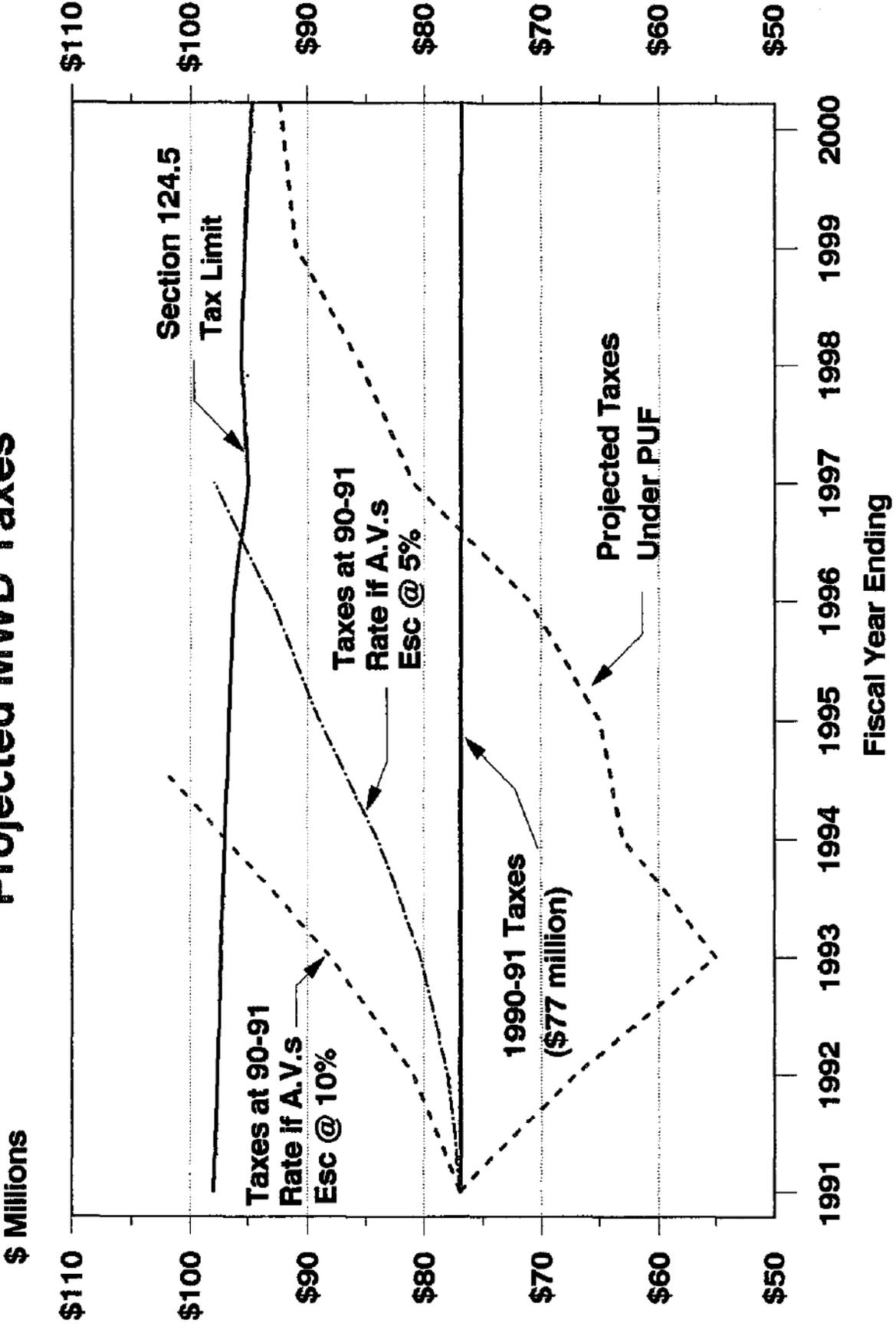
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Actual and Projected MWD Taxes



Fiscal Year Ending

Projected MWD Taxes





San Diego County Water Authority

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San Diego de Water District

South Fenirrigation District

South Bay Irrigation District

Vallecitos Water District

Village Center
Municipal Water District

Wild Irrigation District

Yuma
Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

August 15, 2016

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

**RE: Finance and Insurance Committee and Board Meeting Agenda Item 5E-2:
Adopt CEQA determination and the resolution establishing the tax rate for fiscal year
2016/17 - OPPOSE**

Chairman Record and Board Members,

We have procedural and substantive objections to Board Memo 5E-2, described below, and for these reasons, we OPPOSE adoption of Agenda Item 5E-2. We have a standing objection to MWD's suspension of the property tax limitation when it has not provided any facts demonstrating its need to do so, and MWD, has not provided any analysis why it cannot use available sources of fixed revenue, which the legislature in 1984 expressly gave MWD authorization to collect as an alternative to ad valorem taxes.

First, although the committee and board meeting agendas said the board memo on this subject would be "mailed separately," it was not received until 2:48 PM on Friday afternoon, by email (following an inquiry and request by one of our Delegates for this information). We believe establishing MWD's tax rate is an important Board responsibility that warrants receipt of information well in advance of the meeting at which it is scheduled to be voted on, not late on the Friday afternoon before Monday's 9:30 AM committee meeting.

We also raise a concern about how MWD has categorized this issue in current and prior committee and board meeting agendas, i.e., not under Board Action items, *even when as this month action is clearly proposed to be taken*, but under "Other Matters." This is very confusing to members of the public who may believe (quite reasonably) that all matters the Board will be voting on are listed either under the Consent Agenda or Board Action Items. And of course, this month, members of the public would have to be checking MWD's web site continuously until late Friday afternoon hoping to obtain any information at all about what is being voted on Monday morning and at Tuesday's Board meeting. We request you correct this process to provide timely information and transparency on future board agendas of issues related to the tax rate limitation suspension and California WaterFix costs which MWD identifies as

justification for these property tax increases.

We are aware that the Board already voted at its April 12, 2016 meeting to adopt a resolution finding that continuing the ad valorem tax rate at the rate levied for fiscal year 2015/16 is "essential" to MWD's fiscal integrity. We opposed that board action for the reasons described in our March 6, 2016 letter, a copy of which is attached (without attachments). The April 12, 2016 Board meeting Memo 8-1 ("April Board Memo") did not contain any facts or analysis establishing why suspension of the tax rate limitation was necessary, let alone, "essential;" in fact, the April Board Memo is clear on its face that MWD could have raised water rates or used other readily available sources of fixed revenue as an alternative to suspension of the tax rate limitation.

Board Memo 5E-2 does not provide any new facts or analysis to justify the tax rate limitation suspension or imposition of the tax rate as described; instead, it relies upon a series of conclusory "recitals" taken from the April Board Memo. These self-serving declarations by MWD are not evidence or a substitute for a substantive analysis supporting a conclusion that suspension of the tax limitation is essential to MWD's fiscal integrity. In fact, these recitals are in stark contrast to the facts, including the following:

MWD has sufficient revenue available to pay all of its costs without a tax rate limitation suspension. At the time of the April 2016 board meeting, MWD had collected almost \$850 million more than needed to pay its costs over the preceding four years. MWD chose to spend all of that money outside of its budget and rate-setting process rather than using those ratepayer dollars to avoid any purported need to suspend the tax rate limitation. Board Memo 5E-2 clearly states that the Board could have raised water rates to pay MWD's costs for fiscal year 2016/17, but chose not to do so; staff then goes on to reach the faulty conclusion that since the Board chose not to raise water rates, a tax rate suspension is therefore "essential." This turns the substance and intent of SB 1445 on its head.

MWD has alternative sources of fixed revenue available that could be used in lieu of ad valorem property taxes. The April Board Memo states:

SB 1445 also authorized alternative sources of fixed revenue, including standby or readiness-to-serve charges and benefit assessments. It was not until 1992/93, when standby charges were initially adopted, that Metropolitan had any fixed revenue other than property tax. Now, however, those fixed-revenue alternatives are likely governed by additional legal requirements not in place or contemplated when the Legislature enacted SB 1445. Further, the precise scope of those requirements is uncertain, meaning that uncertainty and potential risk will accompany reliance on any new fixed revenue alternative authorized by SB 1445. (April Board Memo at page 10.)

Based on this mere recital, not accompanied by any further explanation or analysis of the purported "uncertainty" or "risk" associated with using the tools the Legislature expressly provided for MWD to use *in lieu of ad valorem property taxes*, MWD staff declares that ad valorem property taxes are "essential." We request that staff provide a detailed report at the September Board meeting of the "additional legal requirements" to which reference is made,

the analysis by which it has concluded that use of the fixed revenue alternatives is too "uncertain" or creates "risk," and the nature and extent of the risk it has identified.

MWD's reasoning is flawed and its characterization of history, including the legislative history of SB 1445, is false. We have described that history in prior letters to this Board and so will not repeat it here; instead, we incorporate our prior letters (and attachments), listed at the end of this letter, by reference.

Resolution 9210 violates the requirements of MWD Act Section 134. Resolution 9210 states that the Board "has fixed such rates and charges as will result in revenue which will pay the District's operating expenses" and other costs as described (emphasis added). However, that is not what Section 134 requires; rather, it provides that the Board, "so far as practicable, shall fix such rate or rates for water as will result in revenue, together with revenue from any water standby or availability charge or assessment" to pay the Districts' operating and other costs as described (emphasis added). Resolution 9210 does not comply with Section 134 of the MWD Act.

It is premature to justify the need for a property tax limitation suspension on costs of the State Water Project or California WaterFix. The evidence before the Board is clear that MWD has more than ample revenues and fixed cost recovery alternatives to pay for current State Water Project costs, without the necessity of a tax rate limitation suspension. The Board has not been provided with any cost estimates associated with the California WaterFix, neither Board Memo 5E-2 nor Resolution 9210 identifies or describes any such costs, and the Board has not yet voted on the project. Unless and until these things happen, the State Water Project costs do not justify the tax rate limitation suspension.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director

Attachments:

1. March 6, 2016 letter RE March 7 Finance and Insurance Committee/Budget and Rates Workshop Agenda Item 9-2 (Proposed revenue requirements) and 8d (Presentation) and March 8 Board Meeting Agenda Item 4 Public Hearing RE suspension of tax rate limitation and proposed water rates and charges for calendar years 2017 and 2018
2. MWD April 30, 1984 Memo Re: Proposed Legislation Amending Metropolitan Water District Act and Revisions to Metropolitan Water District Administrative Code Relating to Taxation and Water Pricing
3. MWD March 1984 Report to the California Legislature in Response to AB 322

Prior letters written RE suspension of tax limitation:

1. Letter from Water Authority to John Foley and the MWD Board of Directors dated May 14, 2013 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
2. Letter from Metropolitan to California State Senate dated May 29, 2013 Re: public hearing scheduled pursuant to section 124.5 of the MWD Act on the suspension of ad valorem tax rate limitations
3. Letter from Water Authority to John Foley and Members of the Board of Directors dated June 5, 2013, Re: Board Memo 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 MWD Act to maintain the ad valorem tax rate for fiscal year 2013/14 – OPPOSE
4. Letter from Water Authority to Darrell Steinberg and The California State Senate dated March 7, 2014 Re: MWD Public Hearing on Suspension of Tax Rate Limitation
5. Letter from Water Authority to Randy Record and Members of the Board of Directors dated August 15, 2015 Re: Board Memo 5G-2 – Adopt (1) the resolution finding that continuing an ad valorem tax rate at the rate levied for fiscal year 2013/14 is essential to MWD’s fiscal integrity; and (2) the resolution establishing the tax rate for fiscal year 2014/15 – OPPOSE OPTION 1
6. Letter from Water Authority to Randy Record and Members of the Board of Directors dated March 6, 2016 Re: March 7 Finance and Insurance Committee/Budget and Rates Workshop #3 Items 9-2

cc: San Diego County Water Authority Board of Directors



San Diego County Water Authority

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March 6, 2016

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Members of the Board of Directors
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MEMBER AGENCIES

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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: March 7 Finance and Insurance Committee/Budget and Rates Workshop #3
Agenda Items 9-2 (Proposed revenue requirements) and 8d (Presentation); and

March 8 Board Meeting Agenda Item 4
Public Hearing RE suspension of tax rate limitation and proposed water rates and
charges for calendar years 2017 and 2018

Chair Record and Members of the Board:

We request this letter be made part of the record of Monday's Finance and Insurance
Committee Meeting and Tuesday's board meeting.

MWD's budget and rate-setting process suffers from a lack of transparency: As stated in our
February 9, 2016 letter to the board (attached, with all attachments), we object to MWD holding
a public hearing on rates and taxes without providing MWD's member agencies and the public
with budget information or a cost of service report sufficient to explain -- and allow the public to
review and understand -- how MWD intends to spend public money, allocate its costs and set its
rates. Holding a public hearing -- or a lot of board meetings and workshops -- without this
information, is form over substance and fails to meet the most basic ethics and transparency
requirement necessary to maintain the public trust. The fact that a trial court has ruled MWD's
rates are illegal should result in more, not less, disclosure, in the interest of understanding the
basis of MWD's rates.

***The Water Authority continues to object to MWD's cost allocation and rates and charges that
have been invalidated by the Superior Court:*** While MWD has not released its cost of service
report, it has made written statements that the proposed rates and charges are based upon the
same flawed and illegal methodology that the Court in *SDCWA v. MWD* rejected. We object to
the proposed rates for the same reasons we have previously objected: because they improperly
allocate all of MWD's SWP costs to transportation; and because the Water Stewardship Rate is
an unlawful tax that is not based on cost of service (or even tied to any service at all) and which
certainly may not be recovered as a transportation rate.

Chairman Record and Members of the Board

March 6, 2016

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MWD's rates and charges can't be analyzed without more budget information, a cost of service report and the financial planning model used to allocate costs and set rates: The "estimated" rates and charges have finally now been identified as the "proposed" rates and charges in Board Memo 9-2; however, there is still no cost of service report explaining how MWD's costs have been allocated and assigned to the proposed rates, as described. The Water Authority has repeatedly requested this information from MWD, including most recently through a Public Records Act request. While MWD has indicated that it will make disclosable information available, it obviously will not do so prior to Tuesday's public hearing. MWD is also taking the position that its financial planning model, through which its rates have been calculated, and without which its rates cannot be analyzed, is a "propriety" software program that will not be made available to MWD's member agencies or to the public. It is not in the public's best interest or in MWD's best interest to conduct its ratemaking under a shroud of secrecy. (See attached letters dated February 18, February 26 and March 4, 2016 between the Water Authority and MWD's General Counsel.)

Lack of budget detail limits the board's ability to choose to reduce costs rather than raise rates or borrow money: As stated in our February 6, 2016 letter RE Board Memo 8-2 on the proposed budget and "estimated" rates, the staff's refusal to provide budget detail to the board of directors eliminates its ability to review proposed expenditures at a level of detail that would allow the board to determine whether it is in MWD's best interest to cut costs rather than raise rates or borrow more money. This should be of a particular interest given this month's staff recommendation to borrow money at a higher cost to pay operational expenses. It is also of serious concern to us that the proposed budget includes a gimmick such as the "Resolution of Reimbursement," giving staff advanced authorization to later raid PAYGo revenues to pay for O&M (an action that would likely violate cost of service laws in the process). Staff's refusal to provide budget detail should be a matter of grave concern to every member of this board of directors; we cannot possibly provide oversight based on PowerPoint presentations and the departmental budget numbers the staff has provided.

There is no basis for suspension of the tax rate limitation, especially when MWD is at the same time recommending reduction of the Readiness to Serve (RTS) charge: We have written many times about why there is no factual or legal basis for MWD's suspension of the tax rate limitation imposed by the Legislature, now embodied in Section 124.5 of the MWD Act. [See, e.g., our August 15, 2015 letter (copy attached, without attachments.)] With this tax rate suspension, MWD will collect over the next two years almost five times the amount of tax revenue otherwise allowed under its Act. MWD does not need to suspend the tax rate limitation; it needs a long range finance plan to responsibly structure how it will pay for current and anticipated costs, including increased costs of the State Water Project. There is clearly no basis for MWD to impose higher property taxes to ensure its "fiscal integrity," at the very same it is proposing to decrease by double digits its other fixed charges, including the RTS charge, which is the very tool the Legislature gave MWD to enable it to reduce taxes but maintain fixed cost recovery.

Chairman Record and Members of the Board

March 6, 2016

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ALTERNATIVE TREATMENT COST RECOVERY MECHANISM

We would like to emphasize at the outset that we and the Water Authority support prudent fixed cost recovery by MWD through cost-of-service-based rates and charges reflecting member agencies' respective burdens on, and benefits received from MWD investments. To be successful, the benefits of these investments must be identified in advance, with the concurrence and agreement of the member agencies that benefit to pay for those benefits. (See Blue Ribbon Task Force Report dated January 1994, Part I, discussing the importance of integrating MWD's IRP and rate structure and warning about the risks associated with MWD making major capital investments when no agency is legally obligated to pay.)

MWD's February proposal for fixed treatment cost recovery is legally flawed. Even though the "alternative treatment cost recovery mechanism" is not among the proposed rates described in Board Memo 9-2, it remains in the presentation to be made at Workshop #3. Accordingly, we provide comments on the PowerPoint presentation at the Finance and Insurance Committee Meeting dated February 23, 2016 (copy attached).

The Proposal does not "Align Charges with Service Commitment/Investment" (slide 5): The statutory duties of a special district, formed under general law, are established by the entity's authorizing act. Whatever treatment facilities and improvements MWD has elected to operate for its convenience or at the request of one or more member agencies does not create or impose a "duty" to provide treatment services. Thus, the foundational objective to "align charges with MWD's service obligation" -- is flawed; , contrary to statements in the presentation, MWD is not "the treated water service provider for Member Agencies," and absent a contract, it does not have a service "obligation" or "duty to serve" treated water to its member agencies. To the contrary, as stated in its Official Statement, MWD's member agencies "are not required to purchase or use any of the water available from MWD." (See, for example, December 9, 2015 Official Statement at A-27.)

What MWD has is its own service "policy" (Laguna Declaration) and "desire" to serve water -- treated and untreated -- to its member agencies; however, without a contractual agreement, that self-declared desire alone does not establish a duty to serve on the part of MWD or an obligation to purchase water from MWD by its member agencies. MWD has no power to restrict the rights of water suppliers within its service area to provide water and water treatment to their customers. Accordingly, there is no legal basis for a claim by MWD of legal protection from member agencies exercising their sovereign right to develop and treat water supplies. This is the very reason why the Blue Ribbon Task Force identified -- more than 20 years ago -- the need for MWD to obtain meaningful member agency commitments to pay before it embarks upon large capital spending projects like treatment plants.

Because we are not aware of, and independent research has not disclosed any authority for the proposition that MWD has a statutory duty to treat the wholesale water it provides, we strongly recommend that the General Counsel provide the board with a legal opinion that supports the

Chairman Record and Members of the Board

March 6, 2016

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assertion that MWD has a legal duty or obligation to serve. The General Counsel should provide this opinion to the board so it may better understand the risks it is taking when it chooses to make investments in a declining sales market, when its member agencies increasingly are developing -- and should be encouraged to develop -- other cost-competitive local water supply resources. Aside from the risk factor, MWD cannot properly conduct a cost of service analysis based on flawed legal assumptions.

Determining the allocation of fixed treatment costs based on a proportional share of volume during the period 1998-2007 does not conform to proper cost of service methodologies: No cost of service based explanation is provided (and none exists) for assessing fixed treatment cost recovery based on the date of the last "significant treatment plant capacity addition." This is yet another result-oriented, arbitrary rate designed to benefit some agencies at the expense of others.

Allowing two different tests for minimum demand violates the MWD Act's requirement that rates be uniform: No cost of service based explanation is provided (and none exists) for assigning agencies to alternative measures of minimum demand to determine cost recovery. The underlying data should be the measure of cost recovery.

It is not possible from the information provided in the PowerPoint presentation (or that has otherwise been made available by MWD) to determine what costs have been allocated to fixed vs. variable categories; or, what fixed costs are defined as commodity, demand and standby related: We have previously requested the budget and cost of service data necessary to understand how MWD has allocated its costs and set its proposed rates, including the potential for imposition of an alternative fixed treatment charge. The data that has been provided is fragmentary and out of context. We again request to be provided with the detailed data and supporting detail for the cost allocation formulae for this and other rates and charges.

Finally, the statement that, "MWD has invested in treatment capacity to serve the Member Agencies, but today does not require the beneficiaries of demand or standby capacity to pay anything for the cost of this dedicated capacity; for the cost of this service," is inaccurate. In the first place, MWD has not dedicated any of its plant capacity to any member agency; second, this cost is recovered in the current volumetric treatment rate. If MWD's statement were true, then there would be additional revenue raised by the fixed plus volumetric approach. But this is not the case, because the total revenue requirement presented by MWD for the fixed plus variable alternative is the same as the current methodology. The current 100 percent volumetric methodology collects revenues equal to the "alternative."

The only thing that is clear from the information that has been provided is the intention to alter MWD's current treatment cost recovery, as between and among its member agencies, without any demonstrated factual basis for doing so. While an alternative treatment cost recovery mechanism might be justified based on member agencies' causation of those treatment costs and within that limit, and the board's discretion to set legal rates and charges, the current

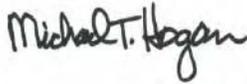
Chairman Record and Members of the Board

March 6, 2016

Page 5

proposal falls short of that objective. It is a sham, not based on cost causation but designed solely to achieve the results described at slide 27 of the Presentation, principally, to shift additional costs to the Water Authority without any cost justification for doing so.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director

Attachments

1. February 9, 2016 Letter to MWD re 2016 Rate Setting Process and Schedule for Public Hearing and Request for Distribution of Cost of Service Report Prior to the Public Hearing (with attachments)
2. February 18, 2016, February 26, 2016, and March 4, 2016 Letters between MWD and the Water Authority re PRA request
3. August 15, 2015 Letter to MWD re Ad Valorem tax rate suspension (without attachments)
4. February 3, 2016 MWD PowerPoint Presentation: Alternative Treatment Cost Recovery Mechanism
5. Blue Ribbon Task Force Report dated January 1994, through Part I: integration of MWD's IRP and rate structure



APPROVED
 by the Board of Directors of
 The Metropolitan Water District
 of Southern California
 at its meeting held **MAY 8 1984**
[Signature]
 Executive Secretary

35130

Attachment 2

6-2

The Metropolitan Water District of Southern California

April 30, 1984

To: Board of Directors (Executive Committee--Action)
 (Legal & Claims Committee--Action)
 (Finance & Insurance Committee--Action)
 From: General Manager (Water Problems Committee--Action)
 Subject: Proposed Legislation Amending Metropolitan Water
 District Act and Revisions to Metropolitan Water
 District Administrative Code Relating to Taxation
 and Water Pricing

Report

Attached is a copy of a proposed amendment to the MWD Act (Exhibit A) which would provide, commencing with fiscal year 1990-91, that the District's ad valorem property taxes, other than annexation taxes, shall not exceed (1) the amount required to pay debt service on Metropolitan's general obligation bonds and (2) that portion of the District's payment obligation to the State under the state water service contract which is reasonably allocable, as determined by the District, to the State's payment of existing Burns-Porter Bonds debt service used to finance construction of facilities for the benefit of the District. The restrictions would not be applicable if the Board, after a hearing to consider that issue, found that a tax in excess of this restriction would be essential to the fiscal integrity of the District, and the offices of the Speaker of the Assembly and the President pro tempore of the Senate were given written notice of the hearing at least 10 days prior to the date of hearing.

For the period prior to fiscal year 1990-91, taxes would be based upon the proportionate use formula, amended so as to exclude debt service on District bonds attributable to financing construction of treatment plants and any increases in working capital reserves beyond that now required by District policy. Changes in the MWD Administrative Code to accomplish this revision are shown in completed form on Exhibit B, and Exhibit C shows additions and deletions to the code by underscoring and strikeouts.

Also attached as Exhibit D is a table setting forth the estimated effect of these changes on the District.



Board of Directors
(Executive, Legal & Claims,
Finance & Insurance,
Water Problems Committees)

April 30, 1984

-2-

Recommendation

(1) That the Board recommend to the California Legislature that Section 124.5 as shown on the attached Exhibit A be added to the Metropolitan Water District Act; and

(2) That the Metropolitan Water District Administrative Code definition of "capital costs", as referred to in the formula for allocation of water revenues, be amended as shown on attached Exhibit B, said change in definition not to become effective unless and until such time as the bill containing proposed Section 124.5, substantially in the form shown on the attached Exhibit A, is chaptered.


Carl Boronkay

JWM/kdb
Attachments (4)

EXHIBIT A

Section 124.5. Subject only to the exception in this section and notwithstanding any other provision of law, commencing with fiscal year 1990-1991 any ad valorem property tax levied by a district on taxable property in such district (other than special taxes levied and collected pursuant to annexation proceedings pursuant to Articles 1, 2, 3 and 6 of Chapter 1 of Part 7) shall not exceed the composite amount required to pay (1) principal and interest on general obligation bonded indebtedness of the district and (2) that portion of the district's payment obligation under a water service contract with the state which is reasonably allocable, as determined by the district, to the payment by the state of principal and interest on California Water Resources Development Bonds issued as of the effective date of this section and used to finance construction of facilities for the benefit of the district. The aforesaid restrictions shall not apply if the board of directors of the district, following a hearing held to consider that issue, finds that a tax in excess of the aforesaid restrictions is essential to the fiscal integrity of the district, and written notice of such hearing is filed with the offices of the Speaker of the Assembly and the President pro tempore of the Senate at least ten days prior to the date thereof.

EXHIBIT B

Capital costs referred to in Section 311.2 shall include:

(1) Capital payments made to the State under the District's State water service contract and the Devil Canyon-Castaic contract.

(2) Debt service on bonds issued by the District, including both principal and interest, excluding however, debt service attributable to bonds the proceeds of which were used to finance construction of treatment plants.

(3) Payments for the First San Diego Aqueduct.

(4) Increases in restricted funds and working capital required in order to attain the sum of \$10 million plus 25 percent of projected fixed costs to be paid from water revenues. "Fixed costs" for this purpose shall be as defined in Section 331.2.1 of this code.

(5) The replacement portions of the minimum and variable operation, maintenance, power and replacement components of the Delta and Transportation Charges under the District's State water service contract.

(6) Increases in operating equipment inventories.

(7) Increases in appropriations for inventories of supplies.

(8) "Pay-as-you-go" construction costs.

All other costs shall be considered operation and maintenance costs.

EXHIBIT C

Capital costs referred to in Section 311.2 shall include:

(1) Capital payments made to the State under the District's State water service contract and the Devil Canyon-Castaic contract.

(2) Debt service on bonds issued by the District, including both principal and interest, excluding however, debt service attributable to bonds the proceeds of which were used to finance construction of treatment plants.

(3) Payments for the First San Diego Aqueduct.

(4) Increases in restricted funds and working capital required by the District's policy in order to attain the sum of \$10 million plus 25 percent of projected fixed costs to be paid from water revenues. "Fixed costs" for this purpose shall be as defined in Section 331.2.1 of this code.

(5) The replacement portions of the minimum and variable operation, maintenance, power and replacement components of the Delta and Transportation Charges under the District's State water service contract.

(6) Increases in operating equipment inventories.

(7) Increases in appropriations for inventories of supplies.

(8) "Pay-as-you-go" construction costs.

All other costs shall be considered operation and maintenance costs.

23-Apr-84

EXHIBIT - D

COMPARISON OF TAXES

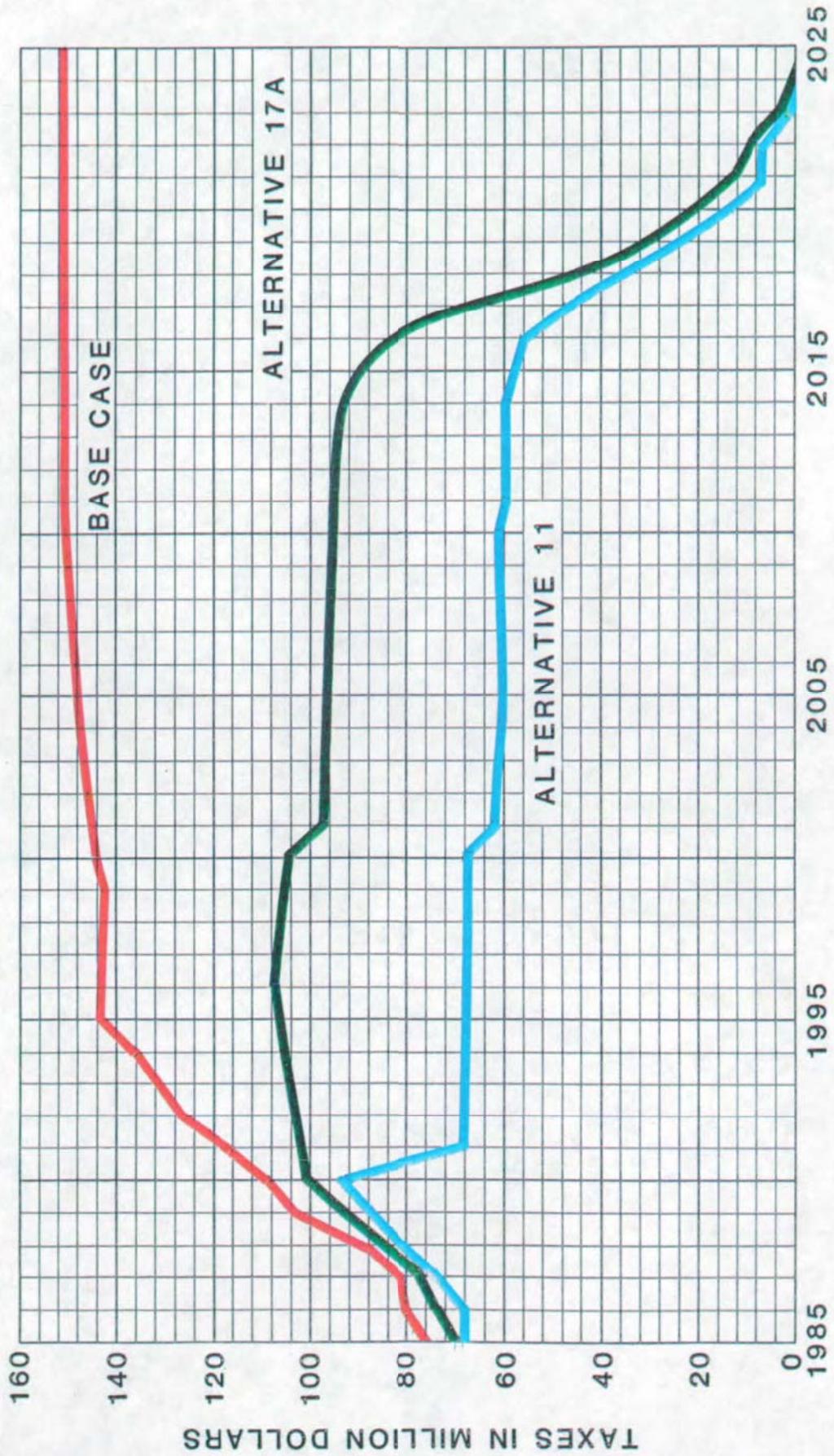
F/Y	BASE CASE	ADJUSTED		ALTERNATIVE 11	ALTERNATIVE 17**
		BASE CASE*			
84-85	75,520	70,176		68,367	80,665
85-86	78,579	73,952		67,842	90,473
86-87	81,506	76,842		74,470	98,534
87-88	87,138	83,550		81,098	102,704
88-89	102,535	94,832		87,726	107,718
89-90	108,405	100,598		94,353	107,724
90-91	115,520	107,713		68,000	107,507
91-92	126,050	118,263		68,000	107,236
92-93	131,039	0		68,000	107,207
93-94	135,541	0		68,000	107,030
94-95	141,984	0		68,000	106,727
95-96	142,050	0		68,000	106,456
96-97	142,720	0		68,000	105,825
97-98	143,010	0		68,000	105,095
98-99	143,238	0		68,000	104,582
99-00	144,534	0		68,000	104,205
00-01	145,000	0		61,000	96,790
01-02	145,000	0		61,000	96,474
02-03	146,000	0		61,000	96,296
03-04	146,500	0		60,000	96,387
04-05	147,000	0		60,000	96,303
05-06	147,500	0		60,000	95,942
06-07	148,000	0		60,000	95,649
07-08	148,500	0		60,000	95,460
08-09	149,000	0		60,000	95,457
09-10	149,500	0		60,000	95,232
10-11	150,000	0		59,000	94,866
11-12	150,000	0		59,000	94,465
12-13	150,000	0		59,000	94,039
13-14	150,000	0		59,000	92,630
14-15	150,000	0		58,000	89,464
15-16	150,000	0		57,000	84,867
16-17	150,000	0		50,000	70,513
17-18	150,000	0		28,000	45,143
18-19	150,000	0		24,000	34,708
19-20	150,000	0		13,000	21,358
20-22	150,000	0		6,000	12,600
21-22	150,000	0		6,000	8,698
22-23	150,000	0		0	441
23-24	150,000	0		0	0

(Over)

* Treatment Plant debt service removed
from PUF capital costs

** Alternative 17 provides for a tax levy to cover all MWD
G.O. Bond debt service and MWD's share of SWP G.O. Bond
debt service associated with construction of SWP transpor-
tation and conservation facilities.

COMPARISON OF TAXES



FILE: COMPTAX

23-Apr-84

C O M P A R I S O N O F T A X E S

F/Y	BASE CASE	ADJUSTED BASE CASE*	ALTERNATIVE 11	ALTERNATIVE 17**
84-85	75,520	70,176	68,367	80,665
85-86	78,579	73,952	67,842	90,473
86-87	81,506	76,842	74,470	98,534
87-88	87,138	83,550	81,098	102,704
88-89	102,535	94,832	87,726	107,718
89-90	108,405	100,598	94,353	107,724
90-91	115,520	107,713	68,000	107,507
91-92	126,050	118,263	68,000	107,236
92-93	131,039	0	68,000	107,207
93-94	135,541	0	68,000	107,030
94-95	141,984	0	68,000	106,727
95-96	142,050	0	68,000	106,456
96-97	142,720	0	68,000	105,825
97-98	143,010	0	68,000	105,095
98-99	143,238	0	68,000	104,582
99-00	144,534	0	68,000	104,205
00-01	145,000	0	61,000	96,790
01-02	145,000	0	61,000	96,474
02-03	146,000	0	61,000	96,296
03-04	146,500	0	60,000	96,387
04-05	147,000	0	60,000	96,303
05-06	147,500	0	60,000	95,942
06-07	148,000	0	60,000	95,649
07-08	148,500	0	60,000	95,460
08-09	149,000	0	60,000	95,457
09-10	149,500	0	60,000	95,232
10-11	150,000	0	59,000	94,866
11-12	150,000	0	59,000	94,465
12-13	150,000	0	59,000	94,039
13-14	150,000	0	59,000	92,630
14-15	150,000	0	58,000	89,464
15-16	150,000	0	57,000	84,867
16-17	150,000	0	50,000	70,513
17-18	150,000	0	28,000	45,143
18-19	150,000	0	24,000	34,708
19-20	150,000	0	13,000	21,358
20-12	150,000	0	6,000	12,600
21-22	150,000	0	6,000	8,698
22-23	150,000	0	0	441
23-24	150,000	0	0	0

(* Treatment Plant debt service removed
from PUF capital costs

** Alternative 17 provides for a tax levy to cover all MWD
G.O. Bond debt service and MWD's share of SWP G.O. Bond
debt service associated with construction of SWP transpor-
tation and conservation facilities.

Handwritten marks or scribbles in the top left corner.

03-May-84

Attachment 2

C O M P A R I S O N O F T A X E S
(In millions of dollars)

F/Y	BASE CASE	ALTERNATIVE 11	ALTERNATIVE 17A
84-85	75,520	68,367	70,176
85-86	78,579	67,842	73,952
86-87	81,506	74,470	76,842
87-88	87,138	81,098	83,550
88-89	102,535	87,726	94,832
89-90	108,405	94,353	100,598
90-91	115,520	68,000	107,507
91-92	126,050	68,000	107,236
92-93	131,039	68,000	107,207
93-94	135,541	68,000	107,030
94-95	141,984	68,000	106,727
95-96	142,050	68,000	106,456
96-97	142,720	68,000	105,825
97-98	143,010	68,000	105,095
98-99	143,238	68,000	104,582
99-00	144,534	68,000	104,205
00-01	145,000	61,000	96,790
01-02	145,000	61,000	96,474
02-03	146,000	61,000	96,296
03-04	146,500	60,000	96,387
04-05	147,000	60,000	96,303
05-06	147,500	60,000	95,942
06-07	148,000	60,000	95,649
07-08	148,500	60,000	95,460
08-09	149,000	60,000	95,457
09-10	149,500	60,000	95,232
10-11	150,000	59,000	94,866
11-12	150,000	59,000	94,465
12-13	150,000	59,000	94,039
13-14	150,000	59,000	92,630
14-15	150,000	58,000	89,464
15-16	150,000	57,000	84,867
16-17	150,000	50,000	70,513
17-18	150,000	28,000	45,143
18-19	150,000	24,000	34,708
19-20	150,000	13,000	21,358
20-21	150,000	6,000	12,600
21-22	150,000	6,000	8,698
22-23	150,000	0	441
23-24	150,000	0	0

NOTES:

1. Modified PUF used in Alternative 17A through F Y. 1989-90. (Treatment Plant debt service removed from PUF capital costs).
2. From F.Y. 1990-91, Alternative 17A provides for a tax levy to cover all G.O. Bond debt service and MWD's share of SWP G.O. Bond debt service associated with construction of SWP transportation and conservation facilities.

5-7(2)



The Metropolitan Water District of Southern California

Report to the California Legislature
in
Response to AB 322

March 1984



5-7(e)

The Metropolitan Water District of Southern California

Office of Board of Directors

E. Thornton Ibbetson, *Chairman*
Glenn P. Allen, *Vice Chairman*
John M. Cranston, *Vice Chairman*
Edward L. Kussman, *Vice Chairman*
Samuel C. Rue, *Secretary*

March 23, 1984

Hon. David Roberti
President Pro Tempore
California Senate
State Capitol
Sacramento, California 95814

Hon. Willie L. Brown, Jr.
Speaker of the Assembly
California Assembly
State Capitol
Sacramento, California 95814

Gentlemen:

Assembly Bill 322 Report on the Taxation
Policy of The Metropolitan Water District

The Metropolitan Water District of Southern California presents this report to the Legislature in response to the directive of Assembly Bill 322 enacted in September 1983. Essentially, that act provides that Metropolitan shall not impose a property tax rate for voter-approved indebtedness for fiscal years 1984-85 and 1985-86 which exceeds the rate imposed for fiscal year 1982-83, unless at least 80 percent of Metropolitan's board of directors finds that there exists a fiscal emergency which requires a property tax rate increase, and approves that tax rate increase. In addition, the bill requires Metropolitan to submit a report to the Legislature on or before March 31, 1984, describing its program to reduce its reliance on property taxes and to assure that the property tax burden is equitably distributed.

The report transmitted with this letter explains in detail the historical development and application of the current financial policy of the board of directors governing reliance on property taxes and water revenues. It also shows the important relationship between the tax/water revenue policy and the financial health of the Metropolitan Water District. Metropolitan will face significant financial problems in the future as its

The Metropolitan Water District of Southern California

Hon. David Roberti
Hon. Willie L. Brown, Jr. -2-

March 23, 1984

fixed costs, those that do not vary with water deliveries, continue to increase while taxes, its only source of firm revenues, continue to decrease as a proportion of the district's total income. Projections indicate that in the year 2000 fixed costs will be 77 percent of Metropolitan's total budget. Total fixed costs over the period studied (1985 to 2000) will increase from \$285 million in 1984-85 to \$845 million in the year 2000. This dramatic increase represents the financial need to pay Metropolitan's share of the completion of the State Water Project and to complete our own distribution system so that we may assure millions of Southern Californians a firm water supply in the years ahead.

Metropolitan's water revenues are dependent upon the sale of supplemental water supplies. Sales have been shown to be highly unreliable during wet periods when wholesale purchases of water from Metropolitan are sharply curtailed. To aid in our quest for a suitable means of providing firm revenue, we are asking for financial flexibility legislation and legal authority for Metropolitan to collect some form of service charge or assessment. Proposed legislation on these matters is included following the executive summary and conclusions section of the report.

It is important to note, as emphasized in the report, that the high levels of fixed costs facing Metropolitan are a direct result of Metropolitan's participation as the principal partner in the State Water Project, the same State Water Project that was conceived and born in the California Legislature and that has served and enriched the entire state since the early 1960s. As we pay about two-thirds of the project's costs, any change in our board's financial policies that does not ensure the continued financial strength of Metropolitan could have serious adverse financial impacts on the State Water Project, and therefore upon the credit of the state itself.

Metropolitan currently determines its water and tax revenue requirements by means of its proportionate use formula. The formula and the practice are based on the concept that water users should pay the costs of capital assets relating to the system capacity currently in use, while costs of unused capital assets representing reserve capacity should be recovered through property taxes since they are benefiting from that capacity for future supply. Water users pay, in addition to their share of the capital costs, all operating costs, which are at least two-thirds of the district's total costs.

The Metropolitan Water District of Southern California

Hon. David Roberti
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March 23, 1984

The ratio is dynamic; the proportion of capital costs paid by water users increases over time as the capacity of the aqueducts is more fully utilized. Conversely, Metropolitan's reliance on taxes reduces automatically as the amount of capacity held in reserve for future use diminishes. For example, this year the owner of a \$100,000 home will pay \$23.70 in taxes to the district. In the year 2000, the owner of a \$100,000 home will pay about \$14. This method of dividing capital costs between water users and taxpayers was adopted as policy in 1979, after many years of negotiation, to settle a long-running dispute among Metropolitan's member agencies over the water/tax revenue issue. However, as the current controversy indicates, the proportionate use formula as presently administered is not considered to represent an equitable policy by some members of the board. The problem of developing a revenue policy that is considered fair and equitable by all parties has proven to be much more difficult than might have been anticipated.

In the last several months, the board of directors has worked closely with staff, local agency managers, consultants, and other interested parties on an exhaustive study of alternative revenue policies. As explained in the report, numerous alternatives were proposed and analyzed in detail. Concepts such as service or assessment charges, differential tax rates, and modifications to the current proportionate use formula were among the ideas examined.

The complexity of the issues, combined with the diversity of regional opinions on the questions of equity, have made it extremely difficult to progress toward a consensus solution to the problem.

In addition, a cloud of uncertainty now covers Metropolitan's financial future since the latest Jarvis initiative apparently has qualified for the November 1984 ballot (see resolution included in the appendix section of the report). Should this initiative be approved by the voters, Metropolitan's current tax and water rate policies would probably be invalidated. By the same reasoning, any new or revised tax and water rate policies adopted pursuant to the AB 322 mandate would likewise be of suspect validity if the initiative passes.

For these reasons, the 51-member board of directors concluded, by a 76 percent majority vote, that a final decision on these matters cannot be reached by March 31, 1984. Accordingly, the board hereby requests that an extension of two years

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be granted and that Metropolitan be released from the tax limitation that is imposed for the next two years. This will allow Metropolitan to have an independent study of the financial issues conducted by a consultant. It is believed such a study will provide the opportunity to arrive at a consensus solution to the revenue problem. Such a solution would be reported to the California Legislature on or before March 31, 1986.

In conclusion, we feel that the interim report transmitted with this letter will demonstrate that the Metropolitan Water District has pursued and will continue to pursue an equitable taxation policy designed to reduce reliance on property taxes. Further study is needed to address the concerns of those who feel strongly that the tax reductions should be accelerated, as well as the concerns of those who disagree with that position. We hope that you will read the report with interest and insight, recognizing that this board's policies have been painstakingly crafted over many years of thoughtful consideration by, and compromise among, our 27 member agencies and those policies should be altered only after a consensus is reached.

The Metropolitan Water District board thanks you for your attention to our problems, and we look forward to working closely with you in the future.

Very truly yours,



E. Thornton Ibbetson
Chairman of the Board

Attachment

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INTRODUCTION

In September 1983, the California Legislature passed and the governor approved AB 322, legislation that placed a restriction on Metropolitan Water District's property tax rates for fiscal years 1984-85 and 1985-86. The bill also required Metropolitan to file a report with the Legislature by March 31, 1984, describing a program to "reduce the reliance of the district on the property taxes and to assure that the property tax burden is equitably distributed."

In response to the Legislature's request, Metropolitan's board of directors accelerated on-going studies of the district's water and tax rate policies. Also, a special task force was created to perform an in-depth examination of alternative revenue concepts.

Following six months of study by Metropolitan's board and staff, the district's member agencies and subagencies, various consultants and other interested parties, a decision was reached by the district's board by a 76 percent majority vote that additional time is needed for study and review of financial alternatives. This report is a statement of the district's efforts to date.

A considerable portion of this report is important background material detailing the development of Metropolitan, its current financial policies and projected future revenue

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needs. Without such information there is little basis to evaluate the current policy and the numerous alternatives that were studied.

All of Metropolitan's member agencies received draft copies of various sections of the report as study progressed. This enabled them to evaluate the various pricing policies and revenue structures as they were developed.

The alternative revenue structures studied contain voluminous data and graphics. This material is generally described in this report. A more detailed description of this material is available upon request.

SOUTHERN CALIFORNIA WATER SOURCES

Southern California has four primary sources of water: local groundwater and stream runoff, and water imported through the Los Angeles aqueducts, the Colorado River Aqueduct and the State Water Project.

Groundwater and stream runoff

Settlers in Southern California were able to meet their water needs by capturing water flowing in rivers and streams and by tapping the groundwater basins that lie under some portions of the coastal plain.

As population and agriculture increased, these local supplies became insufficient. Today, local supplies meet only about a third of Southern California's total water demand. The remainder is imported through aqueduct systems.

Los Angeles aqueducts

The city of Los Angeles in the early part of this century built a 233-mile aqueduct from the Owens Valley on the eastern edge of the Sierra Nevada. Water started flowing to the city through this system in 1913, augmenting local supplies which came primarily from the Los Angeles River basin.

In 1940, as the city's water demands continued to grow, the aqueduct was extended another 105 miles north to the Mono basin, where additional water was available for export.

In 1970, a second aqueduct was completed from the Owens Valley, increasing the city's supply from the two basins to about 470,000 acre-feet annually. (An acre-foot of water equals some 325,900 gallons.)

Los Angeles now receives about 80 percent of its water from the Owens and Mono basins. About 15 percent is produced from local wells, and the remainder is supplied by Metropolitan.

Colorado River Aqueduct

In the 1920s, another aqueduct was conceived by Los Angeles. This one was to import water to the city from the Colorado River. In 1925, city voters approved a \$2-million bond issue for preliminary investigations of the project.

But other cities in Southern California also were interested in obtaining additional water supplies. So, with the approval of the state Legislature, a regional public agency called the Metropolitan Water District of Southern California was formed in 1928 by the consortium of cities to build the aqueduct system.

In 1931, voters in the Metropolitan district approved a \$220-million bond issue for construction of the aqueduct. About \$190 million in construction work was completed in the 1930s and initial water deliveries were made in 1941. Some features of the project were not completed until the 1950s,

when additional water was needed to meet the needs of a growing population and as new areas annexed to the district.

Additional expansions and improvements were made to the Metropolitan system in the 1960s and 1970s. Today, the district has an investment of more than \$1.5 billion in facilities which include a 242-mile aqueduct from the Colorado River to the Lake Mathews storage reservoir in Riverside County, 5 pumping plants, 700 miles of large diameter distribution pipelines, 5 water treatment plants, 12 reservoirs, a series of hydroelectric power plants and numerous support facilities.

State Water Project

Following World War II, Southern California became the new home for millions of Americans. But other areas of the state also were experiencing a population boom. Supplying water to this growing population was recognized by the Legislature as a statewide issue.

In 1945, the Legislature launched studies of the problem, and in 1951 the development of a new water delivery system was authorized. That system was called the Feather River Project, which has evolved into what today is called the State Water Project.

In 1959, the Legislature enacted the Burns-Porter Act, which was approved by voters in 1960, and authorized a \$1.75-billion bond issue for the construction of a complex of

reservoirs, pumping plants, power plants, canals, tunnels and pipelines.

The State Water Project captures and stores water behind Oroville Dam, located in the foothills northeast of Sacramento. Water is released from the dam as needed down the Feather River into the Sacramento River, and then pumped, along with surplus flows from other rivers, into the Governor Edmund G. Brown California Aqueduct at the south end of the Sacramento-San Joaquin Delta. Water is delivered through the aqueduct to the south San Francisco Bay area, the San Joaquin Valley and Southern California.

Metropolitan entered into a contract with the state in 1960 for the purchase of state project water. The first deliveries reached the district in 1972.

Metropolitan, which ultimately is entitled to 48 percent of the project's deliveries, is the largest of the 30 agencies that have similar contracts.

These contracts require the state to make all reasonable efforts to develop sufficient water supplies to meet its contractual water delivery obligations. Contracting agencies are required to repay all of the project's water-supply-related costs over the 75-year term of the agreements.

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Formation and purpose

The Metropolitan Water District Act was passed by the state Legislature in 1927, allowing a consortium of Southern California cities to form the Metropolitan Water District.

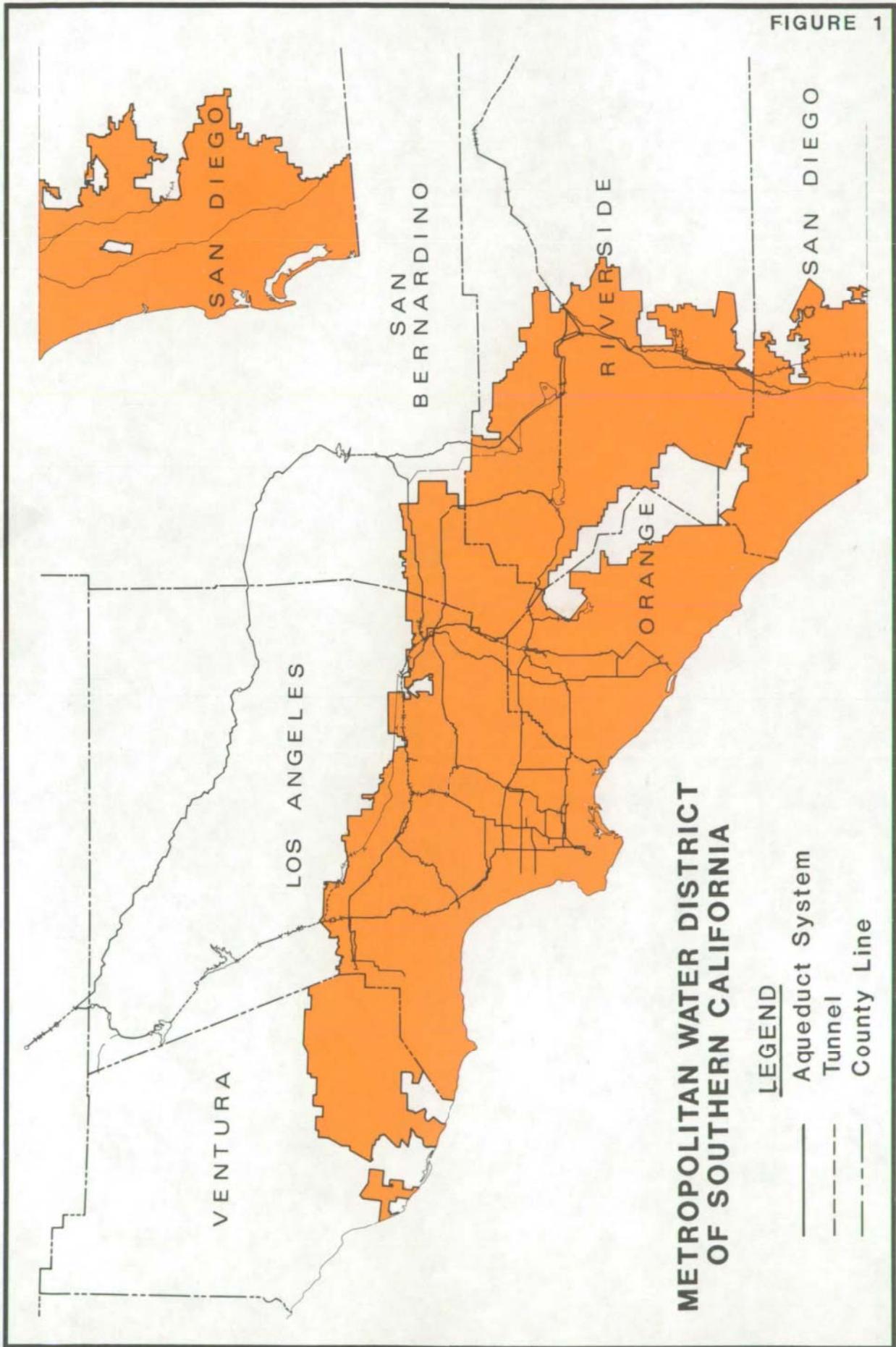
The primary purpose of Metropolitan is to acquire water and water rights inside or outside the state, and to develop and distribute that water wholesale for domestic and municipal uses.

Under the act, the district was given authority to levy taxes on property within its boundaries, to establish water rates, to sell bonds for construction projects, to acquire property through the power of eminent domain and to sell surplus water for other beneficial uses.

Organization

Metropolitan's service area presently encompasses 5114 square miles, with a population of about 13 million (Figure 1). The district extends from Oxnard, in Ventura County, about 200 miles south to the Mexican border and inland from the sea about 75 miles. Included in this area are portions of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura counties.

FIGURE 1



**METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

LEGEND

- Aqueduct System
- - - Tunnel
- - - County Line

The district has about 1350 employees and an annual budget of \$360 million.

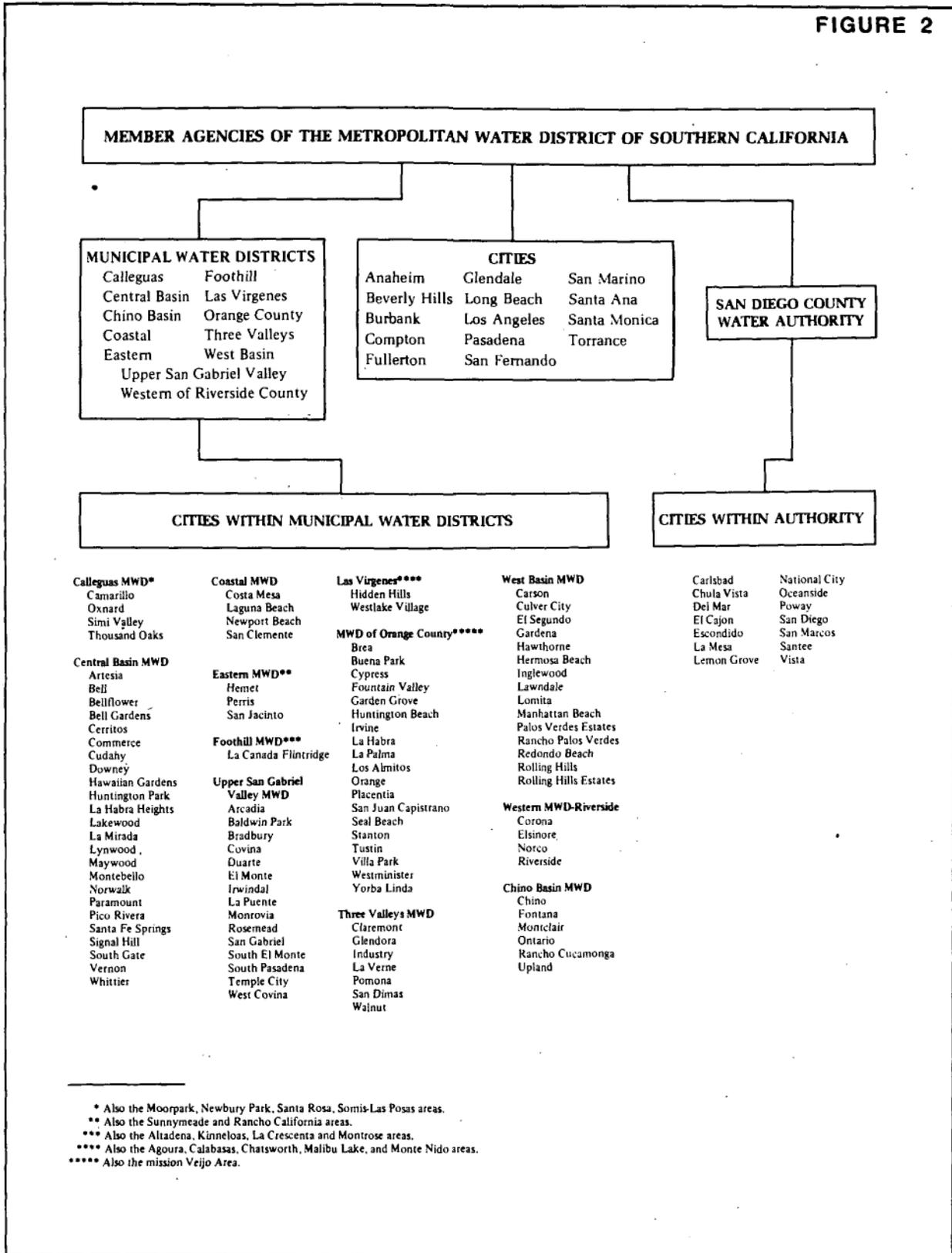
Metropolitan today has 27 member agencies, including 14 cities, 12 municipal water districts and one county water authority (Figures 2 & 3). In all, more than 135 cities are served by Metropolitan's member agencies.

The district is governed by a board of directors consisting of at least one representative from each member agency. Additional directors are allocated to a member agency based on the agency's share of Metropolitan's total assessed valuation. Voting is based on one vote for each \$10 million of assessed valuation, and there are currently 51 members on the governing board.

Member agencies receive water from Metropolitan at various points along the district's distribution system. Water is priced at uniform rates for similar classes of service and charges for deliveries are billed monthly.

Property owners within the district are required to pay ad valorem taxes levied at rates established each year by the board of directors, subject to the limits imposed by Proposition 13, the Jarvis initiative, which was approved by voters in 1978.

FIGURE 2



**METROPOLITAN WATER DISTRICT
POPULATION, ASSESSED VALUES, AND VOTE ENTITLEMENTS OF MEMBER AGENCIES**

Member Agency	Date of Entry	Population		Assessed Valuation			Percent of Total ³	Vote Entitlement	Director Entitlement
		1950	1980 ¹	At Entry	Amount Certified ² (August 1983)				
Anaheim	12/29/28	14,556	221,847	\$ 30,777,640	\$ 900,272,442		0.25	90	1
Beverly Hills	12/29/28	29,032	32,367	243,685,640	3,491,049,558		0.95	349	1
Burbank	12/29/28	78,577	84,625	109,881,120	3,146,370,760		0.86	315	1
Calleguas MWD	12/14/60	14,000	344,030	278,802,200	11,980,631,300		3.27	1,198	2
Central Basin MWD	11/12/54	600,000	1,241,936	4,478,953,040	26,582,382,329		7.27	2,658	3
Chino Basin MWD	11/26/51	64,000	345,813	328,131,960	8,752,299,807		2.39	875	1
Coastal MWD	6/15/42	39,000	170,231	41,003,640	11,517,540,327		3.15	1,152	2
Compton	7/10/31	47,991	81,286	42,811,540	672,463,014		0.18	67	1
Eastern MWD	7/20/51	25,000	133,679	78,492,400	4,064,464,629		1.11	407	1
Foothill MWD	1/15/53	55,000	79,744	307,795,440	1,939,368,473		0.53	194	1
Fullerton	3/13/31	13,958	102,034	50,664,560	2,419,395,936		0.66	242	1
Glendale	12/29/28	95,702	139,060	304,643,780	4,053,082,267		1.11	405	1
Las Virgenes MWD	12/1/60	3,500	33,423	52,237,200	2,259,027,343		0.62	226	1
Long Beach	3/13/31	250,767	361,334	757,596,160	10,501,415,234		2.87	1,050	1
Los Angeles	12/29/28	1,970,538	2,966,763	7,206,622,140	82,891,726,442		22.66	8,289	8
MWD of Orange County	11/26/51	97,000	1,233,745	1,100,485,920	56,875,302,752		15.55	5,688	6
Pasadena	12/29/28	104,577	119,374	471,042,020	3,560,557,347		0.97	356	1
San Diego CWA	12/17/46	458,000	1,776,851	905,280,760	55,371,613,097		15.14	5,537	6
San Fernando	11/12/71	13,000	17,731	103,019,200	328,248,633		0.09	33	1
San Marino	12/29/28	11,230	13,307	57,939,960	674,426,661		0.18	67	1
Santa Ana	12/29/28	45,533	203,713	80,807,220	1,941,580,317		0.53	194	1
Santa Monica	12/29/28	71,595	88,314	251,584,900	4,301,785,035		1.18	430	1
Three Valleys MWD	11/15/50	60,000	359,161	283,326,560	9,285,455,873		2.54	929	1
Torrance	3/13/31	22,241	131,497	104,698,300	4,931,335,936		1.35	493	1
Upper San Gabriel Valley MWD	3/12/63	261,100	669,677	3,372,941,272	14,504,719,094		3.96	1,451	2
West Basin MWD	7/23/48	195,000	732,609	647,255,620	30,418,113,605		8.31	3,042	3
Western MWD of Riverside County	11/12/54	90,000	332,957	610,334,560	8,490,391,766		2.32	849	1
Total		4,730,897	12,017,108	\$22,300,814,752	\$365,855,019,977		100.00	36,586	51

- 1) 1980 Census.
- 2) The above valuations include only those which have been certified by the County Auditors, in accordance with Section 305 of the Metropolitan Water District Act, Statutes of 1969, as amended. The certified valuations have been reduced to reflect Homeowner's Property Exemptions and do not include areas excluded from the District.
- 3) Percent of Total Assessed Valuation and Vote Entitlement are based on Assessed Valuation after deduction of Homeowner's Exemptions.

FIGURE 3

EXISTING AND PLANNED FACILITIES OF THE DISTRICT

Metropolitan's distribution system has been expanded in several phases to keep pace with increasing water demands.

With the anticipated greater reliance upon State Water Project supplies, a further expansion of both state and district water delivery facilities in Southern California will be required.

Development of the water supply system

The first stage of building Metropolitan's distribution system involved the construction of the Colorado River Aqueduct, a treatment plant and other facilities during the 1930s. In addition to building the aqueduct from Lake Havasu to Lake Mathews, distribution pipelines also were built west through Riverside and San Bernardino counties into Los Angeles County, and south into Orange County.

Construction work in the second stage took place in the 1940s and 1950s when the district built pipelines and canals to San Diego, built additional treatment facilities and developed an integrated network of distribution lines in Los Angeles and Orange counties, which were experiencing rapid growth. The pumping capacity of the aqueduct also was expanded.

The third stage in the 1960s involved the construction of treatment and distribution systems for state project water.

These additions extended into both the eastern and western portions of Metropolitan's service area, and involved the construction of reservoirs, treatment plants, tunnels and pipelines and a fourth and fifth pipeline into San Diego County.

Future construction

Another major stage of construction now is being considered. This phase involves new facilities needed for the distribution of the additional state project water that will be necessary to offset increasing demands and the loss of Colorado River supplies.

Projects under consideration include a 31-mile stretch of tunnels and connector pipes through the foothills of the San Gabriel Mountains which will deliver state project water from Castaic Lake to district filtration plants in Los Angeles and Orange counties. Also under consideration is the enlargement of the East Branch of the State Water Project and a major expansion of the eastern portion of Metropolitan's distribution system.

These projects will allow increased deliveries to Riverside and San Diego counties. Many new facilities already have been identified and more study will confirm which combination of projects will meet increasing water demands at the least cost. The new facilities must provide flexibility and

security to the operation of the district's overall distribution system.

New projects will be integrated with the old to provide the most reliable and cost-effective system while allowing water from either the Colorado or state project to be delivered to any point in Metropolitan's service area.

Construction schedules will be arranged so that facilities are built in stages as the needs of the district's member agencies grow.

Financing

To finance the initial construction and part of the later expansion of Metropolitan's system, the district sold \$220 million in general obligation bonds authorized by voters in 1931. Those long-term bonds were sold between 1931 and 1956, and some are still outstanding.

In 1956, district voters approved a \$77-million general obligation bond issue. These 12-year bonds were sold between 1957 and 1959 and have been repaid through annexation fees collected from agencies that joined Metropolitan after its formation.

Facilities built since the mid-1960s for the filtration and distribution of state project water and hydroelectric power generation were financed by the sale of \$485 million in general obligation bonds and \$372.5 million in revenue bonds. The general obligation bonds were part of an \$850-million issue

approved by voters in 1966. The authority to sell revenue bonds was approved by voters in 1974.

In addition to the money derived from the bond sales and the issuing of notes, \$247 million in construction has been paid with money from district taxes, interest on investments, water sales and other revenues.

New facilities will be financed primarily with the \$365 million in remaining general obligation bonds from the 1966 issue and the sale of additional revenue bonds.

Hydroelectric power facilities

The district has a program to build small hydroelectric power plants on its distribution system at points where energy has previously been dissipated through valves or by cascading in pipelines. Ten plants are now in operation and five more are in various stages of design and construction. All of the plants, located in Los Angeles, Orange, Riverside and San Diego counties, will be operational by 1986.

The total generating capacity of the 15 plants will be approximately 78 megawatts. The cost of the facilities is estimated at \$100 million, and they are expected to generate about \$30 million in gross annual income, based on a sales price of 50 mills per kilowatt-hour.

Energy from the first five plants now is being sold to the state Department of Water Resources at a price based on

the department's least costly alternative source of energy. Power from the remaining plants is currently sold to Southern California Edison under a 20-year contract based on the cost of oil.

Power sales from the plants will partially offset future growth in Metropolitan's energy costs.

WATER DEMAND

Population growth and varying weather conditions are the two most significant factors affecting Metropolitan's future water needs.

Water demand also is affected by per capita consumption, agricultural use and the availability of local supplies. Reductions in per capita consumption are expected in the future but they will not offset the need for additional water. Without sufficient supplies, a major change in Southern California's lifestyle can be expected. Agricultural water use is expected to decline in the future. Local supplies are, for the most part, developed, so only a small increase in supply from these sources is expected.

Population

California's growing population has played a crucial role in planning California's various water projects. An analysis of future population in California, done by the state in the 1950s, was used as the basis for the design of the State Water Project. An early 1960s' Metropolitan study of population growth in Southern California led to the authorization of an \$850-million general obligation bond issue in 1966 and a major expansion of the district's distribution system.

Based on data collected during the 1980 census, Metropolitan has projected a most-probable population increase within its service area of 3.7 million people between 1980 and 2000, bringing the total to 15.7 million people. That is a 31 percent increase. Population growth is expected to be lowest in Los Angeles County, and higher in outlying counties where undeveloped land already within the district's boundaries is available.

The district's projections are consistent with those prepared by the Southern California Association of Governments and the San Diego County Association of Governments. Both organizations are regional planning agencies.

Per capita use

After increasing significantly from the 1940s through the early 1970s, per capita water consumption has been on the decline in the Los Angeles County area. This has been attributed to water conservation programs, the redevelopment of neighborhoods of single-family homes into higher density apartments, condominiums or commercial areas and the imposition of expensive sewer discharge fees on industry.

In the other five counties served by Metropolitan, urban per capita consumption is increasing in some areas because of the development of new residential tracts with larger lots and larger homes and gardens, often in inland areas where temperatures are high.

Price elasticity of demand

A review of various existing studies on price elasticity of demand has led to the conclusion that retail water demand in Southern California would, at most, decrease only slightly as a result of increases in water prices.

Far more significant factors in estimating water demand are population projections and the effects of local weather on per capita use.

Conservation

Conservation programs by Metropolitan and other water agencies are expected to cause some decline in per capita water use in most areas over the long term. District studies project water conservation programs will reduce overall per capita water consumption in urban areas by a minimum of five percent between 1980 and the year 2000.

Urban water demand

Metropolitan's projections for future urban water demands have been developed by comparing a range of population projections with the differing water use patterns that occur in wet and dry years in Southern California (Figure 4).

URBAN WATER DEMAND IN MWD SERVICE AREA

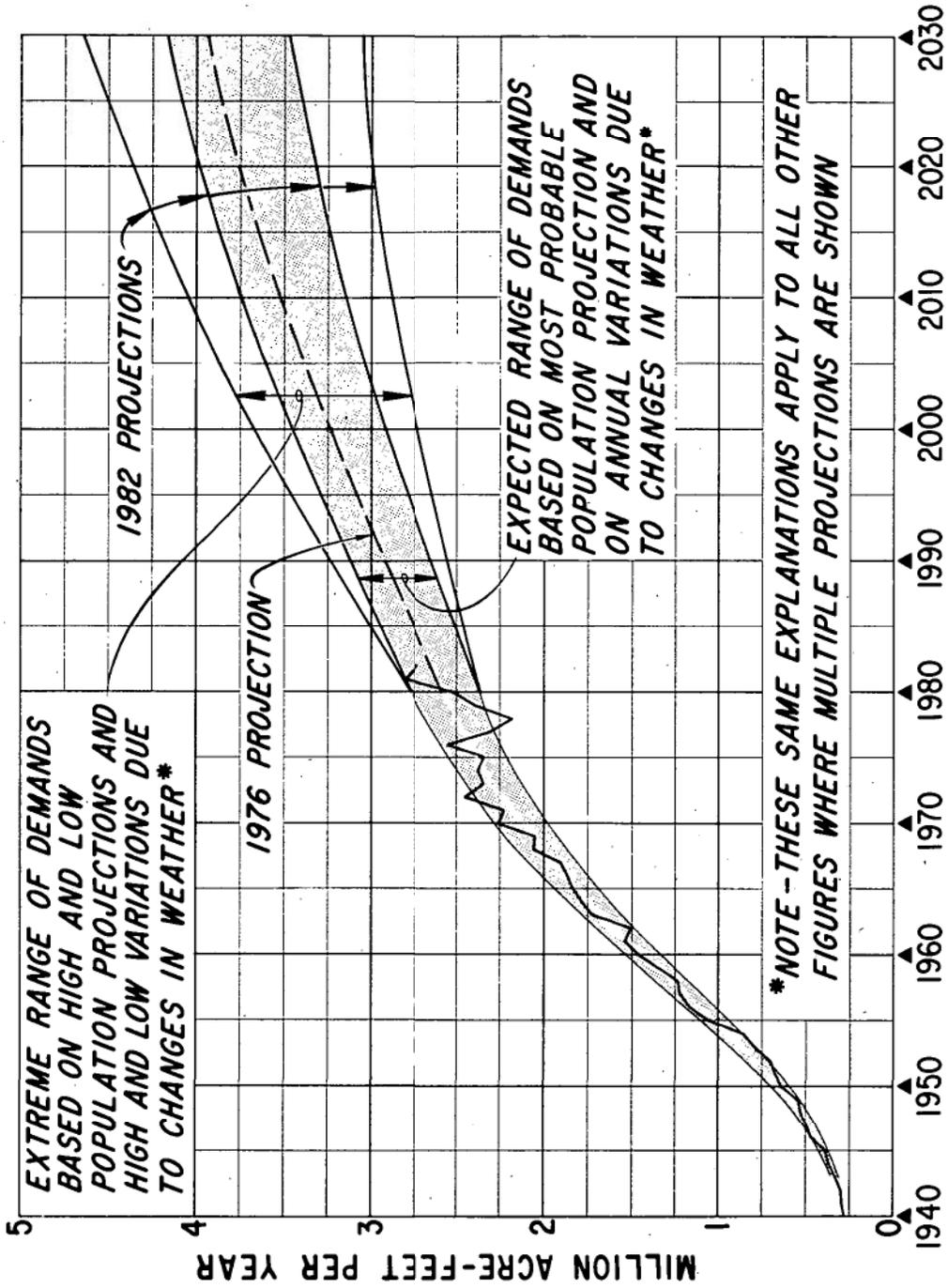


FIGURE 4

With normal population growth and average weather conditions, urban water demand on all sources within the district's service area is expected to increase from 2,570,000 acre-feet delivered in 1980 to 3,190,000 acre-feet by the year 2000, or about 24 percent. That increase is less than the 31 percent growth in population that is expected during that time, with a decline in per capita use expected to account for the difference.

Projections based on normal population and higher per capita use during dry weather put urban water demand at 3,450,000 acre-feet by the turn of the century, and lower per capita use during wet weather at 2,920,000 acre-feet.

In all three scenarios, urban water use is going to go up because of the expected increases in population.

Agricultural water demand

Currently about 15 percent of the water used in Metropolitan's service area -- including imported water and local supplies -- is for agriculture. This is in contrast to statewide use, where agriculture consumes about 85 percent of all water used. Metropolitan provides about 40 percent of all agricultural water used in its service area. However, that accounts for only 12 percent of the district's total deliveries.

Total agricultural demand in the district is expected to decline under normal weather and farm economic conditions from 490,000 acre-feet in 1980 to 420,000 acre-feet by the year

2000. Metropolitan's agricultural deliveries are expected to experience a corresponding reduction.

Total water demand

The combined urban and agricultural water demand on all sources within Metropolitan's service area is expected, under normal population growth and average weather conditions, to increase from 1980's level of 3,060,000 acre-feet to 3,610,000 acre-feet by the turn of the century (Figure 5). Because local supplies are developed, the deliveries the district will make are expected to increase from the 1980 normal demand of 1,500,000 acre-feet to about 2,000,000 acre-feet. To deliver those increased amounts of water, major additions will be needed to both the State Water Project and Metropolitan's distribution facilities.

COMBINED WATER DEMANDS IN MWD SERVICE AREA
 NORMAL PROJECTION
 USED FOR WATER SUPPLY PLANNING PURPOSES

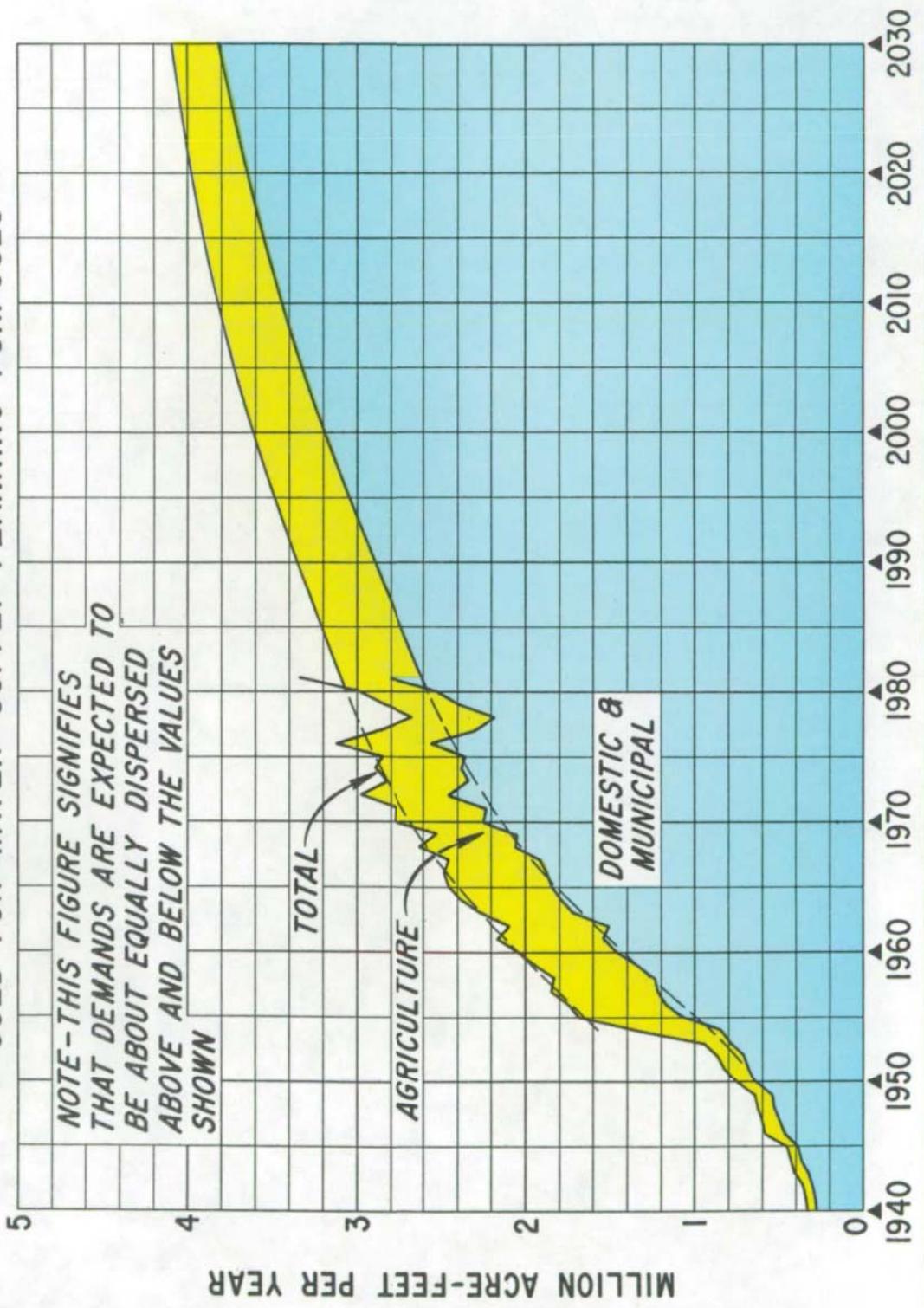


FIGURE 5

ADEQUACY OF WATER SUPPLIES

There is considerable uncertainty and concern over the adequacy of Southern California's future dependable water supplies (Figures 6 & 7). At the same time that population will be increasing, Metropolitan will have lost a large portion of the allotment of one of its most reliable water supplies -- the Colorado River.

There are other concerns too: the uncertainty of future precipitation and runoff; the timing and construction of State Water Project facilities necessary to deliver contracted amounts of water; the effects of future litigation, legislation and administrative decisions on new and existing water supplies; and the need for additions to Metropolitan's distribution system so increased amounts of state project water can be delivered to its customers.

Finding solutions will not be easy or inexpensive. But in the meantime, Metropolitan has been working on several programs designed to increase its water supply.

Groundwater and stream runoff

Local water -- primarily stream runoff into reservoirs and percolation into groundwater basins -- supplies an average of 1,100,000 acre-feet of water each year, enough to meet the needs of about 5.1 million people.

DEPENDABLE SUPPLY
REPEAT OF 1928-34 DRY PERIOD

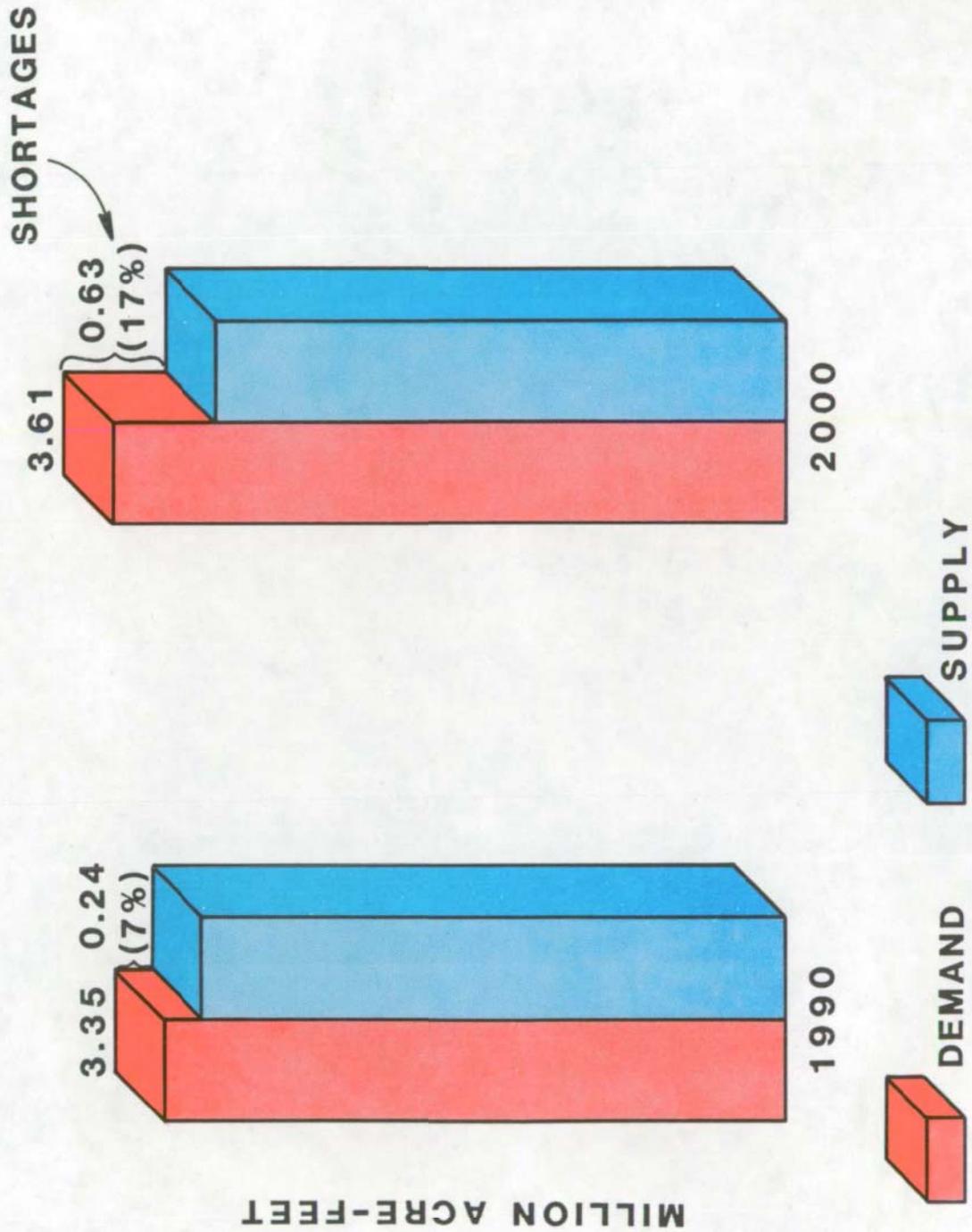


FIGURE 6

FIGURE 7

**COMPARISON OF DEPENDABLE WATER SUPPLY WITH
NORMAL DEMAND IN THE DISTRICT'S SERVICE AREA***
(Repeat of 1928-34 Dry Period)
(In Acre-feet)

Source	Supply		Demand	
	1990	2000	1990	2000
District				
Colorado River	450,000	400,000		
State Water Project	<u>1,080,000</u>	<u>990,000</u>		
Subtotal	1,530,000	1,390,000	1,770,000	2,020,000
Other				
Los Angeles Aqueducts	470,000	470,000		
Local Supplies	<u>1,110,000</u>	<u>1,120,000</u>		
Subtotal	<u>1,580,000</u>	<u>1,590,000</u>	<u>1,580,000</u>	<u>1,590,000</u>
Total	3,110,000	2,980,000	3,350,000	3,610,000

*Table 1, Page I-4, Report No. 948 "Water Supply Available to Metropolitan Water District Prior to Year 2000".

In recent years, rainfall has brought local supplies to above-average levels by filling reservoirs and many groundwater basins to near capacity. In past years, however, little rainfall coupled with excessive pumping led to severe overdrafting of groundwater basins. Metropolitan, working with local water agencies, has implemented programs that allow imported water to be used for refilling groundwater basins and, in some coastal areas, preventing seawater intrusion.

Local supplies are an important source of water for Southern California's coastal plain. But most groundwater supplies have been developed, and there is little that can be done to store more water in surface reservoirs in the area.

However, two surface reservoir projects, a storage program in the Chino groundwater basin, additional wastewater reuse and the desalting of brackish groundwater are being studied.

Colorado River

For decades, Metropolitan Water District had a right to divert up to 1,212,000 acre-feet of water from the Colorado River each year. Evaporation and seepage losses in transporting and storing the water reduced the actual amount available to about 1,150,000 acre-feet annually.

In 1964, a U.S. Supreme Court decree in Arizona vs. California reduced the state's basic rights to Colorado River

water to 4.4 million acre-feet. That resulted in Metropolitan, which has lower priority to river water than other California users, having its yearly allotment cut to below 550,000 acre-feet.

Metropolitan's allotments of Colorado River water will be reduced when the Central Arizona Project becomes operational about 1985. The project initially will serve Phoenix and later Tucson.

After taking into account Indian tribe water rights, conveyance losses, water exchanges and other commitments, the dependable supply of Colorado River water available to Metropolitan will be about 389,000 acre-feet in 1990 and 342,000 acre-feet in 2000.

Some additional water could be available to the district, however, in years in which the Secretary of the Interior declares there are surplus supplies in the river.

A water "banking" program is being developed to deliver Colorado River water in advance to desert water agencies in wet years, thereby making additional water from the river available to Metropolitan in dry years. The advance deliveries would be stored in groundwater basins, and would make a total of 450,000 acre-feet of water from the Colorado available to Metropolitan in 1990 and 400,000 acre-feet available in the year 2000.

There are a number of alternatives Metropolitan is investigating which could increase its future supply from the

river but many of these possibilities have legal, political and institutional obstacles that would have to be overcome.

Additional Colorado River water might be available to the district from Nevada's or Arizona's unused apportionments, or from unused allotments from other California agencies. Irrigation water now lost by seepage from the All American and other canals in the Imperial Irrigation District might be salvaged by lining those canals. Further improvements in the operation of the Imperial system may also save water. The possibility of Metropolitan helping finance needed improvements in return for salvaged water is being discussed.

Further supplies from the Colorado may also be possible through a "banking" program that would store water in Lake Mead for future use when state supplies are diminished. That program may not be viable for 15 or 20 years, however.

State Water Project

In 1960, Metropolitan contracted with the state for the ultimate delivery of 1,500,000 acre-feet of water per year from the State Water Project. That amount was later increased to 2,011,500 acre-feet, in large part to offset the loss of Metropolitan's Colorado River supplies resulting from the Supreme Court decree (Figure 8).

However, the dependable supply estimated to be available to Metropolitan at the turn of the century through the

COMBINED WATER SUPPLIES IN MWD SERVICE AREA NORMAL PROJECTION

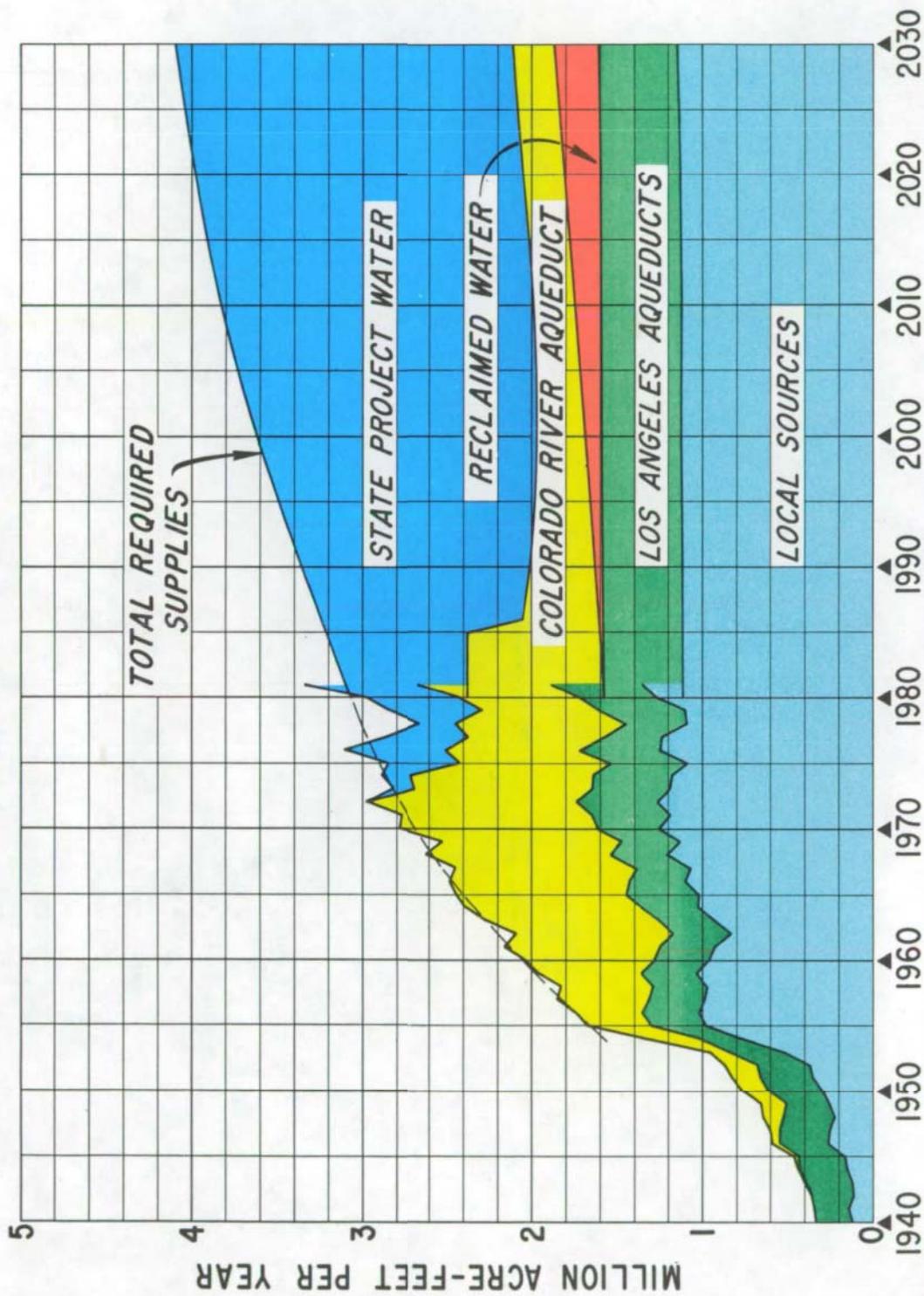


FIGURE 8

state project's existing facilities is only 990,000 acre-feet per year.

The water supply available from existing state project facilities has so far been enough to satisfy demand, except during the 1976-77 drought. Those were the two driest consecutive years in California's recorded history. Currently, water demands exceed the state project's supply during dry periods less severe than that of 1976-77. And beginning in the late 1980s, it's estimated that the project will not meet demands even in years of average water supply.

In order for the state to meet its contractual commitments, additional facilities are needed so more water can be moved from the Sacramento River across the delta to the intake pumps of the California Aqueduct. New reservoirs also will be needed to conserve high winter storm flows for later use.

The state Department of Water Resources has developed a series of alternative plans that would increase supplies delivered through the State Water Project. Those alternatives are being reviewed by the Legislature and agencies that have contracted for project water. At the same time, Metropolitan will continue to evaluate other plans which will ensure that an adequate long-term supply will be available to the people of Southern California.

Los Angeles aqueducts

The city of Los Angeles normally imports enough water from the Owens Valley and Mono basin to meet the needs of about 2.2 million people. Deliveries through its aqueducts, when coupled with local groundwater supplies, are almost enough to meet the city's total water needs (Figure 9). In normal years, only a fraction of the water Los Angeles uses has to be purchased from Metropolitan, even though those purchases can rise dramatically in dry periods such as the 1976-1977 drought.

Los Angeles' imported water--which is brought to the city through gravity flow aqueducts--and groundwater supplies are considerably cheaper to the consumer than those that must be pumped hundreds of miles to the coastal plain. If it were not for the city's system, Metropolitan would have had to contract for larger amounts of water from northern California.

There is uncertainty about Los Angeles' water supply, too. The 100,000 acre-feet of water the city imports from the Mono basin is currently the subject of a lawsuit. And an additional 50,000 to 100,000 acre-feet of the total 370,000 acre-feet the city imports from Owens Valley has also been under litigation in the past. But the city and Inyo County recently agreed to try to negotiate their differences over the Owens Valley supplies rather than continue costly lawsuits.

In the Mono basin case, the California Supreme Court recently found that the city will have to prove that the value

of its continuing use of basin water outweighs any adverse effects that might be occurring to the environment. In reaching that decision, the Supreme Court opened up to legal argument the issue of whether the city's use of the water unnecessarily impairs the public trust. The United States Supreme Court has refused to hear an appeal by the city at this time, and the issue now will be resolved at trial.

While that decision appears to represent a major shift in California water rights law, it is unclear what effect, if any, it will have on Metropolitan.

In the event Los Angeles loses the court cases and, therefore, portions of its current supply, the city would have to obtain additional water from Metropolitan. That would increase even further the district's dependence on the State Water Project and other potential new sources of water.

Water-management objectives

Because of Southern California's increasing dependence on imported water, Metropolitan has a continuing water-management program aimed at ensuring an adequate supply at a cost-effective price.

Current objectives of the management program are to:

- plan long-term supplies capable of meeting normal demands.

- plan for the district's distribution system to have enough capacity to meet above-normal demands.
- maintain enough reserve water in storage in both Metropolitan and state reservoirs to meet the difference between normal and above-normal demands for one year.
- investigate the storage of even more water in Southern California reservoirs to meet that increased demand for an additional one or two years.
- encourage the storage of water in groundwater basins by continuing existing programs and launching new ones, such as conjunctive use storage and advance delivery programs.
- continue the Local Projects Program to increase local water supplies.
- pursue programs to protect and increase Colorado River supplies.
- continue a water conservation program that includes public information and other activities that urge the efficient use of water.
- work with state officials and others for the timely and effective completion of the State Water Project which will allow necessary amounts of surplus water from northern California to be

delivered into the state project's aqueduct. This water transfer system must have enough capacity to allow the state to meet its contracted delivery obligations, be reliable and provide high-quality water.

Local projects

As part of the comprehensive water management program, Metropolitan is joining with its member agencies to identify new local water supplies. Called the Local Projects Program, this effort includes storm water capture and storage facilities, desalting brackish groundwater and wastewater reuse.

These projects will be undertaken on a cost-sharing basis. Several already have been evaluated and selected for a first-phase demonstration program. These projects could produce an estimated 42,000 acre-feet of water each year. The idea behind the program is to find new water supplies that cost about the same or less than the development of new imported supplies. By the year 2000, it is expected that an additional 100,000 acre-feet of supply could be developed annually.

REVENUES

The Metropolitan Water District Act provides the district with authority to raise revenues through water sales and property tax levies.

Under the limitations of Proposition 13, the district's tax rate can be set high enough to pay for outstanding general obligation bonds and State Water Project debt. Water rates are to be set at a level sufficient to pay all of the district's costs "as far as practicable."

While nearly all of the district's income comes from water sales and taxes, Metropolitan has secondary sources of income. They are annexation charges, power sales and interest earned on investments.

The total amount of money Metropolitan will have to generate from these combined sources will increase from \$330 million during the current fiscal year to \$620 million in 1990 and almost \$1.1 billion by the year 2000 (Figure 10).

Revenue history

During Metropolitan's early years, when the Colorado River Aqueduct was under construction, no water was available for sale. Costs of the aqueduct project were paid entirely from property tax revenues.

TOTAL REVENUES REQUIRED BY THE DISTRICT*

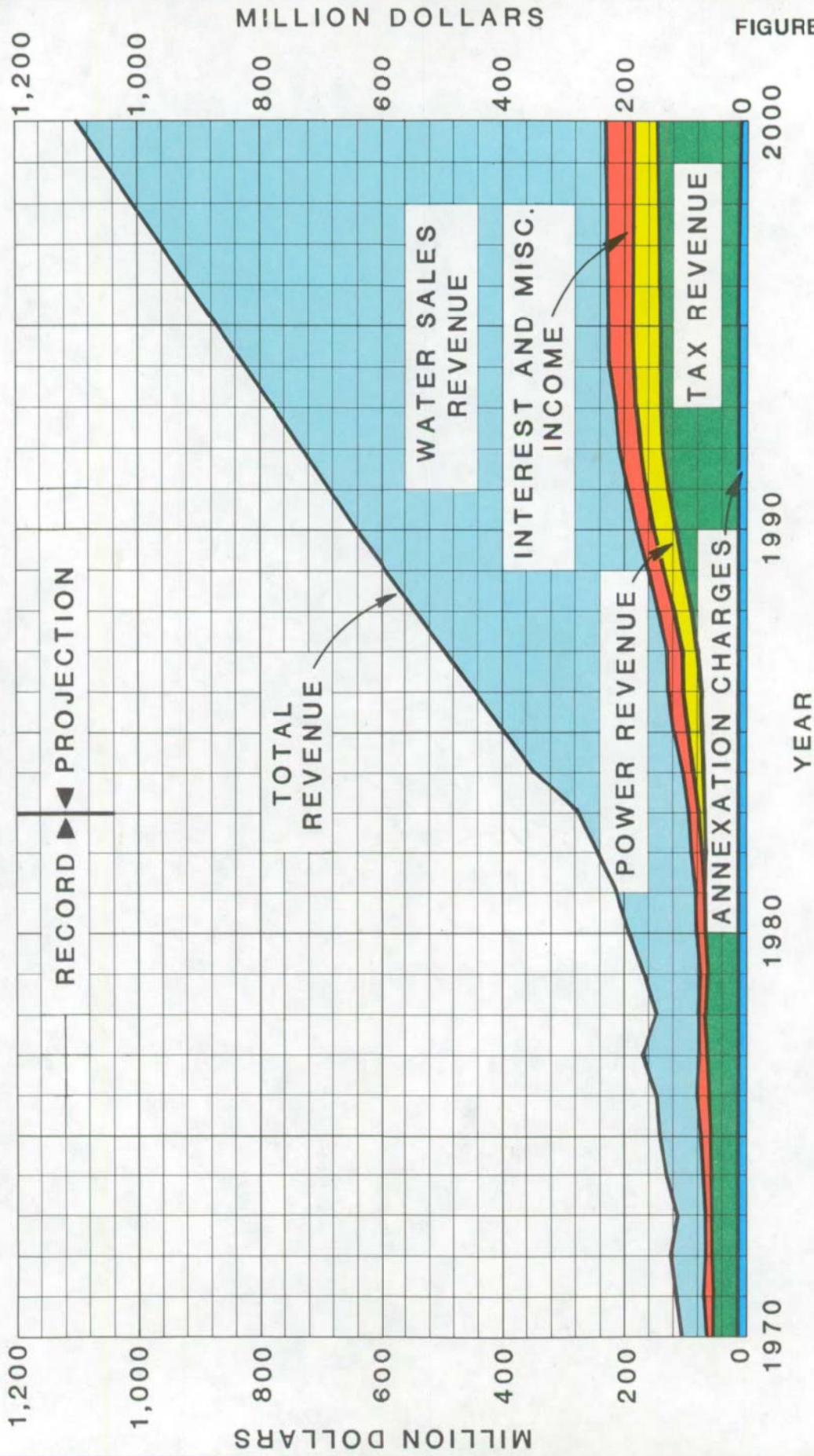


FIGURE 10

* CURRENT POLICY ABSENT AB 322

In the 1940s, after water deliveries began, income from water sales was used to help pay part of the district's bills.

Population growth in the 1950s led to increased water deliveries, and water sales revenues became an ever-larger portion of the district's total income picture. That, coupled with increases in assessed valuation, resulted in a substantial decrease in Metropolitan's tax rate. The property tax levy has gone from a peak of 50 cents per \$100 assessed valuation in 1946 to an equivalent of 9.4 cents per \$100 today (Figure 11).

During each of the past five years, Metropolitan has collected an ever-smaller percentage of the total taxes the district is authorized to collect under Proposition 13 (Figure 12). In fiscal year 1979-80, as an example, the district could have collected \$127.8 million in taxes to pay for general obligation bond debt service and State Water Project charges. During that fiscal year, however, the district collected \$67.1 million, or 53 percent of the total allowable.

This fiscal year, Metropolitan has authority to collect \$223.4 million, but the tax levy will generate only \$91.2 million, or 41 percent of the allowable maximum.

The cost of water has continued to rise over the years and is expected to continue that trend. The initial

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ANNUAL PROPERTY TAX RATE

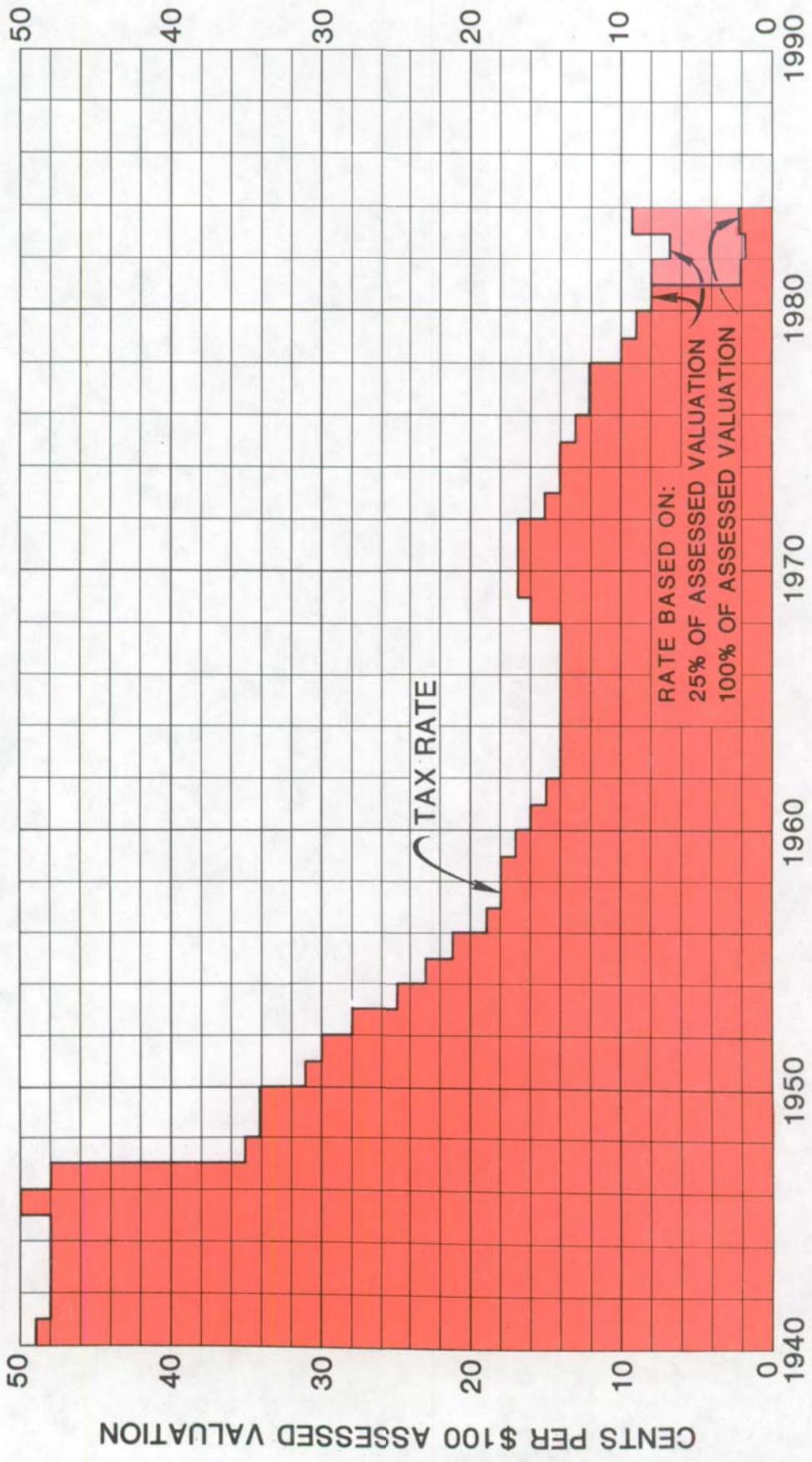
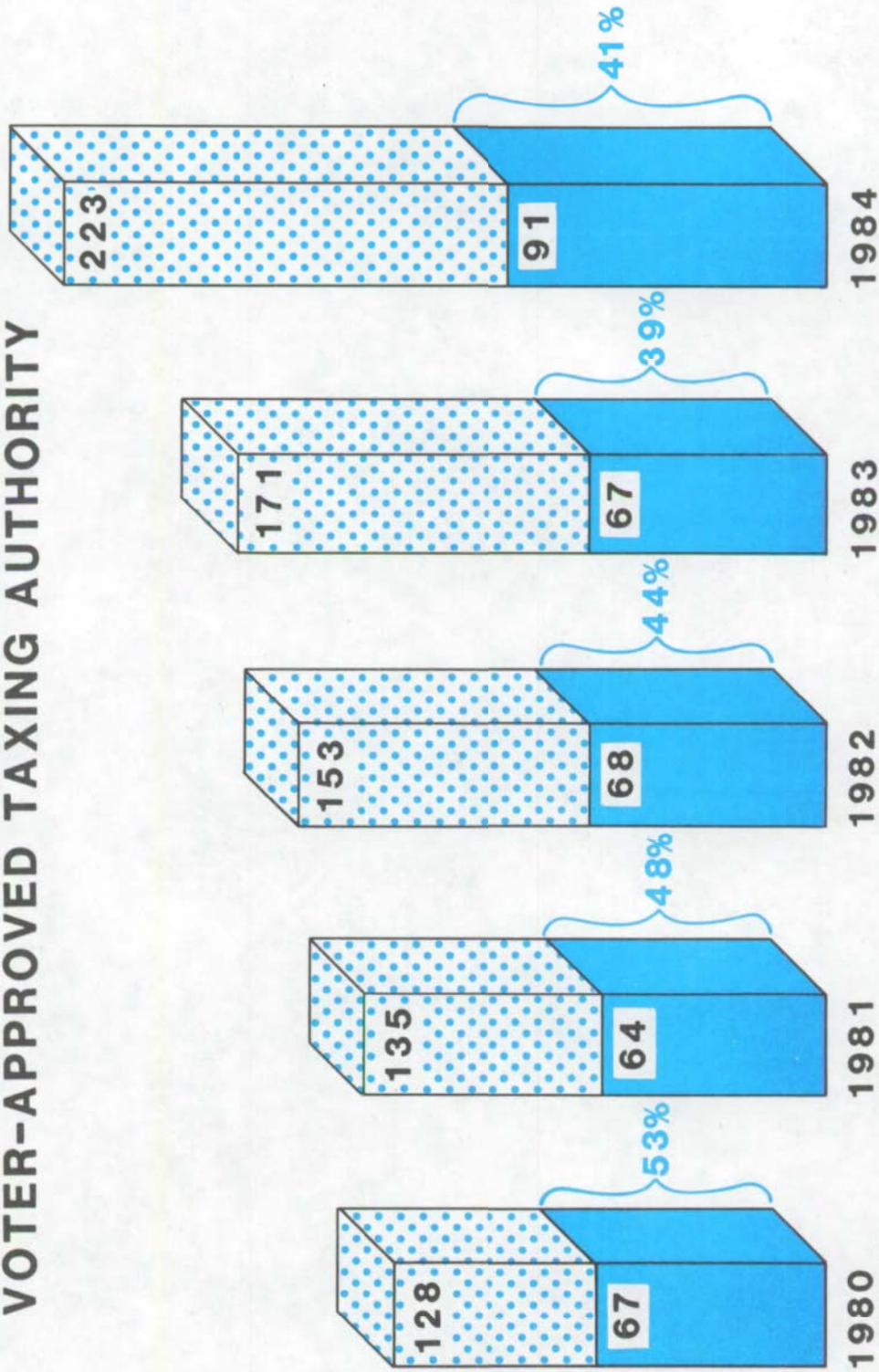


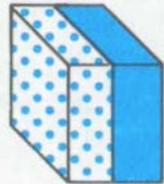
FIGURE 11

RATES SHOWN ARE FOR FISCAL YEAR PERIODS
RATES FOR ANNEXATION CHARGES ARE NOT SHOWN.

**COMPARISON OF TAX COLLECTIONS TO
VOTER-APPROVED TAXING AUTHORITY**



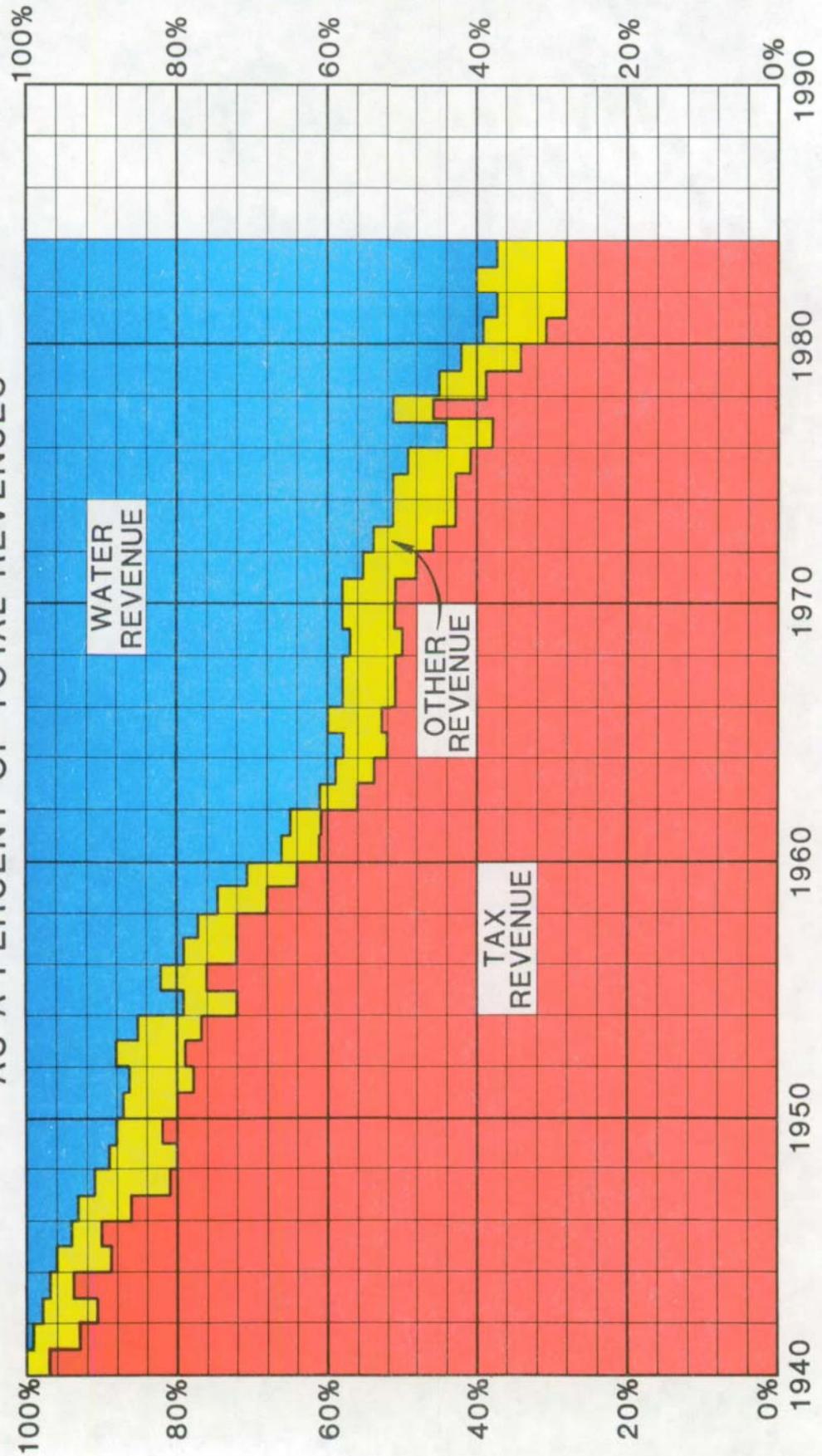
MILLION DOLLARS



UNUSED (PROPOSITION 13 TAXING AUTHORITY)
TAXES UNDER PROPORTIONATE-USE FORMULA
(CURRENT POLICY)

FIGURE 12

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
 RECORD OF REVENUES BY SOURCE
 AS A PERCENT OF TOTAL REVENUES



PERCENTS SHOWN ARE FOR FISCAL YEAR PERIODS
 REVENUE FROM ANNEXATION CHARGES IS INCLUDED IN TAX REVENUE

FIGURE 14

AVERAGE WATER RATE*

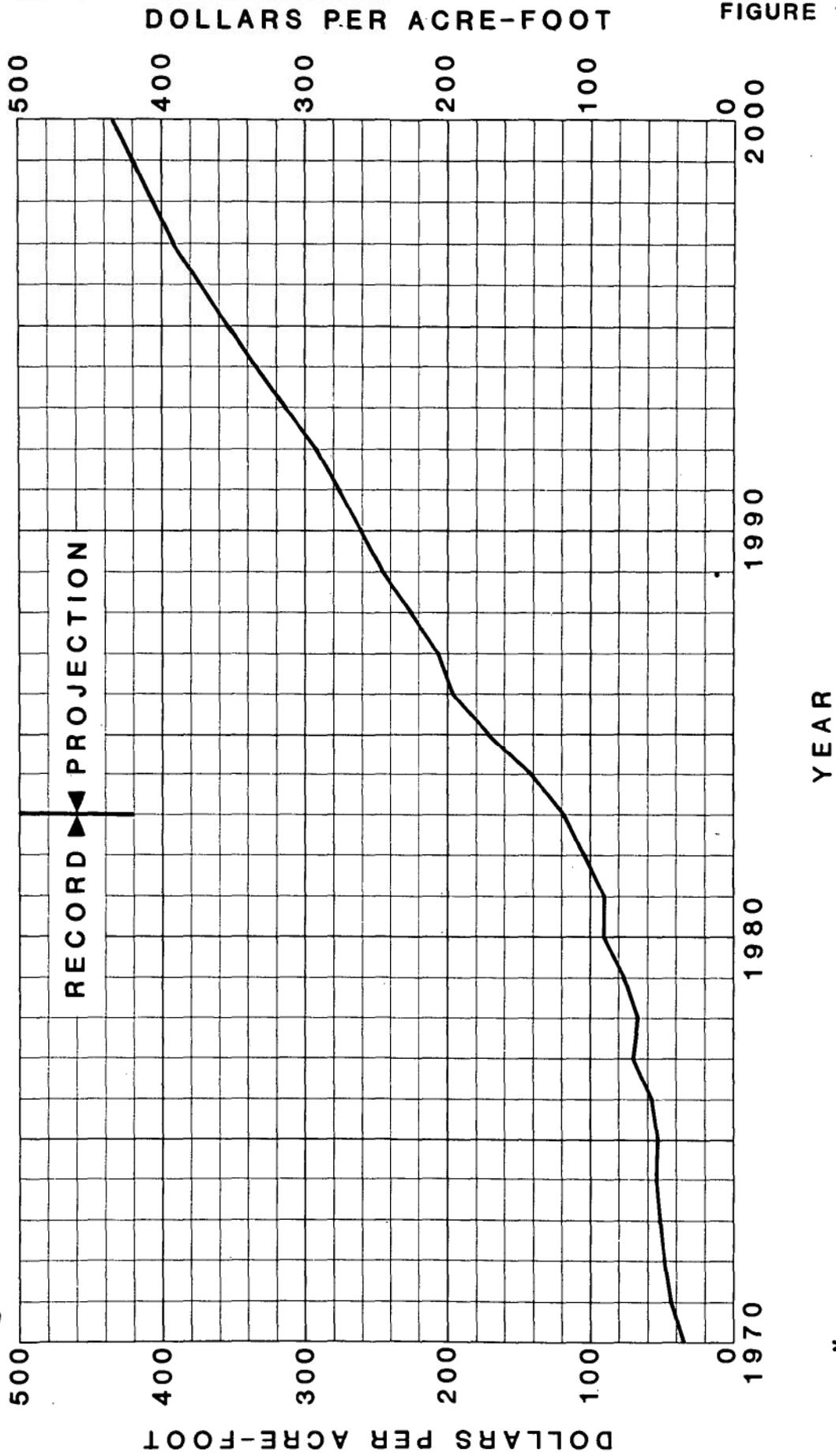


FIGURE 15

* CURRENT POLICY ABSENT AB 322

Tax rates

The district's tax rate is based upon the assessed valuation of property within its service area, approximately \$380 billion this fiscal year.

The district's total tax revenues are comprised of three components: annexation levies, taxes to retire general obligation bonds and taxes that pay for a portion of the district's share of the capital costs of the State Water Project.

Annexation taxes are paid by property owners in agencies that joined Metropolitan between 1942 and 1978 and opted not to pay a cash fee at the time they joined. These taxes are equal to the levies the agency would have paid had they been a member of the district since its inception. These funds are used to pay a portion of State Water Project costs.

Taxes for general obligation bonds and State Water Project costs are spread among all district taxpayers.

Property taxes are expected to increase under existing tax rate policies from \$80 million this fiscal year to about \$140 million by the year 2000, excluding annexation taxes. Taxes, however, will be an ever-decreasing portion of Metropolitan's total revenues.

Other revenue sources

Annexation charges represent a relatively small portion of the district's total income, and they will decrease even further in the future. Since the passage of Proposition 13, the district requires new annexation fees be paid in cash at the time a new annexation is finalized.

The sale of electricity produced at hydroelectric plants built on the district's distribution system is expected to generate about \$20 million in 1985. That will increase to about \$50 million by the turn of the century.

Revenue from the plants could vary, however, depending on energy rates established by the power utility industry, on inflation, and on the number of new plants that the district will be able to build and operate.

Interest income will increase in the future as the district issues new bonds and reserves are increased to cover both district and bond sale requirements.

Under current reserve policies, it is estimated the district's reserve funds will increase an average of \$16 million per year through the year 2000.

Both water rates and tax rates are reduced by interest income as well as revenues from the sale of surplus district property.

WATER PRICING AND TAXATION POLICIES

In 1960, when district participation in the State Water Project was under consideration, Metropolitan's water pricing and taxation policies came under extensive discussion.

One suggestion was that each of the 23 agencies that then comprised Metropolitan should contract independently with the state for water from the state project. Under those circumstances agencies that needed little or no additional water would not have to pay for a project they were not going to use. Agencies that needed the additional water from the north would pay for the project needed to deliver it.

In a major policy decision, Metropolitan's board of directors disagreed, and took the position that the entire district should contract for sufficient state water to meet all of its member agencies' needs. A specific water pricing and taxation policy was developed which applied to the future costs of the State Water Project as well as the continuing costs of the Colorado River Aqueduct system.

The policy was adopted on September 27, 1960. The concept was simple: Metropolitan was organized to serve all of its member agencies equally and impartially. To achieve this, both the water supplies and the costs of both projects would be merged for operational and accounting purposes.

The district's members would be provided equitable service from the combined water supplies. All member agencies would be required to participate in the repayment of the combined costs.

Costs of the combined projects would be repaid under the following formula:

- all operating costs and at least half of the capital costs would be paid by water users.
- the remaining capital costs would be paid by taxpayers, with the expectation that the tax burden would gradually be reduced as greater amounts of water were sold.

After establishing these guidelines, Metropolitan entered into its contract with the state for the purchase of northern California water.

In 1974, Metropolitan's board again looked at the district's taxing and water pricing policies. That review was prompted by a number of factors including the greatly expanded service area of the district, the effects of state project supplies, the future loss of Colorado River water, long-term energy costs, and whether the rising price of water would have an effect on consumption.

The following year, the city of Los Angeles filed suit against the district, claiming the use of property taxes to pay capital costs resulted in a disproportionate share of

these costs being paid by that city's taxpayers. The suit also claimed that the district's water rate and tax policies were violating the requirement that water revenues be used "as far as practicable" to pay all district costs and that the district's policies were not being followed.

This suit was settled with an agreement by Metropolitan to adhere to a formula that limited taxes at one half of capital costs for three years, and so long thereafter until the formula was changed.

Proportionate use formula

A new formula for setting water rates and tax rates was developed. It was called the "proportionate use formula."

Under this formula, water users would pay all operating and maintenance costs and an increasing portion of capital costs as water deliveries increased. Taxpayers, meanwhile, would pay the remaining capital costs, but their share would decrease as water sales went up. The proportion of capital costs paid by water users is computed each year by dividing the district's highest single-year water sales by the combined entitlements from the Colorado River and the State Water Project.

At the time it was adopted, the proportionate use formula resulted in water and tax rates close to what they would have been under the former policy. In 1982-83, water

users paid about 46 percent of all capital costs. By the year 2000 it is projected that water users will be paying 61 percent of capital costs.

Preferential rights

The Metropolitan Water District Act, in addition to authorizing water and tax rates, contains provisions that allocate to district member agencies certain rights to Metropolitan's water supplies.

The more cumulative taxes paid by a member agency, the greater that agency's right to Metropolitan water. That right to water is called a "preferential right" (Figure 16).

The city of Los Angeles has paid more in taxes than any other of Metropolitan's member agencies. Therefore, the city has acquired the largest preferential right.

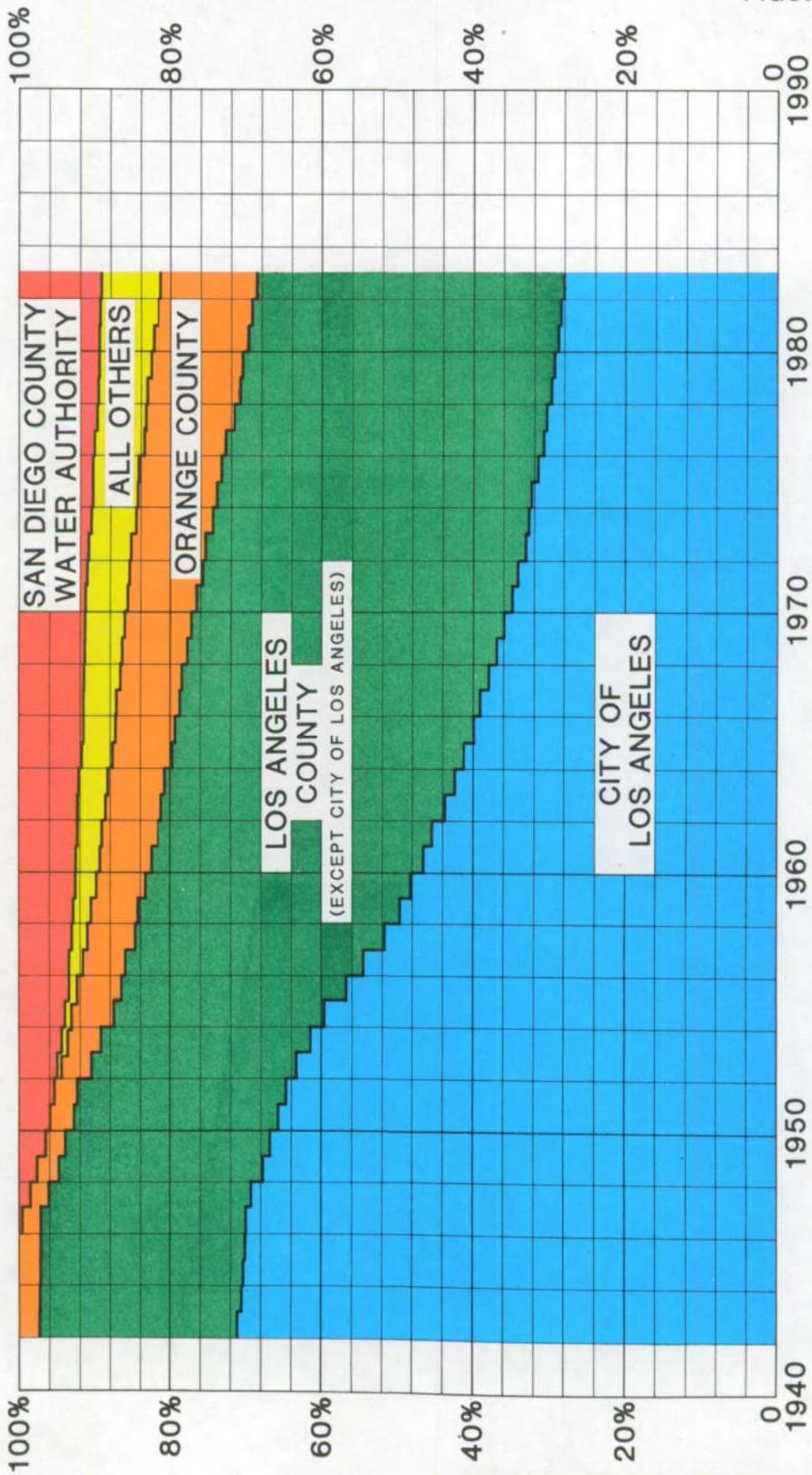
In 1943, the city's preferential right was 71 percent. The combined rights of all the Los Angeles County member agencies that year were 97 percent.

As other agencies have annexed to the district and paid property taxes, Los Angeles' share has dropped.

The city's preferential right in 1983 had declined to 28 percent, while the combined shares of Los Angeles County member agencies had dropped to 68 percent.

San Diego County Water Authority, on the other hand, had its right climb from 0 percent in 1943 to 11 percent in 1983.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA RECORD OF PREFERENTIAL RIGHTS TO PURCHASE WATER



THE PERCENTS SHOWN ARE FOR FISCAL YEAR PERIODS

FIGURE 16

EXPENDITURES

The Metropolitan Water District has two broad categories of costs it has to pay: those that vary with the amount of water the district imports and sells to its customers and those that must be paid whether water is delivered to customers or not. The first type of costs are called variable costs, while the second type are called fixed costs.

These expenses can be subdivided into the costs of construction and operation of district-owned facilities and those associated with Metropolitan's participation in the State Water Project.

The revenues needed to pay these costs are primarily collected through water sales and the district's property tax levy. The proportion of revenue generated from each of these two sources is established by the proportionate use formula.

Fixed costs of district-owned facilities

A major fixed cost for Metropolitan is the payment for construction of the Colorado River Aqueduct and the district's distribution system. Minimum operating expenses associated with these facilities also can be categorized as a fixed cost.

Metropolitan has the authority to sell both general obligation and revenue bonds for construction purposes, and

many of the district's facilities have been built with money from bond sales.

Over the next 10 to 15 years, it is anticipated that several hundred million dollars in additional bonds will be sold to finance the construction of additional improvements to Metropolitan's system and the enlargement of the East Branch of the State Water Project. The East Branch enlargement is included as a district fixed cost on the assumption that Metropolitan will initially finance the work with a partial repayment of some of those costs possible in the future.

As those new bonds are sold, the district's annual fixed costs for bond service will increase.

In 1983, the district's annual debt service for its aqueduct and distribution system was about \$59.8 million. That amount is expected to increase to about \$230 million annually by the year 2000 (Figure 17).

Other fixed costs involving the district-owned system include payments to San Diego County Water Authority for the purchase of the first San Diego Aqueduct and purchases of major operating equipment.

These miscellaneous fixed costs were about \$800,000 in 1983 and are expected to increase to about \$1 million by the year 2000.

Minimum operating expenses for the district's system include employee salaries and benefits, contracted professional and technical services, equipment charges, supplies and

FIXED COSTS ASSOCIATED WITH THE DISTRICT'S SYSTEM

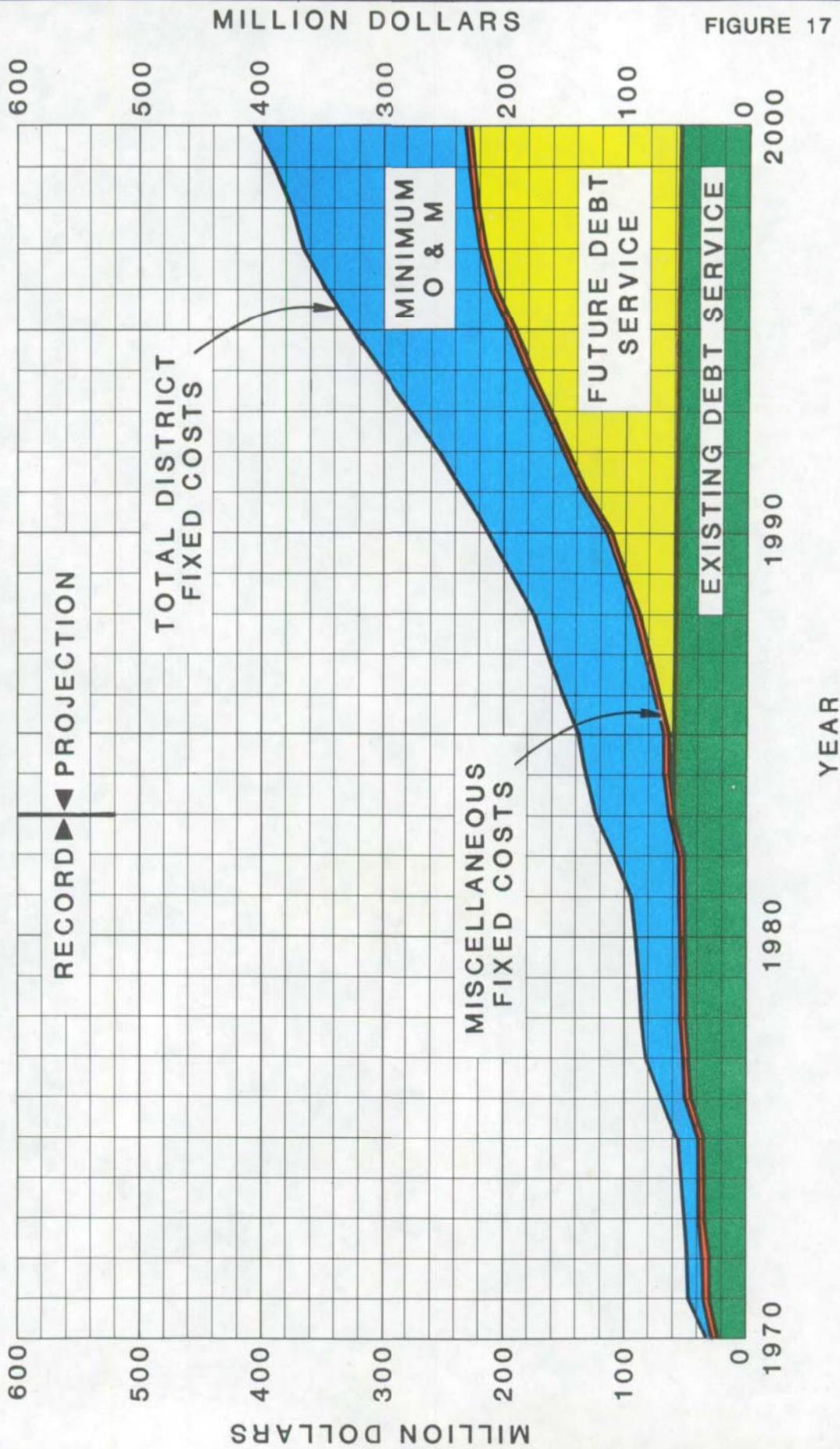


FIGURE 17

utilities. These costs amounted to \$56.4 million in 1970 and are expected to increase, based on a 6 percent inflation factor, to about \$171.3 million by the year 2000.

The total of all fixed costs for the construction, operation and administration of the district's importation and distribution system was about \$117.3 million in 1983. It is expected to increase to about \$402.3 million by the year 2000.

Fixed costs of the State Water Project

Participation in the State Water Project involves various contractual commitments that require Metropolitan to make specified payments each year whether the district receives water through the project or not.

These fixed costs are divided into two categories:

- transportation charges include the costs of the conveyance facilities -- aqueducts and pumping plants, as examples -- that deliver water. The costs of each reach of the California Aqueduct system are split among the contracting agencies that will receive water through it.
- delta water charges include the costs of the reservoirs and other facilities that store water for later use. These charges are allocated to contractors based on the number of acre-feet

of water that each is entitled to receive under its water supply contract with the state. Conservation facilities include Lake Oroville, certain delta facilities, San Luis Reservoir and a portion of the aqueduct system from the Sacramento-San Joaquin Delta to the San Luis Reservoir.

The capital portion of fixed state project payments include the costs of the design, inspection, land acquisition, equipment, materials and construction of project facilities.

Delta and transportation capital charges to Metropolitan were about \$71.7 million in 1983 and are projected to increase to about \$128.7 million by the year 2000.

The long-range transportation charge estimates do not include projected capital costs for enlarging the East Branch of the state project. The delta water charge increase includes a proposed groundwater storage program, a proposed reservoir project and construction of improvements in the Sacramento-San Joaquin Delta.

If other additions are made to the state project system, such as a delta transfer facility and more reservoirs, higher delta water charges would be incurred by the district and other contractors.

Fixed transportation and delta charges also contain minimum operation, maintenance, power and equipment replacement

costs. These ancillary expenses also must be paid whether or not water is delivered through the state project system.

Power needed to pump water through the State Water Project is obtained from generation facilities owned and operated by the Department of Water Resources and from purchases and exchanges with private and municipal power companies in California and the Pacific Northwest.

Hydroelectric power plants on the State Water Project system will by 1990 produce about half of the energy that will be needed to pump water through the 444-mile aqueduct into the Central Valley and Southern California. Additional hydroelectric plants are also under study.

To make sure enough reliable and economical power is available from other sources to run the project in the future, the Department of Water Resources is acquiring or building its own power facilities.

These state-owned projects are called "off-aqueduct" power facilities because they are not an integral part of the state project system. They include a coal-fired steam plant in Nevada and geothermal plants in California.

The cost to develop these sources is substantial. The district's share of off-aqueduct power plant costs are included in the ancillary fixed expense category.

In years of reduced water deliveries, the Department of Water Resources plans to sell excess power that is generated

by these off-aqueduct power plants and not used for the operation of the project. The revenue from these power sales will be credited to a contractor's bill as early as one year after sales have been made.

The operations, maintenance, power and other minimum ancillary costs were about \$48.6 million in 1983 and will increase to about \$146.7 million by the year 2000. The costs of off-aqueduct power facilities will increase to \$169.1 million by the turn of the century.

The combined total of all fixed State Water Project costs and off-aqueduct costs will increase from 1983's level of \$120.3 million to about \$444.5 million by 2000 (Figure 18).

Total fixed costs

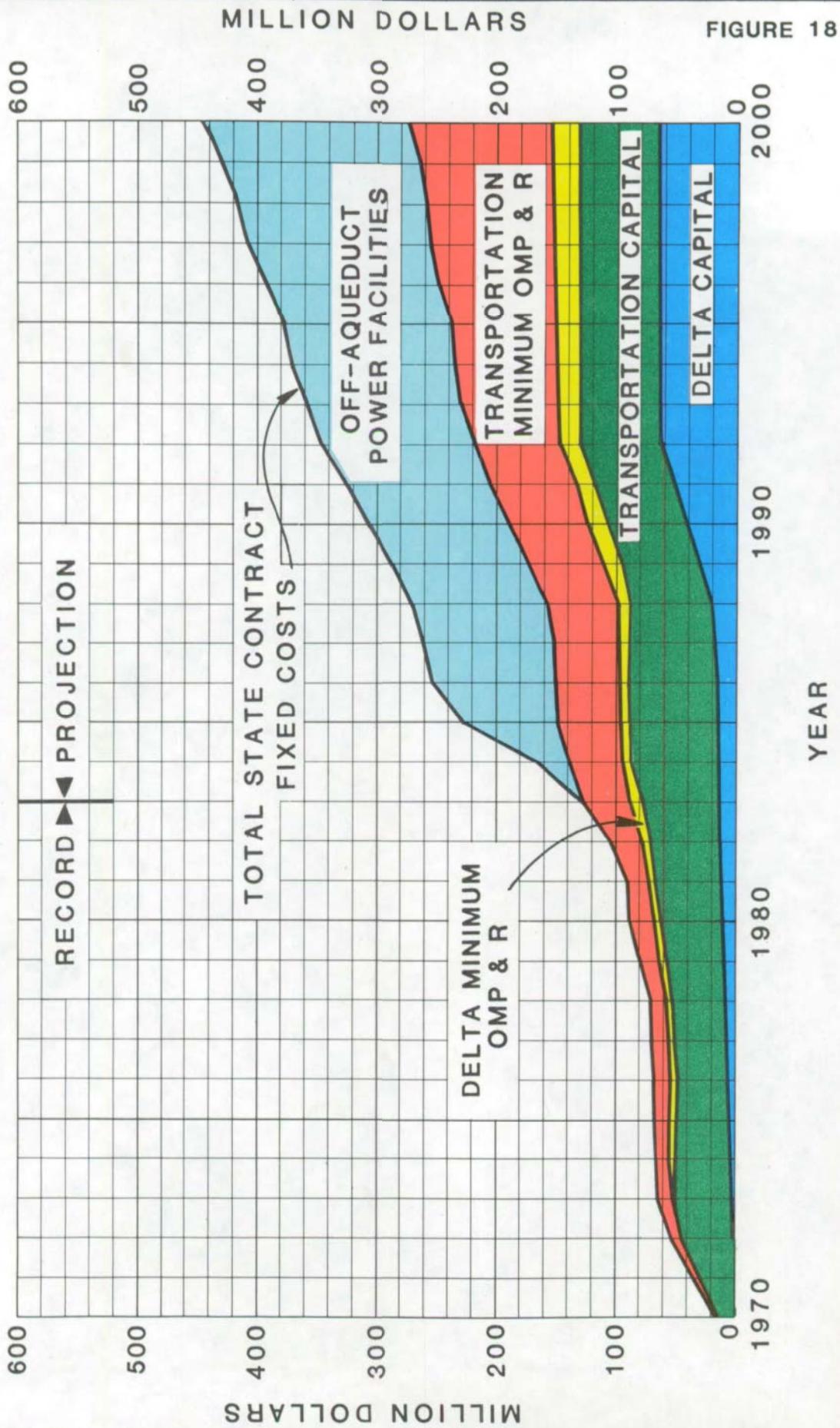
Metropolitan's total fixed costs for both district-owned facilities and participation in the State Water Project were about \$273.6 million in 1983 (Figure 19). They are projected to increase to about \$848.6 million by the turn of the century.

Variable costs of district-owned facilities

The variable costs of operating Metropolitan's Colorado River Aqueduct and distribution system are primarily for power purchased to pump water and the purchases of chemicals and electricity used in the water treatment process.

Other variable costs could include construction projects funded by the district on a pay-as-you-go basis.

FIXED COSTS ASSOCIATED WITH PARTICIPATION IN THE STATE WATER PROJECT



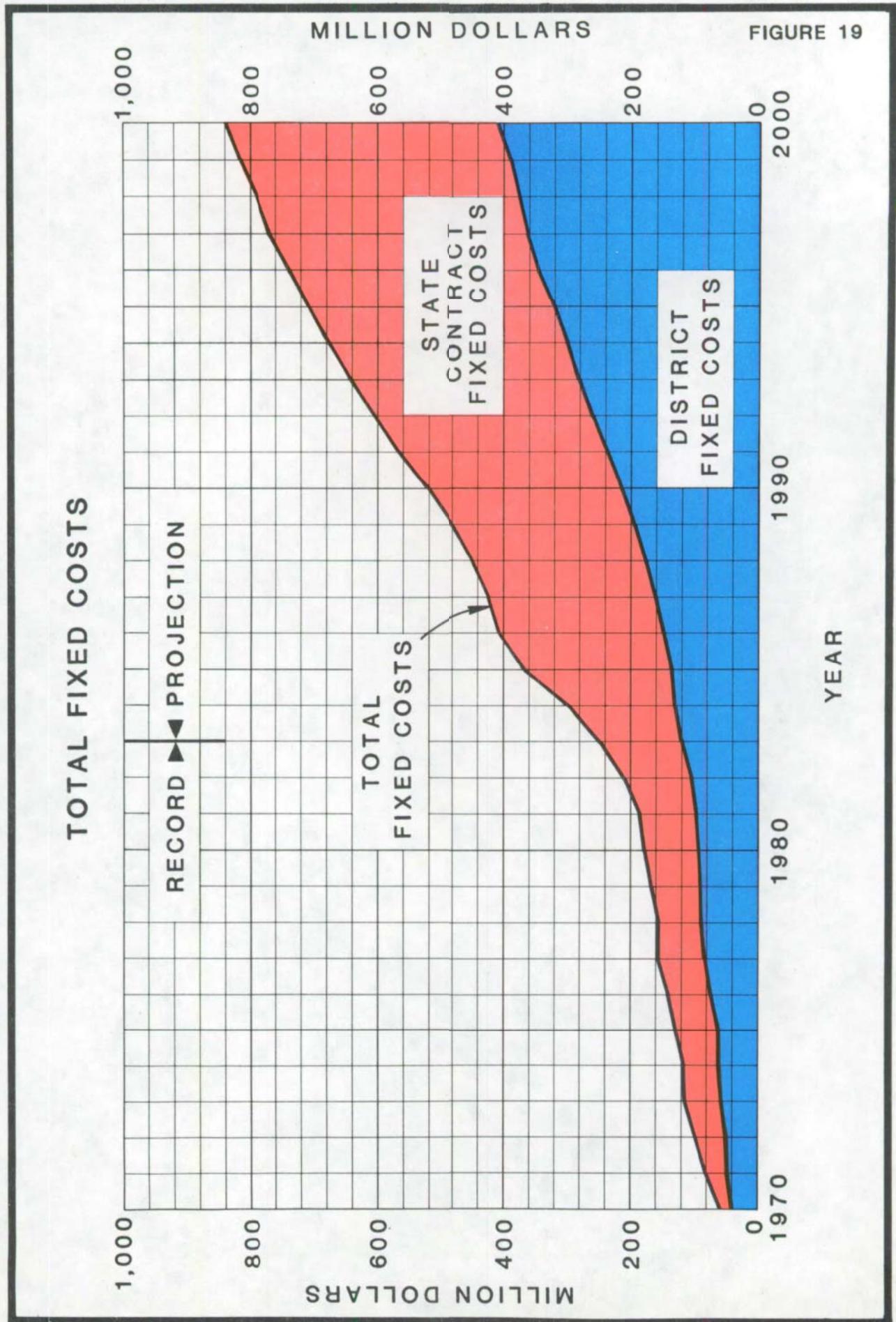


FIGURE 19

These construction costs are variable because they could be reduced or eliminated during a financial crisis.

Power purchased to operate the Colorado River Aqueduct is currently supplied from Parker Dam and Hoover Dam hydroelectric facilities. The district currently has rights to enough power from these two sources to pump approximately 800,000 acre-feet of water each year. To pump more water than that through the aqueduct, the district could use excess power from Hoover if it is available, or buy more expensive electricity from Southern California Edison.

After the Central Arizona Project becomes operational, which is expected to occur in 1985, it is anticipated that only power from Parker and Hoover will be needed to pump water through the Colorado River Aqueduct.

The variable cost of treating water at the district's treatment plants is currently about \$4 to \$5 per acre-foot. That amount is expected to gradually increase as the costs of chemicals and power escalate.

The total of all variable costs of operating Metropolitan's aqueduct, distribution and treatment plant systems was about \$6.8 million in 1983 and will increase to about \$16.5 million by the year 2000.

Variable costs of the State Water Project

Variable costs of the State Water Project return to the state all of the operating expenses that vary with the volume of water deliveries.

These costs, billed to the district under the transportation charge, are for variable operation, maintenance, power and equipment replacement expenses.

The primary variable cost paid by the district is for the power needed to pump water through the California Aqueduct. This cost is expected to increase as the cost of electricity continues to rise and larger amounts of water are delivered through the system.

During the 1960s, the state executed contracts with several power utilities in California and the Pacific Northwest for supplemental power for the state project. The electricity sold under the contracts was priced at about 3 mills per kilowatt-hour for energy delivered during off-peak hours and about 7 mills per kilowatt-hour for both energy and capacity during on-peak hours.

Those contracts terminated last year. The current state project rates -- which reflect the increases in the cost of electricity since the energy crises of the 1970s -- jumped to 18 mills per kilowatt-hour in 1983. That price is expected to continue to rise, primarily because of increases in the costs of fuel.

The state generates power at a number of facilities along the state project system, such as the Hyatt and Thermalito power plants at Oroville and power recovery plants on the California Aqueduct.

Low-cost blocks of power from these sources -- Oroville facilities will generate electricity at a cost of 10 to 13 mills per kilowatt-hour, as an example -- are used together with power from higher priced sources to obtain the total supply needed to operate the entire state project.

Metropolitan's variable state project costs are expected to increase significantly as the power costs for pumping go up and the district starts receiving larger water deliveries through the system. By the year 2000, the state project variable costs paid by Metropolitan are expected to climb to about \$230.5 million.

Total variable costs

Total variable costs for both district facilities and the state project will increase from the 1983 level of \$20.3 million to \$247 million by the turn of the century (Figure 20).

Total fixed and variable costs

The combined fixed and variable costs of the state project and the district-owned system are expected to climb from the 1983 level of \$257.9 million to almost \$1.1 billion by the year 2000 (Figure 21). At that time, it is estimated that the district's fixed cost obligations will represent nearly 80 percent of Metropolitan's total annual expenditures.

TOTAL VARIABLE COSTS

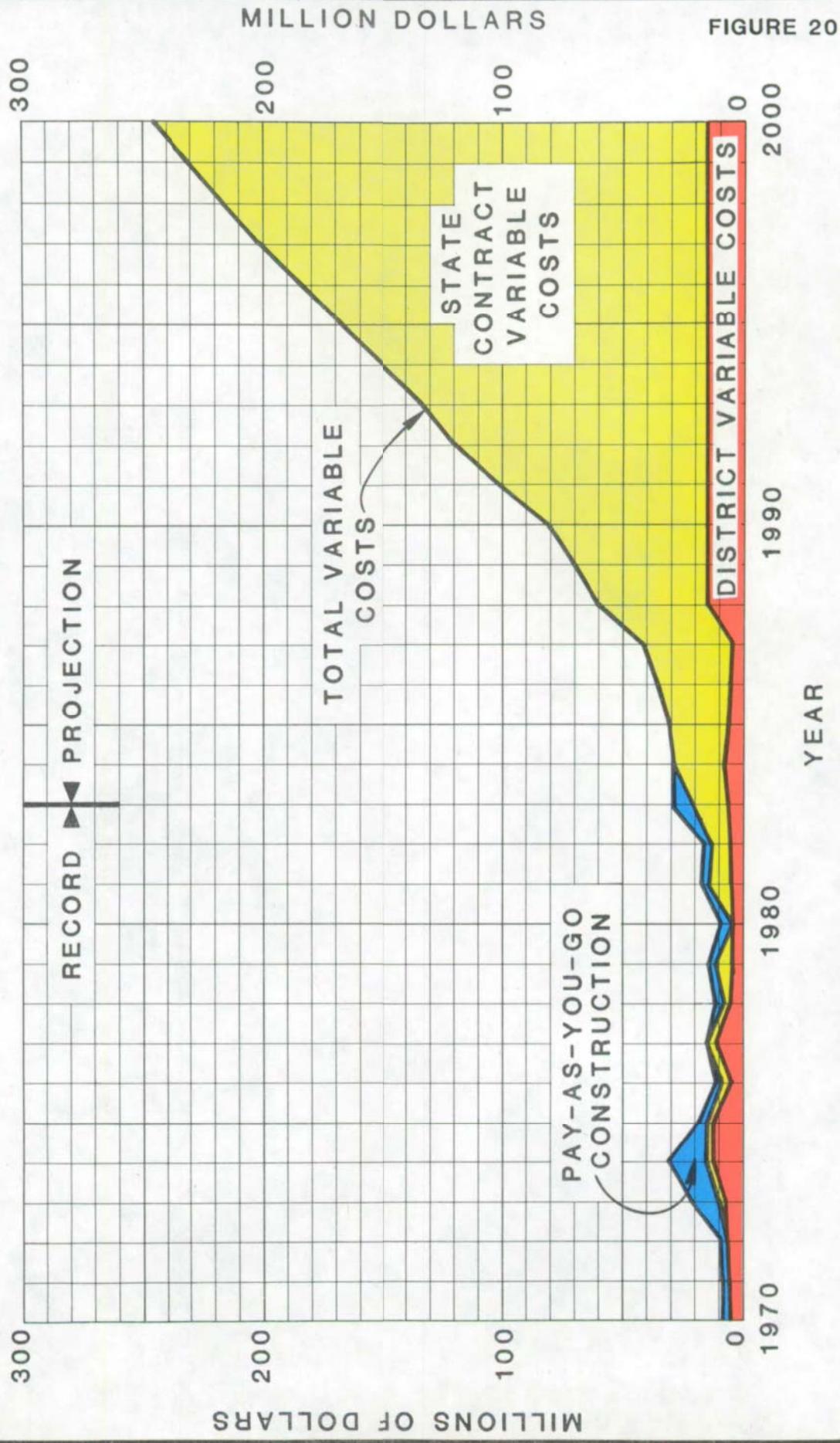


FIGURE 20

TOTAL COSTS TO BE PAID BY THE DISTRICT

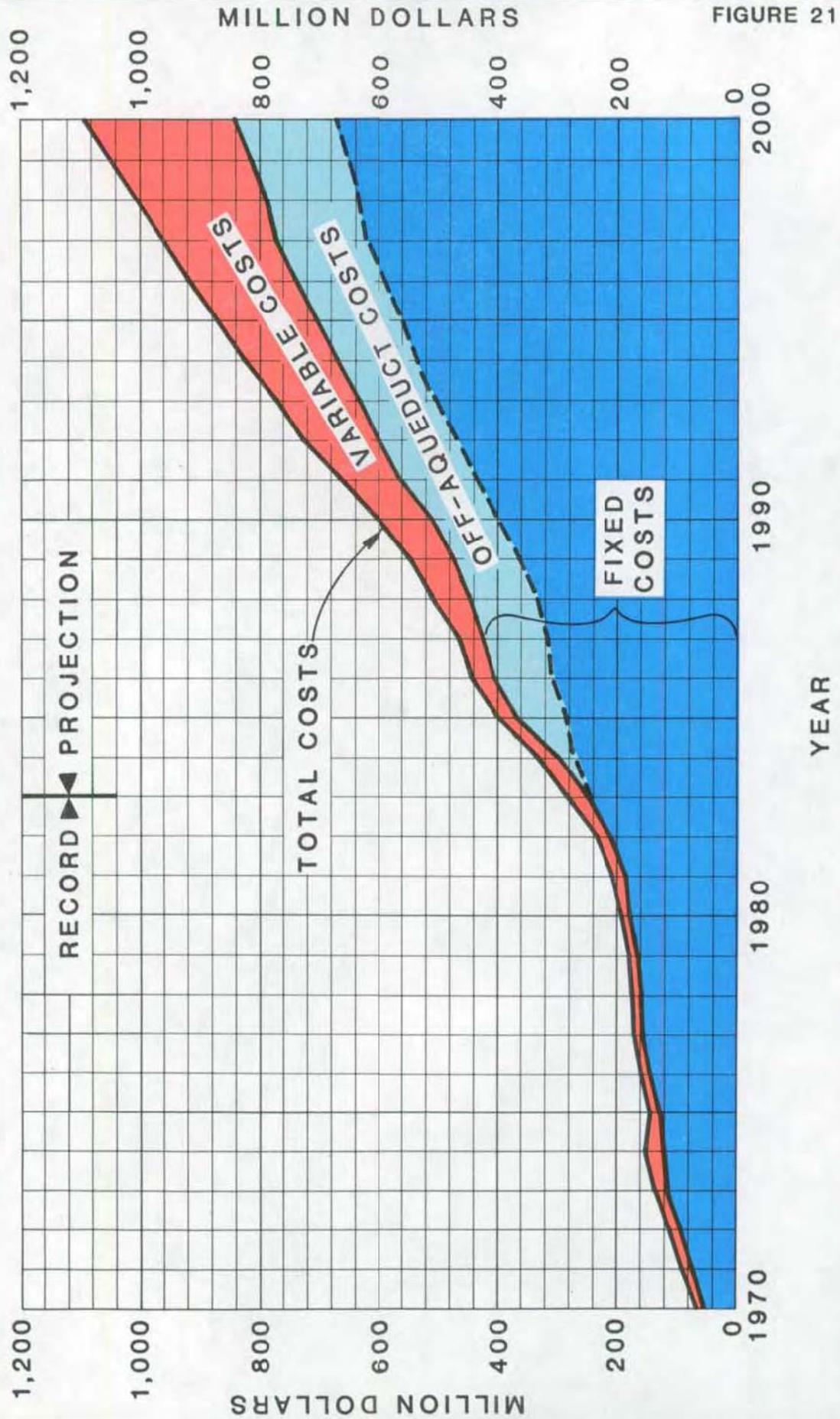


FIGURE 21

STATE WATER PROJECT CONTRACTS

Metropolitan Water District is entitled to receive about half of the state project's water and, because the district is located at the end of the aqueduct system, required to pay for an even larger portion of the project's total costs.

Like all project contractors, Metropolitan is obligated to pay a large portion of these costs whether water deliveries are made or not.

These payment obligations were spelled out in the Burns-Porter Act, during contract negotiations and reviews of the project by the Legislature. Subsequent court rulings have affirmed these obligations. Guarantees were carefully included in the Burns-Porter Act to protect both future water deliveries and the investors who purchased project bonds.

Agencies contracting for water can collect revenues to pay their share of state project costs through water sales and taxes. If water sales revenues are not available, however, project contractors are required under the terms of their contract to levy a tax or assessment on property within their service areas in order to meet these payment obligations.

In the event of a contractor default, the state of California could become obligated to pay the project's bond payments with money from the general fund. Any contractor default could have a serious effect on the financial integrity of the project and the state as well.

Burns-Porter Act

The Burns-Porter Act was enacted by the state Legislature in 1959 and approved by state voters in November 1960.

The act authorized the sale of \$1.75 billion in general obligation bonds which acted as "seed money" for the construction of initial facilities of the State Water Project.

Other funds for the project were derived from revenue bonds authorized under the state Central Valley Project Act in 1933 and from the California Water Fund, which initially was funded by appropriations from Tideland oil and gas revenues.

The overall financing plan was designed to make the State Water Project self-supporting. Revenues from water sales are used to operate and maintain the system and pay the principal and interest on the bonds issued by the state to build it.

Project income in excess of these needs is earmarked for the California Water Fund, making those revenues available for future use on additional project facilities.

The Department of Water Resources expects that these repaid funds will provide a major source of financing for state project construction starting in the mid-to-late 1980s.

The 30 agencies that have contracted for water through the project will pay about 93 percent of the project's costs. The state general fund will pay about 3 percent of the costs for recreation and fish and wildlife facilities, while the federal government will pay about 1 percent for flood control.

The remaining 3 percent will come from interest earnings and other miscellaneous income.

Guarantees that ensured the integrity of the project and protected bondholders' investments were carefully drafted into the Burns-Porter Act. These guarantees specified:

- the Department of Water Resources would enter into contracts.
- the contracts could not be impaired by the Legislature as long as any bonds were outstanding.
- the state could sue or be sued over the contracts.
- the water service contracts would remain in effect for the full term of the bonds.
- the contracts would be for the direct benefit of the bondholders.
- the revenue derived from the contracts could only be used for payment of operations, maintenance and replacement costs of the project; for payment of principal and interest on Burns-Porter bonds; for reimbursement of the California Water Fund; and for the acquisition and construction of additional project facilities.

Metropolitan's contract -- a prototype

Metropolitan Water District signed a contract to participate in the State Water Project four days before California voters approved the Burns-Porter Act in November 1960.

This contract was an important one because it served as the prototype document after which all other contracts would be patterned.

Metropolitan's contract was negotiated during much of 1960. A series of contracting principles published by then Governor Edmund G. Brown Sr. served as the benchmark for those negotiations.

These contracting principles became well known to California's voters, and covered in some detail how water supply costs of the project would be repaid. These principles provided that:

- costs of the project would be divided among the water supply, flood control, recreation, fish and wildlife, drainage and quality control aspects of the project.
- rates would be set to repay the state for operations, maintenance and replacement costs, and, to meet principal and interest payments on bonds, expenditures from the California Water Fund and other money used for construction. Those costs declared by the Legislature to be nonreimbursable and federal contributions for flood control were not included in the water rate structure.

- as a general policy, contracts for water would be executed with public agencies having taxing, assessment or other powers to meet the requirements of the contract. Contracts with organizations not having those powers would be executed only if adequate security could be provided to ensure payment obligations could be met.
- agencies would agree that they would, if necessary, use taxing or assessment authority to pay contract obligations.

Legislative review

Following voter approval of the Burns-Porter Act, the Legislature during its 1961 session reviewed the terms of Metropolitan's prototype contract.

The Legislature had the authority to make amendments to the contract, and the Senate did pass various bills which would have altered the pricing provisions in it to favor agricultural users or users north of the Sacramento-San Joaquin Delta. But all of those bills died in the Assembly.

The Department of Water Resources subsequently entered into negotiations with other public agencies and by the end of 1963 had executed all but 2 of the 30 contracts that exist today.

Metropolitan's state contract obligations

As the major contractor for state project water, Metropolitan Water District, is also the primary source of the project's revenues.

Because the district has contracted for about half of the project's water deliveries, Metropolitan will be required to pay approximately one-half of the costs of both existing and planned conservation facilities. Future conservation facilities, which may be constructed with bond proceeds and money from the California Water Fund, include facilities in the Sacramento-San Joaquin Delta and storage projects both north and south of the delta.

Transportation charges are based upon a contractor's proportionate right to use various facilities. Metropolitan's deliveries are made at the end of the project's aqueducts after being pumped over the Tehachapi Mountains, and the district's costs are therefore significantly higher for these facilities than agencies in the San Joaquin Valley or northern portions of the state. The district will be obligated to pay about two-thirds of all transportation charges.

An expensive element of future costs will be for power, and Metropolitan's water deliveries require more energy than any other contractor.

Metropolitan will be obligated to pay about 68 percent of the costs of power generating facilities that are built into the state project system.

At the same time, the district will be obligated to pay about 73 percent of the costs of off-aqueduct facilities that are needed to run the project's pumping plants.

The continuing ability of Metropolitan to pay its share of the project's total costs is vital to the financial integrity of the entire State Water Project.

At the same time, the financial security of the project is absolutely essential to protect the state's overall credit rating.

Litigation

In 1963, the constitutionality of the Burns-Porter Act was affirmed by the California Supreme Court in the case of The Metropolitan Water District of Southern California vs. Marquardt. This case tested the validity of the water supply contract between the state and Metropolitan. The court upheld the Burns-Porter Act and the contract against the various constitutional objections and other challenges that were made.

In November 1979, another aspect of the state project was challenged in the case of Goodman vs. the County of Riverside. In that case it was alleged that the county was collecting property taxes to meet state project contract obligations for the Desert Water Agency in violation of the tax limitations contained in Proposition 13.

Metropolitan, the Desert Water Agency, the Department of Water Resources, San Geronio Pass Water Agency and a group of banks intervened in support of Riverside County.

On August 31, 1981, a trial court found that property taxes levied on behalf of Desert Water Agency -- and other state project contractors -- were within the voter-approved exception of Jarvis because the State Water Project had been approved by voters in November 1960. The court also found that imposing Jarvis tax limitations on Desert Water Agency's levies would constitute an unconstitutional impairment of the state's contract with project bondholders.

The plaintiff in the case appealed the decision, but in March 1983 the Fourth District Court of Appeal affirmed that taxes levied by State Water Project contractors were within the exceptions to Proposition 13's tax limitations.

A petition was later filed for a hearing on the issue before the Supreme Court. On July 14, 1983, the Supreme Court refused to hear the issue, and the decision is now final.

NEW FIRM REVENUE SOURCES

In order for the district to pay the increasing costs of the State Water Project and needed improvements to Metropolitan Water District's distribution system, additional sources of firm revenue or substantial increases in working capital reserves will be required.

Historically, income from water sales and tax levies has been sufficient to meet district principal and interest payments for outstanding revenue and general obligation bonds, state project obligations, and various operation and maintenance expenses.

Under the current proportionate use formula, taxes are going to provide a declining portion of the district's revenue base, while the reliance on water sales will increase. Income from supplemental water sales has been shown -- particularly during the past two years -- to be a less reliable source of revenue because it can fluctuate greatly with weather changes.

To help meet the anticipated increases in costs -- especially those costs that are fixed -- Metropolitan will have to look to other forms of revenue to augment taxes and water sales.

Credit quality

Metropolitan's bonds have been highly rated by the rating agencies, which is a reflection of the district's good

credit. The district currently has an AA rating on its revenue bonds and AAA rating on its general obligation bonds.

These high quality credit ratings have been assigned because of the size, diversity and growth characteristics of the district's service area, the solid financial record of Metropolitan, and the district's ability and demonstrated willingness to raise needed revenues through water and tax rate adjustments.

There are concerns in the financial community, however, over future district bond sales.

Those concerns center, in part, on the anticipated substantial increases in future water costs and the willingness of the public to pay them. There also are uncertainties over the development of the additional water supplies that will be needed to meet future demands.

Another concern involves the ability of Metropolitan to adequately -- and consistently -- back the revenue bonds it sells.

Historically, the district has maintained favorable debt service coverage on its revenue bonds with net revenues -- after operating expenses are subtracted -- in excess of four times the annual payment on the outstanding bonds.

In 1982-83, a dramatic drop in water sales resulted in a reduction in that debt service coverage to two times the annual payment amount. The growing dependency on variable

water sales to pay higher fixed principal and interest costs could cause further instability.

If adequate and consistent bond debt service coverage is not maintained, the district's credit rating will be jeopardized.

Taxes are a stable and predictable revenue source, and Metropolitan's ability to levy them as required not only forms the basis of the rating of its own general obligation bonds, but also provides the basic security behind State Water Project bonds and their rating.

Tax assessments are known in advance, so the amount of income available from that source is easily computed. The collection rate on taxes is very high. Financial institutions and investors view predictable and reliable revenue sources, like taxes, as more desirable than variable water revenues, which fluctuate with weather conditions.

Bond sale limits

It is anticipated that \$1 billion, or more, in capital improvements will have to be financed between 1985 and the year 2000.

The amount of revenue bonds the district can issue, however, is limited to the equity the district has developed in its system. That equity currently is about \$1.3 billion, and the district's combined revenue bond issues cannot exceed that

amount. The district currently has \$364 million in outstanding revenue bonds.

If anticipated construction programs are financed with revenue bonds, the district would reach its limit by the early 1990s. The district plans to issue \$365 million in voter-authorized but unissued general obligation bonds. Even with this issue, the district still may exceed its revenue bond limit by the mid-1990s.

Other funding methods

There are other ways the district could stabilize its financial position. They include pay-as-you-go financing for some capital projects, service or assessment charges, short-term borrowing, and increasing the limit on the district's working capital reserves.

Using pay-as-you-go financing for some capital projects would help reduce the district's long-term debt service. Those funds also could be used to lessen cash flow problems during periods of low water sales.

A rate structure that included service charges or assessment charges, or both, would stabilize the district's revenue bond coverage and add strength to the district's bond rating. These charges also would help offset the loss of firm tax revenues which will occur under the existing proportionate use formula.

Short-term borrowing ability would allow the district to issue tax-exempt commercial paper at lower interest rates than long-term bonds. These funds could be used to help smooth cash flow fluctuations caused by reductions in water sales.

Increasing the level of working capital reserves also would provide the district with a cushion against cash flow fluctuations.

Pay-as-you-go financing and increasing reserves are policy decisions that would be made by Metropolitan's board of directors. The ability to levy a service charge or assessment charge and the authority to issue short-term commercial paper would require amendments to the Metropolitan Water District Act.

JARVIS INITIATIVE

Proposition 13, approved by California's voters in 1978, limited property tax levies to one percent of cash value. The initiative also rolled property tax assessments back to 1975 levels, limited increases in those assessments, and required a two-thirds vote of the Legislature to increase state taxes and a two-thirds vote of the public within the area affected before new "special" taxes could be imposed.

The initiative contained, however, an exception to the one percent tax limit which allowed additional taxes to be collected to pay for various debts approved by the voters prior to July 1, 1978. Metropolitan and other public agencies have relied on this exception.

Petitions now have been circulated by Howard Jarvis and the "Save Prop 13 Committee" for a new voter initiative which would expand Proposition 13 and negate several court rulings that have been reached in interpreting it. That new initiative apparently has qualified for the November ballot.

The Jarvis Initiative would amend Proposition 13 in a way that would limit Metropolitan and other agencies from collecting property taxes for anything other than pre-1978 voter-approved general obligation bonds, and could even prohibit the district from issuing \$365 million in already approved bonds.

In addition, increases in water rates could be construed as a "tax" under the initiative, and they also would be prohibited without a two-thirds vote of the people within the area affected or of the Legislature.

If approved by voters in November and then upheld against almost certain court challenges, the initiative could undermine the financial stability of Metropolitan and the State Water Project.

ALTERNATIVE REVENUE STRUCTURES

Metropolitan Water District's review of tax rate and water pricing policies involved the study and analysis of 26 separate alternatives. They included variations of the board's current policy known as the proportionate use formula; service charge, standby charge and benefit assessment concepts; and, cases involving a differential or nonuniform tax levy.

The alternatives were evaluated with the following objectives in mind: a continuing reduction in the reliance on property taxes, equitable distribution of the total costs of the district among the district's member agencies, provide cash flow stability, and, a smooth transition from current revenue policies to any new revenue policy.

Careful study was made of the current proportionate use formula. This formula reduces taxes, as a percentage of the district's total income, over time by allocating greater portions of capital costs to water users as the use of the district's importation systems capacity increases.

In effect, the taxpayer's share represents payment for the unused reserve capacity in the system. This formula reduces the reliance of the district on taxes.

Ten variations of the formula's ingredients were studied. The various tax levies resulting from the formula computations would be utilized to pay a portion of the voter-approved debt service of Metropolitan.

Ten alternatives incorporating a service charge were also studied, along with various methods of allocating the charges to Metropolitan's member agencies.

The concept of a differential tax, or nonuniform ad valorem tax levy, was studied as another way of redistributing the district's tax revenues among its member agencies. Six alternatives utilizing this concept were evaluated.

Workshops were held with member agencies to review the various alternatives and to obtain their input.

On file at the district are volumes of data which describe alternative revenue structures of Metropolitan and their impacts on member agencies.

EXECUTIVE SUMMARY AND CONCLUSIONS

Metropolitan Water District's existing tax rate and water rate policies have developed over more than 50 years of district operations.

Paying for a dependable water supply system that now serves about 13 million Southern Californians has become extremely complex. Participation in the State Water Project has resulted in substantial costs consumers must pay for the necessary water supply.

The original policies have evolved into today's proportionate use concept in which the water user pays an ever-increasing portion of the district's costs while the taxpayer's share declines.

Taxes today represent about 23 percent of the district's total income, while water rates and other miscellaneous income provide the remaining 77 percent. Under the existing proportionate use formula, taxes will drop to 13 percent of total district income by the year 2000.

The owner of a \$100,000 home now pays \$23.70 a year in taxes to the district. In the year 2000, the existing proportionate use formula will have resulted in a drop in the district's tax rate to a level where the owner of a \$100,000 home will pay about \$14 in taxes to the district.

Although water pricing and taxation policies have been the subject of almost continuous discussion over the years, it was not until 1959 that serious differences in those policies emerged among the district's member agencies. Those differences remain today.

Los Angeles has contended it pays a disproportionate share of property taxes in relationship to the amount of district water it chooses to purchase from Metropolitan.

The issue came to the forefront again last summer when Assembly Bill 322, authored by Assemblyman Michael Roos, (D-Los Angeles), was enacted by the Legislature.

That bill put a temporary limit on Metropolitan's tax rate for fiscal years 1984-85 and 1985-86 and required the district to conduct a study of tax and water rate policies.

Metropolitan's staff collectively spent thousands of hours examining various revenue proposals. Numerous meetings were held by Metropolitan's board of directors, its committees and its subcommittees to examine the merits of the various alternatives.

Metropolitan's member agencies were actively involved in the deliberations.

Numerous alternative revenue plans were developed and reviewed. These plans looked at various ways of allocating Metropolitan's costs through tax rates, water sales and possible new income sources.

In the course of the studies, a series of other financial uncertainties facing the district had to be addressed:

-- Metropolitan's fixed costs are increasing dramatically at the same time that firm tax revenues are declining as a percentage of total income. The district is faced with meeting a growing portion of these fixed costs with uncertain water sales revenues. This problem could affect the financial stability of the district and its credit rating, as well as the credit of the state.

-- other sources of firm revenues are needed to protect the district against inadequate income.

-- the district will be limited in its ability to finance future construction projects, which could require that they be paid for with current revenue sources.

The new Jarvis initiative, which apparently has qualified for the November ballot, is perhaps the most pressing financial uncertainty facing the district.

The initiative, if approved by voters and upheld in the courts, would have profound impacts on Metropolitan. It would eliminate the ability to levy taxes for State Water Project obligations, could prohibit the issuing of \$365 million in voter-authorized but unissued general obligation bonds, and, prohibit necessary future increases in water rates without a two-thirds vote of the people in the area affected or of the Legislature.

Following six months of intense study and evaluation of the myriad issues involved, Metropolitan Water District's board of directors reached, by a 76 percent majority vote, the following conclusions and recommendations:

-- studies have confirmed that changes in Metropolitan's financing procedures would have profound impacts on the district's 27 member agencies and more than 120 subagencies. In light of these findings, Metropolitan asks the Legislature to grant a two-year extension on the report required by AB 322. This would allow sufficient time to properly consider the many complex factors involved in this issue.

-- the Legislature relieve Metropolitan from the special tax restrictions contained in AB 322. Metropolitan already has experienced financial problems because of reductions in firm tax income and a greater reliance on variable water rates.

-- Metropolitan submit a report at this time on the background of the district, its tax and water rate policies, and report further to the Legislature in two years following a study by an independent consultant.

In the meantime, Metropolitan will continue to utilize the existing proportionate use formula, which does lower the district's dependence on tax revenues over time.

Recognizing its need for additional firm revenue sources, Metropolitan asks the Legislature to adopt suggested

legislation which would authorize the district to implement a service charge and assessment program and develop financial flexibility through the use of short-term, tax exempt commercial paper, negotiated bond sales and flexible interest payment deadlines.

APPENDICES

Proposed legislation

An act to add Sections 134.5, 134.6, 134.7, 134.8, 134.9, and Chapter 7 (commencing with Section 296) to Part 5 to, and to amend Sections 130, 131, 134, 135, 222, 225, 226, 239.3 and 308 of the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969, as amended), relating to metropolitan water districts.

The people of the State of California do enact as follows:

SECTION 1. Section 130 of the Metropolitan Water District Act is amended to read:

130. A district may:

- (a) Acquire water and water rights within or without the state.
- (b) Develop, store and transport water.
- (c) Provide, sell and deliver water at wholesale for municipal and domestic uses and purposes.
- (d) Fix the rates for water/ , and the amount of any water standby or availability service charge.
- (e) Acquire, construct, operate and maintain any and all works, facilities, improvements and property necessary for convenient to the exercise of the powers granted by this section.

SEC. 2. Section 131 of the Metropolitan Water District Act is amended to read:

131. (a) A district may provide, sell and deliver water and water service to the United States of America or to any board, department or agency thereof or to the State of California for any use or purpose pursuant to contract therefor. Such contract may be for permanent service, but shall provide for the furnishing of such water or water service upon terms and conditions and at rates which will apportion an equitable share of the capital cost and operating expense of the district's works to the contractee. Every such contract shall provide that at the end of five years from the date of its execution and every three years thereafter there shall be such readjustment of the contract, upon the demand of either party thereto, either upward or downward as to rates, as the board of directors of the district may find to be just and reasonable in order to effectuate such equitable apportionment of such capital costs and operating expenses.

(b) A district may provide, sell, and deliver water and water service, by a contract not to exceed 50 years, to any private corporation or public agency, or combination thereof, for use in connection with, or ancillary to, the generation of electric power at plants which are located outside of the district but which generate power the major portion of which is used directly, or indirectly through exchange, within the

district, or for pumping, producing, treating, or reclaiming water for use within the district. Such contracts shall not aggregate more than 100,000 acre-feet of water from the Colorado River and more than 60,000 acre-feet of water from the State Water Resources Development System in any one year during such period. Every such contract shall provide that agricultural waste water, brackish ground water, or other water not suitable for domestic, municipal, or agricultural purposes shall be utilized for power plant cooling to the extent practicable, and if not immediately available, such waste or brackish water, as it becomes available and to the extent practicable, shall replace the fresh water then being used for such purpose. Such water and water service is to be furnished by the district at charges not less than such corporations or agencies would pay in general taxes to the district, the substantial equivalent of what such corporations or agencies would pay, directly or indirectly, as a result of a service charge imposed by and within the district, and the water rate of the district applicable to the classification of water delivered to such plants if such plants were located within the district, and in the case of a public agency within the district, if such plants were located within such agency. No contract shall be entered into pursuant to this subdivision to provide, sell, and deliver water and water service for use within the service area of any agency which has a contract with

the State of California for a water supply under the State Water Resources Development System without the prior written consent of such agency and the Director of Water Resources of the State of California.

(c) All water contracted for under this section shall be deemed not to be surplus water available for sale pursuant to Section 132. For purposes of this section the term "public agency" shall mean a county, city, district, local agency, public authority or public corporation.

SEC. 3. Section 134 of the Metropolitan Water District Act is amended to read:

134. The board, so far as practicable, shall fix such rate or rates for water as will result in revenue which, together with revenue from any water standby or availability service charge, will pay the operating expenses of the district, provide for repairs and maintenance, provide for payment of the purchase price or other charges for property or services or other rights acquired by the district, and provide for the payment of the interest and principal of the bonded debt subject to the applicable provisions of this act authorizing the issuance and retirement of the bonds. Such rates, subject to the provisions of this chapter, shall be uniform for like classes of service throughout the district.

SEC. 4. Section 134.5 is added to the Metropolitan Water District Act, to read:

134.5. The board may, from time to time, impose a water standby or availability service charge within a district. The amount of revenue to be raised by the service charge shall be as determined by the board.

Allocation of the service charge among member public agencies shall be in accordance with a method established by ordinance or resolution of the board. Factors that may be considered include, but are not limited to, historical water deliveries by a district; projected water service demands by member public agencies of a district; contracted water service demands by member public agencies of a district; service connection capacity; acreage; property parcels; population, and assessed valuation, or a combination thereof.

The service charge may be collected from the member public agencies of a district. As an alternative, a district may impose a service charge as a standby charge against individual parcels within the district. In implementing this alternative, a district may use the provisions of Water Code Sections 31031 et seq., provided that in utilizing Section 31031, a district shall have the additional powers to (1) raise the standby charge rate above ten dollars (\$10) per year by a majority vote of the board and (2) after taking into account the factors in the previous paragraph, have different standby charge rates for parcels situated within different member public agencies.

As an alternative to the two methods set forth in this prior paragraph, a district at the option of its board may

convert the charge to a benefit assessment to be levied pursuant to Sections 134.6 through 134.9 of this act.

SEC. 5. Section 134.6 is added to the Metropolitan Water District Act, to read:

134.6 The board of a district may by ordinance or resolution, adopted after notice and public hearing, determine and propose for adoption an annual water standby or availability assessment on each parcel of real property within the jurisdiction of each member public agency of the district, except that the governing body shall not impose an assessment upon a federal or state governmental agency or another local agency.

The board may establish zones or areas of benefit within the district or within its member public agencies and may restrict the imposition of the assessments to areas lying within one or more of the zones or areas of benefit established within the district or within its member public agencies.

The benefit assessment shall be levied on a parcel, class of improvement to property, or use of property basis, or a combination thereof, within the boundaries of the district, member public agency, zone, or area of benefit.

The assessment may be levied against any parcel, improvement, or use of property to which water services, through a district's member public agencies, may be made available, directly or indirectly, whether or not such service is actually used.

SEC. 6. Section 134.7 is added to the Metropolitan Water District Act, to read:

134.7. For the first fiscal year in which a benefit assessment is proposed to be imposed pursuant to this act, the board shall cause a written report to be prepared and filed with the executive secretary of the district which shall contain all of the following information:

(1) A description of the service proposed to be financed through the revenue derived from the assessment.

(2) A description of each lot or parcel of property proposed to be subject to the benefit assessment. The assessor's parcel number shall be a sufficient description of the parcel.

(3) The amount of the proposed assessment for each parcel.

(4) The basis and schedule of the assessment.

The executive secretary shall cause notice of the filing of the report and of a time, date, and place of hearing thereon to be published pursuant to Section 6066 of the Government Code and posted in at least one public place within the jurisdiction of each affected member public agency.

At the hearing, the board shall hear and consider all protests. At the conclusion of the hearing, the board may adopt, revise, change, reduce, or modify the proposed assessment. The board shall make a determination upon the assessment as described in the report or as determined at the hearing, and

shall, by ordinance or resolution, determine the proposed assessment.

SEC. 7. Section 134.8 is added to the Metropolitan Water District Act, to read:

134.8 The board may provide for the collection of the assessment in the same manner, and subject to the same penalties and priority of lien as, other charges and taxes fixed by and collected on behalf of the district, except that if, for the first year the assessment is levied the real property on which the assessment is levied has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of county taxes would become delinquent, the confirmed assessment shall not result in a lien against the real property but shall be transferred to the unsecured roll.

If the assessments are collected by the county, the county may deduct its reasonable costs incurred for the service before remittal of the balance to the district's treasury.

SEC. 8. Section 134.9 is added to the Metropolitan Water District Act, to read:

134.9 In imposing benefit assessments pursuant to Section 134.6, the board of a district may use any of the provisions of the Benefit Assessment Act of 1982, the Improvement Act of 1911, or the Municipal Improvement Act of 1913 as a means for imposing and collecting such assessments.

SEC. 9. Section 135 of the Metropolitan Water District Act is amended to read:

135. Each member public agency shall have a preferential right to purchase from the district for distribution by such agency, or any public utility therein empowered by such agency for the purpose, for domestic and municipal uses within the agency a portion of the water served by the district which shall, from time to time, bear the same ratio to all of the water supply of the district as the total accumulation of amounts paid by such agency to the district on tax assessments and otherwise, including water standby or availability service charges, but excepting purchase of water, toward the capital cost and operating expense of the district's works shall bear to the total payments received by the district on account of tax assessments and otherwise, including water standby or availability service charges, but excepting purchase of water, toward such capital cost and operating expense.

Sec. 10. Chapter 7 (commencing with Section 296) is added to Part 5 of the Metropolitan Water District Act to read:

CHAPTER 7

SHORT-TERM REVENUE CERTIFICATES

296. A district may borrow money and incur indebtedness from time to time for any of the purposes for which it is authorized by law to spend money. Such indebtedness shall be evidenced by revenue certificates issued in the manner and subject to the limitations set forth in this chapter. It may also borrow money and incur indebtedness to pay the principal or interest on certificates issued pursuant to this chapter.

297. Certificates issued by a district pursuant to this chapter may be negotiable or non-negotiable, and all certificates shall be, and shall recite upon their face that they are payable both as to principal and interest out of any revenues of the district which are made security for the certificates pursuant to an indenture or resolution duly adopted by the directors of the district. The word "revenues" as used in this chapter shall refer to any revenues derived from the sale of water and power, annexation charges (whether collected through tax levies or otherwise), grants, available tax revenues or any other legally available funds. In no event shall any such resolution or indenture preclude payment from the proceeds of sale of other certificates issued pursuant to this chapter or from amounts drawn on bank (or other financial institution) lines of credit pursuant to Section 299.1 hereof or from any other lawfully available source of funds.

298. In order to exercise the power to borrow money pursuant to this chapter, the board shall adopt a resolution or approve an indenture authorizing the sale and issuance of certificates for such purpose, which resolution or indenture shall specify:

(a) the purpose or purposes for which the proposed certificates are to be issued;

(b) the maximum principal amount of the certificates which may be outstanding at any one time;

(c) the maximum interest cost, to be determined in the manner specified in said resolution, to be incurred through the issuance of such certificates; and

(d) the obligations to certificate holders while certificates are outstanding, which obligations may include such of those specified in Clauses (1) through (d), of this section as the board shall make applicable to certificate holders.

299. The board may also provide, in its discretion:

(a) for the sale and issuance of such certificates at such times, in such manner (either through public or private sale), in such amounts, with such maturities not exceeding 270 days from date of issue, at such rate of interest, with such rate or discount from par, and with such other terms and conditions, as may be deemed appropriate by it or by the general manager of the district or such other officer as may be designated by the board;

(b) for the appointment of one or more banks or trust companies, either inside or outside the State of California, as depository for safekeeping and as agent for the delivery of, and the payment of, said certificates;

(c) for the employment of one or more persons or firms to assist the district in the sale of said certificates whether as sales agents, dealer managers, or in some other comparable capacity;

(d) for the refunding of such certificates from time to time without further action by the board, unless and until the board specifically revokes such authority to refund; and

(e) for such other terms and conditions as the board may deem appropriate.

299.1 The board may arrange for a bank (or other financial institution) line of credit for the purposes of (a) providing an additional source of repayment for indebtedness incurred under this chapter and any interest thereon or (b) borrowing for any purpose for which short-term revenue certificates could themselves have been issued. Amounts drawn on such lines of credit may be evidenced by negotiable or non-negotiable promissory notes or other evidences of indebtedness. The board is authorized to use any of the provisions of Sections 297-299 in connection with the entering into of such line of credit, borrowing thereunder, or repaying of such borrowings.

SEC. 11. Section 222 of the Metropolitan Water District Act is amended to read:

222. The bonds shall be issued in such denominations as the board may determine, and shall be payable on the day and at the place or places fixed in such bonds and with interest at the rates specified therein, which rates shall not exceed 7 percent per annum payable ~~semiannually~~ at such time or times as the board determines, unless the board determines by a two-thirds vote of the total vote of the board that the interests of the district and the public interest or necessity require that bonds be sold subject to a higher maximum rate in order to obtain needed funds.

SEC. 12. Section 225 of the Metropolitan Water District Act is amended to read:

225. Unless the board determines by a two-thirds vote of the total vote of the board that the interests of the district and the public interest or necessity require that the provisions of this section and of Section 226 of this chapter be waived so that the bonds may be sold at private sale upon such terms and conditions as the board may deem necessary, convenient or desirable ~~the~~ bonds shall not be sold at a price less than the par value thereof, together with accrued interest to the date of delivery, nor until notice

calling for the bids therefor shall have been published in a newspaper of general circulation published and circulated in the county in which the principal place of business of the district is located. Such notice shall state the time for the receipt of such bids, which shall not be less than 10 days after the publication thereof. Such notice may offer the bonds at a fixed interest rate or with the interest rate or rates undetermined, in which event the bids shall contain a statement of the rate or rates of interest at which the bidder will take the bonds and pay par value or more therefor, together with accrued interest.

SEC. 13. Section 226 of the Metropolitan Water District Act is amended to read:

226. Unless the board has made the determination, provided in Section 225 hereof, to have a private sale, bids for the bonds shall be opened publicly, and the results publicly announced. The bonds shall be sold to the bidder whose bid will result in the lowest net interest cost. If no bids are received or if the board determines that the bids received are not satisfactory as to price or responsibility of the bidders, the board may reject all bids received and either readvertise or sell the bonds at private sale.

SEC. 14. Section 239.3 of the Metropolitan Water District Act is amended to read:

239.3 The phrase "any public improvement or works of the district" in Section 237 and the phrase "properties, works and facilities of the district" in Section 238 shall be deemed to include, without limitation, works, facilities, improvements, and property of the district for the provision, generation, and delivery of hydroelectric power pursuant to Chapter 2.5 (commencing with Section 137) of Part 4 of this act.

In addition, the phrase "the payment of funds for any part of the capital costs of any public improvement or works of any public entity or agency" in Section 237 and the phrase "properties, works and facilities of the district" in Section 238 shall be deemed to include, without limitation, works, facilities, improvements and property of a private corporation to the extent required for the provision, generation, wheeling, and delivery of such hydroelectric power by the district.

The acquisition and construction of such works, facilities, improvements and property for either of the above purposes shall be deemed to be a purpose for which revenue bonds, whether heretofore or hereafter authorized pursuant to this chapter, may be issued and sold.

SEC. 15. Section 308 of the Metropolitan Water District Act is amended to read:

308. If from any cause the income and revenues of the district shall be inadequate to pay the interest or principal (including sinking fund requirements, if any) of any bonds issued under Chapters 1, 2, and 3 of Part 5, except bonds payable only out of income derived from special taxes levied and collected pursuant to annexation proceedings pursuant to Articles 1, 2, 3, and 6 of Chapter 1, or Part 7, as the same become due, the board shall, at the time of fixing the tax levy, pursuant to Section 307, and in the same manner provided for such tax levy, levy and collect annually until such bonds shall be paid or until there shall be a sum in the treasury of the district set apart for such purposes sufficient to meet all sums coming due for such interest or principal, a tax, in addition to all other taxes levied for district purposes, sufficient to pay the annual interest on such bonds and such part of the principal as shall become due before the time when money will be available from the next general tax levy, or such portion thereof as shall not be met from previous levies or other revenues of the district. Taxes so levied and collected shall be used for no purpose other than the payment of such interest or principal, except that in case a tax is levied, as above stated, for any authorized but unsold bonds, and such bonds are not so issued and sold or such tax for any other reason is not required for such purpose, the proceeds from the tax so levied shall be applied to the payment of interest or

principal, on any bonds authorized by the electors then outstanding or subsequently issued. In addition to the foregoing, taxes shall also be levied to meet the requirement of any resolution adopted pursuant to Section ~~288~~ 287.

* * *

Additional legislation will provide for the repeal of the restrictive provisions in Revenue and Taxation Code Section 97.6(e), and substitute March 31, 1986 for March 31, 1984 in Section 97.6(f) to complete our legislative recommendation. The draft of that legislation follows:

An act to amend Section 97.6 of the Revenue and Taxation Code, relating to fiscal affairs and declaring the urgency thereof, to take effect immediately.

The people of the State of California do enact as follows:

SECTION 1. Section 97.6 of the Revenue and Taxation Code, as amended by Chapter 1324 of the Statutes of 1983, is amended to read:

97.6 (a) For the 1983-84 and 1984-85 fiscal years no local agency shall impose a property tax rate pursuant to subdivision (a) of Section 93 for other than bonded indebtedness which is in excess of the rate, if any, imposed in the 1982-83 fiscal year or imposed for the 1983-84 fiscal year pursuant to a budget resolution adopted on or before July 1, 1983, which contemplated the levy of an additional property tax rate for pension system costs, whichever rate is higher, for other than bonded indebtedness. This section shall be deemed to be a maximum tax rate pursuant to Section 20 of Article XIII of the California Constitution.

(b) If a local agency imposes a rate in excess of the maximum rate authorized by subdivision (a), the amount of property tax allocated to agency pursuant to this chapter shall be reduced by one dollar (\$1) for each one dollar (\$1) of property tax revenue attributable to the excess rate.

(c) Any property tax revenue which has been subtracted from a local agency's allocation pursuant to subdivision (b) shall be allocated to elementary, high school, and unified school districts within the agency's jurisdiction in proportion to the average daily attendance of each such district.

(d) As used in this section, "bonded indebtedness" means any bond obligation of a local government which was approved by the voters of such jurisdiction prior to July 1, 1978.

(e) This section shall not apply to taxes levied to meet obligations to make payments to either the State of California under contracts for the sale, delivery, or use of water entered into pursuant to the California Water Resources Development Bond Act, which is provided for in Chapter 8 (commencing with Section 12930) of Part 6 of Division 6 of the Water Code, or the United States under voter-approved contracts for the sale, delivery, or use of water or for repayment of voter-approved obligations

for the construction, maintenance, or operation of water conservation, treatment or distribution facilities, however, any metropolitan water district, formed pursuant to the Metropolitan Water District Act (Ch. 209, Stats. 1969), may increase its property tax rate for fiscal year 1983-84 above the level imposed in fiscal year 1982-83 to make payments to the State of California under contracts entered into pursuant to the California Water Resources Development Bond Act, only if the increased levy was enacted by the board of directors on or before August 31, 1983, and furthermore any metropolitan water district, formed pursuant to the Metropolitan Water District Act (Ch. 209, Stats. 1969), shall not impose a property tax rate for fiscal years 1984-85 and 1985-86 which is in excess of the rate imposed in fiscal year 1982-83, unless at least 80 percent of the board of directors finds that there exists a fiscal emergency which requires a property tax rate increase and approves the rate increase.

(f) All metropolitan water districts formed pursuant to the Metropolitan Water District Act (Ch. 209, Stats. 1969), shall submit a report to the Legislature on or before March 31, 1984, 1986, detailing its program to reduce the reliance of the district on the property taxes and to assure that the property tax burden is equitably distributed.

(g) This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1989, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1989, pursuant to Section 9611 of the Government Code, Section 97.6 of the Revenue and Taxation Code, as added by Section 3 of Chapter 491 of the Statutes of 1983, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The amendment to Section 97.6 of the Revenue and Taxation Code made by Chapter 1324 of the Statutes of 1983 contained a restriction on the tax rate that may be levied by a metropolitan water district during fiscal years 1984-85 and 1985-86, while at the same time relieving other local agencies which must meet obligations to make payments to the state or federal government pursuant to specified contracts from any such tax rate limitations. The effect of the limitation on a metropolitan water district which has such a contract under the California Water Resources Development Bond Act may be to

impair the state's bonding ability and at the same time cause such a district to increase its wholesale water rates inordinately to the detriment of the ultimate consumer. In order to overcome these effects as soon as possible to facilitate local agency planning, it is necessary that this act take effect immediately.

RESOLUTION 8015

A RESOLUTION OF THE BOARD OF DIRECTORS,
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
IN OPPOSITION TO THE INITIATIVE PETITION
TO AMEND ARTICLE XIII A OF THE STATE CONSTITUTION

WHEREAS, it appears an initiative petition proposed by Howard Jarvis and the "Save Prop. 13 Committee" to amend Article XIII A of the State Constitution (Proposition 13 of 1978) will be on the November 1984 general election ballot; and

WHEREAS, the intent of the proposed initiative would prohibit property tax levies to raise revenue for payments of all voter-approved indebtedness other than bonds, thereby precluding a levy of taxes to make payments required under State Water Project contracts, and would also limit the use of fees to raise revenue for public purposes; and

WHEREAS, the proposed amendment could also prevent the District from collecting pre-1978 annexation fees now used to pay a portion of the District's state water contract obligations, and in so doing would cause certain areas to be unfairly burdened with increased charges to compensate for the loss of fees previously approved and fairly allocable to other areas more recently annexed to the District; and

WHEREAS, most of the thirty State Water Project contractors will not attain full deliveries of water from the State Water Project until at least 1990, and some contractors do not as yet receive any water from the Project and have no source of revenue other than property taxes with which to make those payments; and

WHEREAS, loss of taxing authority to assist in the payment of state water contract obligations combined with arbitrary restrictions on adjustment of water rates would be a severe economic burden for most if not all contracting agencies, and the inability of certain water service contractors to continue to meet their payment obligations could lead to defaults which would adversely affect the fiscal integrity of the State Water Project and the state's credit; and

WHEREAS, adoption of this initiative would jeopardize the sale of \$365 million in unsold general obligation bonds which were approved by the voters of the District by a margin of more than three to one, and the sale of these bonds is essential to

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complete, at the lowest cost, construction of facilities by the District that will be required in order to distribute water already contracted for that will become available when the State Water Project is fully developed; and

WHEREAS, other provisions of the initiative would unreasonably diminish local control of rate making for water and other agencies, substituting the requirement of either approval by the State Legislature or an agency-wide election, with a two-thirds vote in either case, for authority to make routine and necessary periodic rate adjustments.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of The Metropolitan Water District of Southern California hereby finds that the proposed initiative constitutional amendment represents a real and substantial threat to both the fiscal integrity of the State Water Project, the Water Service Contractors and the State of California's credit, and to the security of an adequate future water supply for the people of Southern California.

BE IT FURTHER RESOLVED, that the Board of Directors of The Metropolitan Water District of Southern California does hereby oppose adoption of this proposed initiative constitutional amendment.

BE IT FURTHER RESOLVED, that the Executive Secretary send copies of this resolution to each member agency of this District and to any party requesting a copy.

I HEREBY CERTIFY, that the foregoing is a full, true, and correct copy of resolution adopted by the Board of Directors of The Metropolitan Water District of Southern California at its meeting held March 19, 1984.

Executive Secretary
The Metropolitan Water District
of Southern California

GOVERNOR'S CONTRACTING PRINCIPLES

On January 20, 1960, the document "Contracting Principles for Water Contracts under the California Water Resources Development System" was announced by the Governor. The Contracting Principles provided the basic principles and policy guidelines which would be followed in the negotiation and preparation of long term project water supply contracts.

The Contracting Principles are:

"1. Costs shall be allocated on the separable costs-remaining benefits basis for multipurpose development facilities and on a proportionate use basis, by areas, for water transportation facilities.

"2. For purposes of project commodity pricing, costs will be allocated among water supply, flood control, recreation, enhancement of fish and wildlife, drainage, quality control, and such other functions as may be authorized and performed by the particular facility or facilities under consideration.

"3. Rates for water and power and for other reimbursable items will be established so as to return to the State all costs of project operation, maintenance and replacement, all principal and interest on (1) bonds, (2) expenditures from the California Water Fund, and (3) other monies used in the construction of the project works. Those costs declared by the Legislature to be nonreimbursable, and the Federal contribution for flood control and for other items will not be included in the rate structure.

"4. The project will require more power for pumping purposes than it will produce. Power required in the operation of the project must be paid for by the water users whether it is obtained from project or nonproject sources. Therefore, the costs of the project facilities producing the power is properly a cost of water supply and in the project cost allocation no separate allocation of the capital costs of

power facilities will be made. The capital cost of power will be included in the costs allocated to water supply. The difference between the actual cost of power, that is, the amount necessary to repay the capital and operation and maintenance costs of the power facilities, and the market value of the power provides an economic benefit. A cost allocation study will be made with reference to power facilities for the purpose of determining the economic benefit to be derived from the use of project power for project purposes.

"In addition to the extent that from time to time any power is available for sale, it will be sold at its market value. Preference will be given to public agencies in such sale as required under existing law. The difference between the actual cost and the market value of such power will result in income to reduce project costs. This added income (power credit) will be applied, and the computed economic benefit will be made available, to reduce the cost of project water except for water used on land in single ownership in excess of 160 acres (320 acres in the case of community property).

"5. Under the Delta Pooling Concept, there will be a single price for state project water at the Delta and for state project service areas above the Delta which will be referred to as the Delta Water Rate. The Delta Water Rate will consist of an annual (1) capital cost component, (2) necessary minimum operation, maintenance and replacement component; and (3) an operation and maintenance component which will vary with the amounts of water furnished.

"The Delta Water Rate will be based on the cost of construction and the cost of operation, maintenance and replacement of these conservation facilities allocated to water supply upstream from and within the Delta. The capital cost component and the minimum maintenance and replacement component will be collected irrespective of the amount of water furnished. The operation and maintenance component will be collected from the contractors receiving water in proportion to the amounts of water furnished. Increases and decreases in the capital cost component of the Delta Water Rate will be made from time to time to reflect the then outstanding unpaid reimbursable cost incurred in the construction of facilities necessary to make water available at the Delta.

"6. Those contracting for water from a project aqueduct will pay, in addition to the Delta Water Rate, a charge herein referred to as the 'Transportation Rate'. The Transportation Rate will consist of an annual (1) capital cost component, (2) necessary minimum maintenance and replacement component and (3) maintenance and operation component which will vary with the amount of water furnished.

"The capital cost component, and the minimum maintenance and replacement component will be allocated to service areas by reaches of aqueduct, using the proportionate use method of cost allocation and will be collected annually irrespective of the amount of water furnished. The maintenance and operation component which varies with the quantity of water delivered will be computed for the same reaches of aqueduct as used for the other components of the Transportation Rate and will be allocated among, and collected annually from, the contractors receiving water in proportion to the amounts of water received. Provision will be made for reserve funds to be used for the purpose of meeting large, unforeseen cost of operation and maintenance, repair and replacement of works. The total annual charge to project water contractors will be the sum of the Transportation Rate plus the Delta Water Rate.

"7. The following is a breakdown of the Delta Water Rate and the Transportation Rate. The Transportation Rate is stated for reaches of the aqueducts where the rate will be set by reaches. These rates are based upon estimated costs. Provision will be made in the contracts for revision of the rates when actual costs become known:

"8. Contracts for dependable water supply shall be for at least 50-year terms, but shall contain provision for changes in rates and operating provisions. Upon expiration of the term of the contract, the contracting agency shall have the option of continued service on terms and conditions prescribed by the State, but at no greater cost than would have been the case had the original contract continued in effect. Should the terms and conditions provide for the furnishing of such continuing water service for only a specified period of years, the contracting agency shall have a like right to continued service at the expiration of such succeeding term during which it was receiving project water.

"9. To ensure continuity and dependability of water supplies the contracts will provide:

(a) That contracts for dependable water supply will aggregate no more than a stated amount based upon the yield of the project. This amount which will be approximately 4,000,000 [Ed. Note: this figure raised to 4,230,000 in 1964] acre-feet annually, is to be increased by the yield due to added storage facilities when and as constructed. In addition, contracts may be executed for interim or nondependable water supply subject to reduction or termination by the State at any time.

(b) For the furnishing of stated maximum annual amounts of project water. The time and rate of furnishing of water delivery during any year by the State will be pursuant to schedules and amendments thereof submitted by the contracting agency for such year. The State will comply with such schedules consistent with its delivery ability taking into account all such schedules submitted by agencies entitled under contract to a dependable project water supply.

(c) That in the event of a shortage in the dependable project supply available in any year for export, project water will be prorated among all export contractors. Each contracting agency will receive an amount of water which bears the same relationship to the available supply, computed on the same basis as the project yield studies, that the amount called for in the agency's contract for a particular year bears to the total amount of water required to be delivered pursuant to all contracts in the respective year. However, the Department will reserve the right to prorate on some

other basis if required to meet necessary demands for domestic supply, fire prevention, or sanitation in the respective year or season.

(d) That bond funds will be used to construct added storage facilities and related facilities for local needs to meet commitments to export from the Delta to the extent that California Water Fund monies are used for construction of the original facilities and to the extent such added construction is required by virtue of a reduction, occasioned by operation of area of origin statutes, in the amount of water available for export. This will be subject to the proviso, however, that to the extent that the Director at any time after 1985 finds that any such funds are not then required to meet such reduction and will not be required for such purpose within the next succeeding 10 years, any such funds may be used for the construction of added storage facilities to meet increased demands for export to or from the Delta and to meet local needs.

(e) That the State will plan the availability of water from the Delta so that deliveries can be made at the time and in the amounts scheduled in the contracts. To the extent possible, five years notice shall be given of any reduction in deliveries which will occur as a result of operation of area of origin statutes.

"10. Construction of any transportation facility financed wholly or in part through the sale of bonds, will not be started unless water service contracts have been executed which will insure recovery of at least 75 percent of the cost of such facility.

"11. Local contracting agencies may make funds available for construction or completion of construction of initial or ultimate facilities and will be credited to the extent of such contributions.

"12. As a general policy, contracts for project water will be executed with public agencies having the taxing, assessment or equivalent power and all other powers required in order to comply with the terms of the contract. Contracts will be executed with others not having the taxing, assessment or equivalent power only when the State can be provided with security sufficient to insure that the obligations incurred will be paid.

"13. Each contracting agency will agree that, in the event in any year it is unable or fails through other means to raise the funds necessary in any year to pay to the State the sum required under the contract, it will use its taxing or assessment power to raise such sum."

SMITH BARNEY, HARRIS UPHAM & CO.
INCORPORATED

1345 AVENUE OF THE AMERICAS
NEW YORK, N.Y. 10105
(212) 399-6000

December 30, 1983

Mr. Gerald J. Lonergan
Chief Financial Officer
Metropolitan Water District
of Southern California
1111 Sunset Boulevard, Box 54153
Los Angeles, California 90054

Dear Gerry:

This letter is in response to your request that Smith Barney review and provide comments on how recent legislation, specifically AB 377 and AB 322, and the proposed New Jarvis Initiative, may affect the future financial performance of The Metropolitan Water District of Southern California. Our comments will be based upon a review of the legislation and the proposed initiative as well as several discussions with the District's legal and financial staff. We will first describe the legislation and initiative generally, then focus on the areas that may have the greatest potential negative affect on the future financial performance of The Metropolitan Water District of Southern California. It is important to recognize that our comments are based upon certain individuals' interpretation of the legislation and proposed initiative, and that such interpretation may or may not be supported by the various court decisions which may evolve over time. What is most important is that the potential financial affects of such legislation and proposed initiative be addressed early so that appropriate action can be taken.

First, in the way of background, it is our understanding that the District's General Counsel has advised that AB 377, which attempted to generally limit reliance on property taxes by limiting for the next two fiscal years the tax rates for other than voter approved bonded indebtedness to the rate used for other than bonded indebtedness for fiscal year 1983, does not apply to the District. Subsequent to the effective date of AB 377, the District's Board of Directors levied a tax for fiscal year 1983-84 which included a rate for other than bonded indebtedness which was higher than the rate for the 1982-83 levy. Based upon General Counsel's advice such legislation should have no affect on the District's future financial performance.

In September 1983, the Legislature adopted AB 322 which confirmed the Board's action to raise the tax rate for 1983, but imposed a requirement to roll the rate back to the 1982 rate for two succeeding fiscal years -- unless the Board of Directors by an 80% vote finds that a "fiscal emergency" exists

which requires a tax rate increase and approves such increase. Such legislation excludes from any limitation "bonded indebtedness", which is defined to mean any bond obligation of a local government which was approved by the voters of the jurisdiction prior to July 1, 1978. It is believed by some individuals that such legislation may constrain the Board's ability to assess taxes for other than actual debt service requirements on outstanding general obligation bonds such as for amounts levied for the capital costs related to The State Water Project, to that assessed in 1982, assuming there is no declaration of a "fiscal emergency" by the Board's 80% vote. It is important to recognize that this requirement could impair the District's ability to operate in the future in that based upon the method of voting, as few as one Member Agency could prohibit the declaration of a fiscal emergency. It is also believed that such legislation may result in sufficient questions concerning the \$365,000,000 unissued general obligation debt to result in the District being unable to issue such bonds. The financial effects of such limitations are described later in this letter.

The proposed New Jarvis Initiative would amend the California Constitution, specifically Article XIII A and, if adopted and upheld, would essentially reverse or undo a series of court cases interpreting the original intent of Proposition 13. Such initiative would override Goodman v. County of Riverside, thereby prohibiting special property tax levies for payments under The State Water Project Contracts. As with AB 322, questions exist as to whether or not the \$365,000,000 of unissued general obligation bonds could be issued. In addition, there are questions with the proposed initiative as to whether any water rate increase would be limited to the Consumer Price Index, not to exceed 2% per year, unless approved by two-thirds of the qualified electorate.

We have listed below the limitations or questions which we believe could affect the future financial performance of the District.

1. Limitation on the ability to increase the tax levies for the capital portion of The State Water Contract above the 1982 rate for two succeeding fiscal years. (AB 322)

Pursuant to the District's Proportionate-Use Formula and based upon the decision in Goodman v. County of Riverside, the District assesses a tax levy for the capital component of the State Water Contract. In fiscal year 1982, the District received approximately \$68,000,000 in tax revenues of which \$36,416,000 was for debt service requirements on outstanding general obligation debt. The remainder was used to pay a portion of the capital costs related to the State Water Project. Based upon the District's cash flow forecast provided in its most recent Official Statement, the State Water Contract capital costs are expected to increase in fiscal years 1984 and 1985 by approximately 24% and 10%, respectively. To the extent that the District is unable to assess a tax levy to cover a portion of such increases over the next two years water rates will have to be increased.

2. Questions which may prohibit the District from issuing \$365,000,000 of General Obligation Bonds. (AB 322 and Proposed New Jarvis Initiative)

The Court of Appeals recently issued an opinion holding that the \$365,000,000 of District general obligation bonds remaining unissued from a \$850,000,000 authorization by the voters in 1966 could be issued, and that such bonds are not subject to the 6% maximum interest rate at the time the issue was approved, but may be sold at the current statutory rate. Certain questions related to AB 322 and the proposed New Jarvis Initiative may result in the District being unable to issue such general obligation debt. The result of such an event would be that the District would be forced to issue revenue bond debt to continue funding its construction program. The District's revenue bonds and general obligation bonds are currently rated by Moody's Investor Service as AA and AAA, respectively. The increase in debt service requirements to the District due to the issuance of lower-rated revenue bond debt, as opposed to higher-rated general obligation debt under current market conditions would be approximately .50%, or an increase of over \$1,800,000 per year of interest payments on the entire amount of debt.

3. Prohibition of special property tax levies for payments under the State Water Contract. (Proposed New Jarvis Initiative)

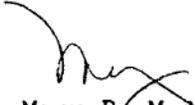
The District's General Counsel believes that the proposed New Jarvis Initiative would override Goodman v. County of Riverside, thereby prohibiting special property tax levies for payments under the State Water Contract. As described earlier, the District currently assesses tax levies which exceed general obligation debt service requirements by approximately \$32.0 million, which represented approximately 20% of the District 1982-83 revenues generated from water rates. Such an event would put additional pressure of the District's water rates right after two concurrent unusually wet years.

4. Possibility of limiting increases in water rates to the inflation rate, not to exceed 2% per year, unless approved by two thirds of the qualified electors of the governmental agency. (Proposed New Jarvis Initiative)

Certain individuals believe that the proposed New Jarvis Initiative may include water rates as a "fee or charge" thereby subjecting increases in such charges to the inflation rate, not to exceed 2% per year unless approved by two-thirds the qualified voters in the governmental unit. Such a requirement, if adopted and upheld, would have serious negative ramifications on the perceived credit quality of the District. In essence, such a requirement would subject almost any increase in water rates to a vote of the people. Virtually every credit analysis of the District cites the ability to establish rates and charges to cover the costs of operation--without any outside influence--as one of the important credit strengths of the District. Leaving the legal questions aside, we question how the District would be able to operate effectively under such a constraint.

Finally, it is important to note that the combined impact of AB 322 and the proposed New Jarvis Initiative could cause additional cost increases to the District, if the rating agencies and the analytical community considered these changes to be significant negatives for credit quality. The combination of the loss of access to general obligation bond financing, constraints on ability to raise rates both in the form of taxes as well as water rates, and/or the loss of management flexibility would have to be examined by the rating agencies, and could cause a reduction in the District bond ratings for future revenue bond offerings. Clearly, such a rating change, if it should occur, would create additional costs for the member districts and their rate payers for which there is no corresponding benefit.

Sincerely,



Mary P. Mudryk
Vice President

Dillon, Read & Co. Inc.

*535 Madison Avenue
New York, New York 10022
212-906-7000*

January 24, 1984

Mr. David N. Kennedy
Director
California Department of Water
Resources
P.O. Box 388
Sacramento, California 95802

Dear Mr. Kennedy:

You have requested that Dillon Read review and comment on the financial effects on the Department of Water Resources (the "Department") of certain legislation, specifically AB 322, and the proposed New Jarvis Initiative. Our comments are based upon discussions with certain members of the staffs of the Department and of the Metropolitan Water District of Southern California (the "District" or "Metropolitan") and a review of the legislation, the proposed initiative, and a letter from Smith Barney, Harris Upham & Co., Incorporated to Metropolitan dated December 30, 1983 (the "Smith Barney letter"). The Smith Barney letter, attached as Exhibit A, describes generally the legislation and proposed initiative and addresses the financial effects of the legislation and proposed initiative on Metropolitan.

We generally concur with Smith Barney's comments regarding the financial effects of the legislation and proposed initiative on Metropolitan. Specifically:

1. "It is important to recognize that our comments are based upon certain individuals' interpretation of the legislation and proposed initiative, and that such interpretation may or may not be supported by the various court decisions which may evolve over time. What is most important is that the potential financial effects of such legislation and proposed initiative be addressed early so that appropriate action can be taken."

Dillon, Read & Co. Inc.

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2. To the extent that AB 322 or the New Jarvis Initiative (or any other measure) limits Metropolitan's ability to assess a tax levy for payments under the State Water Contract, Metropolitan's water rates will have to be increased.
3. To the extent that either AB 322 or the New Jarvis Initiative prohibit Metropolitan's issuance of general obligation bonds, currently rated Aaa by Moody's Investors Service and AAA by Standard & Poor's Corporation, and revenue bonds, currently rated Aa by Moody's Investors Service and AA by Standard & Poor's Corporation are issued instead, substantial additional interest charges will result.
4. "Certain individuals believe that the proposed New Jarvis Initiative may include water rates as a 'fee or charge' thereby subjecting increases in such charges to the inflation rate, not to exceed 2% per year unless approved by two-thirds the qualified voters in the governmental unit. Such a requirement, if adopted and upheld, would have serious negative ramifications on the perceived credit quality of the District. In essence, such a requirement would subject almost any increase in water rates to a vote of the people. Virtually every credit analysis of the District cites the ability to establish rates and charges to cover the costs of operation--without any outside influence--as one of the important credit strengths of the District. Leaving the legal questions aside, we question how the District would be able to operate effectively under such a constraint."
5. Any decrease in the credit rating of Metropolitan resulting from the loss of the ability to issue general obligation bonds, constraints on the ability to raise rates and/or taxes, and/or the loss of management flexibility would create additional costs for member districts and their rate payers for which there is no corresponding benefit.

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Any negative effects of AB 322 or the proposed constitutional initiative which impair Metropolitan's credit standing will, in turn, have a significant effect on the Department's credit strength and cost of funds. The primary underlying credit for the Department's recent and anticipated future financing has been the Water Supply Contracts signed with 30 contractors, including Metropolitan. Metropolitan is by far the largest contractor, having made approximately 60% of the total payments under the Water Supply Contracts in 1982. Hence, Metropolitan's ability to make such payments is a key determinant of the Department's credit strength. Any real or perceived deterioration in Metropolitan's financial condition, absent other offsetting factors, can be expected to increase the Department's borrowing cost.

Furthermore, the proposed constitutional initiative and any subsequent legislation similar to AB 322 applying to the contractors, would have similar adverse effects on the 29 remaining contractors and thus on the Department. Although each of the remaining 29 contractors is small compared to the District, their aggregate contribution in 1982 was approximately \$77.8 million or 40% of total payments.

Finally, we believe it is important to point out that the financial community generally views a predictable revenue stream as much more desirable than a revenue stream which fluctuates with weather, general economic conditions, or the like. One of the important credit strengths of the Department's bonds has been the requirement that each contractor tax, if necessary, to meet its payment obligations under the Water Supply Contracts. The ability to tax is generally regarded as the greatest security available to a municipal entity since revenues are both relatively secure and predictable. The amounts assessed as a tax are well known in advance and the rate of collection is usually high. To the extent that the ultimate ability to tax to make payments under the Water Supply Contracts is restricted, credit quality will tend to decrease and thus cost of money will tend to increase. A rate structure which generates a stable stream of revenues, such as a structure including a demand charge or an entitlements charge, however, would tend to lessen the negative effects of a reduced reliance on taxes. (The Department has such a rate structure, but Metropolitan does not.)

Dillon, Read & Co. Inc.

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Please let me know if you need further explanation or analysis.

Very truly yours,



Sally A. Dean
Vice President

SMITH BARNEY, HARRIS UPHAM & CO.
INCORPORATED

1345 AVENUE OF THE AMERICAS
NEW YORK, N.Y. 10105
(212) 399-6000

January 27, 1984

Mr. Gerald J. Lonergan
Chief Financial Officer
Metropolitan Water District
of Southern California
1111 Sunset Boulevard, Box 54153
Los Angeles, CA 90054

Dear Gerry:

This letter is in response to your request that Smith Barney comment on recent legislation, specifically AB 377 and 322, and how the proposed New Jarvis Initiative may affect future financings for the State of California Department of Water Resources related to the State Water Project (the "Department" and the "SWP"). Our specific comments related to the affects of such legislation and proposed initiative on The Metropolitan Water District of Southern California (the "District"), have already been provided by letter, a copy of which is attached hereto.

In the way of background, the District is the largest contractor for water services from the State in terms of the quantity of water required, (approximately 48 percent), as well as the total amount of payments made to the State (approximately 60 percent). A portion of the SWP has been financed via State general obligation bonds as well as various series of revenue bonds relating to specific projects. Despite the pledge of revenues, the historical source of revenues has been payments from the District under various water service contracts with contractors rather than with state taxes when permitted.

The relative importance of the District's operations on the opinion of credit worthiness of the State's bonds, particularly the revenue bonds, is clearly indicated in the credit opinion of Moody's Investors Service related to the sale of \$200,000,000 Department of Water Resources Power Facility Revenue Bonds, Series E and F for the Central Valley Project, a copy of which is attached. Such opinion states:

"The economic importance of the water being sold, a tested record of strong management and the regional position of the department's primary contractor, the Metropolitan Water District of Southern California, combine to produce strong security despite concern regarding ability to increase future water production."

Moody's opinion also considered the security provisions related to the ability of the contractors to tax for payments to the State as Other Security Provisions. Such opinion stated:

"Water supply contracts provide that a contractor must levy a tax on all non-exempt property to provide for payments under the water supply contract in the event of a shortfall in other revenue."

In addition, the opinion cited the Goodman vs. County of Riverside decision exempting such taxes from Proposition 13 limitations and defining the concept of "indebtedness" to include the full cost of the SWP.

In responding to your request we also thought it would be helpful to send a copy of a Smith Barney, Harris Upham & Co. revenue bond review - new issue update for the State of California Department of Water Resources Central Valley Project Power Facilities Revenue Bonds, Series B for the Reid Gardner Project, dated July 1, 1983. Such review states as a weaknesses of the bond security, among others, the uncertainty at that time related to the ability to levy a tax as needed for payments under the Water Supply Contracts as follows:

- o "Payments by a Contractor under the Water Supply Contracts not provided from other means must be made from a levy on taxable real property. Proposition 13, the Jarvis-Gann Initiative, created Article XIII A to the California Constitution, which limits ad valorem taxes in real property to one percent of "full cash value", as defined, except for taxes or special assessments to pay debt service on indebtedness approved by the electorate. The California Attorney General has opined that, since the Burns-Porter Act was approved by the electorate, payments under the Contracts fall under the exception. He indicated, however, that water charges should be used, rather than taxes, wherever possible. In a case regarding Kern County, the right of the water agency to collect taxes under XIII A was affirmed by the Court of Appeal. It is not clear, however, that the ruling applies to other Contractors. On 11/6/79, certain property owners in Palm Springs filed suit against the County of Riverside, saying that tax levies for the Desert Water Agency were illegal under XIII A. On August 31, 1981, the trial court ruled that the tax levy was valid. The plaintiffs have appealed.
- o The Gann Initiative, Article XIII B to the State Constitution placed certain limits on annual appropriations of state and local government agencies, essentially based on appropriations in 1978-79 adjusted for changes in the cost of living and population. Exceptions are made for proceeds from user fees for "reasonable" costs of a product or service. The ability of the Contractors to make payments under the water contracts would not appear to be impaired to the extent such payments come from user fees. The impact on payments from ad valorem taxes is not yet clear."

In addition, such report cited among others the following strengths of the issues.

- o "The provisions under the Water Supply Contracts provide considerable assurance that debt service will be paid. As discussed above, the Contracts provide that payments will be made from water charges, and to the extent necessary, from ad valorem taxes. The allocated portion of Contract revenues for the Projects is calculated to provide for Operating and Maintenance expenses of the Projects plus 1.25X debt service on all parity bonds. Furthermore, payment for debt service must be made whether or not the Projects are in operation, and shall have priority over the payment of operating expenses.
- o Almost 68% of projected payments under the Resolution are from the Metropolitan Water District of Southern California, a well-run major supplier of water to much of Southern California in areas with over 11.6 million population. Water sales revenue of the District in fiscal year 6/30/81 exceeded \$141.4 million.
- o An indirect effect of the Jarvis-Gann Initiative has been to improve, in many cases, the security strength of those bond issues, payable from general fund sources, which are exempt from the 1% of full value cap on ad valorem tax levies. As discussed under weaknesses (stated above), payments under the Water Supply Contracts appear to be exempt from the cap (to the extent they are paid from ad valorem tax rather than water charges)."

Based upon our general understanding of the credit underlying the SWP bonds and these analyses, it is reasonable to state that to the extent that the District's credit standing is weakened through constraints placed upon either the District's ability to tax or increase water rates, as needed, there will be a direct effect on the perceived credit strength of the Department, thereby affecting its cost of financing and resulting in increased costs for all participants in the SWP.

With best regards,



Mary P. Mudryk
Vice President

Testimony of Dennis Cushman
Metropolitan Water District of Southern California
Metropolitan Water District Board of Directors Meeting, Item 8-1, April 12, 2016
Approve Biennial Budget, Revenue Requirements and Water Rates and Charges
and Suspend Tax Rate Limitation for 2017 and 2018

Good afternoon, Chairman Record and members of the Board. I'm Dennis Cushman, assistant general manager of the San Diego County Water Authority. I would like to submit into today's record, a letter dated April 11, addressed to the Clerk of the Board, with attachments, including CDs numbered 8 and 9. My associate, Liz Mendelson, will hand it to the Clerk of the Board.

The Water Authority opposes suspension of the tax rate limitation, because this action clearly is not necessary, let alone "essential," given the almost \$850 million MWD has over-collected from ratepayers over the past four years. It is also improper when MWD is proposing to reduce its RTS and Capacity Charges -- the very tools the Legislature gave MWD in lieu of higher property taxes.

The Water Authority opposes the 2017 and 2018 water rates and charges on both procedural and substantive grounds.

First, MWD violated Administrative Code Section 4304 because it failed to provide a cost of service analysis and recommended rates at the Board's February meeting. Instead, the cost of service analysis was not released until March 16, more than one month late and eight days after the public hearing. The General Manager's rate recommendations were not presented until they were posted on the MWD website on March 30, almost two months later than required by the Admin Code and three weeks after the public hearing.

MWD also refused again to comply with Government Code Section 54999.7, which requires MWD to provide the data and methodology for establishing its rates in a timely fashion.

Finally, MWD has refused to make its rate model available to the Water Authority and the public. Without the rate model, MWD cannot show how its rates and charges tie to, or are based on its budgetary, accounting and operational data.

Turning to the substance of the proposed rates, we have provided reports by two consulting firms -- Municipal & Financial Services Group and Stratecon Inc. -- that detail why MWD's cost of service analysis is flawed and its recommended rates and charges for 2017 and 2018 are illegal:

- First, State Water Project costs continue to be improperly allocated to transportation rates, rather than supply rates.
- Second, the Water Stewardship Rate is an illegal tax that is not related to any service provided by MWD; rather, these revenues are collected from all member agencies and used by MWD to pay local water supply costs of only some member agencies. These costs, if they may be incurred by MWD at all, must be assigned to the member agencies that benefit from receipt of these funds.
- Third, while MWD's cost of service analysis states and demonstrates that the service characteristics and demand patterns of its 26 member agency customers vary significantly, it has not assigned its costs in a manner that recognizes this fact. It is missing entirely a required step in the industry standard practice of assigning costs to rates and charges.

As a result of these and other issues causing cross-subsidies, all of MWD's rates, including its supply rates, are illegal.

Cost of service is a real limit on the discretion this board has to allocate MWD's costs. The sooner MWD recognizes this fact, the better for all of MWD's 26 member agency customers and the almost 19 million people they serve.



San Diego County Water Authority

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

April 11, 2016

Dawn Chin, Clerk of the Board
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0154

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 Diego 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 11 Finance and Insurance Committee Meeting, Agenda Item 8-1: Approve proposed biennial budget for fiscal years 2016/17 and 2017/18, proposed ten-year forecast, proposed revenue requirements for fiscal years 2016/17 and 2017/18, and recommended water rates and charges to be effective on January 1, 2017 and January 1, 2018; adopt resolutions fixing and adopting water rates and charges for 2017 and 2018; and adopt the resolution finding that continuing an ad valorem tax rate at the rate levied for fiscal year 2015/16 is essential to Metropolitan's fiscal integrity.

Letter Submitting Documents into the Administrative Record

Dear Ms. Chin:

Accompanying this letter are two CD's, titled CD#8 and CD#9. These disks contain a copy of all those documents listed as Item No.'s 205 thru 242 in the attached Master Index of Documents San Diego County Water Authority Requests be Included in the Administrative Record for Setting of MWD Rates and Charges for Calendar Years 2017 and 2018 ("Master Index") correspond to SDCWA . The Water Authority requests that this letter and these documents be included in the Administrative Record.

CD#8 Contains: an index of the contents of CD#8; MWD Storage Agreements and Water Surplus and Drought Management Plan Documents dating back to 2007; indexes of video links to MWD Board Meetings for April 2014- April 2016, Finance and Insurance Committee Meetings for April 2014-April 2016, and IRP Committee Meetings 2015-2016; copies of letters and correspondences between MWD and the San Diego County Water Authority between 3/8/16 and 4/7/16; MWD Fiscal Year Billing Activity Reports for 2014 and 2015; MWD Fiscal Year Sales for 1980-2016, a Table of MWD Preferential Rights in 2015, and several documents cited in the reports referenced below.

CD#9 Contains: an index of the contents of CD#9; MWD Integrated Resource Plan (IRP) documents listed on the index of these documents.

Also attached are copies of the following reports:

1. San Diego County Water Authority - Metropolitan Water District Cost of Service Rate Review, Municipal & Financial Services Group (dated April 9, 2016).
2. Metropolitan Water District of Southern California Water Supply Assessment and Use Among its 26 Member Agency Customers, Stratecon Inc. (dated April 9, 2016) .

The Water Authority requests inclusion of this letter and its attachments, including each and every document listed in the indexes and the attached CDs, in the Administrative Record of proceedings relating to the actions, resolutions, adoption, and imposition of MWD's rates and charges for calendar years 2017 and 2018.

Sincerely



Dennis A. Cushman
Assistant General Manager

Attachments:

1. Master Index of Documents San Diego County Water Authority Requests be Included in the Administrative Record for Setting of MWD Rates and Charges for Calendar Years 2017 and 2018 (4-9-16)
2. CD#8
3. CD#9
4. San Diego County Water Authority - Metropolitan Water District Cost of Service Rate Review
5. Metropolitan Water District of Southern California Water Supply Assessment and Use Among its 26 Member Agency Customers

Attachment 1

San Diego County Water Authority
Metropolitan Water District Cost of Service Rate Review



San Diego County Water Authority

Metropolitan Water District Cost-of-Service Rate Review

April 10, 2016

***Developed by:
Municipal & Financial Services Group***

Executive Summary

MFSG has reviewed the rates and rate setting process used by MWD to set its rates for calendar years 2017 and 2018, as well as materials related to the 2010 and 2012 cases (San Diego County Water Authority vs. Metropolitan Water District), including Statements of Decision by the San Francisco Superior Court. MFSG has formed the following opinions regarding MWD's rates and rate setting process:

1. State Water Project (SWP) costs are incorrectly allocated to conveyance rates and should be recovered entirely by MWD's supply rates (the terms "conveyance," "transportation" and "transmission and distribution" are used interchangeably in this report).
2. MWD's collection of Department of Water Resources (DWR) power costs through conveyance rates deviates from cost-of-service principles and statutory (Proposition 26) proportionality requirements.
3. Collection of MWD's cost of obtaining water from the SWP through the transportation rates is a violation of industry standard cost-of-service principles.
4. Costs allocated to MWD's Water Stewardship Rate (WSR) are not charged by MWD based on cost-causation or benefit received by MWD's respective member agencies (i.e. those that cause the cost and benefit from the supply should pay for it), nor are revenues collected proportionately from those who benefit from expenditure of funds / costs incurred by MWD.
5. MWD's rate setting process fails to address functionally specific cost allocations as dictated by industry standards.
6. MWD's current rates and rate structure do not properly account for the proportional cost allocation of providing reserve capacity for fluctuations in demands as a result of individual MWD customers' use of such capacity.
7. Water supply costs are not properly allocated in MWD's rate structure given its customers' varying and proportional use of water supply and storage facilities.
8. The proposed Treatment Alternative is arbitrary and does not adhere to AWWA cost-of-service standards.
9. There is no demonstrated cost-of-service need to suspend the ad valorem tax limit imposed on MWD.

Assigned Task

MFSG was assigned several tasks related to reviewing the Metropolitan Water District's (MWD) rate setting process for fiscal years 2016-17 and 2017-18 and cost-of-service analysis for proposed water rates and charges for calendar years 2017 and 2018:

- Review the rate methodology, especially regarding the cost-of-service functional allocations and their appropriateness, given the industry standards set forth in the American Water Works Association (AWWA) Manual M1 as modified to comply with California law, principles of cost-causation set forth in Proposition 26 and the Statement of Decision on Rate Setting Challenges in San Diego County Water Authority (SDCWA) vs. Metropolitan Water District.
- Identify MWD's cost allocation methodology for all 26 of its customers.

- Replicate the rate setting process used by MWD in order to understand how its costs have been allocated and rates set to recover its costs.
- Evaluate the alternative treatment charge methodology in terms of its adherence to industry standard cost-of-service principles.
- Determine any cost-of-service need to suspend the ad valorem tax limit imposed on MWD.

After reviewing the materials provided by MWD, MFSG is unable to replicate the rate setting process used by MWD for several reasons.

First, the materials and data provided by MWD in connection with setting its 2017 and 2018 rates are not sufficient for an independent reviewer to independently confirm or validate the financial and operational source data used by MWD in its rate calculations, nor to confirm or validate the procedures and formulae used to identify or allocate cost and usage data to specific functions or services provided by MWD to its customers.

MWD has also not provided any functional cost-of-service models that would allow a third party to replicate its rate setting process beginning with the most basic budget documents. MWD's claim that its financial planning and rate model is proprietary software is on its surface not true; MWD has admitted that it utilizes a commercial software program (Excel, developed and licensed by Microsoft) for its financial planning model. MWD has not developed any software as part of, or in support of, its financial planning/rate model. MWD simply has not and will not disclose the "instructions" (formulae and operational steps) that MWD utilizes with Microsoft Excel's software to constitute and operate MWD's financial planning and rate model. For example, the Excel spreadsheets MWD has provided have the following limitations:

1. In all tables in which a total is shown to be the sum of the numbers listed in a table, the Excel function =SUM([data]) is removed, and a hard coded (i.e. typed in) number equal to the result of that function is put into the cell. The SUM function is not a proprietary function developed by MWD.
2. In all tables where percentage allocations are made, the multiplication formulas are removed and hard coded numbers are shown. The multiplication function is not a proprietary function developed by MWD.

There are numerous other examples and it is obvious that all Excel functions have been removed or disabled in the spreadsheet models provided by MWD in connection with the 2017 and 2018 rates, and none can possibly be characterized as proprietary. It is inconceivable for a public entity such as MWD to withhold such simple calculations. MWD claims that its rate setting procedure (i.e. model) adheres to industry standards. This contradicts the notion of having proprietary formulae in a rate model. There is absolutely no need for any proprietary formulae to calculate the cost-of-service rates for even the largest utilities in the world.

AWWA guidelines are sufficient in their use of basic addition, subtraction, multiplication and division to calculate cost-of-service based rates. There are other more advanced Excel functions that make cost-of-service allocations easier by expediting those basic functions, but there are absolutely no functions necessary to complete a cost-of-service allocation beyond the ones programed by Microsoft into Excel.

MFSG has reviewed the available material provided by MWD as a part of its rate setting process for fiscal years 2016-17 and 2017-18 and cost-of-service analysis for proposed water rates and charges for calendar years 2017 and 2018, and although MFSG cannot replicate the cost-of-service methodology used by MWD when setting those rates, MFSG is able to make observations and form several opinions regarding the cost allocation methodology used by MWD based on the material it has provided.

Review of 2010 Bartle Wells Supplemental Report

MFSG reviewed the 2010 supplemental report from Bartle Wells Associates dated April 12, 2010. The supplemental report concludes that:

“The rates MWD proposes to impose as of January 1, 2011 are not consistent with industry standards, fail to fairly apportion costs among customer classes in proportion to the cost of serving each, and require transportation customers to subsidize water supply customers.”

MFSG understands that the methodology used to set MWD’s 2017 and 2018 rates is the same methodology that was used to set the 2011 rates mentioned in the Bartle Wells report (except for MWD’s proposed new fixed treatment charge, discussed in more detail below). Based on an independently conducted review of MWD’s fiscal years 2016-17 and 2017-18 cost-of-service analysis and documentation for proposed water rates and charges for calendar years 2017 and 2018, MFSG agrees with the assessment of Bartle Wells Associates and concludes that MWD’s rate setting process remains inconsistent with authoritative industry standards and proper cost-of-service principles. Most notably, we agree with Bartle Wells’ finding that SWP costs are purchased water costs and therefore should be functionalized as supply costs and collected through supply rates. We also agree with the Bartle Wells’ finding regarding the Water Stewardship Rate, that conservation and local supply development are supply functions and that the notion that conservation must be encouraged by artificially inflating the cost of transportation of water through MWD facilities is inconsistent with modern day realities in California water law and policy.

Review of 2012 FCS Report

MFSG reviewed the report submitted to the Water Authority by FCS Group dated March 12, 2012. A summary of the report’s finding are as follows:

1. State Water Project (SWP) costs are incorrectly allocated to conveyance rates and should be recovered entirely by MWD’s supply rate.
2. The fees imposed by MWD on the Water Authority to transport Imperial Irrigation District (IID) and canal lining supplies through MWD facilities exceeds the cost of providing that service.
3. MWD’s collection of Department of Water Resources (DWR) power costs through conveyance and transportation rates deviates from cost-of-service principles and statutory (Proposition 26) proportionality requirements.
4. Collection of MWD’s cost of obtaining water through the SWP through the transportation rate is a violation of cost-of-service principles.

5. MWD's Water Stewardship Rate (WSR) is inequitable and does not satisfy cost-of-service and proportionality requirements; first, because it is collected on all water that passes through MWD facilities, including wheeled or transported water; and second, because the funds collected through the WSR are dispersed to member agencies disproportionately.
6. MWD's rate setting process fails to address class-specific cost allocations as dictated by industry standards.
7. The current rate structure does not accurately reflect the cost of providing reserve capacity for fluctuations in demands as a result of individual MWD customers.
8. Costs related to seasonal peaking are not properly addressed in MWD's rate structure.
9. The determination made by MWD's rate consultant (Raftelis Financial Consulting) in 1999 that not enough data was available to perform a properly sophisticated cost-of-service analysis is no longer credible given the time elapsed and advances in technology since 1999.

FCS's report goes on to estimate the economic impact related to the misallocation (i.e. over charging) of the Water Authority. This economic impact is beyond the scope of MFSG's task and was not reviewed by MFSG. After reviewing the report submitted by FCS, MFSG concurs with the nine FCS conclusions listed above.

Industry Standard Cost-of-service Methodology

Identifying the revenue requirements for a utility, which means identifying the total amount of cash that is required on an annual basis to pay for the costs of the utility, includes identifying:

- Operating and Maintenance ("O&M") Costs – the direct and indirect (overhead) costs, including items such as labor, chemicals, power, supplies, etc. – the ongoing costs of operation.
- Capital Costs – the annualized capital expenses, consisting of debt service on existing debt and anticipated capital costs, whether for cash-funded projects ("Pay as You Go," or PAYGO) or the annual debt service (principal and interest) for debt to be issued.

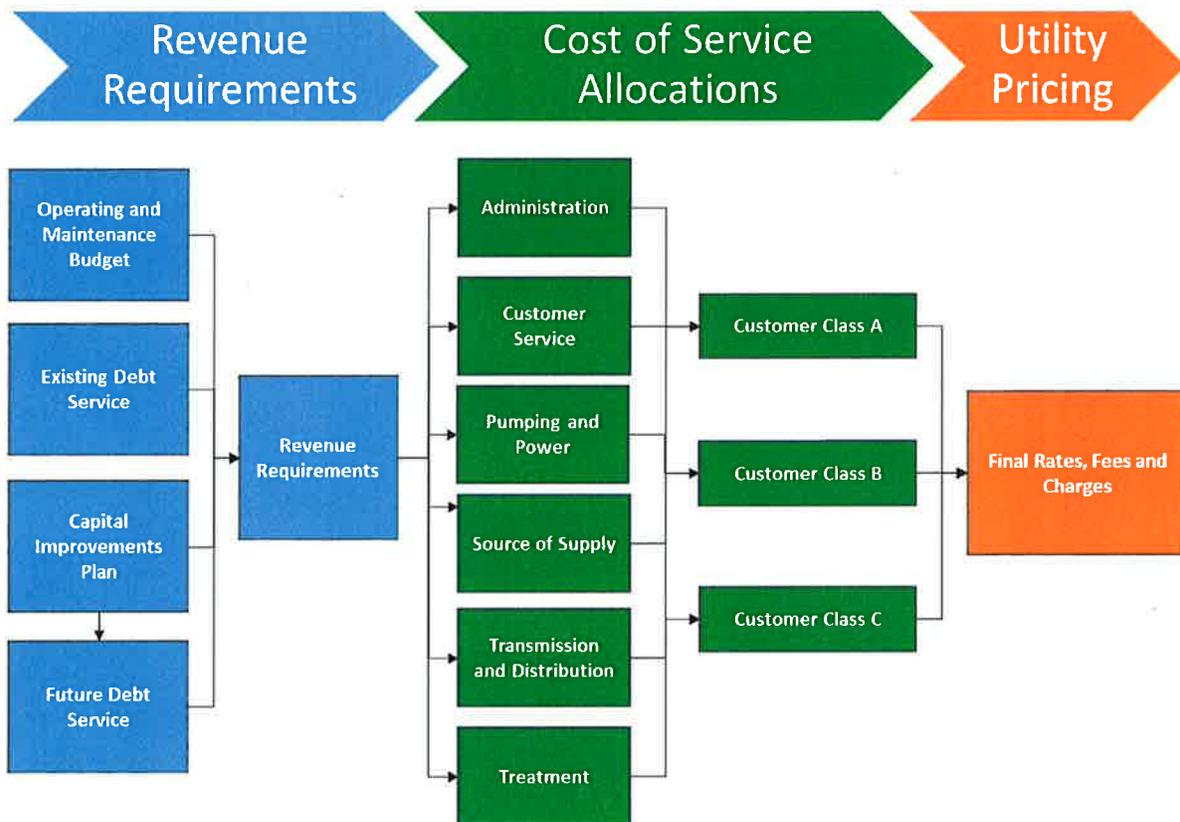
In addition, there may be reserve contributions built into a utility's rate, particularly if a utility is required to maintain certain debt coverage ratios or minimum cash reserve balances. The revenue requirements must be tied to specific budget documents that correspond to (i.e. match) the audited financial statements of the utility. The first step in any cost-of-service study is to collect financial documents that can be sourced when determining a utility's total cost of providing water and other services.

After the total revenue requirements have been determined, miscellaneous non-rate revenues are deducted from the revenue requirements. The resulting net revenue requirement is then allocated to the functions of the utility, to identify the costs to form the basis for various parts of the customer bill. The typical functions (cost elements) to which the net revenue requirement is identified / allocated based on AWWA standards are:

- Source of Supply
- Treatment
- Transmission and Distribution
- Pumping and Power

- Customer Service
- Administrative and General

The revenue requirement is identified or allocated to these functions, to establish the basis for how each type of cost is to be recovered from customers. For example, customer service costs might be allocated based on the number of accounts; meter testing and replacement might be allocated based on the number and size of meters, since larger meters cost more to repair and replace than smaller meters. Treatment and storage costs might be further subdivided into base costs and peaking costs. The cost-of-service results generate the numerator of the calculation to determine customer rates. The denominator is the customer data related to each functional category above. A basic flow chart of how this process works is shown below:



Once the costs of a utility are categorized into the above stated functions, the costs are allocated to customers based on the service requirements and demand patterns of the utility's customer base. Depending on the differences in customer habits, customers are typically grouped into classes of similar service requirements and demand patterns. Costs related to one customer class may not necessarily be related to any other classes. It is this step in the rate calculation that satisfies the necessity for equity in utility rates, proportionality under California law and uniformity under California law and the MWD Act. MWD's rate setting and cost-of-service process fails to include this critical step of grouping its customers into like classes, even with the admission contained in its cost-of-service discussion that MWD's customers are different in terms of service requirements and demand patterns. Rather than assigning its costs by customer class, MWD assigns the costs to "services," which do not account for its customers' service

characteristics or demand patterns. This is an obvious and critical omission in MWD's cost-of-service process.

Distributing Costs to Customer Classes

As outlined above, one of the cornerstones of any rate setting process is defining the various classes of customers served by a water utility. AWWA Manual M26, *Water Rates and Related Charges*, defines customer classes as homogeneous groups of customers that are justified by similarities in service requirements and demand patterns. Both service characteristics and use patterns affect the cost-of-service, and therefore require different pricing among different customer classes in order to fairly and proportionately distribute a utility's costs among its customers. The idea is that customers with similar service requirements and patterns of use should be placed in the same class of service so that rates are nondiscriminatory and reflect, as closely as possible, the cost of providing service to each customer or customer class. Without the proper definition of customer classes, taking these service characteristics and demand patterns into account, it is impossible to properly assign costs to customers.

MWD states in its most recent cost-of-service report (p.87), "Metropolitan, a wholesaler, serves one class of customers: its member agencies." MWD then, in the next sentence, contradicts this notion of having only one customer class by stating that, "These wholesale customers use Metropolitan's facilities differently and, therefore, receive different services from Metropolitan." However, in its rate setting process, MWD fails to identify or define the different service characteristics and demand patterns of its 26 customers or group them into customer classes based on these differences it admits exist. Rather than assign its costs to customer classes, MWD assigns costs to "services," thus completely eliminating a key step in a cost based rate setting process. This issue is evident in several instances of MWD's rate setting process. For example, the way MWD allocates drought related costs makes no effort to allocate these costs equitably based upon usage. From AWWA's M1 chapter on Drought Surcharges:

"The issue of equity can often be addressed by considering the specific circumstances that create the need for the [drought] surcharge and the way in which the surcharge is assessed and collected. For equity to prevail, there should be a reasonable relationship between the amount of surcharge revenue collected from each customer class and the benefits that accrue when the surcharge revenues are used."

MWD allocates the fixed commodity costs of drought related storage costs to its annual volumetric supply rate (p. 88, Schedule 16 of the FY 2016-17 and FY 2017-18 COS analysis), which are then charged to all customers equally, without regard to the proportional extent to which its customers benefit from MWD incurring these costs. Nowhere in MWD's cost-of-service documents is there evidence of MWD's assessment of the proportional demand of each member agency for drought storage and supply.

The Water Stewardship Rate (WSR) is another example of MWD's lack of proper customer class definitions. At the outset, MWD admits that there is no actual service tied to the WSR; rather, this rate is simply a mechanism to redistribute revenues collected from all member agencies and paid to some member agencies in varying degrees to develop local water supplies. Not only does MWD improperly allocate these costs as a transportation charge (discussed in a later section), but MWD collects this rate on all water conveyed through MWD's system, including wheeled water. MWD, on page 111 of its

Proposed Biennial Budget, states that “The [WSR] programs also free up capacity in Metropolitan’s system to convey both Metropolitan water and water from other non-Metropolitan sources.” But MWD has not provided any analysis that evidences or supports this purported benefit to MWD’s distribution capacity. Most critically for purposes of this issue, MWD has failed to provide any evidence that the act of wheeling or transporting third-party water through its facilities *causes* MWD to incur any expenses in its local water resources or conservation programs, which it funds with the Water Stewardship Rate revenues. Accordingly, the collection of Water Stewardship Rate revenues from wheelers utterly fails any possible cost-of-service justification.

Further, MWD makes no distinction between the member agency customers that benefit from local supply projects funded by WSR revenues and the customers it charges to fund these projects (all customers). This violates not only cost-of-service principles, but the proportionality requirements of Proposition 26. Costs incurred to fund local supply projects should be charged proportionally, to the extent MWD’s individual member agency customers benefit from those local water supply projects. MWD has itself admitted that there is no water supply benefit to MWD from the WSR funded local supply projects.

Customer allocation is also important when it comes to MWD’s Readiness-to-Serve (RTS) charge. From page 29 of the COS Report, “The RTS recover the cost of the portion of the system that is available to provide emergency service and available capacity during outages and hydrologic variability due to intermittent droughts.” While MWD allocates emergency capacity costs of its reservoirs to the RTS, it allocates costs of reservoir drought capacity and water supplies that are held in standby for intermittent droughts to the annual volumetric supply rate. This results in annual supply customers subsidizing the drought standby customers’ intermittent demands.

MWD allocates the RTS among all member agencies based on a ten year rolling average of demand. No effort is made to identify or allocate proportionally which customers require and use the emergency service or drought standby service due to variability of local supplies – it is apparent some customers rarely require MWD to provide standby service while others routinely do so. The ten-year average of total annual demand does not properly consider the facts regarding MWD’s customers’ respective use of standby service, and therefore does not allocate the RTS charge properly among MWD’s customers.

In addition to not accounting for the admitted differences in its customers’ service needs, MWD’s demand projections do not reflect the reality of the current consumption patterns of its 26 customers. The demand projections provided by MWD and used to allocate its supply and treatment costs (such as the Water Supply Rate, the System Access Rate and the Water Stewardship Rate) are calculated using, and applied to, pass-through water sales that are not supplied or treated by MWD, specifically San Diego’s independent water supplies. When rates are allocated based on these totals, MWD is not properly identifying which costs are properly allocated to which customers based on service characteristics and demand patterns.

MWD's Use of Terminology

MWD uses certain terminology in a way that misleads and incorrectly identifies certain aspects of its rate setting procedures. For example, from MWD's FY2016-17 and FY 2017-18 Cost-of-service Report (p. 73):

"The Commodity/Demand approach was modified for its application to Metropolitan's rate structure by adding a separate cost allocation for costs related to standby."

When MWD uses the word "standby" it does not use it to mean the industry standard meaning of emergency supply in the face of outages or the reduction in the supply from a primary water source. From AWWA Manual M1 (Sixth Edition, p.173 -174):

"Standby service (and the associate [sic]) rate is different from interruptible service or a capacity reservation"

And also:

"By definition, standby service is intended to be used on a random and infrequent basis. Therefore, such service is not intended to be a major source of revenue and is not likely to have a material effect on a utility's financial sufficiency as long as the standby rate recovers any additional costs incurred to provide the service."

The industry definition of standby service is truly for emergency service, not everyday storage/treatment capacity. MWD uses the word "standby" to refer to existing capacity in its system that is accessed routinely by some of MWD's 26 customers to varying degrees. While the word "standby" seems to adequately describe the use of this supply, MWD's use of the term is not consistent with the industry standard cost-of-service definition of the word and thus contributes to distorting proper cost allocations.

MWD Cost-of-service Allocations

State Water Project – MWD improperly allocates a large portion of the price of water purchased by MWD from the California State Water Project (SWP) as a transportation cost rather than properly allocating it as a supply cost (COS Report, p. 77). This results in unjustifiably higher cost allocations to MWD's customers who use MWD's transportation service to convey non-MWD water and unjustifiably lower cost allocations for customers who buy water from MWD.

MWD makes reference to the Federal Energy Regulatory Commission (FERC) on page 94 of their COS report –

"The treatment of Metropolitan's Conveyance and Aqueduct facilities as one integrated system for purposes of rate-setting is not uncommon or novel. The Federal Energy Regulatory Commission (FERC), for example, recognizes the practice of rolling the costs of transmission facilities into a single rate when the facilities are part of an integrated system. The practice is recognized regardless of legal ownership of (or entitlements in) a particular facility."

The above statement is misleading. This appears to be a reference to FERC Order 1000 (136 FERC 61,051, July 2011) which modifies the rules governing when electric utilities share the cost for capital investments

into transmission facilities. The order provides six principles to govern when and how electric utilities share the cost of transmission facilities. Two of these principles would apply directly to Metropolitan's behavior, if it were an electric utility being regulated under Order 1000, and likely result in FERC finding the cost allocation scheme not "just and reasonable". Principle two states that there is "no involuntary allocation of costs to non-beneficiaries" of a transmission facility – this essentially requires direct physical contact to the facility being paid for; and principle three states that the cost-benefit ratio for services provided should not exceed 1.25 unless the public utility provides justification to FERC, and FERC approves, a higher ratio. Here Metropolitan wants to fill the role of both the rate setting utility and the oversight agency. When FERC approves a utility's rates, it ensures the process is transparent, judges objectively, and guarantees that the rates are just and reasonable. By collapsing the role of the utility and the agency into a single entity, Metropolitan removes the transparency and objectivity from this process, and so may not claim the same level of deference as FERC.

MWD is a wholesale customer of the SWP. The cost of moving water through the SWP for delivery to MWD is included in the SWP water supply costs borne by MWD. After the point of delivery, there is no rational basis for allocating SWP costs to any other MWD function but **water supply**. As far as MWD customers are concerned, the SWP costs are paid for by the time the SWP water reaches MWD's transmission system. MFSG agrees with the previous expert reports on the subject (FCS and Bartle Wells) and the Phase I decision by Judge Curtis E.A. Karnow that, "Met's conveyance rates over collect from wheelers because Met allocated all of the State Water Project costs for the transportation of purchased water to its conveyance rates." (August 28 Statement of Decision, p. 13). Moreover, MWD has not described how or to what extent to which wheeling uses the SWP aqueduct (Statement of Decision, p. 54). The transmission costs of the SWP should be passed through to MWD customers as a supply cost only.

Debt Allocation – MWD allocates both current and anticipated future debt based on its current asset base (i.e. current net book value of its assets, including work in progress). That is, a certain proportion of total debt is allocated (for rate making purposes) to each of MWD's asset categories based on the dollar value of current assets, not the debt (currently held or planned) associated with each asset category. This methodology would be more acceptable if all 26 of MWD's customers were uniform in their use of MWD's assets, which as stated previously, MWD admits is not the case. For example, MWD's treatment plants do not uniformly serve its 26 customers. When MWD issues debt to rehabilitate or repair a specific treatment plant, the debt payment related to that rehabilitation is spread over all of MWD's assets, including source of supply, conveyance and storage. It is a clear violation of cost-causation principles to allocate treatment related debt to anything other than the customers served by the treatment assets that cause the need for debt to be issued. See the following table:

Functional Categories	NBV for FY 2018	% of Total NBV
Source of Supply	26,956,288	0.3%
Conveyance and Aqueduct	1,721,625,421	21.1%
Storage	1,974,847,640	24.2%
Treatment	2,542,059,665	31.1%
Distribution	1,468,515,134	18.0%
Administrative and General	321,024,887	3.9%
Hydroelectric	113,543,153	1.4%
Total	\$ 8,168,572,190	100.0%

Source: COR Report p.66. Totals may not add due to rounding.

If, for instance, MWD issues debt in the amount of \$100,000,000 to expand its storage capacity, then \$31,100,000 (31.1%) of that debt would be allocated under MWD's methodology to treatment, and charged on the treatment rate. This is more than the portion \$24,200,000 (24.2%) that would be allocated to storage. Clearly this is not a cost-causation related allocation. Because of this, the above stated allocation methodology unjustifiably allocates certain costs to customers who do not make use of certain assets. This cost allocation is not consistent with proper cost-of-service standards as outlined in AWWA Manual M1 and is not consistent with the proportionality requirements of Proposition 26.

Demand Management – As noted earlier, MWD misallocates costs related to its demand management program (collected through the Water Stewardship Rate) to conveyance. As discussed above, demand management is not a service that MWD provides and the WSR is a mechanism to redistribute revenues collected from all member agencies and paid to some member agencies in varying degrees. To the extent that MWD spends funds on demand management, those costs should be allocated to supply exclusively, and proportionally to the MWD customers who benefit from the costs MWD incurs. As per MWD's own guidelines for considering incentives for demand management projects states,

“[The] project must replace an existing demand or prevent a new demand on Metropolitan's imported water deliveries either through direct replacement of potable water or increased regional groundwater production.” (10/14/2014 Board Meeting Letter 8-4, Attachment 1, page 1)

And also:

“The current program was adopted in 2007 with a goal of incentivizing 174,000 AFY of new annual production.” (10/14/2014 Board Meeting Letter 8-4, Attachment 1, page 2)

And also,

“For projects proposed by member agencies, Metropolitan would consider the following:

- *Water quantity to ensure that the project makes a meaningful addition to regional supply reliability*
- *Water quality to confirm that project water will meet all water quality objectives,*
- *Ensure that the project helps meet the IRP resource needs*
- *Ability to help address current and future drought conditions*

- *Impacts to Metropolitan's cash flow (delivered cost of the project)*
- *The need for Metropolitan's involvement to expedite project completion*
- *The availability of Metropolitan resources to expedite project completion, and*
- *Compliance of the project with all permitting and environmental requirements."*

These, particularly the first four bullets, are strictly related to MWD's water supply. Nowhere in the explicitly stated considerations is any mention of any requirement that a project increase transmission capacity in MWD's system as a result of any Local Resources Program (LRP) project, let alone what the benefit of such increases capacity would be. And no evidence has been presented by MWD of any such transportation benefit. Furthermore, there is no mention anywhere in any MWD document or analysis provided in connection to this rate making that the act of wheeling or transporting independent water supplies in MWD facilities *causes* MWD to incur these local water resource development and conservation program expenses. This fails the cost-causation test that is the core tenet of cost based rate making.

In the April 24, 2014 Statement of Decision issued by Judge Karnow, he states that there may be some avoided costs related to conveyance as a result of these projects, but "the best we can do with this record is to conclude that to some unspecified extent, some portion of the Water Stewardship Rate is causally linked to some avoided transportation costs. This is not enough to show that the costs of the service have a reasonable relationship to the service provided." And further, that, "The Raftelis 1999 report suggests 50-50 allocation, but that suggestion was made simply because no data supported any other allocation; the number is wholly arbitrary, as is the allocation of 100% of these Water Stewardship Rate charges to transportation."

In the 2016-17 and 2017-18 cost-of-service analysis on page 96, MWD states that, "In fact, Metropolitan's Demand Management Programs result in a reduction in demand for imported water supplies." MWD continues to state that, "It is this reduced demand that defers or avoids capital costs to build, expand, or maintain conveyance and distribution facilities." While this might occur in some circumstances, MWD has still made no effort to identify or calculate this avoided cost to determine the proper allocation between supply and transportation. Without a cost-of-service-based calculation of a cost avoidance related to any demand management project, this rate is arbitrarily set and not based on industry standard cost-of-service. In the event that MWD could demonstrate an actual avoided transportation cost as a result of any demand management project, MWD would also need to demonstrate in assigning any such costs to wheeled water that it is the wheeling that caused the costs to be incurred as opposed to increased capacity being needed to transport MWD water. Because MWD has failed to demonstrate that the wheeling transaction *caused* MWD to incur the expense for which it has charged the Water Stewardship Rate, MWD has failed the cost-causation test.

The costs of MWD's subsidy "incentives" must be borne proportionally by the customer member agencies receiving the supply benefit as a result of the subsidy "incentives" from MWD in order to comply with industry standards for equity and California legal requirements that costs and benefits be measured and assigned proportionally.

Proportionality and Proposition 26

As discussed earlier, MWD's rate setting procedure has no proportionality analysis based on MWD's 26 customers. Proposition 26 requires three specific things of a public agency setting rates and/or fees:

1. Revenues cannot exceed the costs required to provide the service
2. Revenues cannot be used for any other purpose than to recover costs related to the service provided
3. Amount of any fee cannot exceed the proportional cost of the service attributable to a customer

Requirements number one and three are not addressed at all by MWD's current cost-of-service methodology. Specifically, MWD makes no effort to identify which customers use which service categories when being allocated costs functionalized based on service category.

Because MWD may not, as a California special purpose government entity, collect general fund revenues to provide services outside the scope of water supply/treatment/storage/delivery, requirement two applies within the context of utility service – that is, cost-based revenues should only be used to recoup expenses related to a specific service. Not only has MWD recovered revenues far in excess of its costs to provide services, it has spent these excess revenues in a non-budgeted way on things not tied to any purpose for which the revenue was collected.

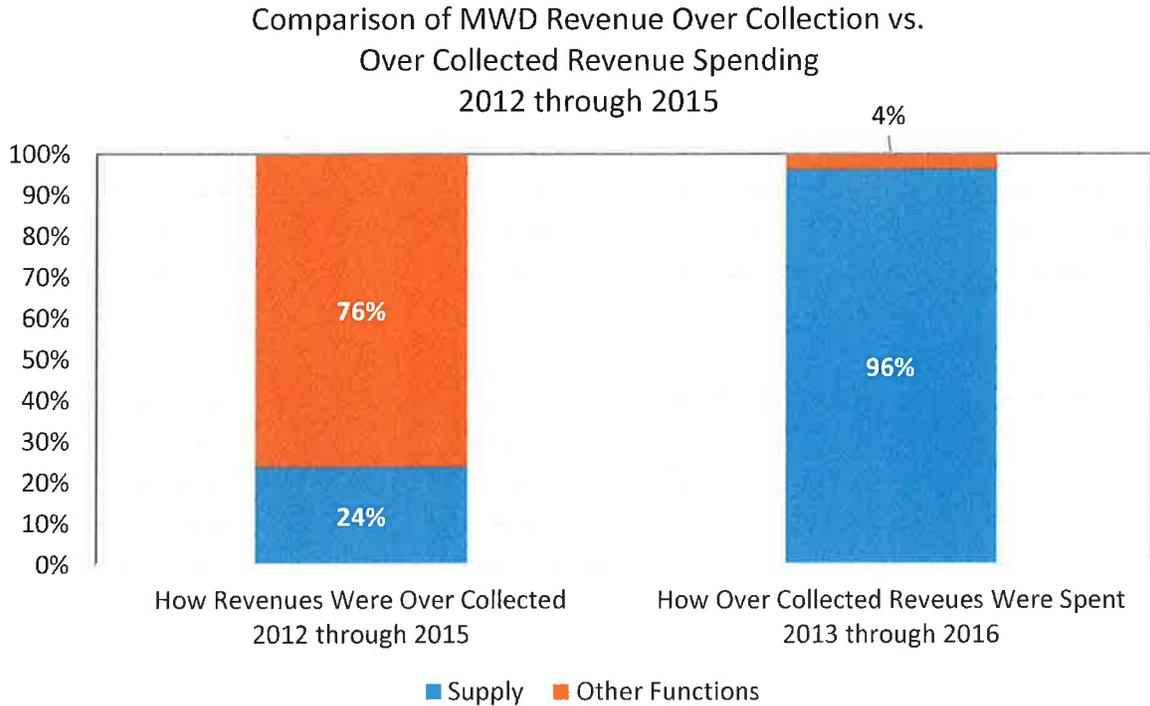
The most notable example of MWD disregarding proportionality is the methodology used to allocate what it calls "standby" and "emergency" storage, only about a third of which is paid for by the RTS. MWD claims that what it provides is "insurance" in the form of additional storage for when member agencies need additional water supply (MWD Board Workshop #4 Transcript, March 22, 2016). What MWD does not do is allocate the costs of this storage capacity and supply inventory with any recognition of who benefits from this "insurance." These costs are allocated based on average demand (MWD Board Workshop #4 Transcript, March 22, 2016), which fails entirely to identify or determine which member agencies are using the emergency storage capacity and supply and in what proportion.

MWD has made references to the "unknown" and uncertainties related to climate change, but makes no reference to such preparations in its cost-of-service report, and therefore has made no allocations based on the projected need of any of their member agencies associated with climate change.

Revenue Over Collection

It can be shown that MWD has over collected revenues and spent said revenues on a non-budgeted, non-cost-of-service basis. Based on analysis of revenues vs. expenses presented by MWD for FY 2012 through FY 2015, MWD collected revenues above and beyond its revenue targets and revenue needs to fund the operating and capital costs of its system each year, and spent these "excess" dollars on various purposes, programs and projects, including capital projects, operations and maintenance expenses, and conservation that was never included in its budget (which served as the basis for the rates and fees it charged in the first place). Based on MWD's supporting documents (including financial presentations, flow data and spending data), the money generated from transportation related rates accounted for an average of 75% of "excess revenues" from FY 2012 to FY 2015, however 96% of these excess revenues

were spent on supply related projects (as defined by MWD) in those years. That is, all revenues that are collected above and beyond budgeted expenses are spent without regard to why the revenues were collected or the extent to which they were over collected proportionally among MWD's member agencies. The following chart illustrates the sharp difference in how revenues were over collected and how they were spent.



Assumption: % of revenues over collected = % of revenues collected

In stark contrast to its own practice, refusing to maintain balancing accounts or true up at the end of one revenue period and the beginning of the next, it should be noted that MWD requires such a re-balancing from the California Department of Water Resources (DWR) annually on DWR's statement of charges sent to MWD. For example,

The Conservation Replacement Accounting System charge of \$0.8 million was removed in the rebill since the capitalization of projects and modification of costs resulted in an over-collection of the charge, which will be refunded to the contractors separately from the Statement of Charges. The Metropolitan Water District of Southern California Report on the Audit of Metropolitan's 2015 Charges for the State Water Project Issued by State of California Department of Water Resources.

MWD staff has stated that the result of its rate setting process will be the collection of revenues that exceed actual expenditures in seven out of ten years (April 8, 2013 F&I Meeting, 24:21 into the recording available on MWD's website). MWD does not re-balance ("true up") revenues and expenditures as a part of its bi-annual budget process. However, among regulated utilities, this "true up" is a common industry practice designed to ensure the integrity of cost based rate making. The California Public Utilities Code

(CPUC) describes the process of using Balancing Accounts to determine whether costs or revenues were higher each year, and account for such a discrepancy in the following year's budget. CPUC Section 792.5 States:

"Whenever the commission authorizes any change in rates reflecting and passing through to customers specific changes in costs...the commission shall require as a condition of such order that the public utility establish and maintain a reserve account reflecting the balance, whether positive or negative, between the related costs and revenues, and the commission shall take into account by appropriate adjustment or other action any positive or negative balance remaining in any such reserve account at the time of any subsequent rate adjustment."

While MWD is not a PUC-regulated utility, industry best practices dictate that during each budget cycle the utility make its best effort to align projected expenses with projected revenues. It is understandable that the two never match exactly at the end of a fiscal year. However, the difference in revenues and expenditures (especially in the case where revenues exceed expenditures) should be accounted for in each budget cycle, so that over the course of time, and on average, revenues equal expenditures. MFSG does not see any effort made by MWD to account for this in its budget. This has led to the recent practice of revenue collection far in excess of the cost-of-service and the subsequent spending of the excess revenues collected from one service function being spent on projects related to other service functions. Such cross subsidization is not permitted as a general matter of cost-causation and allocation principles for both industry standards and is constitutionally prohibited under Proposition 26.

Treatment Rate Alternative

MFSG has reviewed the proposed alternative treatment cost allocations presented by Raftelis Financial Consultants (RFC) to the MWD Board. Absent the net book value model and rate setting model, neither of which has been provided by MWD, MFSG cannot determine if the cost allocations presented by RFC are consistent and compliant with industry standard cost-of-service allocations, both as to the allocation of costs between fixed vs. variable costs, and (within fixed costs) allocations between commodity, demand, and standby costs.

However, MFSG can state with certainty that the allocation of purported fixed costs based on the proposed two-part test (i.e. the greater of a ten-year average consumption from 1998-2007 or the most recent ten year rolling average) is not consistent with the proper cost-of-service methodology outlined in AWWA Manual M1 or the principles of cost-causation under Proposition 26. Selection of the time period 1998-2007 is at best arbitrary, or, calculated to achieve a specific outcome in the assignment of costs unrelated to cost-causation.

Cost-of-service principles dictate that current costs be allocated based on current demand. RFC's treatment charge alternative presentation suggests that allocating current fixed costs based on FY 1998 through FY 2007 is appropriate because that is when MWD did its last significant treatment plant capacity addition. This capacity addition is **not an ongoing "fixed" operating cost related to treatment**. While there are fixed costs related to operating the treatment plants currently, the consumption habits of an MWD customer from 1998 to 2007 has no rational nexus to allocating the current treatment costs (fixed or variable) in FY 2016-17 and FY 2017-18.

The "Test Year" for any rate setting process must reflect one of two things: the most recently available actual data (current year) or the most reasonably projected data for next year. Regardless of the cost allocation, neither of the results of the two-part test proposed by RFC reflect a legitimate basis upon which to charge customers for current or future treatment costs.

It is also clear from the Cost-of-service report that MWD is no longer allocating the same costs to treatment. MWD's Capital Improvement Plan contains about \$600 million in additional treatment improvements while projecting that the treatment charge will decrease. It is implausible that the nature of these improvements reduces MWD's treatment operating expenses in a way that would result in such a decrease.

Ad Valorem Tax Limit Suspension

MWD has the authority to levy ad valorem taxes to raise revenue needed to pay certain debt obligations and SWP costs. This tax levying ability is limited based on Section 124.5 of the MWD Act. MWD's Board Letter 8-1 says specifically:

"Since FY 1990/91, Section 124.5 of the Metropolitan Water District Act (MWD Act) has limited property tax collections to the amount necessary to pay the total of annual debt service on Metropolitan's general obligation bonds plus a small portion of its SWC payment obligation, limited to the preexisting debt service on state general obligation bonds (Burns-Porter bonds) for facilities benefitting Metropolitan"

MWD has the ability, based on the same section of the law, to suspend this limit if after a public hearing, the MWD Board determines that the limit must be suspended to raise revenue essential to the fiscal integrity of the District. MWD has used this ability to suspend the limit on the ad valorem tax in Fiscal Years 2013-14, 2014-15, and FY 2015-16. In the material provided for the April 12, 2016 Board meeting, specifically Board Letter 8-1, it is recommended by MWD staff that the Board once again suspend the tax limit for FY 2016-17 and FY 2017-18.

MFSG cannot opine on the necessary level of demonstration required for MWD to show that additional tax revenues are "essential for the fiscal integrity" of the District. MWD itself (in Board Letter 8-1) admits that SB 1445 does not define "essential" or "fiscal integrity", but determines that the full text of the provision, the legislative context, and the legislative history provide guidance to their intended meaning. However, MWD does not go into any detail as to its exact interpretation of this intended meaning.

MFSG's opinion on the matter is limited to exactly how these purported essential revenues should be raised and allocated to its customers within a cost-of-service perspective. First, based on the supplied material, MFSG has determined that MWD finds it appropriate to suspend the limit on its taxing ability for the following reasons:

1. MWD will see increases in SWC costs (Board Letter 8-1, p. 11)
2. MWD must maintain a balance between fixed and variable revenues (Board Letter 8-1, p. 12)

3. Other fixed revenue generation options are “unavailable or impractical” (Board Letter 8-1, p. 12)

The first reason (SWC cost increases) has already been shown by multiple experts (and ruled by the courts) to be a supply cost increase, and therefore should be allocated to MWD’s supply rate to align these costs with the service function by which these revenues should be collected. This is certainly an available option, and would be the most appropriate option in terms of a cost-of-service basis for generating SWC revenue.

MWD cites the need for “revenue stability” when considering the need to suspend the ad valorem tax limit. MWD does not, however, cite any specific policy or need to raise a certain amount of fixed vs. variable revenue. Nor does it attempt to explain what percentage of fixed revenues would qualify as essential to the fiscal integrity of the District, which is the condition upon which it has the authority to suspend the tax limit. In short, MFSG cannot deduce exactly what target MWD has for fixed revenues.

MWD’s existing RTS charge - a fixed charge - is authorized by the MWD Act. As a result, MFSG fundamentally disagrees with the determination by MWD that an increase in ad valorem taxation is "essential" to achieve MWD’s revenue stability objective. In fact, Attachment 5 to MWD’s April 12, 2016 Board letter (Engineer’s Report, p. 10) states that the existing RTS charge “will result in greater water rate stability for all users throughout Metropolitan’s service area.” The same report sets the potential benefit amount that could be generated by the RTS to be over \$406 million. The report then recommends to only collect \$144 million from the FY 2016-17 RTS charge – only 34 percent of the costs for which MWD states it could collect from the RTS charge. Not only is MWD foregoing the obvious – and more cost-of-service-compliant basis – opportunity to **increase** the RTS charge (to recover as much as 100 percent of the costs for which the RTS charge was designed), MWD instead proposes to **decrease the RTS charge** over the next two years. Clearly the option of maintaining or increasing the RTS is a readily available option for MWD and, as such, undermines MWD’s claim that suspending the tax rate limitation of its Act is “necessary to the fiscal integrity of the district

For these reasons, and solely from a cost-of-service perspective, MFSG disagrees with the determination that MWD must suspend the limit of its ad valorem taxing authority. Indeed, by suspending the limitation and not allocating these costs to the appropriate service function (i.e. supply), MWD is understating the cost-of-service related to its Supply Rate, contrary to industry standard practices relating to cost-causation and principles related to Proposition 26.

Conclusions

In the opinion of MFSG, MWD's rates do not meet industry standards, are not based on cost-causation principles and fail entirely to assess the proportional benefits MWD's 26 customer member agencies receive from the costs MWD incurs.

Attachment 2

Metropolitan Water District of Southern California
Water Supply Assessment and Use Among its 26 Member
Agency Customers



**Metropolitan Water District of Southern California Water Supply Assessment
and Use Among its 26 Member Agency Customers**

By

Rodney T. Smith, Ph.D.
President
Stratecon Inc.

1490 N. Claremont Blvd, Suite 203
Claremont CA, 91711
(909) 626-2221
www.stratwater.com

April 9, 2016

The San Diego County Water Authority requested Stratecon Inc. conduct a water resource analysis of the sources and demands for the Metropolitan Water District of Southern California (“Metropolitan”)’s water supplies. A primary objective is to identify how material changed circumstances in Metropolitan’s supplies and variability in Metropolitan’s water sources and member agency water demands drive the magnitude and timing of costs incurred by Metropolitan. The analysis includes a short examination of the historical record of Metropolitan’s water supplies and water demands and an analysis of the projected demand for Metropolitan water. Based on this information, the discussion then addresses what uses and users are causing the magnitude and timing of costs incurred by Metropolitan.

Material Changed Circumstances and Risks

Metropolitan’s operations and programs must be understood within historical context as well as material changed circumstances in Metropolitan’s water supplies and its 26 member agency customers’ water demands. As observed by Metropolitan Water District Blue Ribbon Task Force in 1994, “current demand and supply volatility makes defining (Metropolitan’s) optimal water resource mix much more complex than in the past.”¹ Metropolitan and certain of its member agencies available water supplies have been materially impacted by changed circumstances including:

- Starting with the Mono Lake decision, Los Angeles has experienced significant declines in the availability of water from the Los Angeles Aqueduct and caused an increased demand on Metropolitan’s water supplies.
- The era of a full Colorado River Aqueduct ended as the impact of the U.S. Supreme Court decision in *Arizona v. California* caught up with Metropolitan, causing a substantial reduction in Metropolitan’s available Colorado River low cost water supplies, which was only mitigated by implementation of the Quantification Settlement Agreement (“QSA”) and related agreements in 2003.
- Increased restrictions on operations of the State Water Project (“SWP”) reversed a trend of increasing SWP water allocations in the late 1990s and early 2000’s and a new trend of decreasing SWP water allocations starting in 2003 that has caused a reduction in the availability of SWP water supplies.
- Some of Metropolitan’s member agencies have developed and are developing local water supplies to reduce their demands on Metropolitan, including most prominently programs undertaken by the San Diego County Water Authority, while other agencies’ reliance is increasing.

Understanding the consequences of material changed circumstances and risks is essential in order to properly assess what is currently causing Metropolitan to incur costs and the proportional benefits to Metropolitan’s member agencies.

¹ “Metropolitan Water District Blue Ribbon Task Force”, Final Report January 1994, p. 5.

Metropolitan's Water Sources

Metropolitan's principal water resources are based on Colorado River rights and a contract to purchase water from the California State Water Project ("SWP"). For different reasons discussed below, the year 2003 represented a turning point in the availability of water from these sources. Simply stated, the amount and reliability of Metropolitan's water supplies in 2003 and thereafter are materially lower than before 2003. As a result, Metropolitan incurred and is continuing to incur increased costs to meet the varying demands of its member agencies.

Colorado River Water Supplies

Under a 1931 Agreement among California parties, Metropolitan has a Priority 4 right for 550,000 acre feet ("AF") per year and Priority 5 right of 662,000 AF per year of the total consumptive use of Colorado River water available to California.² These priorities are junior to 3.85 million AF of Colorado River water for Priorities 1, 2 and 3.³ Given that California's total annual entitlement to Colorado River water equals 4.4 million AF, Metropolitan will receive water under its Priority 5 right only when there is unused entitlement water from Arizona or Nevada or when there is surplus Colorado River water in the Lower Basin.⁴

The historic record of Colorado River water deliveries can be divided into two periods: pre-2003 and 2003 and thereafter (see Chart 1).⁵ Before 2003, Metropolitan routinely received water under its Priority 5 right. In 30 of the 39 years for the period 1964-2002, Metropolitan's Colorado River water supplies ranged between 1.1 million AF and 1.3 million AF per year.⁶ During the last decade of the 20th Century, Arizona and Nevada's use of Colorado River water was rapidly approaching their Colorado River water entitlements. As a result, the availability of water under Metropolitan's Priority 5 right to keep Metropolitan's Colorado River Aqueduct full had come to an end. The loss of this Colorado River water would have been even more devastating to Metropolitan and its member agencies absent the execution of the Quantification and Settlement Agreement ("QSA") and related agreements in 2003.

Since 2003, there have been two sources of Colorado River water conveyed through Metropolitan's Colorado River Aqueduct: (i) Metropolitan water available under its Priority 4 right, own transfer agreements and programs discussed below and (ii) San Diego County Water Authority's Colorado River water acquired under its long-term water and conservation

² Boulder Canyon Project Agreement, Requesting Apportionment of California's Share of the Waters of the Colorado River Among the Applicants in the State, August 18, 1931, Sections 4 and 5.

³ *Ibid*, Section 3.

⁴ The text ignores Metropolitan's liability for a cutback in its Priority 4 right when the use of Colorado River water by California Indian Tribes and miscellaneous Present Perfected Rights exceeds 14,500 AF per year (see discussion below).

⁵ Compiled from Decree Accounting Reports 1964-2014, *Arizona v. California*, U.S. Bureau of Reclamation, <http://www.usbr.gov/lc/region/g4000/wtracct.html>.

⁶ The Colorado River water in excess of Metropolitan's Priority 4 right was almost unused entitlement water from Arizona and Nevada during this time period. Starting in 1989, Metropolitan's water conservation agreement with the Imperial Irrigation District generated about 100,000 AF per year of conserved Colorado River water, although 20,000 AF of this amount was available to the Coachella Valley Water District. Therefore, the amount of Colorado River water available to Metropolitan under its agreement with the Imperial Irrigation District accounted for a minor share of the water available to Metropolitan above its Priority 4 right.

agreement with the Imperial Irrigation District (“IID”) and the lining of the All American Canal and the Coachella Canal. For the 2003-2014 time period, the annual amount of Colorado River water conveyed through the Colorado River Aqueduct averaged 856,720 AF, of which 752,255 AF were Metropolitan’s Colorado River water supplies and 104,454 AF were San Diego’s Colorado River water supplies (see Table 1).⁷ Concerning future Colorado River water supplies, San Diego’s supply situation is firm—set in contract—while Metropolitan’s Colorado River water situation is more complex. Both San Diego and Metropolitan have incurred and will incur substantial costs in order to ensure availability of Colorado River water in the future.

Table 1
Average Annual Colorado River Water Supplies (AF): 2003-2014

Metropolitan	San Diego	Total
752,255	104,454	856,720

Starting in 2018, the quantity of conserved water transferred from IID to San Diego will increase from 100,000 AF per year (the amount in 2014) and ramp up to 205,000 AF by 2022 due to a three year period of early transfer water. By 2023, the primary transfer volume will stabilize at 200,000 AF.⁸ Therefore, San Diego’s total Colorado River water supplies will increase from 180,000 AF in 2014 to 280,000 AF by 2023. San Diego will pay for this water supply and therefore Metropolitan need not incur any costs in order to meet this demand.

Metropolitan has entered into long-term water conservation agreements with IID and the Palo Verde Irrigation District (“PVID”). Metropolitan recently purchased land in PVID and is now the largest landowner in the District. Metropolitan also has access to unused Priority 3 water, ICS credits and engages in interstate banking arrangements and related transfers with the Southern Nevada Water Authority.

Metropolitan-IID Water Conservation Agreement. Table 2 shows the historic record of Colorado River water available to Metropolitan under its IID water conservation agreement since 2003.⁹ The annual amount of water conserved averaged 103,943 AF. After CVWD’s exercise of its right of up to 20,000 AF per year under a 1989 Approval Agreement, the net supply of Colorado River water available to Metropolitan averaged 90,863 AF.

Table 2
Water Conservation under the IID/Metropolitan 1988 Agreement

<i>Year</i>	<i>Conserved Water</i>	<i>To CVWD</i>	<i>Net Supply</i>
2003	105,130	0	105,130
2004	101,900	20,000	81,900

⁷ Compiled from Decree Accounting Reports in *Arizona v. California*, 2003-2014.

⁸ “Colorado River Water Delivery Agreement: Federal Quantification Settlement Agreement”, October 10, 2003, Exhibit B <http://www.usbr.gov/lc/region/g4000/crwda/crwda.pdf>.

⁹ Compiled from Decree Accounting Reports in *Arizona v. California*, 2003-2014.

<i>Year</i>	<i>Conserved Water</i>	<i>To CVWD</i>	<i>Net Supply</i>
2005	101,940	20,000	81,940
2006	101,160	20,000	81,160
2007	105,000	20,000	85,000
2008	105,000	16,000	89,000
2009	105,000	12,000	93,000
2010	105,000	8,000	97,000
2011	103,940	4,000	99,940
2012	104,140	10,463	93,677
2013	105,000	6,693	98,307
2014	104,100	19,795	84,305
Average	103,943	13,079	90,863

Metropolitan-PVID Land Fallowing Agreement. Metropolitan and PVID entered into a 35-year land fallowing agreement in 2004 providing for a minimum of 33,000 AF and a maximum of 133,000 AF of conserved Colorado River water.¹⁰ Table 3 provides the annual amount of water conserved under the program.¹¹ In 2009, Metropolitan and PVID entered into a one-year supplemental fallowing program that conserved an estimated 24,100 AF of Colorado River water in 2009 and an estimated 37,900 AF of Colorado River water in 2010.¹² The annual amount of water conserved by land fallowing agreement has averaged 93,489 AF.

Table 3
Water Conserved by Metropolitan/PVID Land Fallowing Program

<i>Year</i>	<i>Acre Feet</i>
2005	108,666
2006	102,039
2007	65,300
2008	94,303
2009	144,325
2010	148,614
2011	122,216
2012	73,662
2013	32,750
2014	43,010
Average	93,489

¹⁰ Metropolitan Water District, Urban Water Management Plan (2010), p. 3-6.

¹¹ Compiled from Decree Accounting Reports in *Arizona v. California*, 2003-2014.

¹² Urban Water Management Plan, p. 3-6.

Under the QSA, Metropolitan's available Colorado River water is adjusted annually depending on whether the consumptive use of Colorado River water under Priority 1, 2 and 3b is below or above 420,000 AF.¹³ Priority 1, 2 and 3b are, respectively, the consumptive use of Colorado River water by PVID, the Reservation Division of the Yuma Project and the Lower Palo Verde Mesa.¹⁴ By reducing PVID's use of Colorado River water, PVID land fallowing increases the amount of Colorado River water available to Metropolitan (see Chart 2).

Chart 3 plots Metropolitan's Agricultural Adjustment (on the vertical axis) versus the amount of water conserved by PVID land fallowing (on the horizontal axis) to illustrate how land fallowing under Metropolitan's agreement with PVID is a key driver of Metropolitan's Agricultural Adjustment. The annual variation of the amount of water conserved by land fallowing explains 95% of the annual variation in Metropolitan's Agricultural Adjustment for available Colorado River supplies from the consumptive use of Priority 1, 2 and 3b. For the period 2005-2014, "Metropolitan Agricultural Adjustment" has averaged 16,596 AF. Even though PVID land fallowing averaged 93,489 AF during this time period, there has been sustained overruns by Priority 1, 2 and 3b relative to the 420,000 AF benchmark.

Metropolitan must engage in significant land fallowing to offset its liability for underwriting the risk that the consumptive use of Colorado River water by Priority 1, 2 and 3b (plus Yuma Island) exceeds 420,000 AF per year. Metropolitan must conserve about 82,000 AF of water by land fallowing for Metropolitan to avoid its liability for Priority 1, 2 and 3b overruns (see Chart 3).¹⁵ With an annual average of 93,489 AF of land fallowing, Metropolitan's net increase in annual Colorado River water supplies after accounting for the liability of Priority 1, 2 and 3b overruns is 16,596 AF.¹⁶

In July 2015, Metropolitan purchased 12,782 acres (of which 12,049 acres are irrigable) in the Palo Verde Valley within PVID.¹⁷ When combined with an earlier purchase of 8,000 acres from San Diego Gas & Electric in 2001, this brings Metropolitan's ownership to about 20% of the acreage in the Lower Palo Verde Valley. Public reports indicate that Metropolitan staff is in the process of establishing a land management strategy for the acquired lands.¹⁸ Presumably, a strategy may be developed to increase the amount of Colorado River water available to Metropolitan.

Unused Priority 3 Water. Under the QSA, IID and CVWD, respectively, have a Priority 3 right to 3.1 million AF and 330,000 AF of consumptive use of Colorado River water. These quantifications are adjusted for transfers, including canal lining projects. To the extent that the

¹³ Colorado River Water Delivery Agreement: Federal Quantification Settlement Agreement", October 10, 2003, Section 4d <http://www.usbr.gov/lc/region/g4000/crwda/crwda.pdf>

¹⁴ The Bureau of Reclamation also includes the use of Colorado River water on Yuma Island in the calculation.

¹⁵ The value of "x" that yields an estimated MWD Adjustment of zero.

¹⁶ 16,553 AF equals the projected Metropolitan Agricultural Adjustment from Chart 3 when PVID land fallowing equals 93,489 AF.

¹⁷ See "Metropolitan Buys a Large Block of Land within PVID", *Journal of Water*, October 2015, <http://journalofwater.com/jow/metropolitan-buys-large-block-of-land-in-pvid/>.

¹⁸ *Ibid.*

actual consumptive use of Colorado River water is less than the adjusted entitlements, the “underruns” become unused Colorado River water available to Metropolitan.

Chart 4 shows the record of unused Priority 3 water for 2004-2014.¹⁹ In four of the eleven years, there was no unused Priority 3 water. In three other years, the volume of unused Priority 3 water was minor (approximately 50,000 AF or less). In the remaining four years, there were significant blocks of unused Priority 3 water (ranging from 150,000 AF to almost 250,000 AF). While the historic record has “runs” of successive years of either no unused Priority 3 water or positive amounts of unused Priority 3 water, the correlation between the amounts of unused Priority 3 water in successive years is weak.²⁰ The quantity of unused Priority 3 water averaged 84,990 AF.

ICS Credits. In 2007, the Bureau of Reclamation approved implementation of Intentionally Created Surplus (“ICS”) credits, which would become available when a Colorado River water user undertook specified actions to reduce their use of Colorado River water. If the water “created” by the actions is not used in the year the water is created, it can be stored in Lake Mead for use in future years. Water stored is subject to a one-time 5% system assessment and an annual evaporation loss of 3%. ICS water stored in Lake Mead is lost when there are flood control releases from Lake Mead. ICS credits may not be recovered during the declared shortages in the Lower Colorado River Basin.

Metropolitan has created and used ICS credits from three activities:

- Extraordinary conservation (PVID land fallowing and conserved IID water)
- System conservation
- Pilot run of Yuma Desalter Project.

Chart 5 shows the ending balance of Metropolitan’s ICS credits in each year since the program was initiated in 2006.²¹ Metropolitan’s ICS credits peaked in 2010 at almost 600,000 AF. Since then, Metropolitan has been recovering ICS credits, especially from the extraordinary

¹⁹ Calculated as the amount, if any, IID’s and CVWD’s consumptive use of Colorado River water is below IID’s and CVWD’s Priority 3 entitlement (3.43 million AF), less 14,500 AF for Colorado River water use by miscellaneous PPR’s and Indians, less IID transfers to Metropolitan (net of amount used by CVWD) and San Diego, less mitigation water to the Salton Sea, less canal lining water, less IID and CVWD paybacks of overruns, less IID creation of ICS credits, plus IID recovery of ICS credits, less amount of LCWSP water exchanged with IID for Colorado River water. Data compiled from *Colorado River Accounting and Water Use Report: Arizona, California, and Nevada, 2004-2014*.

²⁰ The correlation in the amount of unused Priority 3 water in successive years is 0.28. With 9 data points, the standard deviation of the estimated correlation coefficient is 0.33 (under the null hypothesis of no correlation). The resulting T-statistic (estimated correlation/standard deviation of correlation coefficient) is 0.85. A T-statistic of 0.85 with 9 degrees of freedom has a significance level of only 42%.

²¹ Compiled from Decree Accounting Reports in *Arizona v. California, 2003-2014*.

conservation account. With shortages in the Lower Colorado River basin on the horizon, Metropolitan has an incentive to use its ICS credits before they are not available.²²

Interstate Banking. Metropolitan, the Southern Nevada Water Authority (“SNWA”) and the Colorado River Commission of Nevada entered a Storage and Interstate Release Agreement in 2004. Under the agreement, Metropolitan stores unused Colorado River entitlement of Nevada for subsequent recovery by Metropolitan through development of Intentionally Created Unused Entitlement for Southern Nevada Water Authority. Pursuant to a 2012 amendment to the agreement, Nevada could store a minimum of 200,000 AF and a maximum of 400,000 AF through 2016. The maximum amount of water Nevada may recover is 30,000 AF in any year. The maximum amount of water Nevada may make available is 75,000 AF in any year. Of the amount of water made available, two-thirds is added to Nevada’s storage account and one-third becomes Metropolitan’s water.

Chart 6 shows water made available to Metropolitan under the Nevada Storage Agreement. When Nevada stores water, this increases Metropolitan’s diversions of Colorado River water. However, when Nevada recovers water from storage, Metropolitan will reduce its use of Colorado River water either by assigning water made available under its agreements with IID or PVID to Nevada or by undertaking new extraordinary conservation measures that reduces its use of Colorado River water.

In 2015, Metropolitan and SNWA transformed their storage agreement into a transfer subject to claw-back provisions.²³ The agreement provides for SNWA to store 150,000 AF of unused Colorado River water off stream in Metropolitan’s system in California and makes the water available for use by Metropolitan. SNWA’s Interstate Account will be credited 125,000 AF, and 25,000 AF will be accounted as loss. Metropolitan pays \$44.375 million—or about \$296/AF for 150,000 AF. Metropolitan will return the 125,000 AF upon SNWA’s request in future years via Intentionally Created Unused Apportionment (“ICUA”) in the Colorado River system. For the water returned, SNWA will reimburse Metropolitan its payment, escalated to account for inflation.

Comparison of Metropolitan’s Colorado River Water Supplies before and after 2003

Table 4 compares Metropolitan’s Colorado River water supplies before and after 2003. For the ten years before 2003, Metropolitan’s Colorado River water supplies averaged 1,203,822 AF. From 2003 and thereafter Metropolitan’s supplies from its Priority 4 rights and transfer agreements with IID and PVID averaged 660,022 AF. When combined with the average amount of unused Priority 3 water available, Metropolitan’s Colorado River water supplies averaged 745,012 AF. Therefore, the end of the era of unused entitlement water and surplus water means

²² For a discussion of the emerging risk of shortages in the Lower Colorado River Basin, see “Emerging Shortages in the Colorado River Basin: Is it Worse Than We Think”, *Journal of Water*, June 2015, <http://journalofwater.com/jow/emerging-shortages-in-the-colorado-river-basin-is-it-worse-than-we-think/>.

²³ See “Agreement with SNWA, CRCN Increases Metropolitan’s Short-Term Water Supplies”, *Journal of Water*, October 2015, <http://journalofwater.com/jow/agreement-with-snwa-crcn-increases-metropolitans-short-term-water-supplies/>.

that, despite its programs over the past thirteen years, Metropolitan has 458,810 AF per year less Colorado River water. San Diego's independent Colorado River supplies offset 180,000 AF of Metropolitan's reduced Colorado River water supplies in 2014 and will offset 280,000 AF per year of Metropolitan's reduced Colorado River water supplies over the long-term. This is demand Metropolitan need not plan to meet and avoids costs that Metropolitan otherwise would need to incur.

Table 4
Comparison of Metropolitan's Annual Colorado River Water Supplies Pre and Post 2003

<i>Item</i>	<i>AF</i>	<i>Comment</i>
Pre-2003	1,203,822	Mostly Priority 4 and Priority 5 water
Post-2003		
Priority 4	550,000	Exclusive of liability for Indian/Misc. PPRs
IID	93,489	Pre-2003 agreement
PVID	16,533	Inclusive of liability for Priority 1, 2 3b overruns
Sub-Total	660,022	
Unused Priority 3	84,990	Part of supply in excess of Priority 4 right pre-2003
Total	745,012	
Lost Supply	458,810	

State Water Project

Metropolitan has a Table A contract amount of 1,911,500 AF from the State Water Project.²⁴ The amount of water available depends on declarations by California's Department of Water Resources.

The history of SWP allocations has three distinct time periods (see Chart 7). Between 1968 through 1989, SWP allocations averaged more than 90%.²⁵ Spurred by the 1991 drought, SWP allocations dropped and averaged 74% through the 1990s. There was a brief recovery in SWP allocations, increasing by 10 percentage points until the early 2000s. Since then, average SWP allocations have been declining. The last two years have witnessed the lowest allocations in the historic record. The final SWP Allocation for 2014 was only 5% (most of the year the declared SWP Allocation was zero). The Final Allocation for 2015 was 20%.²⁶

The period of 90%+ SWP Allocations corresponded to the scheduled build-up of the SWP (see Chart 8). SWP Contract Amounts grew until 1990. Therefore, the relevant historical

²⁴ Management of the California State Water Project, Bulletin 132-14, California Department of Water Resources, November 2015, Table 1-6, p. 14.

²⁵ Before the 1994 Monterrey Amendment, agencies submitted water requests reflecting their actual water demands. With the Monterrey Amendment, available water was pro-rated in accordance with requests. This provided an incentive for agencies to request their full entitlement amounts (see Chart 8).

²⁶ DWR's has made a series of declarations for the 2016 SWP Allocation, starting at 10% and currently standing at 45%. For a recent discussion, see "DWR Increases SWP Allocations after Recent Storms," *Journal of Water*, March 2016, <http://journalofwater.com/jow/dwr-increases-swp-allocation-to-45-after-more-storms/>.

period for SWP Allocations going forward is the post-1989 record. After the Monterey Amendments to SWP contracts, SWP contractors now request their full contract amounts each year.

The Journal of Water conducted a statistical analysis of Final SWP Allocations between 1990 and 2015.²⁷ The resulting model predicts about three-fourths of the annual variation in Final SWP Allocations (see Chart 9). As expected, the Final SWP Allocation is greater, the more water in storage at Oroville at the beginning of the water year and the greater the actual amount of precipitation measured by the Northern Sierra 8 Station Precipitation Index, October through April of the water year. There was also a modest increasing trend in Final SWP Allocations of 0.8 of a percentage point per year from 1990 through 2002 that was reversed in 2003. Since then, the expected Final SWP Allocation is declining by 3.0 percentage points per year.

The amount of water delivered to Metropolitan through SWP facilities includes available Table A water, Article 21 water and carryover water, non-SWP project water from the Yuba Accord, Dry-Year Transfer Programs, recovery of water from storage and other programs (see Chart 10). Since the year 2000, the amount of water delivered to Metropolitan has exceeded 800,000 AF in all but one year (2014) and exceeded 1 million AF in eleven of fifteen years (but in only three of the last seven years).

The Department of Water Resources recent report on the SWP's Delivery Capability provides information on the anticipated yield of Metropolitan's SWP Table A Contract (see Chart 11).²⁸ Under existing regulatory conditions, the average yield of Metropolitan's Table A Contract is 1,160 thousand acre feet ("TAF"). Early onset of long-term climate change will reduce Metropolitan's average yield by 14,000 AF. Increased environmental regulations without an Isolated Facility will reduce Metropolitan's yield by 194 TAF in the case of the less stringent "Low Outflow" regulatory scenario and by 338 TAF in the case of the more stringent "High Outflow" regulatory scenario.

Conclusions Regarding Metropolitan's Water Sources

The year 2003 represents a turning point for Metropolitan's water sources. On the Colorado River, the era of large volumes of Priority 5 Colorado River water ended. On the positive side, the QSA paved the way for Metropolitan's long-term fallowing program that has conserved, on average, 93,489 AF per year. On the down side, Metropolitan assumed the risk for overruns by Priority 1, 2 and 3b. The net effect has been that its PVID venture has yielded, on average, only 16,596 AF per year.

The year 2003 was also a turning point for Metropolitan with respect to SWP supplies with a decreasing trend in SWP Table A Allocations. DWR currently projects the average yield of Table A at 61% under current regulatory conditions. However, the actual Table A yields have been considerably less for 2013-2015. While the situation for 2016 looks promising with a

²⁷ See "DWR Announces Initial SWP Allocation," *Journal of Water*, December 2015
<http://journalofwater.com/jow/california-dwr-announces-initial-swp-allocation/>.

²⁸ Compiled from "Final Appendices: The State Water Project Delivery Capability Report", July 2015. The text's names for the scenarios is taken from the DWR study.

current announced allocation of 45%, there is significant risk that final allocations may be smaller.²⁹ Metropolitan has used about 1.5 million acre feet of stored water to offset the reduction in available water supplies.³⁰

MWD Storage

With the loss of the large volumes of Priority 5 Colorado River water and the reduction in SWP allocations, storage has increasingly become an important part of Metropolitan's operations. Metropolitan staff now prepare reports on "Water Surplus and Drought Management," where staff discuss the amount of water Metropolitan has in storage and how stored water should be managed in the face of alternative scenarios regarding the yield from Metropolitan's water sources.³¹

The amount of water Metropolitan has in storage (exclusive of emergency reserves) has varied considerably since 2004 (see Chart 12).³² Metropolitan entered the post-QSA period with about 1.7 million AF in storage. Chart 13 shows the change in storage by calendar year.³³ Metropolitan withdrew more than 1 million AF from storage in 2014 (the year when SWP Allocations were zero until late in the year when the SWP Allocation was reset at 5%). It withdrew more than 500,000 AF from storage in calendar years 2007 and 2008. The calendar years with the large increases in water in storage (defined as more than 500,000 AF) were 2009, 2010 and 2011; a rapid build-up in ICS credits occurred in these years (see Chart 5).

Metropolitan staff memoranda each year discuss available Colorado River and SWP supplies and where water could be withdrawn from or added to storage (subject to available put capacity).³⁴ Metropolitan's storage increases with a higher SWP Allocation (see Chart 14). The correlation between the two series is 0.48. Metropolitan withdrew large volumes of water from storage when the SWP Allocation was less than 40%. However, it also withdrew water from storage when the SWP Allocation exceeded 60% (see discussion of LA Aqueduct water deliveries below).

²⁹ See "DWR Increases SWP Allocation to 45% After More Storms, *Journal of Water*, March 2016, <http://journalofwater.com/jow/dwr-increases-swp-allocation-to-45-after-more-storms/>.

³⁰ 1.5 million AF = the difference in the amount of water in Metropolitan storage (exclusive of emergency reserves) on January 1, 2016 and January 1, 2012.

³¹ See Staff Report, "Water Surplus and Drought Management Board Report," Metropolitan, January 14, 2014.

³² Data compiled from Metropolitan staff reports on "Water Surplus and Drought Management" from 2005 forward. Until 2007, staff reports reported the total amount of water in storage without any identification of the amount held for emergency reserves. Thereafter, staff reports deducted 626,000 AF annually for emergency reserves. The data in Chart 11 deducts 626,000 AF from the storage levels reported before 2007.

³³ Change in storage for a calendar year calculated as the amount of water in storage as of January 1 of the following year less the amount of water in storage on January 1 of the calendar year.

³⁴ See Staff Report, "Water Surplus and Drought Management Board Report," Metropolitan, January 14, 2014.

Metropolitan's Water Demand

Demand for Metropolitan's water has been on an oscillating but generally declining trend (see Chart 15). In the fiscal year ending 1990, Metropolitan's water sales totaled 2.4 million AF. In the fiscal year ending 2014, Metropolitan's water sales totaled 1.9 million AF.³⁵ Starting in 2013, Metropolitan eliminated separate pricing for agricultural water and replenishment relative to full water service. All water sales are now at full service pricing. See Attachment A for a statistical study of Metropolitan water sales.

Two significant factors regarding member agency local supplies have an impact on Metropolitan's water sales.

First, the greater the water available from the Los Angeles Aqueduct, the lower Metropolitan water sales. The variability in Los Angeles Aqueduct water supplies reflects both the variability in hydrology in the Owens Valley and long-term decline in supplies due to environmental restrictions in Mono Lake and the Owens Valley. LA shifts on and off purchases of Metropolitan water depending on the availability of water from the LA Aqueduct (see Chart 16). The correlation between deliveries from the LA Aqueduct and LA's water purchases from Metropolitan is -0.95. This means that there is almost an exact negative relation between water deliveries on the Los Angeles Aqueduct and LA's purchases of water from Metropolitan

Second, with the initiation of San Diego's significant acquisitions of Colorado River water in 2003, there is now an independent, permanent declining trend in Metropolitan's water sales. San Diego has also developed a seawater desalination plant that is now fully operational; other Metropolitan member agencies are initiating their own projects. For example, the Orange County Water District commenced operations in 2008 of the first phase of its Groundwater Replenishment System that produces 100 million gallons per day.³⁶ Member agencies are in the process of implementing or planning for other significant ventures.

Eleven of Metropolitan's member agencies have expanded their local supplies since 2000 (see Chart 17).³⁷ The cumulative increase in San Diego's local supplies was 252,307 AF per year since 2000. With total member agency local supplies increasing by only 203,707 AF per year, the non-San Diego member agencies as a group experienced a decline in local supplies. Unsurprisingly, Los Angeles suffered the greatest loss of 110,097 AF per year. Other member agencies with large cumulative increases in local water supplies are MWDOC (56,391 AF per year), Inland Empire (39,092 per year) Calleguas (28,019 AF per year), Western (15,152 AF per year), Long Beach (10,802 AF per year) and Glendale (6,297 AF per year).

³⁵ Fiscal year ending 2014 was the last year before the imposition of state regulations requiring reductions in per capita municipal water use.

³⁶ See Orange County Water District, <http://www.ocwd.com/gwrs/>.

³⁷ Data compiled from Annual Reports of the Metropolitan Water District of Southern California, Table "Water Use by Metropolitan's Member Agencies" Table 1-4 in the 2014 Annual Report and comparable tables in earlier annual reports. The analysis included San Diego's Colorado River water supplies from its IID Agreement and Canal Lining projects in San Diego's local water supplies. Cumulative increase in local supplies estimated by cumulating the trend growth for each member agency over 14 years.

Metropolitan member agencies have many projects currently in full design phase with funds appropriated or at advanced planning stage with completed environmental review.³⁸ If only half the yield from these projects is realized, these future projects will increase local supplies by 100,000 AF per year. The declining trend in Metropolitan's water sales is likely to continue as member agencies continue to expand their local supplies.

Conclusions Regrading Metropolitan Water Sales

The trend and variability in Metropolitan water sales reflects the balancing of competing factors. For the period 1990 through 2014, the net balance of these factors have been an oscillating but generally declining trend in Metropolitan water sales (see Chart 15).

The variability in Metropolitan water sales reflects two factors. Variability in local rainfall and LA Aqueduct deliveries, respectively, will impact Metropolitan water sales by -12%/6% and -10% /+10% (see Attachment A). These fluctuations are managed with Metropolitan water storage, at a cost. In the case of LA Aqueduct water supplies, shortfalls in supplies in fiscal year ending 2008 and 2013 required that Metropolitan withdraw water from storage even though SWP Allocations exceeded 60%--a circumstance where normally Metropolitan would have increased carryover storage.

Principles of Cost Causation

California law requires a cost of service justification for water rates. However, many water agencies fundamentally reject the concept.³⁹

A core question with regard to Metropolitan's water rates and charges is the extent to which those rates and charges reflect the proportional burdens its 26 customer member agencies place upon Metropolitan, and the benefits each receives from the costs Metropolitan incurs to provide water service. Metropolitan's rate setting process does not address this question of proportional benefits and burdens in providing a supplemental water supply, or attempt to measure them; rather, as the Court described it in *San Juan Capistrano*, it appears to reject "the very idea behind the question," by simply *declaring* it has a single class of customers.⁴⁰ Metropolitan makes this declaration even though the data and evidence presented in other parts of its cost of service analysis support a finding that the proportional benefits to Metropolitan's 26 customer member agencies are not "equal" and should not be accounted for as a single customer class. The fact that individual customers use different "services," for example, treated water, raw water or wheeling, does not account for the different service characteristics and demand patterns causing Metropolitan to incur costs to meet the varying demands of its 26 customer member

³⁸ Letter dated January 10, 2016 from San Diego County Water Authority to Metropolitan's Chairman of the Board and Members of the Board of Directors.

³⁹ See Journal of Water, *JOW Corner, CA Appellate Court Holds that Tiered Pricing Must Reflect Cost of Service* (May 2015).

⁴⁰ See MWD's cost of service analysis supporting its proposed 2017 and 2018 calendar year rates, at page 87.

agencies. Given the small number of customers Metropolitan has, it would not be difficult to assess and fairly allocate the costs it incurs in order to provide services to each of them.

As demonstrated in the preceding sections of this analysis, Metropolitan incurs substantial costs - in the hundreds of millions of dollars annually - to meet the water supply demands of its member agencies over time, including wet, average and dry years. Due to changed circumstances beginning in 2003 impacting the availability of its historic sources of imported water supply, Metropolitan has increasingly found it necessary to turn to more costly water supply and storage options. The cost of these incrementally more expensive water supplies should be paid by the member agencies that are causing Metropolitan to incur these costs, not agencies whose demands are decreasing.

Costs Incurred to Offset Losses of Colorado River and SWP Water Supplies

After the QSA and increased restrictions on the SWP, Metropolitan has lost water supplies. Even if demand for Metropolitan water does not grow, or even declines, there remains the issue of whether supply reductions are causing Metropolitan to incur the costs that it is incurring.

Table 5 compiles the earlier estimates of Metropolitan’s Colorado River and SWP water supplies.⁴¹ In assessing the adequacy or inadequacy of these water supplies, the issue returns to the demand for Metropolitan water. A key question for determining which agencies are causing the timing and magnitude of Metropolitan’s cost of offsetting supply losses are which member agencies demands have not decreased sufficiently to be supplied with lower available water supplies.

**Table 5
Metropolitan’s Colorado River and SWP Water Supplies Under Alternative Scenarios
(TAF)**

<i>Supply</i>	<i>Existing Conditions</i>	<i>Early Long Term</i>	<i>EC High Outflow</i>	<i>EC Low Outflow</i>
Colorado River	745	745	745	745
SWP	1,160	1,146	822	966
Total	1,905	1,891	1,567	1,711

Storage

With the end of the era of unused or surplus Colorado River water, Metropolitan lost a significant base load water supply. Storage needed to be developed to manage variability in Colorado River water due to Metropolitan’s exposure to variability in Priority 1, 2 and 3b overruns and unused Priority 3 Colorado River water as well as the increased variability in available SWP water supplies. To this end, Metropolitan has developed storage capacity to

⁴¹ Table 4 for Colorado River water supplies and Chart 11 for SWP Average Yield.

manage its water supplies and entered into short-term transfers as tools to manage water supply variability.

Storage assets can also manage demand variability. Variability in local rainfall is one driver of variability in the demand for Metropolitan water. When local rainfall is abundant and member agency water demands fall, Metropolitan can store available water supplies for future years when local rainfall is low and member agency water demands increase. The variability of Metropolitan storage is depicted in Chart 13.

From the perspective of the demand for Metropolitan storage, however, not all local water supplies and member agencies are equal. As discussed above, the variability in LA Aqueduct water supplies generates significant variability in LA's demand for Metropolitan water service. To meet high periods of LA demand, Metropolitan withdrew water from storage despite the fact that SWP Allocations exceeded 60% when Metropolitan normally would store SWP water. In fact, the variability in LA Aqueduct water supplies creates a specific demand on Metropolitan's water supplies and storage. In contrast, San Diego's Colorado River acquisitions and its Carlsbad desalination plant are stable supply sources. As such, these sources do not place an additional demand on Metropolitan's water and storage activities.

A key question for determining which member agencies are causing the timing and magnitude of Metropolitan's cost of storage activities are which member agencies experience volatility in their local supply programs and thus the magnitude of their increased demand for Metropolitan storage activities and which do not. Agencies whose demand patterns place a cost burden on Metropolitan storage and supply assets must pay for the benefits they receive from the costs Metropolitan incurs. However, Metropolitan does not make this assessment in either its Integrated Resources Plan or its cost of service analysis.

Impacts on Metropolitan Rate-Making

Metropolitan is a regional wholesaler who delivers water to 26 member agencies.⁴² No two customers are alike. They vary in terms of the size and mix of their own local water resources (groundwater, transfers, desalination, recycling, etc.). They vary in terms of whether their demand for Metropolitan water is growing or declining.

Cost-of-service rate-making links rate structure to an apportionment of costs proportional to benefits. Metropolitan is taking actions within the context of changed circumstances discussed above. Industry standards and California law both require that Metropolitan assess how and the proportional extent to which member agencies benefit from Metropolitan's actions.

This fundamental question can be broken down into two parts. Part One involves Metropolitan's existing water supplies and infrastructure. As shown in Table 5, Metropolitan's average annual water supplies are 1.9 million AF under existing conditions of the SWP and can be as low as 1.6 million AF under the more stringent future regulatory restrictions on the SWP.

⁴² <http://www.mwdh2o.com/WhoWeAre/Mission/Pages/default.aspx>.

Metropolitan's infrastructure capacity substantially exceeds its water supplies.⁴³ These levels define the water demands Metropolitan can meet without undertaking new water supply options and infrastructure investment.

Part Two involves the actions taken to expand Metropolitan's water supplies beyond Part One levels. Which member agencies benefit from those actions? The member agencies whose demands for Metropolitan water exceed their share of Part One supply. Assuming that the cost of developing new supplies differs from the cost of Part One supplies, the cost-of-service rate for Part Two supplies would differ from the cost-of-service rate for Part One supplies. This approach conforms to the recent appellate court decision involving the City of San Juan Capistrano, where the court held rate tiers should be linked to defined level of service and how alternative supply sources are used to provide service in tiers.⁴⁴

Although Metropolitan has failed to conduct this type of analysis, as it must in order to ensure cost-based ratemaking, the MWD Act would suggest applying this approach using member agency preferential rights (see Table 6), since that is the legal measure of the investment each of Metropolitan's member agencies has made.⁴⁵ The first task is to identify which agencies' preferential rights are sufficient to meet their existing and future demands with Metropolitan's current water and storage assets. Second, what new investments are required to meet the demand of member agencies exceeding their preferential rights? The exact threshold depends on which DWR scenario for future SWP project yields is considered most reasonable for assessing Metropolitan's future conditions.⁴⁶

⁴³ Metropolitan conveyed 1.3 million AF of Colorado River water in 1994. This capacity is about 75% greater than Metropolitan's Colorado River water supplies (see Table 4). Metropolitan's SWP contract includes assignment of reaches on the California Aqueduct to deliver 1.9 million AF. This capacity is about 65% greater than Metropolitan's average SWP yield under existing conditions and 130% greater than Metropolitan's average SWP yield under more stringent future regulatory conditions.

⁴⁴ See "CA Appellate Court Holds that Tiered Pricing Must Reflect Cost-of-Service," *Journal of Water*, May 2015, <http://journalofwater.com/jow/ca-appellate-court-holds-that-tiered-pricing-must-reflect-cost-of-service/>. Although Metropolitan purports to have two tiers of service, with Tier Two pricing to be set at a level that reflects Metropolitan's costs of acquiring new supplies, the FY 2016/17 and 2017/18 biennial budget does not include any projected income from Tier Two sales because Metropolitan has set the Tier One sales level so high (2.05 million acre feet) that no agency is projected to reach Tier Two. The two-tiered pricing structure dates back to Metropolitan's October 16, 2001 Board Memo 9-6 (Rate Structure Board Memo). At that time, Metropolitan management also stated that the tiered supply rates would reflect the higher costs of new MWD supply development and pass appropriate costs of new supply development to those member agencies that would be relying on Metropolitan for growing demands. However, there is no evidence of this linkage occurring in the current or any former Metropolitan cost of service analysis.

⁴⁵ Section 135 of the Metropolitan Water District Act gives each member agency a preferential entitlement to purchase a portion of the water served by Metropolitan based upon a ratio of all payments from tax assessments and otherwise, except for purchases of water, made by the member agency to Metropolitan compared to total payments made by all member agencies from tax assessments and otherwise, except for purchases of water, since Metropolitan was formed. The payments represent the legally recognized proportional investment share from each agency toward the capital cost and operating expense of Metropolitan's facilities.

⁴⁶ Table 6 uses the range of DWR scenarios (see Table 5) and preferential rights by member agency as calculated by MWD at 06/30/2015, without adjustment for the Court's ruling in *San Diego County Water Authority v. Metropolitan Water Dist.* (Case No. CFP-10-510830). The Court found that MWD's current methodology for calculating San Diego's preferential rights violates Section 135 of the MWD Act, by failing to include the payments San Diego makes under the Exchange Agreement between the parties. The Court expressly found that San Diego is

Table 6
Threshold Member Agency Demand Levels Served by Existing Investments

<i>Member Agency</i>	<i>Preferential Rights</i>	<i>1.9 Million AF Metropolitan Supply</i>	<i>1.6 Million AF Metropolitan Supply</i>	<i>Metropolitan Water Purchased in FY Ending 2014</i>
Anaheim	1.04%	19,760	16,640	15,118
Beverly Hills	0.97%	18,430	15,520	11,632
Burbank	0.90%	17,100	14,400	15,817
Calleguas MWD	4.23%	80,370	67,680	116,685
Central Basin	6.49%	123,310	103,840	33,951
Compton	0.23%	4,370	3,680	44
Eastern MWD	3.74%	71,060	59,840	100,884
Foothill MWD	0.67%	12,730	10,720	9,795
Fullerton	0.59%	11,210	9,440	8,776
Glendale	1.27%	24,130	20,320	20,341
Inland Empire	2.61%	49,590	41,760	67,833
Las Virgenes	0.90%	17,100	14,400	23,760
Long Beach	2.34%	44,460	37,440	36,340
Los Angeles	20.01%	380,190	320,160	441,871
MWDOC	13.70%	260,300	219,200	244,665
Pasadena	1.10%	20,900	17,600	23,097
San Diego	18.42%	349,980	294,720	365,403
San Fernando	0.08%	1,520	1,280	61
San Marino	0.18%	3,420	2,880	1,583

not purchasing water from MWD under the Exchange Agreement. The case is on appeal; if the appellate court upholds the trial court ruling, MWD will be required to calculate preferential rights consistent with the Court's ruling and the respective preferential rights of all member agencies will be adjusted accordingly.

<i>Member Agency</i>	<i>Preferential Rights</i>	<i>1.9 Million AF Metropolitan Supply</i>	<i>1.6 Million AF Metropolitan Supply</i>	<i>Metropolitan Water Purchased in FY Ending 2014</i>
Santa Ana	0.76%	14,440	12,160	11,679
Santa Monica	0.85%	16,150	13,600	5,900
Three Valleys	2.83%	53,770	45,280	71,072
Torrance	1.13%	21,470	18,080	17,210
Upper San Gabriel	3.27%	62,130	52,320	34,779
West Basin MWD	7.88%	149,720	126,080	120,915
Western MWD	3.81%	72,390	60,960	76,194
Total	100.00%	1,900,000	1,600,000	1,875,401

For cost of service purposes (as well as investment), reasonably projected future circumstances are more relevant than current circumstances. For example, in the case of San Diego, its purchases of Metropolitan water in FY ending 2014 exceeds its preferential rights under either assumption about the water supply available from Metropolitan's existing investments. However, with the Carlsbad Desalination Plant coming on line in 2015 and an additional build up scheduled in its Colorado River water supplies, San Diego will be expanding its local supplies by an additional 156,000 AF per year by 2021. The only reasonable assumption regarding San Diego is that, within the next decade or sooner, its demand for Metropolitan water will be less than its preferential rights to the water available from Metropolitan's existing supply and storage assets.

Water storage has become increasingly important as Metropolitan manages the increased variability of its water supplies since 2003. As evidenced in the past few years, stored water helped Metropolitan meet member agency water demands despite low SWP allocations. With carryover storage (exclusive of emergency reserves) now below 1 million AF, Metropolitan has sufficient unused storage capacity to build up storage in the future if and when water supplies for storage become available.⁴⁷

Water storage also manages demand variability. Dry conditions in Metropolitan's service area increases Metropolitan water demands by up to 6% and wet conditions decrease Metropolitan's water demands by up to 12% (see Attachment A).

⁴⁷ Metropolitan has about 6 million AF of storage capacity, see "Water Surplus and Drought Management", Metropolitan Staff Report, dated April 4, 2015, Attachment 1. Of this capacity, 1.5 million AF represents Metropolitan's right to store ICS Credits in Lake Mead. As discussed above, water storage in Lake Mead has the disadvantage that water cannot be recovered during times of shortages in the Lower Colorado River Basin.

A critical aspect of Metropolitan's demand variability involves Los Angeles. Variability in hydrologic conditions in the Owens Valley translates into variability in LA Aqueduct supplies that, in turn, translate into variability in Metropolitan water demand (see Chart 16 and Attachment A). The variability in LA Aqueduct supplies is growing and translates now into swings of +/- 200,000 AF per year. In effect, Metropolitan must combine more storage with water supplies to meet Los Angeles's water demand than other member agencies whose water demands on Metropolitan are less volatile.

The allocation of Metropolitan's drought storage costs to the volumetric commodity charge does not reflect the benefits received by each of Metropolitan's customers. Metropolitan must assign these costs in a manner that reasonably accounts for the varying demands of and proportional benefits received by Metropolitan's 26 member agency customers.

Conclusion

California law requires a cost-of-service justification for water service rates. Justifiable water rates must be based on an understanding of customer classes and how their demands are driving investments and operational decisions. Customer classes and rate tiers must be linked to defined levels of service and how alternative supply sources are used to provide service. By not identifying Metropolitan's customer classes, and failing to factor in material changed circumstances in both Metropolitan supplies and member agency local supplies, Metropolitan has produced a rate structure wholly disconnected from cost-based rate-making principles.

Chart 1
Colorado River Water Diverted into Colorado River Aqueduct

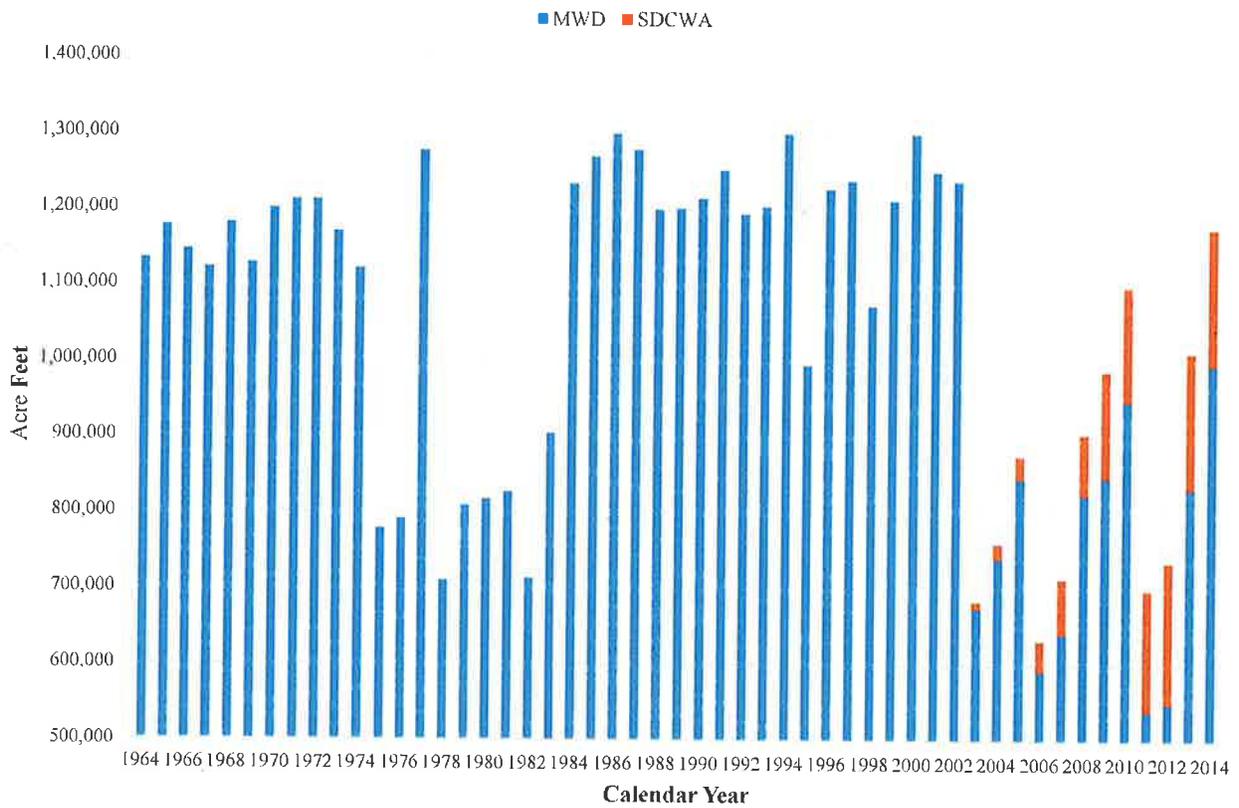


Chart 2
Metropolitan's Agricultural Adjustment and
PVID Land Fallowing

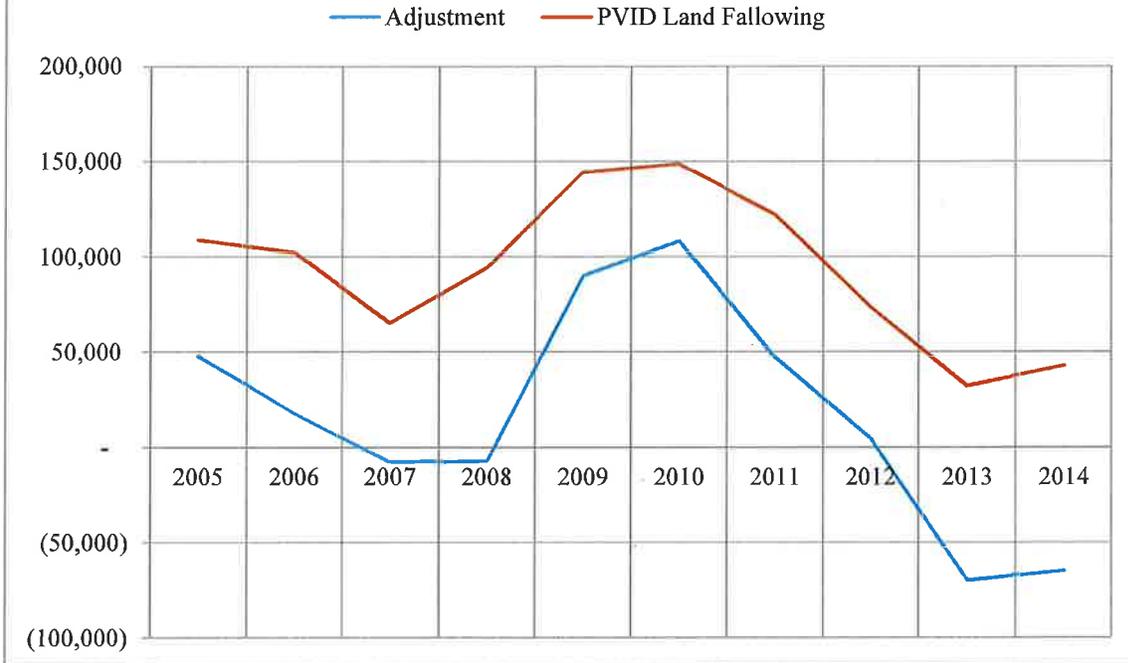


Chart 3
Metropolitan's Agricultural Adjustment of
Colorado River Water
(2005-2014)

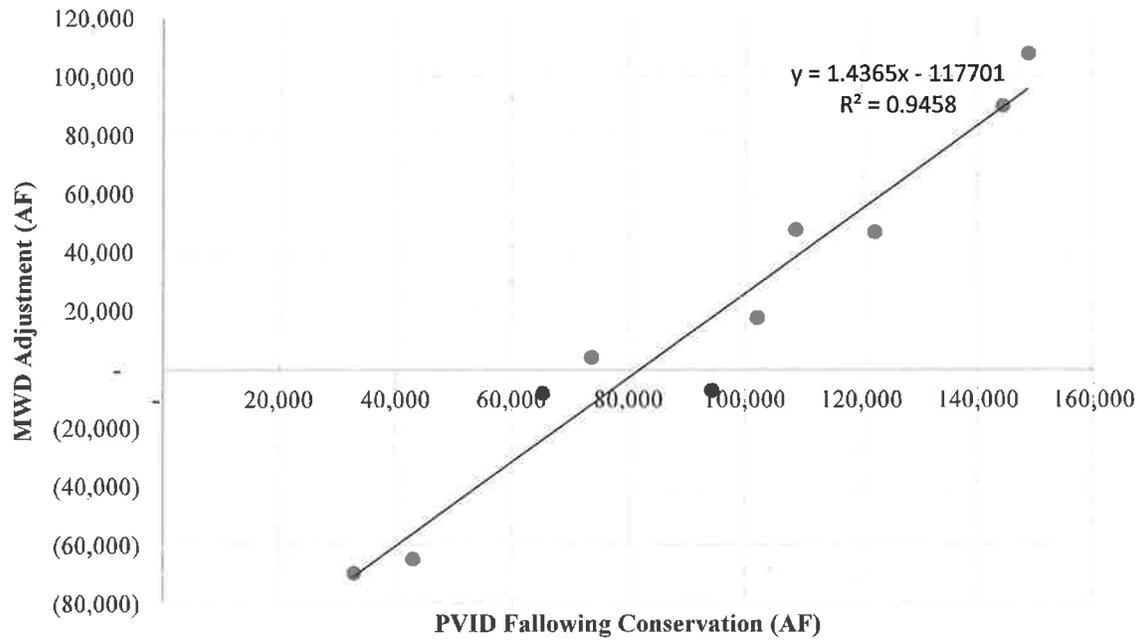


Chart 4
Unused Priority 3 Water

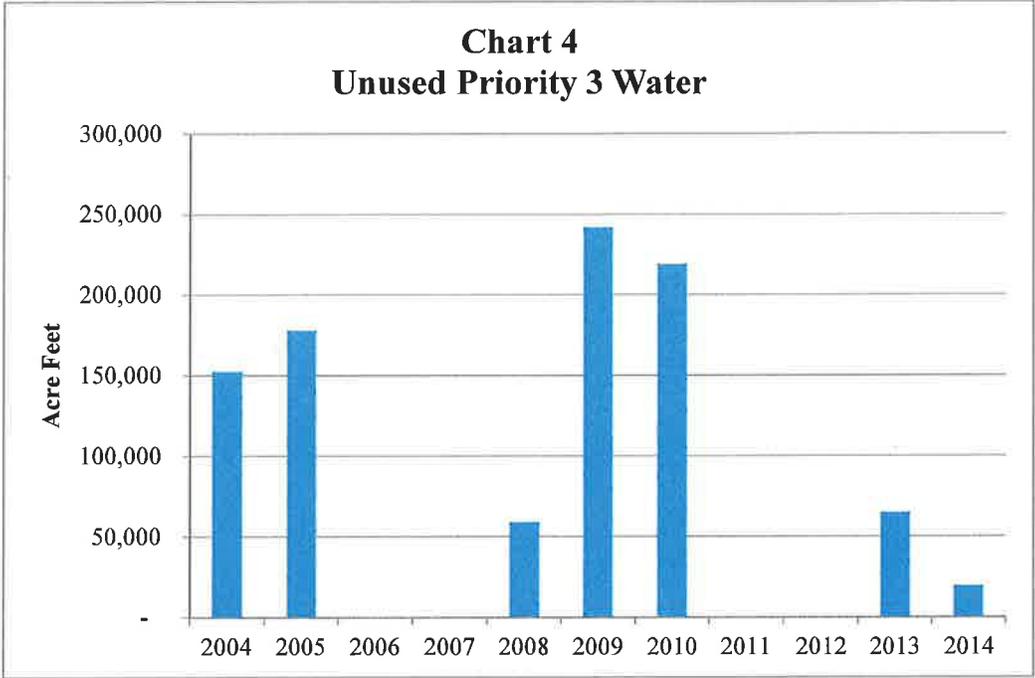


Chart 5
Metropoliation's ICS Credits
(End of Year)

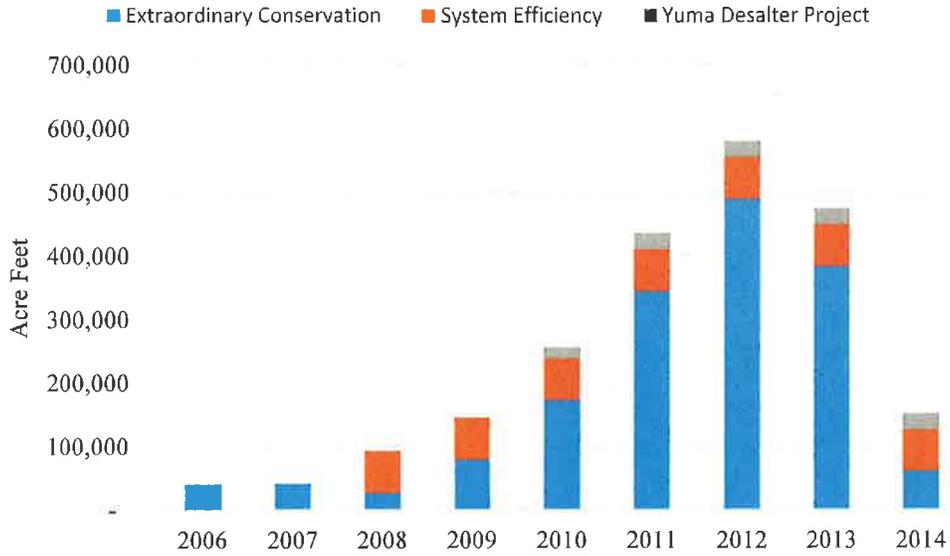


Chart 6
Water Available to Metropolitan from Nevada

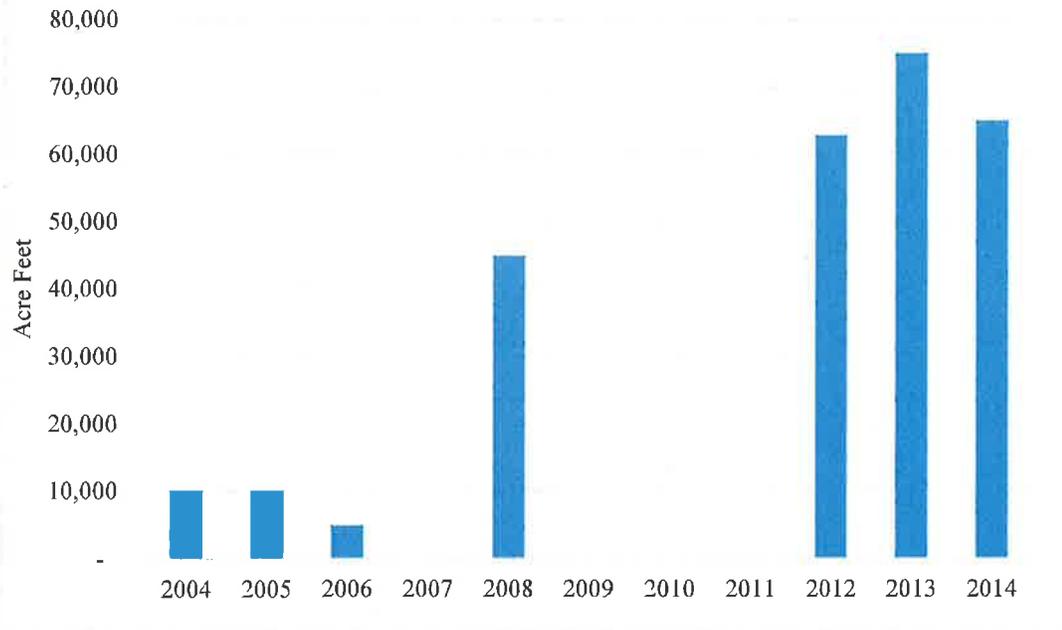


Chart 7
SWP Allocations

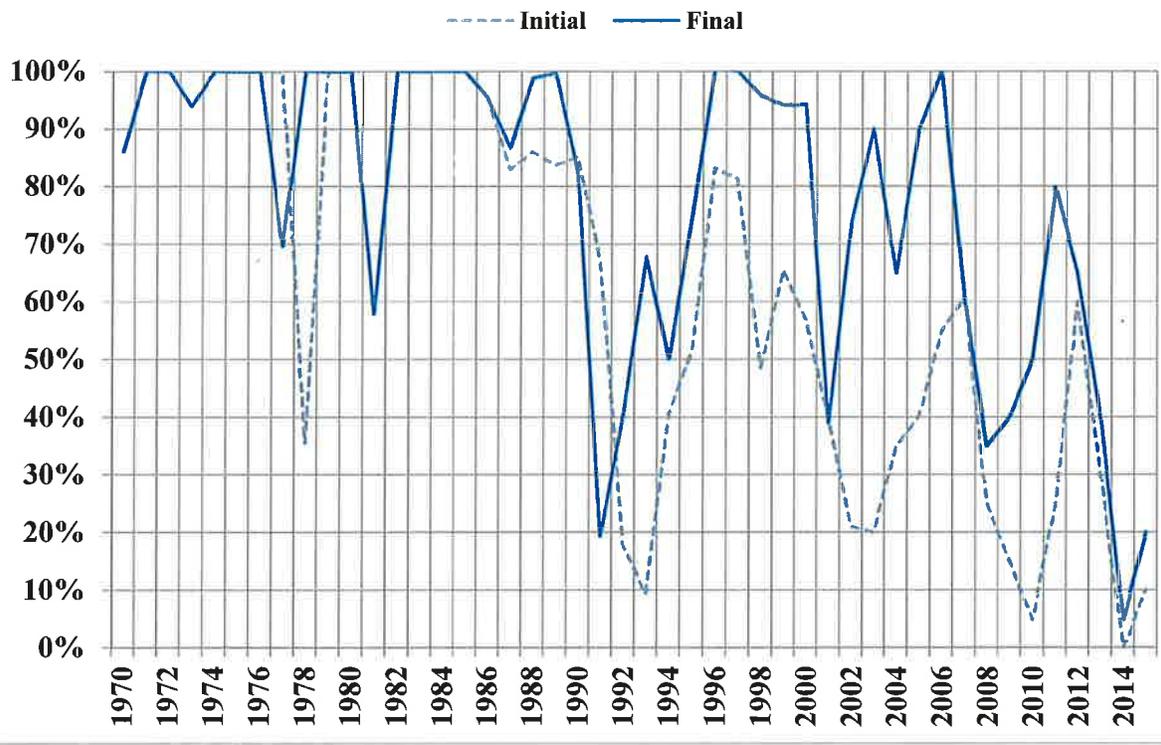


Chart 8
Build Up of SWP and Requests

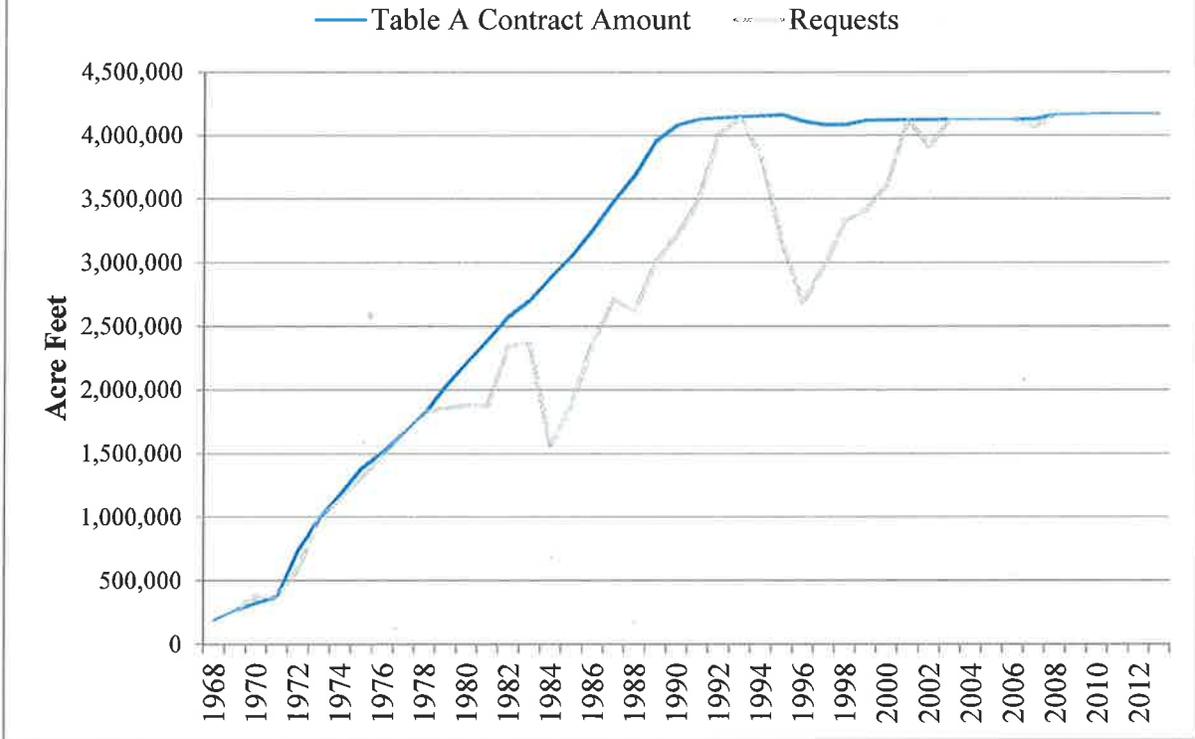


Chart 9
Statistical Model of Final SWP Allocations

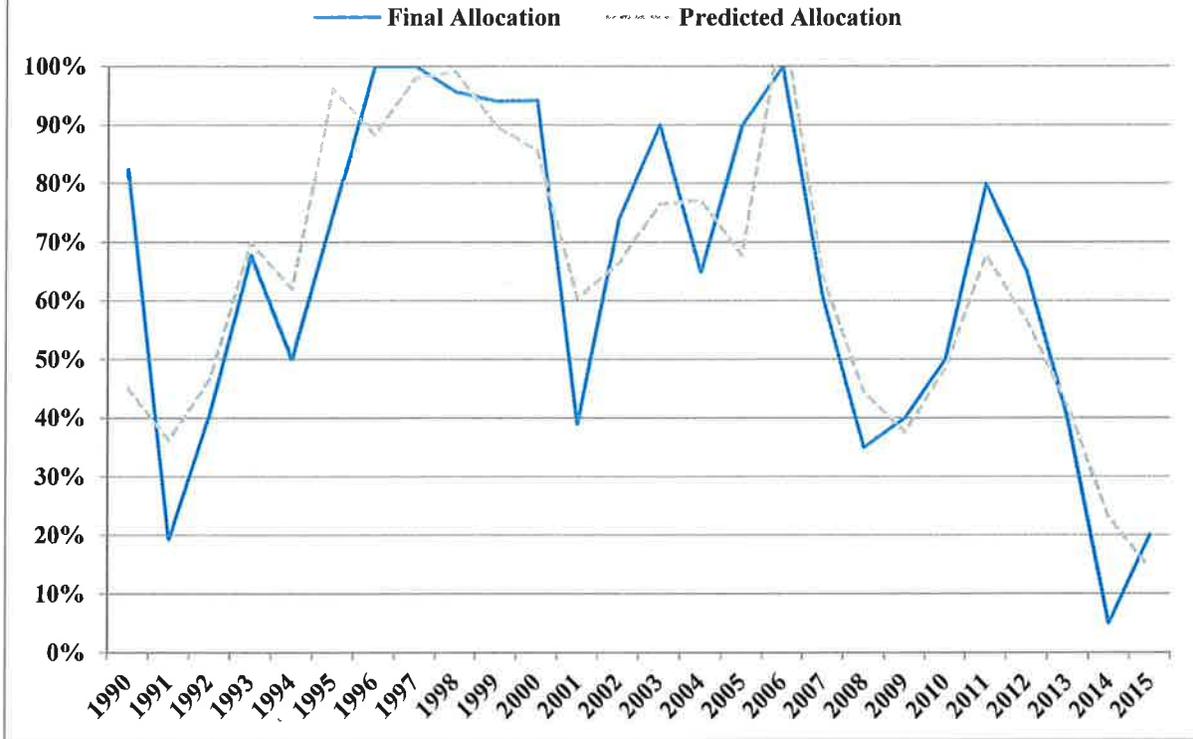


Chart 10
Annual Water Delivered Through SWP Facilities

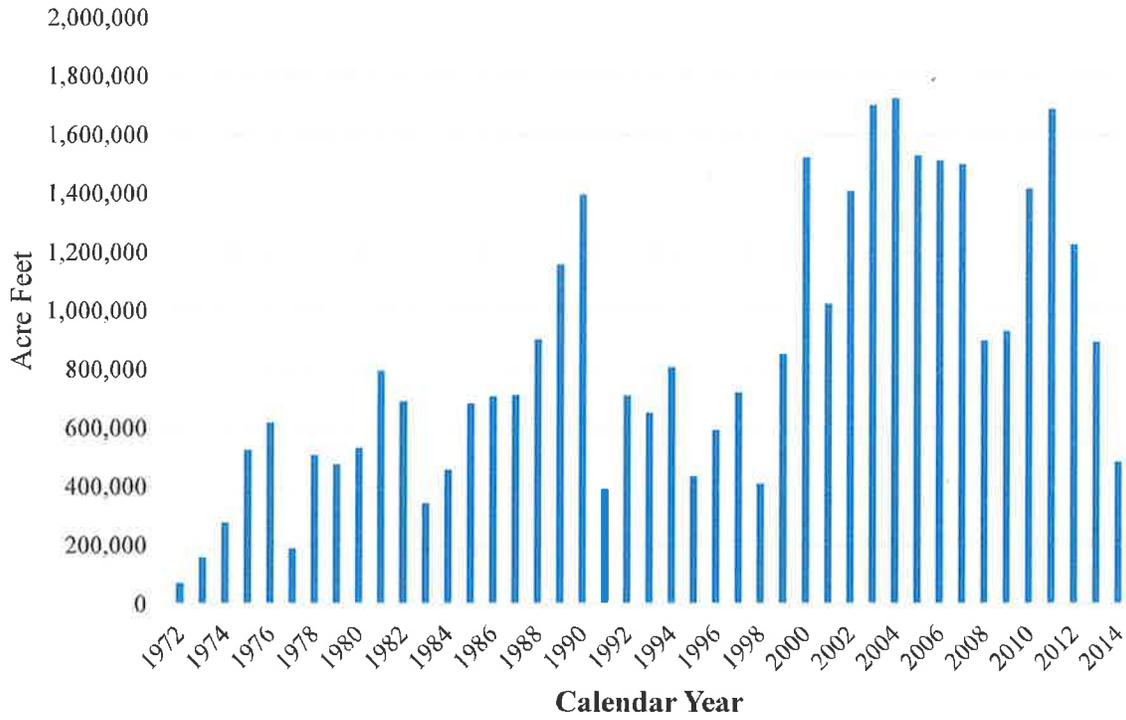


Chart 11
Average Yield of Metropolitan's Table A Contract
(1,000 Acre Feet)

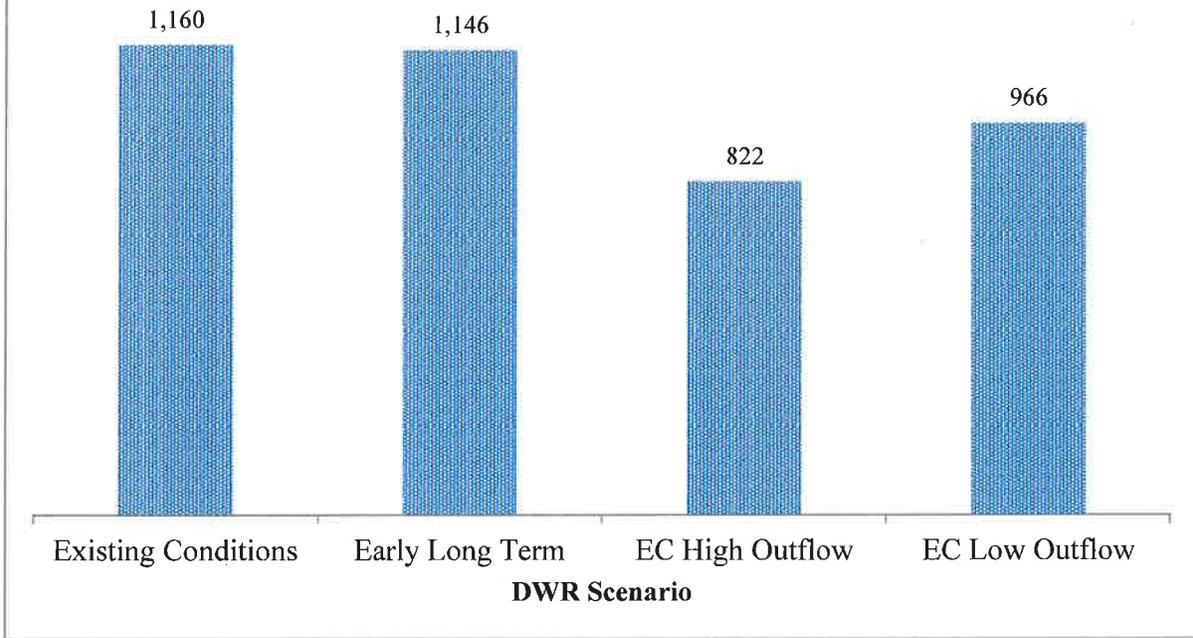


Chart 12
Beginning of Year Metropolitan Water Storage
(Less Emergency Storage)

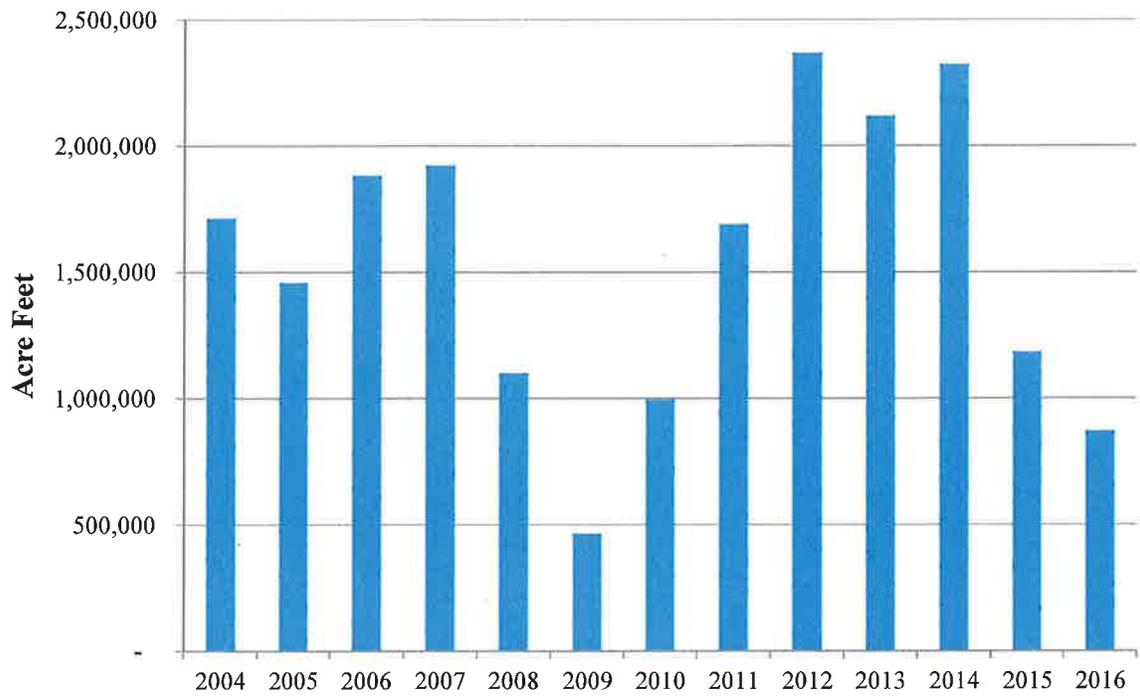


Chart 13
Change in Metropolitan Water Storage

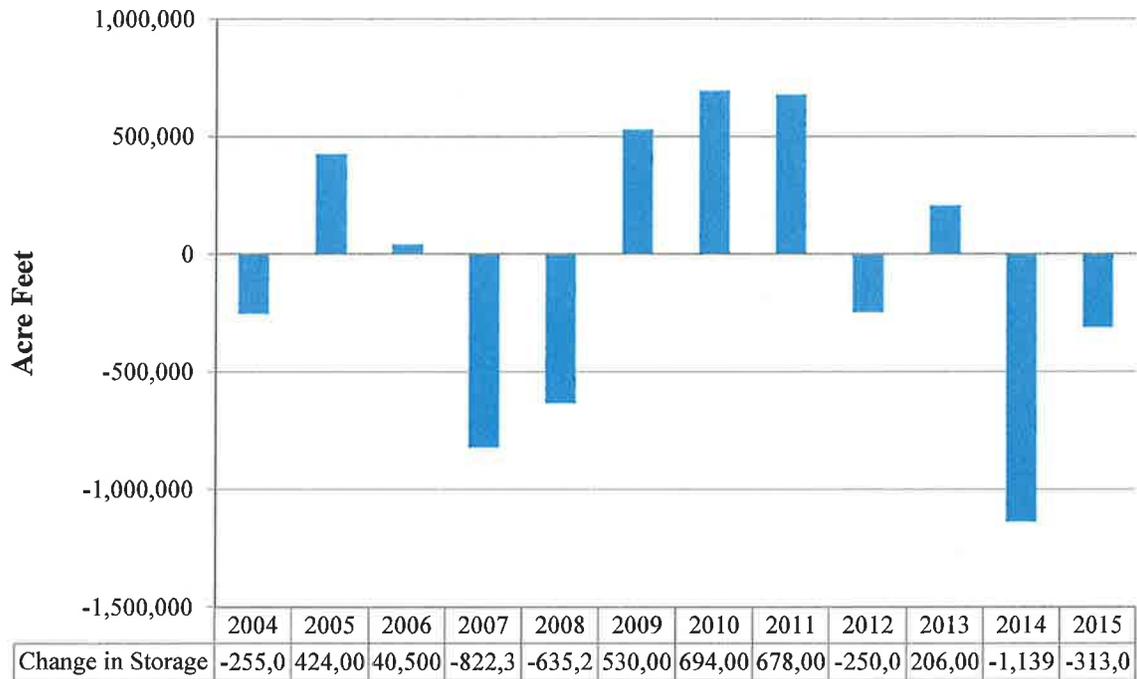


Chart 14
Change in MWD Storage and Final SWP Allocations

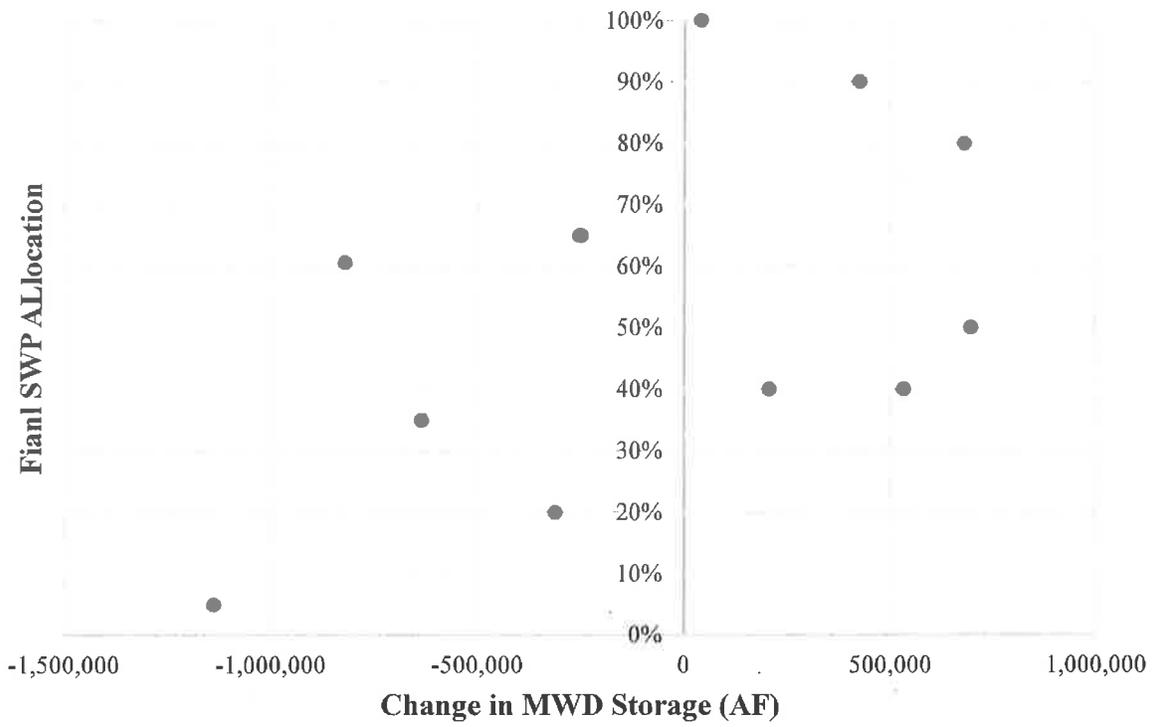


Chart 15
Metropolitan Water Sales

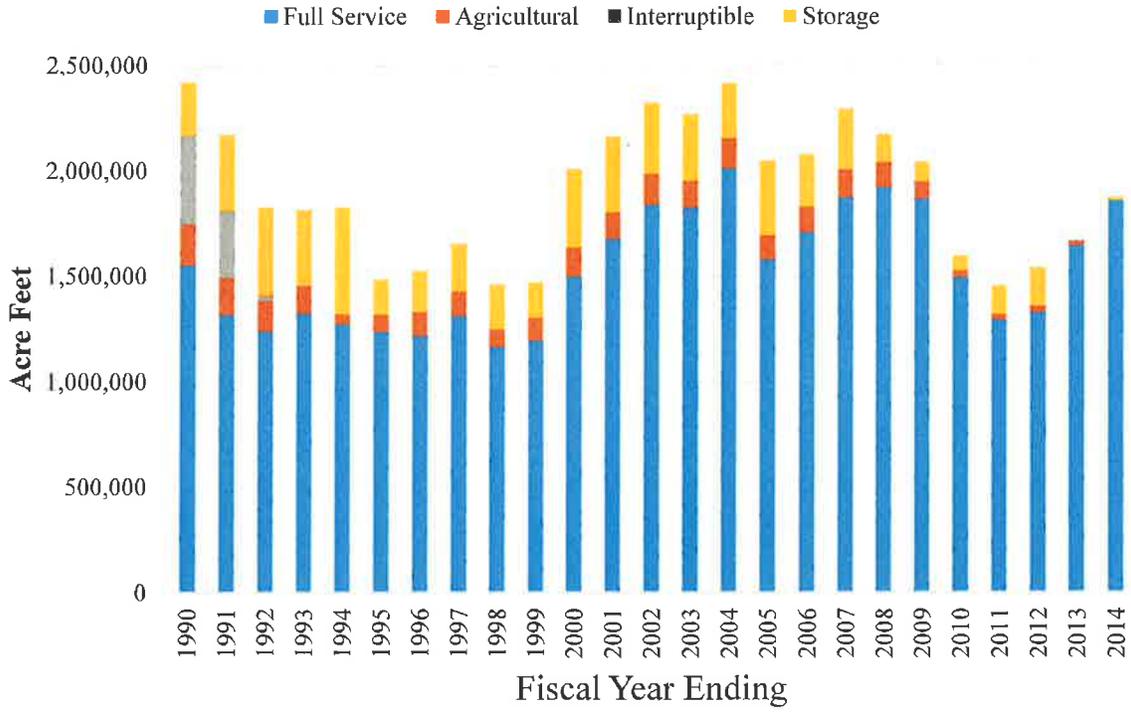


Chart 16
Los Angeles Water Resources

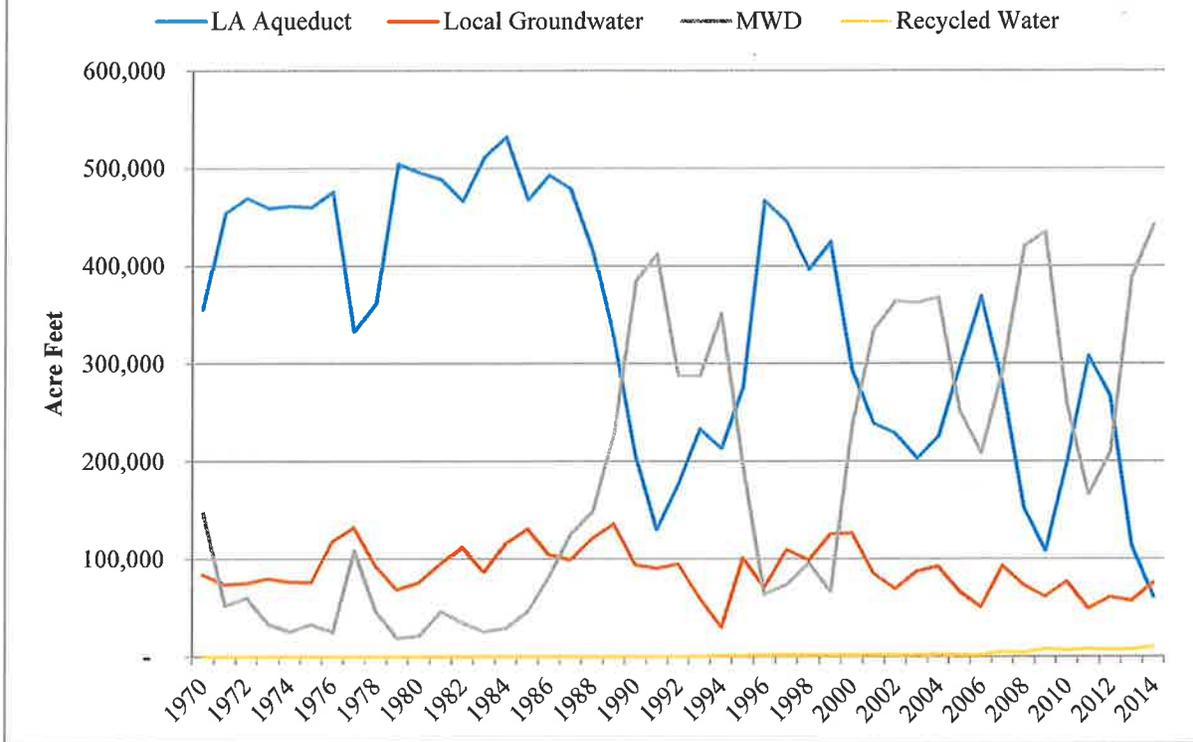
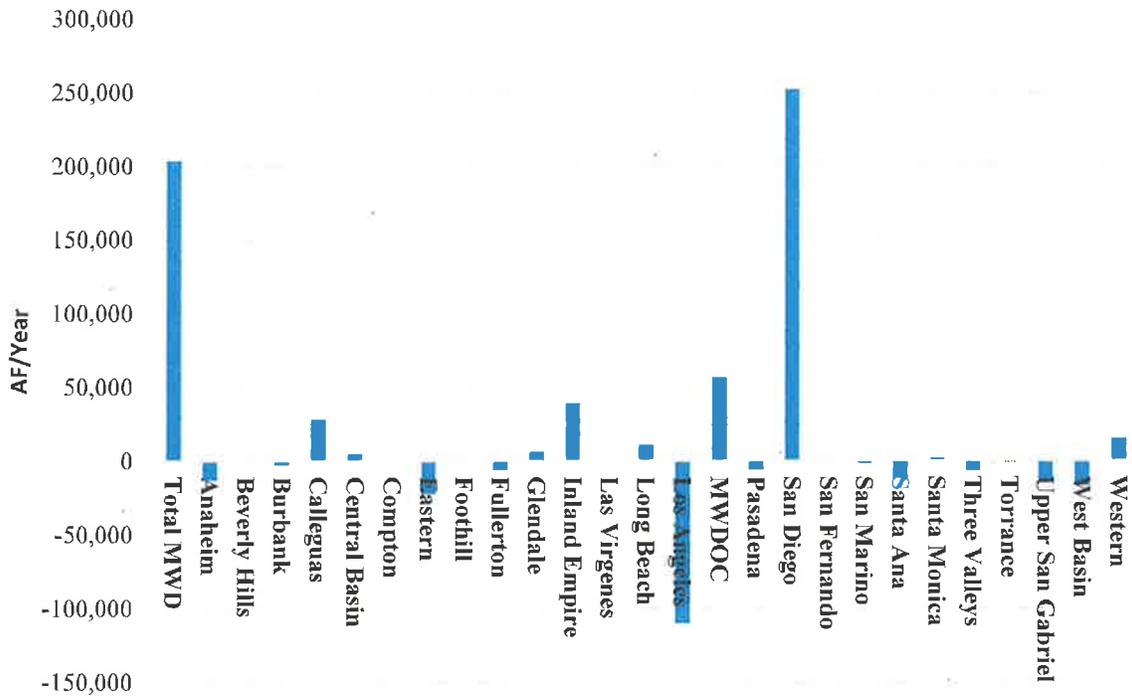


Chart 17
Cumulative Increase in Local Supplies by Member Agencies:
2001-2014



Attachment A
Statistical Study of Metropolitan Water Sales

Metropolitan's water sales decline with local rainfall and the real water price and increases with real (inflation-adjusted) personal income in the six counties within Metropolitan's service area (see Table A-1).⁴⁸ Two significant factors regarding member agency local supplies also have an impact on Metropolitan's water sales. First, the greater the water available from the Los Angeles Aqueduct, the lower Metropolitan's water sales. Second, with the initiation of San Diego's significant acquisitions of Colorado River water and Canal Lining water in 2003, there is now an independent declining trend in Metropolitan's water sales. All these factors explain 87 percent of the annual variation in Metropolitan's water sales. The factors are individually and jointly statistically significant. The estimated model tracks the annual variability in Metropolitan's water sales (see Chart A-1).⁴⁹

Table A-1
Statistical Model of Metropolitan's Water Sales
(depending variable: natural logarithm of sales)

<i>Factor</i>	<i>Co-efficient</i>	<i>T-Statistic</i>
Intercept	-6.733	-1.72
Local Rainfall (inches)	-0.005	-2.80
Real Water Price ('14\$/AF)*	-0.442	-4.32
Real Personal Income ('14\$/AF)*	0.950	6.70
LA Aqueduct Deliveries*	-0.155	-3.86
Post-2003 Trend	-0.045	-5.49
* natural logarithm		
R ² = 0.87		
Standard Error Residual: 0.07		
Serial Correlation Residual: -0.05		
F-Statistic: 25.1		
Level of Significance: 0.00000009		

⁴⁸ Metropolitan water sales for firm, interruptible, agriculture and storage water service. Metropolitan's water price equals the price for firm service and the readiness-to-serve charge divided by the total base used in the apportionment of the readiness-to-serve obligation. Local rainfall measured by the annual rainfall in Los Angeles. The Metropolitan water rate stated in terms of 2014\$ using the Bureau of Labor Statistic's Consumer Price Index. Real personal income from Bureau of Economic Analysis, U.S. Department of Commerce

⁴⁹ The lack of any serial correlation in the model's residual confirms an underlying statistical assumption of the method of model estimation (ordinary least squares).

Local Rainfall

Variability in local rainfall has a material impact on Metropolitan water sales (see Chart A-2).⁵⁰ For above average rainfall, Metropolitan water sales decline by 6% to 12%. For below average rainfall, Metropolitan water sales increase by 2% to 6%.

Real Water Price

Metropolitan's real water price has been on an oscillating but increasing trend. The real water price was increasing through the mid-1990s, then declined until 2008, and has been on a sharp upward trend thereafter. The annual increases in the real water price during the 1990s reduced annual Metropolitan water sales by up to 7% and the annual increases in the real water price after 2008 reduced annual Metropolitan water sales by up to 10% (see Chart A-3).⁵¹ In contrast, the annual declines in the real water price between the mid-1990s through 2007 only increased annual Metropolitan annual water sales by up to 4%. The cumulative increase in the real water price from 1990 through 2014 is estimated to reduce annual Metropolitan water sales by 29%.⁵²

An increased real water price has two impacts on member agency demand for Metropolitan water. First, increased Metropolitan water rates increase the price paid by retail customers and provide an economic incentive to reduce water usage. Second, increased Metropolitan water rates make member agency local water supply projects more attractive and provide an economic incentive for member agencies to reduce their dependence on Metropolitan.

Real Personal Income

Real personal income in the six counties within Metropolitan's service area has been generally increasing due to population growth and increases in real per capita personal income. During times of positive growth, annual Metropolitan water sales generally increases by 2% to 4%, although the economic expansion in the late 1990s increased annual Metropolitan water sales by almost 7% (see Chart A-4).⁵³ In contrast, during times of economic decline, annual Metropolitan water sales generally decline by between 2% and 4%. The cumulative increase in real personal income from 1990 through 2014, when considered independently of all other variables, is estimated to increase permanently annual Metropolitan water sales by 41%.⁵⁴

⁵⁰ Impact of rainfall variability estimated by multiplying the estimated co-efficient for local rainfall (-0.005) by the difference between local rainfall in the year and the average of local rainfall for 1990-2014 (14.35 inches).

⁵¹ Impact of annual changes in the real water price estimated by multiplying the estimated coefficient for the real water price (-0.442) by the difference in the natural logarithm of the real water price in a year and the natural logarithm of the real water price in the prior year.

⁵² Impact estimated by multiplying the estimated co-efficient for the real water price (-0.442) by the difference in the natural logarithm of the real water price in 2014 (6.52) and the natural logarithm of the real water price in 1990 (5.88).

⁵³ Impact of annual changes in real personal income estimated by multiplying the estimated the estimated co-efficient for real personal income (0.95) by the difference in the natural logarithm of real personal income in a year and the natural logarithm of real personal income in the prior year.

⁵⁴ Impact estimated by multiplying the estimated co-efficient for the real personal income (0.950) by the difference in the natural logarithm of real personal income in 2014 (27.20) and the natural logarithm of real personal income in 1990 (27.63).

Los Angeles Aqueduct Deliveries

Variability in LA Aqueduct supplies has a material impact on Metropolitan water sales (see Chart A-5).⁵⁵ The annual variability in LA Aqueduct supplies increases the variability in Metropolitan water sales by up to 20% (10% +/-). The two highest years for the estimated increases in Metropolitan water sales, (fiscal year ending 2008 and 2013) include the calendar years when Metropolitan withdrew water from storage even though SWP Allocations exceeded 60%.⁵⁶ The decline in deliveries from the LA Aqueduct from 1990 through 2014 is estimated to have increased annual Metropolitan water sales by 19%.⁵⁷

Post 2003 Trend

As discussed above, the year 2003 was a deterioration in Metropolitan's water supplies. It also triggered the start of San Diego's long-term Colorado River water program that will develop 280,000 acre feet of alternative Colorado River water supplies. Further, San Diego has followed up with the completion of the Carlsbad seawater desalination plant that can produce up to 56,000 AF per year. Other member agencies have also engaged in significant local projects.

The Post-2003 trend reflects the impact of all of these activities on Metropolitan water sales. At an annual 4.5% rate decline for the period 2003 through 2014, this trend signifies, based on all factors (i.e. local rainfall, Metropolitan's real water price, real personal income and LA Aqueduct deliveries), that the trend in Metropolitan's water sales is down by 40%.⁵⁸

⁵⁵ Impact of LA Aqueduct supply variability estimated by multiplying the estimated co-efficient for LA Aqueduct supplies (-0.155) by the difference between the natural logarithm of LA Aqueduct supplies in the year and the natural logarithm of LA Aqueduct supplies in the prior year.

⁵⁶ As displayed in Chart 14, there are two years from the change in storage was negative while SWP Allocations were in excess of 60%. These are the two years discussed in the text.

⁵⁷ Impact estimated by multiplying the estimated co-efficient for the LA Aqueduct deliveries (-.155) by the difference in the natural logarithm of LA Aqueduct deliveries in 2014 (11.02) and the natural logarithm of LA Aqueduct deliveries in 1990 (12.24).

⁵⁸ $-40\% \approx (1-.0455)^{11} - 1$

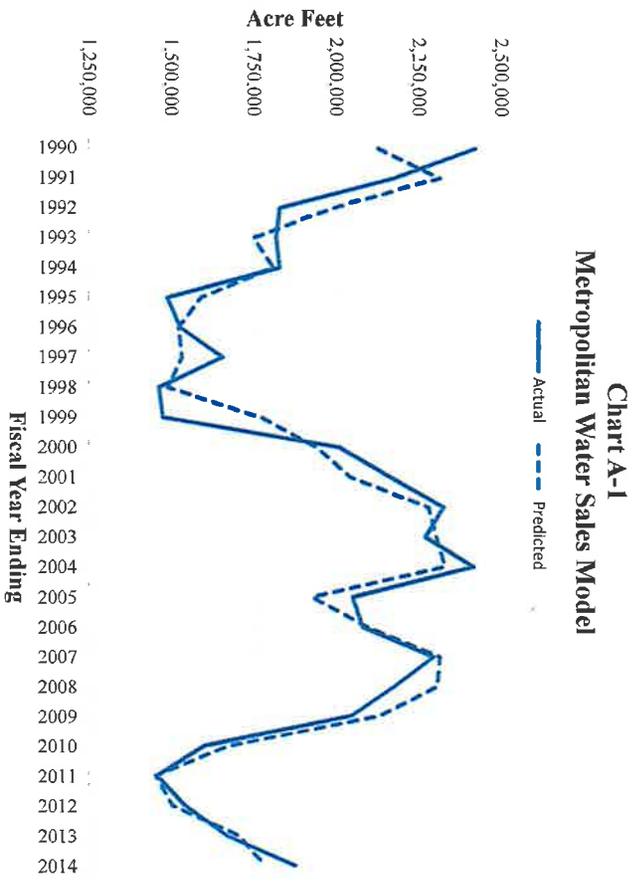


Chart A-2
Estimated Impact of Rainfall Variability on
Metropolitan Water Sales

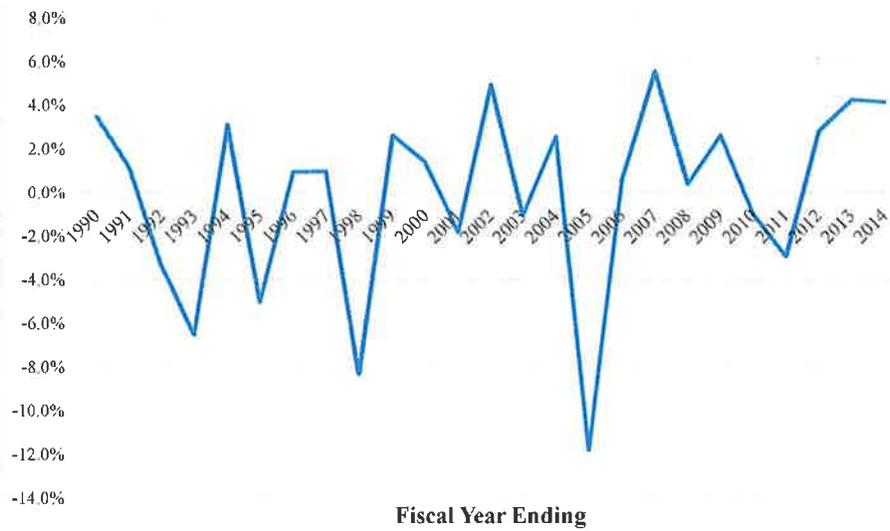


Chart A-3
Estimated Impact of Annual Changes in Real Water Price on Metropolitan Water Sales

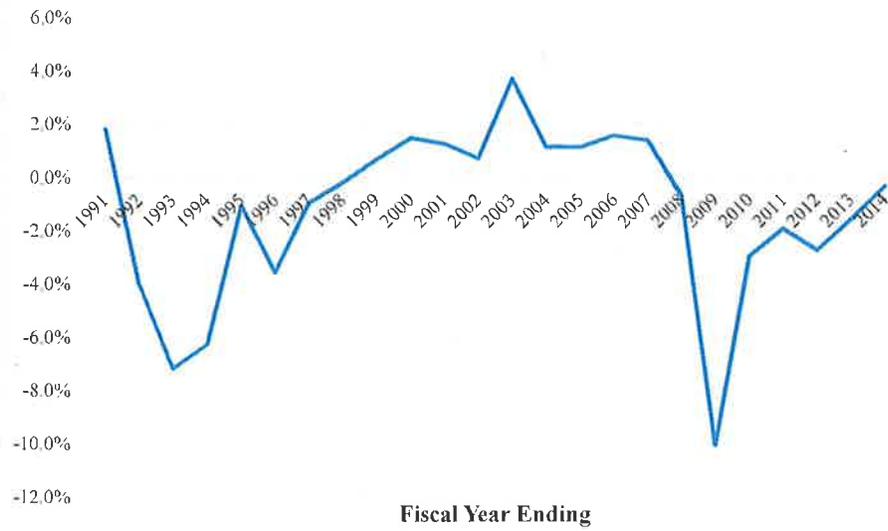


Chart A-4
Estimated Impact of Annual Changes in Real Personal
Income on Metropolitan Water Sales

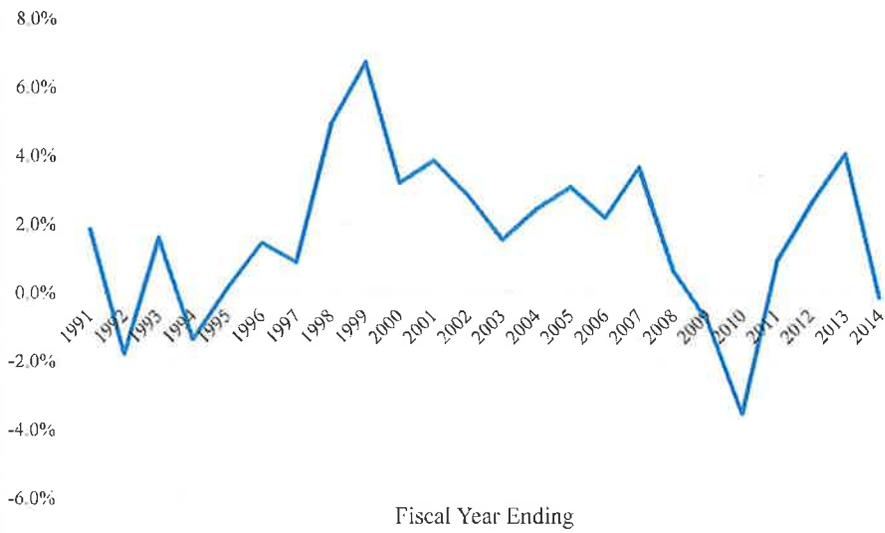
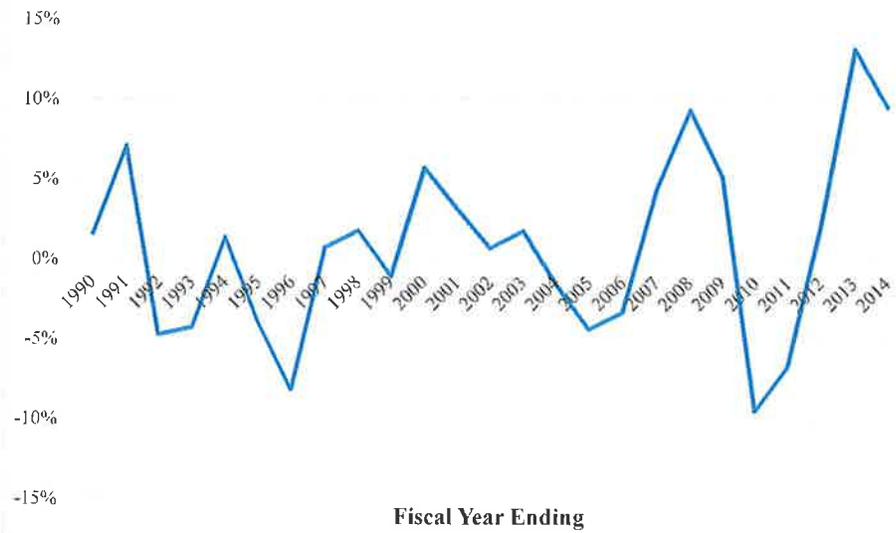


Chart A-5
Estimated Impact of Variability in LA Aqueduct Supplies on Metropolitan Water Sales



Attachment 3

Master Index of Documents San Diego County Water Authority
Requests be Included in the Administrative Record for Setting
of MWD Rates and Charges for Calendar Years 2017 and 2018
(4-9-16)

Master Index of Documents San Diego County Water Authority Requests be Included in the Administrative Record for Setting of MWD Rates and Charges for Calendar Years 2017 and 2018			
SDCWA Item No.	Date	Description	Method of Introduction
SDCWA 001	1/27/14	SDCWA Written Request for Notice under Gov. Code Section 54999.7(d) and Request for Data and Proposed Methodology for Establishing Rates and Charges (Government Code Section 54999.7(e))	CD#6
SDCWA 002	2/28/14	SDCWA Renewed written request for data and proposed methodology for establishing rates and charges (Gov. Code 54999.7 and 6250)	CD#6
SDCWA 003	3/10/14	MWD Response to Request for Information Dated February 28, 2014	CD#6
SDCWA 004	3/10/14	Testimony of Dennis Cushman before MWD Finance and Insurance Committee Meeting Agenda Item 8b: Proposed Rates for 2015 and 2016	CD#6
SDCWA 005	3/11/14	Testimony of Dennis Cushman at MWD Board Meeting Public Hearing on Proposed Rates for Calendar Years 2015 and 2016	CD#6
SDCWA 006	3/11/14	March 11, 2014 Letter - Public Hearing Comments on Proposed Rates and Charges, with attachments	CD#6
SDCWA 007	3/11/14	Administrative Record for Setting of MWD's 2013 and 2014 Rates in <i>SDCWA v. MWD</i> , Case No. CPF-12-512466 (S.F. Superior Court) which is inclusive of the Administrative Record in the case challenging MWD's 2011 and 2012 Rates (<i>SDCWA v. MWD</i> , Case No. CPF-10-510830 (S.F. Superior Court))	CD#1
SDCWA 008	3/11/14	Additional documents SDCWA requested be included in Administrative Record for the adoption of MWD's calendar year 2015 and 2016 rates	CD#2
SDCWA 009	3/10/14	CD of Post-Trial Briefs, Transcripts, and Statements of Decision in 2014 Rate Case; Cushman Testimony to MWD Finance and Insurance Committee, and Cushman Board Public Hearing Testimony and Transmittal Letter	CD#3
SDCWA 010	3/19/14	MWD letter to SDCWA forwarding DVD containing MWD records	CD#6
SDCWA 011		<i>Reserved</i>	
SDCWA 012		<i>Reserved</i>	
SDCWA 013		Documents and Testimony from Phase II of the <i>SDCWA v. MWD</i> Trial (2010 and 2012 Rate Cases)	CD#5

SDCWA 014	4/8/14	Letter Re: April 7, 2014 Finance and Insurance Committee Meeting Board Memo 8-1 - Approve proposed biennial budget for fiscal year 2014/15 and 15/16, proposed ten-year forecast, proposed revenue requirement for fiscal year 2014/15 and 2015/16 and recommend water rates; adopt resolution 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)	CD#6
SDCWA 015	4/8/14	Documents forwarded with SDCWA 014	CD#6
SDCWA 016	8/16/10	Comment Letter on MWD Staff Analysis on Opt-in/Opt-out Conservation Program (August 16, 2010)	CD#6
SDCWA 017	10/11/10	Integrated Resources Plan (October 11, 2010)	CD#6
SDCWA 018	11/29/10	MWD Draft Long Term Conservation Plan (November 29, 2010)	CD#6
SDCWA 019	1/5/11	Draft Long Range Finance Plan (January 5, 2011)	CD#6
SDCWA 020	4/25/11	MWD Discounted Water Program (April 25, 2011)	CD#6
SDCWA 021	5/4/11	MWD's Response to the Water Authority's April 25, 2011 Discounted Water Program Letter (May 4, 2011)	CD#6
SDCWA 022	5/6/11	Sale of Discounted Water (May 6, 2011)	CD#6
SDCWA 023	6/13/11	MWD Local Resources Program – Chino Desalter (June 13, 2011)	CD#6
SDCWA 024	7/20/11	Comments on Long Term Conservation Plan Working Draft Version 11 (July 20, 2011)	CD#6
SDCWA 025	8/16/11	Member Agency Willingness to Sign Take-or-Pay Contracts (August 16, 2011)	CD#6
SDCWA 026	9/9/11	Adjustments to MWD's Water Supply Allocation Plan Formula (September 9, 2011)	CD#6
SDCWA 027	9/12/11	Comments and Questions – Replenishment Service Program (September 12, 2011)	CD#6
SDCWA 028	10/7/11	Water Planning and Stewardship Reports – lack of justifications to demonstrate needs and benefits (October 7, 2011)	CD#6
SDCWA 029	10/25/11	KPMG Audit Report (October 25, 2011)	CD#6
SDCWA 030	11/4/11	Letter on Approve Policy Principles for a Replenishment (Discounted Water) Program (November 4, 2011)	CD#6
SDCWA 031	11/23/11	Turf Replacement Grant (November 23, 2011)	CD#6
SDCWA 032	12/12/11	Letter on Review Options for Updated Replenishment (Discounted Water) Program (December 12, 2011)	CD#6

SDCWA 033	12/13/11	Water Authority's Request to Include Information in MWD's SB 60 (December 13, 2011)	CD#6
SDCWA 034	1/5/12	Response letter to MWD Letters on Replenishment Dated December 21, 2011 (January 5, 2012)	CD#6
SDCWA 035	1/18/12	MWD Response to January 5, 2012 Letter on Replenishment Workgroup Materials addressed to MWD Delegation (January 18, 2012)	CD#6
SDCWA 036	3/12/12	Oppose Local Resources Program Agreements (March 12, 2012)	CD#6
SDCWA 037	3/13/12	San Diego County Water Authority's Annexation (March 13, 2012)	CD#6
SDCWA 038	4/9/12	Re: Board Memo 8-2: Authorize the execution and distribution on the Official Statement in connection with the issuance of the Water Revenue Refunding Bonds (April 9, 2012)	CD#6
SDCWA 039	5/7/12	Oppose changes to water conservation incentives (subsidies) as described (May 7, 2012)	CD#6
SDCWA 040	6/11/12	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)	CD#6
SDCWA 041	6/11/12	Oppose Local Resources Program Agreement with MWDOC and the City of San Clemente for the San Clemente Recycled Water System Expansion Project (June 11, 2012)	CD#6
SDCWA 042	7/9/12	Update on Rate Refinement Discussions (July 9, 2012)	CD#6
SDCWA 043	8/16/12	Rate Refinement Workshop (August 16, 2012)	CD#6
SDCWA 044	8/20/12	Re: Board Memo : Authorize the execution and distribution of an Official Statement for potential refunding of Water Revenue Bonds (August 20, 2012)	CD#6
SDCWA 045	8/20/12	Oppose Local Resources Program Agreement with MWDOC and El Toro Water District for the El Toro Recycled Water System Expansion Project (August 20, 2012)	CD#6
SDCWA 046	8/29/12	Re: Confirmation of MWD's review of Water Authority's August 20, 2012 comments on Appendix A and OS (August 29, 2012)	CD#6
SDCWA 047	9/10/12	Update on "Rate Refinement" (Board Information Item 7-b) (September 10, 2012)	CD#6
SDCWA 048	9/10/12	Comments and Positions on Proposed Amendments to the MWD Administrative Code (September 10, 2012)	CD#6

SDCWA 049	10/8/12	Water Authority's Response to MWD's September 4, 2012 Letter Regarding Water Authority's Comments on Appendix A to Remarketing Statement and Official Statement (October 8, 2012)	CD#6
SDCWA 050	10/8/12	Water Authority's letter on Board Memo 8-3 – Approve the Form of the Amended and Restated Purchase Order and Authorize Amendment to the Administrative Code (October 8, 2012)	CD#6
SDCWA 051	10/9/12	Water Authority's testimony, as given by Dennis Cushman, on benefits of QSA to MWD (October 9, 2012)	CD#6
SDCWA 052	11/4/12	Director Lewinger's letter to CFO Breaux re: Tracking Revenues from Rate Components Against Actual Expenditures (November 4, 2012)	CD#6
SDCWA 053	11/5/12	Water Authority Opposition to Board Memo 8-1: Authorize the Execution and Distribution of the Official Statement in Connection with the Issuance of the Water Revenue Refunding Bonds, 2012 Series G (November 5, 2012)	CD#6
SDCWA 054	12/10/12	Water Authority's letter re: 7-2: Authorize MOU for Greater LA County Region Integrated Regional Water Management Plan Leadership Committee and join other IRWM groups in our service area if invited by member agencies (December 10, 2012)	CD#6
SDCWA 055	12/10/12	Water Authority's Letter re: SB 60 Annual Public Hearing and Report to the Legislature Regarding Adequacy or MWD's UWMP – Request to Include Information in Report to Legislature (December 10, 2012)	CD#6
SDCWA 056	12/10/12	Oppose Local Resources Program agreement with TVMWD and Cal Poly Pomona for the Cal Poly Pomona Water Treatment Plant (December 10, 2012)	CD#6
SDCWA 057	12/27/12	Water Authority's letter on 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)	CD#6
SDCWA 058	1/14/13	Water Authority's response to MWD's letter regarding the Amended and Restated Purchase Order dated January 4, 2013 (January 14, 2013)	CD#6
SDCWA 059	2/11/13	Water Authority Opposition to Board Memo 8-1: Authorize the Execution and Distribution of the Official Statement in Connection with the Issuance of the Water Revenue Refunding Bonds, 2013 Series A, 2013 Series B, and 2013 Series C, and Amendment and Termination of	CD#6

		Interest Rate Swaps (February 11, 2013)	
SDCWA 060	2/11/13	Oppose Local Resources Program agreement with Calleguas MWD and Camrosa Water District for the Round Mountain Water Treatment Plant (February 11, 2013)	CD#6
SDCWA 061	2/11/13	Water Authority Delegation Statement on Item 7-5 re WaterSMART grant funding (February 11, 2013)	CD#6
SDCWA 062	3/7/13	Water Authority's Letter re: Board Item 9-1 – Proposed Foundational Actions Funding Program (March 7, 2013)	CD#6
SDCWA 063	4/8/13	Water Authority's Letter regarding 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)	CD#6
SDCWA 064	4/8/13	Water Authority's Letter re: Board Item 8-4: Approve Foundational Actions Funding Program -- OPPOSE (April 8, 2013)	CD#6
SDCWA 065	5/10/13	Oppose Local Resources Program agreement with Long Beach and Water Replenishment District for the Leo J. Vander Lands Water Treatment Facility Expansion Project (May 10, 2013)	CD#6
SDCWA 066	5/13/13	Water Authority Opposition to 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, 2013 Series D (May 13, 2013)	CD#6
SDCWA 067	5/14/13	Water Authority's Letter regarding the Public Hearing on Freezing the Ad Valorem Tax Rate (May 14, 2013)	CD#6
SDCWA 068	5/29/13	MWD letter to State Legislature Notifying of Public Hearing on Ad Valorem Tax Rate (May 29, 2013)	CD#6
SDCWA 069	6/5/13	Water Authority letter re 8-1: Mid-cycle Budget Review and Use of Reserves (June 5, 2013)	CD#6
SDCWA 070	6/7/13	Water Authority Opposition to 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)	CD#6

SDCWA 071	7/5/13	Oppose Local Resources Program agreement with the city of Anaheim for the Anaheim Water Recycling Demonstration Project (July 5, 2013)	CD#6
SDCWA 072	8/16/13	Water Authority's letter re 5G-2: Adopt resolution maintaining the tax rate for fiscal year 2013/14 – Oppose (August 16, 2013)	CD#6
SDCWA 073	8/19/13	Water Authority's Letter re: Entering into an exchange and purchase agreement with the San Gabriel Valley Municipal Water District (August 19, 2013)	CD#6
SDCWA 074	9/9/13	Water Authority Delegation Opposition letter to 8-3: Authorization to implement New Conservation Program Initiatives (September 9, 2013)	CD#6
SDCWA 075	9/10/13	Water Authority Delegation letter Opposing 8-2: Authorize staff to enter into funding agreements for Foundational Actions Funding Program proposals (September 10, 2013)	CD#6
SDCWA 076	9/11/13	Letter from Water Authority General Counsel Hentschke regarding Record of September 10, 2013 MWD Board Meeting (September 11, 2013)	CD#6
SDCWA 077	9/16/13	Letter from MWD General Counsel Scully responding to Hentschke's September 11, 2013 letter regarding Record of September 10, 2013 MWD Board Meeting (September 16, 2013)	CD#6
SDCWA 078	10/4/13	Residents for Sustainable Mojave Development comment letter on MWD's Role in Approving the Cadiz Valley Water Conservation, Recovery and Storage Project (October 4, 2013)	CD#6
SDCWA 079	10/4/13	Water Authority's letter supporting with reservation of rights to object to cost allocation regarding 8-3: Authorize agreement with the SWC to pursue 2014 Sacramento Valley water transfer supplies (October 4, 2013)	CD#6
SDCWA 080	10/4/13	Oppose Local Resources Program agreement with Eastern for the Perris II Brackish Groundwater Desalter (October 4, 2013)	CD#6
SDCWA 081	10/8/13	Water Authority's letter requesting to table or in the alternative to oppose 8-1: Authorize amendment to MWD's Cyclic Storage Agreement with Upper San Gabriel Valley Municipal Water District and the Main San Gabriel Basin Watermaster (October 8, 2013)	CD#6
SDCWA 082	11/1/13	AFSCME letter regarding the compensation recommendations for board direct reports (November 1,	CD#6

		2013)	
SDCWA 083	11/13/13	Water Authority letter regarding Foundational Actions Funding Program Agreement (November 13, 2013)	CD#6
SDCWA 084	11/14/13	Ethics Officer Ghaly letter to Ethics Committee Chair Edwards regarding Responses to Director Questions re Ethics Workshops (November 14, 2013)	CD#6
SDCWA 085	12/9/13	Water Authority Delegation letter regarding 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)	CD#6
SDCWA 086	12/9/13	Water Authority Delegation letter regarding SB 60 Report – Water Planning and Stewardship Committee Public Hearing (December 9, 2013)	CD#6
SDCWA 087	12/9/13	Water Authority Delegation letter regarding Applicability of MWD’s Administrative Code (December 9, 2013)	CD#6
SDCWA 088	1/10/14	MWD General Counsel response to Water Authority letter regarding Applicability of MWD’s Administrative Code (January 10, 2014)	CD#6
SDCWA 089	1/27/14	Water Authority General Counsel letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (January 27, 2014)	CD#6
SDCWA 090	2/3/14	Mayors of 14 cities in San Diego Region letter regarding MWD’s Calendar Years 2015 and 2016 rate setting and fiscal years 2013 and 2014 over-collection (February 3, 2014)	CD#6
SDCWA 091	2/5/14	MWD General Counsel response to the Water Authority’s January 27, 2014 letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (February 5, 2014)	CD#6
SDCWA 092	2/10/14	Water Authority Delegation letter regarding Board Memo 8-2 on On-Site Retrofit Pilot Program and Board Memo 8-7 on Increase of \$20 million for conservation incentives and outreach (February 10, 2014)	CD#6
SDCWA 093	2/28/14	Water Authority General Counsel response to MWD’s February 5, 2014 response letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (February 28, 2014)	CD#6

SDCWA 094	3/7/14	Water Authority Delegation letter to California State Senator Steinberg and California State Assemblyman Pérez regarding MWD's Public Hearing on Suspension of Tax Rate Limitation (March 7, 2014)	CD#6
SDCWA 095	3/10/14	MWD General Counsel response to the Water Authority's February 28, 2014 response letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (March 10, 2014)	CD#6
SDCWA 096	3/10/14	Water Authority Delegation letter regarding Board Memo 8-3 on Water Savings Incentive Program (WSIP) Agreement with Altman's Specialty Plants, Inc. (March 10, 2014)	CD#6
SDCWA 097	3/19/14	MWD General Counsel response with DVD of information to the Water Authority's February 28, 2014 response letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (March 19, 2014)	CD#6
SDCWA 098	4/4/14	MWD General Counsel further response with DVD of information to the Water Authority's February 28, 2014 response letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (April 4, 2014)	CD#6
SDCWA 099	3/4/16	CD of Correspondences between SDCWA and MWD during the 2015 and 2016 calendar years relevant to the determination, evaluation, and legitimacy of water rates for 2017 and 2018	CD#7
SDCWA 100	12/9/10	Comments to MWD on Draft Official Statement	CD#7
SDCWA 101	12/13/10	MWD's response to the Water Authority's December 9 Official Statement on MWD's Appendix A	CD#7
SDCWA 102	5/24/11	MWD's Response to Water Authority's May 16 Official Statement	CD#7
SDCWA 103	8/15/11	Opposition Letter on Long Term Conservation Plan and Revised Policy Principles on Water Conservation (August 15, 2011)	CD#7
SDCWA 104	12/21/11	MWD's Response to Water Authority's December 12, 2011 letter on Replenishment Program (December 21, 2011)	CD#7
SDCWA 105	1/18/12	MWD's Letter on Request to Include Information in Report to Legislature (January 18, 2012)	CD#7

SDCWA 106	1/18/12	MWD's Replenishment Workgroup Documentation Response Letter to Water Authority's January 5, 2012 "MWD Letters on Replenishment dated December 21, 2011" addressed to Ken Weinberg (January 18, 2012)	CD#7
SDCWA 107	2/10/12	MWD Response Letter to Proposed Biennial Budget and Associated Rates and Charges for 2012/13 and 2013/14 (February 10, 2012)	CD#7
SDCWA 108	3/9/12	MWD's Response to Water Authority's March 5, 2012 "Comments on Proposed Rates and Charges" (March 9, 2012)	CD#7
SDCWA 109	4/5/12	MWD's Response to Water Authority Report on Cost of Service Review (April 5, 2012)	CD#7
SDCWA 110	9/4/12	MWD's Response to Comments on Appendix A to Remarketing Statement and Official Statement	CD#7
SDCWA 111	9/7/12	MWD Response to August 16, 2012 Rate Refinement Workshop Letter (September 7, 2012)	CD#7
SDCWA 112	10/25/12	MWD's Response to Water Authority's October 8, 2012 letter re: MWD's September 4, 2012 letter regarding Appendix A to Remarketing Statement and Official Statement	CD#7
SDCWA 113	10/30/12	MWD's Response to Water Authority's October 8, 2012 letter regarding Board Memo 8-3 on Purchase Orders (October 30, 2012)	CD#7
SDCWA 114	11/19/12	MWD's Response to Water Authority's November 5, 2012 Letter Regarding Board Item 8-1: Authorize the Execution and Distribution of the Official Statement in Connection with the Issuance of the Water Revenue Refunding Bonds, 2012 Series G	CD#7
SDCWA 115	12/26/12	Letter from Water Authority Chair Wornham inviting MWD Chair Foley to lunch (December 26, 2012)	CD#7
SDCWA 116	1/4/13	MWD's response to Water Authority's letter on Amended and Restated Purchase Order dated December 27, 2012 (January 4, 2013)	CD#7
SDCWA 117	1/16/13	MWD's response to Water Authority's letter on Amended and Restated Purchase Order dated January 14, 2013 (January 16, 2013)	CD#7
SDCWA 118	2/19/13	MWD's response to Water Authority's Letter re: Board Memo 8-1 dated February 11, 2013	CD#7
SDCWA 119	5/22/13	MWD's response to Water Authority's Letter re: Board Memo 8-3 dated May 13, 2013	CD#7

SDCWA 120	6/18/13	MWD's response to Water Authority's June 7, 2013 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	CD#7
SDCWA 121	11/18/13	Water Authority letter regarding Unlawful recording by MWD of telephone conversations with Water Authority staff (November 18, 2013)	CD#7
SDCWA 122	11/20/13	MWD response to Water Authority's November 13 letter regarding Foundational Actions Funding Program Agreement (November 20, 2013)	CD#7
SDCWA 123	11/20/13	MWD's response to Water Authority's November 18 letter regarding Skinner Treatment Plan Telephone Recordings (November 20, 2013)	CD#7
SDCWA 124	11/21/13	MWD's response to AFSCME's November 1 letter regarding compensation recommendations for board direct reports (November 21, 2013)	CD#7
SDCWA 125	12/13/13	MWD response to Water Authority's December 9, 2013 letter regarding Board Memo 8-1: Authorize the execution and distribution of Remarketing Statements in connection with the remarketing of the water Revenue Refunding Bonds	CD#7
SDCWA 126	4/8/14	Water Authority Assistant General Manager's letter to MWD General Manager Kightlinger and Board regarding MWD's proposed biennial budget for fiscal years 2014/15 and 2015/16, proposed ten-year forecast, and recommended water rates for calendar years 2015 and 2016 (April 8, 2014)	CD#7
SDCWA 127	4/8/14	Water Authority Assistant General Manager's letter to MWD Clerk of the Board Chin regarding MWD's proposed biennial budget for fiscal years 2014/15 and 2015/16, proposed ten-year forecast, and recommended water rates for calendar years 2015 and 2016 (April 8, 2014)	CD#7
SDCWA 128	5/2/14	Water Authority General Manager letter regarding Compliance with Paragraph 11.1 of the Amended and Restated Agreement between MWD and the Water Authority for the Exchange of Water dated October 10, 2003 (May 2, 2014)	CD#7

SDCWA 129	5/12/14	Water Authority Delegation letter regarding Board Memo 8-2: Authorize execution and distribution of the Official Statement in connection with the issuance of the Special Variable Rate Water Revenue Refunding Bonds, 2014 Series D, and authorize payment of costs and issuance from bond proceeds – Oppose	CD#7
SDCWA 130	5/12/14	Water Authority Delegation letter regarding Board Item 8-6 – Authorize changes to conservation program in response to drought conditions – Support Implementation of Conservation Measures in Response to State Drought Conditions; Oppose Use of Illegal Rates to Pay for Water Conservation Measures (May 12, 2014)	CD#7
SDCWA 131	5/16/14	Please see section 11 (Subsidy Programs – Conservation) for the Water Authority General Manager’s letter to California Natural Resources Agency Secretary Laird regarding Water Conservation and MWD Rates (May 16, 2014)	CD#7
SDCWA 132	5/16/14	Water Authority General Manager’s letter to California Natural Resources Agency Secretary Laird regarding Water Conservation and MWD Rates (May 16, 2014)	CD#7
SDCWA 133	5/19/14	MWD’s response letter to Water Authority’s May 12, 2014 letter regarding MWD’s Official Statement	CD#7
SDCWA 134	7/14/14	MWD General Manager’s letter to the State Water Resources Control Board regarding Emergency Water Conservation Regulations (July 14, 2014)	CD#7
SDCWA 135	8/18/14	MWD General Manager’s letter to the State Water Resources Control Board regarding Emergency Water Conservation and Curtailment Regulations (August 18, 2014)	CD#7
SDCWA 136	10/11/14	Water Authority Delegation letter to MWD regarding Refinements to Local Resources Program (October 11, 2014)	CD#7
SDCWA 137	10/11/14	Water Authority Chair Weston’s letter to MWD Chair Record regarding the MWD Board Room Demeanor (October 11, 2014)	CD#7
SDCWA 138	10/13/14	Water Authority Delegation letter to MWD regarding Update on Purchase Orders (October 13, 2014)	CD#7
SDCWA 139	10/15/14	Central Basin Water Association letter to Central Basin regarding MWD’s failure to deliver 60,000 acre-feet of groundwater replenishment supplies (October 15, 2014)	CD#7
SDCWA 140	10/17/14	MWD Chair Record’s response letter to Water Authority Chair Weston regarding MWD Board Room Demeanor	CD#7

		(October 17, 2014)	
SDCWA 141	10/31/14	Central Basin letter to MWD regarding delivery of 60,000 acre-feet of groundwater replenishment supplies and preferential rights (October 31, 2014)	CD#7
SDCWA 142	11/12/14	MWD's response to Central Basin's letter regarding delivery of 60,000 acre-feet of groundwater replenishment supplies and preferential rights (November 12, 2014)	CD#7
SDCWA 143	11/17/14	Water Authority Delegates letter to MWD regarding MWD's Official Statement	CD#7
SDCWA 144	11/17/14	Water Authority Delegates letter to MWD regarding Purchase Orders (November 17, 2014)	CD#7
SDCWA 145	11/17/14	Water Authority Delegates letter to MWD regarding Balancing Accounts (November 17, 2014)	CD#7
SDCWA 146	11/18/14	City of Signal Hill Letter to MWD Chair Record regarding Central Basin's request for replenishment water (November 18, 2014)	CD#7
SDCWA 147	11/20/14	MWD's response letter to Water Authority's November 17, 2014 letter regarding MWD's Official Statement	CD#7
SDCWA 148	12/5/14	Central Basin Letter to MWD regarding replenishment deliveries and rescinding preferential rights (December 5, 2014)	CD#7
SDCWA 149	12/8/14	Water Authority Delegates letter to MWD regarding modifications to Water Supply Allocation Plan (December 8, 2014)	CD#7
SDCWA 150	12/8/14	Mayors of the cities of San Diego and Los Angeles joint letter to MWD regarding modifications to Water Supply Allocation Plan and separate groundwater replenishment allocation (December 8, 2014)	CD#7
SDCWA 151	12/8/14	Water Authority Delegates letter to MWD regarding SB 60 Report – Water Planning and Stewardship Committee Public Hearing (December 8, 2014)	CD#7
SDCWA 152	12/8/14	Water Authority Delegates letter to MWD regarding Conservation Spending and Efforts (December 8, 2014)	CD#7
SDCWA 153	12/8/14	Southwest Water Coalition Letter to MWD Chair Record regarding Central Basin's Groundwater Replenishment Requests (December 8, 2014)	CD#7
SDCWA 154	12/9/14	MWD Chair Record response letter to Signal Hill regarding Central Basin's request for replenishment water (December 9, 2014)	CD#7

SDCWA 155	12/17/14	MWD Chair Record response letter to Southwest Water Coalition regarding Central Basin's request for replenishment water (December 17, 2014)	CD#7
SDCWA 156	12/18/14	MWD response letter to mayors of the cities of San Diego and Los Angeles joint letter to MWD regarding modifications to Water Supply Allocation Plan and separate groundwater replenishment allocation (December 18, 2014)	CD#7
SDCWA 157	1/5/15	Gateway Cities response letter to mayors of the cities of San Diego and Los Angeles joint letter to MWD regarding modifications to Water Supply Allocation Plan and separate groundwater replenishment allocation (January 5, 2015)	CD#7
SDCWA 158	3/5/15	MWDOC's letter to MWD supporting to Approve and Authorize Execution and Distribution of Remarketing Statements in Connection with Remarketing of water revenue refunding bonds (March 5, 2015)	CD#7
SDCWA 159	3/6/15	Water Authority Delegation letter to MWD regarding Water Planning and Stewardship Committee Agenda and Water Supply Management Strategies including Use of Storage (March 6, 2015)	CD#7
SDCWA 160	3/9/15	Water Authority Delegates letter to MWD regarding MWD's Official Statement (March 9, 2015)	CD#7
SDCWA 161	3/17/15	MWD's response letter to Water Authority's November 17, 2014 letter regarding MWD's Official Statement (March 17, 2015)	CD#7
SDCWA 162	3/26/15	MWD Chair letter to Assembly Minority Leader Olsen regarding Invitation to Tour Diamond Valley Lake (March 26, 2015)	CD#7
SDCWA 163	3/26/15	MWD Chair letter to Assembly Speaker Atkins regarding Invitation to Tour Diamond Valley Lake (March 26, 2015)	CD#7
SDCWA 164	4/13/15	Water Authority Delegates letter to MWD Board regarding Calendar Year 2016 Readiness-to-Serve and Capacity charges (April 13, 2015)	CD#7
SDCWA 165	5/4/15	Water Authority General Manager's letter to State Water Resources Control Board regarding Drought Regulation (May 4, 2015)	CD#7
SDCWA 166	5/8/15	Water Authority Delegates letter to MWD regarding Authorization of \$150 million in Additional Funding for Conservation Incentives and Implementation of Modifications to the Turf Removal Program (May 8, 2015)	CD#7

SDCWA 167	5/9/15	Water Authority Delegates letter to MWD Board regarding MWD's Water Standby Charge for Fiscal Year 2016 (May 9, 2015)	CD#7
SDCWA 168	5/25/15	Water Authority Delegates letter to MWD regarding Authorization of \$350 million in Additional Funding for Conservation Incentives and Implementation of Modifications to the Turf Removal Program (May 25, 2015)	CD#7
SDCWA 169	6/5/15	Water Authority Delegates letter to MWD opposing MWD's Official Statement (June 5, 2015)	CD#7
SDCWA 170	6/22/15	MWD's response letter to the Delegates' June 5 letter regarding MWD's Official Statement (June 22, 2015)	CD#7
SDCWA 171	7/1/15	Water Authority General Manager's letter to State Water Resources Control Board regarding Conservation Water Pricing and Governor's Executive Order for 25 Percent Conservation (July 1, 2015)	CD#7
SDCWA 172	7/9/15	Water Authority Delegates letter to MWD Board regarding Adopt a Resolution for the Reimbursement with Bond Proceeds of Capital Investment Plan projects funded from the General Fund and Replacement and Refurbishment Fund (July 9, 2015)	CD#7
SDCWA 173	8/5/15	Water Authority General Counsel's letter to MWD regarding Public Records Act request and MWD's Turf Removal Program (August 5, 2015)	CD#7
SDCWA 174	8/6/15	MWD response to Water Authority's August 5 letter regarding Public Records Act request and MWD's Turf Removal Program (August 6, 2015)	CD#7
SDCWA 175	8/7/15	Water Authority Delegate Lewinger's letter to MWD requesting Information on MWD's Turf Removal Program (August 7, 2015)	CD#7
SDCWA 176	8/11/15	Olivenhain General Manager letter to MWD and Water Authority regarding Public Records Act request and MWD's Turf Removal Program (August 11, 2015)	CD#7
SDCWA 177	8/12/15	Rincon Del Diablo letter to MWD and Water Authority regarding Public Records Act request and MWD's Turf Removal Program (August 12, 2015)	CD#7
SDCWA 178	8/13/15	MWD response to Olivenhain's letter regarding Public Records Act request and MWD's Turf Removal Program (August 13, 2015)	CD#7
SDCWA 179	8/14/15	Poway letter to MWD and Water Authority regarding Public Records Act request and MWD's Turf Removal Program (August 14, 2015)	CD#7

SDCWA 180	8/15/15	Water Authority Delegates letter to MWD Board regarding Maintaining the Ad Valorem Tax Rate for Fiscal Year 2016 (August 15, 2015)	CD#7
SDCWA 181	8/16/15	Water Authority Delegates letter to MWD Board regarding Amendment to the California Agreement for the Creation and Delivery of Extraordinary Conservation Intentionally Created Surplus (August 16, 2015)	CD#7
SDCWA 182	8/17/15	MWD response to Poway's letter regarding Public Records Act request and MWD's Turf Removal Program (August 17, 2015)	CD#7
SDCWA 183	8/17/15	MWD response to Rincon Del Diablo's letter regarding Public Records Act request and MWD's Turf Removal Program (August 17, 2015)	CD#7
SDCWA 184	9/18/15	Water Authority Joint Letter to State Water Resources Control Board regarding Mandatory Drought Regulations (September 18, 2015)	CD#7
SDCWA 185	9/20/15	Water Authority Delegates Letter to MWD regarding approve the introduction by title only of an Ordinance Determining That The Interests of The District Require The Use of Revenue Bonds In The Aggregate Principal Amount of \$5 Million (September 20, 2015)	CD#7
SDCWA 186	9/20/15	Water Authority Delegates letter to MWD regarding Recycled Water Program with Los Angeles County Sanitation Districts (September 20, 2015)	CD#7
SDCWA 187	10/10/15	Water Authority Delegates Letter to MWD regarding Adopt Ordinance No. 149 determining that the interests of MWD require the use of revenue bonds in the aggregate principal amount of \$500 million (October 10, 2015)	CD#7
SDCWA 188	10/11/15	Water Authority Delegates letter to MWD opposing MWD's Official Statement (October 11, 2015)	CD#7
SDCWA 189	10/26/15	Water Authority Delegates letter to MWD regarding MGO fiscal year 2015 audit report (October 26, 2015)	CD#7
SDCWA 190	11/5/15	Water Authority Interim Deputy General Counsel letter to MWD regarding procedures to authorize the sale of water revenue bonds (November 5, 2015)	CD#7
SDCWA 191	11/6/15	Water Authority Delegates letter to MWD opposing the authorization to sell up to \$250 million in Water Revenue Bonds (November 6, 2015)	CD#7

SDCWA 192	11/7/15	Water Authority Delegate letter regarding exchange and storage program with Antelope Valley-East Kern Water Agency (November 7, 2015)	CD#7
SDCWA 193	11/9/15	Water Authority Delegates letter to MWD regarding Recycled Water Program with Los Angeles County Sanitation Districts (November 9, 2015)	CD#7
SDCWA 194	11/10/15	MWD response to Water Foundation letter to MWD supporting Recycled Water Program with Los Angeles County Sanitation Districts (November 10, 2015)	CD#7
SDCWA 195	11/12/15	MWD response to Water Authority Delegates' October 11 letter to MWD opposing MWD's Official Statement (November 12, 2015)	CD#7
SDCWA 196	12/1/15	Water Authority General Manager's Letter to State Water Resources Control Board regarding comments on potential modifications to emergency conservation regulations (December 1, 2015)	CD#7
SDCWA 197	12/7/15	MWD letter to LACSD General Manager regarding potential recycled water program (December 7, 2015)	CD#7
SDCWA 198	1/6/16	Water Authority General Manager's letter commenting on State Water Resources Control Board's proposed regulatory framework (January 6, 2016)	CD#7
SDCWA 199	1/10/16	Water Authority Delegates' letter to MWD commenting on MWD's 2015 Integrated Water Resources Plan Update (January 10, 2016)	CD#7
SDCWA 200	1/28/16	Water Authority General Manager's letter commenting on State Water Resources Control Board's extended emergency conservation regulations (January 28, 2016)	CD#7
SDCWA 201	2/4/16	Water Authority General Counsel's letter to MWD requesting data and proposed methodology for establishing rates and charges (February 4, 2016)	CD#7
SDCWA 202	2/6/16	Water Authority Delegates' letter to MWD regarding MWD's proposed budget and rates for 2017 and 2018, and ten-year forecast (February 6, 2016)	CD#7
SDCWA 203	2/9/16	Water Authority Delegates' letter to MWD regarding cost of service report for proposed budget and rates for 2017 and 2018 (February 9, 2016)	CD#7
SDCWA 204	2/22/16	Water Authority Delegates' letter to MWD regarding budget and rates workshop #2 and information request (February 22, 2016)	CD#7
SDCWA 205	4/8/16	Index of Contents of CD#8	CD#8
SDCWA 206	8/18/31	Boulder Canyon Project Agreement	CD#8

SDCWA 207	11/12/85	MWD Memo to Board of Directors Re Preferential Rights	CD#8
SDCWA 208	10/17/07	MWD Funding Growth Related Capital Slides	CD#8
SDCWA 209	11/1/10	MWD Regional Urban Water Management Plan - Nov 2010	CD#8
SDCWA 210	7/1/14	MWD 2014 Annual Report	CD#8
SDCWA 211	7/24/14	MWD Fiscal Year To Date Billing Activity Report Through June 2014	CD#8
SDCWA 212	11/30/14	MWD SWP SOC Audit Report Full	CD#8
SDCWA 213	11/30/14	MWD SWP SOC Audio Summary	CD#8
SDCWA 214	5/1/15	CA Ct of App Holds Tiered Pricing Must Reflect Cost of Service	CD#8
SDCWA 215	6/1/15	Emerging Shortages in Colorado River Basin - Journal of Water	CD#8
SDCWA 216	6/30/15	MWD Preferential Rights Table	CD#8
SDCWA 217	7/17/15	MWD Fiscal Year To Date Billing Activity Report Through June 2015	CD#8
SDCWA 218	9/1/15	Metropolitan Purchase in PVID - Journal of Water	CD#8
SDCWA 219	10/1/15	Agreement with SNWA CRCN Increases Metropolitan Supplies	CD#8
SDCWA 220	12/1/15	California DWR Announces Initial SWP Allocation	CD#8
SDCWA 221	1/27/16	Hal Soper Email Re Overcollection with Attached Slide	CD#8
SDCWA 222	2/18/16	Water Authority General Counsel's letter to MWD requesting data under Cal. Public Records Act Section 6250 (February 18, 2016)	CD#8
SDCWA 223	2/26/16	Response of MWD General Counsel to Public Records Act Request Dated February 18, 2016 (Feb. 26, 2016)	CD#8
SDCWA 224	3/1/16	DWR Increases SWP Allocation to 45 Perc after Storms	CD#8
SDCWA 225	3/4/16	SDCWA Letter MWD GC Re Public Records Act Request of Feb. 18, 2016	CD#8
SDCWA 226	3/6/16	SDCWA to MWD Board Re March 7 Finance and Insurance Committee/Budget and Rates Workshop #3 Items 9-2	CD#8
SDCWA 227	3/30/16	Further Response to Public Records Act Request Dated February 18, 2016 (March 30, 2016)	CD#8
SDCWA 228	4/7/16	Index of MWD Storage Agreements and WSDM Documents	CD#8
SDCWA 229	4/7/16	Index to Video File Links for MWD Board Meetings April 2014-April 2016	CD#8
SDCWA 230	4/7/16	Index to Video File Links for MWD Finance and Insurance Committee April 2014-April 2016	CD#8

SDCWA 231	4/7/16	Index to Video File Links for MWD IRP Committee Meetings 2015-April 2016	CD#8
SDCWA 232	4/7/16	Letter from MWD GC to Water Authority GC Re Further Response to PRA (original contained DVD)	CD#8
SDCWA 233	4/7/16	Letter from MWD GC to Board of Directors RE Information Based Questions from F&I Meetings (PDF of Forwarded Email)	CD#8
SDCWA 234	4/7/16	MWD Fiscal Year Sales for 1980 to 2016	CD#8
SDCWA 235	4/8/16	SDCWA Excel Spreadsheet Re Overcollection	CD#8
SDCWA 236	4/8/16	MWD Storage Agreements and WSDM Documents identified in Index	CD#8
SDCWA 237	4/8/16	MWD Mission	CD#8
SDCWA 238	4/8/16	GWRS Purification System Home Page	CD#8
SDCWA 239	4/8/16	GWRS Purification Process	CD#8
SDCWA 240	4/8/16	GWRS FAQ	CD#8
SDCWA 241	4/7/16	Index of MWD IRP Documents	CD#9
SDCWA 242	4/7/16	MWD IRP Documents identified in Index	CD#9

**Testimony of Dennis Cushman
Metropolitan Water District of Southern California
Finance and Insurance Committee Agenda Item 8-1, April 11, 2016
Approve Biennial Budget, Revenue Requirements and Water Rates and Charges
and Suspend Tax Rate Limitation for 2017 and 2018**

Good morning, Chairman Barbre and members of the committee. I'm Dennis Cushman, assistant general manager of the San Diego County Water Authority. I would like to submit into today's record, a letter of today's date addressed to the Clerk of the Board, with attachments, including CDs numbered 8 and 9. My assistant Liz Mendelson is handing that in to the committee secretary.

The Water Authority opposes suspension of the tax rate limitation, because this action clearly is not necessary, let alone "essential," given the almost \$850 million MWD has over-collected from ratepayers over the past four years. It is also improper when MWD is proposing to reduce its RTS and Capacity Charges – the very tools the Legislature gave MWD in lieu of higher property taxes.

The Water Authority opposes the 2017 and 2018 water rates and charges on both procedural and substantive grounds.

First, MWD violated Administrative Code Section 4304 because it failed to provide a cost of service analysis and recommended rates at the Board's February meeting. Instead, the cost of service analysis was not released until March 16, more than one month late and eight days after the public hearing. The General Manager's rate recommendations were not presented until they were posted on the MWD website on March 30, almost two months later than required by the Admin Code and three weeks after the public hearing.

MWD also refused again to comply with Government Code Section 54999.7, which requires MWD to provide the data and methodology for establishing its rates in a timely fashion.

Finally, MWD has refused to make its rate model available to the Water Authority and the public. Without the rate model, MWD cannot show how its rates and charges tie to, or are based on its budgetary, accounting and operational data.

Turning to the substance of the proposed rates, we have provided reports by two consulting firms – Municipal & Financial Services Group and Stratecon Inc. – that detail why MWD's cost of service analysis is flawed and its recommended rates and charges for 2017 and 2018 are illegal:

- First, State Water Project costs continue to be improperly allocated to transportation rates, rather than supply rates.

- Second, the Water Stewardship Rate is an illegal tax that is not related to any service provided by MWD; rather, these revenues are collected from all member agencies and used by MWD to pay local water supply costs of only some member agencies. These costs, if they may be incurred by MWD at all, must be assigned to the member agencies that benefit from receipt of these funds.
- Third, while MWD's cost of service analysis states and demonstrates that the service characteristics and demand patterns of its 26 member agency customers vary significantly, it has not assigned its costs in a manner that recognizes this fact. It is missing entirely a required step in the industry standard practice of assigning costs to rates and charges.

As a result of these and other issues causing cross-subsidies, all of MWD's rates, including its supply rates, are illegal.

It is not correct to say that MWD need only show that its rates are "reasonable." MWD's rates are required to be based on cost-causation -- that is a real limit on the discretion this board has to allocate MWD's costs. The sooner MWD recognizes this fact, the better for all of MWD's 26 member agency customers and the almost 19 million people they serve.

Thank you.



San Diego County Water Authority

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

March 8, 2016

Dawn Chin, Clerk of the Board
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0154

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
 - Olney Water District
 - Peñon de San Antonio Municipal Water District
 - Camp Pendleton Marine Corps Base
 - Rainbow Municipal Water District
 - Rancho Santa Fe Municipal Water District
 - Rincon del Diabolo 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
 - Yuma Municipal Water District
- OTHER REPRESENTATIVE**
- County of San Diego

Re: March 8 Board Meeting Agenda Item 4: Public Hearing RE suspension of tax rate limitation and proposed water rates and charges for calendar years 2017 and 2018

Letter Submitting Documents into the Administrative Record

Dear Ms. Chin,

Accompanying this letter are 6 CD's containing a copy of all the documents listed in the attached Master Index of Documents San Diego County Water Authority Requests be Included in the Administrative Record for Setting of MWD Rates and Charges for Calendar Years 2017 and 2018 (Attachment 8 to this letter). The Water Authority requests that this letter and these documents be included in the Administrative Record.

CD#1 Contains the Administrative Record Submitted by MWD for Setting of MWD's 2013 and 2014 rates (*SDCWA v. MWD*, Case No. CPF-12-512466 (S.F. Superior Court)), which is inclusive of the Administrative Record in the case challenging MWD's 2011 and 2012 rates (*SDCWA v. MWD*, Case No. CPF-10-510830 (S.F. Superior Court)), and totals 966 documents.

CD#2 Contains documents SDCWA requested be included in the Administrative Record for the adoption of MWD's 2015 and 2016 rates in the CD#2 that was presented with its March 11, 2014 letter to Dawn Chin.

CD#3 Contains the post-trial briefs, transcripts and Statements of Decision from the 2010/2012 Rate Cases (*SDCWA v. MWD*, Case Nos. CPF-10-510830 and CPF-12-512466 (S.F. Superior Court)), testimony presented by Dennis Cushman to MWD's Finance and Insurance Committee and Board of Directors, and additional testimony and related documents. An index for this CD is attached to this letter as Attachment 9.

CD#4 *Intentionally left blank*

CD#5 Contains documents and testimony from Phase II of the SDCWA v. MWD Trial (*SDCWA v. MWD*, Case Nos. CPF-10-510830 and CPF-12-512466 (S.F. Superior Court)). An index of these documents is attached to this letter as Attachment 10.

CD#6 Contains SDCWA's April 8, 2014 letter to MWD's Clerk of the Board and all attachments thereto, including documents contained in the CD that was delivered with that letter (all audio files were provided in the form of a link to MWD board proceedings).

CD#7 Contains additional documents SDCWA requests be included in the Administrative Record for the setting of water rates and charges for calendar years 2017 and 2018 (itemized on the Master Index of Documents as SDCWA 99-204).

Also attached are copies of the following letters:

1. Letter from SDCWA Board Members to Laura Friedman and the MWD Audit and Ethics Committee Members dated October 26, 2015, Re: Audit and Ethics Committee Agenda Item 3-b, Discussions of independent Auditor's Report from MGO LLP for fiscal year 2014/15 (a copy is marked as Attachment 1 to this letter).
2. Letter from SDCWA Directors to Randy Record and the Members of the MWD Board of Directors dated February 6, 2016 Re: Board Memo 9-2: Proposed biennial budget and revenue requirements for fiscal years 2016/2017 and 2017/2018; estimated water rates and charges for calendar years 2017 and 2018 to meet revenue requirements; and ten-year forecast (a copy is marked as Attachment 2 to this letter).
3. Letter from James Taylor to Dawn Chin dated February 18, 2016 Re: Request for Records Under California Public Records Act (California Gov. Code §6250 *et seq.*)(a copy is marked as Attachment 3 to this letter).
4. Letter from Gary Breaux to MWD Board Members dated February 22, 2016 Re: SDCWA's letter dated October 26, 2015 regarding Audit and Ethics Committee Agenda Item 3-b (a copy is marked as Attachment 4 to this letter).
5. MWD Response letter from Gary Breaux to the SDCWA Directors dated February 23, 2016 Re: SDCWA's letters dated February 4, 6, and 9, 2016 (a copy is marked as Attachment 5 to this letter).
6. Letter from Marcia Scully to James Taylor dated February 26, 2016 Re: Response to Public Records Act Request Dated February 18, 2016 (a copy is marked as Attachment 6 to this letter).
7. Letter from James Taylor to Marcia Scully, dated March 4, 2016 Re: San Diego Public Records Act Request of February 18, 2016 (a copy is marked as Attachment 7 to this letter).

The Water Authority requests inclusion of this letter and its Attachments, including each and every document listed in the Indexes and attached CDs, in the Administrative Record of proceedings relating to the actions, resolutions, adoption, and imposition of MWD's rates and charges for calendar years 2017 and 2018.

Sincerely



Dennis A. Cushman
Assistant General Manager

Attachments

- Attachment 1: Letter from SDCWA Directors to MWD Ethics Committee RE Independent Auditor's Report from MGO for 2014/15
- Attachment 2: Letter from SDCWA Directors to MWD Board of Directors Re: Board Memo 9-2: Proposed biennial budget and revenue requirements for fiscal years 2016/2017 and 2017/2018
- Attachment 3: Letter from James Taylor to Dawn Chin Re: Public Records Act Request
- Attachment 4: Letter from Gary Breaux to MWD Board Members Re: SDCWA's Audit and Ethics Committee Agenda Item 3-b letter
- Attachment 5: MWD Response letter from Gary Breaux to the SDCWA Directors dated Re: SDCWA's letters dated February 4, 6, and 9, 2016
- Attachment 6: Letter from Marcia Scully to James Taylor dated Re: Public Records Act Request
- Attachment 7: Letter from James Taylor to Marcia Scully, Re: San Diego Public Records Act Request
- Attachment 8: Master Index of Documents SDCWA Requests be Included in the Administrative Record for Setting of 2017-2018 MWD Rates and Charges
- Attachment 9: CD#3 Index
- Attachment 10: CD#5 Index



San Diego County Water Authority

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

October 26, 2015

Laura Friedman and
 Audit and Ethics Committee Members
 Metropolitan Water District of Southern California
 P.O. Box 54153
 Los Angeles, CA 90054-0153

MEMBER AGENCIES

Carlsbad
 Municipal Water District

City of Dal Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook
 Public Utility District

Holix Water District

Lakeside Water District

Olivenhain
 Municipal Water District

Ray 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

Yuma
 Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

RE: Audit and Ethics Committee Agenda Item 3-b
 Discussion of independent Auditor's Report from MGO LLP for fiscal year 2014/15

Dear Chair Friedman and Committee Members,

We have reviewed the Independent Auditor's Report dated October 19, 2015 ("Report") on MWD's basic financial statements for the fiscal years ended June 30, 2015 and 2014. We have a number of concerns that certain characterizations contained in the Report are misleading, for example, that MWD had "water sales" of \$1,382.9 (dollars in millions) (page 8) for the fiscal year ended June 30, 2015. That is not accurate; that number is only achieved by characterizing as "water sales" the revenue MWD is actually paid for wheeling the Water Authority's independent Colorado River water under the Exchange Agreement. Note 1(c) purports to itemize MWD's sources of revenue but again, does not acknowledge its receipt of substantial revenues for the transportation of third-party water (which reduces the volume of MWD's own "water sales").

It appears that the independent Auditor may not have been provided with a copy of the Water Authority's communications regarding MWD's draft Official Statements. A copy of our last letter dated October 12, 2015 is attached. MWD management has an obligation to inform the auditor both about questions that have been raised and about material events occurring prior to issuance of the Report in a timely fashion, in order to prevent the Report from being misleading.

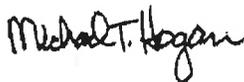
Note 9(d), *Sale of Water by the Imperial Irrigation District to San Diego County Water Authority*, is not only inconsistent with key findings by the Court in the Water Authority rate litigation, it is inconsistent with some of MWD's own arguments in the case. Contrary to the characterization in the Report, Judge Karnow specifically found that the Water Authority is not buying water from MWD under the Exchange Agreement. The Court has also determined that the amount due to the Water Authority as damages is substantially more than "the amount paid by SDCWA under the Exchange Agreement and interest thereon," as

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Committee Chair Friedman and Members of the Committee
October 26, 2015
Page 2

described in Note 9(d) to the financial statement (pages 67-68). In fact, the Court has awarded \$188,295,602 in damages (August 28, 2015 Statement of Decision) and \$43,415,802 in prejudgment interest (October 9, 2015 Order Granting San Diego's Motion for Prejudgment Interest) to the Water Authority. At a minimum, these rulings by the Court should have been included at Note 15, *Subsequent Events*, prior to the Report being issued on October 19, 2015. MWD's management including its Chief Financial Officer has an obligation to inform the independent Auditor of material events in a timely fashion. That apparently did not occur in this case. We request that a copy of this letter and the attachment be provided to the auditor and that the auditor correct the misleading statements and reissue the report.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director

Attachment:

1. Water Authority's October 12, 2015 Letter to MWD Board re 8-2

cc: MWD Board of Directors
Jeff Kightlinger, MWD General Manager
Macias Gini & O'Connell LLP, MWD Independent Auditor



San Diego County Water Authority

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

February 6, 2016

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

Olay 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

Visita Irrigation District

Yulma
Municipal Water District

OTHER
REPRESENTATIVE

County of San Diego

RE: Board Memo 9-2: Proposed biennial budget and revenue requirements for fiscal years 2016/17 and 2017/18; estimated water rates and charges for calendar years 2017 and 2018 to meet revenue requirements; and ten-year forecast

Dear Chairman Record and Board Members:

The purpose of this letter is to provide preliminary comments and questions on Board Memo 9-2, proposed biennial budget and revenue requirements (collectively, the "Budget Document") in advance of the budget and rate workshops that begin with Monday's Finance and Insurance Committee meeting.

1. The Budget Document lacks sufficient detail to understand how MWD has spent money or deliberate how MWD is proposing to spend money. As one example, among many, MWD's proposed Demand Management cost summary does not identify any of the projects included in either Local Resources Program (\$43.7 and \$41.9 million, respectively for the respective fiscal years) or Future Supply Actions (\$4.4 and \$2 million, respectively). The budget also lacks projected actual expenditures for fiscal year (FY) 2016; instead, all comparisons are budget to budget. It is important for Board members to consider actual expenditures as well as proposed budgets, particularly in light of the very substantial additions and modifications to spending that occurred outside of the 2014 budget after it was adopted -- in the hundreds of millions of dollars. We request to be provided with greater detail explaining the proposed expenditures at a detail level sufficient to allow the Board to deliberate where savings might be achieved, as well as to understand the status or outcomes of past programs and expenditures.

2. The Budget Document does not provide any cost of service analysis and lacks sufficient detail to understand how MWD's costs should be assigned to rates. Different than past years, the current Budget Document **does not include any cost of service analysis**. Why has that not been provided? In addition, the Budget Document does not provide a sufficient level of detail or information in order for MWD to defend its rates and establish "**cost**

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MWD Chairman Record and Members of the Board
 February 6, 2016
 Page 2

causation" in accordance with legal requirements. Using the Demand Management cost summary again as an example, it is impossible to identify the proportionate benefits to MWD's customer member agencies resulting from the proposed expenditures. Broad, unsupported statements, such as "demand management programs reduce reliance on imported water," and "demand management programs reduce demands and burdens on MWD's system," are legally insufficient to comply with the common law or California statutory or Constitutional requirements that require MWD to conform to cost of service.

While we understand that MWD has appealed Judge Karnow's decision in the rate cases filed by the Water Authority, there is an increasing body of case law reaffirming these requirements, and clearly establish that they are applicable to water suppliers such as MWD. As one example, we attach a copy of the recent decision of the court in *Newhall County Water District v. Castaic Lake Water Agency*, where a number of arguments by Castaic that are very similar to those made by MWD were again rejected by the Court of Appeal. Chief among them was the argument that the water wholesaler need only identify benefits to its customers "collectively," rather than in a manner that reflects a reasonable relationship to the customers' respective burdens on, or benefits received from the wholesale agency's activities and expenditures. Contrary to these clear legal requirements, MWD's current Budget Document does not provide sufficient information to allow Board members or MWD's 26 customer member agencies to determine proportionate benefit from MWD's proposed expenditures. We repeat here for these purposes, our request to be provided with a greater level of detail regarding MWD's proposed spending, as well as the basis upon which MWD has assessed or may assess proportionate benefit to its customers. We also believe the Board would benefit from a public presentation on current and developing case law regarding the applicability of Proposition 26 to wholesale water agencies such as MWD, so that it is informed of its legal obligations as Board members in setting rates.

3. *The Budget Document does not provide any analysis or data to explain or support the wide range of variation in proposed increases and decreases in various rate categories.* The budget describes an "overall rate increase of 4%;" however, that is a meaningless number outside of the context of specific rates and charges as applied to MWD's 26 customer member agencies, which depends on the type of service or water they buy and what they pay in fixed charges. ***The following rate increases and decreases are proposed for each of the respective fiscal years, without any data or analysis to explain them:***

- Tier 1 supply rate increases of 28.8% and 4%;
- Wheeling rate increases of 6.2% and 4.5%;
- Treatment surcharge decrease of 10.1%, followed by an increase of 2.2%;
- Full service untreated rate increases of 12.1% and 4.4%;
- Full service treated rate increases of 3.9% and 3.7%;
- Readiness-to-Serve (RTS) charge decreases of 11.8% and 3.7%; and
- Capacity Charge (CC) decrease of 26.6%, followed by an increase of 8.8%.

There is no demonstration in the Budget Document that MWD's expenses recovered by the RTS

MWD Chairman Record and Members of the Board
February 6, 2016
Page 3

and CC will vary to such a degree in FYs 2017 and 2018 to support the very substantial proposed decreases in those fixed charges. Moreover, these sources of fixed cost recovery are being reduced at the very same time MWD is proposing to add fixed treatment cost recovery and suspend the property tax limitation under Section 124.5. In addition to the inconsistent logic, MWD is reducing the very charges authorized by the Legislature in 1984 so MWD could have more fixed revenue in lieu of its reliance on property taxes. MWD's proposed rates are precisely contrary to the intent of Sections 124.5 and 134 of its Act (copies attached). We ask that the General Counsel provide a legal opinion why MWD's actions are not the opposite of what was intended by passage of these provisions of the MWD Act.

Absent a justification that is not apparent from the Budget Document, these proposed rate increases and decreases appear to be arbitrary and unreasonable. We ask for the Board's support to require staff to provide both *data and analysis* to support these proposed rates and charges so that they may be understood and demonstrated to be based on cost causation principles.

4. *The Budget Document mischaracterizes the Board's PAYGo funding policy and past actions; and is now proposing a "Resolution of Reimbursement" to formally authorize use of PAYGo revenues to pay for O&M, if necessary.* The Board's PAYGo funding policy was historically set at 20 percent. See attached excerpt from the Board's July 8, 2013 Finance and Insurance Committee meeting. However, MWD staff has for the last several years been using PAYGo funds on an "as- and how-needed" basis. The Board has never deliberated or set a PAYGo "target" or "policy" at 60 percent. Moreover, contrary to what is stated in the Budget Document, the 2014 budget included CIP PAYGo funding at 100 percent, with the 2014 ten-year forecast stating that it "anticipates funding 100% of the CIP from PAYG and Replacement and Refurbishment (R&R) funds for the first three fiscal years, then transitioning to funding 60% of the CIP from water sales revenues." The absence of a Board policy being applied consistently not only fails to accomplish the purpose of PAYGo funding -- to equitably distribute costs of the CIP over time -- but exposes MWD to further litigation risk as funds that are collected for one purpose (CIP) are used for a different purpose (O&M).

The Board should not adopt the recommended "Resolution of Reimbursement" authorizing staff in advance to collect \$120 million annually for one purpose (CIP) and potentially use it for another (O&M). This is not only an unsound fiscal strategy, it serves to mask the true condition of MWD's budget and finances, and breaks any possible connection to cost of service. The Board should make a decision now on whether to raise rates, plan to borrow money or, notably at this point in the budget process, **reduce costs** (see also discussion of sales projections, below). The General Manager has told the Board (during its discussion of unbudgeted turf removal spending last year) that a 7 percent rate increase is necessary to support \$100 million in spending. Advance approval and use of PAYGo funds for O&M is nothing more than a hidden, de facto 8.4 percent additional rate increase each year.

5. The 1.7 MAF MWD sales estimate for the next two fiscal years is likely too high and if so, will leave the Board with an even larger revenue gap to fill; and the Budget Document lacks a fiscally sound contingency plan. The sales estimate may be too high given MWD's current trend at 1.63 MAF (a "sales" number that (at best) misleadingly includes the Water Authority's wheeled water) and El Nino conditions that make it unlikely that agencies will increase demand for MWD water. Further, while the board memo states the sales forecast accounts for 56,000 AF/year of new local supply from the Claude "Bud" Lewis Carlsbad Seawater Desalination Plant and Orange County Water District's expanded groundwater recycling project, no provision has been made for increased local supplies that may reasonably be projected to be available to the Los Angeles Department of Water and Power (LADWP). With a good year on the Eastern Sierra -- which is presently tracking the best snow pack on record -- MWD sales could be reduced by 250,000 AF or more, which translates to a negative revenue impact on MWD of between \$175 million and \$350 million.

It is MWD's obligation to forecast revenues responsibly, based on known and reasonably anticipated conditions, and plan for the contingency of reduced sales using responsible financial management techniques, which do not include budget gimmicks such as adoption of a "Resolution of Reimbursement" to shift CIP/PAYGo money to other uses.

We call to the Directors' attention that the proposed budget for FY 2017 already includes a revenue deficit of \$94.2 million, with MWD intending to withdraw from its reserves to bridge the gap. Similarly, the budget for fiscal year 2018 relies on \$23 million from reserves to fill the gap. Since sales may also be less than projected -- as they very well may be, for the reasons noted above -- the Board must plan now how the revenue gap will be filled. In this regard, we attach another copy of our November 17, 2014 letter suggesting the establishment of balancing accounts, allowing the Board to properly manage between good years and bad, rather than spending all of the money in good years (as it did this past year on turf removal) and needing to raise rates, borrow money or engage in the kind of gimmick represented by the Resolution of Reimbursement. We also ask that discussion of this issue be added to the next budget meeting agenda.

6. There is no demonstrated justification for suspension of the ad valorem tax limitation. As noted above, MWD is proposing in this budget to *reduce* the very charges the Legislature provided to MWD to be used in lieu of property taxes. Under these and other circumstances, there is no proper basis for MWD to suspend the tax rate limitation; instead, it should use the tools provided by the Legislature and included in the MWD Act.

7. No information is provided regarding the proposed changes in treatment cost recovery. Leaving aside the complete inconsistency with increasing fixed treatment cost recovery while reducing fixed cost recovery overall, when will the detail on the new charge be available?

MWD Chairman Record and Members of the Board
 February 6, 2016
 Page 5

8. The Budget Document does not explain why MWD's debt service coverage ratios for 2017 and 2018 are dropping from 2x to 1.6x. A comparison of the financial indices between this 2016 budget and the 2014 forecast shows a difference of only 50,000 AF of water sales reduction each year, yet the debt service ratios are plummeting from 2x to 1.6x. This drop is potentially very disturbing based on the aggressive water supply development plans MWD staff included in the IRP (and upon which it stated that spending decisions would be proposed and made). This is an important issue and policy discussion the Board must address.

9. The CIP numbers contained in the Budget Document don't match the Appendix. The Budget Document includes annual CIP expenditures of \$200 million for each of the proposed fiscal years; however the CIP Appendix includes expenditures of \$246 million and \$240 million, respectively, for fiscal years 2017 and 2018. Please explain and correct the discrepancy by increasing the budget number or reducing projects contained in the Appendices. We will have more extensive comments going forward, and in particular, once additional detail is provided as requested in this letter.

We look forward to beginning the budget review process next week and engaging in a productive dialog with our fellow directors.

Sincerely,



Michael T. Hogan
 Director



Keith Lewinger
 Director



Fern Steiner
 Director



Yen C. Tu
 Director

Attachment 1: Appellate Court Decision – *Newhall County Water District v. Castaic Lake Water Agency*

Attachment 2: Excerpt from the Board's July 8, 2013 Finance and Insurance Committee Meeting

Attachment 3: MWD Act Sections 124.5 and 134

Attachment 4: Water Authority's November 17, 2014 Letter RE Balancing Accounts

Filed 1/19/16

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

NEWHALL COUNTY WATER
DISTRICT,

Plaintiff and Respondent,

v.

CASTAIC LAKE WATER AGENCY et
al.,

Defendants and Appellants.

B257964

(Los Angeles County
Super. Ct. No. BS142690)

APPEAL from a judgment of the Superior Court for the County of Los Angeles.
James C. Chalfant, Judge. Affirmed.

Best Best & Krieger, Jeffrey V. Dunn, and Kimberly E. Hood for Defendants and
Appellants.

Colantuono, Highsmith & Whatley, Michael G. Colantuono, David J. Ruderman,
Jon R. di Cristina; Lagerlof, Senecal, Gosney & Kruse and Thomas S. Bunn III for
Plaintiff and Respondent.

SUMMARY

Plaintiff Newhall County Water District (Newhall), a retail water purveyor, challenged a wholesale water rate increase adopted in February 2013 by the board of directors of defendant Castaic Lake Water Agency (the Agency), a government entity responsible for providing imported water to the four retail water purveyors in the Santa Clarita Valley. The trial court found the Agency's rates violated article XIII C of the California Constitution (Proposition 26). Proposition 26 defines any local government levy, charge or exaction as a tax requiring voter approval, unless (as relevant here) it is imposed "for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product." (Cal. Const., art. XIII C, § 1, subd. (e)(2).)¹

The challenged rates did not comply with this exception, the trial court concluded, because the Agency based its wholesale rate for imported water in substantial part on Newhall's use of groundwater, which was not supplied by the Agency. Consequently, the wholesale water cost allocated to Newhall did not, as required, "bear a fair or reasonable relationship to [Newhall's] burdens on, or benefits received from, the [Agency's] activity." (Art. XIII C, § 1, subd. (e), final par.)

We affirm the trial court's judgment.

FACTS

We base our recitation of the facts in substantial part on the trial court's lucid descriptions of the background facts and circumstances giving rise to this litigation.

1. The Parties

The Agency is a special district and public agency of the state established in 1962 as a wholesale water agency to provide imported water to the water purveyors in the Santa Clarita Valley. It is authorized to acquire water and water rights, and to provide, sell and deliver that water "at wholesale only" for municipal, industrial, domestic and

¹ All further references to any "article" are to the California Constitution.

other purposes. (Wat. Code Appen., § 103-15.) The Agency supplies imported water, purchased primarily from the State Water Project, to four retail water purveyors, including Newhall.

Newhall is also a special district and public agency of the state. Newhall has served its customers for over 60 years, providing treated potable water to communities near Santa Clarita, primarily to single family residences. Newhall owns and operates distribution and transmission mains, reservoirs, booster pump stations, and 11 active groundwater wells.

Two of the other three retail water purveyors are owned or controlled by the Agency: Santa Clarita Water Division (owned and operated by the Agency) and Valencia Water Company (an investor-owned water utility controlled by the Agency since December 21, 2012). Through these two retailers, the Agency supplies about 83 percent of the water demand in the Santa Clarita Valley. The Agency's stated vision is to manage all water sales in the Santa Clarita Valley, both wholesale and retail.

The fourth retailer is Los Angeles County Waterworks District No. 36 (District 36), also a special district and public agency, operated by the County Department of Public Works. It is the smallest retailer, accounting for less than 2 percent of the total water demand.

2. Water Sources

The four retailers obtain the water they supply to consumers from two primary sources, local groundwater and the Agency's imported water.

The only groundwater source is the Santa Clara River Valley Groundwater Basin, East Subbasin (the Basin). The Basin is comprised of two aquifer systems, the Alluvium and the Saugus Formation. This groundwater supply alone cannot sustain the collective demand of the four retailers. (The Basin's operational yield is estimated at 37,500 to 55,000 acre-feet per year (AFY) in normal years, while total demand was projected at 72,343 AFY for 2015, and 121,877 AFY in 2050.)

The groundwater basin, so far as the record shows, is in good operating condition, with no long-term adverse effects from groundwater pumping. Such adverse effects

(known as overdraft) could occur if the amount of water extracted from an aquifer were to exceed the amount of water that recharges the aquifer over an extended period. The retailers have identified cooperative measures to be taken, if needed, to ensure sustained use of the aquifer. These include the continued “conjunctive use” of imported supplemental water and local groundwater supplies, to maximize water supply from the two sources. Diversity of supply is considered a key element of reliable water service during dry years as well as normal and wet years.

In 1997, four wells in the Saugus Formation were found to be contaminated with perchlorate, and in 2002 and 2005, perchlorate was detected in two wells in the Alluvium. All the wells were owned by the retailers, one of them by Newhall. During this period, Newhall and the two largest retailers (now owned or controlled by the Agency) increased their purchases of imported water significantly.

3. Use of Imported Water

Until 1987, Newhall served its customers relying only on its groundwater rights.² Since 1987, it has supplemented its groundwater supplies with imported water from the Agency.

The amount of imported water Newhall purchases fluctuates from year to year. In the years before 1998, Newhall’s water purchases from the Agency averaged 11 percent of its water demand. During the period of perchlorate contamination (1998-2009), its imported water purchases increased to an average of 52 percent of its total demand. Since then, Newhall’s use of imported water dropped to 23 percent, and as of 2012,

² Newhall has appropriative water rights that arise from California’s first-in-time-first-in-right allocation of limited groundwater supplies. (See *El Dorado Irrigation Dist. v. State Water Resources Control Board* (2006) 142 Cal.App.4th 937, 961 [“ ‘[T]he appropriation doctrine confers upon one who actually diverts and uses water the right to do so provided that the water is used for reasonable and beneficial uses and is surplus to that used by riparians or earlier appropriators.’ ”]; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241 [“ ‘As between appropriators, . . . the one first in time is the first in right, and a prior appropriator is entitled to all the water he needs, up to the amount he has taken in the past, before a subsequent appropriator may take any [citation].’ ”].)

Newhall received about 25 percent of its total water supply from the Agency. The overall average since it began to purchase imported water in 1987, Newhall tells us, is 30 percent.

The other retailers, by contrast, rely more heavily on the Agency's imported water. Agency-owned Santa Clarita Water Division is required by statute to meet at least half of its water demand using imported water. (See Wat. Code Appen., § 103-15.1, subd. (d).) Agency-controlled Valencia Water Company also meets almost half its demand with imported water.

4. The Agency's Related Powers and Duties

As noted above, the Agency's primary source of imported water is the State Water Project. The Agency purchases that water under a contract with the Department of Water Resources. The Agency also acquires water under an acquisition agreement with the Buena Vista Water Storage District and the Rosedale-Rio Bravo Water Storage District, and other water sources include recycled water and water stored through groundwater banking agreements. Among the Agency's powers are the power to "[s]tore and recover water from groundwater basins" (Wat. Code Appen., § 103-15.2, subd. (b)), and "[t]o restrict the use of agency water during any emergency caused by drought, or other threatened or existing water shortage, and to prohibit the wastage of agency water" (§ 103-15, subd. (k)).

In addition, and as pertinent here, the Agency may "[d]evelop groundwater management plans within the agency which may include, without limitation, conservation, overdraft protection plans, and groundwater extraction charge plans" (Wat. Code Appen., § 103-15.2, subd. (c).) The Agency has the power to implement such plans "subject to the rights of property owners and with the approval of the retail water purveyors and other major extractors of over 100 acre-feet of water per year." (*Ibid.*)

In 2001, the Legislature required the Agency to begin preparation of a groundwater management plan, and provided for the formation of an advisory council consisting of representatives from the retail water purveyors and other major extractors.

(Wat. Code Appen., § 103-15.1, subd. (e)(1)&(2)(A).) The Legislature required the Agency to “regularly consult with the council regarding all aspects of the proposed groundwater management plan.” (*Id.*, subd. (e)(2)(A).)

Under this legislative authority, the Agency spearheaded preparation of the 2003 Groundwater Management Plan for the Basin, and more recently the 2010 Santa Clarita Valley Urban Water Management Plan. These plans were approved by the retailers, including Newhall.

The 2003 Groundwater Management Plan states the overall management objectives for the Basin as: (1) development of an integrated surface water, groundwater, and recycled water supply to meet existing and projected demands for municipal, agricultural and other water uses; (2) assessment of groundwater basin conditions “to determine a range of operational yield values that will make use of local groundwater conjunctively with [State Water Project] and recycled water to avoid groundwater overdraft”; (3) preservation of groundwater quality; and (4) preservation of interrelated surface water resources. The 2010 Santa Clarita Valley Urban Water Management Plan, as the trial court described it, is “an area-wide management planning tool that promotes active management of urban water demands and efficient water usage by looking to long-range planning to ensure adequate water supplies to serve existing customers and future demands”

5. The Agency’s Wholesale Water Rates

The board of directors of the Agency fixes its water rates, “so far as practicable, [to] result in revenues that will pay the operating expenses of the agency, . . . provide for the payment of the cost of water received by the agency under the State Water Plan, provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of that bonded debt” (Wat. Code Appen., § 103-24, subd. (a).) The Agency’s operating costs include costs for management, administration, engineering, maintenance, water quality compliance, water resources, water treatment operations, storage and recovery programs, and studies.

Before the rate changes at issue here, the Agency had a “100 percent variable” rate structure. That means it charged on a per acre-foot basis for the imported water sold, known as a “volumetric” rate. Thus, as of January 1, 2012, retailers were charged \$487 per acre-foot of imported water, plus a \$20 per acre-foot charge for reserve funding.

Because of fluctuations in the demand for imported water (such as during the perchlorate contamination period), the Agency’s volumetric rates result in fluctuating, unstable revenues. The Agency engaged consultants to perform a comprehensive wholesale water rate study, and provide recommendations on rate structure options. The objective was a rate structure that would provide revenue sufficiency and stability to the Agency, provide cost equity and certainty to the retailers, and enhance conjunctive use of the sources of water supply and encourage conservation. As the Agency’s consultants put it, “[t]wo of the primary objectives of cost of service water rates are to ensure the utility has sufficient revenue to cover the costs of operating and maintaining the utility in a manner that will ensure long term sustainability and to ensure that costs are recovered from customers in a way that reflects the demands they place on the system.”

The general idea was a rate structure with both volumetric and fixed components. Wholesale rate structures that include both a fixed charge component (usually calculated to recover all or a portion of the agency’s fixed costs of operating, maintaining and delivering water) and a volumetric component (generally calculated based on the cost of purchased water, and sometimes including some of the fixed costs) are common in the industry.

6. The Challenged Rates

The Agency’s consultants presented several rate structure options. In the end, the option the Agency chose (the challenged rates) consisted of two components. The first component is a fixed charge based on each retailer’s three-year rolling average of total water demand (that is, its demand for the Agency’s imported water *and* for groundwater not supplied by the Agency). This fixed charge is calculated by “divid[ing] the Agency’s total fixed revenue for the applicable fiscal year . . . by the previous three-year average of total water demand of the applicable Retail Purveyor to arrive at a unit cost per acre

foot.” The Agency would recover 80 percent of its costs through the fixed component of the challenged rates. The second component of the Agency’s rate is a variable charge, based on a per acre foot charge for imported water.³

The rationale for recovering the Agency’s fixed costs in proportion to the retailers’ total water demand, rather than their demand for imported water, is this (as described in the consultants’ study):

“This rate structure meets the Agency’s objective of promoting resource optimization, conjunctive use, and water conservation. Since the fixed cost is allocated on the basis of each retail purveyor’s total demand, if a retail purveyor conserves water, then its fixed charge will be reduced. Additionally, allocating the fixed costs based on total water demand recognizes that imported water is an important standby supply that is available to all retail purveyors, and is also a necessary supply to meet future water demand in the region, and that there is a direct nexus between groundwater availability and imported water use – i.e., it allocates the costs in a manner that bears a fair and reasonable relationship to the retail purveyors’ burdens on and benefits from the Agency’s activities in ensuring that there is sufficient water to meet the demands of all of the retail purveyors and that the supply sources are responsibly managed for the benefits of all of the retail purveyors.”

The rationale continues: “Moreover, the Agency has taken a leadership role in maintaining the health of the local groundwater basin by diversifying the Santa Clarita Valley’s water supply portfolio, as demonstrated in the 2003 Groundwater Management Plan and in resolving perchlorate contamination of the Saugus Formation aquifer. Thus, since all retail purveyors benefit from imported water and the Agency’s activities, they should pay for the reasonable fixed costs of the system in proportion to the demand (i.e.

³ There was also a \$20 per acre foot reserve charge to fund the Agency’s operating reserves, but the Agency reports in its opening brief that it suspended implementation of that charge as of July 1, 2013, when reserve fund goals were met earlier than anticipated.

burdens) they put on the total water supply regardless of how they utilize individual sources of supply.”

The Agency’s rate study showed that, during the first year of the challenged rates (starting July 1, 2013), Newhall would experience a 67 percent increase in Agency charges, while Agency controlled retailers Valencia Water Company and Santa Clarita Water Division would see reductions of 1.9 percent and 10 percent, respectively. District 36 would have a 0.8 percent increase. The rate study also indicated that, by 2050, the impact of the challenged rates on Newhall was expected to be less than under the then-current rate structure, while Valencia Water Company was expected to pay more.

Newhall opposed the challenged rates during the ratemaking process. Its consultant concluded the proposed structure was not consistent with industry standards; would provide a nonproportional, cross-subsidization of other retailers; and did not fairly or reasonably reflect the Agency’s costs to serve Newhall. Newhall contended the rates violated the California Constitution and other California law. It proposed a rate structure that would base the Agency’s fixed charge calculation on the annual demand for imported water placed on the Agency by each of its four customers, using a three-year rolling average of past water deliveries to each retailer.

In February 2013, the Agency’s board of directors adopted the challenged rates, effective July 1, 2013.

7. This Litigation

Newhall sought a writ of mandate directing the Agency to rescind the rates, to refund payments made under protest, to refrain from charging Newhall for its imported water service “with respect to the volume of groundwater Newhall uses or other services [the Agency] does not provide Newhall,” and to adopt a new, lawful rate structure. Newhall contended the rates were not proportionate to Newhall’s benefits from, and burdens on, the Agency’s service, and were therefore invalid under Proposition 26, Proposition 13, Government Code section 54999.7, and the common law of utility ratemaking.

The trial court granted Newhall's petition, finding the rates violated Proposition 26. The court concluded the Agency had no authority to impose rates based on the use of groundwater that the Agency does not provide, and that conversely, Newhall's use of its groundwater rights does not burden the Agency's system for delivery of imported water. Thus the rates bore no reasonable relationship to Newhall's burden on, or benefit received from, the Agency's service. The trial court also found the rates violated Government Code section 54999.7 (providing that a fee for public utility service "shall not exceed the reasonable cost of providing the public utility service" (Gov. Code, § 54999.7, subd. (a)), and violated common law requiring utility charges to be fair, reasonable and proportionate to benefits received by ratepayers. The court ordered the Agency to revert to the rates previously in effect until the adoption of new lawful rates, and ordered it to refund to Newhall the difference between the monies paid under the challenged rates and the monies that would have been paid under the previous rates.

Judgment was entered on July 28, 2014, and the Agency filed a timely notice of appeal.

DISCUSSION

The controlling issue in this case is whether the challenged rates are a tax or a fee under Proposition 26.

1. The Standard of Review

We review de novo the question whether the challenged rates comply with constitutional requirements. (*Griffith v. City of Santa Cruz* (2012) 207 Cal.App.4th 982, 989-990 (*Griffith I*.) We review the trial court's resolution of factual conflicts for substantial evidence. (*Morgan v. Imperial Irrigation District* (2014) 223 Cal.App.4th 892, 916.)

2. The Governing Principles

All taxes imposed by any local government are subject to voter approval. (Art. XIII C, § 2.) Proposition 26, adopted in 2010, expanded the definition of a tax. A "tax" now includes "any levy, charge, or exaction of any kind imposed by a local government,"

with seven exceptions. (*Id.*, § 1, subd. (e).) This case concerns one of those seven exceptions.

Under Proposition 26, the challenged rates are not a tax, and are not subject to voter approval, if they are “[a] charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.” (Art. XIII C, § 1, subd. (e)(2).) The Agency “bears the burden of proving by a preponderance of the evidence” that its charge “is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.” (*Id.*, subd. (e), final par.)

3. This Case

It is undisputed that the Agency’s challenged rates are designed “to recover all of its fixed costs via a fixed charge,” and not to generate surplus revenue. Indeed, Newhall recognizes the Agency’s right to impose a fixed water-rate component to recover its fixed costs. The dispute here is whether the fixed rate component may be based in significant part on the purchaser’s use of a product – groundwater – not provided by the Agency.

We conclude the Agency cannot, consistent with Proposition 26, base its wholesale water rates on the retailers’ use of groundwater, because the Agency does not supply groundwater. Indeed, the Agency does not even have the statutory authority to regulate groundwater, without the consent of the retailers (and other major groundwater extractors). As a consequence, basing its water rates on groundwater it does not provide violates Proposition 26 on two fronts.

First, the rates violate Proposition 26 because the method of allocation does not “bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from,” the Agency’s activity. (Art. XIII C, § 1, subd. (e), final par.) (We will refer to this as the reasonable cost allocation or proportionality requirement.)

Second, to the extent the Agency relies on its groundwater management activities to justify including groundwater use in its rate structure, the benefit to the retailers from those activities is at best indirect. Groundwater management activities are not a “service . . . provided directly to the payor that is not provided to those not charged” (art. XIII C, § 1, subd. (e)(2)), but rather activities that benefit the Basin as a whole, including other major groundwater extractors that are not charged for those services.

For both these reasons, the challenged rates cannot survive scrutiny under Proposition 26. The Agency resists this straightforward conclusion, proffering two principal arguments, melded together. The first is that the proportionality requirement is measured “collectively,” not by the burdens on or benefits received by the individual purveyor. The second is that the “government service or product” the Agency provides to the four water retailers consists not just of providing wholesale water, but also of “managing the Basin water supply,” including “management . . . of the Basin’s groundwater.” These responsibilities, the Agency argues, make it reasonable to set rates for its wholesale water service by “tak[ing] into account the entire Valley water supply portfolio and collective purveyor-benefits of promoting conjunctive use, not just the actual amount of Agency imported water purchased by each Purveyor”

Neither claim has merit, and the authorities the Agency cites do not support its contentions.

a. *Griffin I* and the proportionality requirement

It seems plain to us, as it did to the trial court, that the demand for a product the Agency does not supply – groundwater – cannot form the basis for a reasonable cost allocation method: one that is constitutionally required to be proportional to the benefits the rate payor receives from (or the burden it places on) the Agency’s activity. The Agency’s contention that it may include the demand for groundwater in its rate structure because the proportionality requirement is measured “collectively,” not by the burdens on or benefits to the individual retail purveyor, is not supported by any pertinent authority.

In contending otherwise, the Agency relies on, but misunderstands, *Griffith I* and other cases stating that proportionality “ ‘is not measured on an individual basis,’ ” but

rather “ ‘collectively, considering all rate payors,’ ” and “ ‘need not be finely calibrated to the precise benefit each individual fee payor might derive.’ ” (*Griffith I, supra*, 207 Cal.App.4th at p. 997, quoting *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 438 [discussing regulatory fees under the Water Code and Proposition 13].) As discussed *post*, these cases do not apply here, for one or more reasons. *Griffith I* involves a different exemption from Proposition 26, and other cases involve Proposition 218, which predated Proposition 26 and has no direct application here. In addition to these distinctions – which do make a difference – the cases involved large numbers of payors, who could rationally be (and were) placed in different usage categories, justifying different fees for different classes of payors.

In *Griffith I*, the defendant city imposed an annual inspection fee for all residential rental properties in the city. The court rejected a claim that the inspection fee was a tax requiring voter approval under Proposition 26. (*Griffith I, supra*, 207 Cal.App.4th at p. 987.) *Griffith I* involves another of the seven exemptions in Proposition 26, the exemption for regulatory fees – charges imposed for the regulatory costs of issuing licenses, performing inspections, and the like. (Art. XIII C, § 1, subd. (e)(3) [expressly excepting, from the “tax” definition, a “charge imposed for the reasonable regulatory costs to a local government for . . . performing inspections”].)

The inspection fees in *Griffith I* met all the requirements of Proposition 26. The city’s evidence showed the fees did not exceed the approximate cost of the inspections. (*Griffith I, supra*, 207 Cal.App.4th at p. 997.) And the proportionality requirement of Proposition 26 was also met: “The fee schedule itself show[ed] the basis for the apportionment,” setting an annual registration fee plus a \$20 per unit fee, with lower fees for “[s]elf-certifications” that cost the city less to administer, and greater amounts charged when reinspections were required. (*Griffith I*, at p. 997.) The court concluded: “Considered collectively, the fees are reasonably related to the payors’ burden upon the inspection program. *The larger fees are imposed upon those whose properties require the most work.*” (*Ibid.*, italics added.)

Griffith I did, as the Agency tells us, state that “ ‘the question of proportionality is not measured on an individual basis’ ” but rather “ ‘collectively, considering all rate payors.’ ” (*Griffith I, supra*, 207 Cal.App.4th at p. 997.) But, as mentioned, *Griffith I* was considering a regulatory fee, not, as here, a charge imposed on four ratepayers for a “specific government service or product.” As *Griffith I* explained, “ ‘[t]he scope of a regulatory fee is somewhat flexible’ ” and “ ‘must be related to the overall cost of the governmental regulation,’ ” but “ ‘need not be finely calibrated to the precise benefit each individual fee payor might derive.’ ” (*Ibid.*) That, of course, makes perfect sense in the context of a regulatory fee applicable to numerous payors; indeed, it would be impossible to assess such fees based on the individual payor’s precise burden on the regulatory program. But the inspection fees *were* allocated by categories of payor, and were based on the burden on the inspection program, with higher fees where more city work was required.

Here, there are four payors, with no need to group them in classes to allocate costs. The *Griffith I* concept of measuring proportionality “collectively” simply does not apply. Where charges for a government service or product are to be allocated among only four payors, the only rational method of evaluating their burdens on, or benefits received from, the governmental activity, is individually, payor by payor. And that is particularly appropriate considering the nature of the Proposition 26 exemption in question: charges for a product or service that is (and is required to be) provided “directly to the payor.” Under these circumstances, allocation of costs “collectively,” when the product is provided directly to each of the four payors, cannot be, and is not, a “fair or reasonable” allocation method. (Art. XIII C, § 1, subd. (e), final par.)

b. *Griffith II* – the proportionality requirement and related claims

In *Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586 (*Griffith II*), the court concluded, among other things, that a groundwater augmentation charge complied with the proportionality requirement of Proposition 218. The Agency relies on *Griffith II*, asserting that the court applied the “concept of collective reasonableness with respect to rate allocations” Further, the case

demonstrates, the Agency tells us, that its activities in “management . . . of the Basin’s groundwater” justify basing its rates on total water demand, because all four retailers benefit from having the Agency’s imported water available, even when they do not use it. Neither claim withstands analysis.

Griffith II involved a challenge under Proposition 218, so we pause to describe its relevant points. Proposition 218 contains various procedural (notice, hearing, and voting) requirements for the imposition by local governments of fees and charges “upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.” (Art. XIII D, § 2, subd. (e).) Fees or charges for water service (at issue in *Griffith II*) are exempt from voter approval (art. XIII D, § 6, subd. (c)), but substantive requirements apply. These include a proportionality requirement: that the amount of a fee or charge imposed on any parcel or person “shall not exceed the proportional cost of the service attributable to the parcel.” (*Id.*, subd. (b)(3).)

In *Griffith II*, the plaintiffs challenged charges imposed by the defendant water management agency on the extraction of groundwater (called a “groundwater augmentation charge”). The defendant agency had been created to deal with the issue of groundwater being extracted faster than it is replenished by natural forces, leading to saltwater intrusion into the groundwater basin. (*Griffith II, supra*, 220 Cal.App.4th at p. 590.) The defendant agency was specifically empowered to levy groundwater augmentation charges on the extraction of groundwater from all extraction facilities, “ ‘ ‘for the purposes of paying the costs of purchasing, capturing, storing, and distributing supplemental water for use within [defendant’s boundaries].’ ’ ” (*Id.* at p. 591.) The defendant’s strategy to do so had several facets, but its purpose was to reduce the amount of water taken from the groundwater basin by supplying water to some coastal users, with the cost borne by all users, “on the theory that even those taking water from [inland] wells benefit from the delivery of water to [coastal users], as that reduces the amount of groundwater those [coastal users] will extract [from their own wells], thereby keeping the water in [all] wells from becoming too salty.’ ” (*Id.* at pp. 590-591.)

Griffith II found the charge complied with the Proposition 218 requirement that the charge could not exceed the proportional costs of the service attributable to the parcel. (*Griffith II, supra*, 220 Cal.App.4th at pp. 600-601.) Proposition 218, the court concluded, did not require “a parcel-by-parcel proportionality analysis.” (*Griffith II*, at p. 601.) The court found defendant’s “method of grouping similar users together for the same augmentation rate and charging the users according to usage is a reasonable way to apportion the cost of service,” and Proposition 218 “does not require a more finely calibrated apportion.” (*Griffith II*, at p. 601.) The augmentation charge “affects those on whom it is imposed by burdening them with an expense they will bear proportionately to the amount of groundwater they extract at a rate depending on which of three rate classes applies. It is imposed ‘across-the-board’ on all water extractors. All persons extracting water – including any coastal users who choose to do so – will pay an augmentation charge per acre-foot extracted. All persons extracting water and paying the charge will benefit in the continued availability of usable groundwater.” (*Griffith II*, at pp. 603-604.)

The court rejected the plaintiffs’ claim the charge for groundwater extraction on their parcels was disproportionate because they did not use the agency’s services – that is, they did not receive delivered water, as coastal landowners did. This claim, the court said, was based on the erroneous premise that the agency’s only service was to deliver water to coastal landowners. The court pointed out that the defendant agency was created to manage the water resources for the common benefit of all water users, and the groundwater augmentation charge paid for the activities required to prepare and implement the groundwater management program. (*Griffith II, supra*, 220 Cal.App.4th at p. 600.) Further, the defendant agency “apportioned the augmentation charge among different categories of users (metered wells, unmetered wells, and wells within the delivered water zone).” (*Id.* at p. 601.) (The charges were highest for metered wells in the coastal zone, and there was also a per acre-foot charge for delivered water. (*Id.* at p. 593 & fn. 4.))

We see nothing in *Griffith II* that assists the Agency here. The Agency focuses on the fact that the defendant charged the plaintiff for groundwater extraction even though

the plaintiff received no delivered water, and on the court's statement that the defendant was created to manage water resources for the common benefit of all water users. (*Griffith II, supra*, 220 Cal.App.4th at p. 600.) From this the Agency leaps to the erroneous conclusion that the rates here satisfy the proportionality requirement simply because all four retailers "benefit from having the Agency's supplemental water supplies available," even when they do not use them. This is a false analogy. In *Griffith II*, the defendant charged all groundwater extractors proportionately for extracting water (and had the power to do so), and charged for delivered water as well. *Griffith II* does not support the imposition of charges based on a product the Agency does not supply.

We note further that in *Griffith II*, more than 1,900 parcel owners were subject to the groundwater augmentation charge, and they were placed in three different classes of water extractors and charged accordingly. (*Griffith II, supra*, 220 Cal.App.4th at pp. 593, 601.) Here, there are four water retailers receiving the Agency's wholesale water service, none of whom can reasonably be placed in a different class or category from the other three. In these circumstances, to say costs may be allocated to the four purveyors "collectively," based in significant part on groundwater not supplied by the Agency, because "they all benefit" from the availability of supplemental water supplies, would effectively remove the proportionality requirement from Proposition 26.

That we may not do. Proposition 26 requires by its terms an allocation method that bears a reasonable relationship to the payor's burdens on or benefits from the Agency's activity, which here consists of wholesale water service to be provided "directly to the payor." In the context of wholesale water rates to four water agencies, this necessarily requires evaluation on a "purveyor by purveyor" basis. (Cf. *Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1514 (*Capistrano*) ["[w]hen read in context, *Griffith [II]* does not excuse water agencies from ascertaining the true costs of supplying water to various tiers of usage"; *Griffith II*'s "comments on proportionality necessarily relate only to variations in property location"; "trying to apply [*Griffith II*] to the [Proposition 218 proportionality] issue[] is fatally flawed".])

The Agency's claim that it is not charging the retailers for groundwater use, and its attempt to support basing its rates on total water demand by likening itself to the defendant agency in *Griffith II*, both fail as well. The first defies reason. Because the rates are based on total water demand, the more groundwater a retailer uses, the more it pays under the challenged rates. The use of groundwater demand in the rate structure necessarily means that, in effect, the Agency is charging for groundwater use.

The second assertion is equally mistaken. The differences between the Agency and the defendant in *Griffith II* are patent. In *Griffith II*, the defendant agency was created to manage all water resources, and specifically to deal with saltwater intrusion into the groundwater basin. The Agency here was not. It was created to acquire water and to "provide, sell, and deliver" it. It is authorized to develop and implement groundwater management plans only with the approval of the retail water purveyors (and other major groundwater extractors). In other words, while the Agency functions as the lead agency in developing and coordinating groundwater management plans, its only authority over groundwater, as the trial court found, is a shared responsibility to develop those plans. Further, in *Griffith II*, the defendant agency was specifically empowered to levy groundwater extraction charges for the purpose of purchasing supplemental water. The Agency here was not. As the trial court here aptly concluded, *Griffith II* "does not aid [the Agency] for the simple reason that [the Agency] has no comprehensive authority to manage the water resources of the local groundwater basin and levy charges related to groundwater."⁴

Finally, the Agency insists that it "must be allowed to re-coup its cost of service," and that the practice of setting rates to recover fixed expenses, "irrespective of a customer's actual consumption," was approved in *Paland v. Brooktrails Township*

⁴ The trial court also observed that, "[a]part from [the Agency's] lack of authority to supply or manage Basin groundwater, Newhall correctly notes that [the Agency] has presented no evidence of its costs in maintaining the Basin."

Community Services Dist. Bd. of Directors (2009) 179 Cal.App.4th 1358 (*Paland*).

Paland has no application here.

Paland involved Proposition 218. As we have discussed, Proposition 218 governs (among other things) “property related fees and charges” on parcels of property. Among its prohibitions is any fee or charge for a service “unless that service is actually used by, or immediately available to, the owner of the property in question.” (Art. XIII D, § 6, subd. (b)(4).) The court held that a minimum charge, imposed on parcels of property with connections to the district’s utility systems, for the basic cost of providing water service, regardless of actual use, was “a charge for an immediately available property-related water or sewer service” within the meaning of Proposition 218, and not an assessment requiring voter approval. (*Paland, supra*, 179 Cal.App.4th at p. 1362; see *id.* at p. 1371 [“Common sense dictates that continuous maintenance and operation of the water and sewer systems is necessary to keep those systems immediately available to inactive connections like [the plaintiff’s].”].)

We see no pertinent analogy between *Paland* and this case. This case does not involve a minimum charge imposed on all parcels of property (or a minimum charge for standing ready to supply imported water). Newhall does not contest the Agency’s right to charge for its costs of standing ready to provide supplemental water, and to recoup all its fixed costs. The question is whether the Agency may recoup those costs using a cost allocation method founded on the demand for groundwater the Agency does not supply, and is not empowered to regulate without the consent of groundwater extractors. The answer under Proposition 26 is clear: it may not. *Paland* does not suggest otherwise.⁵

⁵ The parties refer to other recent authorities to support their positions in this case. We may not rely on one of them, because the Supreme Court has granted a petition for review. (*City of San Buenaventura v. United Water Conservation District* (2015) 235 Cal.App.4th 228, review granted June 24, 2015, S226036.) The Agency cites the other case extensively in its reply brief, but we see nothing in that case to suggest that the challenged rates here comply with Proposition 26. (*Great Oaks Water Co. v. Santa Clara Valley Water District* 242 Cal.App.4th 1187 (*Great Oaks*).)

c. Other claims – conservation and “conjunctive use”

The Agency attempts to justify the challenged rates by relying on the conservation mandate in the California Constitution, pointing out it has a constitutional obligation to encourage water conservation. (Art. X, § 2 [declaring the state’s water resources must “be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water [must] be prevented”].) The challenged rates comply with this mandate, the Agency contends, because reducing total water consumption will result in lower charges, and the rates encourage “a coordinated use of groundwater and supplemental water” (conjunctive use). This argument, too, misses the mark.

The Agency’s brief fails to describe the circumstances in *Great Oaks*. There, a water retailer challenged a groundwater extraction fee imposed by the defendant water district. Unlike this case, the defendant in *Great Oaks* was authorized by statute to impose such fees, and its major responsibilities included “preventing depletion of the aquifers from which [the water retailer] extracts the water it sells.” (*Great Oaks, supra*, 242 Cal.App.4th at p. 1197.) The Court of Appeal, reversing a judgment for the plaintiff, held (among other things) that the fee was a property-related charge, and therefore subject to some of the constraints of Proposition 218, but was also a charge for water service, and thus exempt from the requirement of voter ratification. (*Great Oaks*, at p. 1197.) The trial court’s ruling in *Great Oaks* did not address the plaintiff’s contentions that the groundwater extraction charge violated three substantive limitations of Proposition 218, and the Court of Appeal ruled that one of those contentions (that the defendant charged more than was required to provide the property related service on which the charge was predicated) could be revisited on remand. The others were not preserved in the plaintiff’s presuit claim, so no monetary relief could be predicated on those theories. (*Great Oaks*, at pp. 1224, 1232-1234.)

The Agency cites *Great Oaks* repeatedly, principally for the statements that the “provision of alternative supplies of water serves the long-term interests of extractors by reducing demands on the groundwater basin and helping to prevent its depletion,” and that it was not irrational for the defendant water district “to conclude that reduced demands on groundwater supplies benefit retailers by preserving the commodity on which their long-term viability, if not survival, may depend.” (*Great Oaks, supra*, 242 Cal.App.4th at pp. 1248-1249.) These statements, with which we do not disagree, have no bearing on this case, and were made in connection with the court’s holding that the trial court erred in finding the groundwater extraction charge violated the statute that created and empowered the defendant water district. (*Id.* at pp. 1252-1253.)

Certainly the Agency may structure its rates to encourage conservation of the imported water it supplies. (Wat. Code, § 375, subd. (a) [public entities supplying water at wholesale or retail may “adopt and enforce a water conservation program to reduce the quantity of water used by [its customers] for the purpose of conserving the water supplies of the public entity”]. But the Agency has no authority to set rates to encourage conservation of groundwater it does not supply. Moreover, article X’s conservation mandate cannot be read to eliminate Proposition 26’s proportionality requirement. (See *City of Palmdale v. Palmdale Water District* (2011) 198 Cal.App.4th 926, 936-937 [“California Constitution, article X, section 2 is not at odds with article XIII D [Proposition 218] so long as, for example, conservation is attained in a manner that ‘shall not exceed the proportional cost of the service attributable to the parcel.’ ”]; see *id.* at p. 928 [district failed to prove its water rate structure complied with the proportionality requirement of Proposition 218]; see also *Capistrano, supra*, 235 Cal.App.4th at p. 1511, quoting *City of Palmdale* with approval.)

The Agency also insists that basing its rates only on the demand for the imported water it actually supplies – as has long been the case – would “discourage users from employing conjunctive use” The Agency does not explain how this is so, and we are constrained to note that, according to the Agency’s own 2003 Groundwater Management Plan, Newhall and the other retailers “have been practicing the conjunctive use of imported surface water and local groundwater” for many years. And, according to that plan, the Agency and retailers have “a historical and ongoing working relationship . . . to manage water supplies to effectively meet water demands within the available yields of imported surface water and local groundwater.”

In connection, we assume, with its conjunctive use rationale, the Agency filed a request for judicial notice, along with its reply brief. It asked us to take notice of three documents and “the facts therein concerning imported water use and local groundwater production” by Newhall and the other water retailers. The documents are the 2014 and 2015 Water Quality Reports for the Santa Clarita Valley, and a water supply utilization table from the 2014 Santa Clarita Valley Water Report published in June 2015. All of

these, the Agency tells us, are records prepared by the Agency and the four retailers, after the administrative record in this case was prepared. The documents “provide further support” as to the “cooperative efforts of the Agency and the Purveyors in satisfying long-term water supply needs,” and “provide context and useful background to aid in the Court’s understanding of this case.” The Agency refers to these documents in its reply brief, pointing out that since 2011, Newhall has increased its imported water purchases because of the impact of the current drought on certain of its wells, while retailer Valencia Water Company increased groundwater pumping and purchased less imported water in 2014. These cooperative efforts, the Agency says, “reflect the direct benefit to Newhall of having an imported water supply available to it, whether or not it maximizes use of imported water in a particular year.”

We deny the Agency’s request for judicial notice. We see no reason to depart from the general rule that courts may not consider evidence not contained in the administrative record. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 564; cf. *id.* at p. 578 [the exception to the rule in administrative proceedings, for evidence that could not have been produced at the hearing through the exercise of reasonable diligence, applies in “rare instances” where the evidence in question existed at the time of the decision, or in other “unusual circumstances”].) Denial is particularly appropriate where judicial notice has been requested in support of a reply brief to which the opposing party has no opportunity to respond, and where the material is, as the Agency admits, “further support” of evidence in the record, providing “context and useful background.” These are not unusual circumstances.

Returning to the point, neither conservation mandates nor the Agency’s desire to promote conjunctive use – an objective apparently shared by the retailers – permits the Agency to charge rates that do not comply with Proposition 26 requirements. Using demand for groundwater the agency does not supply to allocate its fixed costs may “satisf[y] the Agency’s constitutional obligations . . . to encourage water conservation,”

but it does not satisfy Proposition 26, and it therefore cannot stand.⁶ (Cf. *Capistrano, supra*, 235 Cal.App.4th at pp. 1511, 1498 [conservation is to be attained in a manner not exceeding the proportional cost of service attributable to the parcel under Proposition 218; the agency failed to show its tiered rates complied with that requirement].)

d. Other Proposition 26 requirements

We have focused on the failure of the challenged rates to comply with the proportionality requirement of Proposition 26. But the rates do not withstand scrutiny for another reason as well. Proposition 26 exempts the Agency’s charges from voter approval only if the charge is imposed “for a specific government service or product provided *directly* to the payor that is *not* provided to those not charged” (Italics added.) The only “specific government service or product” the Agency provides directly to the retailers, and not to others, is imported water. As the trial court found: the Agency “does not provide Newhall groundwater. It does not maintain or recharge aquifers. It does not help Newhall pump groundwater. Nor does it otherwise contribute directly to the natural recharge of the groundwater Newhall obtains from its wells.”

The groundwater management activities the Agency *does* provide – such as its leadership role in creating groundwater management plans and its perchlorate remediation efforts – are not specific services the Agency provides directly to the retailers, and not to other groundwater extractors in the Basin. On the contrary, groundwater management services redound to the benefit of all groundwater extractors in the Basin – not just the four retailers. Indeed, implementation of any groundwater

⁶ The Agency also cites *Brydon v. East Bay Municipal Utility District* (1994) 24 Cal.App.4th 178 for the principle that, in pursuing a constitutionally and statutorily mandated conservation program, “cost allocations . . . are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity.” (*Id.* at p. 193.) But *Brydon* predated both Proposition 218 and Proposition 26. (See *Capistrano, supra*, 235 Cal.App.4th at pp. 1512-1513 [*Brydon* “simply has no application to post-Proposition 218 cases”; “it seems safe to say that *Brydon* itself was part of the general case law which the enactors of Proposition 218 wanted replaced with stricter controls on local government discretion”].)

management plan is “subject to the rights of property owners and with the approval of the retail water purveyors *and other major extractors* of over 100 acre-feet of water per year.” (Wat. Code Appen., § 103-15.2, subs. (b)&(c), italics added.)

Certainly the Agency may recover through its water rates its entire cost of service – that is undisputed. The only question is whether those costs may be allocated, consistent with Proposition 26, based in substantial part on groundwater use. They may not, because the Agency’s groundwater management activities plainly are not a service “that is not provided to those not charged” (Art. XIII C, § 1, subd. (e)(2).)

In light of our conclusion the challenged rates violate Proposition 26, we need not consider the Agency’s contention that the rates comply with Government Code section 54999.7 and the common law. Nor need we consider the propriety of the remedy the trial court granted, as the Agency raises no claim of error on that point.

DISPOSITION

The judgment is affirmed. Plaintiff shall recover its costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.

Transcription

Keith Lewinger (Director, San Diego County Water Authority)
Tom DeBacker (Controller, Metropolitan Water District of Southern California)

3b: Financial highlights

Finance and Insurance Committee Meeting

July 8, 2013

DeBacker (16:53): That was not based on a percentage. There was a point in time when we did use a percentage and that percentage was about 20 percent of the CIP. When we changed from that practice we went to a 95 million dollars and that was just to kind of, you know, get us close to what a 20 percent amount would be, but it was not precisely 20 percent.

Lewinger: So it was meant to represent approximately 20 percent?

DeBacker: Yeah and I was just using that going forward.

The Metropolitan Water District Act

PREFACE

This volume constitutes an annotated version of the Metropolitan Water District Act, as reenacted by the California State Legislature in 1969 and as amended in 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1978, 1981, 1984, 1985, 1995, 1998, 1999, 2001, 2004, and 2008. Where there is no legislative history given for a section of this act, it is because the section was enacted as part of the nonsubstantive revision of the Metropolitan Water District Act, Statutes 1969, chapter 209. The editorial work was done by the office of the General Counsel of The Metropolitan Water District of Southern California. To facilitate use of the act, catchlines or catchwords enclosed by brackets have been inserted to indicate the nature of the sections which follow. Also, a table of contents has been set at the beginning of the act. Such table of contents and catchlines or catchwords are not a part of the act as enacted by the Legislature. This annotated act will be kept up to date by means of supplemental pages issued each year in which there is a change to the act.

(Statutes 1969, ch.209, as amended;
West's California Water Code – Appendix Section 109
Deering's California Water Code – Uncodified Act 570)

A contract between the State and a metropolitan water district for a water supply from the State Water Resources Development System was a contract for the furnishing of continued water service in the future, payments by the district being contingent upon performance of contractual duties by the State and not incurred at the outset, so the district did not incur an indebtedness in excess of that permitted by former Section 5(7) of the Metropolitan Water District Act (now Sec. 123).

Metropolitan Water District v. Marquardt, 59 Cal.2d 159, 28 Cal. Rptr. 724 (1963).

Sec. 124. [Taxes, Levy and Limitation]

A district may levy and collect taxes on all property within the district for the purposes of carrying on the operations and paying the obligations of the district, except that such taxes, exclusive of any tax levied to meet the bonded indebtedness of such district and the interest thereon, exclusive of any tax levied to meet any obligation to the United States of America or to any board, department or agency thereof, and exclusive of any tax levied to meet any obligation to the state pursuant to Section 11652 of the Water Code, shall not exceed five cents (\$.05) on each such one hundred dollars (\$100) of assessed valuation. The term "tax levied to meet the bonded indebtedness of such district and the interest thereon" as used in this section shall also include, but shall not be limited to, any tax levied pursuant to Section 287 to pay the principal of, or interest on, bond anticipation notes and any tax levied under the provisions of any resolution or ordinance providing for the issuance of bonds of the district to pay, as the same shall become due, the principal of any term bonds which under the provisions of such resolution or ordinance are to be paid and retired by call or purchase before maturity with moneys set aside for that purpose.

Amended by Stats. 1969, ch. 441.

CASE NOTE

An article in a contract between the State and a metropolitan water district for a water supply from the State Water Resources Development System which article is based upon Water Code Section 11652, requiring the district to levy a tax to provide for all payments due under the contract, does not contravene former Section 5(8) of the Metropolitan Water District Act, imposing a limit on taxation, as Section 11652 is a special provision relating only to taxation to meet obligations from water contracts with state agencies, whereas said Section 5(8) is a general provision relating to taxation by a district for all purposes and the special provision controls the general provision.

Metropolitan Water District v. Marquardt, 59 Cal.2d 159, 28 Cal. Rptr. 724 (1963).

Sec. 124.5. [Ad valorem Tax Limitation]

Subject only to the exception in this section and notwithstanding any other provision of law, commencing with the 1990-91 fiscal year any ad valorem property tax levied by a district on taxable property in the district, other than special taxes levied and collected pursuant to annexation proceedings pursuant to Articles 1 (commencing with Section 350), 2 (commencing with Section 360), 3 (commencing with Section 370), and 6 (commencing with Section 405) of Chapter 1 of Part 7, shall not exceed the composite amount required to pay (1) the principal and interest on general obligation bonded indebtedness of the district and (2) that portion of the district's payment obligation under a water service contract with the state which is reasonably

allocable, as determined by the district, to the payment by the state of principal and interest on bonds issued pursuant to the California Water Resources Development Bond Act as of the effective date of this section and used to finance construction of facilities for the benefit of the district. The restrictions contained in this section do not apply if the board of directors of the district, following a hearing held to consider that issue, finds that a tax in excess of these restrictions is essential to the fiscal integrity of the district, and written notice of the hearing is filed with the offices of the Speaker of the Assembly and the President pro Tempore of the Senate at least 10 days prior to that date of the hearing.

Added by Stats. 1984, ch. 271.

Sec. 125. [Investment of Surplus Money]

Investment of surplus moneys of a district is governed by Article 1 (commencing with Section 53600) of Chapter 4, Part 1, Division 2, Title 5 of the Government Code.

Amended by Stats. 1969, ch. 441.

Sec. 125.5 Guidelines for intended use of unreserved fund balances.

On or before June 20, 2002, the board of directors of a district shall adopt a resolution establishing guidelines for the intended use of unreserved fund balances. The guidelines shall require that any disbursement of funds to member public agencies that represents a refund of money paid for the purchases of water shall be distributed based upon each member agency's purchase of water from the district during the previous fiscal year.

Added Stats. 2001 ch 632 §1 (SB350)

Sec. 126. [Dissemination of Information]

A district may disseminate information concerning the activities of the district, and whenever it shall be found by two-thirds vote of the board to be necessary for the protection of district rights and properties, the district may disseminate information concerning such rights and properties, and concerning matters which, in the judgment of the board, may adversely affect such rights and properties. Expenditures during any fiscal year for the purposes of this section shall not exceed one-half of one cent (\$0.005) for each one hundred dollars (\$100) of assessed valuation of the district.

Sec. 126.5.[Proscription on Use of Public Money for Investigations Relating to Elected Officials, Advocacy Groups, or Interested Persons: Right to Public Records]

(a) The Metropolitan Water District of Southern California and its member public agencies may not expend any public money for contracting with any private entity or person to undertake research or investigations with regard to the personal backgrounds or the statements of

board to be equitable, may fix rates for the sale and delivery to member public agencies of water obtained by the district from one source of supply in substitution for water obtained by the district from another and different source of supply, and may charge for such substitute water at the rate fixed for the water for which it is so substituted.

Sec. 134. [Adequacy of Water Rates; Uniformity of Rates]

The Board, so far as practicable, shall fix such rate or rates for water as will result in revenue which, together with revenue from any water stand-by or availability service charge or assessment, will pay the operating expenses of the district, provide for repairs and maintenance, provide for payment of the purchase price or other charges for property or services or other rights acquired by the district, and provide for the payment of the interest and principal of the bonded debt subject to the applicable provisions of this act authorizing the issuance and retirement of the bonds. Those rates, subject to the provisions of this chapter, shall be uniform for like classes of service throughout the district.

Amended by Stats. 1984, ch. 271

Sec. 134.5. [Water Standby or Availability of Service Charge]

(a) The board may, from time to time, impose a water standby or availability service charge within a district. The amount of revenue to be raised by the service charge shall be as determined by the board.

(b) Allocation of the service charge among member public agencies shall be in accordance with a method established by ordinance or resolution of the board. Factors that may be considered include, but are not limited to, historical water deliveries by a district; projected water service demands by member public agencies of a district; contracted water service demands by member public agencies of a district; service connection capacity; acreage; property parcels; population, and assessed valuation, or a combination thereof.

(c) The service charge may be collected from the member public agencies of a district. As an alternative, a district may impose a service charge as a standby charge against individual parcels within the district.

In implementing this alternative, a district may exercise the powers of a county water district under Section 31031 of the Water Code, except that, notwithstanding Section 31031 of the Water Code, a district may (1) raise the standby charge rate above ten dollars (\$10) per year by a majority vote of the board, and (2) after taking into account the factors specified in subdivision (b), fix different standby charge rates for parcels situated within different member public agencies.



San Diego County Water Authority

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

November 17, 2014

Brett Barbre 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
Olivienhain
Municipal Water District
Olney 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
Yuma
Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

RE: Finance and Insurance Committee Item 6c – Balancing Accounts

Dear Committee Chair Barbre and Members of the Board:

Thank you for placing the balancing accounts issue on the committee agenda this month.

In September, when staff last presented the item for discussion, we noted that the content of the presentation was not responsive to the question, namely, how can revenues from individual rates be tracked to improve accountability and ensure compliance with cost-of-service requirements. We are disappointed to see that the same non-responsive staff presentation will be made again this month.

The concept of balancing accounts is well-known and easy to understand. It is a long-standing accounting practice among private water utilities used to protect both the utility and its customers from changes in costs the utility has no ability to control (for example, the weather,) and at the same time, ensure that rates accurately reflect the costs of providing service. Because MWD now derives significant revenues from transportation services, it is imperative that MWD's accounting methods ensure all of its member agencies and ratepayers that the rates they are paying are fair, and used for the intended purpose as established during the public rate-setting and cost-of-service process.

We are asking that MWD implement an accounting mechanism that tracks revenues from all individual rates and expenditures associated with those rates. To the extent that MWD actual sales differ from forecasted sales, it may collect more or less than the revenue requirement upon which the rate for a particular service is determined. Discrepancies between revenue requirements and actual revenues and expenses are captured through balancing account mechanisms, which "true-up" the actual revenue to the revenue requirement in the following year. This "true-up" ensures that MWD only collects the revenue requirement for the rate that is charged in compliance with applicable law.

We do not understand why MWD would be unwilling to extend its current practice of tracking

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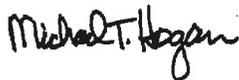
Committee Chair Barbre and Members of the Board
November 17, 2014
Page 2

treatment and water stewardship rates to also include supply, system access and system power rates. We are asking only that MWD account for all of its rates just as it now does for its treatment and water stewardship rates. Tracking rates and revenue collection in this manner does not impede MWD's ability to meet bond covenants or any other requirement or function described in the staff presentation.

We are also concerned with the position expressed at the last committee meeting that the Water Rate Stabilization Fund (WRSF) requirements should flow into a single fund with board discretion to expend those funds on any purpose. The melding of surplus funds received from different rates and charges would necessarily lead to cross-funding of unrelated services. Furthermore, the priority for fund flows (dollars in/out) could first be to the separate fund accounts for each identified service, rather than flowing first to the WRSF, as is the current practice, or sub-account funds could be created within the WRSF to track and account for sources of the "puts" into the WRSF and the "takes" from the fund. This would ensure collections from the rate for each service are accounted for and attributed to that service. Surplus collections remaining in that account may then be used to mitigate corresponding rate increases in the following years so funds are spent for that service in accordance with cost-of-service and Proposition 26 (2010) requirements.

We look forward to discussing this important transparency issue at the committee and board meeting this month.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director



San Diego County Water Authority

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

February 18, 2016

MEMBER AGENCIES

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City of San Diego

Fallbrook
Public Utility District

Helix Water District

Lakeside Water District

Olivewood
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

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

Re: Request for Records Under California Public Records Act
(California Gov. Code § 6250 *et seq.*)

Dear Ms. Chin:

On behalf of my client, the San Diego County Water Authority ("SDCWA"), and pursuant to the California Public Records Act ("PRA"), California Government Code section 6250 *et seq.*, we request the following public records which are in the possession or control of the Metropolitan Water District of Southern California (hereinafter "MWD"). "MWD," as used herein, includes MWD itself, MWD's officers, representatives, agents, employees, affiliates, accountants, consultants, attorneys, MWD's Board of Directors, its individual directors, and any and all persons acting on MWD's behalf. "MWD's Board" and "MWD's Board of Directors," as used herein, includes the Board of Directors as a whole, its directors and all relevant Standing, Ad Hoc, Special Purpose, Temporary Committees, and all other appointments.

This request applies to every such record that is known to MWD and which MWD can locate or discover by reasonably diligent efforts. More specifically, the records that may contain information called for by this request include:

- Documents, communications, letters, memoranda, notes, reports, papers, files, books, records, contracts, agreements, telegrams, electronic mail (saved or deleted), and other communications sent or received;
- Printouts, diary entries and calendars, drafts, tables, compilations, tabulations, charts, spreadsheets, graphs, recommendations, accounts, worksheets, logs, work papers, minutes, notes, summaries, speeches, presentations, and other written records or recordings of or relating to any conference, meeting, visit, interview, or telephone conversations;
- Bills, statements, invoices, and other records of any obligation or expenditure, cancelled checks, vouchers, receipts, and other records of payment;
- Financial and statistical data, analyses, surveys and schedules;
- Audiotapes and videotapes and cassettes and transcripts thereof, affidavits, transcripts of testimony, statements, interviews, and conversations;

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Ms. Dawn Chin
February 18, 2016
Page 2

- Printed matter (including published articles, speeches, newspaper clippings, press releases, and photographs); and
- Microfilm and microfiche, disks, computer files, electronically stored data (including the metadata associated with any such written and/or spoken content), electronically stored information, electronic devices, film, tapes, and other sources from which information can be obtained, including materials used in electronic data processing. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. "Electronically stored information" means information that is stored in an electronic medium, including data, metadata, and all electronically stored data or information.

The term "related to," as used in each category of public record listed below, means directly or indirectly, in whole or in part, comprising, referring to, concerning, evidencing, connected with, commenting on, affecting, responding to, showing, describing, discussing, analyzing, reflecting or constituting.

The term "rate model," as used in each category of public record listed below, means all documents, data, analyses, calculations, studies or other information that constitute, comprise, support or describe the manner in which MWD assigns costs to rates, including but not limited to its "financial planning model," including the spreadsheet, formulas and programming code.

If a record responsive to a request was, but no longer is, in your possession, custody, or control, state precisely what disposition was made of it (including its present location and who possesses or controls it) and identify the person(s) who authorized or ordered such disposition.

Records produced in response to this request should be produced as they are kept in the usual course of business or should be organized and labeled to correspond with the categories in the request. All electronically stored information shall be produced in its native format with all metadata intact.

The requested records are:

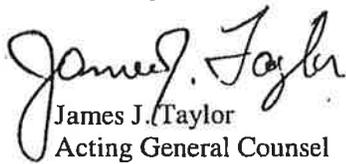
1. Any rate model or models used in formulating proposed rates for the 2017 and 2018 calendar years.
2. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting the rates and charges proposed for the 2017 and 2018 calendar years, as described in MWD Board Memo 9-2 dated 2/9/2016 (Finance and Insurance Committee).
3. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting a proposed reduction of the Readiness-to-Serve and Capacity Charges for 2017.
4. All data, analyses and studies, if any, demonstrating the proportionate benefit each of MWD's 26 customer member agencies will receive from the expenditure of revenues collected from the rates and charges proposed for the 2017 and 2018 calendar years.
5. All data, analyses and studies, if any, that support the conclusion that demand management programs provide distribution and conveyance system benefits, including identification of those parts of the distribution and conveyance system where additional capacity is needed and the customer member agencies that benefit from that capacity being made available.

Ms. Dawn Chin
February 18, 2016
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6. All data, analyses, opinions and studies, if any, that support the conclusion that suspension of the property tax restriction in Section 124.5 of the MWD Act is essential to MWD's fiscal integrity, as described in MWD Board Memo 9-2 at page 3.
7. All data, analyses and studies, if any, supporting the findings, conclusions, recommendations and water supply development targets identified in MWD's 2015 IRP Technical Update Issue Paper Addendum.
8. All data, analyses and studies, if any, supporting the findings, conclusions, recommendations and water supply development targets identified in MWD's Integrated Water Resources Plan 2015 Update.

Within ten (10) days of receipt of this PRA request, please contact me at (858) 522-6791 to discuss whether MWD has records responsive to this request, the page count and cost of copying the records, and whether the documents are also available in electronic format.

Sincerely,


James J. Taylor
Acting General Counsel

cc: MWD Public Records Administrator (by email at praadministration@mwdh2o.com)



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

VIA EMAIL

February 22, 2016

Director Michael T. Hogan
Director Keith Lewinger
Director Yen C. Tu
Director Fern Steiner
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123

Dear Directors:

Your letter dated October 26, 2015 regarding Audit and Ethics Committee Agenda Item 3-b

This letter addresses your comments, received October 26, 2015, on Audit and Ethics Committee Agenda Item 3-b: Discussion of Independent Auditor's report from MGO, LLP for fiscal year 2014/15.

You commented that Metropolitan's water sales amount for fiscal year ending June 30, 2015 "is not accurate; that number is only achieved by characterizing as 'water sales' the revenue MWD is actually paid for wheeling the Water Authority's independent Colorado River water under the Exchange Agreement." SDCWA's payments under the Exchange Agreement are not for wheeling. SDCWA has previously stated that the agreement is not for wheeling, in statements before the California State Water Resources Control Board, the San Francisco and Sacramento Superior Courts, and the California Court of Appeal, including in sworn testimony.

You also commented that Note 1(c) does not acknowledge receipt of revenues such as those under the Exchange Agreement. In fact, Note 1(c) states that water sales revenues includes revenues from exchange transactions.

You further commented that "Judge Karnow specifically found that the Water Authority is not buying water from MWD under the Exchange Agreement" (emphasis in original), in reference to the San Francisco Superior Court's ruling on the preferential rights claim in the SDCWA v. Metropolitan litigation. The Superior Court's decision is under appeal and does not have binding

SDCWA Directors
February 22, 2016
Page 2

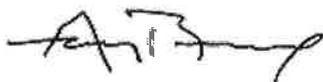
effect. In any event, the parties' disagreement in the litigation as to whether the Exchange Agreement payments are for the "purchase of water," as that term is used in the preferential rights statute and as it has been interpreted by the California Court of Appeal, has no bearing on Metropolitan's stated water sales revenues. The stated water sales revenues show the revenues received from the payment of Metropolitan water rates. It is agreed that under the Exchange Agreement's price term, SDCWA pays Metropolitan water rates (the System Access Rate, System Power Rate, and Water Stewardship Rate).

The matters raised in your comments are not material to a reader of the financial statements. Metropolitan prepares its financial statements in accordance with accounting principles generally accepted in the United States. Information relevant to the fair presentation of financial statements that are free from material misstatement and in accordance with the aforementioned accounting principles was provided to MGO during the course of the audit. Such information was not inclusive of SDCWA's comments on Metropolitan's bond disclosures, since SDCWA's comments did not provide additional undisclosed information which was relevant to the financial statements.

We do note that Metropolitan issued its Comprehensive Annual Financial Report on December 15, 2015, which includes the basic financial statements. Note 15, Subsequent Events, includes a discussion of the final judgment issued on November 18, 2015 by the San Francisco Superior Court for the 2010 and 2012 SDCWA v. Metropolitan cases, the damages and prejudgment interest awards, and the filing of the Notice of Appeal in each case on November 19, 2015.

Thank you for your comments on Metropolitan's Basic Financial Statements.

Sincerely,



Gary Breaux
Assistant General Manager/ Chief Financial Officer



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

VIA EMAIL

February 23, 2016

Director Michael T. Hogan
Director Keith Lewinger
Director Fern Steiner
Director Yen C. Tu
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123

Re: Your letters dated February 4, 2016, February 6, 2016, and February 9, 2016

Dear Directors:

This letter addresses your comments and requests in your letters dated February 4, 2016, February 6, 2016, and February 9, 2016, relating to Metropolitan's 2016 budget and rate setting process.

February 4, 2016 Letter re Written Request for Notice and Request for Data and Proposed Methodology under Government Code Section 54999.7

We have received your request for notice of the public meetings relating to establishment of Metropolitan's 2017 and 2018 rates and charges, and the data and proposed methodology relating to such rates and charges, pursuant to Government Code Section 54999.7. SDCWA has and will continue to receive notice of all meetings, workshops, and public hearings relating to Metropolitan's 2017 and 2018 rates and charges, as well as the information, data, and methodology supporting the rates and charges proposal, in accordance with Metropolitan's practices and the Brown Act.

As you know, Metropolitan disputes SDCWA's litigation position that Section 54999.7 applies to Metropolitan's rates. SDCWA has previously agreed that Section 54999.7 does not apply to Metropolitan. This is an issue in the pending litigation between SDCWA and Metropolitan. The judgment in the litigation is currently on appeal and, therefore, is not binding on Metropolitan. Nevertheless, Metropolitan has and will continue to fully comply with Section 54999.7's requirements through the budget and rates and charges information provided and to be provided to the member agencies and the public.

SDCWA Directors
February 23, 2016
Page 2

February 6, 2016 Letter Re Board Memo 9-2

We appreciate receiving your preliminary written comments in advance of the first workshop of the 2016 budget and rate setting process, held on February 8, 2016 (“Workshop #1”). Staff has reviewed your written comments, as well as your and other Metropolitan Directors’ comments made at Workshop #1, at the February 9 Board meeting, and at the February 23, 2016 Workshop #2. Consistent with past practice, staff has and will continue to address all Directors’ comments and questions at the scheduled workshops to ensure full participation of the Finance & Insurance Committee and Board. As we have informed the Board, the proposed schedule for the 2016 budget and rate setting process will consist of four workshops, with a fifth workshop available if the Board requests it, and one public hearing before the Board may take action on April 12 to adopt the biennial budget and rates and charges.

You have also included in your February 6 letter a request that the General Counsel provide (1) a public presentation regarding the applicability of Proposition 26 to wholesale water agencies such as Metropolitan, and (2) a legal opinion “why MWD’s actions” with respect to the Readiness-to-Serve and Capacity Charges “are not the opposite of what was intended by passage of” Sections 124.5 and 134 of the Metropolitan Water District Act. As you know, the applicability of Proposition 26 to Metropolitan’s wholesale water rates is an issue in the pending litigation between SDCWA and Metropolitan. Metropolitan contends that Proposition 26 does not apply to its rates and Metropolitan has explained that position extensively in the litigation. As stated above, the judgment in the litigation is on appeal and is not currently binding on Metropolitan. Metropolitan’s position is that its rates and charges comply with all applicable law, including but not limited to, the Metropolitan Water District Act.

February 9, 2016 Letter re “2016 Rate Setting Process and Schedule for Public Hearing; Request for Distribution of Cost of Service Report Prior to the Public Hearing”

You commented in your February 9 letter that you have not received “MWD’s 2016 Cost of Service Report” and that Government Code Section 54999.7(d) and (e) require distribution of such report no later than 30 days before rates and charges are adopted.

First, we note that staff has made available prior to Workshop #1 the proposed biennial budget and ten-year forecast, containing revenue requirements and cost of service analysis. Staff also made an extensive presentation regarding the revenue requirements that form Metropolitan’s projected costs of service. Moreover, as explained in the February 9 Board Letter, “[t]he estimated rates are based on Metropolitan’s current methodology for developing rates and charges to produce the necessary revenue required to cover costs.” (Board Memo 9-2, p. 1.) In other words, the proposed rates and charges, with the exception of the Treatment Surcharge, will continue to be proposed pursuant to the rate structure that has been in place since January 1, 2003. Further explanation of the cost of service analysis supporting the continuing rate structure, including a Cost of Service Report, will be presented throughout the budget and rate process.

Second, as stated above, Metropolitan agrees with SDCWA’s prior position that Government Code Section 54999.7 does not apply to Metropolitan. In any event, we point out that SDCWA

SDCWA Directors
February 23, 2016
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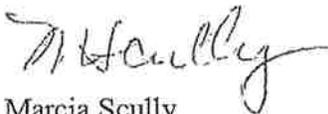
has misread Section 54999.7. The Section requires that the “request of any affected public agency” be “made not less than 30 days prior to the date of the public meeting to establish or increase any rate, charge, surcharge, or fee” (Cal. Gov. Code § 54999.7(e).) The 30-day deadline applies to the request for information – not to the provision of information as you represent in your letter.

We will respond separately to your correspondence received after February 9, 2016. Thank you again for providing your comments in advance and in writing.

Sincerely,



Gary Breaux
Assistant General Manager/ Chief Financial Officer



Marcia Scully
General Counsel

cc: Metropolitan Board of Directors



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

February 26, 2016

James J. Taylor, Esq.
General Counsel
San Diego County Water Authority
4677 Overland Avenue
San Diego, California 92123-1233

Dear Mr. Taylor:

Response to Public Records Act Request Dated February 18, 2016

We received your Public Records Act request, dated February 18, 2016, on that date. A copy of your request is attached.

This response is made in compliance with California Government Code Section 6253(c), which requires an agency to notify a person making a request within 10 days whether a request seeks disclosable records. We have determined that your request seeks disclosable records, with the exception of Metropolitan's financial planning model, which is exempt from disclosure under Government Code Section 6254.9(a) as a proprietary software program developed by Metropolitan that contains nondisclosable formulas and programming code.¹

Disclosable records that are responsive to your request, to the extent material has not already been provided to the Metropolitan Board, are being collected and will be provided to SDCWA in electronic format on DVD(s).

Pursuant to Government Code Section 6253(c), Metropolitan will notify you within 14 days of the date on which we will provide the responsive and disclosable records to you. The voluminous amount of records and our need to remove the proprietary formulas and code from spreadsheets impact the timing of the production and our ability to state the production date at

¹ SDCWA already received the financial planning model through the rate litigation, subject to the parameters and restrictions of the Court's protective order, so SDCWA has had full opportunity to view it and understands its operations.

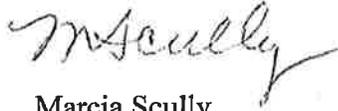
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

James J. Taylor, Esq.
February 26, 2016
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this time. We will also post this material on-line so it is available to all Metropolitan Board members, member agency staff, and the public. In addition, if any Board member would like, we will provide the material to them on DVD(s).

Thank you for your request. Please direct all communications regarding your request to me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "M. Scully".

Marcia Scully
General Counsel



San Diego County Water Authority

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

March 4, 2016

Marcia Scully, Esq.
General Counsel
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

Hellix Water District

Lakeside Water District

Olivenhain
Municipal Water District

Olney 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: San Diego Public Records Act Request of February 18, 2016

Dear Ms. Scully:

I have reviewed your February 26 correspondence, which responds to our February 18 California Public Records Act Request (the "Request"). As you know, the Request seeks categories of information necessary to evaluate MWD's current proposed rates for 2017 and 2018.

In your correspondence, you have denied our request for Metropolitan's financial planning model, claiming that it is exempt under Government Code section 6254.9 as "a proprietary software program developed by Metropolitan that contains nondisclosable formulas and programming code." As you note, the Water Authority received the previous financial planning model in 2013. That disclosure, made in litigation, was subject to a protective order requested by MWD, which for timing reasons, the Water Authority chose not to challenge at that time. Our Request seeks public disclosure of the financial planning model, with updated data, relating to the current rate setting process for 2017 and 2018 rates and charges.

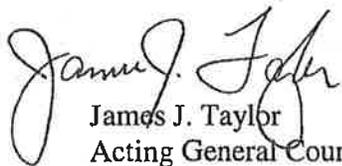
You may or may not be aware, after the protective order was issued, the California Supreme Court issued a decision that confirms the Water Authority's position that the data contained within MWD's financial planning model is a disclosable public record, and is not exempt from disclosure under Government Code 6254.9. See Sierra Club v. Superior Court (2013) 57 Cal.4th 157. Therefore, we ask again that MWD immediately provide us with its current financial planning model, in a fully functional electronic format, including all of the data contained therein. If MWD still refuses to do so, we will have no choice but to commence litigation to obtain this information, which is necessary in order to analyze how MWD has assigned its costs and set its rates.

As to the other requested records, your correspondence notes that MWD will notify us in 14 days of the date on which you will provide responsive records. However, a delay in both your response and the production of records is unacceptable since MWD is currently

Marcia Scully
March 4, 2016
Page 2

in the process of setting rates that will be formally acted upon by the board at its April 12 board meeting. Given the immediacy of rate adoption, it is evident that the responsive records, which all seek the underlying data that MWD used in determining its proposed rates, are readily available and should be immediately disclosed. Since the public hearing on MWD's proposed rates is just four days away, and the proposed rates are scheduled to be adopted on April 12, it is of great public importance that both MWD and the public receive as much information as possible now. At a minimum, MWD should immediately provide access to all available data, including any cost of service studies or reports upon which the data rely, and studies that may have been conducted, and more detailed budget information to the lowest level of data that MWD collects or uses to develop the budget (typically, this would include line by line account numbers, by department, including all activities and programs). Any additional data should also be provided on a rolling production basis.

Sincerely,


James J. Taylor
Acting General Counsel

Attachment 8:

Master Index of Documents San Diego County Water Authority Requests be Included in the Administrative Record for Setting of MWD Rates and Charges for Calendar Years 2017 and 2018

SDCWA Item No.	CD#	Date	Description
SDCWA 001	6	1/27/14	SDCWA Written Request for Notice under Gov. Code Section 54999.7(d) and Request for Data and Proposed Methodology for Establishing Rates and Charges (Government Code Section 54999.7(e))
SDCWA 002	6	2/28/14	SDCWA Renewed written request for data and proposed methodology for establishing rates and charges (Gov. Code 54999.7 and 6250)
SDCWA 003	6	3/10/14	MWD Response to Request for Information Dated February 28, 2014
SDCWA 004	6	3/10/14	Testimony of Dennis Cushman before MWD Finance and Insurance Committee Meeting Agenda Item 8b: Proposed Rates for 2015 and 2016
SDCWA 005	6	3/11/14	Testimony of Dennis Cushman at MWD Board Meeting Public Hearing on Proposed Rates for Calendar Years 2015 and 2016
SDCWA 006	6	3/11/14	March 11, 2014 Letter - Public Hearing Comments on Proposed Rates and Charges, with attachments
SDCWA 007	1	3/11/14	Administrative Record for Setting of MWD's 2013 and 2014 Rates in <i>SDCWA v. MWD</i> , Case No. CPF-12-512466 (S.F. Superior Court) which is inclusive of the Administrative Record in the case challenging MWD's 2011 and 2012 Rates (<i>SDCWA v. MWD</i> , Case No. CPF-10-510830 (S.F. Superior Court))
SDCWA 008	2	3/11/14	Additional documents SDCWA requested be included in Administrative Record for the adoption of MWD's calendar year 2015 and 2016 rates
SDCWA 009	3	3/10/14	CD of Post-Trial Briefs, Transcripts, and Statements of Decision in 2014 Rate Case; Cushman Testimony to MWD Finance and Insurance Committee, and Cushman Board Public Hearing Testimony and Transmittal Letter
SDCWA 010	6	3/19/14	MWD letter to SDCWA forwarding DVD containing MWD records
SDCWA 011			<i>Reserved</i>
SDCWA 012			<i>Reserved</i>
SDCWA 013	5		Documents and Testimony from Phase II of the <i>SDCWA v. MWD</i> Trial (2010 and 2012 Rate Cases)

SDCWA 014	6	4/8/14	Letter Re: April 7, 2014 Finance and Insurance Committee Meeting Board Memo 8-1 - Approve proposed biennial budget for fiscal year 2014/15 and 15/16, proposed ten-year forecast, proposed revenue requirement for fiscal year 2014/15 and 2015/16 and recommend water rates; adopt resolution 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)
SDCWA 015	6	4/8/14	Documents forwarded with SDCWA 014
SDCWA 016	6	8/16/10	Comment Letter on MWD Staff Analysis on Opt-in/Opt-out Conservation Program (August 16, 2010)
SDCWA 017	6	10/11/10	Integrated Resources Plan (October 11, 2010)
SDCWA 018	6	11/29/10	MWD Draft Long Term Conservation Plan (November 29, 2010)
SDCWA 019	6	1/5/11	Draft Long Range Finance Plan (January 5, 2011)
SDCWA 020	6	4/25/11	MWD Discounted Water Program (April 25, 2011)
SDCWA 021	6	5/4/11	MWD's Response to the Water Authority's April 25, 2011 Discounted Water Program Letter (May 4, 2011)
SDCWA 022	6	5/6/11	Sale of Discounted Water (May 6, 2011)
SDCWA 023	6	6/13/11	MWD Local Resources Program – Chino Desalter (June 13, 2011)
SDCWA 024	6	7/20/11	Comments on Long Term Conservation Plan Working Draft Version 11 (July 20, 2011)
SDCWA 025	6	8/16/11	Member Agency Willingness to Sign Take-or-Pay Contracts (August 16, 2011)
SDCWA 026	6	9/9/11	Adjustments to MWD's Water Supply Allocation Plan Formula (September 9, 2011)
SDCWA 027	6	9/12/11	Comments and Questions – Replenishment Service Program (September 12, 2011)
SDCWA 028	6	10/7/11	Water Planning and Stewardship Reports – lack of justifications to demonstrate needs and benefits (October 7, 2011)
SDCWA 029	6	10/25/11	KPMG Audit Report (October 25, 2011)
SDCWA 030	6	11/4/11	Letter on Approve Policy Principles for a Replenishment (Discounted Water) Program (November 4, 2011)

SDCWA 031	6	11/23/11	Turf Replacement Grant (November 23, 2011)
SDCWA 032	6	12/12/11	Letter on Review Options for Updated Replenishment (Discounted Water) Program (December 12, 2011)
SDCWA 033	6	12/13/11	Water Authority's Request to Include Information in MWD's SB 60 (December 13, 2011)
SDCWA 034	6	1/5/12	Response letter to MWD Letters on Replenishment Dated December 21, 2011 (January 5, 2012)
SDCWA 035	6	1/18/12	MWD Response to January 5, 2012 Letter on Replenishment Workgroup Materials addressed to MWD Delegation (January 18, 2012)
SDCWA 036	6	3/12/12	Oppose Local Resources Program Agreements (March 12, 2012)
SDCWA 037	6	3/13/12	San Diego County Water Authority's Annexation (March 13, 2012)
SDCWA 038	6	4/9/12	Re: Board Memo 8-2: Authorize the execution and distribution on the Official Statement in connection with the issuance of the Water Revenue Refunding Bonds (April 9, 2012)
SDCWA 039	6	5/7/12	Oppose changes to water conservation incentives (subsidies) as described (May 7, 2012)
SDCWA 040	6	6/11/12	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)
SDCWA 041	6	6/11/12	Oppose Local Resources Program Agreement with MWDOC and the City of San Clemente for the San Clemente Recycled Water System Expansion Project (June 11, 2012)
SDCWA 042	6	7/9/12	Update on Rate Refinement Discussions (July 9, 2012)
SDCWA 043	6	8/16/12	Rate Refinement Workshop (August 16, 2012)
SDCWA 044	6	8/20/12	Re: Board Memo : Authorize the execution and distribution of an Official Statement for potential refunding of Water Revenue Bonds (August 20, 2012)
SDCWA 045	6	8/20/12	Oppose Local Resources Program Agreement with MWDOC and El Toro Water District for the El Toro Recycled Water System Expansion Project (August 20, 2012)
SDCWA 046	6	8/29/12	Re: Confirmation of MWD's review of Water Authority's August 20, 2012 comments on Appendix A and OS (August 29, 2012)
SDCWA 047	6	9/10/12	Update on "Rate Refinement" (Board Information Item 7-b) (September 10, 2012)

SDCWA 048	6	9/10/12	Comments and Positions on Proposed Amendments to the MWD Administrative Code (September 10, 2012)
SDCWA 049	6	10/8/12	Water Authority's Response to MWD's September 4, 2012 Letter Regarding Water Authority's Comments on Appendix A to Remarketing Statement and Official Statement (October 8, 2012)
SDCWA 050	6	10/8/12	Water Authority's letter on Board Memo 8-3 – Approve the Form of the Amended and Restated Purchase Order and Authorize Amendment to the Administrative Code (October 8, 2012)
SDCWA 051	6	10/9/12	Water Authority's testimony, as given by Dennis Cushman, on benefits of QSA to MWD (October 9, 2012)
SDCWA 052	6	11/4/12	Director Lewinger's letter to CFO Breaux re: Tracking Revenues from Rate Components Against Actual Expenditures (November 4, 2012)
SDCWA 053	6	11/5/12	Water Authority Opposition to Board Memo 8-1: Authorize the Execution and Distribution of the Official Statement in Connection with the Issuance of the Water Revenue Refunding Bonds, 2012 Series G (November 5, 2012)
SDCWA 054	6	12/10/12	Water Authority's letter re: 7-2: Authorize MOU for Greater LA County Region Integrated Regional Water Management Plan Leadership Committee and join other IRWM groups in our service area if invited by member agencies (December 10, 2012)
SDCWA 055	6	12/10/12	Water Authority's Letter re: SB 60 Annual Public Hearing and Report to the Legislature Regarding Adequacy or MWD's UWMP – Request to Include Information in Report to Legislature (December 10, 2012)
SDCWA 056	6	12/10/12	Oppose Local Resources Program agreement with TVMWD and Cal Poly Pomona for the Cal Poly Pomona Water Treatment Plant (December 10, 2012)
SDCWA 057	6	12/27/12	Water Authority's letter on 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)
SDCWA 058	6	1/14/13	Water Authority's response to MWD's letter regarding the Amended and Restated Purchase Order dated January 4, 2013 (January 14, 2013)
SDCWA 059	6	2/11/13	Water Authority Opposition to Board Memo 8-1: Authorize the Execution and Distribution of the Official Statement in Connection with the Issuance of the Water Revenue Refunding Bonds, 2013 Series A, 2013 Series B, and 2013 Series C, and Amendment and Termination of Interest Rate Swaps (February 11, 2013)

SDCWA 060	6	2/11/13	Oppose Local Resources Program agreement with Calleguas MWD and Camrosa Water District for the Round Mountain Water Treatment Plant (February 11, 2013)
SDCWA 061	6	2/11/13	Water Authority Delegation Statement on Item 7-5 re WaterSMART grant funding (February 11, 2013)
SDCWA 062	6	3/7/13	Water Authority's Letter re: Board Item 9-1 – Proposed Foundational Actions Funding Program (March 7, 2013)
SDCWA 063	6	4/8/13	Water Authority's Letter regarding 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)
SDCWA 064	6	4/8/13	Water Authority's Letter re: Board Item 8-4: Approve Foundational Actions Funding Program -- OPPOSE (April 8, 2013)
SDCWA 065	6	5/10/13	Oppose Local Resources Program agreement with Long Beach and Water Replenishment District for the Leo J. Vander Lands Water Treatment Facility Expansion Project (May 10, 2013)
SDCWA 066	6	5/13/13	Water Authority Opposition to 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, 2013 Series D (May 13, 2013)
SDCWA 067	6	5/14/13	Water Authority's Letter regarding the Public Hearing on Freezing the Ad Valorem Tax Rate (May 14, 2013)
SDCWA 068	6	5/29/13	MWD letter to State Legislature Notifying of Public Hearing on Ad Valorem Tax Rate (May 29, 2013)
SDCWA 069	6	6/5/13	Water Authority letter re 8-1: Mid-cycle Budget Review and Use of Reserves (June 5, 2013)
SDCWA 070	6	6/7/13	Water Authority Opposition to 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)
SDCWA 071	6	7/5/13	Oppose Local Resources Program agreement with the city of Anaheim for the Anaheim Water Recycling Demonstration Project (July 5, 2013)
SDCWA 072	6	8/16/13	Water Authority's letter re 5G-2: Adopt resolution maintaining the tax rate for fiscal year 2013/14 – Oppose (August 16, 2013)
SDCWA 073	6	8/19/13	Water Authority's Letter re: Entering into an exchange and purchase agreement with the San Gabriel Valley Municipal Water District (August 19, 2013)

SDCWA 074	6	9/9/13	Water Authority Delegation Opposition letter to 8-3: Authorization to implement New Conservation Program Initiatives (September 9, 2013)
SDCWA 075	6	9/10/13	Water Authority Delegation letter Opposing 8-2: Authorize staff to enter into funding agreements for Foundational Actions Funding Program proposals (September 10, 2013)
SDCWA 076	6	9/11/13	Letter from Water Authority General Counsel Hentschke regarding Record of September 10, 2013 MWD Board Meeting (September 11, 2013)
SDCWA 077	6	9/16/13	Letter from MWD General Counsel Scully responding to Hentschke's September 11, 2013 letter regarding Record of September 10, 2013 MWD Board Meeting (September 16, 2013)
SDCWA 078	6	10/4/13	Residents for Sustainable Mojave Development comment letter on MWD's Role in Approving the Cadiz Valley Water Conservation, Recovery and Storage Project (October 4, 2013)
SDCWA 079	6	10/4/13	Water Authority's letter supporting with reservation of rights to object to cost allocation regarding 8-3: Authorize agreement with the SWC to pursue 2014 Sacramento Valley water transfer supplies (October 4, 2013)
SDCWA 080	6	10/4/13	Oppose Local Resources Program agreement with Eastern for the Perris II Brackish Groundwater Desalter (October 4, 2013)
SDCWA 081	6	10/8/13	Water Authority's letter requesting to table or in the alternative to oppose 8-1: Authorize amendment to MWD's Cyclic Storage Agreement with Upper San Gabriel Valley Municipal Water District and the Main San Gabriel Basin Watermaster (October 8, 2013)
SDCWA 082	6	11/1/13	AFSCME letter regarding the compensation recommendations for board direct reports (November 1, 2013)
SDCWA 083	6	11/13/13	Water Authority letter regarding Foundational Actions Funding Program Agreement (November 13, 2013)
SDCWA 084	6	11/14/13	Ethics Officer Ghaly letter to Ethics Committee Chair Edwards regarding Responses to Director Questions re Ethics Workshops (November 14, 2013)
SDCWA 085	6	12/9/13	Water Authority Delegation letter regarding 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)
SDCWA 086	6	12/9/13	Water Authority Delegation letter regarding SB 60 Report – Water Planning and Stewardship Committee Public Hearing (December 9, 2013)

SDCWA 087	6	12/9/13	Water Authority Delegation letter regarding Applicability of MWD's Administrative Code (December 9, 2013)
SDCWA 088	6	1/10/14	MWD General Counsel response to Water Authority letter regarding Applicability of MWD's Administrative Code (January 10, 2014)
SDCWA 089	6	1/27/14	Water Authority General Counsel letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (January 27, 2014)
SDCWA 090	6	2/3/14	Mayors of 14 cities in San Diego Region letter regarding MWD's Calendar Years 2015 and 2016 rate setting and fiscal years 2013 and 2014 over-collection (February 3, 2014)
SDCWA 091	6	2/5/14	MWD General Counsel response to the Water Authority's January 27, 2014 letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (February 5, 2014)
SDCWA 092	6	2/10/14	Water Authority Delegation letter regarding Board Memo 8-2 on On-Site Retrofit Pilot Program and Board Memo 8-7 on Increase of \$20 million for conservation incentives and outreach (February 10, 2014)
SDCWA 093	6	2/28/14	Water Authority General Counsel response to MWD's February 5, 2014 response letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (February 28, 2014)
SDCWA 094	6	3/7/14	Water Authority Delegation letter to California State Senator Steinberg and California State Assemblyman Pérez regarding MWD's Public Hearing on Suspension of Tax Rate Limitation (March 7, 2014)
SDCWA 095	6	3/10/14	MWD General Counsel response to the Water Authority's February 28, 2014 response letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (March 10, 2014)
SDCWA 096	6	3/10/14	Water Authority Delegation letter regarding Board Memo 8-3 on Water Savings Incentive Program (WSIP) Agreement with Altman's Specialty Plants, Inc. (March 10, 2014)
SDCWA 097	6	3/19/14	MWD General Counsel response with DVD of information to the Water Authority's February 28, 2014 response letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (March 19, 2014)

SDCWA 098	6	4/4/14	MWD General Counsel further response with DVD of information to the Water Authority's February 28, 2014 response letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (April 4, 2014)
SDCWA 099	7	3/4/16	CD of Correspondences between SDCWA and MWD during the 2015 and 2016 calendar years relevant to the determination, evaluation, and legitimacy of water rates for 2017 and 2018
SDCWA 100	7	12/9/10	Comments to MWD on Draft Official Statement
SDCWA 101	7	12/13/10	MWD's response to the Water Authority's December 9 Official Statement on MWD's Appendix A
SDCWA 102	7	5/24/11	MWD's Response to Water Authority's May 16 Official Statement
SDCWA 103	7	8/15/11	Opposition Letter on Long Term Conservation Plan and Revised Policy Principles on Water Conservation (August 15, 2011)
SDCWA 104	7	12/21/11	MWD's Response to Water Authority's December 12, 2011 letter on Replenishment Program (December 21, 2011)
SDCWA 105	7	1/18/12	MWD's Letter on Request to Include Information in Report to Legislature (January 18, 2012)
SDCWA 106	7	1/18/12	MWD's Replenishment Workgroup Documentation Response Letter to Water Authority's January 5, 2012 "MWD Letters on Replenishment dated December 21, 2011" addressed to Ken Weinberg (January 18, 2012)
SDCWA 107	7	2/10/12	MWD Response Letter to Proposed Biennial Budget and Associated Rates and Charges for 2012/13 and 2013/14 (February 10, 2012)
SDCWA 108	7	3/9/12	MWD's Response to Water Authority's March 5, 2012 "Comments on Proposed Rates and Charges" (March 9, 2012)
SDCWA 109	7	4/5/12	MWD's Response to Water Authority Report on Cost of Service Review (April 5, 2012)
SDCWA 110	7	9/4/12	MWD's Response to Comments on Appendix A to Remarketing Statement and Official Statement
SDCWA 111	7	9/7/12	MWD Response to August 16, 2012 Rate Refinement Workshop Letter (September 7, 2012)
SDCWA 112	7	10/25/12	MWD's Response to Water Authority's October 8, 2012 letter re: MWD's September 4, 2012 letter regarding Appendix A to Remarketing Statement and Official Statement
SDCWA 113	7	10/30/12	MWD's Response to Water Authority's October 8, 2012 letter regarding Board Memo 8-3 on Purchase Orders (October 30, 2012)

SDCWA 114	7	11/19/12	MWD's Response to Water Authority's November 5, 2012 Letter Regarding Board Item 8-1: Authorize the Execution and Distribution of the Official Statement in Connection with the Issuance of the Water Revenue Refunding Bonds, 2012 Series G
SDCWA 115	7	12/26/12	Letter from Water Authority Chair Wornham inviting MWD Chair Foley to lunch (December 26, 2012)
SDCWA 116	7	1/4/13	MWD's response to Water Authority's letter on Amended and Restated Purchase Order dated December 27, 2012 (January 4, 2013)
SDCWA 117	7	1/16/13	MWD's response to Water Authority's letter on Amended and Restated Purchase Order dated January 14, 2013 (January 16, 2013)
SDCWA 118	7	2/19/13	MWD's response to Water Authority's Letter re: Board Memo 8-1 dated February 11, 2013
SDCWA 119	7	5/22/13	MWD's response to Water Authority's Letter re: Board Memo 8-3 dated May 13, 2013
SDCWA 120	7	6/18/13	MWD's response to Water Authority's June 7, 2013 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
SDCWA 121	7	11/18/13	Water Authority letter regarding Unlawful recording by MWD of telephone conversations with Water Authority staff (November 18, 2013)
SDCWA 122	7	11/20/13	MWD response to Water Authority's November 13 letter regarding Foundational Actions Funding Program Agreement (November 20, 2013)
SDCWA 123	7	11/20/13	MWD's response to Water Authority's November 18 letter regarding Skinner Treatment Plan Telephone Recordings (November 20, 2013)
SDCWA 124	7	11/21/13	MWD's response to AFSCME's November 1 letter regarding compensation recommendations for board direct reports (November 21, 2013)
SDCWA 125	7	12/13/13	MWD response to Water Authority's December 9, 2013 letter regarding Board Memo 8-1: Authorize the execution and distribution of Remarketing Statements in connection with the remarketing of the water Revenue Refunding Bonds

SDCWA 126	7	4/8/14	Water Authority Assistant General Manager's letter to MWD General Manager Kightlinger and Board regarding MWD's proposed biennial budget for fiscal years 2014/15 and 2015/16, proposed ten-year forecast, and recommended water rates for calendar years 2015 and 2016 (April 8, 2014)
SDCWA 127	7	4/8/14	Water Authority Assistant General Manager's letter to MWD Clerk of the Board Chin regarding MWD's proposed biennial budget for fiscal years 2014/15 and 2015/16, proposed ten-year forecast, and recommended water rates for calendar years 2015 and 2016 (April 8, 2014)
SDCWA 128	7	5/2/14	Water Authority General Manager letter regarding Compliance with Paragraph 11.1 of the Amended and Restated Agreement between MWD and the Water Authority for the Exchange of Water dated October 10, 2003 (May 2, 2014)
SDCWA 129	7	5/12/14	Water Authority Delegation letter regarding Board Memo 8-2: Authorize execution and distribution of the Official Statement in connection with the issuance of the Special Variable Rate Water Revenue Refunding Bonds, 2014 Series D, and authorize payment of costs and issuance from bond proceeds – Oppose
SDCWA 130	7	5/12/14	Water Authority Delegation letter regarding Board Item 8-6 – Authorize changes to conservation program in response to drought conditions – Support Implementation of Conservation Measures in Response to State Drought Conditions; Oppose Use of Illegal Rates to Pay for Water Conservation Measures (May 12, 2014)
SDCWA 131	7	5/16/14	Please see section 11 (Subsidy Programs – Conservation) for the Water Authority General Manager's letter to California Natural Resources Agency Secretary Laird regarding Water Conservation and MWD Rates (May 16, 2014)
SDCWA 132	7	5/16/14	Water Authority General Manager's letter to California Natural Resources Agency Secretary Laird regarding Water Conservation and MWD Rates (May 16, 2014)
SDCWA 133	7	5/19/14	MWD's response letter to Water Authority's May 12, 2014 letter regarding MWD's Official Statement
SDCWA 134	7	7/14/14	MWD General Manager's letter to the State Water Resources Control Board regarding Emergency Water Conservation Regulations (July 14, 2014)
SDCWA 135	7	8/18/14	MWD General Manager's letter to the State Water Resources Control Board regarding Emergency Water Conservation and Curtailment Regulations (August 18, 2014)

SDCWA 136	7	10/11/14	Water Authority Delegation letter to MWD regarding Refinements to Local Resources Program (October 11, 2014)
SDCWA 137	7	10/11/14	Water Authority Chair Weston's letter to MWD Chair Record regarding the MWD Board Room Demeanor (October 11, 2014)
SDCWA 138	7	10/13/14	Water Authority Delegation letter to MWD regarding Update on Purchase Orders (October 13, 2014)
SDCWA 139	7	10/15/14	Central Basin Water Association letter to Central Basin regarding MWD's failure to deliver 60,000 acre-feet of groundwater replenishment supplies (October 15, 2014)
SDCWA 140	7	10/17/14	MWD Chair Record's response letter to Water Authority Chair Weston regarding MWD Board Room Demeanor (October 17, 2014)
SDCWA 141	7	10/31/14	Central Basin letter to MWD regarding delivery of 60,000 acre-feet of groundwater replenishment supplies and preferential rights (October 31, 2014)
SDCWA 142	7	11/12/14	MWD's response to Central Basin's letter regarding delivery of 60,000 acre-feet of groundwater replenishment supplies and preferential rights (November 12, 2014)
SDCWA 143	7	11/17/14	Water Authority Delegates letter to MWD regarding MWD's Official Statement
SDCWA 144	7	11/17/14	Water Authority Delegates letter to MWD regarding Purchase Orders (November 17, 2014)
SDCWA 145	7	11/17/14	Water Authority Delegates letter to MWD regarding Balancing Accounts (November 17, 2014)
SDCWA 146	7	11/18/14	City of Signal Hill Letter to MWD Chair Record regarding Central Basin's request for replenishment water (November 18, 2014)
SDCWA 147	7	11/20/14	MWD's response letter to Water Authority's November 17, 2014 letter regarding MWD's Official Statement
SDCWA 148	7	12/5/14	Central Basin Letter to MWD regarding replenishment deliveries and rescinding preferential rights (December 5, 2014)
SDCWA 149	7	12/8/14	Water Authority Delegates letter to MWD regarding modifications to Water Supply Allocation Plan (December 8, 2014)
SDCWA 150	7	12/8/14	Mayors of the cities of San Diego and Los Angeles joint letter to MWD regarding modifications to Water Supply Allocation Plan and separate groundwater replenishment allocation (December 8, 2014)
SDCWA 151	7	12/8/14	Water Authority Delegates letter to MWD regarding SB 60 Report – Water Planning and Stewardship Committee Public Hearing (December 8, 2014)

SDCWA 152	7	12/8/14	Water Authority Delegates letter to MWD regarding Conservation Spending and Efforts (December 8, 2014)
SDCWA 153	7	12/8/14	Southwest Water Coalition Letter to MWD Chair Record regarding Central Basin's Groundwater Replenishment Requests (December 8, 2014)
SDCWA 154	7	12/9/14	MWD Chair Record response letter to Signal Hill regarding Central Basin's request for replenishment water (December 9, 2014)
SDCWA 155	7	12/17/14	MWD Chair Record response letter to Southwest Water Coalition regarding Central Basin's request for replenishment water (December 17, 2014)
SDCWA 156	7	12/18/14	MWD response letter to mayors of the cities of San Diego and Los Angeles joint letter to MWD regarding modifications to Water Supply Allocation Plan and separate groundwater replenishment allocation (December 18, 2014)
SDCWA 157	7	1/5/15	Gateway Cities response letter to mayors of the cities of San Diego and Los Angeles joint letter to MWD regarding modifications to Water Supply Allocation Plan and separate groundwater replenishment allocation (January 5, 2015)
SDCWA 158	7	3/5/15	MWDOC's letter to MWD supporting to Approve and Authorize Execution and Distribution of Remarketing Statements in Connection with Remarketing of water revenue refunding bonds (March 5, 2015)
SDCWA 159	7	3/6/15	Water Authority Delegation letter to MWD regarding Water Planning and Stewardship Committee Agenda and Water Supply Management Strategies including Use of Storage (March 6, 2015)
SDCWA 160	7	3/9/15	Water Authority Delegates letter to MWD regarding MWD's Official Statement (March 9, 2015)
SDCWA 161	7	3/17/15	MWD s response letter to Water Authority's November 17, 2014 letter regarding MWD's Official Statement (March 17, 2015)
SDCWA 162	7	3/26/15	MWD Chair letter to Assembly Minority Leader Olsen regarding Invitation to Tour Diamond Valley Lake (March 26, 2015)
SDCWA 163	7	3/26/15	MWD Chair letter to Assembly Speaker Atkins regarding Invitation to Tour Diamond Valley Lake (March 26, 2015)
SDCWA 164	7	4/13/15	Water Authority Delegates letter to MWD Board regarding Calendar Year 2016 Readiness-to-Serve and Capacity charges (April 13, 2015)
SDCWA 165	7	5/4/15	Water Authority General Manager's letter to State Water Resources Control Board regarding Drought Regulation (May 4, 2015)

SDCWA 166	7	5/8/15	Water Authority Delegates letter to MWD regarding Authorization of \$150 million in Additional Funding for Conservation Incentives and Implementation of Modifications to the Turf Removal Program (May 8, 2015)
SDCWA 167	7	5/9/15	Water Authority Delegates letter to MWD Board regarding MWD's Water Standby Charge for Fiscal Year 2016 (May 9, 2015)
SDCWA 168	7	5/25/15	Water Authority Delegates letter to MWD regarding Authorization of \$350 million in Additional Funding for Conservation Incentives and Implementation of Modifications to the Turf Removal Program (May 25, 2015)
SDCWA 169	7	6/5/15	Water Authority Delegates letter to MWD opposing MWD's Official Statement (June 5, 2015)
SDCWA 170	7	6/22/15	MWD's response letter to the Delegates' June 5 letter regarding MWD's Official Statement (June 22, 2015)
SDCWA 171	7	7/1/15	Water Authority General Manager's letter to State Water Resources Control Board regarding Conservation Water Pricing and Governor's Executive Order for 25 Percent Conservation (July 1, 2015)
SDCWA 172	7	7/9/15	Water Authority Delegates letter to MWD Board regarding Adopt a Resolution for the Reimbursement with Bond Proceeds of Capital Investment Plan projects funded from the General Fund and Replacement and Refurbishment Fund (July 9, 2015)
SDCWA 173	7	8/5/15	Water Authority General Counsel's letter to MWD regarding Public Records Act request and MWD's Turf Removal Program (August 5, 2015)
SDCWA 174	7	8/6/15	MWD response to Water Authority's August 5 letter regarding Public Records Act request and MWD's Turf Removal Program (August 6, 2015)
SDCWA 175	7	8/7/15	Water Authority Delegate Lewinger's letter to MWD requesting Information on MWD's Turf Removal Program (August 7, 2015)
SDCWA 176	7	8/11/15	Olivenhain General Manager letter to MWD and Water Authority regarding Public Records Act request and MWD's Turf Removal Program (August 11, 2015)
SDCWA 177	7	8/12/15	Rincon Del Diablo letter to MWD and Water Authority regarding Public Records Act request and MWD's Turf Removal Program (August 12, 2015)
SDCWA 178	7	8/13/15	MWD response to Olivenhain's letter regarding Public Records Act request and MWD's Turf Removal Program (August 13, 2015)

SDCWA 179	7	8/14/15	Poway letter to MWD and Water Authority regarding Public Records Act request and MWD's Turf Removal Program (August 14, 2015)
SDCWA 180	7	8/15/15	Water Authority Delegates letter to MWD Board regarding Maintaining the Ad Valorem Tax Rate for Fiscal Year 2016 (August 15, 2015)
SDCWA 181	7	8/16/15	Water Authority Delegates letter to MWD Board regarding Amendment to the California Agreement for the Creation and Delivery of Extraordinary Conservation Intentionally Created Surplus (August 16, 2015)
SDCWA 182	7	8/17/15	MWD response to Poway's letter regarding Public Records Act request and MWD's Turf Removal Program (August 17, 2015)
SDCWA 183	7	8/17/15	MWD response to Rincon Del Diablo's letter regarding Public Records Act request and MWD's Turf Removal Program (August 17, 2015)
SDCWA 184	7	9/18/15	Water Authority Joint Letter to State Water Resources Control Board regarding Mandatory Drought Regulations (September 18, 2015)
SDCWA 185	7	9/20/15	Water Authority Delegates Letter to MWD regarding approve the introduction by title only of an Ordinance Determining That The Interests of The District Require The Use of Revenue Bonds In The Aggregate Principal Amount of \$5 Million (September 20, 2015)
SDCWA 186	7	9/20/15	Water Authority Delegates letter to MWD regarding Recycled Water Program with Los Angeles County Sanitation Districts (September 20, 2015)
SDCWA 187	7	10/10/15	Water Authority Delegates Letter to MWD regarding Adopt Ordinance No. 149 determining that the interests of MWD require the use of revenue bonds in the aggregate principal amount of \$500 million (October 10, 2015)
SDCWA 188	7	10/11/15	Water Authority Delegates letter to MWD opposing MWD's Official Statement (October 11, 2015)
SDCWA 189	7	10/26/15	Water Authority Delegates letter to MWD regarding MGO fiscal year 2015 audit report (October 26, 2015)
SDCWA 190	7	11/5/15	Water Authority Interim Deputy General Counsel letter to MWD regarding procedures to authorize the sale of water revenue bonds (November 5, 2015)
SDCWA 191	7	11/6/15	Water Authority Delegates letter to MWD opposing the authorization to sell up to \$250 million in Water Revenue Bonds (November 6, 2015)

SDCWA 192	7	11/7/15	Water Authority Delegate letter regarding exchange and storage program with Antelope Valley-East Kern Water Agency (November 7, 2015)
SDCWA 193	7	11/9/15	Water Authority Delegates letter to MWD regarding Recycled Water Program with Los Angeles County Sanitation Districts (November 9, 2015)
SDCWA 194	7	11/10/15	MWD response to Water Foundation letter to MWD supporting Recycled Water Program with Los Angeles County Sanitation Districts (November 10, 2015)
SDCWA 195	7	11/12/15	MWD response to Water Authority Delegates' October 11 letter to MWD opposing MWD's Official Statement (November 12, 2015)
SDCWA 196	7	12/1/15	Water Authority General Manager's Letter to State Water Resources Control Board regarding comments on potential modifications to emergency conservation regulations (December 1, 2015)
SDCWA 197	7	12/7/15	MWD letter to LACSD General Manager regarding potential recycled water program (December 7, 2015)
SDCWA 198	7	1/6/16	Water Authority General Manager's letter commenting on State Water Resources Control Board's proposed regulatory framework (January 6, 2016)
SDCWA 199	7	1/10/16	Water Authority Delegates' letter to MWD commenting on MWD's 2015 Integrated Water Resources Plan Update (January 10, 2016)
SDCWA 200	7	1/28/16	Water Authority General Manager's letter commenting on State Water Resources Control Board's extended emergency conservation regulations (January 28, 2016)
SDCWA 201	7	2/4/16	Water Authority General Counsel's letter to MWD requesting data and proposed methodology for establishing rates and charges (February 4, 2016)
SDCWA 202	7	2/6/16	Water Authority Delegates' letter to MWD regarding MWD's proposed budget and rates for 2017 and 2018, and ten-year forecast (February 6, 2016)
SDCWA 203	7	2/9/16	Water Authority Delegates' letter to MWD regarding cost of service report for proposed budget and rates for 2017 and 2018 (February 9, 2016)
SDCWA 204	7	2/22/16	Water Authority Delegates' letter to MWD regarding budget and rates workshop #2 and information request (February 22, 2016)

Attachment 9: CD#3 Index

I. Post-Trial Briefs & Statements of Decision folder

- 1) MWD folder
 - Exhibits
 - Transcripts and Docket Items
 - MWD Post-Trial Brief Hyperlinked
- 2) SDCWA folder
 - S1401 folder
 - SDCWA Post Trial Brief Hyperlinked
- 3) 2014.02.25 Tentative Determination & Proposed Statement
- 4) Final Statements of Decision
- 5) 2014-03-10 Testimony of Dennis Cushman to MWD Finance and Insurance Board, in both Word and PDF forms

II. 2014-03-11 Cushman Board Public Hearing Testimony and Transmittal Letter

III. 2014-04-08 Additional Testimony and MWD related documents

- 2014-04-08 Cushman Testimony file
- 2014-04-08 MWD budget and Rates file
- 2014-04-MWD Rate Submittals COMPLETE file
- 2014-04 WA Documents CD Disk 1 or 1 file with listing of document
- Table of Contents

Attachment 10: CD#5 Index

Note, these items are in two folders: Exhibits and Testimony

Trial Ex. No.	Date	Description
DTX-624	2/10/2011	Letter from Hentschke to Kightlinger re Notice of Payment Under Protest and Demand for Establishment of Escrow Account Fund
DTX-767	10/11/2001	SDCWA Board Workshop presentation, Proposed MWD Rate Structure
PTX-095	8/16/2004	Letter from Kightlinger to Hentschke in response to letter dated August 13, 2004 re RSI language
PTX-120	8/2/2005	Letter From Arakawa To Weinberg Re Commercial/Industrial/Institutional Conservation Credits Program Agreement
PTX-169	5/3/2010	Letter From Stapleton, Hentschke To Kightlinger Re Request For Negotiation Under Para 11.1
PTX-175	6/30/2010	Letter From Hentschke To Tachiki Re Confirmation Of Satisfaction Of 2003 Exchange Agreement Para 11.1
PTX-189	2/24/2011	Letter From Tachiki To Hentschke Re: Acknowledgment Of Payment Under Protest
PTX-207	8/26/2011	Letter from Hentschke to Kightlinger re payment under protest, and attachments
PTX-225	5/4/2012	Letter From Kightlinger To Stapleton Re Request For Negotiation
PTX-229	10/2/2012	Letter From McCrae To Breaux Re: Amended And Restated Exchange Agreement - Price Dispute Remedies
PTX-230	10/15/2012	Letter From Breaux To McCrae Re: Balance In Separate Interest Bearing Account As Provided In Section 12.4[C] Of The Exchange Agreement
PTX-232	2/5/2013	Letter From Hentschke To Kightlinger Re: Notice Of Payment Under Protest, Demand For Establishment Of Separate Interest-Bearing Account, Demand For Refund
PTX-234	2/25/2013	Letter From Kightlinger To Stapleton And Hentschke Re Acknowledgment Of Payment Under Protest
PTX-243	6/18/2013	Letter From Breaux To SDCWA Board Members Re: Your Letter Dated June 7, 2013, Regarding Board Memo 8-5
PTX-246	7/24/2013	Excerpts from MWD Responses to SDCWA Special Interrogatories (Nos. 7-13) (Case No. CPF-12-512466)
PTX-247	7/24/2013	Excerpt from MWD Responses to SDCWA Special Interrogatories (Nos. 23-29) (Case No. CPF-10-510830)
PTX-302	7/3/2006	Email string from Kightlinger to MWD BOD re LADWP-AVEK Turnout Agreement

Trial Ex. No.	Date	Description
PTX-314	2003	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2003
PTX-315	2004	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2004
PTX-316	2005	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2005
PTX-317	2006	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2006
PTX-318	2007	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2007
PTX-319	2008	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2008
PTX-320	2009	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2009
PTX-321	2010	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2010
PTX-322	2011	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2011
PTX-323	2012	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2012
PTX-358	7/7/2010	Letter from Kightlinger to Stapleton re Request for Wheeling Services for Transfer of Water
PTX-430	5/1/2014	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2013
PTX-469		Compilation of MWD Invoices to SDCWA from January 2003 through December 2014
PTX-471		Summary Chart - MWD Overcharges to SDCWA
PTX-472	6/30/2014	MWD spreadsheet – Sec. 135 Preferential Rights to Purchase Water
PTX-473		Spreadsheet – Adjusted Preferential Rights to Purchase Water

Trial Ex. No.	Date	Description
PTX-478	6/12/2009	Email from Skillman to Leta Hais re Response to Questions, and attachment
PTX-479	1/14/2010	Email from Lambeck to Acuna re San Diego Union Tribune looking for info re power costs for SWP and Colorado River
PTX-481	1/5/1998	Letter from Kennedy to Frahm re Suggestions Regarding Wheeling Rate
PTX-487A		Excerpt from MWD Annual Report for 2011
PTX-488A		Excerpt from MWD Annual Report for 2012
PTX-489A		Excerpt from MWD Annual Report for 2013
PTX-490A		Excerpt from MWD Annual Report for 2014
PTX-506		SDCWA WSR Payments and Demands Management Program Benefits 2011-2014
PTX-507		Ramp Up of Exchange Agreement Deliveries 2003 to 2047
PTX-508		MWD Overcharge Calculation 2011
PTX-509		MWD Overcharge Calculation 2012
PTX-510		MWD Overcharge Calculation 2013
PTX-511		MWD Overcharge Calculation 2014
PTX-512		Summary of SDCWA Contract Damages Under Exchange Agreement 2011-2014
PTX-513	9/13/2013	Deposition testimony excerpt of Stephen Arakawa in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>
PTX-514	9/17/2013	Deposition testimony excerpt of June Skillman in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>
PTX-515	9/12/2013	Deposition testimony excerpt of Brian Thomas in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>
PTX-516	9/13/2013	Deposition testimony excerpt of Devendra Uphadyay in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>
PTX-517	9/24/2013	Deposition testimony excerpt of Arnout Van Den Berg in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>
PTX-519	5/27/2010	Email from Kostopoulos to Skillman re COS reports updated
PTX-520	7/19/2010	Email from Kostopoulos to Bennion re COS FY10/11 final and adopted
PTX-521	7/7/2010	Email from Gonzales to Skillman re COS Report
NA	4/2/2015	Trial testimony of Devendra Uphadyay in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>
NA	4/27/2015	Trial testimony of Brent Yamasaki, Lambeck in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water</i>

Trial Ex. No.	Date	Description
		<i>authority v. Metropolitan Water Authority of So. California</i>
NA	4/28/2015	Trial testimony of Jon Lambeck, June Skillman in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>
NA	4/29/2015	Trial testimony of June Skillman in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>

**March 8, 2016 MWD Board of Directors
 Testimony of Dennis Cushman, Assistant General Manager,
 San Diego County Water Authority
 To Metropolitan Water District of Southern California
 Public Hearing to Consider Suspension of Tax Rate Limitations under
 MWD Act Section 124.5 and
 Proposed Water Rates and Charges for Calendar Years 2017 and 2018**

Good afternoon, Chairman Record and members of the board. I'm Dennis Cushman, assistant general manager of the San Diego County Water Authority, speaking on behalf of the Water Authority. As a first order of business, I would like to submit into today's record a letter of today's date addressed to the Clerk of the Board, with attachments, including CDs numbered one through seven and titled *Submittal of Information into Administrative Record* of rate-setting for calendar years 2017 and 2018.

Turning to the proposed budget and rates, it is simply not possible to understand how MWD has allocated the costs contained in its proposed budget for calendar years 2017 and 2018, or whether the proposed rates and charges -- including a potential fixed treatment charge -- which is not even included in this month's 9-dash-2 proposed rates and charges -- are based on cost-causation, as required under California law and the Constitution. To do this, MWD must make available budget detail and the financial planning model it uses to assign its costs and set rates. But MWD's staff and attorneys have flatly refused to provide necessary budget detail or MWD's financial planning model to the board of directors and the member agencies. It is, unfortunately, characteristic of this agency's lack of transparency that it was necessary for the Water Authority to demand this information under the California Public Records Act.

While MWD has not released a cost of service report -- let alone an independent study -- to support its proposed rates, MWD staff has indicated that costs are being allocated under the very same methodology that the Superior Court has determined violates California law and the Constitution. On that basis, and for the record, the Water Authority opposes the rates, as proposed, for 2017 and 2018.

The Water Authority's board members have submitted many detailed letters describing the concerns the Water Authority has about suspension of the tax rate limitation under MWD Act Section 124.5. Given the magnitude of ratepayer money MWD has collected in excess of this board's adopted budget over the past two years -- more than a half-billion dollars -- the Water Authority does not believe it is possible to claim, credibly, that collection of even more tax revenue is "essential" to MWD's "fiscal integrity." With this proposed action, MWD will raise approximately \$157 million more than it would have under the tax limitation imposed by the Legislature. The Water Authority opposes suspension of the tax rate limitations contained in Section 124.5 of the MWD Act.

This year's budget and rate-setting process fails the transparency test. We believe MWD does all of its member agencies and the public a disservice by playing "hide the ball" in its rate-setting process. In the long run, there is nothing to be gained, but much to be lost by continued refusals to make essential financial information available to this board, the member agencies and the public.

Thank you.



San Diego County Water Authority

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

March 6, 2016

Randy Record and
Members of the Board of Directors
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90065-0153

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: March 7 Finance and Insurance Committee/Budget and Rates Workshop #3
Agenda Items 9-2 (Proposed revenue requirements) and 8d (Presentation); and

March 8 Board Meeting Agenda Item 4
Public Hearing RE suspension of tax rate limitation and proposed water rates and
charges for calendar years 2017 and 2018

Chair Record and Members of the Board:

We request this letter be made part of the record of Monday's Finance and Insurance
Committee Meeting and Tuesday's board meeting.

MWD's budget and rate-setting process suffers from a lack of transparency: As stated in our
February 9, 2016 letter to the board (attached, with all attachments), we object to MWD holding
a public hearing on rates and taxes without providing MWD's member agencies and the public
with budget information or a cost of service report sufficient to explain -- and allow the public to
review and understand -- how MWD intends to spend public money, allocate its costs and set its
rates. Holding a public hearing -- or a lot of board meetings and workshops -- without this
information, is form over substance and fails to meet the most basic ethics and transparency
requirement necessary to maintain the public trust. The fact that a trial court has ruled MWD's
rates are illegal should result in more, not less, disclosure, in the interest of understanding the
basis of MWD's rates.

***The Water Authority continues to object to MWD's cost allocation and rates and charges that
have been invalidated by the Superior Court:*** While MWD has not released its cost of service
report, it has made written statements that the proposed rates and charges are based upon the
same flawed and illegal methodology that the Court in *SDCWA v. MWD* rejected. We object to
the proposed rates for the same reasons we have previously objected: because they improperly
allocate all of MWD's SWP costs to transportation; and because the Water Stewardship Rate is
an unlawful tax that is not based on cost of service (or even tied to any service at all) and which
certainly may not be recovered as a transportation rate.

MWD's rates and charges can't be analyzed without more budget information, a cost of service report and the financial planning model used to allocate costs and set rates: The "estimated" rates and charges have finally now been identified as the "proposed" rates and charges in Board Memo 9-2; however, there is still no cost of service report explaining how MWD's costs have been allocated and assigned to the proposed rates, as described. The Water Authority has repeatedly requested this information from MWD, including most recently through a Public Records Act request. While MWD has indicated that it will make disclosable information available, it obviously will not do so prior to Tuesday's public hearing. MWD is also taking the position that its financial planning model, through which its rates have been calculated, and without which its rates cannot be analyzed, is a "propriety" software program that will not be made available to MWD's member agencies or to the public. It is not in the public's best interest or in MWD's best interest to conduct its ratemaking under a shroud of secrecy. (See attached letters dated February 18, February 26 and March 4, 2016 between the Water Authority and MWD's General Counsel.)

Lack of budget detail limits the board's ability to choose to reduce costs rather than raise rates or borrow money: As stated in our February 6, 2016 letter RE Board Memo 8-2 on the proposed budget and "estimated" rates, the staff's refusal to provide budget detail to the board of directors eliminates its ability to review proposed expenditures at a level of detail that would allow the board to determine whether it is in MWD's best interest to cut costs rather than raise rates or borrow more money. This should be of a particular interest given this month's staff recommendation to borrow money at a higher cost to pay operational expenses. It is also of serious concern to us that the proposed budget includes a gimmick such as the "Resolution of Reimbursement," giving staff advanced authorization to later raid PAYGo revenues to pay for O&M (an action that would likely violate cost of service laws in the process). Staff's refusal to provide budget detail should be a matter of grave concern to every member of this board of directors; we cannot possibly provide oversight based on PowerPoint presentations and the departmental budget numbers the staff has provided.

There is no basis for suspension of the tax rate limitation, especially when MWD is at the same time recommending reduction of the Readiness to Serve (RTS) charge: We have written many times about why there is no factual or legal basis for MWD's suspension of the tax rate limitation imposed by the Legislature, now embodied in Section 124.5 of the MWD Act. [See, e.g., our August 15, 2015 letter (copy attached, without attachments.)] With this tax rate suspension, MWD will collect over the next two years almost five times the amount of tax revenue otherwise allowed under its Act. MWD does not need to suspend the tax rate limitation; it needs a long range finance plan to responsibly structure how it will pay for current and anticipated costs, including increased costs of the State Water Project. There is clearly no basis for MWD to impose higher property taxes to ensure its "fiscal integrity," at the very same it is proposing to decrease by double digits its other fixed charges, including the RTS charge, which is the very tool the Legislature gave MWD to enable it to reduce taxes but maintain fixed cost recovery.

ALTERNATIVE TREATMENT COST RECOVERY MECHANISM

We would like to emphasize at the outset that we and the Water Authority support prudent fixed cost recovery by MWD through cost-of-service-based rates and charges reflecting member agencies' respective burdens on, and benefits received from MWD investments. To be successful, the benefits of these investments must be identified in advance, with the concurrence and agreement of the member agencies that benefit to pay for those benefits. (See Blue Ribbon Task Force Report dated January 1994, Part I, discussing the importance of integrating MWD's IRP and rate structure and warning about the risks associated with MWD making major capital investments when no agency is legally obligated to pay.)

MWD's February proposal for fixed treatment cost recovery is legally flawed. Even though the "alternative treatment cost recovery mechanism" is not among the proposed rates described in Board Memo 9-2, it remains in the presentation to be made at Workshop #3. Accordingly, we provide comments on the PowerPoint presentation at the Finance and Insurance Committee Meeting dated February 23, 2016 (copy attached).

The Proposal does not "Align Charges with Service Commitment/Investment" (slide 5): The statutory duties of a special district, formed under general law, are established by the entity's authorizing act. Whatever treatment facilities and improvements MWD has elected to operate for its convenience or at the request of one or more member agencies does not create or impose a "duty" to provide treatment services. Thus, the foundational objective to "align charges with MWD's service obligation" -- is flawed; , contrary to statements in the presentation, MWD is not "the treated water service provider for Member Agencies," and absent a contract, it does not have a service "obligation" or "duty to serve" treated water to its member agencies. To the contrary, as stated in its Official Statement, MWD's member agencies "are not required to purchase or use any of the water available from MWD." (See, for example, December 9, 2015 Official Statement at A-27.)

What MWD has is its own service "policy" (Laguna Declaration) and "desire" to serve water – treated and untreated -- to its member agencies; however, without a contractual agreement, that self-declared desire alone does not establish a duty to serve on the part of MWD or an obligation to purchase water from MWD by its member agencies. MWD has no power to restrict the rights of water suppliers within its service area to provide water and water treatment to their customers. Accordingly, there is no legal basis for a claim by MWD of legal protection from member agencies exercising their sovereign right to develop and treat water supplies. This is the very reason why the Blue Ribbon Task Force identified -- more than 20 years ago -- the need for MWD to obtain meaningful member agency commitments to pay before it embarks upon large capital spending projects like treatment plants.

Because we are not aware of, and independent research has not disclosed any authority for the proposition that MWD has a statutory duty to treat the wholesale water it provides, we strongly recommend that the General Counsel provide the board with a legal opinion that supports the

assertion that MWD has a legal duty or obligation to serve. The General Counsel should provide this opinion to the board so it may better understand the risks it is taking when it chooses to make investments in a declining sales market, when its member agencies increasingly are developing -- and should be encouraged to develop -- other cost-competitive local water supply resources. Aside from the risk factor, MWD cannot properly conduct a cost of service analysis based on flawed legal assumptions.

Determining the allocation of fixed treatment costs based on a proportional share of volume during the period 1998-2007 does not conform to proper cost of service methodologies: No cost of service based explanation is provided (and none exists) for assessing fixed treatment cost recovery based on the date of the last "significant treatment plant capacity addition." This is yet another result-oriented, arbitrary rate designed to benefit some agencies at the expense of others.

Allowing two different tests for minimum demand violates the MWD Act's requirement that rates be uniform: No cost of service based explanation is provided (and none exists) for assigning agencies to alternative measures of minimum demand to determine cost recovery. The underlying data should be the measure of cost recovery.

It is not possible from the information provided in the PowerPoint presentation (or that has otherwise been made available by MWD) to determine what costs have been allocated to fixed vs. variable categories; or, what fixed costs are defined as commodity, demand and standby related: We have previously requested the budget and cost of service data necessary to understand how MWD has allocated its costs and set its proposed rates, including the potential for imposition of an alternative fixed treatment charge. The data that has been provided is fragmentary and out of context. We again request to be provided with the detailed data and supporting detail for the cost allocation formulae for this and other rates and charges.

Finally, the statement that, "MWD has invested in treatment capacity to serve the Member Agencies, but today does not require the beneficiaries of demand or standby capacity to pay anything for the cost of this dedicated capacity; for the cost of this service," is inaccurate. In the first place, MWD has not dedicated any of its plant capacity to any member agency; second, this cost is recovered in the current volumetric treatment rate. If MWD's statement were true, then there would be additional revenue raised by the fixed plus volumetric approach. But this is not the case, because the total revenue requirement presented by MWD for the fixed plus variable alternative is the same as the current methodology. The current 100 percent volumetric methodology collects revenues equal to the "alternative."

The only thing that is clear from the information that has been provided is the intention to alter MWD's current treatment cost recovery, as between and among its member agencies, without any demonstrated factual basis for doing so. While an alternative treatment cost recovery mechanism might be justified based on member agencies' causation of those treatment costs and within that limit, and the board's discretion to set legal rates and charges, the current

proposal falls short of that objective. It is a sham, not based on cost causation but designed solely to achieve the results described at slide 27 of the Presentation, principally, to shift additional costs to the Water Authority without any cost justification for doing so.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director

Attachments

1. February 9, 2016 Letter to MWD re 2016 Rate Setting Process and Schedule for Public Hearing and Request for Distribution of Cost of Service Report Prior to the Public Hearing (with attachments)
2. February 18, 2016, February 26, 2016, and March 4, 2016 Letters between MWD and the Water Authority re PRA request
3. August 15, 2015 Letter to MWD re Ad Valorem tax rate suspension (without attachments)
4. February 3, 2016 MWD PowerPoint Presentation: Alternative Treatment Cost Recovery Mechanism
5. Blue Ribbon Task Force Report dated January 1994, through Part I: integration of MWD's IRP and rate structure



San Diego County Water Authority

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

February 9, 2016

Randy Record

Members of the Board of Directors

Metropolitan Water District of Southern California

P.O. Box 54153

Los Angeles, CA 90054-0153

RE: 2016 Rate Setting Process and Schedule for Public Hearing
Request for Distribution of Cost of Service Report Prior to the Public Hearing

Dear Chairman Record and Members of the Board:

At yesterday's Finance and Insurance Committee meeting, the Chief Financial Officer, Gary Breaux, informed the Board that MWD's 2016 Cost of Service Report (which is the basis of its proposed 2017 and 2018 rates), will not be presented to the Board or made available to the public until the Board's planned Workshop #4, scheduled for March 22, 2016. **That is two weeks AFTER the public hearing on the proposed rates and just three weeks prior to the April 12 board meeting when the rates are proposed to be adopted.** This schedule gives the public NO time to review the Cost of Service Report prior to the public hearing, and severely limits the amount of time available for MWD's member agencies to review and analyze the Cost of Service Report, data and analysis.

In a Feb. 4 letter (attached) to Dawn Chin, Clerk of the Board, the Water Authority formally requested "...all of the data and proposed methodology MWD will rely upon for establishing rates, charges, surcharges, surcharges or fees for 2017 and 2018... in accordance with Government Code Section 54999.7 (d) and (e), which necessarily includes its cost of service report. This law requires MWD to provide *all* of this data no later than 30 days before rates and charges are adopted. The planned March 22 release of the cost of service report does not comply with this requirement. While MWD's general counsel has previously contended in correspondence, and MWD contended in court that it is not required to comply with Government Code Section 54999.7, Judge Karnow specifically ruled 54999.7 applies to MWD.

Aside from the law requiring MWD to make this information available in a timely fashion to affected public agencies such as the Water Authority (and the rest of MWD's customer member agencies), there is an even more fundamental concern with holding a public hearing on MWD's rates without making available to the public in advance, the cost of service report explaining

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

MWD Chairman Record and Members of the Board

February 9, 2016

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how MWD has allocated its costs and is proposing to set its rates.

How can the public intelligently comment on rates, when the basis for setting those rates has not been made available? Conducting a public hearing without providing the most basic information explaining the proposed action by the Board not only lacks transparency, but frustrates the very purpose of having a public hearing to obtain input on legislative decisions in matters of public policy.

As noted in our February 6, 2016 letter (attached), the Cost of Service Report and analysis has historically been made available to the Board and public at the same time as the proposed budget, in January or February of each year, thus allowing a meaningful time for review. We object to this new schedule and ask that either the Cost of Service Report be made available at least 30-days prior to the scheduled public hearing, or, that the public hearing and rate-setting schedule be adjusted to allow at least 30 days for review by all affected public agencies and members of the public.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director

Attachment 1: Water Authority Acting General Counsel's February 4, 2016 letter RE Request for Data and Proposed Methodology for Establishing Rates and Charges

Attachment 2: Water Authority Delegates' February 6, 2016 letter RE Board Memo 9-2



San Diego County Water Authority

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

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

February 4, 2016

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

Re: Written Request for Notice (Government Code Section 54999.7(d));
Request for Data and Proposed Methodology for Establishing Rates and Charges
(Government Code Section 54999.7(e))

Dear Ms. Chin:

The San Diego County Water Authority hereby requests notice of the public meetings and to be provided with all of the data and proposed methodology MWD will rely upon for establishing rates, charges, surcharges or fees for 2017 and 2018 (and any other years that may be before the board during the current rate cycle) in accordance with Government Code Section 54999.7(d) and (e).

Please contact me if you have any questions.

Sincerely,

James J. Taylor
Acting General Counsel

OTHER REPRESENTATIVE

County of San Diego

cc: Maureen Stapleton, SDCWA General Manager
Jeffrey Kightlinger, MWD General Manager
Marcia Scully, MWD General Counsel



San Diego County Water Authority

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

February 6, 2016

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

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Municipal Water District

Vista Irrigation District

Yuima
Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

RE: Board Memo 9-2: Proposed biennial budget and revenue requirements for fiscal years 2016/17 and 2017/18; estimated water rates and charges for calendar years 2017 and 2018 to meet revenue requirements; and ten-year forecast

Dear Chairman Record and Board Members:

The purpose of this letter is to provide preliminary comments and questions on Board Memo 9-2, proposed biennial budget and revenue requirements (collectively, the "Budget Document") in advance of the budget and rate workshops that begin with Monday's Finance and Insurance Committee meeting.

1. The Budget Document lacks sufficient detail to understand how MWD has spent money or deliberate how MWD is proposing to spend money. As one example, among many, MWD's proposed Demand Management cost summary does not identify any of the projects included in either Local Resources Program (\$43.7 and \$41.9 million, respectively for the respective fiscal years) or Future Supply Actions (\$4.4 and \$2 million, respectively). The budget also lacks projected actual expenditures for fiscal year (FY) 2016; instead, all comparisons are budget to budget. It is important for Board members to consider actual expenditures as well as proposed budgets, particularly in light of the very substantial additions and modifications to spending that occurred outside of the 2014 budget after it was adopted -- in the hundreds of millions of dollars. We request to be provided with greater detail explaining the proposed expenditures at a detail level sufficient to allow the Board to deliberate where savings might be achieved, as well as to understand the status or outcomes of past programs and expenditures.

2. The Budget Document does not provide any cost of service analysis and lacks sufficient detail to understand how MWD's costs should be assigned to rates. Different than past years, the current Budget Document **does not include any cost of service analysis**. Why has that not been provided? In addition, the Budget Document does not provide a sufficient level of detail or information in order for MWD to defend its rates and establish "**cost**

causation" in accordance with legal requirements. Using the Demand Management cost summary again as an example, it is impossible to identify the proportionate benefits to MWD's customer member agencies resulting from the proposed expenditures. Broad, unsupported statements, such as "demand management programs reduce reliance on imported water," and "demand management programs reduce demands and burdens on MWD's system," are legally insufficient to comply with the common law or California statutory or Constitutional requirements that require MWD to conform to cost of service.

While we understand that MWD has appealed Judge Karnow's decision in the rate cases filed by the Water Authority, there is an increasing body of case law reaffirming these requirements, and clearly establish that they are applicable to water suppliers such as MWD. As one example, we attach a copy of the recent decision of the court in *Newhall County Water District v. Castaic Lake Water Agency*, where a number of arguments by Castaic that are very similar to those made by MWD were again rejected by the Court of Appeal. Chief among them was the argument that the water wholesaler need only identify benefits to its customers "collectively," rather than in a manner that reflects a reasonable relationship to the customers' respective burdens on, or benefits received from the wholesale agency's activities and expenditures. Contrary to these clear legal requirements, MWD's current Budget Document does not provide sufficient information to allow Board members or MWD's 26 customer member agencies to determine proportionate benefit from MWD's proposed expenditures. We repeat here for these purposes, our request to be provided with a greater level of detail regarding MWD's proposed spending, as well as the basis upon which MWD has assessed or may assess proportionate benefit to its customers. We also believe the Board would benefit from a public presentation on current and developing case law regarding the applicability of Proposition 26 to wholesale water agencies such as MWD, so that it is informed of its legal obligations as Board members in setting rates.

3. The Budget Document does not provide any analysis or data to explain or support the wide range of variation in proposed increases and decreases in various rate categories. The budget describes an "overall rate increase of 4%;" however, that is a meaningless number outside of the context of specific rates and charges as applied to MWD's 26 customer member agencies, which depends on the type of service or water they buy and what they pay in fixed charges. **The following rate increases and decreases are proposed for each of the respective fiscal years, without any data or analysis to explain them:**

- Tier 1 supply rate increases of 28.8% and 4%;
- Wheeling rate increases of 6.2% and 4.5%;
- Treatment surcharge decrease of 10.1%, followed by an increase of 2.2%;
- Full service untreated rate increases of 12.1% and 4.4%;
- Full service treated rate increases of 3.9% and 3.7%;
- Readiness-to-Serve (RTS) charge decreases of 11.8% and 3.7%; and
- Capacity Charge (CC) decrease of 26.6%, followed by an increase of 8.8%.

There is no demonstration in the Budget Document that MWD's expenses recovered by the RTS

MWD Chairman Record and Members of the Board

February 6, 2016

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and CC will vary to such a degree in FYs 2017 and 2018 to support the very substantial proposed decreases in those fixed charges. Moreover, these sources of fixed cost recovery are being reduced at the very same time MWD is proposing to add fixed treatment cost recovery and suspend the property tax limitation under Section 124.5. In addition to the inconsistent logic, MWD is reducing the very charges authorized by the Legislature in 1984 so MWD could have more fixed revenue in lieu of its reliance on property taxes. MWD's proposed rates are precisely contrary to the intent of Sections 124.5 and 134 of its Act (copies attached). We ask that the General Counsel provide a legal opinion why MWD's actions are not the opposite of what was intended by passage of these provisions of the MWD Act.

Absent a justification that is not apparent from the Budget Document, these proposed rate increases and decreases appear to be arbitrary and unreasonable. We ask for the Board's support to require staff to provide both **data and analysis** to support these proposed rates and charges so that they may be understood and demonstrated to be based on cost causation principles.

4. The Budget Document mischaracterizes the Board's PAYGo funding policy and past actions; and is now proposing a "Resolution of Reimbursement" to formally authorize use of PAYGo revenues to pay for O&M, if necessary. The Board's PAYGo funding policy was historically set at 20 percent. See attached excerpt from the Board's July 8, 2013 Finance and Insurance Committee meeting. However, MWD staff has for the last several years been using PAYGo funds on an "as- and how-needed" basis. The Board has never deliberated or set a PAYGo "target" or "policy" at 60 percent. Moreover, contrary to what is stated in the Budget Document, the 2014 budget included CIP PAYGo funding at 100 percent, with the 2014 ten-year forecast stating that it "anticipates funding 100% of the CIP from PAYG and Replacement and Refurbishment (R&R) funds for the first three fiscal years, then transitioning to funding 60% of the CIP from water sales revenues." The absence of a Board policy being applied consistently not only fails to accomplish the purpose of PAYGo funding -- to equitably distribute costs of the CIP over time -- but exposes MWD to further litigation risk as funds that are collected for one purpose (CIP) are used for a different purpose (O&M).

The Board should not adopt the recommended "Resolution of Reimbursement" authorizing staff in advance to collect \$120 million annually for one purpose (CIP) and potentially use it for another (O&M). This is not only an unsound fiscal strategy, it serves to mask the true condition of MWD's budget and finances, and breaks any possible connection to cost of service. The Board should make a decision now on whether to raise rates, plan to borrow money or, notably at this point in the budget process, **reduce costs** (see also discussion of sales projections, below). The General Manager has told the Board (during its discussion of unbudgeted turf removal spending last year) that a 7 percent rate increase is necessary to support \$100 million in spending. Advance approval and use of PAYGo funds for O&M is nothing more than a hidden, de facto 8.4 percent additional rate increase each year.

5. *The 1.7 MAF MWD sales estimate for the next two fiscal years is likely too high and if so, will leave the Board with an even larger revenue gap to fill; and the Budget Document lacks a fiscally sound contingency plan.* The sales estimate may be too high given MWD's current trend at 1.63 MAF (a "sales" number that (at best) misleadingly includes the Water Authority's wheeled water) and El Nino conditions that make it unlikely that agencies will increase demand for MWD water. Further, while the board memo states the sales forecast accounts for 56,000 AF/year of new local supply from the Claude "Bud" Lewis Carlsbad Seawater Desalination Plant and Orange County Water District's expanded groundwater recycling project, no provision has been made for increased local supplies that may reasonably be projected to be available to the Los Angeles Department of Water and Power (LADWP). With a good year on the Eastern Sierra -- which is presently tracking the best snow pack on record -- MWD sales could be reduced by 250,000 AF or more, which translates to a negative revenue impact on MWD of between \$175 million and \$350 million.

It is MWD's obligation to forecast revenues responsibly, based on known and reasonably anticipated conditions, and plan for the contingency of reduced sales using responsible financial management techniques, which do not include budget gimmicks such as adoption of a "Resolution of Reimbursement" to shift CIP/PAYGo money to other uses.

We call to the Directors' attention that the proposed budget for FY 2017 already includes a revenue deficit of \$94.2 million, with MWD intending to withdraw from its reserves to bridge the gap. Similarly, the budget for fiscal year 2018 relies on \$23 million from reserves to fill the gap. Since sales may also be less than projected -- as they very well may be, for the reasons noted above -- the Board must plan now how the revenue gap will be filled. In this regard, we attach another copy of our November 17, 2014 letter suggesting the establishment of balancing accounts, allowing the Board to properly manage between good years and bad, rather than spending all of the money in good years (as it did this past year on turf removal) and needing to raise rates, borrow money or engage in the kind of gimmick represented by the Resolution of Reimbursement. We also ask that discussion of this issue be added to the next budget meeting agenda.

6. *There is no demonstrated justification for suspension of the ad valorem tax limitation.* As noted above, MWD is proposing in this budget to **reduce** the very charges the Legislature provided to MWD to be used in lieu of property taxes. Under these and other circumstances, there is no proper basis for MWD to suspend the tax rate limitation; instead, it should use the tools provided by the Legislature and included in the MWD Act.

7. *No information is provided regarding the proposed changes in treatment cost recovery.* Leaving aside the complete inconsistency with increasing fixed treatment cost recovery while reducing fixed cost recovery overall, when will the detail on the new charge be available?

MWD Chairman Record and Members of the Board
 February 6, 2016
 Page 5

8. The Budget Document does not explain why MWD's debt service coverage ratios for 2017 and 2018 are dropping from 2x to 1.6x. A comparison of the financial indices between this 2016 budget and the 2014 forecast shows a difference of only 50,000 AF of water sales reduction each year, yet the debt service ratios are plummeting from 2x to 1.6x. This drop is potentially very disturbing based on the aggressive water supply development plans MWD staff included in the IRP (and upon which it stated that spending decisions would be proposed and made). This is an important issue and policy discussion the Board must address.

9. The CIP numbers contained in the Budget Document don't match the Appendix. The Budget Document includes annual CIP expenditures of \$200 million for each of the proposed fiscal years; however the CIP Appendix includes expenditures of \$246 million and \$240 million, respectively, for fiscal years 2017 and 2018. Please explain and correct the discrepancy by increasing the budget number or reducing projects contained in the Appendices. We will have more extensive comments going forward, and in particular, once additional detail is provided as requested in this letter.

We look forward to beginning the budget review process next week and engaging in a productive dialog with our fellow directors.

Sincerely,



Michael T. Hogan
 Director



Keith Lewinger
 Director



Fern Steiner
 Director



Yen C. Tu
 Director

Attachment 1: Appellate Court Decision – *Newhall County Water District v. Castaic Lake Water Agency*

Attachment 2: Excerpt from the Board's July 8, 2013 Finance and Insurance Committee Meeting

Attachment 3: MWD Act Sections 124.5 and 134

Attachment 4: Water Authority's November 17, 2014 Letter RE Balancing Accounts

Filed 1/19/16

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

NEWHALL COUNTY WATER
DISTRICT,

Plaintiff and Respondent,

v.

CASTAIC LAKE WATER AGENCY et
al.,

Defendants and Appellants.

B257964

(Los Angeles County
Super. Ct. No. BS142690)

APPEAL from a judgment of the Superior Court for the County of Los Angeles.
James C. Chalfant, Judge. Affirmed.

Best Best & Krieger, Jeffrey V. Dunn, and Kimberly E. Hood for Defendants and
Appellants.

Colantuono, Highsmith & Whatley, Michael G. Colantuono, David J. Ruderman,
Jon R. di Cristina; Lagerlof, Senecal, Gosney & Kruse and Thomas S. Bunn III for
Plaintiff and Respondent.

SUMMARY

Plaintiff Newhall County Water District (Newhall), a retail water purveyor, challenged a wholesale water rate increase adopted in February 2013 by the board of directors of defendant Castaic Lake Water Agency (the Agency), a government entity responsible for providing imported water to the four retail water purveyors in the Santa Clarita Valley. The trial court found the Agency's rates violated article XIII C of the California Constitution (Proposition 26). Proposition 26 defines any local government levy, charge or exaction as a tax requiring voter approval, unless (as relevant here) it is imposed "for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product." (Cal. Const., art. XIII C, § 1, subd. (e)(2).)¹

The challenged rates did not comply with this exception, the trial court concluded, because the Agency based its wholesale rate for imported water in substantial part on Newhall's use of groundwater, which was not supplied by the Agency. Consequently, the wholesale water cost allocated to Newhall did not, as required, "bear a fair or reasonable relationship to [Newhall's] burdens on, or benefits received from, the [Agency's] activity." (Art. XIII C, § 1, subd. (e), final par.)

We affirm the trial court's judgment.

FACTS

We base our recitation of the facts in substantial part on the trial court's lucid descriptions of the background facts and circumstances giving rise to this litigation.

1. The Parties

The Agency is a special district and public agency of the state established in 1962 as a wholesale water agency to provide imported water to the water purveyors in the Santa Clarita Valley. It is authorized to acquire water and water rights, and to provide, sell and deliver that water "at wholesale only" for municipal, industrial, domestic and

¹ All further references to any "article" are to the California Constitution.

other purposes. (Wat. Code Appen., § 103-15.) The Agency supplies imported water, purchased primarily from the State Water Project, to four retail water purveyors, including Newhall.

Newhall is also a special district and public agency of the state. Newhall has served its customers for over 60 years, providing treated potable water to communities near Santa Clarita, primarily to single family residences. Newhall owns and operates distribution and transmission mains, reservoirs, booster pump stations, and 11 active groundwater wells.

Two of the other three retail water purveyors are owned or controlled by the Agency: Santa Clarita Water Division (owned and operated by the Agency) and Valencia Water Company (an investor-owned water utility controlled by the Agency since December 21, 2012). Through these two retailers, the Agency supplies about 83 percent of the water demand in the Santa Clarita Valley. The Agency's stated vision is to manage all water sales in the Santa Clarita Valley, both wholesale and retail.

The fourth retailer is Los Angeles County Waterworks District No. 36 (District 36), also a special district and public agency, operated by the County Department of Public Works. It is the smallest retailer, accounting for less than 2 percent of the total water demand.

2. Water Sources

The four retailers obtain the water they supply to consumers from two primary sources, local groundwater and the Agency's imported water.

The only groundwater source is the Santa Clara River Valley Groundwater Basin, East Subbasin (the Basin). The Basin is comprised of two aquifer systems, the Alluvium and the Saugus Formation. This groundwater supply alone cannot sustain the collective demand of the four retailers. (The Basin's operational yield is estimated at 37,500 to 55,000 acre-feet per year (AFY) in normal years, while total demand was projected at 72,343 AFY for 2015, and 121,877 AFY in 2050.)

The groundwater basin, so far as the record shows, is in good operating condition, with no long-term adverse effects from groundwater pumping. Such adverse effects

(known as overdraft) could occur if the amount of water extracted from an aquifer were to exceed the amount of water that recharges the aquifer over an extended period. The retailers have identified cooperative measures to be taken, if needed, to ensure sustained use of the aquifer. These include the continued “conjunctive use” of imported supplemental water and local groundwater supplies, to maximize water supply from the two sources. Diversity of supply is considered a key element of reliable water service during dry years as well as normal and wet years.

In 1997, four wells in the Saugus Formation were found to be contaminated with perchlorate, and in 2002 and 2005, perchlorate was detected in two wells in the Alluvium. All the wells were owned by the retailers, one of them by Newhall. During this period, Newhall and the two largest retailers (now owned or controlled by the Agency) increased their purchases of imported water significantly.

3. Use of Imported Water

Until 1987, Newhall served its customers relying only on its groundwater rights.² Since 1987, it has supplemented its groundwater supplies with imported water from the Agency.

The amount of imported water Newhall purchases fluctuates from year to year. In the years before 1998, Newhall’s water purchases from the Agency averaged 11 percent of its water demand. During the period of perchlorate contamination (1998-2009), its imported water purchases increased to an average of 52 percent of its total demand. Since then, Newhall’s use of imported water dropped to 23 percent, and as of 2012,

² Newhall has appropriative water rights that arise from California’s first-in-time-first-in-right allocation of limited groundwater supplies. (See *El Dorado Irrigation Dist. v. State Water Resources Control Board* (2006) 142 Cal.App.4th 937, 961 [“ ‘[T]he appropriation doctrine confers upon one who actually diverts and uses water the right to do so provided that the water is used for reasonable and beneficial uses and is surplus to that used by riparians or earlier appropriators.’ ”]; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241 [“ ‘As between appropriators, . . . the one first in time is the first in right, and a prior appropriator is entitled to all the water he needs, up to the amount he has taken in the past, before a subsequent appropriator may take any [citation].’ ”].)

Newhall received about 25 percent of its total water supply from the Agency. The overall average since it began to purchase imported water in 1987, Newhall tells us, is 30 percent.

The other retailers, by contrast, rely more heavily on the Agency's imported water. Agency-owned Santa Clarita Water Division is required by statute to meet at least half of its water demand using imported water. (See Wat. Code Appen., § 103-15.1, subd. (d).) Agency-controlled Valencia Water Company also meets almost half its demand with imported water.

4. The Agency's Related Powers and Duties

As noted above, the Agency's primary source of imported water is the State Water Project. The Agency purchases that water under a contract with the Department of Water Resources. The Agency also acquires water under an acquisition agreement with the Buena Vista Water Storage District and the Rosedale-Rio Bravo Water Storage District, and other water sources include recycled water and water stored through groundwater banking agreements. Among the Agency's powers are the power to "[s]tore and recover water from groundwater basins" (Wat. Code Appen., § 103-15.2, subd. (b)), and "[t]o restrict the use of agency water during any emergency caused by drought, or other threatened or existing water shortage, and to prohibit the wastage of agency water" (§ 103-15, subd. (k)).

In addition, and as pertinent here, the Agency may "[d]evelop groundwater management plans within the agency which may include, without limitation, conservation, overdraft protection plans, and groundwater extraction charge plans" (Wat. Code Appen., § 103-15.2, subd. (c).) The Agency has the power to implement such plans "subject to the rights of property owners and with the approval of the retail water purveyors and other major extractors of over 100 acre-feet of water per year." (*Ibid.*)

In 2001, the Legislature required the Agency to begin preparation of a groundwater management plan, and provided for the formation of an advisory council consisting of representatives from the retail water purveyors and other major extractors.

(Wat. Code Appen., § 103-15.1, subd. (e)(1)&(2)(A).) The Legislature required the Agency to “regularly consult with the council regarding all aspects of the proposed groundwater management plan.” (*Id.*, subd. (e)(2)(A).)

Under this legislative authority, the Agency spearheaded preparation of the 2003 Groundwater Management Plan for the Basin, and more recently the 2010 Santa Clarita Valley Urban Water Management Plan. These plans were approved by the retailers, including Newhall.

The 2003 Groundwater Management Plan states the overall management objectives for the Basin as: (1) development of an integrated surface water, groundwater, and recycled water supply to meet existing and projected demands for municipal, agricultural and other water uses; (2) assessment of groundwater basin conditions “to determine a range of operational yield values that will make use of local groundwater conjunctively with [State Water Project] and recycled water to avoid groundwater overdraft”; (3) preservation of groundwater quality; and (4) preservation of interrelated surface water resources. The 2010 Santa Clarita Valley Urban Water Management Plan, as the trial court described it, is “an area-wide management planning tool that promotes active management of urban water demands and efficient water usage by looking to long-range planning to ensure adequate water supplies to serve existing customers and future demands”

5. The Agency’s Wholesale Water Rates

The board of directors of the Agency fixes its water rates, “so far as practicable, [to] result in revenues that will pay the operating expenses of the agency, . . . provide for the payment of the cost of water received by the agency under the State Water Plan, provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of that bonded debt” (Wat. Code Appen., § 103-24, subd. (a).) The Agency’s operating costs include costs for management, administration, engineering, maintenance, water quality compliance, water resources, water treatment operations, storage and recovery programs, and studies.

Before the rate changes at issue here, the Agency had a “100 percent variable” rate structure. That means it charged on a per acre-foot basis for the imported water sold, known as a “volumetric” rate. Thus, as of January 1, 2012, retailers were charged \$487 per acre-foot of imported water, plus a \$20 per acre-foot charge for reserve funding.

Because of fluctuations in the demand for imported water (such as during the perchlorate contamination period), the Agency’s volumetric rates result in fluctuating, unstable revenues. The Agency engaged consultants to perform a comprehensive wholesale water rate study, and provide recommendations on rate structure options. The objective was a rate structure that would provide revenue sufficiency and stability to the Agency, provide cost equity and certainty to the retailers, and enhance conjunctive use of the sources of water supply and encourage conservation. As the Agency’s consultants put it, “[t]wo of the primary objectives of cost of service water rates are to ensure the utility has sufficient revenue to cover the costs of operating and maintaining the utility in a manner that will ensure long term sustainability and to ensure that costs are recovered from customers in a way that reflects the demands they place on the system.”

The general idea was a rate structure with both volumetric and fixed components. Wholesale rate structures that include both a fixed charge component (usually calculated to recover all or a portion of the agency’s fixed costs of operating, maintaining and delivering water) and a volumetric component (generally calculated based on the cost of purchased water, and sometimes including some of the fixed costs) are common in the industry.

6. The Challenged Rates

The Agency’s consultants presented several rate structure options. In the end, the option the Agency chose (the challenged rates) consisted of two components. The first component is a fixed charge based on each retailer’s three-year rolling average of total water demand (that is, its demand for the Agency’s imported water *and* for groundwater not supplied by the Agency). This fixed charge is calculated by “divid[ing] the Agency’s total fixed revenue for the applicable fiscal year . . . by the previous three-year average of total water demand of the applicable Retail Purveyor to arrive at a unit cost per acre

foot.” The Agency would recover 80 percent of its costs through the fixed component of the challenged rates. The second component of the Agency’s rate is a variable charge, based on a per acre foot charge for imported water.³

The rationale for recovering the Agency’s fixed costs in proportion to the retailers’ total water demand, rather than their demand for imported water, is this (as described in the consultants’ study):

“This rate structure meets the Agency’s objective of promoting resource optimization, conjunctive use, and water conservation. Since the fixed cost is allocated on the basis of each retail purveyor’s total demand, if a retail purveyor conserves water, then its fixed charge will be reduced. Additionally, allocating the fixed costs based on total water demand recognizes that imported water is an important standby supply that is available to all retail purveyors, and is also a necessary supply to meet future water demand in the region, and that there is a direct nexus between groundwater availability and imported water use – i.e., it allocates the costs in a manner that bears a fair and reasonable relationship to the retail purveyors’ burdens on and benefits from the Agency’s activities in ensuring that there is sufficient water to meet the demands of all of the retail purveyors and that the supply sources are responsibly managed for the benefits of all of the retail purveyors.”

The rationale continues: “Moreover, the Agency has taken a leadership role in maintaining the health of the local groundwater basin by diversifying the Santa Clarita Valley’s water supply portfolio, as demonstrated in the 2003 Groundwater Management Plan and in resolving perchlorate contamination of the Saugus Formation aquifer. Thus, since all retail purveyors benefit from imported water and the Agency’s activities, they should pay for the reasonable fixed costs of the system in proportion to the demand (i.e.

³ There was also a \$20 per acre foot reserve charge to fund the Agency’s operating reserves, but the Agency reports in its opening brief that it suspended implementation of that charge as of July 1, 2013, when reserve fund goals were met earlier than anticipated.

burdens) they put on the total water supply regardless of how they utilize individual sources of supply.”

The Agency’s rate study showed that, during the first year of the challenged rates (starting July 1, 2013), Newhall would experience a 67 percent increase in Agency charges, while Agency controlled retailers Valencia Water Company and Santa Clarita Water Division would see reductions of 1.9 percent and 10 percent, respectively. District 36 would have a 0.8 percent increase. The rate study also indicated that, by 2050, the impact of the challenged rates on Newhall was expected to be less than under the then-current rate structure, while Valencia Water Company was expected to pay more.

Newhall opposed the challenged rates during the ratemaking process. Its consultant concluded the proposed structure was not consistent with industry standards; would provide a nonproportional, cross-subsidization of other retailers; and did not fairly or reasonably reflect the Agency’s costs to serve Newhall. Newhall contended the rates violated the California Constitution and other California law. It proposed a rate structure that would base the Agency’s fixed charge calculation on the annual demand for imported water placed on the Agency by each of its four customers, using a three-year rolling average of past water deliveries to each retailer.

In February 2013, the Agency’s board of directors adopted the challenged rates, effective July 1, 2013.

7. This Litigation

Newhall sought a writ of mandate directing the Agency to rescind the rates, to refund payments made under protest, to refrain from charging Newhall for its imported water service “with respect to the volume of groundwater Newhall uses or other services [the Agency] does not provide Newhall,” and to adopt a new, lawful rate structure. Newhall contended the rates were not proportionate to Newhall’s benefits from, and burdens on, the Agency’s service, and were therefore invalid under Proposition 26, Proposition 13, Government Code section 54999.7, and the common law of utility ratemaking.

The trial court granted Newhall's petition, finding the rates violated Proposition 26. The court concluded the Agency had no authority to impose rates based on the use of groundwater that the Agency does not provide, and that conversely, Newhall's use of its groundwater rights does not burden the Agency's system for delivery of imported water. Thus the rates bore no reasonable relationship to Newhall's burden on, or benefit received from, the Agency's service. The trial court also found the rates violated Government Code section 54999.7 (providing that a fee for public utility service "shall not exceed the reasonable cost of providing the public utility service" (Gov. Code, § 54999.7, subd. (a)), and violated common law requiring utility charges to be fair, reasonable and proportionate to benefits received by ratepayers. The court ordered the Agency to revert to the rates previously in effect until the adoption of new lawful rates, and ordered it to refund to Newhall the difference between the monies paid under the challenged rates and the monies that would have been paid under the previous rates.

Judgment was entered on July 28, 2014, and the Agency filed a timely notice of appeal.

DISCUSSION

The controlling issue in this case is whether the challenged rates are a tax or a fee under Proposition 26.

1. The Standard of Review

We review de novo the question whether the challenged rates comply with constitutional requirements. (*Griffith v. City of Santa Cruz* (2012) 207 Cal.App.4th 982, 989-990 (*Griffith I*)). We review the trial court's resolution of factual conflicts for substantial evidence. (*Morgan v. Imperial Irrigation District* (2014) 223 Cal.App.4th 892, 916.)

2. The Governing Principles

All taxes imposed by any local government are subject to voter approval. (Art. XIII C, § 2.) Proposition 26, adopted in 2010, expanded the definition of a tax. A "tax" now includes "any levy, charge, or exaction of any kind imposed by a local government,"

with seven exceptions. (*Id.*, § 1, subd. (e).) This case concerns one of those seven exceptions.

Under Proposition 26, the challenged rates are not a tax, and are not subject to voter approval, if they are “[a] charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.” (Art. XIII C, § 1, subd. (e)(2).) The Agency “bears the burden of proving by a preponderance of the evidence” that its charge “is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.” (*Id.*, subd. (e), final par.)

3. This Case

It is undisputed that the Agency’s challenged rates are designed “to recover all of its fixed costs via a fixed charge,” and not to generate surplus revenue. Indeed, Newhall recognizes the Agency’s right to impose a fixed water-rate component to recover its fixed costs. The dispute here is whether the fixed rate component may be based in significant part on the purchaser’s use of a product – groundwater – not provided by the Agency.

We conclude the Agency cannot, consistent with Proposition 26, base its wholesale water rates on the retailers’ use of groundwater, because the Agency does not supply groundwater. Indeed, the Agency does not even have the statutory authority to regulate groundwater, without the consent of the retailers (and other major groundwater extractors). As a consequence, basing its water rates on groundwater it does not provide violates Proposition 26 on two fronts.

First, the rates violate Proposition 26 because the method of allocation does not “bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from,” the Agency’s activity. (Art. XIII C, § 1, subd. (e), final par.) (We will refer to this as the reasonable cost allocation or proportionality requirement.)

Second, to the extent the Agency relies on its groundwater management activities to justify including groundwater use in its rate structure, the benefit to the retailers from those activities is at best indirect. Groundwater management activities are not a “service . . . provided directly to the payor that is not provided to those not charged” (art. XIII C, § 1, subd. (e)(2)), but rather activities that benefit the Basin as a whole, including other major groundwater extractors that are not charged for those services.

For both these reasons, the challenged rates cannot survive scrutiny under Proposition 26. The Agency resists this straightforward conclusion, proffering two principal arguments, melded together. The first is that the proportionality requirement is measured “collectively,” not by the burdens on or benefits received by the individual purveyor. The second is that the “government service or product” the Agency provides to the four water retailers consists not just of providing wholesale water, but also of “managing the Basin water supply,” including “management . . . of the Basin’s groundwater.” These responsibilities, the Agency argues, make it reasonable to set rates for its wholesale water service by “tak[ing] into account the entire Valley water supply portfolio and collective purveyor-benefits of promoting conjunctive use, not just the actual amount of Agency imported water purchased by each Purveyor”

Neither claim has merit, and the authorities the Agency cites do not support its contentions.

a. *Griffin I* and the proportionality requirement

It seems plain to us, as it did to the trial court, that the demand for a product the Agency does not supply – groundwater – cannot form the basis for a reasonable cost allocation method: one that is constitutionally required to be proportional to the benefits the rate payor receives from (or the burden it places on) the Agency’s activity. The Agency’s contention that it may include the demand for groundwater in its rate structure because the proportionality requirement is measured “collectively,” not by the burdens on or benefits to the individual retail purveyor, is not supported by any pertinent authority.

In contending otherwise, the Agency relies on, but misunderstands, *Griffith I* and other cases stating that proportionality “ ‘is not measured on an individual basis,’ ” but

rather “ ‘collectively, considering all rate payors,’ ” and “ ‘need not be finely calibrated to the precise benefit each individual fee payor might derive.’ ” (*Griffith I, supra*, 207 Cal.App.4th at p. 997, quoting *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 438 [discussing regulatory fees under the Water Code and Proposition 13].) As discussed *post*, these cases do not apply here, for one or more reasons. *Griffith I* involves a different exemption from Proposition 26, and other cases involve Proposition 218, which predated Proposition 26 and has no direct application here. In addition to these distinctions – which do make a difference – the cases involved large numbers of payors, who could rationally be (and were) placed in different usage categories, justifying different fees for different classes of payors.

In *Griffith I*, the defendant city imposed an annual inspection fee for all residential rental properties in the city. The court rejected a claim that the inspection fee was a tax requiring voter approval under Proposition 26. (*Griffith I, supra*, 207 Cal.App.4th at p. 987.) *Griffith I* involves another of the seven exemptions in Proposition 26, the exemption for regulatory fees – charges imposed for the regulatory costs of issuing licenses, performing inspections, and the like. (Art. XIII C, § 1, subd. (e)(3) [expressly excepting, from the “tax” definition, a “charge imposed for the reasonable regulatory costs to a local government for . . . performing inspections”].)

The inspection fees in *Griffith I* met all the requirements of Proposition 26. The city’s evidence showed the fees did not exceed the approximate cost of the inspections. (*Griffith I, supra*, 207 Cal.App.4th at p. 997.) And the proportionality requirement of Proposition 26 was also met: “The fee schedule itself show[ed] the basis for the apportionment,” setting an annual registration fee plus a \$20 per unit fee, with lower fees for “[s]elf-certifications” that cost the city less to administer, and greater amounts charged when reinspections were required. (*Griffith I*, at p. 997.) The court concluded: “Considered collectively, the fees are reasonably related to the payors’ burden upon the inspection program. *The larger fees are imposed upon those whose properties require the most work.*” (*Ibid.*, italics added.)

Griffith I did, as the Agency tells us, state that “ ‘the question of proportionality is not measured on an individual basis’ ” but rather “ ‘collectively, considering all rate payors.’ ” (*Griffith I, supra*, 207 Cal.App.4th at p. 997.) But, as mentioned, *Griffith I* was considering a regulatory fee, not, as here, a charge imposed on four ratepayers for a “specific government service or product.” As *Griffith I* explained, “ ‘[t]he scope of a regulatory fee is somewhat flexible’ ” and “ ‘must be related to the overall cost of the governmental regulation,’ ” but “ ‘need not be finely calibrated to the precise benefit each individual fee payor might derive.’ ” (*Ibid.*) That, of course, makes perfect sense in the context of a regulatory fee applicable to numerous payors; indeed, it would be impossible to assess such fees based on the individual payor’s precise burden on the regulatory program. But the inspection fees *were* allocated by categories of payor, and were based on the burden on the inspection program, with higher fees where more city work was required.

Here, there are four payors, with no need to group them in classes to allocate costs. The *Griffith I* concept of measuring proportionality “collectively” simply does not apply. Where charges for a government service or product are to be allocated among only four payors, the only rational method of evaluating their burdens on, or benefits received from, the governmental activity, is individually, payor by payor. And that is particularly appropriate considering the nature of the Proposition 26 exemption in question: charges for a product or service that is (and is required to be) provided “directly to the payor.” Under these circumstances, allocation of costs “collectively,” when the product is provided directly to each of the four payors, cannot be, and is not, a “fair or reasonable” allocation method. (Art. XIII C, § 1, subd. (e), final par.)

b. *Griffith II* – the proportionality requirement and related claims

In *Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586 (*Griffith II*), the court concluded, among other things, that a groundwater augmentation charge complied with the proportionality requirement of Proposition 218. The Agency relies on *Griffith II*, asserting that the court applied the “concept of collective reasonableness with respect to rate allocations” Further, the case

demonstrates, the Agency tells us, that its activities in “management . . . of the Basin’s groundwater” justify basing its rates on total water demand, because all four retailers benefit from having the Agency’s imported water available, even when they do not use it. Neither claim withstands analysis.

Griffith II involved a challenge under Proposition 218, so we pause to describe its relevant points. Proposition 218 contains various procedural (notice, hearing, and voting) requirements for the imposition by local governments of fees and charges “upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.” (Art. XIII D, § 2, subd. (e).) Fees or charges for water service (at issue in *Griffith II*) are exempt from voter approval (art. XIII D, § 6, subd. (c)), but substantive requirements apply. These include a proportionality requirement: that the amount of a fee or charge imposed on any parcel or person “shall not exceed the proportional cost of the service attributable to the parcel.” (*Id.*, subd. (b)(3).)

In *Griffith II*, the plaintiffs challenged charges imposed by the defendant water management agency on the extraction of groundwater (called a “groundwater augmentation charge”). The defendant agency had been created to deal with the issue of groundwater being extracted faster than it is replenished by natural forces, leading to saltwater intrusion into the groundwater basin. (*Griffith II, supra*, 220 Cal.App.4th at p. 590.) The defendant agency was specifically empowered to levy groundwater augmentation charges on the extraction of groundwater from all extraction facilities, “ “for the purposes of paying the costs of purchasing, capturing, storing, and distributing supplemental water for use within [defendant’s boundaries].” ’ ” (*Id.* at p. 591.) The defendant’s strategy to do so had several facets, but its purpose was to reduce the amount of water taken from the groundwater basin by supplying water to some coastal users, with the cost borne by all users, “on the theory that even those taking water from [inland] wells benefit from the delivery of water to [coastal users], as that reduces the amount of groundwater those [coastal users] will extract [from their own wells], thereby keeping the water in [all] wells from becoming too salty.’ ” (*Id.* at pp. 590-591.)

Griffith II found the charge complied with the Proposition 218 requirement that the charge could not exceed the proportional costs of the service attributable to the parcel. (*Griffith II, supra*, 220 Cal.App.4th at pp. 600-601.) Proposition 218, the court concluded, did not require “a parcel-by-parcel proportionality analysis.” (*Griffith II*, at p. 601.) The court found defendant’s “method of grouping similar users together for the same augmentation rate and charging the users according to usage is a reasonable way to apportion the cost of service,” and Proposition 218 “does not require a more finely calibrated apportion.” (*Griffith II*, at p. 601.) The augmentation charge “affects those on whom it is imposed by burdening them with an expense they will bear proportionately to the amount of groundwater they extract at a rate depending on which of three rate classes applies. It is imposed ‘across-the-board’ on all water extractors. All persons extracting water – including any coastal users who choose to do so – will pay an augmentation charge per acre-foot extracted. All persons extracting water and paying the charge will benefit in the continued availability of usable groundwater.” (*Griffith II*, at pp. 603-604.)

The court rejected the plaintiffs’ claim the charge for groundwater extraction on their parcels was disproportionate because they did not use the agency’s services – that is, they did not receive delivered water, as coastal landowners did. This claim, the court said, was based on the erroneous premise that the agency’s only service was to deliver water to coastal landowners. The court pointed out that the defendant agency was created to manage the water resources for the common benefit of all water users, and the groundwater augmentation charge paid for the activities required to prepare and implement the groundwater management program. (*Griffith II, supra*, 220 Cal.App.4th at p. 600.) Further, the defendant agency “apportioned the augmentation charge among different categories of users (metered wells, unmetered wells, and wells within the delivered water zone).” (*Id.* at p. 601.) (The charges were highest for metered wells in the coastal zone, and there was also a per acre-foot charge for delivered water. (*Id.* at p. 593 & fn. 4.))

We see nothing in *Griffith II* that assists the Agency here. The Agency focuses on the fact that the defendant charged the plaintiff for groundwater extraction even though

the plaintiff received no delivered water, and on the court's statement that the defendant was created to manage water resources for the common benefit of all water users. (*Griffith II, supra*, 220 Cal.App.4th at p. 600.) From this the Agency leaps to the erroneous conclusion that the rates here satisfy the proportionality requirement simply because all four retailers "benefit from having the Agency's supplemental water supplies available," even when they do not use them. This is a false analogy. In *Griffith II*, the defendant charged all groundwater extractors proportionately for extracting water (and had the power to do so), and charged for delivered water as well. *Griffith II* does not support the imposition of charges based on a product the Agency does not supply.

We note further that in *Griffith II*, more than 1,900 parcel owners were subject to the groundwater augmentation charge, and they were placed in three different classes of water extractors and charged accordingly. (*Griffith II, supra*, 220 Cal.App.4th at pp. 593, 601.) Here, there are four water retailers receiving the Agency's wholesale water service, none of whom can reasonably be placed in a different class or category from the other three. In these circumstances, to say costs may be allocated to the four purveyors "collectively," based in significant part on groundwater not supplied by the Agency, because "they all benefit" from the availability of supplemental water supplies, would effectively remove the proportionality requirement from Proposition 26.

That we may not do. Proposition 26 requires by its terms an allocation method that bears a reasonable relationship to the payor's burdens on or benefits from the Agency's activity, which here consists of wholesale water service to be provided "directly to the payor." In the context of wholesale water rates to four water agencies, this necessarily requires evaluation on a "purveyor by purveyor" basis. (Cf. *Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1514 (*Capistrano*) ["[w]hen read in context, *Griffith [II]* does not excuse water agencies from ascertaining the true costs of supplying water to various tiers of usage"; *Griffith II*'s "comments on proportionality necessarily relate only to variations in property location"; "trying to apply [*Griffith II*] to the [Proposition 218 proportionality] issue[] is fatally flawed".])

The Agency's claim that it is not charging the retailers for groundwater use, and its attempt to support basing its rates on total water demand by likening itself to the defendant agency in *Griffith II*, both fail as well. The first defies reason. Because the rates are based on total water demand, the more groundwater a retailer uses, the more it pays under the challenged rates. The use of groundwater demand in the rate structure necessarily means that, in effect, the Agency is charging for groundwater use.

The second assertion is equally mistaken. The differences between the Agency and the defendant in *Griffith II* are patent. In *Griffith II*, the defendant agency was created to manage all water resources, and specifically to deal with saltwater intrusion into the groundwater basin. The Agency here was not. It was created to acquire water and to "provide, sell, and deliver" it. It is authorized to develop and implement groundwater management plans only with the approval of the retail water purveyors (and other major groundwater extractors). In other words, while the Agency functions as the lead agency in developing and coordinating groundwater management plans, its only authority over groundwater, as the trial court found, is a shared responsibility to develop those plans. Further, in *Griffith II*, the defendant agency was specifically empowered to levy groundwater extraction charges for the purpose of purchasing supplemental water. The Agency here was not. As the trial court here aptly concluded, *Griffith II* "does not aid [the Agency] for the simple reason that [the Agency] has no comprehensive authority to manage the water resources of the local groundwater basin and levy charges related to groundwater."⁴

Finally, the Agency insists that it "must be allowed to re-coup its cost of service," and that the practice of setting rates to recover fixed expenses, "irrespective of a customer's actual consumption," was approved in *Paland v. Brooktrails Township*

⁴ The trial court also observed that, "[a]part from [the Agency's] lack of authority to supply or manage Basin groundwater, Newhall correctly notes that [the Agency] has presented no evidence of its costs in maintaining the Basin."

Community Services Dist. Bd. of Directors (2009) 179 Cal.App.4th 1358 (*Paland*).

Paland has no application here.

Paland involved Proposition 218. As we have discussed, Proposition 218 governs (among other things) “property related fees and charges” on parcels of property. Among its prohibitions is any fee or charge for a service “unless that service is actually used by, or immediately available to, the owner of the property in question.” (Art. XIII D, § 6, subd. (b)(4).) The court held that a minimum charge, imposed on parcels of property with connections to the district’s utility systems, for the basic cost of providing water service, regardless of actual use, was “a charge for an immediately available property-related water or sewer service” within the meaning of Proposition 218, and not an assessment requiring voter approval. (*Paland, supra*, 179 Cal.App.4th at p. 1362; see *id.* at p. 1371 [“Common sense dictates that continuous maintenance and operation of the water and sewer systems is necessary to keep those systems immediately available to inactive connections like [the plaintiff’s].”].)

We see no pertinent analogy between *Paland* and this case. This case does not involve a minimum charge imposed on all parcels of property (or a minimum charge for standing ready to supply imported water). Newhall does not contest the Agency’s right to charge for its costs of standing ready to provide supplemental water, and to recoup all its fixed costs. The question is whether the Agency may recoup those costs using a cost allocation method founded on the demand for groundwater the Agency does not supply, and is not empowered to regulate without the consent of groundwater extractors. The answer under Proposition 26 is clear: it may not. *Paland* does not suggest otherwise.⁵

⁵ The parties refer to other recent authorities to support their positions in this case. We may not rely on one of them, because the Supreme Court has granted a petition for review. (*City of San Buenaventura v. United Water Conservation District* (2015) 235 Cal.App.4th 228, review granted June 24, 2015, S226036.) The Agency cites the other case extensively in its reply brief, but we see nothing in that case to suggest that the challenged rates here comply with Proposition 26. (*Great Oaks Water Co. v. Santa Clara Valley Water District* 242 Cal.App.4th 1187 (*Great Oaks*).)

c. Other claims – conservation and “conjunctive use”

The Agency attempts to justify the challenged rates by relying on the conservation mandate in the California Constitution, pointing out it has a constitutional obligation to encourage water conservation. (Art. X, § 2 [declaring the state’s water resources must “be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water [must] be prevented”].) The challenged rates comply with this mandate, the Agency contends, because reducing total water consumption will result in lower charges, and the rates encourage “a coordinated use of groundwater and supplemental water” (conjunctive use). This argument, too, misses the mark.

The Agency’s brief fails to describe the circumstances in *Great Oaks*. There, a water retailer challenged a groundwater extraction fee imposed by the defendant water district. Unlike this case, the defendant in *Great Oaks* was authorized by statute to impose such fees, and its major responsibilities included “preventing depletion of the aquifers from which [the water retailer] extracts the water it sells.” (*Great Oaks, supra*, 242 Cal.App.4th at p. 1197.) The Court of Appeal, reversing a judgment for the plaintiff, held (among other things) that the fee was a property-related charge, and therefore subject to some of the constraints of Proposition 218, but was also a charge for water service, and thus exempt from the requirement of voter ratification. (*Great Oaks*, at p. 1197.) The trial court’s ruling in *Great Oaks* did not address the plaintiff’s contentions that the groundwater extraction charge violated three substantive limitations of Proposition 218, and the Court of Appeal ruled that one of those contentions (that the defendant charged more than was required to provide the property related service on which the charge was predicated) could be revisited on remand. The others were not preserved in the plaintiff’s presuit claim, so no monetary relief could be predicated on those theories. (*Great Oaks*, at pp. 1224, 1232-1234.)

The Agency cites *Great Oaks* repeatedly, principally for the statements that the “provision of alternative supplies of water serves the long-term interests of extractors by reducing demands on the groundwater basin and helping to prevent its depletion,” and that it was not irrational for the defendant water district “to conclude that reduced demands on groundwater supplies benefit retailers by preserving the commodity on which their long-term viability, if not survival, may depend.” (*Great Oaks, supra*, 242 Cal.App.4th at pp. 1248-1249.) These statements, with which we do not disagree, have no bearing on this case, and were made in connection with the court’s holding that the trial court erred in finding the groundwater extraction charge violated the statute that created and empowered the defendant water district. (*Id.* at pp. 1252-1253.)

Certainly the Agency may structure its rates to encourage conservation of the imported water it supplies. (Wat. Code, § 375, subd. (a) [public entities supplying water at wholesale or retail may “adopt and enforce a water conservation program to reduce the quantity of water used by [its customers] for the purpose of conserving the water supplies of the public entity”]. But the Agency has no authority to set rates to encourage conservation of groundwater it does not supply. Moreover, article X’s conservation mandate cannot be read to eliminate Proposition 26’s proportionality requirement. (See *City of Palmdale v. Palmdale Water District* (2011) 198 Cal.App.4th 926, 936-937 [“California Constitution, article X, section 2 is not at odds with article XIII D [Proposition 218] so long as, for example, conservation is attained in a manner that ‘shall not exceed the proportional cost of the service attributable to the parcel.’ ”]; see *id.* at p. 928 [district failed to prove its water rate structure complied with the proportionality requirement of Proposition 218]; see also *Capistrano, supra*, 235 Cal.App.4th at p. 1511, quoting *City of Palmdale* with approval.)

The Agency also insists that basing its rates only on the demand for the imported water it actually supplies – as has long been the case – would “discourage users from employing conjunctive use” The Agency does not explain how this is so, and we are constrained to note that, according to the Agency’s own 2003 Groundwater Management Plan, Newhall and the other retailers “have been practicing the conjunctive use of imported surface water and local groundwater” for many years. And, according to that plan, the Agency and retailers have “a historical and ongoing working relationship . . . to manage water supplies to effectively meet water demands within the available yields of imported surface water and local groundwater.”

In connection, we assume, with its conjunctive use rationale, the Agency filed a request for judicial notice, along with its reply brief. It asked us to take notice of three documents and “the facts therein concerning imported water use and local groundwater production” by Newhall and the other water retailers. The documents are the 2014 and 2015 Water Quality Reports for the Santa Clarita Valley, and a water supply utilization table from the 2014 Santa Clarita Valley Water Report published in June 2015. All of

these, the Agency tells us, are records prepared by the Agency and the four retailers, after the administrative record in this case was prepared. The documents “provide further support” as to the “cooperative efforts of the Agency and the Purveyors in satisfying long-term water supply needs,” and “provide context and useful background to aid in the Court’s understanding of this case.” The Agency refers to these documents in its reply brief, pointing out that since 2011, Newhall has increased its imported water purchases because of the impact of the current drought on certain of its wells, while retailer Valencia Water Company increased groundwater pumping and purchased less imported water in 2014. These cooperative efforts, the Agency says, “reflect the direct benefit to Newhall of having an imported water supply available to it, whether or not it maximizes use of imported water in a particular year.”

We deny the Agency’s request for judicial notice. We see no reason to depart from the general rule that courts may not consider evidence not contained in the administrative record. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 564; cf. *id.* at p. 578 [the exception to the rule in administrative proceedings, for evidence that could not have been produced at the hearing through the exercise of reasonable diligence, applies in “rare instances” where the evidence in question existed at the time of the decision, or in other “unusual circumstances”].) Denial is particularly appropriate where judicial notice has been requested in support of a reply brief to which the opposing party has no opportunity to respond, and where the material is, as the Agency admits, “further support” of evidence in the record, providing “context and useful background.” These are not unusual circumstances.

Returning to the point, neither conservation mandates nor the Agency’s desire to promote conjunctive use – an objective apparently shared by the retailers – permits the Agency to charge rates that do not comply with Proposition 26 requirements. Using demand for groundwater the agency does not supply to allocate its fixed costs may “satisf[y] the Agency’s constitutional obligations . . . to encourage water conservation,”

but it does not satisfy Proposition 26, and it therefore cannot stand.⁶ (Cf. *Capistrano*, *supra*, 235 Cal.App.4th at pp. 1511, 1498 [conservation is to be attained in a manner not exceeding the proportional cost of service attributable to the parcel under Proposition 218; the agency failed to show its tiered rates complied with that requirement].)

d. Other Proposition 26 requirements

We have focused on the failure of the challenged rates to comply with the proportionality requirement of Proposition 26. But the rates do not withstand scrutiny for another reason as well. Proposition 26 exempts the Agency’s charges from voter approval only if the charge is imposed “for a specific government service or product provided *directly* to the payor that is *not* provided to those not charged” (Italics added.) The only “specific government service or product” the Agency provides directly to the retailers, and not to others, is imported water. As the trial court found: the Agency “does not provide Newhall groundwater. It does not maintain or recharge aquifers. It does not help Newhall pump groundwater. Nor does it otherwise contribute directly to the natural recharge of the groundwater Newhall obtains from its wells.”

The groundwater management activities the Agency *does* provide – such as its leadership role in creating groundwater management plans and its perchlorate remediation efforts – are not specific services the Agency provides directly to the retailers, and not to other groundwater extractors in the Basin. On the contrary, groundwater management services redound to the benefit of all groundwater extractors in the Basin – not just the four retailers. Indeed, implementation of any groundwater

⁶ The Agency also cites *Brydon v. East Bay Municipal Utility District* (1994) 24 Cal.App.4th 178 for the principle that, in pursuing a constitutionally and statutorily mandated conservation program, “cost allocations . . . are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity.” (*Id.* at p. 193.) But *Brydon* predated both Proposition 218 and Proposition 26. (See *Capistrano*, *supra*, 235 Cal.App.4th at pp. 1512-1513 [*Brydon* “simply has no application to post-Proposition 218 cases”; “it seems safe to say that *Brydon* itself was part of the general case law which the enactors of Proposition 218 wanted replaced with stricter controls on local government discretion”].)

management plan is “subject to the rights of property owners and with the approval of the retail water purveyors *and other major extractors* of over 100 acre-feet of water per year.” (Wat. Code Appen., § 103-15.2, subs. (b)&(c), italics added.)

Certainly the Agency may recover through its water rates its entire cost of service – that is undisputed. The only question is whether those costs may be allocated, consistent with Proposition 26, based in substantial part on groundwater use. They may not, because the Agency’s groundwater management activities plainly are not a service “that is not provided to those not charged” (Art. XIII C, § 1, subd. (e)(2).)

In light of our conclusion the challenged rates violate Proposition 26, we need not consider the Agency’s contention that the rates comply with Government Code section 54999.7 and the common law. Nor need we consider the propriety of the remedy the trial court granted, as the Agency raises no claim of error on that point.

DISPOSITION

The judgment is affirmed. Plaintiff shall recover its costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.

Transcription

Keith Lewinger (Director, San Diego County Water Authority)
Tom DeBacker (Controller, Metropolitan Water District of Southern California)

3b: Financial highlights

Finance and Insurance Committee Meeting

July 8, 2013

DeBacker (16:53): That was not based on a percentage. There was a point in time when we did use a percentage and that percentage was about 20 percent of the CIP. When we changed from that practice we went to a 95 million dollars and that was just to kind of, you know, get us close to what a 20 percent amount would be, but it was not precisely 20 percent.

Lewinger: So it was meant to represent approximately 20 percent?

DeBacker: Yeah and I was just using that going forward.

The Metropolitan Water District Act

PREFACE

This volume constitutes an annotated version of the Metropolitan Water District Act, as reenacted by the California State Legislature in 1969 and as amended in 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1978, 1981, 1984, 1985, 1995, 1998, 1999, 2001, 2004, and **2008**. Where there is no legislative history given for a section of this act, it is because the section was enacted as part of the nonsubstantive revision of the Metropolitan Water District Act, Statutes 1969, chapter 209. The editorial work was done by the office of the General Counsel of The Metropolitan Water District of Southern California. To facilitate use of the act, catchlines or catchwords enclosed by brackets have been inserted to indicate the nature of the sections which follow. Also, a table of contents has been set at the beginning of the act. Such table of contents and catchlines or catchwords are not a part of the act as enacted by the Legislature. This annotated act will be kept up to date by means of supplemental pages issued each year in which there is a change to the act.

**(Statutes 1969, ch.209, as amended;
West's California Water Code – Appendix Section 109
Deering's California Water Code – Uncodified Act 570)**

A contract between the State and a metropolitan water district for a water supply from the State Water Resources Development System was a contract for the furnishing of continued water service in the future, payments by the district being contingent upon performance of contractual duties by the State and not incurred at the outset, so the district did not incur an indebtedness in excess of that permitted by former Section 5(7) of the Metropolitan Water District Act (now Sec. 123).

Metropolitan Water District v. Marquardt, 59 Cal.2d 159, 28 Cal. Rptr. 724 (1963).

Sec. 124. [Taxes, Levy and Limitation]

A district may levy and collect taxes on all property within the district for the purposes of carrying on the operations and paying the obligations of the district, except that such taxes, exclusive of any tax levied to meet the bonded indebtedness of such district and the interest thereon, exclusive of any tax levied to meet any obligation to the United States of America or to any board, department or agency thereof, and exclusive of any tax levied to meet any obligation to the state pursuant to Section 11652 of the Water Code, shall not exceed five cents (\$0.05) on each such one hundred dollars (\$100) of assessed valuation. The term "tax levied to meet the bonded indebtedness of such district and the interest thereon" as used in this section shall also include, but shall not be limited to, any tax levied pursuant to Section 287 to pay the principal of, or interest on, bond anticipation notes and any tax levied under the provisions of any resolution or ordinance providing for the issuance of bonds of the district to pay, as the same shall become due, the principal of any term bonds which under the provisions of such resolution or ordinance are to be paid and retired by call or purchase before maturity with moneys set aside for that purpose.

Amended by Stats. 1969, ch. 441.

CASE NOTE

An article in a contract between the State and a metropolitan water district for a water supply from the State Water Resources Development System which article is based upon Water Code Section 11652, requiring the district to levy a tax to provide for all payments due under the contract, does not contravene former Section 5(8) of the Metropolitan Water District Act, imposing a limit on taxation, as Section 11652 is a special provision relating only to taxation to meet obligations from water contracts with state agencies, whereas said Section 5(8) is a general provision relating to taxation by a district for all purposes and the special provision controls the general provision.

Metropolitan Water District v. Marquardt, 59 Cal.2d 159, 28 Cal. Rptr. 724 (1963).

Sec. 124.5. [Ad valorem Tax Limitation]

Subject only to the exception in this section and notwithstanding any other provision of law, commencing with the 1990-91 fiscal year any ad valorem property tax levied by a district on taxable property in the district, other than special taxes levied and collected pursuant to annexation proceedings pursuant to Articles 1 (commencing with Section 350), 2 (commencing with Section 360), 3 (commencing with Section 370), and 6 (commencing with Section 405) of Chapter 1 of Part 7, shall not exceed the composite amount required to pay (1) the principal and interest on general obligation bonded indebtedness of the district and (2) that portion of the district's payment obligation under a water service contract with the state which is reasonably

allocable, as determined by the district, to the payment by the state of principal and interest on bonds issued pursuant to the California Water Resources Development Bond Act as of the effective date of this section and used to finance construction of facilities for the benefit of the district. The restrictions contained in this section do not apply if the board of directors of the district, following a hearing held to consider that issue, finds that a tax in excess of these restrictions is essential to the fiscal integrity of the district, and written notice of the hearing is filed with the offices of the Speaker of the Assembly and the President pro Tempore of the Senate at least 10 days prior to that date of the hearing.

Added by Stats. 1984, ch. 271.

Sec. 125. [Investment of Surplus Money]

Investment of surplus moneys of a district is governed by Article 1 (commencing with Section 53600) of Chapter 4, Part 1, Division 2, Title 5 of the Government Code.

Amended by Stats. 1969, ch. 441.

Sec. 125.5 Guidelines for intended use of unreserved fund balances.

On or before June 20, 2002, the board of directors of a district shall adopt a resolution establishing guidelines for the intended use of unreserved fund balances. The guidelines shall require that any disbursement of funds to member public agencies that represents a refund of money paid for the purchases of water shall be distributed based upon each member agency's purchase of water from the district during the previous fiscal year.

Added Stats. 2001 ch 632 §1 (SB350)

Sec. 126. [Dissemination of Information]

A district may disseminate information concerning the activities of the district, and whenever it shall be found by two-thirds vote of the board to be necessary for the protection of district rights and properties, the district may disseminate information concerning such rights and properties, and concerning matters which, in the judgment of the board, may adversely affect such rights and properties. Expenditures during any fiscal year for the purposes of this section shall not exceed one-half of one cent (\$0.005) for each one hundred dollars (\$100) of assessed valuation of the district.

Sec. 126.5.[Proscription on Use of Public Money for Investigations Relating to Elected Officials, Advocacy Groups, or Interested Persons: Right to Public Records]

(a) The Metropolitan Water District of Southern California and its member public agencies may not expend any public money for contracting with any private entity or person to undertake research or investigations with regard to the personal backgrounds or the statements of

board to be equitable, may fix rates for the sale and delivery to member public agencies of water obtained by the district from one source of supply in substitution for water obtained by the district from another and different source of supply, and may charge for such substitute water at the rate fixed for the water for which it is so substituted.

Sec. 134. [Adequacy of Water Rates; Uniformity of Rates]

The Board, so far as practicable, shall fix such rate or rates for water as will result in revenue which, together with revenue from any water stand-by or availability service charge or assessment, will pay the operating expenses of the district, provide for repairs and maintenance, provide for payment of the purchase price or other charges for property or services or other rights acquired by the district, and provide for the payment of the interest and principal of the bonded debt subject to the applicable provisions of this act authorizing the issuance and retirement of the bonds. Those rates, subject to the provisions of this chapter, shall be uniform for like classes of service throughout the district.

Amended by Stats. 1984, ch. 271

Sec. 134.5. [Water Standby or Availability of Service Charge]

(a) The board may, from time to time, impose a water standby or availability service charge within a district. The amount of revenue to be raised by the service charge shall be as determined by the board.

(b) Allocation of the service charge among member public agencies shall be in accordance with a method established by ordinance or resolution of the board. Factors that may be considered include, but are not limited to, historical water deliveries by a district; projected water service demands by member public agencies of a district; contracted water service demands by member public agencies of a district; service connection capacity; acreage; property parcels; population, and assessed valuation, or a combination thereof.

(c) The service charge may be collected from the member public agencies of a district. As an alternative, a district may impose a service charge as a standby charge against individual parcels within the district.

In implementing this alternative, a district may exercise the powers of a county water district under Section 31031 of the Water Code, except that, notwithstanding Section 31031 of the Water Code, a district may (1) raise the standby charge rate above ten dollars (\$10) per year by a majority vote of the board, and (2) after taking into account the factors specified in subdivision (b), fix different standby charge rates for parcels situated within different member public agencies.



San Diego County Water Authority

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

November 17, 2014

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

MEMBER AGENCIES

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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
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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: Finance and Insurance Committee Item 6c – Balancing Accounts

Dear Committee Chair Barbre and Members of the Board:

Thank you for placing the balancing accounts issue on the committee agenda this month.

In September, when staff last presented the item for discussion, we noted that the content of the presentation was not responsive to the question, namely, how can revenues from individual rates be tracked to improve accountability and ensure compliance with cost-of-service requirements. We are disappointed to see that the same non-responsive staff presentation will be made again this month.

The concept of balancing accounts is well-known and easy to understand. It is a long-standing accounting practice among private water utilities used to protect both the utility and its customers from changes in costs the utility has no ability to control (for example, the weather,) and at the same time, ensure that rates accurately reflect the costs of providing service. Because MWD now derives significant revenues from transportation services, it is imperative that MWD's accounting methods ensure all of its member agencies and ratepayers that the rates they are paying are fair, and used for the intended purpose as established during the public rate-setting and cost-of-service process.

We are asking that MWD implement an accounting mechanism that tracks revenues from all individual rates and expenditures associated with those rates. To the extent that MWD actual sales differ from forecasted sales, it may collect more or less than the revenue requirement upon which the rate for a particular service is determined. Discrepancies between revenue requirements and actual revenues and expenses are captured through balancing account mechanisms, which "true-up" the actual revenue to the revenue requirement in the following year. This "true-up" ensures that MWD only collects the revenue requirement for the rate that is charged in compliance with applicable law.

We do not understand why MWD would be unwilling to extend its current practice of tracking

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

Committee Chair Barbre and Members of the Board

November 17, 2014

Page 2

treatment and water stewardship rates to also include supply, system access and system power rates. We are asking only that MWD account for all of its rates just as it now does for its treatment and water stewardship rates. Tracking rates and revenue collection in this manner does not impede MWD's ability to meet bond covenants or any other requirement or function described in the staff presentation.

We are also concerned with the position expressed at the last committee meeting that the Water Rate Stabilization Fund (WRSF) requirements should flow into a single fund with board discretion to expend those funds on any purpose. The melding of surplus funds received from different rates and charges would necessarily lead to cross-funding of unrelated services. Furthermore, the priority for fund flows (dollars in/out) could first be to the separate fund accounts for each identified service, rather than flowing first to the WRSF, as is the current practice, or sub-account funds could be created within the WRSF to track and account for sources of the "puts" into the WRSF and the "takes" from the fund. This would ensure collections from the rate for each service are accounted for and attributed to that service. Surplus collections remaining in that account may then be used to mitigate corresponding rate increases in the following years so funds are spent for that service in accordance with cost-of-service and Proposition 26 (2010) requirements.

We look forward to discussing this important transparency issue at the committee and board meeting this month.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director



San Diego County Water Authority

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

March 4, 2016

Marcia Scully, Esq.
General Counsel
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Re: San Diego Public Records Act Request of February 18, 2016

Dear Ms. Scully:

I have reviewed your February 26 correspondence, which responds to our February 18 California Public Records Act Request (the "Request"). As you know, the Request seeks categories of information necessary to evaluate MWD's current proposed rates for 2017 and 2018.

In your correspondence, you have denied our request for Metropolitan's financial planning model, claiming that it is exempt under Government Code section 6254.9 as "a proprietary software program developed by Metropolitan that contains nondisclosable formulas and programming code." As you note, the Water Authority received the previous financial planning model in 2013. That disclosure, made in litigation, was subject to a protective order requested by MWD, which for timing reasons, the Water Authority chose not to challenge at that time. Our Request seeks public disclosure of the financial planning model, with updated data, relating to the current rate setting process for 2017 and 2018 rates and charges.

You may or may not be aware, after the protective order was issued, the California Supreme Court issued a decision that confirms the Water Authority's position that the data contained within MWD's financial planning model is a disclosable public record, and is not exempt from disclosure under Government Code 6254.9. See Sierra Club v. Superior Court (2013) 57 Cal.4th 157. Therefore, we ask again that MWD immediately provide us with its current financial planning model, in a fully functional electronic format, including all of the data contained therein. If MWD still refuses to do so, we will have no choice but to commence litigation to obtain this information, which is necessary in order to analyze how MWD has assigned its costs and set its rates.

As to the other requested records, your correspondence notes that MWD will notify us in 14 days of the date on which you will provide responsive records. However, a delay in both your response and the production of records is unacceptable since MWD is currently

MEMBER AGENCIES

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City of Escondido

City of National City

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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

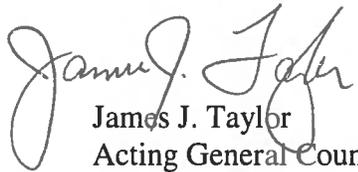
OTHER REPRESENTATIVE

County of San Diego

Marcia Scully
March 4, 2016
Page 2

in the process of setting rates that will be formally acted upon by the board at its April 12 board meeting. Given the immediacy of rate adoption, it is evident that the responsive records, which all seek the underlying data that MWD used in determining its proposed rates, are readily available and should be immediately disclosed. Since the public hearing on MWD's proposed rates is just four days away, and the proposed rates are scheduled to be adopted on April 12, it is of great public importance that both MWD and the public receive as much information as possible now. At a minimum, MWD should immediately provide access to all available data, including any cost of service studies or reports upon which the data rely, and studies that may have been conducted, and more detailed budget information to the lowest level of data that MWD collects or uses to develop the budget (typically, this would include line by line account numbers, by department, including all activities and programs). Any additional data should also be provided on a rolling production basis.

Sincerely,


James J. Taylor
Acting General Counsel



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

February 26, 2016

James J. Taylor, Esq.
General Counsel
San Diego County Water Authority
4677 Overland Avenue
San Diego, California 92123-1233

Dear Mr. Taylor:

Response to Public Records Act Request Dated February 18, 2016

We received your Public Records Act request, dated February 18, 2016, on that date. A copy of your request is attached.

This response is made in compliance with California Government Code Section 6253(c), which requires an agency to notify a person making a request within 10 days whether a request seeks disclosable records. We have determined that your request seeks disclosable records, with the exception of Metropolitan's financial planning model, which is exempt from disclosure under Government Code Section 6254.9(a) as a proprietary software program developed by Metropolitan that contains nondisclosable formulas and programming code.¹

Disclosable records that are responsive to your request, to the extent material has not already been provided to the Metropolitan Board, are being collected and will be provided to SDCWA in electronic format on DVD(s).

Pursuant to Government Code Section 6253(c), Metropolitan will notify you within 14 days of the date on which we will provide the responsive and disclosable records to you. The voluminous amount of records and our need to remove the proprietary formulas and code from spreadsheets impact the timing of the production and our ability to state the production date at

¹ SDCWA already received the financial planning model through the rate litigation, subject to the parameters and restrictions of the Court's protective order, so SDCWA has had full opportunity to view it and understands its operations.

James J. Taylor, Esq.
February 26, 2016
Page 2

this time. We will also post this material on-line so it is available to all Metropolitan Board members, member agency staff, and the public. In addition, if any Board member would like, we will provide the material to them on DVD(s).

Thank you for your request. Please direct all communications regarding your request to me.

Very truly yours,



Marcia Scully
General Counsel



San Diego County Water Authority

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

February 18, 2016

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

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

Re: Request for Records Under California Public Records Act
(California Gov. Code § 6250 *et seq.*)

Dear Ms. Chin:

On behalf of my client, the San Diego County Water Authority ("SDCWA"), and pursuant to the California Public Records Act ("PRA"), California Government Code section 6250 *et seq.*, we request the following public records which are in the possession or control of the Metropolitan Water District of Southern California (hereinafter "MWD"). "MWD," as used herein, includes MWD itself, MWD's officers, representatives, agents, employees, affiliates, accountants, consultants, attorneys, MWD's Board of Directors, its individual directors, and any and all persons acting on MWD's behalf. "MWD's Board" and "MWD's Board of Directors," as used herein, includes the Board of Directors as a whole, its directors and all relevant Standing, Ad Hoc, Special Purpose, Temporary Committees, and all other appointments.

This request applies to every such record that is known to MWD and which MWD can locate or discover by reasonably diligent efforts. More specifically, the records that may contain information called for by this request include:

- Documents, communications, letters, memoranda, notes, reports, papers, files, books, records, contracts, agreements, telegrams, electronic mail (saved or deleted), and other communications sent or received;
- Printouts, diary entries and calendars, drafts, tables, compilations, tabulations, charts, spreadsheets, graphs, recommendations, accounts, worksheets, logs, work papers, minutes, notes, summaries, speeches, presentations, and other written records or recordings of or relating to any conference, meeting, visit, interview, or telephone conversations;
- Bills, statements, invoices, and other records of any obligation or expenditure, cancelled checks, vouchers, receipts, and other records of payment;
- Financial and statistical data, analyses, surveys and schedules;
- Audiotapes and videotapes and cassettes and transcripts thereof, affidavits, transcripts of testimony, statements, interviews, and conversations;

Ms. Dawn Chin
February 18, 2016
Page 2

- Printed matter (including published articles, speeches, newspaper clippings, press releases, and photographs); and
- Microfilm and microfiche, disks, computer files, electronically stored data (including the metadata associated with any such written and/or spoken content), electronically stored information, electronic devices, film, tapes, and other sources from which information can be obtained, including materials used in electronic data processing. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. "Electronically stored information" means information that is stored in an electronic medium, including data, metadata, and all electronically stored data or information.

The term "related to," as used in each category of public record listed below, means directly or indirectly, in whole or in part, comprising, referring to, concerning, evidencing, connected with, commenting on, affecting, responding to, showing, describing, discussing, analyzing, reflecting or constituting.

The term "rate model," as used in each category of public record listed below, means all documents, data, analyses, calculations, studies or other information that constitute, comprise, support or describe the manner in which MWD assigns costs to rates, including but not limited to its "financial planning model," including the spreadsheet, formulas and programming code.

If a record responsive to a request was, but no longer is, in your possession, custody, or control, state precisely what disposition was made of it (including its present location and who possesses or controls it) and identify the person(s) who authorized or ordered such disposition.

Records produced in response to this request should be produced as they are kept in the usual course of business or should be organized and labeled to correspond with the categories in the request. All electronically stored information shall be produced in its native format with all metadata intact.

The requested records are:

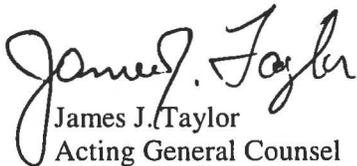
1. Any rate model or models used in formulating proposed rates for the 2017 and 2018 calendar years.
2. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting the rates and charges proposed for the 2017 and 2018 calendar years, as described in MWD Board Memo 9-2 dated 2/9/2016 (Finance and Insurance Committee).
3. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting a proposed reduction of the Readiness-to-Serve and Capacity Charges for 2017.
4. All data, analyses and studies, if any, demonstrating the proportionate benefit each of MWD's 26 customer member agencies will receive from the expenditure of revenues collected from the rates and charges proposed for the 2017 and 2018 calendar years.
5. All data, analyses and studies, if any, that support the conclusion that demand management programs provide distribution and conveyance system benefits, including identification of those parts of the distribution and conveyance system where additional capacity is needed and the customer member agencies that benefit from that capacity being made available.

Ms. Dawn Chin
February 18, 2016
Page 3

6. All data, analyses, opinions and studies, if any, that support the conclusion that suspension of the property tax restriction in Section 124.5 of the MWD Act is essential to MWD's fiscal integrity, as described in MWD Board Memo 9-2 at page 3.
7. All data, analyses and studies, if any, supporting the findings, conclusions, recommendations and water supply development targets identified in MWD's 2015 IRP Technical Update Issue Paper Addendum.
8. All data, analyses and studies, if any, supporting the findings, conclusions, recommendations and water supply development targets identified in MWD's Integrated Water Resources Plan 2015 Update.

Within ten (10) days of receipt of this PRA request, please contact me at (858) 522-6791 to discuss whether MWD has records responsive to this request, the page count and cost of copying the records, and whether the documents are also available in electronic format.

Sincerely,


James J. Taylor
Acting General Counsel

cc: MWD Public Records Administrator (by email at praadministration@mwdh2o.com)



San Diego County Water Authority

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

August 15, 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

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Public Utility District

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San Dieguito Water District

Santa Fe Irrigation District

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Vallecitos Water District

Valley Center
Municipal Water District

Vista Irrigation District

Yuima
Municipal Water District

**OTHER
REPRESENTATIVE**

County of San Diego

RE: Board Memo 5G-2 - Adopt (1) the resolution finding that continuing an ad valorem tax rate at the rate levied for fiscal year 2013/14 is essential to Metropolitan's fiscal integrity; and (2) the resolution establishing the tax rate for fiscal year 2014/15 - OPPOSE OPTION 1

Dear Chair Record and Board Members,

We have reviewed Board Memo 5G-2 and OPPOSE the action recommended to be adopted by the Board of Directors (i.e., to suspend the tax limitation of Section 124.5, thereby increasing the amount of property tax revenue to be collected by MWD). We have stated our objections previously, each time MWD has proposed to suspend the property tax rate limitations imposed by the Legislature, now embodied in Section 124.5 of the MWD Act. Copies of our May 14, June 5 and August 16, 2013 letters are attached for your ease of reference (Attachment 1). We SUPPORT adoption of OPTION 2 as described at page one of the Board Memorandum.

We OPPOSE the action recommended by staff because MWD has failed to make the requisite factual showing that additional tax revenues are "essential to the fiscal integrity of the District." Such a finding would be impossible to make given that MWD has collected almost \$800 million more than necessary to pay the actual expense items included in its adopted budgets over the past three years (even with this spending, MWD still has substantial cash reserves that are nearly at the maximum level prescribed by the Board of Directors). The fact that the MWD board later chose to spend this rate revenue on unbudgeted expenditures does not change the fact that these revenues were available to the District and therefore the collection of higher taxes was not, and is not necessary, let alone "essential" to the fiscal integrity of the district.

MWD has also failed to show why the other fixed revenue options it has available, such as the Readiness-to-Serve charge and benefit assessments, are not feasible. Indeed, it is clear from the legislative history of SB 1445 that the Legislature intended that MWD would use

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

Chair Record and Members of the Board

August 15, 2015

Page 2

these alternatives in lieu of property taxes. See April 21, 1988 Memorandum from MWD's General Counsel to the Subcommittee on Financial Policy (Attachment 2).

Board Memorandum 5G-2 is incorrect when it states that MWD's fixed costs, particularly its fixed State Water Contract obligations, are increasing "in ways unforeseen by the Legislature in 1984" (Board Memorandum 5G-2, last paragraph at page 4). To the contrary, MWD's own Report to the California Legislature in Response to AB 322 (March 1984), clearly identified that fixed costs of the State Water Project were expected to increase dramatically (excerpts from the Report - Figures 18 and 19 - are included as Attachment 3).

We also OPPOSE staff recommendation because MWD has failed to provide the public with sufficient information to have a reasonable opportunity to be heard at the public hearing, as required by Section 124.5. The Board meeting agenda does not even reference the related Committee agenda item. Even if the Board Memorandum is located by a member of the public, it asks them to cull through all of the financial information appearing on MWD's web site, rather than providing an analysis of MWD's current financial condition, demonstrating that increased tax revenues are "essential" to its fiscal integrity within the meaning of the statute passed by the Legislature and signed into law (SB 1445).

MWD needs a long-range finance plan to address how it will pay for current and anticipated costs of the State Water Project. Revenues from property taxes – as one source of revenues, fixed or otherwise – should be considered and discussed by the board in the broader context of a plan to ensure MWD's long-term fiscal sustainability. Taking action, one year at a time, to increase property tax revenues without a comprehensive long-term fiscal strategy and plan does little to assure the public and our ratepayers that MWD is a fiscally prudent and sustainable agency. We would welcome the opportunity to have that dialogue.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director

Attachments:

1. Water Authority's Letters to MWD Board (May 14, June 5 and August 16, 2013)
2. Memorandum from MWD's General Counsel to the Subcommittee on Financial Policy (April 21, 1988)
3. MWD Report to California Legislature in Response to AB 322, excerpts - Figures 18 and 19 (March 1984)




Finance and Insurance Committee Meeting

Consideration of Alternative Treatment Cost Recovery Mechanism

February 23, 2016

Objectives-Goals

- Objective – Fixed Charge Concept
 - Cost of Service
 - Align charges with service commitment/investment
 - Cost recovery – revenue stability

Treatment Fixed Charge Concept

- 38% of total Treatment revenue requirements
 - Cost of Service based: sum of Treatment Demand and Standby costs
 - Used to develop fixed or demand charge

Fixed Cost Recovery - An Industry Perspective

- Cost-of-service considerations – What is the cost of providing on-demand service and standby service?
- Declining water use driving trend to increase fixed cost recovery – fixed revenues

Align Charges with Service Commitment/Investment

- MWD is the treated water service provider for Member Agencies
- MWD service obligation – be capable of meeting average and peak week treated water demands of Member Agencies
- Investment in treatment capacity designed to meet the needs of Member Agencies
- Meet average and peak week demands AND provide on-demand and standby capacity

Treatment Fixed Charge Concept (\$ millions)

FY 2016/17 Treatment Revenue Requirement	
Direct O&M at WTPs	\$59
Indirect O&M (WSO, IT, Eng., HR)	46
A&G (Legal, Finance, Audit, Ethics)	30
Capital Costs (Debt, PAYGO)	140
	54% of Total
LESS: Revenue Offsets / Decline in Reserves	<u>-18</u>
TOTAL Net Revenue Requirement	\$257



5



6



Treatment Fixed Charge Concept (\$ millions)

FY 2016/17 Treatment Revenue Requirement		\$257 (100%)
Variable		\$24 (9%)
Fixed		\$233 (91%)
Commodity	\$135	
Demand	\$41	38% of Total
Standby	\$57	

Current Treatment Surcharge: 100% Volumetric Cost Recovery

- $\frac{\text{Revenue Requirement}}{\text{Treated Water Sales}} = \$/AF \text{ Volumetric Rate}$
 - Demand and Standby treatment capacity and reduced treated water sales revenue
 - Potential for Member Agencies to stop using the MWD treatment system and make no contribution to Demand and Standby-related costs
 - MWD retains the obligation to serve Member Agencies



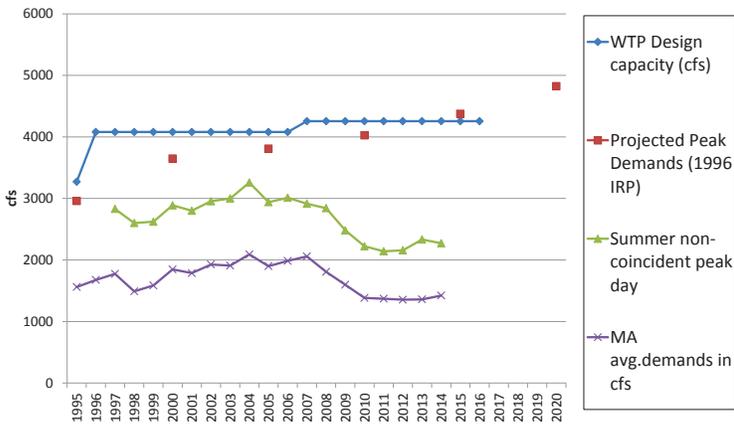
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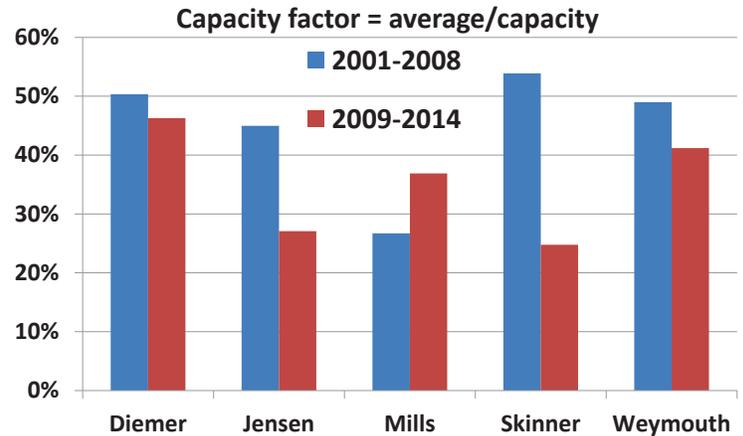
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Long-Term Treated Water Demand Has Not Materialized



WTP Utilization Has Declined



Align Charges with Service Commitment/Investment

Cost of Service principles, i.e., pay for the service provided:

Member Agencies pay only when taking treated water and in effect require all system users to bear the cost burden for demand or standby capacity

MWD has invested in treatment capacity to serve the Member Agencies, but today does not require the beneficiaries of demand or standby capacity to pay anything for the cost of this dedicated capacity; for the cost of this service

Fixed Cost Recovery Cost-of-Service Perspective

- Demand or standby service – “...rate charged should reflect the cost of having capacity reserved and available for the customer.”(1)
 - Fixed Demand Charge – reflect peaking costs and demands
 - Consumption Rate

(1) AWWA M1 Principles of Water Rates, Fees, and Charges, Sixth Edition

Fixed Revenue Recovery is Common

Agency	Wholesale Cost Recovery
Massachusetts Water Resource Authority, MA	Customers are assessed a <u>fixed annual amount based on their proportional share of the previous year's demand</u> . FY 2015 assessment = \$3,239 per million gallons. Fixed revenue recovery = 100%.
North Texas Municipal Water District, TX	Customers pay on a volumetric basis. Fixed costs are recovered under <u>take-or-pay contracts based on the higher of estimated test-year demand or the maximum volume of water used in any previous year</u> . FY 2016 fixed charge = \$1.88 per kgal. Estimated fixed revenue recovery = 85%.
Upper Trinity Regional Water District, TX	Customers pay their proportionate share of demand costs under <u>take-or-pay contracts based on a minimum daily volume equal to 18% of their highest peak day demand in the preceding five-year period</u> . FY 2015 annual demand charge = \$388,110 per MGD. Estimated fixed revenue recovery under minimum take-or-pay contracts = 78%.
San Francisco Public Utilities Commission, CA	4 wholesale customers are subject to a <u>take-or-pay requirement specifying a minimum annual volume</u> they must purchase. Estimated fixed revenue recovery from wholesale customers under minimum take-of-pay contracts = 24%.

Fixed Revenue Recovery is Common

Agency	Wholesale Cost Recovery
Great Lakes Water Authority, MI	<u>60% of the annual revenue requirement is estimated to be recovered through a fixed demand charge</u> ; 40% recovered through volumetric rates.
Jordon Valley Water Conservancy District, UT	Each wholesale customer has a <u>contracted take-or-pay minimum purchase volume</u> . Estimated fixed revenue recovery from wholesale customers under minimum take-or-pay contracts = 100%.
Dallas Water Utilities, TX	Wholesale customers pay a <u>fixed demand charge</u> and a volumetric rate. The demand charge is based on the higher of current year demand or the average of the previous five years. Demand charge is \$243,453 per mgd per year and the volumetric rate is \$0.4305 per kgal. Estimated fixed charge revenue from wholesale customers = 60%.
Portland Water Bureau, OR	Wholesale customers specify a <u>minimum annual "guaranteed purchase quantity"</u> as well as seasonal and daily peaking factor. If actual peaking factors exceed those specified, customers must pay a surcharge. Fixed revenue recovery from wholesale customers under minimum take-of-pay contracts = 100%

Current Treatment Surcharge: 100% Volumetric Cost Recovery

- $$\frac{\text{Revenue Requirement}}{\text{Treated Water Sales}} = \$/AF \text{ Volumetric Rate}$$
 - Demand and Standby treatment capacity and reduced treated water sales revenue
 - Potential for Member Agencies to stop using the MWD treatment system and make no contribution to Demand and Standby-related costs
 - MWD retains the obligation to serve Member Agencies

FY 2016/17 Treatment Revenue Requirement (Hypothetical Pro Forma – For Example Only)

Status Quo Treated Surcharge (\$/AF)	
Treatment Revenue Requirement	\$257,479,354
Forecasted Treated Water Sales (AF)	<u>822,000</u>
Treated Surcharge (\$/AF)	\$313



FY 2016/17 Status Quo Treatment Surcharge (100% Volumetric) (HYPOTHETICAL PRO FORMA - FOR EXAMPLE ONLY)					
Member Agency	Projected Test Year Treated Water Sales		x	Total Revenue Requirement =	Member Agency Revenue Requirement
	AF	%			
Anaheim	3,947	0.48%	x	\$257,479,354 =	\$1,236,208
Beverly Hills	10,212	1.24%	x	257,479,354 =	3,198,735
Burbank	6,354	0.77%	x	257,479,354 =	1,990,241
Calleguas	88,943	10.82%	x	257,479,354 =	27,860,023
Central Basin	27,937	3.40%	x	257,479,354 =	8,750,956
Compton	0	0.00%	x	257,479,354 =	87
Eastern	53,248	6.48%	x	257,479,354 =	16,679,159
Foothill	7,461	0.91%	x	257,479,354 =	2,337,078
Fullerton	7,639	0.93%	x	257,479,354 =	2,392,937
Glendale	15,693	1.91%	x	257,479,354 =	4,915,618
Inland Empire	0	0.00%	x	257,479,354 =	0
Las Virgenes	20,314	2.47%	x	257,479,354 =	6,362,979
Long Beach	42,391	5.16%	x	257,479,354 =	13,278,470
Los Angeles	61,097	7.43%	x	257,479,354 =	19,137,588
MWDOC	141,285	17.19%	x	257,479,354 =	44,255,500
Pasadena	17,238	2.10%	x	257,479,354 =	5,399,667
San Diego CWA	97,266	11.83%	x	257,479,354 =	30,467,286
San Fernando	92	0.01%	x	257,479,354 =	28,723
San Marino	673	0.08%	x	257,479,354 =	210,923
Santa Ana	4,929	0.60%	x	257,479,354 =	1,543,796
Santa Monica	3,920	0.48%	x	257,479,354 =	1,227,816
Three Valleys	36,641	4.46%	x	257,479,354 =	11,477,206
Torrance	14,919	1.81%	x	257,479,354 =	4,673,233
Upper San Gabriel	8,350	1.02%	x	257,479,354 =	2,615,453
West Basin	103,936	12.64%	x	257,479,354 =	32,556,355
Western MWD	47,515	5.78%	x	\$257,479,354 =	14,883,317
TOTAL	822,000	100.00%			\$257,479,354
				Unit Cost per AF	\$313

Proposed Treatment Rate Design: Volumetric + Fixed Revenue Recovery

- Volumetric Revenue Recovery = 62%

$$\frac{\text{Revenue Requirement}}{\text{Treated Water Sales}} = \$/\text{AF Volumetric Rate}$$

- Fixed Revenue Recovery = 38%

$$\text{Revenue Requirement} * \text{Proportional Demand} = \$ \text{Annual Fixed Charge}$$

Proposed Treatment Rate Design: Volumetric + Fixed Revenue Recovery

2-Part Test for Minimum Demand

Greater of:

- TYRA of Treated Water Sales *OR*
- Average of 1998 – 2007 Treated Water Sales

2007 was the last significant treatment plant capacity addition

FY 2016/17 Treatment Revenue Requirement

Status Quo Treatment Surcharge (\$/AF)	
Total Treatment Revenue Requirement	\$257,479,354
Forecast Treated Water Sales (AF)	<u>822,000</u>
Treated Surcharge (\$/AF)	\$313
Treatment Fixed Annual Charge (\$/AF)	
Fixed Demand	\$40,822,844
Fixed Standby	56,724,561
Total Fixed Charge Revenue Requirement	\$97,547,405
% of Total Revenue Requirement	37.9%
Fixed Charge Units of Service (AF)	<u>1,341,701</u>
Annual Fixed Charge (\$/AF)	\$73
Treatment Volumetric Rate (\$/AF)	
Net Remaining Revenue Requirement	\$159,931,949
% of Total Revenue Requirement	62.1%
Forecast Treated Water Sales (AF)	<u>822,000</u>
Volumetric Rate (\$/AF)	\$195

FY 2016/2017 Member Agency Fixed Charge Revenue Requirement (38% Revenue Recovery) (HYPOTHETICAL PRO FORMA - FOR EXAMPLE ONLY)						
Member Agency	AVG. 1998 - 2007 Treated Water Sales (AF)	TYRA 2006 - 2015 Treated Water Sales (AF)	Units Used in Fixed Charge Calculation	% of Total	Total Fixed Charge Revenue Requirement	Member Agency Annual Fixed Revenue Requirement
Anaheim	13,134	12,126	13,134	0.98%	X \$97,547,405 =	\$954,911
Beverly Hills	13,008	11,386	13,008	0.97%	x 97,547,405 =	945,725
Burbank	12,816	10,089	12,816	0.96%	x 97,547,405 =	931,758
Calleguas	112,585	114,712	114,712	8.55%	x 97,547,405 =	8,340,091
Central Basin	67,191	46,198	67,191	5.01%	x 97,547,405 =	4,885,071
Compton	3,514	1,924	3,514	0.26%	x 97,547,405 =	255,451
Eastern	73,423	73,323	73,423	5.47%	x 97,547,405 =	5,338,173
Foothill	11,623	9,933	11,623	0.87%	x 97,547,405 =	845,074
Fullerton	11,513	11,072	11,513	0.86%	x 97,547,405 =	837,031
Glendale	25,094	19,585	25,094	1.87%	x 97,547,405 =	1,824,421
Inland Empire	0	0	0	0.00%	x 97,547,405 =	0
Las Virgenes	22,106	22,810	22,810	1.70%	x 97,547,405 =	1,658,376
Long Beach	44,267	36,397	44,267	3.30%	x 97,547,405 =	3,218,416
Los Angeles	79,762	87,950	87,950	6.56%	x 97,547,405 =	6,394,377
MWDOC	244,203	204,975	244,203	18.20%	x 97,547,405 =	17,754,580
Pasadena	21,779	21,181	21,779	1.62%	x 97,547,405 =	1,583,398
San Diego CWA	251,381	156,458	251,381	18.74%	x 97,547,405 =	18,276,450
San Fernando	387	206	387	0.03%	x 97,547,405 =	28,135
San Marino	1,041	931	1,041	0.08%	x 97,547,405 =	75,664
Santa Ana	15,788	13,331	15,788	1.18%	x 97,547,405 =	1,147,853
Santa Monica	12,627	9,252	12,627	0.94%	x 97,547,405 =	918,014
Three Valleys	49,467	41,833	49,467	3.69%	x 97,547,405 =	3,596,498
Torrance	21,052	18,130	21,052	1.57%	x 97,547,405 =	1,530,565
Upper San Gabriel	13,963	7,346	13,963	1.04%	x 97,547,405 =	1,015,173
West Basin	145,421	125,668	145,421	10.84%	x 97,547,405 =	10,572,734
Western MWD	61,511	63,538	63,538	4.74%	x \$97,547,405 =	4,619,464
TOTAL	1,328,654	1,120,354	1,341,701	100.00%		\$97,547,405
Annual Fixed Charge (\$/AF)						\$73

FY 2016/2017 Member Agency Volumetric Revenue Requirement (62% Volumetric) (HYPOTHETICAL PRO FORMA - FOR EXAMPLE ONLY)						
Member Agency	Projected Test-Year Treated Water Sales		Total Revenue Requirement	Member Agency Revenue Requirement		
	AF	%				
Anaheim	3,947	0.48%	X \$159,931,949 =	\$767,864		
Beverly Hills	10,212	1.24%	x 159,931,949 =	1,986,877		
Burbank	6,354	0.77%	x 159,931,949 =	1,236,228		
Calleguas	88,943	10.82%	x 159,931,949 =	17,305,107		
Central Basin	27,937	3.40%	x 159,931,949 =	5,435,611		
Compton	0	0.00%	x 159,931,949 =	54		
Eastern	53,248	6.48%	x 159,931,949 =	10,360,172		
Foothill	7,461	0.91%	x 159,931,949 =	1,451,664		
Fullerton	7,639	0.93%	x 159,931,949 =	1,486,361		
Glendale	15,693	1.91%	x 159,931,949 =	3,053,310		
Inland Empire	0	0.00%	x 159,931,949 =	0		
Las Virgenes	20,314	2.47%	x 159,931,949 =	3,952,331		
Long Beach	42,391	5.16%	x 159,931,949 =	8,247,852		
Los Angeles	61,097	7.43%	x 159,931,949 =	11,887,212		
MWDOC	141,285	17.19%	x 159,931,949 =	27,489,072		
Pasadena	17,238	2.10%	x 159,931,949 =	3,353,975		
San Diego CWA	97,266	11.83%	x 159,931,949 =	18,924,595		
San Fernando	92	0.01%	x 159,931,949 =	17,841		
San Marino	673	0.08%	x 159,931,949 =	131,014		
Santa Ana	4,929	0.60%	x 159,931,949 =	958,921		
Santa Monica	3,920	0.48%	x 159,931,949 =	762,651		
Three Valleys	36,641	4.46%	x 159,931,949 =	7,129,006		
Torrance	14,919	1.81%	x 159,931,949 =	2,902,754		
Upper San Gabriel	8,350	1.02%	x 159,931,949 =	1,624,575		
West Basin	103,936	12.64%	x 159,931,949 =	20,222,209		
Western MWD	47,515	5.78%	x \$159,931,949 =	9,244,694		
TOTAL	822,000	100.00%		\$159,931,949		
Volumetric \$/AF				\$199		

Summary of FY 2016/2017 Member Agency Treatment Revenue Requirement Impacts (HYPOTHETICAL PRO FORMA - FOR EXAMPLE ONLY)						
Member Agency	Status Quo Treated Water Surcharge	Proposed Rate Design				
		Fixed Charge Revenue Requirement	Volumetric Revenue Requirement	Total Revenue Requirement	\$ Difference From Status Quo	% Difference From Status Quo
Anaheim	\$1,236,208	\$954,911	\$767,864	\$1,722,775	\$486,567	39%
Beverly Hills	3,198,735	945,725	1,986,877	2,932,602	(266,132)	-8%
Burbank	1,990,241	931,758	1,236,228	2,167,985	177,745	9%
Calleguas	27,860,023	8,340,091	17,305,107	25,645,198	(2,214,825)	-8%
Central Basin	8,750,956	4,885,071	5,435,611	10,320,681	1,569,725	18%
Compton	87	255,451	54	255,505	255,418	> 100%
Eastern	16,679,159	5,338,173	10,360,172	15,698,345	(980,813)	-6%
Foothill	2,337,077	845,074	1,451,664	2,296,738	(40,340)	-2%
Fullerton	2,392,937	837,031	1,486,361	2,323,392	(69,545)	-3%
Glendale	4,915,618	1,824,421	3,053,310	4,877,732	(37,886)	-1%
Inland Empire	0	0	0	0	0	0%
Las Virgenes	6,362,979	1,658,376	3,952,331	5,610,707	(752,272)	-12%
Long Beach	13,278,470	3,218,416	8,247,852	11,466,268	(1,812,202)	-14%
Los Angeles	19,137,588	6,394,377	11,887,212	18,281,589	(855,999)	-4%
MWDOC	44,255,500	17,754,580	27,489,072	45,243,652	988,152	2%
Pasadena	5,399,667	1,583,398	3,353,975	4,937,373	(462,295)	-9%
San Diego CWA	30,467,286	18,276,450	18,924,595	37,201,045	6,733,759	22%
San Fernando	28,723	28,135	17,841	45,976	17,253	60%
San Marino	210,923	75,664	131,014	206,678	(4,245)	-2%
Santa Ana	1,543,796	1,147,853	958,921	2,106,774	562,978	36%
Santa Monica	1,227,816	918,014	762,651	1,680,665	452,849	37%
Three Valleys	11,477,206	3,596,498	7,129,006	10,725,505	(751,701)	-7%
Torrance	4,673,233	1,530,565	2,902,754	4,433,319	(239,914)	-5%
Upper San Gabriel	2,615,453	1,015,173	1,624,575	2,639,748	24,295	1%
West Basin	32,556,355	10,572,734	20,222,209	30,794,944	(1,761,412)	-5%
Western MWD	14,883,317	4,619,464	9,244,694	13,864,158	(1,019,159)	-7%
TOTAL	\$257,479,354	\$97,547,405	\$159,931,949	\$257,479,354	\$0	0%

Proposed Treatment Rate Design: Volumetric + Fixed Revenue Recovery

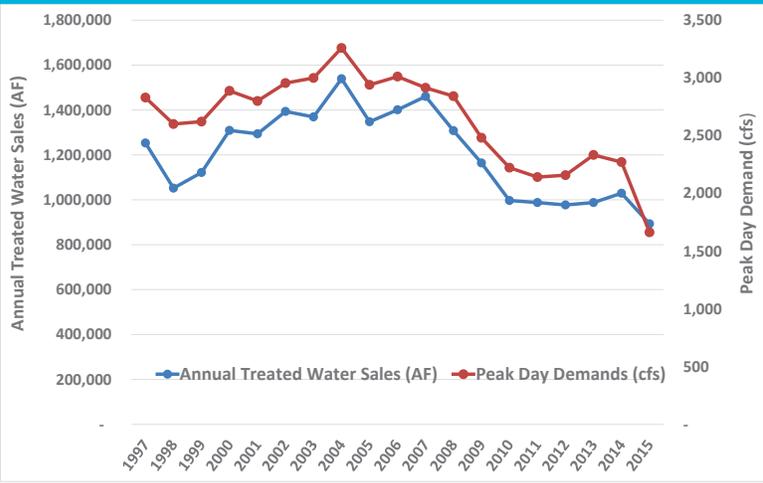
2-Part Test for Minimum Demand

Questions – Concerns from 1-15-16 Manager’s Meeting:

1. How are peak demands captured?
2. Minimum forever?


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Correlation Between Annual Treated Sales and Treated Peak Day Demands = .95



Revenue Requirement Impacts of Peaking Factors in the Minimum Charge

Member Agency	Minimum: > of 1998-2007	Minimum: > of 1998 - 2007 OR	\$ Difference	% Difference
	OR 2006 - 2015 TYRA	2006 - 2015 TYRA AND 2013 - 2015 PEAKING		
Anaheim	\$1,722,775	\$1,880,003	\$157,228	9%
Beverly Hills	2,932,602	3,056,005	123,402	4%
Burbank	2,167,985	2,158,712	(9,274)	0%
Calleguas	25,645,198	26,269,066	623,868	2%
Central Basin	10,320,681	9,515,216	(805,465)	-8%
Compton	255,505	197,671	(57,833)	-23%
Eastern	15,698,345	16,869,107	1,170,761	7%
Foothill	2,296,738	2,278,411	(18,326)	-1%
Fullerton	2,323,392	2,346,647	23,255	1%
Glendale	4,877,732	4,869,738	(7,994)	0%
Inland Empire	0	0	0	---
Las Virgenes	5,610,707	5,799,214	188,506	3%
Long Beach	11,466,268	11,260,314	(205,954)	-2%
Los Angeles	18,281,589	19,169,363	887,774	5%
MWDOC	45,243,652	44,086,858	(1,156,794)	-3%
Pasadena	4,937,373	5,159,315	221,942	4%
San Diego CWA	37,201,045	35,379,254	(1,821,791)	-5%
San Fernando	45,976	116,636	70,660	154%
San Marino	206,678	297,300	90,623	44%
Santa Ana	2,106,774	1,956,865	(149,909)	-7%
Santa Monica	1,680,665	1,678,702	(1,963)	0%
Three Valleys	10,725,505	11,372,852	647,347	6%
Torrance	4,433,319	4,367,355	(65,964)	-1%
Upper San Gabriel	2,639,748	2,569,783	(69,965)	-3%
West Basin	30,794,944	30,246,079	(548,865)	-2%
Western MWD	13,864,158	14,578,887	714,729	5%
TOTAL	\$257,479,354	\$257,479,354	\$0	0%

FY 2016/2017 Member Agency Revenue Requirement Impacts (HYPOTHETICAL PRO FORMA - FOR EXAMPLE ONLY)

Member Agency	Status Quo Treated Water Surcharge	Option #1		Option #2		Dollar Difference from Status Quo	
		Minimum: > of 1998-2007 OR 2006-2015 TYRA	Minimum > of 1998-2007 OR 2006-2015 TYRA AND 2013-2015 PEAKING	Option #1	Option #2	Option #1	Option #2
Anaheim	\$1,236,208	\$1,722,775	\$1,880,003	\$486,567	\$643,795		
Beverly Hills	3,198,735	2,932,602	3,056,005	(266,132)	(142,730)		
Burbank	1,990,241	2,167,985	2,158,712	177,745	168,471		
Calleguas	27,860,023	25,645,198	26,269,066	(2,214,825)	(1,590,957)		
Central Basin	8,750,956	10,320,681	9,515,216	1,569,725	764,260		
Compton	87	255,505	197,671	255,418	197,585		
Eastern	16,679,159	15,698,345	16,869,107	(980,813)	189,948		
Foothill	2,337,078	2,296,738	2,278,411	(40,340)	(58,666)		
Fullerton	2,392,937	2,323,392	2,346,647	(69,545)	(46,290)		
Glendale	4,915,618	4,877,732	4,869,738	(37,886)	(45,880)		
Inland Empire	0	0	0	0	0		
Las Virgenes	6,362,979	5,610,707	5,799,214	(752,272)	(563,765)		
Long Beach	13,278,470	11,466,268	11,260,314	(1,812,202)	(2,018,156)		
Los Angeles	19,137,588	18,281,589	19,169,363	(855,999)	31,776		
MWDOC	44,255,500	45,243,652	44,086,858	988,152	(168,642)		
Pasadena	5,399,667	4,937,373	5,159,315	(462,295)	(240,353)		
San Diego CWA	30,467,286	37,201,045	35,379,254	6,733,759	4,911,968		
San Fernando	28,723	45,976	116,636	17,253	87,913		
San Marino	210,923	206,678	297,300	(4,245)	86,378		
Santa Ana	1,543,796	2,106,774	1,956,865	562,978	413,069		
Santa Monica	1,227,816	1,680,665	1,678,702	452,849	450,887		
Three Valleys	11,477,206	10,725,505	11,372,852	(751,701)	(104,354)		
Torrance	4,673,233	4,433,319	4,367,355	(239,914)	(305,878)		
Upper San Gabriel	2,615,453	2,639,748	2,569,783	24,295	(45,670)		
West Basin	32,556,355	30,794,944	30,246,079	(1,761,412)	(2,310,277)		
Western MWD	14,883,317	13,864,158	14,578,887	(1,019,159)	(304,430)		
Total	\$257,479,354	\$257,479,354	\$257,479,354	\$0	\$0		

Minimum Forever?

- Under Status Quo and All Approaches, service levels should be re-defined in conjunction with treatment plant capacity decisions



Recommended Approach

- Volume Rate and Fixed Charge Based on a Minimum
 - Appropriate assignment of demand and standby capacity costs
- Peaking Could be Considered as Part of the Fixed Charge Determination



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Status Quo

- Maintain Current 100% Volumetric Treatment Cost Recovery



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Summary

- Recommended Fixed-Minimum and Volume Method
 - Acknowledge treatment cost of service – Demand and Standby-related costs
 - Enhance treatment and total system fixed revenue recovery



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METROPOLITAN WATER DISTRICT
BLUE RIBBON TASK FORCE

FINAL REPORT
JANUARY
1994

METROPOLITAN WATER DISTRICT

BLUE RIBBON TASK FORCE

FINAL REPORT

Foreword: The Blue Ribbon Task Force

On April 7, 1993, the Metropolitan Water District Board of Directors authorized the formation of a Blue Ribbon Task Force, comprised of private sector volunteers, to conduct a six-month review of the District's business practices and operational policies. The creation of the Task Force was motivated by concerns that Metropolitan did not enjoy sufficient public support, the perceived low general understanding of the District's role in providing wholesale water supplies to Southern California, and a desire to enlist the private sector to obtain fresh perspectives about the MWD's business practices and identify new solutions to problems that might exist.

Members of the Board, member agencies, and other interested individuals subsequently nominated 124 community leaders to serve on the Task Force. On June 14, 1993, the Executive Committee of the Board selected 33 people from the overall list of nominees to be invited to form the Task Force. Twenty-seven individuals eventually accepted invitations to undertake the effort, and, at the request of the Board, Nelson Rising, Senior Partner of Maguire Thomas Partners, agreed to serve as the Chair.

The Task Force first met on July 28, 1993. After considerable discussion, technical briefings, and additional meetings, four working subcommittees were created: (1) Integrated Resources Planning (IRP) and Rate Structures, chaired by Raymond L. Orbach, Chancellor, University of California, Riverside; (2) External Relations, chaired by Beth Rogers, Managing Partner, Pacific Earth Resources; (3) Business Practices, chaired by Jacques Yeager, Sr., President, E.L. Yeager Construction Co., Inc.; and (4) Human Resources and Diversity, co-chaired by Bondie Gambrell, President, Forty Acres Real Estate Company and Patty DeDominic, President, PDQ Personnel Services, Inc.

After the organizational structure of the Task Force was established, the Board approved a budget for the effort, an executive director was selected, and each Subcommittee secured outside

consultant assistance as necessary to complete its review. The Task Force met several times in executive, plenary and Subcommittee sessions during August-December, 1993 to develop a set of findings and a series of recommendations for the Board's consideration in each area of concern.

This Report details the results of the Task Force's examination of several substantive areas within the MWD, all of which were undergoing rapid change. Functioning as a "citizen's committee" of private-sector individuals concerned about water issues in Southern California, the Task Force evaluated Metropolitan's processes for reaching fundamental resource and policy decisions, and its general business and personnel practices.

From the outset, the Task Force Report recognized that it could not, and did not want to serve as an outside auditor or management consultant for Metropolitan. Rather than focus on complex statistical issues or intricate policy debates, the findings and recommendations presented in this Report are intended to signal general areas that the volunteer members of the Task Force, after several months of study, believe merit additional Board and MWD staff attention. It is hoped that concerned readers will look beyond potential disagreements over comparatively minor matters and treat the broad themes developed in the Report as an invaluable barometer of public concern in an era when public understanding and support is increasingly critical to Metropolitan's mission.

The Metropolitan Board of Directors demonstrated considerable initiative and confidence in requesting this first-ever comprehensive, outside assessment of the District's activities. The goal of the Report is to assist Metropolitan continue its remarkable level of service to the people of Southern California in providing reliable, affordable wholesale water supplies during the currently challenging times in the water industry.

The Metropolitan Water District Blue Ribbon Task Force

Executive Committee Members and Subcommittee Chairs

Nelson Rising, Senior Partner, Maguire Thomas Partners
Task Force Chair

Raymond L. Orbach, Chancellor, U.C. Riverside
Chair, IRP/Rate Structures Subcommittee

Beth Rogers, Managing Partner, Pacific Earth Resources
Chair, External Relations Subcommittee

Jacques S. Yeager, President, E.L. Yeager Construction Co., Inc.
Chair, Business Practices Subcommittee

Bondie Gambrell, President, Forty Acres Real Estate Co.
Co-chair, Human Resources and Diversity Subcommittee

Patty DeDominic, President, PDQ Personnel Services, Inc.
Co-chair, Human Resources and Diversity Subcommittee

IRP/Rate Structure Subcommittee Members

Donald F. McIntyre, President, Central City Association
of Los Angeles

Donald W. Reeder, Manager, Pro-Ag, Inc.

Ralph R. Pesqueira, El Indio Restaurants

Paul C. Hudson, President, Broadway Federal Savings

Warren Henry, President, Henry Avocado Packing Co.

Linda LeGerrette, Priceless Events

Gary Hunt, Executive Vice President, The Irvine Company

External Relations Subcommittee Members

Billie Curry Greer, President, Greer/Dailey, Inc.

Jerry Cremins, President, State Building and
Construction Trades Council

Stewart Kwoh, Executive Director
Asia-Pacific American Legal Center of Southern California

Business Practices Subcommittee Members

Roberta J. Spoon, Brodshatzer, Wallace, Spoon & Yip

Larry M. Seigel, Partner, Ernst & Young

Dennis C. Poulsen, President and CEO, Rose Hills Co.

J. Nick Baker, President, One Central Bank

John Cardis, Managing Partner, Deloitte & Touche

Roy Cardona

Gilbert T. Ray, O'Melveny & Meyers

Human Resources and Diversity Subcommittee Members

Richard M. Brown, President, California Angels

Fred Y. M. Chen, President, MAA Engineering Consultants, Inc.

Phillip J. Pace, President, PACE Development Co.

Blue Ribbon Task Force Executive Director

David Friedman, Tuttle & Taylor

Subcommittee Consultants

Lloyd Dixon, RAND, IRP and Rate Structures
Michael Hanemann, U.C. Berkeley, IRP and Rate Structures
Michael Beck, U.C. Riverside, IRP and Rate Structures
West Directions, External Relations
Arroyo Seco Associates, Inc., Business Practices
Arthur Anderson & Co., Business Practices
Ron McCoy, Business Practices
Karo Enterprises, Human Resources and Diversity
Golden State Management Services,
Human Resources and
Diversity

Introduction

Metropolitan's Strategic Challenges and The Task Force Report

From its inception in 1928, the Metropolitan Water District (Metropolitan or the MWD) has established an enviable record of reliability, unsurpassed engineering quality, and public service while providing Southern Californians with the wholesale water supplies on which their livelihoods depend. As the largest water district of its kind in the world, Metropolitan's many achievements include the construction of the Colorado River Aqueduct and a key role in the continuous expansion and improvement of the California State Water Project. The MWD's importance to our region's social and economic vitality is further exemplified by its status as the anchor financial rating institution in the western United States.

Unlike more stable, earlier periods, Metropolitan's mission and operational practices are now subject to extensive reappraisal. Chief among its new challenges is intensified competition for California's scarce water resources, as burgeoning demands for agricultural, industrial, urban and environmental water—and the prolonged recent drought—generate ever-more painful allocation decisions, and as the state's Colorado River rights are reduced. These supply concerns are exacerbated by the still-unresolved problem of transporting State Water Project flows through the Sacramento and San Joaquin Delta, and increasingly stringent federal and state water quality standards. At the same time, Metropolitan faces intensified demands for social diversity, environmental sensitivity, and regional growth coordination that profoundly affect how it defines and carries out its functions.

All of these challenges make the MWD's task of providing reliable wholesale water supplies at a price its customers can afford increasingly difficult. In response, Metropolitan has initiated several measures, many of which are unprecedented since its formation in 1928:

- *Proposed major capital improvement program.* Metropolitan is poised to begin a major capital improvement program, valued at close to \$6 billion. The centerpieces of the program—and nearly half its cost—are the Domenigoni Reservoir and Inland Feeder projects, designed to increase local water storage flexibility, insure against inter-mountain supply disruptions, link the East Branch of the State Water Project to the Colorado River Aqueduct to enhance water quality and delivery capabilities, and facilitate better system maintenance.
- *New key management and Board personnel.* Metropolitan has recently hired a new General Manager and General Counsel, and is continuing its search for a Personnel Director. Half of the MWD's Division Managers are new to their positions within the last year. In December, a new Chair and officers were elected to head the MWD Board of Directors, which has itself experienced more than a 70% membership turnover in the last three years.
- *Novel water transfer legislation and transactions.* The MWD was instrumental in securing legislation permitting water transfers from the federal Central Valley Project, and it continues to press for similar measures regarding State Water Project supplies. Metropolitan is completing the first-ever contract to purchase water from a Central Valley Project contractor under the authority of the Central Valley Project Improvement Act.
- *Outreach to member agencies.* Under the direction of the new General Manager, Metropolitan has taken steps to involve member agencies more fully in its decision making, including a novel "American Assembly" which, for the first time ever, brought MWD, Board, and member agency staff together to discuss major strategic issues.
- *Commitment to diversity.* In recent hearings and other public communications, Metropolitan has made

particularly strong commitments to diversify its staff and ambitious affirmative action and minority/women owned business enterprise contracting objectives.

- *Outside reviews.* Over the past several months, the Metropolitan Board and management staff have initiated two unprecedented reviews of the MWD's operations by public, independent entities, the Operations and Engineering Peer Review, and the Blue Ribbon Task Force.
- *Completion of the first-ever MWD senior management retreat to stimulate staff and interagency coordination.*
- *Completion by the Board and Senior Management in 1993 of the first-ever Metropolitan Strategic Plan.*
- *Initiation of a novel integrated resources planning effort, including the involvement of member agency managers, to define Metropolitan's future operational objectives.*
- *Development and partial Board approval of innovative rate structure revisions designed to rationalize Metropolitan's revenue stream with respect to its fixed and variable costs.*

In general, the Task Force was impressed with the MWD's professionalism and dedication to the people of Southern California and the State. The fact that the Board of Directors initiated this review of the MWD's activities reflects considerable foresight and self-confidence. In most areas of concern, Metropolitan has already begun positive responses or is planning corrective measures. The Task Force applauds the MWD's achievements and its efforts to identify and solve its problem areas.

The purposes of this Report are to:

(1) underscore the necessity for Metropolitan to maintain—and, in some cases, substantially enhance—its ongoing responses to new and difficult challenges;

(2) discuss current and potential problems with certain Metropolitan strategies and provide positive corrective suggestions; and

(3) identify additional areas of concern that Metropolitan has yet to explicitly consider, and provide recommendations for addressing them.

This Report is comprised of five parts: Part I, Integrated Resources Planning and Rate Structures; Part II, External Relations; Part III, Business Practices; Part IV, Human Resources and Diversity; and Part V, Issues Not Addressed in this Report.

The first two parts examine many of the long-range planning and governance issues confronting Metropolitan. Their major theme is that in the current and reasonably foreseeable future, the MWD cannot function simply as a utility providing engineering solutions to Southern California's water supply, distribution, and quality challenges. Metropolitan must instead continue its ongoing evolution into a regional, if not state-wide governance organization to generate creative solutions to existing and future water issues, and then help build the alliances and consensus necessary to realize outcomes that best serve the public interest.

Parts III and IV assess Metropolitan's progress in improving its most important management, personnel and operational functions. The Task Force found that Metropolitan has made substantial improvements, but that much work remains to be done in several specific areas.

Part V briefly considers several matters that the Task Force considers of importance for Metropolitan's future success, but which were not explicitly addressed in this Report.

Part I: Integrated Resources Planning and Rate Structure Proposals

After several years of limited system improvements and comparatively stable water rates, Metropolitan is once again planning several major construction projects, activities which will almost certainly require substantial rate increases or other revenue enhancements. The MWD has instituted two innovative procedures to identify its capital investment goals and the best means for achieving them: Integrated Resources Planning (IRP) and rate structure proposals. The Task Force believes that supporting and expanding the scope of Metropolitan's current IRP and rate structure initiatives are critically important if the organization is to meet its objectives and continue to serve the public interest.

Four aspects of Metropolitan's IRP and rate structure activities were examined—(1) the integration of both efforts with MWD's overall decision making process, (2) IRP planning techniques, (3) rate structure proposal issues, and (4) regional and statewide water policy governance concerns.

1. The IRP/Rate Structure Process and MWD Decision Making.

A. Findings

Current demand and supply volatility makes defining MWD's optimal water resource mix much more complex than in the past. Each combination of potential resources generates a different set of supply, water quality, project cost, and member agency burden-sharing risks. The MWD's IRP process began with the Board establishing specific reliability and supply objectives. Then, with such goals in mind, the IRP sought to find the most appropriate mix of water sources—including imported water, local groundwater supplies, conservation and best management practice techniques, reclamation, desalination, and water transfers from the State Water

and Central Valley Projects—and system improvements that could realize its objectives.

MWD's rate structure proposals address concerns that as MWD embarks on the capital improvement program or other ambitious construction efforts, it will incur vastly increased fixed costs arising from the expense of bond financing to pay for capital expenditures. These debt service charges would be added to the MWD's already substantial fixed obligations arising from its State Water Project commitments—Metropolitan's contract with the State requires it to pay a greater amount per acre foot than originally anticipated without enforceable delivery guarantees—and recurring maintenance and administration charges. Metropolitan's additional cost burdens were projected in 1991 to increase the wholesale price of water from approximately \$200 to close to \$700 per acre foot, a level that could seriously undermine demand for Metropolitan water. In addition, the drought increased member agency awareness of other, non-MWD sources of supply, such as reclamation, conservation and water markets.

Since raising *ad valorem* property taxes is not currently being considered, MWD would increasingly be forced to cover its fixed costs with variable revenue sources, largely through increased water sales income. At the same time, increased water rates would likely decrease member agency demand for MWD water, which in turn would reduce income—and possibly the need for some capital programs. Metropolitan's proposed new rate structures attempt to increase member agency fixed payments to cover fixed MWD expenses independent of the volume of water the agencies purchase, but, as discussed in Part I.3 below, do not yet sufficiently resolve this crucial issue and fail to recognize the dampening effect higher prices will likely have on water demand.

The IRP and rate structure proposals were initially conceived as comparatively simply engineering and financial exercises. IRP would set the system-wide plumbing, storage, local project development and other "hardware" parameters required to meet certain reliability or quality goals. A new rate structure would establish the best way to pay for the resulting improvements.

In practice, both have become much more sophisticated, politically sensitive efforts and are intimately intertwined. Most participants now recognize that there is a range of possible solutions that ultimately depend on the degree to which interagency consensus-building, and influence at the state and federal level, can be achieved. The implications of this evolution are discussed in Part I.4, and Part II, below.

At present, the relationship between the IRP and actual MWD engineering and project decision making is ambiguous, partially due to the problem of coordinating ongoing, Board-approved construction projects with the IRP process. Prior to IRP completion, in accordance with approved plans, the MWD has spent at least \$200 million in improvements at the Domenigoni Reservoir project site, begun blasting apart a mountain for the required dam landfill, and released press statements heralding the imminent construction of an 800,000 acre foot storage facility—the largest possible configuration. Since the scale, timing and desirability of such projects as the Domenigoni Reservoir are now subject to IRP review—which may conclude that certain currently planned initiatives are too costly or that better alternatives for meeting operational objectives exist—there is a latent tension between the IRP and existing capital improvement priorities that the MWD has previously developed.

The IRP and rate structure efforts are also not yet fully integrated, although the Strategic Plan commits the MWD to linking both efforts. The same MWD staff and member agency representatives are involved in both the IRP and rate structure initiatives, but each is proceeding somewhat independently from the other. The Board recently approved a new rate structure for 1995-96, for example, that will generate fixed revenues to amortize capital improvement program debt expenses before the extent and scope of these projects—and their cost—has been determined by the IRP process.

As a result, IRP participants are in effect being asked to define future operational and resource objectives without at the same time directly considering the costs or revenue stream implications of the choices they will make. Discussions over possible rate structure revisions amount to setting prices for water, construction and other

MWD services before the quality and volume of such "products" has been defined through the IRP. Further, the impact of new rate structures on MWD investment and member agency water purchase and investment decisions has been overlooked.

In the past, major policy decisions have been undertaken by the MWD with largely informal member agency coordination. Although both the IRP and rate structure efforts directly involve member agencies in setting functional objectives, performance standards and the development of background materials such as the Strategic Resources Assessment—and to some extent, other outside participants—the precise role of non-MWD participation in IRP and rate structure discussions often seems limited to commenting on Metropolitan-generated objectives rather than considering *de novo* functional objectives and performance standards.

B. Recommendations.

- *The IRP process should actually govern MWD engineering, investment and operational decisions. To effectively establish MWD's future priorities, the IRP should unambiguously be the central planning process for the organization, not an "exercise" subject to revision, or rejection, as Metropolitan staff sees fit. Major investment projects, including the Inland Feeder and Domenigoni Reservoir, should not be undertaken independently from the IRP. Unless the IRP participants clearly understand that their choices will have real consequences for MWD and the region's water policy, they will have no incentive to carefully appraise their options, revise the IRP process as necessary, and develop a strategy that can reliably guide Metropolitan's future decision making.*
- *The IRP and rate structure proposals should be formally, and functionally, integrated. Metropolitan must explicitly link IRP system choices to the cost and risk commitments member agencies must make when considering various rate structure proposals. This requirement goes beyond simply designating the same personnel for both activities,*

but instead involves a closely coordinated effort in which member agencies' willingness to pay sets operational and system limitations for the IRP, and resource choices are continuously factored into revenue enhancement decisions.

- *Reliability, quality and other water supply specifications cannot be made independently from the willingness of MWD customers to pay for such services.* Member agencies may want, for example, the insurance provided by major investments to increase MWD standby capacity, but if forced to commit funds for such capabilities, they may actually prefer far lower levels of protection than a hypothetically "costless" water supply guarantee.
- *Member agency and other external participants in the IRP and rate structure process should have an unequivocal role in shaping the outcome.* Building a consensus on the future system parameters MWD's customers desire, and the amount they are willing to pay to achieve these goals, is Metropolitan's greatest challenge. Member agency and other appropriate consumer participation is therefore critical in the IRP and rate structure process, and the decisions these external actors help to make should unambiguously control the results.
- *Baseline reliability objectives should be revisited as alternative resource and cost scenarios are developed and not treated as fixed elements of MWD's planning process.* Failure to recognize the effects that dramatically increased water rates will likely have on the demand for water may invalidate the justification for some capital program expenditures. Reliability, cost and demand are all interdependent and should be treated that way in the IRP and rate structure reform processes.

2. The Integrated Resources Planning (IRP) process.

A. Findings.

The IRP process is a pioneering step in regional and California water policy planning. There are several issues the MWD should consider as the effort evolves.

The extent to which Metropolitan can obtain comprehensive agreements from appropriate water agencies about such matters as groundwater management will likely affect the scope of construction projects and other investments it must make to meet its operational goals. At present, agency coordination is not adequately modelled in the IRP. The possibility, for example, that major Southern California reservoir projects might be scaled back if the agencies that control surplus groundwater storage reserves coordinate their activities is not explicitly incorporated into any IRP planning scenario.

The IRP also generally assumes a static political environment affecting possible MWD water supplies and other operational concerns. Politically-sensitive decisions, such as access to the Colorado, new environmental or other water set-asides, quality standards, or modifying MWD's (currently heavy) State Water Project financial burdens can have a substantial effect on Metropolitan's potential resource mix and water supply reliability. Mounting major political efforts to influence outcomes relating to such crucial issues is not, however, considered an integral strategic option in the IRP.

Several water supply sources, such as Central Valley Project and other water transfers, are treated as residual factors in the IRP, and not part of the primary resource mix. The IRP estimates total "conventional" supplies from anticipated demand. Any shortfall is assumed to be filled by water transfers or other non-traditional sources. This treatment may understate the potential size and scope of new resources and focus attention on a more limited range of options for future water supply management.

The IRP estimates of total water demand are based on a static model that is used to project per capita water use and then combined with population growth and land use forecasts provided by outside agencies. The model is based on past behavior and may not describe the true range of future options. Further, the IRP analyses that are derived from the water demand models do not adequately consider the potential effects of cost increases, lifestyle changes, enhanced conservation technologies, and other factors on regional water use. The MWD itself has an influence on future Southern California population expansion and development patterns (such as lot sizes and landscaping practices) because of its pricing and supply capabilities. These fundamental relationships are not addressed in the IRP.

Several operational and other requirements are not explicitly factored into the costs associated with various MWD resource mixes. Although tightening federal and state standards have required substantial filtration and R&D expenditures by MWD, and affect the way that water can be used for groundwater replenishment and residential use, water quality expenses are not presently considered in achieving the IRP resource mix.

The IRP also assumes that "Best Management Practices" and local resource investments such as reclamation, will be limited in scope and not require substantial expenditures to achieve. Implementing Best Management Practices standards and building local water recycling or other capabilities requires MWD and agency expenditures that should explicitly be considered as part of the overall costs needed to realize a desired water supply.

The IRP was originally designed primarily as a one-time effort to set construction and service priorities for several years in the future. Current plans envision follow-on sessions but these have yet to be clearly defined in scope and time. The emphasis on the current planning process and lack of a fixed follow-on effort may encourage investments that might be better deferred, modified, or even scrapped as future demand, supply or other circumstances deviate from the plan's initial assumptions. A more flexible approach would be to treat current resource mix and reliability goals as approximations of future requirements, and distinguish priority

from less imperative projects useful more for insurance than to meet current problems. Planned outlays and operational goals would then be reassessed at regular intervals to re-establish priority and staggered investments for the following period until the next plan review is conducted.

Metropolitan's IRP process begins by establishing reliability and service standards, and then attempts to develop the least costly, most effective resource mix that will meet its goals. Another approach would be to start with the amount member agencies are willing to pay for system-wide improvements over a period of time, and derive from that figure the maximum reliability and performance capabilities MWD can afford to make. At present, these two methods will likely generate widely divergent results because the IRP does not adequately reexamine the reliability and other baseline assumptions affecting resource mix debates. If the IRP results are valid, each method should reasonably approximate the results of the other.

As different resource, reliability and operational goals are considered, IRP participants are not presented with fully articulated alternative models. The current practice is to make marginal changes in an assumed base resource mix in response to new cost, technological, political or other concerns. This practice may limit the participants' understanding about the implications of different options, and artificially constrain the range of choices they take into account.

B. Recommendations.

- *Explicitly model the relationship between resource choices and various cooperative regional water management agreements. As part of the IRP, MWD should explicitly model a range of inter-agency water use and storage agreements, including groundwater management, from a "no agreement" baseline to much more cooperative arrangements, to illustrate the relationship between member and other appropriate agency collaboration and MWD operational goals, resource mix options, and costs. The coordination of member, non-member and*

sub-agency water policies and programs will affect regional water resource costs and reliability, and Metropolitan's functional scope and responsibility.

- *Incorporate political factors into the IRP.* The IRP should expressly consider whether committing resources to obtain more favorable legal results—securing federal guarantees for maximum Colorado River Aqueduct utilization, for example, or working in Sacramento to reduce State Water Project financial obligations or strengthen the Project's delivery guarantees—makes sense as part of Metropolitan's long term strategies.
- *Water transfer supply resources should be actively incorporated into the potential resource mix.* The IRP should explicitly consider the costs and benefits associated with securing major water transfers rather than treat such supplies as residual or secondary resources. The environmental and economic impacts to the regions from which water rights are purchased should be part of the planning process.
- *Water demand variations should be less static.* The IRP should develop a range of demand levels considering the potential effects of such factors as future price increases, coordinated regional growth management strategies, new development charges, and enhanced delivery and conservation technologies on regional water use. In particular, Metropolitan's own impacts on baseline population, development patterns, and water use levels should be explicitly considered.
- *Water quality should be factored in as an explicit cost.* The IRP should explicitly consider options and costs associated with achieving water quality standards compliance, and the system-wide implications for delivering or procuring filtered and unfiltered water with the willingness of member agencies to pay for such options. In addition, the MWD should evaluate the benefits and costs associated with expanded parallel

distribution systems to provide untreated or grey water supplies for uses that do not require filtered, treated water.

- *Costs associated with Best Management Practices and local projects should be clearly established and evaluated.* The IRP should flexibly assess the costs and benefits of achieving Best Management Practices and local project subsidies, and broaden the extent to which these components of the IRP might vary as part of the regional resource mix.
- *Continuously stagger and reassess investment needs.* The IRP should consider staggering investments over a period of time to evaluate whether the predicted requirements in fact materialize. At regular intervals, the timing and scope of planned investments should be reassessed and modified as circumstances warrant.
- *Derive IRP results starting from a willingness to pay perspective as well as from reliability and supply goals to assess whether current planning efforts adequately "loop back" and force the reappraisal of initial reliability and other operational assumptions.* Member agencies, and other water users, may have a desire to improve reliability and performance capabilities beyond their willingness or ability to pay for such improvements. In the event of substantial divergences in various water users' willingness to pay for MWD capacities, Metropolitan may wish to consider more flexibly pricing wholesale water supplies to reflect the levels of reliability and cost burdens that each user desires and is willing to bear. Effective planning can only occur after the maximum level of current and future investment member agencies will bear has been determined.
- *Educate IRP participants by modelling alternative future scenarios more clearly rather than make marginal modifications to the baseline scenario.*

- *As part of the IRP process, the MWD should consider developing coordination agreements with member and other relevant agencies that have extensive groundwater basins that could be used by the MWD to increase storage. Incentive programs should be established wherever useful and feasible to compensate member and other groundwater agencies for storing MWD water for future use by Metropolitan.*
- *The MWD must continue to develop planning and pricing policy relationships with its member agencies. Involvement by the member agencies in MWD planning should not be limited to mere representation through the MWD Board membership, but through explicit communication channels with member agency personnel. Where appropriate—in groundwater management, for example—non-member water agencies should also be part of the planning process.*
- *The MWD should assure that the IRP process actively considers overall "public benefits." The IRP planning process could limit growth and stifle economic development instead of enhancing these goals unless linked to a basic sense of which outcomes best generate overall public benefits and welfare. Defining such standards, and integrating them into the IRP process should therefore be an integral part of the MWD's planning agenda.*

3. The Rate Structure Proposals

A. Findings

An effective rate structure should generate sufficiently stable revenues to cover fixed costs, and stimulate careful consideration of the costs and benefits associated with capital projects, alternative water supplies, and consumption. Metropolitan's proposals recognize and address these issues, but several potential problems remain.

The proposed rate structures primarily create two new obligations on member agencies, a Readiness to Serve Charge and a New Demand Charge. The Readiness to Serve Charge is intended to provide stable revenue to cover the fixed costs associated with the capital improvement projects to meet existing users' untreated water quality and reliability needs. The New Demand Charge would shift the costs of increased system capacity to the users that generate the new demands on MWD.

As the concept has evolved, each member agency will eventually pay a Readiness to Serve Charge based on its average MWD water purchases over the previous four years. The amount of revenue anticipated from current Readiness to Serve Charge proposals appears to be much less than the anticipated fixed costs associated with a fully implemented capital improvement program.

Worse, as year-to-year water use changes for each agency, some will bear more of the Readiness to Serve Charge burden, and others less, depending on each agency's desire and ability to utilize alternatives to MWD supplies. To reduce the range of Readiness to Serve Charge burden shifting, MWD's proposals would limit the reduction any one agency could achieve to 50% of its 1989-93 consumption levels. This limitation still permits dramatic variations from initial Readiness to Serve Charge commitments. Some member agencies—especially those with a number of water supply alternatives—may not adequately weigh the costs and benefits of proposed projects at the outset.

The New Demand Charge also does not yet require up-front agency commitments. Under current proposals, MWD could still initiate projects on its own, and only when demand actually increases above a baseline amount would the agencies that require and benefit from the new capacity actually have to pay for such improvements. The timing, scope and extent of New Demand Charge investments and payments are not synchronized, forcing Metropolitan to unilaterally forecast future demand and initiate projects, rather than secure up-front commitments from agencies that want additional system capacity improvements. This strategy commits current resources without guaranteeing the future revenues to pay for new investments.

An additional problem with the New Demand Charge is that the definition of current versus "new" capacity expenditures could severely harm future development and economic vitality if not carefully assessed. Current users—which control the Board—will have incentives to define new and future capacity investments in ways that may shift the costs of system improvements that actually benefit both current and future consumers exclusively onto future users. Such a result could negatively affect Southern California's economic development options.

MWD's proposals will also modify its basic water sales rates. As an increasing amount of revenue is obtained from fixed commitments like the Readiness to Serve and New Demand Charges, the variable unit price of wholesale water sales will fall (although the total cost of water to the end user will increase significantly when fixed charges are factored into the price). This may cause variable water rates to deviate substantially from real marginal costs, even though member agencies are likely to derive their retail or secondary wholesale prices from a combination of the fixed and variable water charges they pay.

The recent rate structure revisions also create a new peaking charge to recover the operational and capital costs associated with customer demand spikes during periods of low water supplies. The present level of the peaking charge—\$6 million—is not yet adequate to cover the actual costs of customer peaking, but rather reflects the member agencies' desire for a period of phased-in implementation of the new expense.

MWD has not proposed revisions to its drought allocation policy, the Incremental Interruption and Conservation Plan. At present, in drought emergencies, member agencies are given an allotment based on their 1989-90 share of total MWD consumption, and charged a higher amount for purchases above their allocated levels. If member agencies in fact do cut back consumption below the base allocation, as was the case in the early 1990s, MWD may not generate enough revenue to cover its fixed and drought-related costs, necessitating future, substantial rate increases. Should this

occur, public support for conservation and trust in Metropolitan may fall.

The new rate structures also do not address the severe problems many water-dependent industries are experiencing as Metropolitan water rates climb. Agriculture in the MWD service area, for example, which consumes about 5% of Metropolitan's overall water deliveries, is being severely hurt by escalating water costs and the risk of service interruptions. Throughout the region, but especially in areas like San Diego, where the delivery of untreated MWD water supplies is limited, growers frequently must pay the highest MWD treated water rates. Yet—together with other uses such as direct and in lieu replenishment and sea water barrier programs—they receive the lowest delivery priority during shortages.

Already high, dramatically escalating water costs and uncertain supplies are causing many long-term, productive groves and farms to be retired, and are also adversely affecting other horticultural activities, such as nurseries, that generate substantial urban revenues and employment. Despite the economic and social consequences of the Southern California agricultural retrenchment, there is no systematic analysis, let alone creative mitigation of water pricing and service concerns.

Currently, MWD pays a fixed fee of \$154 per acre foot for approved member agency reclamation projects, and a varying amount up to \$250 per acre foot for groundwater recovery efforts. The real value of such local projects to Metropolitan in fact varies substantially with water availability. The rate structure proposals do not effectively approximate Metropolitan's real marginal and avoided local project costs over time. As resource options change, this deficiency does not encourage the optimal integration of water resources.

In December, 1993, the Board approved several new categories of rate charges that will be gradually imposed in later years. The Board deferred the imposition of Readiness to Serve or New Demand Charges in 1993-94 and voted instead to extend the increase in parcel taxes that had been imposed in 1993-94 for 1994-

95. This "standby charge" will raise approximately \$50 million to cover estimated capital improvement program expenses associated with meeting certain continuing—as opposed to future—service requirements (even though the IRP process has yet to define the MWD's capital investment priorities). Water rates will also rise by about 6.5%.

For 1995-96, the Board agreed to abolish the parcel tax standby charge in favor of a Readiness to Serve Charge that will generate approximately \$66 million per year, an amount the MWD believes to be equal to the anticipated debt service generated by capital improvement program costs attributable to maintaining existing untreated water system capacity. These estimates, however, have been made prior to the clarification of actual MWD capital improvement program objectives in the ongoing IRP process. A New Demand Charge is also slated to be imposed in 1996-97, well after many capital improvements affecting increased capacity will likely have been initiated. The Board also requested from the MWD staff several studies of demand charge and seasonal storage options, the impacts on Metropolitan of agency water use variation, and local project sensitivity to rate changes.

Securing member agency commitments to pay for new categories of fixed charges as specified in the revised rate structures is a considerable achievement for the Board and MWD staff. The current challenge is to closely coordinate the further definition of the precise burden, form, and method of payment of the new charges with the IRP process in an interactive manner (see Part I.1 and Part I.2, above) so that costs and system improvements are simultaneously determined.

It is not sufficient for the IRP to simply generate system specifications, and then to use these results to mechanically determine the amount in each new category of charges that the member agencies will have to pay. The goal of the IRP and rate structure efforts is to assure reliable water supplies at a price that Southern California businesses and consumers can afford. This can only be achieved by continually weighing system improvement objectives against specific cost burdens at the wholesale and retail levels, an objective that will require close, and continuous linkage

between both the IRP and rate structure efforts. A failure to adequately cover capital improvement program fixed debt burdens, or ambiguity in the method of funding such obligations, can also adversely impair the MWD's financial base.

B. Recommendations.

- *The MWD's new rate structures should ensure adequate coverage of the fixed commitments for projects that generate additional fixed costs for Metropolitan. To force MWD's member agencies and other water consumers to price, rationally appraise, and commit to new construction, rate structures like the Readiness to Serve and New Demand Charges should be sufficient to cover the full fixed expense of new projects without substantial modifications based on water use or other variable factors. Implementing this policy may require MWD to allocate rights in its water supplies to member agencies based on their fixed payment commitments.*
- *If a comprehensive Readiness to Serve and New Development pricing scheme is implemented, secondary markets should be established by the MWD to allow the transfer of member agency excess water entitlements to other users that may need additional water supplies. A secondary market for the water entitlements created by a Readiness to Serve and New Demand Charge system would provide member agencies with a mechanism to reduce their fixed commitments to the MWD by selling the water entitlements for which they have no need. Conversely, MWD customers that may require additional supplies could obtain them through such secondary market purchases, avoid paying new development charges, and reduce pressure on the MWD for additional system expansion.*
- *If current proposals cannot adequately address the MWD's revenue and pricing challenges, then alternative rate structure revisions should be explored, such as using higher variable water rates to increase the rate*

stabilization fund and cover fixed costs, or creatively utilizing ad valorem or other fixed revenue enhancements. As at least a short-term alternative in the event effective Readiness to Serve and New Demand Charges cannot be established, the MWD should consider modifying its current water prices to build a reserve for its fixed cost coverage. While rates may slightly rise if sales fall, in general this strategy would more accurately cause water prices to reflect the marginal cost to MWD, inclusive of capital investments, and therefore encourage more efficient water allocation. An additional alternative may be to utilize *ad valorem* parcel or other fixed revenue sources more flexibly, including comparatively novel arrangements in which certain agencies may elect to pay property taxes, Readiness to Serve Charges, New Demand Charges or higher variable water rates according to their individual preferences and requirements.

- *The peaking charge should recover the actual economic costs generated by peaking behavior and not be set by political considerations.*
- *MWD rate structure proposals should revise and improve the emergency allocation programs and local project pricing schemes to reflect MWD's real marginal and avoided costs and revenue requirements.*
- *Comprehensive rate structure revisions should not be further delayed, and pressing MWD revenue needs should be addressed as soon as possible.*
- *In coordination with member agencies and other appropriate water entities, the MWD should explore and implement measures to mitigate the adverse effects of rising water rates on agricultural and other water-dependent industries that do not require the same reliability and water quality as other urban users. The MWD should sponsor efforts to resolve the adverse impact rising water rates and low reliability are having*

on Southern California agriculture and other water-dependent industries to ensure against major job and business losses. Possible solutions include: (1) permitting agriculture to purchase surplus water, when available, at below the MWD's marginal but above its variable cost; (2) the creation of two-tiered rates for certain industrial or agricultural users; or (3) the provision of a "value-added" water rate credit for industrial users that generate jobs and revenues for the community at large.

- *Metropolitan should explicitly seek the optimal integration of water resources through its rate structures since water pricing, in the absence of comprehensive interagency water coordination agreements, is likely to be the most effective tool for some time for selecting among imported water, reclamation, desalting, and other supply options.*

4. Governance.

A. Findings.

Both the IRP and rate structure revision efforts clearly demonstrate the importance of governance issues to MWD's mission. In the past, Metropolitan could plausibly generate system needs internally and adjust rates as required to pay for the improvements. In the current environment, inter-agency coordination is critical to establish the most efficient resource base responsive to the public need, and then secure the funding commitments to pay for necessary investments.

MWD system costs, reliability and supply standards will likely vary considerably with the extent to which member agencies, and other significant water management entities, agree to coordinate regional water management. Comparatively inexpensive options are possible in the event groundwater storage, conservation and emergency use strategies can be regionally integrated. Increased cooperation between MWD and regional water agencies is critical to avoid costly projects, or forcing MWD to construct massive storage and delivery facilities to mitigate potential peaking problems and local supply interruptions.

Governance skills also will determine if MWD can actually pay for its future projects. With bond and property tax revenues limited, and in an era of high business and consumer rate sensitivity, MWD can no longer afford to build major facilities and hope that member agencies will buy enough water to pay for them over several years. The wide variation in member agency local water supply and project options means that each agency will differently value MWD water and facility investments, a fact that can frustrate needed revenue agreements.

The Task Force was troubled to learn, for example, that some of the member agencies most strongly supporting big-ticket projects like the Domenigoni reservoir also had the most aggressive plans to reduce their future MWD water purchases and develop independent supplies. In effect, such agencies appear to want MWD to develop costly backup capacity—or insurance—for their local supply strategies, while seeking to shift the costs for these benefits on to Metropolitan and other agencies and consumers.

Even if a resource and financing strategic consensus could be built among Metropolitan's member and other relevant agencies, the problem of actually realizing the plan's objectives at the consumer level would remain. MWD can attempt to set prices and build facilities to achieve certain levels of consumption or conservation, but its actions will have little effect unless its own agencies, and the consumers that the member agencies themselves serve, price their products and make investments in a consistent fashion. Secondary wholesale and retail charges can double the cost of water to final consumers from MWD price levels. Depending on how these charges are structured at the retail level, Metropolitan's intended price and service incentives may be severely distorted.

As a result, regional governance concerns are at the heart of Metropolitan's planning, pricing, and strategic implementation activities.

Governance is also fundamental to MWD's mission in the larger sense of affecting the political decisions at the state and federal level that will shape Metropolitan's fundamental resource,

financial and utilization options. Southern California faces substantial water supply and distribution challenges that will likely not be seriously discussed, let alone resolved, if not comprehensively reviewed on a regional, statewide, or federal basis. In the contemporary environment, Metropolitan should actively sponsor the regional, statewide and even national discussions necessary to shape its own future and serve the greater public interest.

Similarly, the third-party impacts of many water resource choices and pricing policies are usually not factored into procurement decisions. Water transfers or capacity acquisition charges might benefit certain consumers, but could also harm others, such as the economies of communities from which water transfers take place, or newly developing areas that must bear comparatively high new development water costs. While special interests may effectively advocate their own concerns, the broader public interest may be overlooked.

The Task Force believes that the full range of costs, benefits and social concerns latent in complex water policy issues is not being adequately assessed at either the regional, state, or the federal level. One of Metropolitan's fundamental responsibilities should be to use its considerable influence to help fill this leadership void.

B. Recommendations.

- *Metropolitan should explicitly commit itself to becoming, or building, a regional governance institution facilitating member, groundwater management and retail agency consensus about water policy goals and cooperative management. Management, staff and external relations strategies should be immediately implemented consistent with that objective.*
- *To facilitate regional coordination, Metropolitan should initiate discussions among its member agencies concerning the institutional enhancements that might be required for it to function as a regional governance entity, or to identify other institutional innovations that can accomplish this goal.*



San Diego County Water Authority

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

March 4, 2016

Marcia Scully, Esq.
General Counsel
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Re: San Diego Public Records Act Request of February 18, 2016

Dear Ms. Scully:

I have reviewed your February 26 correspondence, which responds to our February 18 California Public Records Act Request (the "Request"). As you know, the Request seeks categories of information necessary to evaluate MWD's current proposed rates for 2017 and 2018.

In your correspondence, you have denied our request for Metropolitan's financial planning model, claiming that it is exempt under Government Code section 6254.9 as "a proprietary software program developed by Metropolitan that contains nondisclosable formulas and programming code." As you note, the Water Authority received the previous financial planning model in 2013. That disclosure, made in litigation, was subject to a protective order requested by MWD, which for timing reasons, the Water Authority chose not to challenge at that time. Our Request seeks public disclosure of the financial planning model, with updated data, relating to the current rate setting process for 2017 and 2018 rates and charges.

You may or may not be aware, after the protective order was issued, the California Supreme Court issued a decision that confirms the Water Authority's position that the data contained within MWD's financial planning model is a disclosable public record, and is not exempt from disclosure under Government Code 6254.9. See Sierra Club v. Superior Court (2013) 57 Cal.4th 157. Therefore, we ask again that MWD immediately provide us with its current financial planning model, in a fully functional electronic format, including all of the data contained therein. If MWD still refuses to do so, we will have no choice but to commence litigation to obtain this information, which is necessary in order to analyze how MWD has assigned its costs and set its rates.

As to the other requested records, your correspondence notes that MWD will notify us in 14 days of the date on which you will provide responsive records. However, a delay in both your response and the production of records is unacceptable since MWD is currently

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Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center
Municipal Water District

Vista Irrigation District

Yuima
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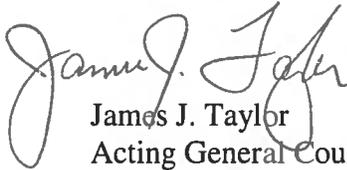
OTHER REPRESENTATIVE

County of San Diego

Marcia Scully
March 4, 2016
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in the process of setting rates that will be formally acted upon by the board at its April 12 board meeting. Given the immediacy of rate adoption, it is evident that the responsive records, which all seek the underlying data that MWD used in determining its proposed rates, are readily available and should be immediately disclosed. Since the public hearing on MWD's proposed rates is just four days away, and the proposed rates are scheduled to be adopted on April 12, it is of great public importance that both MWD and the public receive as much information as possible now. At a minimum, MWD should immediately provide access to all available data, including any cost of service studies or reports upon which the data rely, and studies that may have been conducted, and more detailed budget information to the lowest level of data that MWD collects or uses to develop the budget (typically, this would include line by line account numbers, by department, including all activities and programs). Any additional data should also be provided on a rolling production basis.

Sincerely,


James J. Taylor
Acting General Counsel



San Diego County Water Authority

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

February 22, 2016

Randy Record and

Members of the Board of Directors

Metropolitan Water District of Southern California

P.O.Box 54153

Los Angeles, CA 90065-0153

RE: Finance & Insurance Committee Workshop #2
Renewed Request for Budget Information and Cost of Service Report

Dear Chairman Record and Board Members,

We have reviewed the material distributed for tomorrow's Workshop #2 and find that it consists solely of a PowerPoint presentation, not the information we have previously requested.

We are asking again for the budget detail underlying the broad cost categories included in the budget document and PowerPoint presentation (i.e., O&M, debt service, State Water Contract, CRA power, supply programs, demand management and CIP). As a board member, it is not possible to understand what costs MWD is incurring (or why) or formulate questions based on this scant information. Clearly, this level of detailed information exists and was used to tally the budget numbers included in these broad cost categories. Similarly, a cost of service analysis must exist, at least in draft form, in order for staff to have proposed the various rate increases and decreases for 2017 and 2018, described in last month's Board Memo 9-2 and proposed biennial budget; we renew our request for any cost of service analysis so far produced, whether in draft or final form.

We also requested detailed, side by side budget numbers comparing the adopted budget for 2014/15 and 2015/16 to projected actuals for those years (and to the proposed budget). The slides staff has presented lack any detailed comparison of adopted budget to projected actual for 2014/15 and 2015/16, even at the 50,000 foot, "categorical" level. Again, we request the budget detail information for both adopted budget and projected actual for these rate years.

One of our main responsibilities as board members is to maintain the financial accountability of our organization. As board members, we act as trustees of the MWD's assets and must exercise due diligence to oversee that this organization is well-managed and that its financial condition is sound. It is not possible to fulfill our responsibility as board members based on the limited information provided by staff. There is little point in having a large number of workshops if detailed budget information is not going to be provided.

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

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Santa Fe Irrigation District

South Bay Irrigation District

Vallacitos Water District

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Vista Irrigation District

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OTHER REPRESENTATIVE

County of San Diego

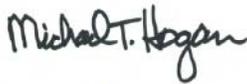
MWD Chairman Record and Members of the Board

February 22, 2016

Page 2

We would like to pick up a copy of the additional budget detail and draft cost of service report used to assign costs and calculate the rates included in the proposed biennial budget when we are at MWD for Workshop #2, tomorrow.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director



San Diego County Water Authority

4677 Overland Avenue • San Diego, California 92123-1233
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February 18, 2016

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Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

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

Re: Request for Records Under California Public Records Act
(California Gov. Code § 6250 *et seq.*)

Dear Ms. Chin:

On behalf of my client, the San Diego County Water Authority ("SDCWA"), and pursuant to the California Public Records Act ("PRA"), California Government Code section 6250 *et seq.*, we request the following public records which are in the possession or control of the Metropolitan Water District of Southern California (hereinafter "MWD"). "MWD," as used herein, includes MWD itself, MWD's officers, representatives, agents, employees, affiliates, accountants, consultants, attorneys, MWD's Board of Directors, its individual directors, and any and all persons acting on MWD's behalf. "MWD's Board" and "MWD's Board of Directors," as used herein, includes the Board of Directors as a whole, its directors and all relevant Standing, Ad Hoc, Special Purpose, Temporary Committees, and all other appointments.

This request applies to every such record that is known to MWD and which MWD can locate or discover by reasonably diligent efforts. More specifically, the records that may contain information called for by this request include:

- Documents, communications, letters, memoranda, notes, reports, papers, files, books, records, contracts, agreements, telegrams, electronic mail (saved or deleted), and other communications sent or received;
- Printouts, diary entries and calendars, drafts, tables, compilations, tabulations, charts, spreadsheets, graphs, recommendations, accounts, worksheets, logs, work papers, minutes, notes, summaries, speeches, presentations, and other written records or recordings of or relating to any conference, meeting, visit, interview, or telephone conversations;
- Bills, statements, invoices, and other records of any obligation or expenditure, cancelled checks, vouchers, receipts, and other records of payment;
- Financial and statistical data, analyses, surveys and schedules;
- Audiotapes and videotapes and cassettes and transcripts thereof, affidavits, transcripts of testimony, statements, interviews, and conversations;

- Printed matter (including published articles, speeches, newspaper clippings, press releases, and photographs); and
- Microfilm and microfiche, disks, computer files, electronically stored data (including the metadata associated with any such written and/or spoken content), electronically stored information, electronic devices, film, tapes, and other sources from which information can be obtained, including materials used in electronic data processing. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. "Electronically stored information" means information that is stored in an electronic medium, including data, metadata, and all electronically stored data or information.

The term "related to," as used in each category of public record listed below, means directly or indirectly, in whole or in part, comprising, referring to, concerning, evidencing, connected with, commenting on, affecting, responding to, showing, describing, discussing, analyzing, reflecting or constituting.

The term "rate model," as used in each category of public record listed below, means all documents, data, analyses, calculations, studies or other information that constitute, comprise, support or describe the manner in which MWD assigns costs to rates, including but not limited to its "financial planning model," including the spreadsheet, formulas and programming code.

If a record responsive to a request was, but no longer is, in your possession, custody, or control, state precisely what disposition was made of it (including its present location and who possesses or controls it) and identify the person(s) who authorized or ordered such disposition.

Records produced in response to this request should be produced as they are kept in the usual course of business or should be organized and labeled to correspond with the categories in the request. All electronically stored information shall be produced in its native format with all metadata intact.

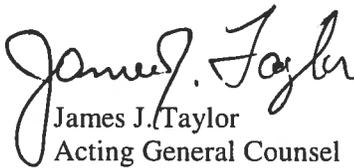
The requested records are:

1. Any rate model or models used in formulating proposed rates for the 2017 and 2018 calendar years.
2. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting the rates and charges proposed for the 2017 and 2018 calendar years, as described in MWD Board Memo 9-2 dated 2/9/2016 (Finance and Insurance Committee).
3. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting a proposed reduction of the Readiness-to-Serve and Capacity Charges for 2017.
4. All data, analyses and studies, if any, demonstrating the proportionate benefit each of MWD's 26 customer member agencies will receive from the expenditure of revenues collected from the rates and charges proposed for the 2017 and 2018 calendar years.
5. All data, analyses and studies, if any, that support the conclusion that demand management programs provide distribution and conveyance system benefits, including identification of those parts of the distribution and conveyance system where additional capacity is needed and the customer member agencies that benefit from that capacity being made available.

6. All data, analyses, opinions and studies, if any, that support the conclusion that suspension of the property tax restriction in Section 124.5 of the MWD Act is essential to MWD's fiscal integrity, as described in MWD Board Memo 9-2 at page 3.
7. All data, analyses and studies, if any, supporting the findings, conclusions, recommendations and water supply development targets identified in MWD's 2015 IRP Technical Update Issue Paper Addendum.
8. All data, analyses and studies, if any, supporting the findings, conclusions, recommendations and water supply development targets identified in MWD's Integrated Water Resources Plan 2015 Update.

Within ten (10) days of receipt of this PRA request, please contact me at (858) 522-6791 to discuss whether MWD has records responsive to this request, the page count and cost of copying the records, and whether the documents are also available in electronic format.

Sincerely,


James J. Taylor
Acting General Counsel

cc: MWD Public Records Administrator (by email at praadministration@mwdh2o.com)



San Diego County Water Authority

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

February 9, 2016

Randy Record

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
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Ramona
Municipal Water District

Rincon del Diablo
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vailcitos Water District

Valley Center
Municipal Water District

Vista Irrigation District

Yuima
Municipal Water District

OTHER
REPRESENTATIVE

County of San Diego

RE: 2016 Rate Setting Process and Schedule for Public Hearing
Request for Distribution of Cost of Service Report Prior to the Public Hearing

Dear Chairman Record and Members of the Board:

At yesterday's Finance and Insurance Committee meeting, the Chief Financial Officer, Gary Breaux, informed the Board that MWD's 2016 Cost of Service Report (which is the basis of its proposed 2017 and 2018 rates), will not be presented to the Board or made available to the public until the Board's planned Workshop #4, scheduled for March 22, 2016. **That is two weeks AFTER the public hearing on the proposed rates and just three weeks prior to the April 12 board meeting when the rates are proposed to be adopted.** This schedule gives the public NO time to review the Cost of Service Report prior to the public hearing, and severely limits the amount of time available for MWD's member agencies to review and analyze the Cost of Service Report, data and analysis.

In a Feb. 4 letter (attached) to Dawn Chin, Clerk of the Board, the Water Authority formally requested "...all of the data and proposed methodology MWD will rely upon for establishing rates, charges, surcharges, surcharges or fees for 2017 and 2018... in accordance with Government Code Section 54999.7 (d) and (e), which necessarily includes its cost of service report. This law requires MWD to provide *all* of this data no later than 30 days before rates and charges are adopted. The planned March 22 release of the cost of service report does not comply with this requirement. While MWD's general counsel has previously contended in correspondence, and MWD contended in court that it is not required to comply with Government Code Section 54999.7, Judge Karnow specifically ruled 54999.7 applies to MWD.

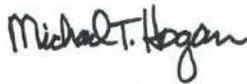
Aside from the law requiring MWD to make this information available in a timely fashion to affected public agencies such as the Water Authority (and the rest of MWD's customer member agencies), there is an even more fundamental concern with holding a public hearing on MWD's rates without making available to the public in advance, the cost of service report explaining

how MWD has allocated its costs and is proposing to set its rates.

How can the public intelligently comment on rates, when the basis for setting those rates has not been made available? Conducting a public hearing without providing the most basic information explaining the proposed action by the Board not only lacks transparency, but frustrates the very purpose of having a public hearing to obtain input on legislative decisions in matters of public policy.

As noted in our February 6, 2016 letter (attached), the Cost of Service Report and analysis has historically been made available to the Board and public at the same time as the proposed budget, in January or February of each year, thus allowing a meaningful time for review. We object to this new schedule and ask that either the Cost of Service Report be made available at least 30-days prior to the scheduled public hearing, or, that the public hearing and rate-setting schedule be adjusted to allow at least 30 days for review by all affected public agencies and members of the public.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director

Attachment 1: Water Authority Acting General Counsel's February 4, 2016 letter RE Request for Data and Proposed Methodology for Establishing Rates and Charges

Attachment 2: Water Authority Delegates' February 6, 2016 letter RE Board Memo 9-2



San Diego County Water Authority

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

MEMBER AGENCIES

Carlsbad
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

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Fallbrook
Public Utility District

Helix Water District

Lakeside Water District

Olivenhain
Municipal Water District

Otay Water District

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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

February 4, 2016

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

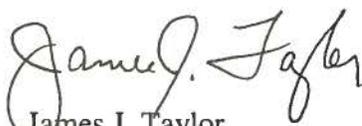
**Re: Written Request for Notice (Government Code Section 54999.7(d));
 Request for Data and Proposed Methodology for Establishing Rates and Charges
 (Government Code Section 54999.7(e))**

Dear Ms. Chin:

The San Diego County Water Authority hereby requests notice of the public meetings and to be provided with all of the data and proposed methodology MWD will rely upon for establishing rates, charges, surcharges or fees for 2017 and 2018 (and any other years that may be before the board during the current rate cycle) in accordance with Government Code Section 54999.7(d) and (e).

Please contact me if you have any questions.

Sincerely,


James J. Taylor
Acting General Counsel

cc: Maureen Stapleton, SDCWA General Manager
Jeffrey Kightlinger, MWD General Manager
Marcia Scully, MWD General Counsel

OTHER REPRESENTATIVE

County of San Diego



San Diego County Water Authority

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February 6, 2016

Randy Record and

Members of the Board of Directors

Metropolitan Water District of Southern California

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MEMBER AGENCIES

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OTHER REPRESENTATIVE

County of San Diego

RE: Board Memo 9-2: Proposed biennial budget and revenue requirements for fiscal years 2016/17 and 2017/18; estimated water rates and charges for calendar years 2017 and 2018 to meet revenue requirements; and ten-year forecast

Dear Chairman Record and Board Members:

The purpose of this letter is to provide preliminary comments and questions on Board Memo 9-2, proposed biennial budget and revenue requirements (collectively, the "Budget Document") in advance of the budget and rate workshops that begin with Monday's Finance and Insurance Committee meeting.

1. The Budget Document lacks sufficient detail to understand how MWD has spent money or deliberate how MWD is proposing to spend money. As one example, among many, MWD's proposed Demand Management cost summary does not identify any of the projects included in either Local Resources Program (\$43.7 and \$41.9 million, respectively for the respective fiscal years) or Future Supply Actions (\$4.4 and \$2 million, respectively). The budget also lacks projected actual expenditures for fiscal year (FY) 2016; instead, all comparisons are budget to budget. It is important for Board members to consider actual expenditures as well as proposed budgets, particularly in light of the very substantial additions and modifications to spending that occurred outside of the 2014 budget after it was adopted -- in the hundreds of millions of dollars. We request to be provided with greater detail explaining the proposed expenditures at a detail level sufficient to allow the Board to deliberate where savings might be achieved, as well as to understand the status or outcomes of past programs and expenditures.

2. The Budget Document does not provide any cost of service analysis and lacks sufficient detail to understand how MWD's costs should be assigned to rates. Different than past years, the current Budget Document **does not include any cost of service analysis**. Why has that not been provided? In addition, the Budget Document does not provide a sufficient level of detail or information in order for MWD to defend its rates and establish "cost

MWD Chairman Record and Members of the Board

February 6, 2016

Page 2

causation" in accordance with legal requirements. Using the Demand Management cost summary again as an example, it is impossible to identify the proportionate benefits to MWD's customer member agencies resulting from the proposed expenditures. Broad, unsupported statements, such as "demand management programs reduce reliance on imported water," and "demand management programs reduce demands and burdens on MWD's system," are legally insufficient to comply with the common law or California statutory or Constitutional requirements that require MWD to conform to cost of service.

While we understand that MWD has appealed Judge Karnow's decision in the rate cases filed by the Water Authority, there is an increasing body of case law reaffirming these requirements, and clearly establish that they are applicable to water suppliers such as MWD. As one example, we attach a copy of the recent decision of the court in *Newhall County Water District v. Castaic Lake Water Agency*, where a number of arguments by Castaic that are very similar to those made by MWD were again rejected by the Court of Appeal. Chief among them was the argument that the water wholesaler need only identify benefits to its customers "collectively," rather than in a manner that reflects a reasonable relationship to the customers' respective burdens on, or benefits received from the wholesale agency's activities and expenditures. Contrary to these clear legal requirements, MWD's current Budget Document does not provide sufficient information to allow Board members or MWD's 26 customer member agencies to determine proportionate benefit from MWD's proposed expenditures. We repeat here for these purposes, our request to be provided with a greater level of detail regarding MWD's proposed spending, as well as the basis upon which MWD has assessed or may assess proportionate benefit to its customers. We also believe the Board would benefit from a public presentation on current and developing case law regarding the applicability of Proposition 26 to wholesale water agencies such as MWD, so that it is informed of its legal obligations as Board members in setting rates.

3. *The Budget Document does not provide any analysis or data to explain or support the wide range of variation in proposed increases and decreases in various rate categories.* The budget describes an "overall rate increase of 4%;" however, that is a meaningless number outside of the context of specific rates and charges as applied to MWD's 26 customer member agencies, which depends on the type of service or water they buy and what they pay in fixed charges. ***The following rate increases and decreases are proposed for each of the respective fiscal years, without any data or analysis to explain them:***

- Tier 1 supply rate increases of 28.8% and 4%;
- Wheeling rate increases of 6.2% and 4.5%;
- Treatment surcharge decrease of 10.1%, followed by an increase of 2.2%;
- Full service untreated rate increases of 12.1% and 4.4%;
- Full service treated rate increases of 3.9% and 3.7%;
- Readiness-to-Serve (RTS) charge decreases of 11.8% and 3.7%; and
- Capacity Charge (CC) decrease of 26.6%, followed by an increase of 8.8%.

There is no demonstration in the Budget Document that MWD's expenses recovered by the RTS

MWD Chairman Record and Members of the Board

February 6, 2016

Page 3

and CC will vary to such a degree in FYs 2017 and 2018 to support the very substantial proposed decreases in those fixed charges. Moreover, these sources of fixed cost recovery are being reduced at the very same time MWD is proposing to add fixed treatment cost recovery and suspend the property tax limitation under Section 124.5. In addition to the inconsistent logic, MWD is reducing the very charges authorized by the Legislature in 1984 so MWD could have more fixed revenue in lieu of its reliance on property taxes. MWD's proposed rates are precisely contrary to the intent of Sections 124.5 and 134 of its Act (copies attached). We ask that the General Counsel provide a legal opinion why MWD's actions are not the opposite of what was intended by passage of these provisions of the MWD Act.

Absent a justification that is not apparent from the Budget Document, these proposed rate increases and decreases appear to be arbitrary and unreasonable. We ask for the Board's support to require staff to provide both *data and analysis* to support these proposed rates and charges so that they may be understood and demonstrated to be based on cost causation principles.

4. *The Budget Document mischaracterizes the Board's PAYGo funding policy and past actions; and is now proposing a "Resolution of Reimbursement" to formally authorize use of PAYGo revenues to pay for O&M, if necessary.* The Board's PAYGo funding policy was historically set at 20 percent. See attached excerpt from the Board's July 8, 2013 Finance and Insurance Committee meeting. However, MWD staff has for the last several years been using PAYGo funds on an "as- and how-needed" basis. The Board has never deliberated or set a PAYGo "target" or "policy" at 60 percent. Moreover, contrary to what is stated in the Budget Document, the 2014 budget included CIP PAYGo funding at 100 percent, with the 2014 ten-year forecast stating that it "anticipates funding 100% of the CIP from PAYG and Replacement and Refurbishment (R&R) funds for the first three fiscal years, then transitioning to funding 60% of the CIP from water sales revenues." The absence of a Board policy being applied consistently not only fails to accomplish the purpose of PAYGo funding -- to equitably distribute costs of the CIP over time -- but exposes MWD to further litigation risk as funds that are collected for one purpose (CIP) are used for a different purpose (O&M).

The Board should not adopt the recommended "Resolution of Reimbursement" authorizing staff in advance to collect \$120 million annually for one purpose (CIP) and potentially use it for another (O&M). This is not only an unsound fiscal strategy, it serves to mask the true condition of MWD's budget and finances, and breaks any possible connection to cost of service. The Board should make a decision now on whether to raise rates, plan to borrow money or, notably at this point in the budget process, *reduce costs* (see also discussion of sales projections, below). The General Manager has told the Board (during its discussion of unbudgeted turf removal spending last year) that a 7 percent rate increase is necessary to support \$100 million in spending. Advance approval and use of PAYGo funds for O&M is nothing more than a hidden, de facto 8.4 percent additional rate increase each year.

MWD Chairman Record and Members of the Board
 February 6, 2016
 Page 4

5. *The 1.7 MAF MWD sales estimate for the next two fiscal years is likely too high and if so, will leave the Board with an even larger revenue gap to fill; and the Budget Document lacks a fiscally sound contingency plan.* The sales estimate may be too high given MWD's current trend at 1.63 MAF (a "sales" number that (at best) misleadingly includes the Water Authority's wheeled water) and El Nino conditions that make it unlikely that agencies will increase demand for MWD water. Further, while the board memo states the sales forecast accounts for 56,000 AF/year of new local supply from the Claude "Bud" Lewis Carlsbad Seawater Desalination Plant and Orange County Water District's expanded groundwater recycling project, no provision has been made for increased local supplies that may reasonably be projected to be available to the Los Angeles Department of Water and Power (LADWP). With a good year on the Eastern Sierra -- which is presently tracking the best snow pack on record -- MWD sales could be reduced by 250,000 AF or more, which translates to a negative revenue impact on MWD of between \$175 million and \$350 million.

It is MWD's obligation to forecast revenues responsibly, based on known and reasonably anticipated conditions, and plan for the contingency of reduced sales using responsible financial management techniques, which do not include budget gimmicks such as adoption of a "Resolution of Reimbursement" to shift CIP/PAYGo money to other uses.

We call to the Directors' attention that the proposed budget for FY 2017 already includes a revenue deficit of \$94.2 million, with MWD intending to withdraw from its reserves to bridge the gap. Similarly, the budget for fiscal year 2018 relies on \$23 million from reserves to fill the gap. Since sales may also be less than projected -- as they very well may be, for the reasons noted above -- the Board must plan now how the revenue gap will be filled. In this regard, we attach another copy of our November 17, 2014 letter suggesting the establishment of balancing accounts, allowing the Board to properly manage between good years and bad, rather than spending all of the money in good years (as it did this past year on turf removal) and needing to raise rates, borrow money or engage in the kind of gimmick represented by the Resolution of Reimbursement. We also ask that discussion of this issue be added to the next budget meeting agenda.

6. *There is no demonstrated justification for suspension of the ad valorem tax limitation.* As noted above, MWD is proposing in this budget to *reduce* the very charges the Legislature provided to MWD to be used in lieu of property taxes. Under these and other circumstances, there is no proper basis for MWD to suspend the tax rate limitation; instead, it should use the tools provided by the Legislature and included in the MWD Act.

7. *No information is provided regarding the proposed changes in treatment cost recovery.* Leaving aside the complete inconsistency with increasing fixed treatment cost recovery while reducing fixed cost recovery overall, when will the detail on the new charge be available?

MWD Chairman Record and Members of the Board

February 6, 2016

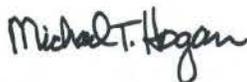
Page 5

8. The Budget Document does not explain why MWD's debt service coverage ratios for 2017 and 2018 are dropping from 2x to 1.6x. A comparison of the financial indices between this 2016 budget and the 2014 forecast shows a difference of only 50,000 AF of water sales reduction each year, yet the debt service ratios are plummeting from 2x to 1.6x. This drop is potentially very disturbing based on the aggressive water supply development plans MWD staff included in the IRP (and upon which it stated that spending decisions would be proposed and made). This is an important issue and policy discussion the Board must address.

9. The CIP numbers contained in the Budget Document don't match the Appendix. The Budget Document includes annual CIP expenditures of \$200 million for each of the proposed fiscal years; however the CIP Appendix includes expenditures of \$246 million and \$240 million, respectively, for fiscal years 2017 and 2018. Please explain and correct the discrepancy by increasing the budget number or reducing projects contained in the Appendices. We will have more extensive comments going forward, and in particular, once additional detail is provided as requested in this letter.

We look forward to beginning the budget review process next week and engaging in a productive dialog with our fellow directors.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director

Attachment 1: Appellate Court Decision – *Newhall County Water District v. Castaic Lake Water Agency*

Attachment 2: Excerpt from the Board's July 8, 2013 Finance and Insurance Committee Meeting

Attachment 3: MWD Act Sections 124.5 and 134

Attachment 4: Water Authority's November 17, 2014 Letter RE Balancing Accounts

Filed 1/19/16

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

NEWHALL COUNTY WATER
DISTRICT,

Plaintiff and Respondent,

v.

CASTAIC LAKE WATER AGENCY et
al.,

Defendants and Appellants.

B257964

(Los Angeles County
Super. Ct. No. BS142690)

APPEAL from a judgment of the Superior Court for the County of Los Angeles.
James C. Chalfant, Judge. Affirmed.

Best Best & Krieger, Jeffrey V. Dunn, and Kimberly E. Hood for Defendants and
Appellants.

Colantuono, Highsmith & Whatley, Michael G. Colantuono, David J. Ruderman,
Jon R. di Cristina; Lagerlof, Senecal, Gosney & Kruse and Thomas S. Bunn III for
Plaintiff and Respondent.

SUMMARY

Plaintiff Newhall County Water District (Newhall), a retail water purveyor, challenged a wholesale water rate increase adopted in February 2013 by the board of directors of defendant Castaic Lake Water Agency (the Agency), a government entity responsible for providing imported water to the four retail water purveyors in the Santa Clarita Valley. The trial court found the Agency’s rates violated article XIII C of the California Constitution (Proposition 26). Proposition 26 defines any local government levy, charge or exaction as a tax requiring voter approval, unless (as relevant here) it is imposed “for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.” (Cal. Const., art. XIII C, § 1, subd. (e)(2).)¹

The challenged rates did not comply with this exception, the trial court concluded, because the Agency based its wholesale rate for imported water in substantial part on Newhall’s use of groundwater, which was not supplied by the Agency. Consequently, the wholesale water cost allocated to Newhall did not, as required, “bear a fair or reasonable relationship to [Newhall’s] burdens on, or benefits received from, the [Agency’s] activity.” (Art. XIII C, § 1, subd. (e), final par.)

We affirm the trial court’s judgment.

FACTS

We base our recitation of the facts in substantial part on the trial court’s lucid descriptions of the background facts and circumstances giving rise to this litigation.

1. The Parties

The Agency is a special district and public agency of the state established in 1962 as a wholesale water agency to provide imported water to the water purveyors in the Santa Clarita Valley. It is authorized to acquire water and water rights, and to provide, sell and deliver that water “at wholesale only” for municipal, industrial, domestic and

¹ All further references to any “article” are to the California Constitution.

other purposes. (Wat. Code Appen., § 103-15.) The Agency supplies imported water, purchased primarily from the State Water Project, to four retail water purveyors, including Newhall.

Newhall is also a special district and public agency of the state. Newhall has served its customers for over 60 years, providing treated potable water to communities near Santa Clarita, primarily to single family residences. Newhall owns and operates distribution and transmission mains, reservoirs, booster pump stations, and 11 active groundwater wells.

Two of the other three retail water purveyors are owned or controlled by the Agency: Santa Clarita Water Division (owned and operated by the Agency) and Valencia Water Company (an investor-owned water utility controlled by the Agency since December 21, 2012). Through these two retailers, the Agency supplies about 83 percent of the water demand in the Santa Clarita Valley. The Agency's stated vision is to manage all water sales in the Santa Clarita Valley, both wholesale and retail.

The fourth retailer is Los Angeles County Waterworks District No. 36 (District 36), also a special district and public agency, operated by the County Department of Public Works. It is the smallest retailer, accounting for less than 2 percent of the total water demand.

2. Water Sources

The four retailers obtain the water they supply to consumers from two primary sources, local groundwater and the Agency's imported water.

The only groundwater source is the Santa Clara River Valley Groundwater Basin, East Subbasin (the Basin). The Basin is comprised of two aquifer systems, the Alluvium and the Saugus Formation. This groundwater supply alone cannot sustain the collective demand of the four retailers. (The Basin's operational yield is estimated at 37,500 to 55,000 acre-feet per year (AFY) in normal years, while total demand was projected at 72,343 AFY for 2015, and 121,877 AFY in 2050.)

The groundwater basin, so far as the record shows, is in good operating condition, with no long-term adverse effects from groundwater pumping. Such adverse effects

(known as overdraft) could occur if the amount of water extracted from an aquifer were to exceed the amount of water that recharges the aquifer over an extended period. The retailers have identified cooperative measures to be taken, if needed, to ensure sustained use of the aquifer. These include the continued “conjunctive use” of imported supplemental water and local groundwater supplies, to maximize water supply from the two sources. Diversity of supply is considered a key element of reliable water service during dry years as well as normal and wet years.

In 1997, four wells in the Saugus Formation were found to be contaminated with perchlorate, and in 2002 and 2005, perchlorate was detected in two wells in the Alluvium. All the wells were owned by the retailers, one of them by Newhall. During this period, Newhall and the two largest retailers (now owned or controlled by the Agency) increased their purchases of imported water significantly.

3. Use of Imported Water

Until 1987, Newhall served its customers relying only on its groundwater rights.² Since 1987, it has supplemented its groundwater supplies with imported water from the Agency.

The amount of imported water Newhall purchases fluctuates from year to year. In the years before 1998, Newhall’s water purchases from the Agency averaged 11 percent of its water demand. During the period of perchlorate contamination (1998-2009), its imported water purchases increased to an average of 52 percent of its total demand. Since then, Newhall’s use of imported water dropped to 23 percent, and as of 2012,

² Newhall has appropriative water rights that arise from California’s first-in-time-first-in-right allocation of limited groundwater supplies. (See *El Dorado Irrigation Dist. v. State Water Resources Control Board* (2006) 142 Cal.App.4th 937, 961 [“ ‘[T]he appropriation doctrine confers upon one who actually diverts and uses water the right to do so provided that the water is used for reasonable and beneficial uses and is surplus to that used by riparians or earlier appropriators.’ ”]; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241 [“ ‘As between appropriators, . . . the one first in time is the first in right, and a prior appropriator is entitled to all the water he needs, up to the amount he has taken in the past, before a subsequent appropriator may take any [citation].’ ”].)

Newhall received about 25 percent of its total water supply from the Agency. The overall average since it began to purchase imported water in 1987, Newhall tells us, is 30 percent.

The other retailers, by contrast, rely more heavily on the Agency's imported water. Agency-owned Santa Clarita Water Division is required by statute to meet at least half of its water demand using imported water. (See Wat. Code Appen., § 103-15.1, subd. (d).) Agency-controlled Valencia Water Company also meets almost half its demand with imported water.

4. The Agency's Related Powers and Duties

As noted above, the Agency's primary source of imported water is the State Water Project. The Agency purchases that water under a contract with the Department of Water Resources. The Agency also acquires water under an acquisition agreement with the Buena Vista Water Storage District and the Rosedale-Rio Bravo Water Storage District, and other water sources include recycled water and water stored through groundwater banking agreements. Among the Agency's powers are the power to "[s]tore and recover water from groundwater basins" (Wat. Code Appen., § 103-15.2, subd. (b)), and "[t]o restrict the use of agency water during any emergency caused by drought, or other threatened or existing water shortage, and to prohibit the wastage of agency water" (§ 103-15, subd. (k)).

In addition, and as pertinent here, the Agency may "[d]evelop groundwater management plans within the agency which may include, without limitation, conservation, overdraft protection plans, and groundwater extraction charge plans" (Wat. Code Appen., § 103-15.2, subd. (c).) The Agency has the power to implement such plans "subject to the rights of property owners and with the approval of the retail water purveyors and other major extractors of over 100 acre-feet of water per year." (*Ibid.*)

In 2001, the Legislature required the Agency to begin preparation of a groundwater management plan, and provided for the formation of an advisory council consisting of representatives from the retail water purveyors and other major extractors.

(Wat. Code Appen., § 103-15.1, subd. (e)(1)&(2)(A).) The Legislature required the Agency to “regularly consult with the council regarding all aspects of the proposed groundwater management plan.” (*Id.*, subd. (e)(2)(A).)

Under this legislative authority, the Agency spearheaded preparation of the 2003 Groundwater Management Plan for the Basin, and more recently the 2010 Santa Clarita Valley Urban Water Management Plan. These plans were approved by the retailers, including Newhall.

The 2003 Groundwater Management Plan states the overall management objectives for the Basin as: (1) development of an integrated surface water, groundwater, and recycled water supply to meet existing and projected demands for municipal, agricultural and other water uses; (2) assessment of groundwater basin conditions “to determine a range of operational yield values that will make use of local groundwater conjunctively with [State Water Project] and recycled water to avoid groundwater overdraft”; (3) preservation of groundwater quality; and (4) preservation of interrelated surface water resources. The 2010 Santa Clarita Valley Urban Water Management Plan, as the trial court described it, is “an area-wide management planning tool that promotes active management of urban water demands and efficient water usage by looking to long-range planning to ensure adequate water supplies to serve existing customers and future demands”

5. The Agency’s Wholesale Water Rates

The board of directors of the Agency fixes its water rates, “so far as practicable, [to] result in revenues that will pay the operating expenses of the agency, . . . provide for the payment of the cost of water received by the agency under the State Water Plan, provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of that bonded debt” (Wat. Code Appen., § 103-24, subd. (a).) The Agency’s operating costs include costs for management, administration, engineering, maintenance, water quality compliance, water resources, water treatment operations, storage and recovery programs, and studies.

Before the rate changes at issue here, the Agency had a “100 percent variable” rate structure. That means it charged on a per acre-foot basis for the imported water sold, known as a “volumetric” rate. Thus, as of January 1, 2012, retailers were charged \$487 per acre-foot of imported water, plus a \$20 per acre-foot charge for reserve funding.

Because of fluctuations in the demand for imported water (such as during the perchlorate contamination period), the Agency’s volumetric rates result in fluctuating, unstable revenues. The Agency engaged consultants to perform a comprehensive wholesale water rate study, and provide recommendations on rate structure options. The objective was a rate structure that would provide revenue sufficiency and stability to the Agency, provide cost equity and certainty to the retailers, and enhance conjunctive use of the sources of water supply and encourage conservation. As the Agency’s consultants put it, “[t]wo of the primary objectives of cost of service water rates are to ensure the utility has sufficient revenue to cover the costs of operating and maintaining the utility in a manner that will ensure long term sustainability and to ensure that costs are recovered from customers in a way that reflects the demands they place on the system.”

The general idea was a rate structure with both volumetric and fixed components. Wholesale rate structures that include both a fixed charge component (usually calculated to recover all or a portion of the agency’s fixed costs of operating, maintaining and delivering water) and a volumetric component (generally calculated based on the cost of purchased water, and sometimes including some of the fixed costs) are common in the industry.

6. The Challenged Rates

The Agency’s consultants presented several rate structure options. In the end, the option the Agency chose (the challenged rates) consisted of two components. The first component is a fixed charge based on each retailer’s three-year rolling average of total water demand (that is, its demand for the Agency’s imported water *and* for groundwater not supplied by the Agency). This fixed charge is calculated by “divid[ing] the Agency’s total fixed revenue for the applicable fiscal year . . . by the previous three-year average of total water demand of the applicable Retail Purveyor to arrive at a unit cost per acre

foot.” The Agency would recover 80 percent of its costs through the fixed component of the challenged rates. The second component of the Agency’s rate is a variable charge, based on a per acre foot charge for imported water.³

The rationale for recovering the Agency’s fixed costs in proportion to the retailers’ total water demand, rather than their demand for imported water, is this (as described in the consultants’ study):

“This rate structure meets the Agency’s objective of promoting resource optimization, conjunctive use, and water conservation. Since the fixed cost is allocated on the basis of each retail purveyor’s total demand, if a retail purveyor conserves water, then its fixed charge will be reduced. Additionally, allocating the fixed costs based on total water demand recognizes that imported water is an important standby supply that is available to all retail purveyors, and is also a necessary supply to meet future water demand in the region, and that there is a direct nexus between groundwater availability and imported water use – i.e., it allocates the costs in a manner that bears a fair and reasonable relationship to the retail purveyors’ burdens on and benefits from the Agency’s activities in ensuring that there is sufficient water to meet the demands of all of the retail purveyors and that the supply sources are responsibly managed for the benefits of all of the retail purveyors.”

The rationale continues: “Moreover, the Agency has taken a leadership role in maintaining the health of the local groundwater basin by diversifying the Santa Clarita Valley’s water supply portfolio, as demonstrated in the 2003 Groundwater Management Plan and in resolving perchlorate contamination of the Saugus Formation aquifer. Thus, since all retail purveyors benefit from imported water and the Agency’s activities, they should pay for the reasonable fixed costs of the system in proportion to the demand (i.e.

³ There was also a \$20 per acre foot reserve charge to fund the Agency’s operating reserves, but the Agency reports in its opening brief that it suspended implementation of that charge as of July 1, 2013, when reserve fund goals were met earlier than anticipated.

burdens) they put on the total water supply regardless of how they utilize individual sources of supply.”

The Agency’s rate study showed that, during the first year of the challenged rates (starting July 1, 2013), Newhall would experience a 67 percent increase in Agency charges, while Agency controlled retailers Valencia Water Company and Santa Clarita Water Division would see reductions of 1.9 percent and 10 percent, respectively. District 36 would have a 0.8 percent increase. The rate study also indicated that, by 2050, the impact of the challenged rates on Newhall was expected to be less than under the then-current rate structure, while Valencia Water Company was expected to pay more.

Newhall opposed the challenged rates during the ratemaking process. Its consultant concluded the proposed structure was not consistent with industry standards; would provide a nonproportional, cross-subsidization of other retailers; and did not fairly or reasonably reflect the Agency’s costs to serve Newhall. Newhall contended the rates violated the California Constitution and other California law. It proposed a rate structure that would base the Agency’s fixed charge calculation on the annual demand for imported water placed on the Agency by each of its four customers, using a three-year rolling average of past water deliveries to each retailer.

In February 2013, the Agency’s board of directors adopted the challenged rates, effective July 1, 2013.

7. This Litigation

Newhall sought a writ of mandate directing the Agency to rescind the rates, to refund payments made under protest, to refrain from charging Newhall for its imported water service “with respect to the volume of groundwater Newhall uses or other services [the Agency] does not provide Newhall,” and to adopt a new, lawful rate structure. Newhall contended the rates were not proportionate to Newhall’s benefits from, and burdens on, the Agency’s service, and were therefore invalid under Proposition 26, Proposition 13, Government Code section 54999.7, and the common law of utility ratemaking.

The trial court granted Newhall's petition, finding the rates violated Proposition 26. The court concluded the Agency had no authority to impose rates based on the use of groundwater that the Agency does not provide, and that conversely, Newhall's use of its groundwater rights does not burden the Agency's system for delivery of imported water. Thus the rates bore no reasonable relationship to Newhall's burden on, or benefit received from, the Agency's service. The trial court also found the rates violated Government Code section 54999.7 (providing that a fee for public utility service "shall not exceed the reasonable cost of providing the public utility service" (Gov. Code, § 54999.7, subd. (a)), and violated common law requiring utility charges to be fair, reasonable and proportionate to benefits received by ratepayers. The court ordered the Agency to revert to the rates previously in effect until the adoption of new lawful rates, and ordered it to refund to Newhall the difference between the monies paid under the challenged rates and the monies that would have been paid under the previous rates.

Judgment was entered on July 28, 2014, and the Agency filed a timely notice of appeal.

DISCUSSION

The controlling issue in this case is whether the challenged rates are a tax or a fee under Proposition 26.

1. The Standard of Review

We review de novo the question whether the challenged rates comply with constitutional requirements. (*Griffith v. City of Santa Cruz* (2012) 207 Cal.App.4th 982, 989-990 (*Griffith I*.) We review the trial court's resolution of factual conflicts for substantial evidence. (*Morgan v. Imperial Irrigation District* (2014) 223 Cal.App.4th 892, 916.)

2. The Governing Principles

All taxes imposed by any local government are subject to voter approval. (Art. XIII C, § 2.) Proposition 26, adopted in 2010, expanded the definition of a tax. A "tax" now includes "any levy, charge, or exaction of any kind imposed by a local government,"

with seven exceptions. (*Id.*, § 1, subd. (e).) This case concerns one of those seven exceptions.

Under Proposition 26, the challenged rates are not a tax, and are not subject to voter approval, if they are “[a] charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.” (Art. XIII C, § 1, subd. (e)(2).) The Agency “bears the burden of proving by a preponderance of the evidence” that its charge “is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.” (*Id.*, subd. (e), final par.)

3. This Case

It is undisputed that the Agency’s challenged rates are designed “to recover all of its fixed costs via a fixed charge,” and not to generate surplus revenue. Indeed, Newhall recognizes the Agency’s right to impose a fixed water-rate component to recover its fixed costs. The dispute here is whether the fixed rate component may be based in significant part on the purchaser’s use of a product – groundwater – not provided by the Agency.

We conclude the Agency cannot, consistent with Proposition 26, base its wholesale water rates on the retailers’ use of groundwater, because the Agency does not supply groundwater. Indeed, the Agency does not even have the statutory authority to regulate groundwater, without the consent of the retailers (and other major groundwater extractors). As a consequence, basing its water rates on groundwater it does not provide violates Proposition 26 on two fronts.

First, the rates violate Proposition 26 because the method of allocation does not “bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from,” the Agency’s activity. (Art. XIII C, § 1, subd. (e), final par.) (We will refer to this as the reasonable cost allocation or proportionality requirement.)

Second, to the extent the Agency relies on its groundwater management activities to justify including groundwater use in its rate structure, the benefit to the retailers from those activities is at best indirect. Groundwater management activities are not a “service . . . provided directly to the payor that is not provided to those not charged” (art. XIII C, § 1, subd. (e)(2)), but rather activities that benefit the Basin as a whole, including other major groundwater extractors that are not charged for those services.

For both these reasons, the challenged rates cannot survive scrutiny under Proposition 26. The Agency resists this straightforward conclusion, proffering two principal arguments, melded together. The first is that the proportionality requirement is measured “collectively,” not by the burdens on or benefits received by the individual purveyor. The second is that the “government service or product” the Agency provides to the four water retailers consists not just of providing wholesale water, but also of “managing the Basin water supply,” including “management . . . of the Basin’s groundwater.” These responsibilities, the Agency argues, make it reasonable to set rates for its wholesale water service by “tak[ing] into account the entire Valley water supply portfolio and collective purveyor-benefits of promoting conjunctive use, not just the actual amount of Agency imported water purchased by each Purveyor”

Neither claim has merit, and the authorities the Agency cites do not support its contentions.

a. *Griffin I* and the proportionality requirement

It seems plain to us, as it did to the trial court, that the demand for a product the Agency does not supply – groundwater – cannot form the basis for a reasonable cost allocation method: one that is constitutionally required to be proportional to the benefits the rate payor receives from (or the burden it places on) the Agency’s activity. The Agency’s contention that it may include the demand for groundwater in its rate structure because the proportionality requirement is measured “collectively,” not by the burdens on or benefits to the individual retail purveyor, is not supported by any pertinent authority.

In contending otherwise, the Agency relies on, but misunderstands, *Griffith I* and other cases stating that proportionality “‘is not measured on an individual basis,’ ” but

rather “ ‘collectively, considering all rate payors,’ ” and “ ‘need not be finely calibrated to the precise benefit each individual fee payor might derive.’ ” (*Griffith I, supra*, 207 Cal.App.4th at p. 997, quoting *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 438 [discussing regulatory fees under the Water Code and Proposition 13].) As discussed *post*, these cases do not apply here, for one or more reasons. *Griffith I* involves a different exemption from Proposition 26, and other cases involve Proposition 218, which predated Proposition 26 and has no direct application here. In addition to these distinctions – which do make a difference – the cases involved large numbers of payors, who could rationally be (and were) placed in different usage categories, justifying different fees for different classes of payors.

In *Griffith I*, the defendant city imposed an annual inspection fee for all residential rental properties in the city. The court rejected a claim that the inspection fee was a tax requiring voter approval under Proposition 26. (*Griffith I, supra*, 207 Cal.App.4th at p. 987.) *Griffith I* involves another of the seven exemptions in Proposition 26, the exemption for regulatory fees – charges imposed for the regulatory costs of issuing licenses, performing inspections, and the like. (Art. XIII C, § 1, subd. (e)(3) [expressly excepting, from the “tax” definition, a “charge imposed for the reasonable regulatory costs to a local government for . . . performing inspections”].)

The inspection fees in *Griffith I* met all the requirements of Proposition 26. The city’s evidence showed the fees did not exceed the approximate cost of the inspections. (*Griffith I, supra*, 207 Cal.App.4th at p. 997.) And the proportionality requirement of Proposition 26 was also met: “The fee schedule itself show[ed] the basis for the apportionment,” setting an annual registration fee plus a \$20 per unit fee, with lower fees for “[s]elf-certifications” that cost the city less to administer, and greater amounts charged when reinspections were required. (*Griffith I*, at p. 997.) The court concluded: “Considered collectively, the fees are reasonably related to the payors’ burden upon the inspection program. *The larger fees are imposed upon those whose properties require the most work.*” (*Ibid.*, italics added.)

Griffith I did, as the Agency tells us, state that “ ‘the question of proportionality is not measured on an individual basis’ ” but rather “ ‘collectively, considering all rate payors.’ ” (*Griffith I, supra*, 207 Cal.App.4th at p. 997.) But, as mentioned, *Griffith I* was considering a regulatory fee, not, as here, a charge imposed on four ratepayers for a “specific government service or product.” As *Griffith I* explained, “ ‘[t]he scope of a regulatory fee is somewhat flexible’ ” and “ ‘must be related to the overall cost of the governmental regulation,’ ” but “ ‘need not be finely calibrated to the precise benefit each individual fee payor might derive.’ ” (*Ibid.*) That, of course, makes perfect sense in the context of a regulatory fee applicable to numerous payors; indeed, it would be impossible to assess such fees based on the individual payor’s precise burden on the regulatory program. But the inspection fees *were* allocated by categories of payor, and were based on the burden on the inspection program, with higher fees where more city work was required.

Here, there are four payors, with no need to group them in classes to allocate costs. The *Griffith I* concept of measuring proportionality “collectively” simply does not apply. Where charges for a government service or product are to be allocated among only four payors, the only rational method of evaluating their burdens on, or benefits received from, the governmental activity, is individually, payor by payor. And that is particularly appropriate considering the nature of the Proposition 26 exemption in question: charges for a product or service that is (and is required to be) provided “directly to the payor.” Under these circumstances, allocation of costs “collectively,” when the product is provided directly to each of the four payors, cannot be, and is not, a “fair or reasonable” allocation method. (Art. XIII C, § 1, subd. (e), final par.)

b. *Griffith II* – the proportionality requirement and related claims

In *Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586 (*Griffith II*), the court concluded, among other things, that a groundwater augmentation charge complied with the proportionality requirement of Proposition 218. The Agency relies on *Griffith II*, asserting that the court applied the “concept of collective reasonableness with respect to rate allocations” Further, the case

demonstrates, the Agency tells us, that its activities in “management . . . of the Basin’s groundwater” justify basing its rates on total water demand, because all four retailers benefit from having the Agency’s imported water available, even when they do not use it. Neither claim withstands analysis.

Griffith II involved a challenge under Proposition 218, so we pause to describe its relevant points. Proposition 218 contains various procedural (notice, hearing, and voting) requirements for the imposition by local governments of fees and charges “upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.” (Art. XIII D, § 2, subd. (e).) Fees or charges for water service (at issue in *Griffith II*) are exempt from voter approval (art. XIII D, § 6, subd. (c)), but substantive requirements apply. These include a proportionality requirement: that the amount of a fee or charge imposed on any parcel or person “shall not exceed the proportional cost of the service attributable to the parcel.” (*Id.*, subd. (b)(3).)

In *Griffith II*, the plaintiffs challenged charges imposed by the defendant water management agency on the extraction of groundwater (called a “groundwater augmentation charge”). The defendant agency had been created to deal with the issue of groundwater being extracted faster than it is replenished by natural forces, leading to saltwater intrusion into the groundwater basin. (*Griffith II, supra*, 220 Cal.App.4th at p. 590.) The defendant agency was specifically empowered to levy groundwater augmentation charges on the extraction of groundwater from all extraction facilities, “ “for the purposes of paying the costs of purchasing, capturing, storing, and distributing supplemental water for use within [defendant’s boundaries].” ’ ” (*Id.* at p. 591.) The defendant’s strategy to do so had several facets, but its purpose was to reduce the amount of water taken from the groundwater basin by supplying water to some coastal users, with the cost borne by all users, “on the theory that even those taking water from [inland] wells benefit from the delivery of water to [coastal users], as that reduces the amount of groundwater those [coastal users] will extract [from their own wells], thereby keeping the water in [all] wells from becoming too salty.’ ” (*Id.* at pp. 590-591.)

Griffith II found the charge complied with the Proposition 218 requirement that the charge could not exceed the proportional costs of the service attributable to the parcel. (*Griffith II, supra*, 220 Cal.App.4th at pp. 600-601.) Proposition 218, the court concluded, did not require “a parcel-by-parcel proportionality analysis.” (*Griffith II*, at p. 601.) The court found defendant’s “method of grouping similar users together for the same augmentation rate and charging the users according to usage is a reasonable way to apportion the cost of service,” and Proposition 218 “does not require a more finely calibrated apportion.” (*Griffith II*, at p. 601.) The augmentation charge “affects those on whom it is imposed by burdening them with an expense they will bear proportionately to the amount of groundwater they extract at a rate depending on which of three rate classes applies. It is imposed ‘across-the-board’ on all water extractors. All persons extracting water – including any coastal users who choose to do so – will pay an augmentation charge per acre-foot extracted. All persons extracting water and paying the charge will benefit in the continued availability of usable groundwater.” (*Griffith II*, at pp. 603-604.)

The court rejected the plaintiffs’ claim the charge for groundwater extraction on their parcels was disproportionate because they did not use the agency’s services – that is, they did not receive delivered water, as coastal landowners did. This claim, the court said, was based on the erroneous premise that the agency’s only service was to deliver water to coastal landowners. The court pointed out that the defendant agency was created to manage the water resources for the common benefit of all water users, and the groundwater augmentation charge paid for the activities required to prepare and implement the groundwater management program. (*Griffith II, supra*, 220 Cal.App.4th at p. 600.) Further, the defendant agency “apportioned the augmentation charge among different categories of users (metered wells, unmetered wells, and wells within the delivered water zone).” (*Id.* at p. 601.) (The charges were highest for metered wells in the coastal zone, and there was also a per acre-foot charge for delivered water. (*Id.* at p. 593 & fn. 4.))

We see nothing in *Griffith II* that assists the Agency here. The Agency focuses on the fact that the defendant charged the plaintiff for groundwater extraction even though

the plaintiff received no delivered water, and on the court's statement that the defendant was created to manage water resources for the common benefit of all water users. (*Griffith II, supra*, 220 Cal.App.4th at p. 600.) From this the Agency leaps to the erroneous conclusion that the rates here satisfy the proportionality requirement simply because all four retailers "benefit from having the Agency's supplemental water supplies available," even when they do not use them. This is a false analogy. In *Griffith II*, the defendant charged all groundwater extractors proportionately for extracting water (and had the power to do so), and charged for delivered water as well. *Griffith II* does not support the imposition of charges based on a product the Agency does not supply.

We note further that in *Griffith II*, more than 1,900 parcel owners were subject to the groundwater augmentation charge, and they were placed in three different classes of water extractors and charged accordingly. (*Griffith II, supra*, 220 Cal.App.4th at pp. 593, 601.) Here, there are four water retailers receiving the Agency's wholesale water service, none of whom can reasonably be placed in a different class or category from the other three. In these circumstances, to say costs may be allocated to the four purveyors "collectively," based in significant part on groundwater not supplied by the Agency, because "they all benefit" from the availability of supplemental water supplies, would effectively remove the proportionality requirement from Proposition 26.

That we may not do. Proposition 26 requires by its terms an allocation method that bears a reasonable relationship to the payor's burdens on or benefits from the Agency's activity, which here consists of wholesale water service to be provided "directly to the payor." In the context of wholesale water rates to four water agencies, this necessarily requires evaluation on a "purveyor by purveyor" basis. (Cf. *Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1514 (*Capistrano*) ["[w]hen read in context, *Griffith [II]* does not excuse water agencies from ascertaining the true costs of supplying water to various tiers of usage"; *Griffith II*'s "comments on proportionality necessarily relate only to variations in property location"; "trying to apply [*Griffith II*] to the [Proposition 218 proportionality] issue[] is fatally flawed"].)

The Agency's claim that it is not charging the retailers for groundwater use, and its attempt to support basing its rates on total water demand by likening itself to the defendant agency in *Griffith II*, both fail as well. The first defies reason. Because the rates are based on total water demand, the more groundwater a retailer uses, the more it pays under the challenged rates. The use of groundwater demand in the rate structure necessarily means that, in effect, the Agency is charging for groundwater use.

The second assertion is equally mistaken. The differences between the Agency and the defendant in *Griffith II* are patent. In *Griffith II*, the defendant agency was created to manage all water resources, and specifically to deal with saltwater intrusion into the groundwater basin. The Agency here was not. It was created to acquire water and to "provide, sell, and deliver" it. It is authorized to develop and implement groundwater management plans only with the approval of the retail water purveyors (and other major groundwater extractors). In other words, while the Agency functions as the lead agency in developing and coordinating groundwater management plans, its only authority over groundwater, as the trial court found, is a shared responsibility to develop those plans. Further, in *Griffith II*, the defendant agency was specifically empowered to levy groundwater extraction charges for the purpose of purchasing supplemental water. The Agency here was not. As the trial court here aptly concluded, *Griffith II* "does not aid [the Agency] for the simple reason that [the Agency] has no comprehensive authority to manage the water resources of the local groundwater basin and levy charges related to groundwater."⁴

Finally, the Agency insists that it "must be allowed to re-coup its cost of service," and that the practice of setting rates to recover fixed expenses, "irrespective of a customer's actual consumption," was approved in *Paland v. Brooktrails Township*

⁴ The trial court also observed that, "[a]part from [the Agency's] lack of authority to supply or manage Basin groundwater, Newhall correctly notes that [the Agency] has presented no evidence of its costs in maintaining the Basin."

Community Services Dist. Bd. of Directors (2009) 179 Cal.App.4th 1358 (*Paland*).

Paland has no application here.

Paland involved Proposition 218. As we have discussed, Proposition 218 governs (among other things) “property related fees and charges” on parcels of property. Among its prohibitions is any fee or charge for a service “unless that service is actually used by, or immediately available to, the owner of the property in question.” (Art. XIII D, § 6, subd. (b)(4).) The court held that a minimum charge, imposed on parcels of property with connections to the district’s utility systems, for the basic cost of providing water service, regardless of actual use, was “a charge for an immediately available property-related water or sewer service” within the meaning of Proposition 218, and not an assessment requiring voter approval. (*Paland, supra*, 179 Cal.App.4th at p. 1362; see *id.* at p. 1371 [“Common sense dictates that continuous maintenance and operation of the water and sewer systems is necessary to keep those systems immediately available to inactive connections like [the plaintiff’s].”].)

We see no pertinent analogy between *Paland* and this case. This case does not involve a minimum charge imposed on all parcels of property (or a minimum charge for standing ready to supply imported water). Newhall does not contest the Agency’s right to charge for its costs of standing ready to provide supplemental water, and to recoup all its fixed costs. The question is whether the Agency may recoup those costs using a cost allocation method founded on the demand for groundwater the Agency does not supply, and is not empowered to regulate without the consent of groundwater extractors. The answer under Proposition 26 is clear: it may not. *Paland* does not suggest otherwise.⁵

⁵ The parties refer to other recent authorities to support their positions in this case. We may not rely on one of them, because the Supreme Court has granted a petition for review. (*City of San Buenaventura v. United Water Conservation District* (2015) 235 Cal.App.4th 228, review granted June 24, 2015, S226036.) The Agency cites the other case extensively in its reply brief, but we see nothing in that case to suggest that the challenged rates here comply with Proposition 26. (*Great Oaks Water Co. v. Santa Clara Valley Water District* 242 Cal.App.4th 1187 (*Great Oaks*).)

c. Other claims – conservation and “conjunctive use”

The Agency attempts to justify the challenged rates by relying on the conservation mandate in the California Constitution, pointing out it has a constitutional obligation to encourage water conservation. (Art. X, § 2 [declaring the state’s water resources must “be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water [must] be prevented”].) The challenged rates comply with this mandate, the Agency contends, because reducing total water consumption will result in lower charges, and the rates encourage “a coordinated use of groundwater and supplemental water” (conjunctive use). This argument, too, misses the mark.

The Agency’s brief fails to describe the circumstances in *Great Oaks*. There, a water retailer challenged a groundwater extraction fee imposed by the defendant water district. Unlike this case, the defendant in *Great Oaks* was authorized by statute to impose such fees, and its major responsibilities included “preventing depletion of the aquifers from which [the water retailer] extracts the water it sells.” (*Great Oaks, supra*, 242 Cal.App.4th at p. 1197.) The Court of Appeal, reversing a judgment for the plaintiff, held (among other things) that the fee was a property-related charge, and therefore subject to some of the constraints of Proposition 218, but was also a charge for water service, and thus exempt from the requirement of voter ratification. (*Great Oaks*, at p. 1197.) The trial court’s ruling in *Great Oaks* did not address the plaintiff’s contentions that the groundwater extraction charge violated three substantive limitations of Proposition 218, and the Court of Appeal ruled that one of those contentions (that the defendant charged more than was required to provide the property related service on which the charge was predicated) could be revisited on remand. The others were not preserved in the plaintiff’s presuit claim, so no monetary relief could be predicated on those theories. (*Great Oaks*, at pp. 1224, 1232-1234.)

The Agency cites *Great Oaks* repeatedly, principally for the statements that the “provision of alternative supplies of water serves the long-term interests of extractors by reducing demands on the groundwater basin and helping to prevent its depletion,” and that it was not irrational for the defendant water district “to conclude that reduced demands on groundwater supplies benefit retailers by preserving the commodity on which their long-term viability, if not survival, may depend.” (*Great Oaks, supra*, 242 Cal.App.4th at pp. 1248-1249.) These statements, with which we do not disagree, have no bearing on this case, and were made in connection with the court’s holding that the trial court erred in finding the groundwater extraction charge violated the statute that created and empowered the defendant water district. (*Id.* at pp. 1252-1253.)

Certainly the Agency may structure its rates to encourage conservation of the imported water it supplies. (Wat. Code, § 375, subd. (a) [public entities supplying water at wholesale or retail may “adopt and enforce a water conservation program to reduce the quantity of water used by [its customers] for the purpose of conserving the water supplies of the public entity”]. But the Agency has no authority to set rates to encourage conservation of groundwater it does not supply. Moreover, article X’s conservation mandate cannot be read to eliminate Proposition 26’s proportionality requirement. (See *City of Palmdale v. Palmdale Water District* (2011) 198 Cal.App.4th 926, 936-937 [“California Constitution, article X, section 2 is not at odds with article XIII D [Proposition 218] so long as, for example, conservation is attained in a manner that ‘shall not exceed the proportional cost of the service attributable to the parcel.’ ”]; see *id.* at p. 928 [district failed to prove its water rate structure complied with the proportionality requirement of Proposition 218]; see also *Capistrano, supra*, 235 Cal.App.4th at p. 1511, quoting *City of Palmdale* with approval.)

The Agency also insists that basing its rates only on the demand for the imported water it actually supplies – as has long been the case – would “discourage users from employing conjunctive use” The Agency does not explain how this is so, and we are constrained to note that, according to the Agency’s own 2003 Groundwater Management Plan, Newhall and the other retailers “have been practicing the conjunctive use of imported surface water and local groundwater” for many years. And, according to that plan, the Agency and retailers have “a historical and ongoing working relationship . . . to manage water supplies to effectively meet water demands within the available yields of imported surface water and local groundwater.”

In connection, we assume, with its conjunctive use rationale, the Agency filed a request for judicial notice, along with its reply brief. It asked us to take notice of three documents and “the facts therein concerning imported water use and local groundwater production” by Newhall and the other water retailers. The documents are the 2014 and 2015 Water Quality Reports for the Santa Clarita Valley, and a water supply utilization table from the 2014 Santa Clarita Valley Water Report published in June 2015. All of

these, the Agency tells us, are records prepared by the Agency and the four retailers, after the administrative record in this case was prepared. The documents “provide further support” as to the “cooperative efforts of the Agency and the Purveyors in satisfying long-term water supply needs,” and “provide context and useful background to aid in the Court’s understanding of this case.” The Agency refers to these documents in its reply brief, pointing out that since 2011, Newhall has increased its imported water purchases because of the impact of the current drought on certain of its wells, while retailer Valencia Water Company increased groundwater pumping and purchased less imported water in 2014. These cooperative efforts, the Agency says, “reflect the direct benefit to Newhall of having an imported water supply available to it, whether or not it maximizes use of imported water in a particular year.”

We deny the Agency’s request for judicial notice. We see no reason to depart from the general rule that courts may not consider evidence not contained in the administrative record. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 564; cf. *id.* at p. 578 [the exception to the rule in administrative proceedings, for evidence that could not have been produced at the hearing through the exercise of reasonable diligence, applies in “rare instances” where the evidence in question existed at the time of the decision, or in other “unusual circumstances”].) Denial is particularly appropriate where judicial notice has been requested in support of a reply brief to which the opposing party has no opportunity to respond, and where the material is, as the Agency admits, “further support” of evidence in the record, providing “context and useful background.” These are not unusual circumstances.

Returning to the point, neither conservation mandates nor the Agency’s desire to promote conjunctive use – an objective apparently shared by the retailers – permits the Agency to charge rates that do not comply with Proposition 26 requirements. Using demand for groundwater the agency does not supply to allocate its fixed costs may “satisf[y] the Agency’s constitutional obligations . . . to encourage water conservation,”

but it does not satisfy Proposition 26, and it therefore cannot stand.⁶ (Cf. *Capistrano*, *supra*, 235 Cal.App.4th at pp. 1511, 1498 [conservation is to be attained in a manner not exceeding the proportional cost of service attributable to the parcel under Proposition 218; the agency failed to show its tiered rates complied with that requirement].)

d. Other Proposition 26 requirements

We have focused on the failure of the challenged rates to comply with the proportionality requirement of Proposition 26. But the rates do not withstand scrutiny for another reason as well. Proposition 26 exempts the Agency’s charges from voter approval only if the charge is imposed “for a specific government service or product provided *directly* to the payor that is *not* provided to those not charged” (Italics added.) The only “specific government service or product” the Agency provides directly to the retailers, and not to others, is imported water. As the trial court found: the Agency “does not provide Newhall groundwater. It does not maintain or recharge aquifers. It does not help Newhall pump groundwater. Nor does it otherwise contribute directly to the natural recharge of the groundwater Newhall obtains from its wells.”

The groundwater management activities the Agency *does* provide – such as its leadership role in creating groundwater management plans and its perchlorate remediation efforts – are not specific services the Agency provides directly to the retailers, and not to other groundwater extractors in the Basin. On the contrary, groundwater management services redound to the benefit of all groundwater extractors in the Basin – not just the four retailers. Indeed, implementation of any groundwater

⁶ The Agency also cites *Brydon v. East Bay Municipal Utility District* (1994) 24 Cal.App.4th 178 for the principle that, in pursuing a constitutionally and statutorily mandated conservation program, “cost allocations . . . are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity.” (*Id.* at p. 193.) But *Brydon* predated both Proposition 218 and Proposition 26. (See *Capistrano*, *supra*, 235 Cal.App.4th at pp. 1512-1513 [*Brydon* “simply has no application to post-Proposition 218 cases”; “it seems safe to say that *Brydon* itself was part of the general case law which the enactors of Proposition 218 wanted replaced with stricter controls on local government discretion”].)

management plan is “subject to the rights of property owners and with the approval of the retail water purveyors *and other major extractors* of over 100 acre-feet of water per year.” (Wat. Code Appen., § 103-15.2, subds. (b)&(c), italics added.)

Certainly the Agency may recover through its water rates its entire cost of service – that is undisputed. The only question is whether those costs may be allocated, consistent with Proposition 26, based in substantial part on groundwater use. They may not, because the Agency’s groundwater management activities plainly are not a service “that is not provided to those not charged” (Art. XIII C, § 1, subd. (e)(2).)

In light of our conclusion the challenged rates violate Proposition 26, we need not consider the Agency’s contention that the rates comply with Government Code section 54999.7 and the common law. Nor need we consider the propriety of the remedy the trial court granted, as the Agency raises no claim of error on that point.

DISPOSITION

The judgment is affirmed. Plaintiff shall recover its costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.

Transcription

Keith Lewinger (Director, San Diego County Water Authority)
Tom DeBacker (Controller, Metropolitan Water District of Southern California)

3b: Financial highlights

Finance and Insurance Committee Meeting

July 8, 2013

DeBacker (16:53): That was not based on a percentage. There was a point in time when we did use a percentage and that percentage was about 20 percent of the CIP. When we changed from that practice we went to a 95 million dollars and that was just to kind of, you know, get us close to what a 20 percent amount would be, but it was not precisely 20 percent.

Lewinger: So it was meant to represent approximately 20 percent?

DeBacker: Yeah and I was just using that going forward.

The Metropolitan Water District Act

PREFACE

This volume constitutes an annotated version of the Metropolitan Water District Act, as reenacted by the California State Legislature in 1969 and as amended in 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1978, 1981, 1984, 1985, 1995, 1998, 1999, 2001, 2004, and **2008**. Where there is no legislative history given for a section of this act, it is because the section was enacted as part of the nonsubstantive revision of the Metropolitan Water District Act, Statutes 1969, chapter 209. The editorial work was done by the office of the General Counsel of The Metropolitan Water District of Southern California. To facilitate use of the act, catchlines or catchwords enclosed by brackets have been inserted to indicate the nature of the sections which follow. Also, a table of contents has been set at the beginning of the act. Such table of contents and catchlines or catchwords are not a part of the act as enacted by the Legislature. This annotated act will be kept up to date by means of supplemental pages issued each year in which there is a change to the act.

**(Statutes 1969, ch.209, as amended;
West's California Water Code – Appendix Section 109
Deering's California Water Code – Uncodified Act 570)**

A contract between the State and a metropolitan water district for a water supply from the State Water Resources Development System was a contract for the furnishing of continued water service in the future, payments by the district being contingent upon performance of contractual duties by the State and not incurred at the outset, so the district did not incur an indebtedness in excess of that permitted by former Section 5(7) of the Metropolitan Water District Act (now Sec. 123).

Metropolitan Water District v. Marquardt, 59 Cal.2d 159, 28 Cal. Rptr. 724 (1963).

Sec. 124. [Taxes, Levy and Limitation]

A district may levy and collect taxes on all property within the district for the purposes of carrying on the operations and paying the obligations of the district, except that such taxes, exclusive of any tax levied to meet the bonded indebtedness of such district and the interest thereon, exclusive of any tax levied to meet any obligation to the United States of America or to any board, department or agency thereof, and exclusive of any tax levied to meet any obligation to the state pursuant to Section 11652 of the Water Code, shall not exceed five cents (\$0.05) on each such one hundred dollars (\$100) of assessed valuation. The term "tax levied to meet the bonded indebtedness of such district and the interest thereon" as used in this section shall also include, but shall not be limited to, any tax levied pursuant to Section 287 to pay the principal of, or interest on, bond anticipation notes and any tax levied under the provisions of any resolution or ordinance providing for the issuance of bonds of the district to pay, as the same shall become due, the principal of any term bonds which under the provisions of such resolution or ordinance are to be paid and retired by call or purchase before maturity with moneys set aside for that purpose.

Amended by Stats. 1969, ch. 441.

CASE NOTE

An article in a contract between the State and a metropolitan water district for a water supply from the State Water Resources Development System which article is based upon Water Code Section 11652, requiring the district to levy a tax to provide for all payments due under the contract, does not contravene former Section 5(8) of the Metropolitan Water District Act, imposing a limit on taxation, as Section 11652 is a special provision relating only to taxation to meet obligations from water contracts with state agencies, whereas said Section 5(8) is a general provision relating to taxation by a district for all purposes and the special provision controls the general provision.

Metropolitan Water District v. Marquardt, 59 Cal.2d 159, 28 Cal. Rptr. 724 (1963).

Sec. 124.5. [Ad valorem Tax Limitation]

Subject only to the exception in this section and notwithstanding any other provision of law, commencing with the 1990-91 fiscal year any ad valorem property tax levied by a district on taxable property in the district, other than special taxes levied and collected pursuant to annexation proceedings pursuant to Articles 1 (commencing with Section 350), 2 (commencing with Section 360), 3 (commencing with Section 370), and 6 (commencing with Section 405) of Chapter 1 of Part 7, shall not exceed the composite amount required to pay (1) the principal and interest on general obligation bonded indebtedness of the district and (2) that portion of the district's payment obligation under a water service contract with the state which is reasonably

allocable, as determined by the district, to the payment by the state of principal and interest on bonds issued pursuant to the California Water Resources Development Bond Act as of the effective date of this section and used to finance construction of facilities for the benefit of the district. The restrictions contained in this section do not apply if the board of directors of the district, following a hearing held to consider that issue, finds that a tax in excess of these restrictions is essential to the fiscal integrity of the district, and written notice of the hearing is filed with the offices of the Speaker of the Assembly and the President pro Tempore of the Senate at least 10 days prior to that date of the hearing.

Added by Stats. 1984, ch. 271.

Sec. 125. [Investment of Surplus Money]

Investment of surplus moneys of a district is governed by Article 1 (commencing with Section 53600) of Chapter 4, Part 1, Division 2, Title 5 of the Government Code.

Amended by Stats. 1969, ch. 441.

Sec. 125.5 Guidelines for intended use of unreserved fund balances.

On or before June 20, 2002, the board of directors of a district shall adopt a resolution establishing guidelines for the intended use of unreserved fund balances. The guidelines shall require that any disbursement of funds to member public agencies that represents a refund of money paid for the purchases of water shall be distributed based upon each member agency's purchase of water from the district during the previous fiscal year.

Added Stats. 2001 ch 632 §1 (SB350)

Sec. 126. [Dissemination of Information]

A district may disseminate information concerning the activities of the district, and whenever it shall be found by two-thirds vote of the board to be necessary for the protection of district rights and properties, the district may disseminate information concerning such rights and properties, and concerning matters which, in the judgment of the board, may adversely affect such rights and properties. Expenditures during any fiscal year for the purposes of this section shall not exceed one-half of one cent (\$0.005) for each one hundred dollars (\$100) of assessed valuation of the district.

Sec. 126.5.[Proscription on Use of Public Money for Investigations Relating to Elected Officials, Advocacy Groups, or Interested Persons: Right to Public Records]

(a) The Metropolitan Water District of Southern California and its member public agencies may not expend any public money for contracting with any private entity or person to undertake research or investigations with regard to the personal backgrounds or the statements of

board to be equitable, may fix rates for the sale and delivery to member public agencies of water obtained by the district from one source of supply in substitution for water obtained by the district from another and different source of supply, and may charge for such substitute water at the rate fixed for the water for which it is so substituted.

Sec. 134. [Adequacy of Water Rates; Uniformity of Rates]

The Board, so far as practicable, shall fix such rate or rates for water as will result in revenue which, together with revenue from any water stand-by or availability service charge or assessment, will pay the operating expenses of the district, provide for repairs and maintenance, provide for payment of the purchase price or other charges for property or services or other rights acquired by the district, and provide for the payment of the interest and principal of the bonded debt subject to the applicable provisions of this act authorizing the issuance and retirement of the bonds. Those rates, subject to the provisions of this chapter, shall be uniform for like classes of service throughout the district.

Amended by Stats. 1984, ch. 271

Sec. 134.5. [Water Standby or Availability of Service Charge]

(a) The board may, from time to time, impose a water standby or availability service charge within a district. The amount of revenue to be raised by the service charge shall be as determined by the board.

(b) Allocation of the service charge among member public agencies shall be in accordance with a method established by ordinance or resolution of the board. Factors that may be considered include, but are not limited to, historical water deliveries by a district; projected water service demands by member public agencies of a district; contracted water service demands by member public agencies of a district; service connection capacity; acreage; property parcels; population, and assessed valuation, or a combination thereof.

(c) The service charge may be collected from the member public agencies of a district. As an alternative, a district may impose a service charge as a standby charge against individual parcels within the district.

In implementing this alternative, a district may exercise the powers of a county water district under Section 31031 of the Water Code, except that, notwithstanding Section 31031 of the Water Code, a district may (1) raise the standby charge rate above ten dollars (\$10) per year by a majority vote of the board, and (2) after taking into account the factors specified in subdivision (b), fix different standby charge rates for parcels situated within different member public agencies.



San Diego County Water Authority

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

November 17, 2014

Brett Barbre 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: Finance and Insurance Committee Item 6c – Balancing Accounts

Dear Committee Chair Barbre and Members of the Board:

Thank you for placing the balancing accounts issue on the committee agenda this month.

In September, when staff last presented the item for discussion, we noted that the content of the presentation was not responsive to the question, namely, how can revenues from individual rates be tracked to improve accountability and ensure compliance with cost-of-service requirements. We are disappointed to see that the same non-responsive staff presentation will be made again this month.

The concept of balancing accounts is well-known and easy to understand. It is a long-standing accounting practice among private water utilities used to protect both the utility and its customers from changes in costs the utility has no ability to control (for example, the weather,) and at the same time, ensure that rates accurately reflect the costs of providing service. Because MWD now derives significant revenues from transportation services, it is imperative that MWD's accounting methods ensure all of its member agencies and ratepayers that the rates they are paying are fair, and used for the intended purpose as established during the public rate-setting and cost-of-service process.

We are asking that MWD implement an accounting mechanism that tracks revenues from all individual rates and expenditures associated with those rates. To the extent that MWD actual sales differ from forecasted sales, it may collect more or less than the revenue requirement upon which the rate for a particular service is determined. Discrepancies between revenue requirements and actual revenues and expenses are captured through balancing account mechanisms, which "true-up" the actual revenue to the revenue requirement in the following year. This "true-up" ensures that MWD only collects the revenue requirement for the rate that is charged in compliance with applicable law.

We do not understand why MWD would be unwilling to extend its current practice of tracking

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

Committee Chair Barbre and Members of the Board

November 17, 2014

Page 2

treatment and water stewardship rates to also include supply, system access and system power rates. We are asking only that MWD account for all of its rates just as it now does for its treatment and water stewardship rates. Tracking rates and revenue collection in this manner does not impede MWD's ability to meet bond covenants or any other requirement or function described in the staff presentation.

We are also concerned with the position expressed at the last committee meeting that the Water Rate Stabilization Fund (WRSF) requirements should flow into a single fund with board discretion to expend those funds on any purpose. The melding of surplus funds received from different rates and charges would necessarily lead to cross-funding of unrelated services. Furthermore, the priority for fund flows (dollars in/out) could first be to the separate fund accounts for each identified service, rather than flowing first to the WRSF, as is the current practice, or sub-account funds could be created within the WRSF to track and account for sources of the "puts" into the WRSF and the "takes" from the fund. This would ensure collections from the rate for each service are accounted for and attributed to that service. Surplus collections remaining in that account may then be used to mitigate corresponding rate increases in the following years so funds are spent for that service in accordance with cost-of-service and Proposition 26 (2010) requirements.

We look forward to discussing this important transparency issue at the committee and board meeting this month.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director



San Diego County Water Authority

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

February 6, 2016

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
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- 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

RE: Board Memo 9-2: Proposed biennial budget and revenue requirements for fiscal years 2016/17 and 2017/18; estimated water rates and charges for calendar years 2017 and 2018 to meet revenue requirements; and ten-year forecast

Dear Chairman Record and Board Members:

The purpose of this letter is to provide preliminary comments and questions on Board Memo 9-2, proposed biennial budget and revenue requirements (collectively, the "Budget Document") in advance of the budget and rate workshops that begin with Monday's Finance and Insurance Committee meeting.

1. The Budget Document lacks sufficient detail to understand how MWD has spent money or deliberate how MWD is proposing to spend money. As one example, among many, MWD's proposed Demand Management cost summary does not identify any of the projects included in either Local Resources Program (\$43.7 and \$41.9 million, respectively for the respective fiscal years) or Future Supply Actions (\$4.4 and \$2 million, respectively). The budget also lacks projected actual expenditures for fiscal year (FY) 2016; instead, all comparisons are budget to budget. It is important for Board members to consider actual expenditures as well as proposed budgets, particularly in light of the very substantial additions and modifications to spending that occurred outside of the 2014 budget after it was adopted -- in the hundreds of millions of dollars. We request to be provided with greater detail explaining the proposed expenditures at a detail level sufficient to allow the Board to deliberate where savings might be achieved, as well as to understand the status or outcomes of past programs and expenditures.

2. The Budget Document does not provide any cost of service analysis and lacks sufficient detail to understand how MWD's costs should be assigned to rates. Different than past years, the current Budget Document **does not include any cost of service analysis**. Why has that not been provided? In addition, the Budget Document does not provide a sufficient level of detail or information in order for MWD to defend its rates and establish "**cost**"

OTHER REPRESENTATIVE

County of San Diego

causation" in accordance with legal requirements. Using the Demand Management cost summary again as an example, it is impossible to identify the proportionate benefits to MWD's customer member agencies resulting from the proposed expenditures. Broad, unsupported statements, such as "demand management programs reduce reliance on imported water," and "demand management programs reduce demands and burdens on MWD's system," are legally insufficient to comply with the common law or California statutory or Constitutional requirements that require MWD to conform to cost of service.

While we understand that MWD has appealed Judge Karnow's decision in the rate cases filed by the Water Authority, there is an increasing body of case law reaffirming these requirements, and clearly establish that they are applicable to water suppliers such as MWD. As one example, we attach a copy of the recent decision of the court in *Newhall County Water District v. Castaic Lake Water Agency*, where a number of arguments by Castaic that are very similar to those made by MWD were again rejected by the Court of Appeal. Chief among them was the argument that the water wholesaler need only identify benefits to its customers "collectively," rather than in a manner that reflects a reasonable relationship to the customers' respective burdens on, or benefits received from the wholesale agency's activities and expenditures. Contrary to these clear legal requirements, MWD's current Budget Document does not provide sufficient information to allow Board members or MWD's 26 customer member agencies to determine proportionate benefit from MWD's proposed expenditures. We repeat here for these purposes, our request to be provided with a greater level of detail regarding MWD's proposed spending, as well as the basis upon which MWD has assessed or may assess proportionate benefit to its customers. We also believe the Board would benefit from a public presentation on current and developing case law regarding the applicability of Proposition 26 to wholesale water agencies such as MWD, so that it is informed of its legal obligations as Board members in setting rates.

3. The Budget Document does not provide any analysis or data to explain or support the wide range of variation in proposed increases and decreases in various rate categories. The budget describes an "overall rate increase of 4%;" however, that is a meaningless number outside of the context of specific rates and charges as applied to MWD's 26 customer member agencies, which depends on the type of service or water they buy and what they pay in fixed charges. **The following rate increases and decreases are proposed for each of the respective fiscal years, without any data or analysis to explain them:**

- Tier 1 supply rate increases of 28.8% and 4%;
- Wheeling rate increases of 6.2% and 4.5%;
- Treatment surcharge decrease of 10.1%, followed by an increase of 2.2%;
- Full service untreated rate increases of 12.1% and 4.4%;
- Full service treated rate increases of 3.9% and 3.7%;
- Readiness-to-Serve (RTS) charge decreases of 11.8% and 3.7%; and
- Capacity Charge (CC) decrease of 26.6%, followed by an increase of 8.8%.

There is no demonstration in the Budget Document that MWD's expenses recovered by the RTS

and CC will vary to such a degree in FYs 2017 and 2018 to support the very substantial proposed decreases in those fixed charges. Moreover, these sources of fixed cost recovery are being reduced at the very same time MWD is proposing to add fixed treatment cost recovery and suspend the property tax limitation under Section 124.5. In addition to the inconsistent logic, MWD is reducing the very charges authorized by the Legislature in 1984 so MWD could have more fixed revenue in lieu of its reliance on property taxes. MWD's proposed rates are precisely contrary to the intent of Sections 124.5 and 134 of its Act (copies attached). We ask that the General Counsel provide a legal opinion why MWD's actions are not the opposite of what was intended by passage of these provisions of the MWD Act.

Absent a justification that is not apparent from the Budget Document, these proposed rate increases and decreases appear to be arbitrary and unreasonable. We ask for the Board's support to require staff to provide both **data and analysis** to support these proposed rates and charges so that they may be understood and demonstrated to be based on cost causation principles.

4. The Budget Document mischaracterizes the Board's PAYGo funding policy and past actions; and is now proposing a "Resolution of Reimbursement" to formally authorize use of PAYGo revenues to pay for O&M, if necessary. The Board's PAYGo funding policy was historically set at 20 percent. See attached excerpt from the Board's July 8, 2013 Finance and Insurance Committee meeting. However, MWD staff has for the last several years been using PAYGo funds on an "as- and how-needed" basis. The Board has never deliberated or set a PAYGo "target" or "policy" at 60 percent. Moreover, contrary to what is stated in the Budget Document, the 2014 budget included CIP PAYGo funding at 100 percent, with the 2014 ten-year forecast stating that it "anticipates funding 100% of the CIP from PAYG and Replacement and Refurbishment (R&R) funds for the first three fiscal years, then transitioning to funding 60% of the CIP from water sales revenues." The absence of a Board policy being applied consistently not only fails to accomplish the purpose of PAYGo funding -- to equitably distribute costs of the CIP over time -- but exposes MWD to further litigation risk as funds that are collected for one purpose (CIP) are used for a different purpose (O&M).

The Board should not adopt the recommended "Resolution of Reimbursement" authorizing staff in advance to collect \$120 million annually for one purpose (CIP) and potentially use it for another (O&M). This is not only an unsound fiscal strategy, it serves to mask the true condition of MWD's budget and finances, and breaks any possible connection to cost of service. The Board should make a decision now on whether to raise rates, plan to borrow money or, notably at this point in the budget process, **reduce costs** (see also discussion of sales projections, below). The General Manager has told the Board (during its discussion of unbudgeted turf removal spending last year) that a 7 percent rate increase is necessary to support \$100 million in spending. Advance approval and use of PAYGo funds for O&M is nothing more than a hidden, de facto 8.4 percent additional rate increase each year.

5. *The 1.7 MAF MWD sales estimate for the next two fiscal years is likely too high and if so, will leave the Board with an even larger revenue gap to fill; and the Budget Document lacks a fiscally sound contingency plan.* The sales estimate may be too high given MWD's current trend at 1.63 MAF (a "sales" number that (at best) misleadingly includes the Water Authority's wheeled water) and El Nino conditions that make it unlikely that agencies will increase demand for MWD water. Further, while the board memo states the sales forecast accounts for 56,000 AF/year of new local supply from the Claude "Bud" Lewis Carlsbad Seawater Desalination Plant and Orange County Water District's expanded groundwater recycling project, no provision has been made for increased local supplies that may reasonably be projected to be available to the Los Angeles Department of Water and Power (LADWP). With a good year on the Eastern Sierra -- which is presently tracking the best snow pack on record -- MWD sales could be reduced by 250,000 AF or more, which translates to a negative revenue impact on MWD of between \$175 million and \$350 million.

It is MWD's obligation to forecast revenues responsibly, based on known and reasonably anticipated conditions, and plan for the contingency of reduced sales using responsible financial management techniques, which do not include budget gimmicks such as adoption of a "Resolution of Reimbursement" to shift CIP/PAYGo money to other uses.

We call to the Directors' attention that the proposed budget for FY 2017 already includes a revenue deficit of \$94.2 million, with MWD intending to withdraw from its reserves to bridge the gap. Similarly, the budget for fiscal year 2018 relies on \$23 million from reserves to fill the gap. Since sales may also be less than projected -- as they very well may be, for the reasons noted above -- the Board must plan now how the revenue gap will be filled. In this regard, we attach another copy of our November 17, 2014 letter suggesting the establishment of balancing accounts, allowing the Board to properly manage between good years and bad, rather than spending all of the money in good years (as it did this past year on turf removal) and needing to raise rates, borrow money or engage in the kind of gimmick represented by the Resolution of Reimbursement. We also ask that discussion of this issue be added to the next budget meeting agenda.

6. *There is no demonstrated justification for suspension of the ad valorem tax limitation.* As noted above, MWD is proposing in this budget to **reduce** the very charges the Legislature provided to MWD to be used in lieu of property taxes. Under these and other circumstances, there is no proper basis for MWD to suspend the tax rate limitation; instead, it should use the tools provided by the Legislature and included in the MWD Act.

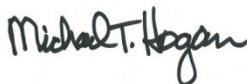
7. *No information is provided regarding the proposed changes in treatment cost recovery.* Leaving aside the complete inconsistency with increasing fixed treatment cost recovery while reducing fixed cost recovery overall, when will the detail on the new charge be available?

8. The Budget Document does not explain why MWD's debt service coverage ratios for 2017 and 2018 are dropping from 2x to 1.6x. A comparison of the financial indices between this 2016 budget and the 2014 forecast shows a difference of only 50,000 AF of water sales reduction each year, yet the debt service ratios are plummeting from 2x to 1.6x. This drop is potentially very disturbing based on the aggressive water supply development plans MWD staff included in the IRP (and upon which it stated that spending decisions would be proposed and made). This is an important issue and policy discussion the Board must address.

9. The CIP numbers contained in the Budget Document don't match the Appendix. The Budget Document includes annual CIP expenditures of \$200 million for each of the proposed fiscal years; however the CIP Appendix includes expenditures of \$246 million and \$240 million, respectively, for fiscal years 2017 and 2018. Please explain and correct the discrepancy by increasing the budget number or reducing projects contained in the Appendices. We will have more extensive comments going forward, and in particular, once additional detail is provided as requested in this letter.

We look forward to beginning the budget review process next week and engaging in a productive dialog with our fellow directors.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director

Attachment 1: Appellate Court Decision – *Newhall County Water District v. Castaic Lake Water Agency*

Attachment 2: Excerpt from the Board's July 8, 2013 Finance and Insurance Committee Meeting

Attachment 3: MWD Act Sections 124.5 and 134

Attachment 4: Water Authority's November 17, 2014 Letter RE Balancing Accounts

Filed 1/19/16

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

NEWHALL COUNTY WATER
DISTRICT,

Plaintiff and Respondent,

v.

CASTAIC LAKE WATER AGENCY et
al.,

Defendants and Appellants.

B257964

(Los Angeles County
Super. Ct. No. BS142690)

APPEAL from a judgment of the Superior Court for the County of Los Angeles.
James C. Chalfant, Judge. Affirmed.

Best Best & Krieger, Jeffrey V. Dunn, and Kimberly E. Hood for Defendants and
Appellants.

Colantuono, Highsmith & Whatley, Michael G. Colantuono, David J. Ruderman,
Jon R. di Cristina; Lagerlof, Senecal, Gosney & Kruse and Thomas S. Bunn III for
Plaintiff and Respondent.

SUMMARY

Plaintiff Newhall County Water District (Newhall), a retail water purveyor, challenged a wholesale water rate increase adopted in February 2013 by the board of directors of defendant Castaic Lake Water Agency (the Agency), a government entity responsible for providing imported water to the four retail water purveyors in the Santa Clarita Valley. The trial court found the Agency’s rates violated article XIII C of the California Constitution (Proposition 26). Proposition 26 defines any local government levy, charge or exaction as a tax requiring voter approval, unless (as relevant here) it is imposed “for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.” (Cal. Const., art. XIII C, § 1, subd. (e)(2).)¹

The challenged rates did not comply with this exception, the trial court concluded, because the Agency based its wholesale rate for imported water in substantial part on Newhall’s use of groundwater, which was not supplied by the Agency. Consequently, the wholesale water cost allocated to Newhall did not, as required, “bear a fair or reasonable relationship to [Newhall’s] burdens on, or benefits received from, the [Agency’s] activity.” (Art. XIII C, § 1, subd. (e), final par.)

We affirm the trial court’s judgment.

FACTS

We base our recitation of the facts in substantial part on the trial court’s lucid descriptions of the background facts and circumstances giving rise to this litigation.

1. The Parties

The Agency is a special district and public agency of the state established in 1962 as a wholesale water agency to provide imported water to the water purveyors in the Santa Clarita Valley. It is authorized to acquire water and water rights, and to provide, sell and deliver that water “at wholesale only” for municipal, industrial, domestic and

¹ All further references to any “article” are to the California Constitution.

other purposes. (Wat. Code Appen., § 103-15.) The Agency supplies imported water, purchased primarily from the State Water Project, to four retail water purveyors, including Newhall.

Newhall is also a special district and public agency of the state. Newhall has served its customers for over 60 years, providing treated potable water to communities near Santa Clarita, primarily to single family residences. Newhall owns and operates distribution and transmission mains, reservoirs, booster pump stations, and 11 active groundwater wells.

Two of the other three retail water purveyors are owned or controlled by the Agency: Santa Clarita Water Division (owned and operated by the Agency) and Valencia Water Company (an investor-owned water utility controlled by the Agency since December 21, 2012). Through these two retailers, the Agency supplies about 83 percent of the water demand in the Santa Clarita Valley. The Agency's stated vision is to manage all water sales in the Santa Clarita Valley, both wholesale and retail.

The fourth retailer is Los Angeles County Waterworks District No. 36 (District 36), also a special district and public agency, operated by the County Department of Public Works. It is the smallest retailer, accounting for less than 2 percent of the total water demand.

2. Water Sources

The four retailers obtain the water they supply to consumers from two primary sources, local groundwater and the Agency's imported water.

The only groundwater source is the Santa Clara River Valley Groundwater Basin, East Subbasin (the Basin). The Basin is comprised of two aquifer systems, the Alluvium and the Saugus Formation. This groundwater supply alone cannot sustain the collective demand of the four retailers. (The Basin's operational yield is estimated at 37,500 to 55,000 acre-feet per year (AFY) in normal years, while total demand was projected at 72,343 AFY for 2015, and 121,877 AFY in 2050.)

The groundwater basin, so far as the record shows, is in good operating condition, with no long-term adverse effects from groundwater pumping. Such adverse effects

(known as overdraft) could occur if the amount of water extracted from an aquifer were to exceed the amount of water that recharges the aquifer over an extended period. The retailers have identified cooperative measures to be taken, if needed, to ensure sustained use of the aquifer. These include the continued “conjunctive use” of imported supplemental water and local groundwater supplies, to maximize water supply from the two sources. Diversity of supply is considered a key element of reliable water service during dry years as well as normal and wet years.

In 1997, four wells in the Saugus Formation were found to be contaminated with perchlorate, and in 2002 and 2005, perchlorate was detected in two wells in the Alluvium. All the wells were owned by the retailers, one of them by Newhall. During this period, Newhall and the two largest retailers (now owned or controlled by the Agency) increased their purchases of imported water significantly.

3. Use of Imported Water

Until 1987, Newhall served its customers relying only on its groundwater rights.² Since 1987, it has supplemented its groundwater supplies with imported water from the Agency.

The amount of imported water Newhall purchases fluctuates from year to year. In the years before 1998, Newhall’s water purchases from the Agency averaged 11 percent of its water demand. During the period of perchlorate contamination (1998-2009), its imported water purchases increased to an average of 52 percent of its total demand. Since then, Newhall’s use of imported water dropped to 23 percent, and as of 2012,

² Newhall has appropriative water rights that arise from California’s first-in-time-first-in-right allocation of limited groundwater supplies. (See *El Dorado Irrigation Dist. v. State Water Resources Control Board* (2006) 142 Cal.App.4th 937, 961 [“ ‘[T]he appropriation doctrine confers upon one who actually diverts and uses water the right to do so provided that the water is used for reasonable and beneficial uses and is surplus to that used by riparians or earlier appropriators.’ ”]; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241 [“ ‘As between appropriators, . . . the one first in time is the first in right, and a prior appropriator is entitled to all the water he needs, up to the amount he has taken in the past, before a subsequent appropriator may take any [citation].’ ”].)

Newhall received about 25 percent of its total water supply from the Agency. The overall average since it began to purchase imported water in 1987, Newhall tells us, is 30 percent.

The other retailers, by contrast, rely more heavily on the Agency's imported water. Agency-owned Santa Clarita Water Division is required by statute to meet at least half of its water demand using imported water. (See Wat. Code Appen., § 103-15.1, subd. (d).) Agency-controlled Valencia Water Company also meets almost half its demand with imported water.

4. The Agency's Related Powers and Duties

As noted above, the Agency's primary source of imported water is the State Water Project. The Agency purchases that water under a contract with the Department of Water Resources. The Agency also acquires water under an acquisition agreement with the Buena Vista Water Storage District and the Rosedale-Rio Bravo Water Storage District, and other water sources include recycled water and water stored through groundwater banking agreements. Among the Agency's powers are the power to "[s]tore and recover water from groundwater basins" (Wat. Code Appen., § 103-15.2, subd. (b)), and "[t]o restrict the use of agency water during any emergency caused by drought, or other threatened or existing water shortage, and to prohibit the wastage of agency water" (§ 103-15, subd. (k)).

In addition, and as pertinent here, the Agency may "[d]evelop groundwater management plans within the agency which may include, without limitation, conservation, overdraft protection plans, and groundwater extraction charge plans" (Wat. Code Appen., § 103-15.2, subd. (c).) The Agency has the power to implement such plans "subject to the rights of property owners and with the approval of the retail water purveyors and other major extractors of over 100 acre-feet of water per year." (*Ibid.*)

In 2001, the Legislature required the Agency to begin preparation of a groundwater management plan, and provided for the formation of an advisory council consisting of representatives from the retail water purveyors and other major extractors.

(Wat. Code Appen., § 103-15.1, subd. (e)(1)&(2)(A).) The Legislature required the Agency to “regularly consult with the council regarding all aspects of the proposed groundwater management plan.” (*Id.*, subd. (e)(2)(A).)

Under this legislative authority, the Agency spearheaded preparation of the 2003 Groundwater Management Plan for the Basin, and more recently the 2010 Santa Clarita Valley Urban Water Management Plan. These plans were approved by the retailers, including Newhall.

The 2003 Groundwater Management Plan states the overall management objectives for the Basin as: (1) development of an integrated surface water, groundwater, and recycled water supply to meet existing and projected demands for municipal, agricultural and other water uses; (2) assessment of groundwater basin conditions “to determine a range of operational yield values that will make use of local groundwater conjunctively with [State Water Project] and recycled water to avoid groundwater overdraft”; (3) preservation of groundwater quality; and (4) preservation of interrelated surface water resources. The 2010 Santa Clarita Valley Urban Water Management Plan, as the trial court described it, is “an area-wide management planning tool that promotes active management of urban water demands and efficient water usage by looking to long-range planning to ensure adequate water supplies to serve existing customers and future demands”

5. The Agency’s Wholesale Water Rates

The board of directors of the Agency fixes its water rates, “so far as practicable, [to] result in revenues that will pay the operating expenses of the agency, . . . provide for the payment of the cost of water received by the agency under the State Water Plan, provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of that bonded debt”

(Wat. Code Appen., § 103-24, subd. (a).) The Agency’s operating costs include costs for management, administration, engineering, maintenance, water quality compliance, water resources, water treatment operations, storage and recovery programs, and studies.

Before the rate changes at issue here, the Agency had a “100 percent variable” rate structure. That means it charged on a per acre-foot basis for the imported water sold, known as a “volumetric” rate. Thus, as of January 1, 2012, retailers were charged \$487 per acre-foot of imported water, plus a \$20 per acre-foot charge for reserve funding.

Because of fluctuations in the demand for imported water (such as during the perchlorate contamination period), the Agency’s volumetric rates result in fluctuating, unstable revenues. The Agency engaged consultants to perform a comprehensive wholesale water rate study, and provide recommendations on rate structure options. The objective was a rate structure that would provide revenue sufficiency and stability to the Agency, provide cost equity and certainty to the retailers, and enhance conjunctive use of the sources of water supply and encourage conservation. As the Agency’s consultants put it, “[t]wo of the primary objectives of cost of service water rates are to ensure the utility has sufficient revenue to cover the costs of operating and maintaining the utility in a manner that will ensure long term sustainability and to ensure that costs are recovered from customers in a way that reflects the demands they place on the system.”

The general idea was a rate structure with both volumetric and fixed components. Wholesale rate structures that include both a fixed charge component (usually calculated to recover all or a portion of the agency’s fixed costs of operating, maintaining and delivering water) and a volumetric component (generally calculated based on the cost of purchased water, and sometimes including some of the fixed costs) are common in the industry.

6. The Challenged Rates

The Agency’s consultants presented several rate structure options. In the end, the option the Agency chose (the challenged rates) consisted of two components. The first component is a fixed charge based on each retailer’s three-year rolling average of total water demand (that is, its demand for the Agency’s imported water *and* for groundwater not supplied by the Agency). This fixed charge is calculated by “divid[ing] the Agency’s total fixed revenue for the applicable fiscal year . . . by the previous three-year average of total water demand of the applicable Retail Purveyor to arrive at a unit cost per acre

foot.” The Agency would recover 80 percent of its costs through the fixed component of the challenged rates. The second component of the Agency’s rate is a variable charge, based on a per acre foot charge for imported water.³

The rationale for recovering the Agency’s fixed costs in proportion to the retailers’ total water demand, rather than their demand for imported water, is this (as described in the consultants’ study):

“This rate structure meets the Agency’s objective of promoting resource optimization, conjunctive use, and water conservation. Since the fixed cost is allocated on the basis of each retail purveyor’s total demand, if a retail purveyor conserves water, then its fixed charge will be reduced. Additionally, allocating the fixed costs based on total water demand recognizes that imported water is an important standby supply that is available to all retail purveyors, and is also a necessary supply to meet future water demand in the region, and that there is a direct nexus between groundwater availability and imported water use – i.e., it allocates the costs in a manner that bears a fair and reasonable relationship to the retail purveyors’ burdens on and benefits from the Agency’s activities in ensuring that there is sufficient water to meet the demands of all of the retail purveyors and that the supply sources are responsibly managed for the benefits of all of the retail purveyors.”

The rationale continues: “Moreover, the Agency has taken a leadership role in maintaining the health of the local groundwater basin by diversifying the Santa Clarita Valley’s water supply portfolio, as demonstrated in the 2003 Groundwater Management Plan and in resolving perchlorate contamination of the Saugus Formation aquifer. Thus, since all retail purveyors benefit from imported water and the Agency’s activities, they should pay for the reasonable fixed costs of the system in proportion to the demand (i.e.

³ There was also a \$20 per acre foot reserve charge to fund the Agency’s operating reserves, but the Agency reports in its opening brief that it suspended implementation of that charge as of July 1, 2013, when reserve fund goals were met earlier than anticipated.

burdens) they put on the total water supply regardless of how they utilize individual sources of supply.”

The Agency’s rate study showed that, during the first year of the challenged rates (starting July 1, 2013), Newhall would experience a 67 percent increase in Agency charges, while Agency controlled retailers Valencia Water Company and Santa Clarita Water Division would see reductions of 1.9 percent and 10 percent, respectively. District 36 would have a 0.8 percent increase. The rate study also indicated that, by 2050, the impact of the challenged rates on Newhall was expected to be less than under the then-current rate structure, while Valencia Water Company was expected to pay more.

Newhall opposed the challenged rates during the ratemaking process. Its consultant concluded the proposed structure was not consistent with industry standards; would provide a nonproportional, cross-subsidization of other retailers; and did not fairly or reasonably reflect the Agency’s costs to serve Newhall. Newhall contended the rates violated the California Constitution and other California law. It proposed a rate structure that would base the Agency’s fixed charge calculation on the annual demand for imported water placed on the Agency by each of its four customers, using a three-year rolling average of past water deliveries to each retailer.

In February 2013, the Agency’s board of directors adopted the challenged rates, effective July 1, 2013.

7. This Litigation

Newhall sought a writ of mandate directing the Agency to rescind the rates, to refund payments made under protest, to refrain from charging Newhall for its imported water service “with respect to the volume of groundwater Newhall uses or other services [the Agency] does not provide Newhall,” and to adopt a new, lawful rate structure. Newhall contended the rates were not proportionate to Newhall’s benefits from, and burdens on, the Agency’s service, and were therefore invalid under Proposition 26, Proposition 13, Government Code section 54999.7, and the common law of utility ratemaking.

The trial court granted Newhall’s petition, finding the rates violated Proposition 26. The court concluded the Agency had no authority to impose rates based on the use of groundwater that the Agency does not provide, and that conversely, Newhall’s use of its groundwater rights does not burden the Agency’s system for delivery of imported water. Thus the rates bore no reasonable relationship to Newhall’s burden on, or benefit received from, the Agency’s service. The trial court also found the rates violated Government Code section 54999.7 (providing that a fee for public utility service “shall not exceed the reasonable cost of providing the public utility service” (Gov. Code, § 54999.7, subd. (a)), and violated common law requiring utility charges to be fair, reasonable and proportionate to benefits received by ratepayers. The court ordered the Agency to revert to the rates previously in effect until the adoption of new lawful rates, and ordered it to refund to Newhall the difference between the monies paid under the challenged rates and the monies that would have been paid under the previous rates.

Judgment was entered on July 28, 2014, and the Agency filed a timely notice of appeal.

DISCUSSION

The controlling issue in this case is whether the challenged rates are a tax or a fee under Proposition 26.

1. The Standard of Review

We review de novo the question whether the challenged rates comply with constitutional requirements. (*Griffith v. City of Santa Cruz* (2012) 207 Cal.App.4th 982, 989-990 (*Griffith I*.) We review the trial court’s resolution of factual conflicts for substantial evidence. (*Morgan v. Imperial Irrigation District* (2014) 223 Cal.App.4th 892, 916.)

2. The Governing Principles

All taxes imposed by any local government are subject to voter approval. (Art. XIII C, § 2.) Proposition 26, adopted in 2010, expanded the definition of a tax. A “tax” now includes “any levy, charge, or exaction of any kind imposed by a local government,”

with seven exceptions. (*Id.*, § 1, subd. (e).) This case concerns one of those seven exceptions.

Under Proposition 26, the challenged rates are not a tax, and are not subject to voter approval, if they are “[a] charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.” (Art. XIII C, § 1, subd. (e)(2).) The Agency “bears the burden of proving by a preponderance of the evidence” that its charge “is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.” (*Id.*, subd. (e), final par.)

3. This Case

It is undisputed that the Agency’s challenged rates are designed “to recover all of its fixed costs via a fixed charge,” and not to generate surplus revenue. Indeed, Newhall recognizes the Agency’s right to impose a fixed water-rate component to recover its fixed costs. The dispute here is whether the fixed rate component may be based in significant part on the purchaser’s use of a product – groundwater – not provided by the Agency.

We conclude the Agency cannot, consistent with Proposition 26, base its wholesale water rates on the retailers’ use of groundwater, because the Agency does not supply groundwater. Indeed, the Agency does not even have the statutory authority to regulate groundwater, without the consent of the retailers (and other major groundwater extractors). As a consequence, basing its water rates on groundwater it does not provide violates Proposition 26 on two fronts.

First, the rates violate Proposition 26 because the method of allocation does not “bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from,” the Agency’s activity. (Art. XIII C, § 1, subd. (e), final par.) (We will refer to this as the reasonable cost allocation or proportionality requirement.)

Second, to the extent the Agency relies on its groundwater management activities to justify including groundwater use in its rate structure, the benefit to the retailers from those activities is at best indirect. Groundwater management activities are not a “service . . . provided directly to the payor that is not provided to those not charged” (art. XIII C, § 1, subd. (e)(2)), but rather activities that benefit the Basin as a whole, including other major groundwater extractors that are not charged for those services.

For both these reasons, the challenged rates cannot survive scrutiny under Proposition 26. The Agency resists this straightforward conclusion, proffering two principal arguments, melded together. The first is that the proportionality requirement is measured “collectively,” not by the burdens on or benefits received by the individual purveyor. The second is that the “government service or product” the Agency provides to the four water retailers consists not just of providing wholesale water, but also of “managing the Basin water supply,” including “management . . . of the Basin’s groundwater.” These responsibilities, the Agency argues, make it reasonable to set rates for its wholesale water service by “tak[ing] into account the entire Valley water supply portfolio and collective purveyor-benefits of promoting conjunctive use, not just the actual amount of Agency imported water purchased by each Purveyor”

Neither claim has merit, and the authorities the Agency cites do not support its contentions.

a. *Griffin I* and the proportionality requirement

It seems plain to us, as it did to the trial court, that the demand for a product the Agency does not supply – groundwater – cannot form the basis for a reasonable cost allocation method: one that is constitutionally required to be proportional to the benefits the rate payor receives from (or the burden it places on) the Agency’s activity. The Agency’s contention that it may include the demand for groundwater in its rate structure because the proportionality requirement is measured “collectively,” not by the burdens on or benefits to the individual retail purveyor, is not supported by any pertinent authority.

In contending otherwise, the Agency relies on, but misunderstands, *Griffith I* and other cases stating that proportionality “‘is not measured on an individual basis,’” but

rather “ ‘collectively, considering all rate payors,’ ” and “ ‘need not be finely calibrated to the precise benefit each individual fee payor might derive.’ ” (*Griffith I, supra*, 207 Cal.App.4th at p. 997, quoting *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 438 [discussing regulatory fees under the Water Code and Proposition 13].) As discussed *post*, these cases do not apply here, for one or more reasons. *Griffith I* involves a different exemption from Proposition 26, and other cases involve Proposition 218, which predated Proposition 26 and has no direct application here. In addition to these distinctions – which do make a difference – the cases involved large numbers of payors, who could rationally be (and were) placed in different usage categories, justifying different fees for different classes of payors.

In *Griffith I*, the defendant city imposed an annual inspection fee for all residential rental properties in the city. The court rejected a claim that the inspection fee was a tax requiring voter approval under Proposition 26. (*Griffith I, supra*, 207 Cal.App.4th at p. 987.) *Griffith I* involves another of the seven exemptions in Proposition 26, the exemption for regulatory fees – charges imposed for the regulatory costs of issuing licenses, performing inspections, and the like. (Art. XIII C, § 1, subd. (e)(3) [expressly excepting, from the “tax” definition, a “charge imposed for the reasonable regulatory costs to a local government for . . . performing inspections”].)

The inspection fees in *Griffith I* met all the requirements of Proposition 26. The city’s evidence showed the fees did not exceed the approximate cost of the inspections. (*Griffith I, supra*, 207 Cal.App.4th at p. 997.) And the proportionality requirement of Proposition 26 was also met: “The fee schedule itself show[ed] the basis for the apportionment,” setting an annual registration fee plus a \$20 per unit fee, with lower fees for “[s]elf-certifications” that cost the city less to administer, and greater amounts charged when reinspections were required. (*Griffith I*, at p. 997.) The court concluded: “Considered collectively, the fees are reasonably related to the payors’ burden upon the inspection program. *The larger fees are imposed upon those whose properties require the most work.*” (*Ibid.*, italics added.)

Griffith I did, as the Agency tells us, state that “ ‘the question of proportionality is not measured on an individual basis’ ” but rather “ ‘collectively, considering all rate payors.’ ” (*Griffith I, supra*, 207 Cal.App.4th at p. 997.) But, as mentioned, *Griffith I* was considering a regulatory fee, not, as here, a charge imposed on four ratepayers for a “specific government service or product.” As *Griffith I* explained, “ ‘[t]he scope of a regulatory fee is somewhat flexible’ ” and “ ‘must be related to the overall cost of the governmental regulation,’ ” but “ ‘need not be finely calibrated to the precise benefit each individual fee payor might derive.’ ” (*Ibid.*) That, of course, makes perfect sense in the context of a regulatory fee applicable to numerous payors; indeed, it would be impossible to assess such fees based on the individual payor’s precise burden on the regulatory program. But the inspection fees *were* allocated by categories of payor, and were based on the burden on the inspection program, with higher fees where more city work was required.

Here, there are four payors, with no need to group them in classes to allocate costs. The *Griffith I* concept of measuring proportionality “collectively” simply does not apply. Where charges for a government service or product are to be allocated among only four payors, the only rational method of evaluating their burdens on, or benefits received from, the governmental activity, is individually, payor by payor. And that is particularly appropriate considering the nature of the Proposition 26 exemption in question: charges for a product or service that is (and is required to be) provided “directly to the payor.” Under these circumstances, allocation of costs “collectively,” when the product is provided directly to each of the four payors, cannot be, and is not, a “fair or reasonable” allocation method. (Art. XIII C, § 1, subd. (e), final par.)

b. *Griffith II* – the proportionality requirement and related claims

In *Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586 (*Griffith II*), the court concluded, among other things, that a groundwater augmentation charge complied with the proportionality requirement of Proposition 218. The Agency relies on *Griffith II*, asserting that the court applied the “concept of collective reasonableness with respect to rate allocations” Further, the case

demonstrates, the Agency tells us, that its activities in “management . . . of the Basin’s groundwater” justify basing its rates on total water demand, because all four retailers benefit from having the Agency’s imported water available, even when they do not use it. Neither claim withstands analysis.

Griffith II involved a challenge under Proposition 218, so we pause to describe its relevant points. Proposition 218 contains various procedural (notice, hearing, and voting) requirements for the imposition by local governments of fees and charges “upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.” (Art. XIII D, § 2, subd. (e).) Fees or charges for water service (at issue in *Griffith II*) are exempt from voter approval (art. XIII D, § 6, subd. (c)), but substantive requirements apply. These include a proportionality requirement: that the amount of a fee or charge imposed on any parcel or person “shall not exceed the proportional cost of the service attributable to the parcel.” (*Id.*, subd. (b)(3).)

In *Griffith II*, the plaintiffs challenged charges imposed by the defendant water management agency on the extraction of groundwater (called a “groundwater augmentation charge”). The defendant agency had been created to deal with the issue of groundwater being extracted faster than it is replenished by natural forces, leading to saltwater intrusion into the groundwater basin. (*Griffith II, supra*, 220 Cal.App.4th at p. 590.) The defendant agency was specifically empowered to levy groundwater augmentation charges on the extraction of groundwater from all extraction facilities, “ “for the purposes of paying the costs of purchasing, capturing, storing, and distributing supplemental water for use within [defendant’s boundaries].” ’ ” (*Id.* at p. 591.) The defendant’s strategy to do so had several facets, but its purpose was to reduce the amount of water taken from the groundwater basin by supplying water to some coastal users, with the cost borne by all users, “on the theory that even those taking water from [inland] wells benefit from the delivery of water to [coastal users], as that reduces the amount of groundwater those [coastal users] will extract [from their own wells], thereby keeping the water in [all] wells from becoming too salty.’ ” (*Id.* at pp. 590-591.)

Griffith II found the charge complied with the Proposition 218 requirement that the charge could not exceed the proportional costs of the service attributable to the parcel. (*Griffith II, supra*, 220 Cal.App.4th at pp. 600-601.) Proposition 218, the court concluded, did not require “a parcel-by-parcel proportionality analysis.” (*Griffith II*, at p. 601.) The court found defendant’s “method of grouping similar users together for the same augmentation rate and charging the users according to usage is a reasonable way to apportion the cost of service,” and Proposition 218 “does not require a more finely calibrated apportion.” (*Griffith II*, at p. 601.) The augmentation charge “affects those on whom it is imposed by burdening them with an expense they will bear proportionately to the amount of groundwater they extract at a rate depending on which of three rate classes applies. It is imposed ‘across-the-board’ on all water extractors. All persons extracting water – including any coastal users who choose to do so – will pay an augmentation charge per acre-foot extracted. All persons extracting water and paying the charge will benefit in the continued availability of usable groundwater.” (*Griffith II*, at pp. 603-604.)

The court rejected the plaintiffs’ claim the charge for groundwater extraction on their parcels was disproportionate because they did not use the agency’s services – that is, they did not receive delivered water, as coastal landowners did. This claim, the court said, was based on the erroneous premise that the agency’s only service was to deliver water to coastal landowners. The court pointed out that the defendant agency was created to manage the water resources for the common benefit of all water users, and the groundwater augmentation charge paid for the activities required to prepare and implement the groundwater management program. (*Griffith II, supra*, 220 Cal.App.4th at p. 600.) Further, the defendant agency “apportioned the augmentation charge among different categories of users (metered wells, unmetered wells, and wells within the delivered water zone).” (*Id.* at p. 601.) (The charges were highest for metered wells in the coastal zone, and there was also a per acre-foot charge for delivered water. (*Id.* at p. 593 & fn. 4.))

We see nothing in *Griffith II* that assists the Agency here. The Agency focuses on the fact that the defendant charged the plaintiff for groundwater extraction even though

the plaintiff received no delivered water, and on the court’s statement that the defendant was created to manage water resources for the common benefit of all water users. (*Griffith II, supra*, 220 Cal.App.4th at p. 600.) From this the Agency leaps to the erroneous conclusion that the rates here satisfy the proportionality requirement simply because all four retailers “benefit from having the Agency’s supplemental water supplies available,” even when they do not use them. This is a false analogy. In *Griffith II*, the defendant charged all groundwater extractors proportionately for extracting water (and had the power to do so), and charged for delivered water as well. *Griffith II* does not support the imposition of charges based on a product the Agency does not supply.

We note further that in *Griffith II*, more than 1,900 parcel owners were subject to the groundwater augmentation charge, and they were placed in three different classes of water extractors and charged accordingly. (*Griffith II, supra*, 220 Cal.App.4th at pp. 593, 601.) Here, there are four water retailers receiving the Agency’s wholesale water service, none of whom can reasonably be placed in a different class or category from the other three. In these circumstances, to say costs may be allocated to the four purveyors “collectively,” based in significant part on groundwater not supplied by the Agency, because “they all benefit” from the availability of supplemental water supplies, would effectively remove the proportionality requirement from Proposition 26.

That we may not do. Proposition 26 requires by its terms an allocation method that bears a reasonable relationship to the payor’s burdens on or benefits from the Agency’s activity, which here consists of wholesale water service to be provided “directly to the payor.” In the context of wholesale water rates to four water agencies, this necessarily requires evaluation on a “purveyor by purveyor” basis. (Cf. *Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1514 (*Capistrano*) [“[w]hen read in context, *Griffith [II]* does not excuse water agencies from ascertaining the true costs of supplying water to various tiers of usage”; *Griffith II*’s “comments on proportionality necessarily relate only to variations in property location”; “trying to apply [*Griffith II*] to the [Proposition 218 proportionality] issue[] is fatally flawed”].)

The Agency's claim that it is not charging the retailers for groundwater use, and its attempt to support basing its rates on total water demand by likening itself to the defendant agency in *Griffith II*, both fail as well. The first defies reason. Because the rates are based on total water demand, the more groundwater a retailer uses, the more it pays under the challenged rates. The use of groundwater demand in the rate structure necessarily means that, in effect, the Agency is charging for groundwater use.

The second assertion is equally mistaken. The differences between the Agency and the defendant in *Griffith II* are patent. In *Griffith II*, the defendant agency was created to manage all water resources, and specifically to deal with saltwater intrusion into the groundwater basin. The Agency here was not. It was created to acquire water and to "provide, sell, and deliver" it. It is authorized to develop and implement groundwater management plans only with the approval of the retail water purveyors (and other major groundwater extractors). In other words, while the Agency functions as the lead agency in developing and coordinating groundwater management plans, its only authority over groundwater, as the trial court found, is a shared responsibility to develop those plans. Further, in *Griffith II*, the defendant agency was specifically empowered to levy groundwater extraction charges for the purpose of purchasing supplemental water. The Agency here was not. As the trial court here aptly concluded, *Griffith II* "does not aid [the Agency] for the simple reason that [the Agency] has no comprehensive authority to manage the water resources of the local groundwater basin and levy charges related to groundwater."⁴

Finally, the Agency insists that it "must be allowed to re-coup its cost of service," and that the practice of setting rates to recover fixed expenses, "irrespective of a customer's actual consumption," was approved in *Paland v. Brooktrails Township*

⁴ The trial court also observed that, "[a]part from [the Agency's] lack of authority to supply or manage Basin groundwater, Newhall correctly notes that [the Agency] has presented no evidence of its costs in maintaining the Basin."

Community Services Dist. Bd. of Directors (2009) 179 Cal.App.4th 1358 (*Paland*).
Paland has no application here.

Paland involved Proposition 218. As we have discussed, Proposition 218 governs (among other things) “property related fees and charges” on parcels of property. Among its prohibitions is any fee or charge for a service “unless that service is actually used by, or immediately available to, the owner of the property in question.” (Art. XIII D, § 6, subd. (b)(4).) The court held that a minimum charge, imposed on parcels of property with connections to the district’s utility systems, for the basic cost of providing water service, regardless of actual use, was “a charge for an immediately available property-related water or sewer service” within the meaning of Proposition 218, and not an assessment requiring voter approval. (*Paland, supra*, 179 Cal.App.4th at p. 1362; see *id.* at p. 1371 [“Common sense dictates that continuous maintenance and operation of the water and sewer systems is necessary to keep those systems immediately available to inactive connections like [the plaintiff’s].”].)

We see no pertinent analogy between *Paland* and this case. This case does not involve a minimum charge imposed on all parcels of property (or a minimum charge for standing ready to supply imported water). Newhall does not contest the Agency’s right to charge for its costs of standing ready to provide supplemental water, and to recoup all its fixed costs. The question is whether the Agency may recoup those costs using a cost allocation method founded on the demand for groundwater the Agency does not supply, and is not empowered to regulate without the consent of groundwater extractors. The answer under Proposition 26 is clear: it may not. *Paland* does not suggest otherwise.⁵

⁵ The parties refer to other recent authorities to support their positions in this case. We may not rely on one of them, because the Supreme Court has granted a petition for review. (*City of San Buenaventura v. United Water Conservation District* (2015) 235 Cal.App.4th 228, review granted June 24, 2015, S226036.) The Agency cites the other case extensively in its reply brief, but we see nothing in that case to suggest that the challenged rates here comply with Proposition 26. (*Great Oaks Water Co. v. Santa Clara Valley Water District* 242 Cal.App.4th 1187 (*Great Oaks*).)

c. Other claims – conservation and “conjunctive use”

The Agency attempts to justify the challenged rates by relying on the conservation mandate in the California Constitution, pointing out it has a constitutional obligation to encourage water conservation. (Art. X, § 2 [declaring the state’s water resources must “be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water [must] be prevented”].) The challenged rates comply with this mandate, the Agency contends, because reducing total water consumption will result in lower charges, and the rates encourage “a coordinated use of groundwater and supplemental water” (conjunctive use). This argument, too, misses the mark.

The Agency’s brief fails to describe the circumstances in *Great Oaks*. There, a water retailer challenged a groundwater extraction fee imposed by the defendant water district. Unlike this case, the defendant in *Great Oaks* was authorized by statute to impose such fees, and its major responsibilities included “preventing depletion of the aquifers from which [the water retailer] extracts the water it sells.” (*Great Oaks, supra*, 242 Cal.App.4th at p. 1197.) The Court of Appeal, reversing a judgment for the plaintiff, held (among other things) that the fee was a property-related charge, and therefore subject to some of the constraints of Proposition 218, but was also a charge for water service, and thus exempt from the requirement of voter ratification. (*Great Oaks*, at p. 1197.) The trial court’s ruling in *Great Oaks* did not address the plaintiff’s contentions that the groundwater extraction charge violated three substantive limitations of Proposition 218, and the Court of Appeal ruled that one of those contentions (that the defendant charged more than was required to provide the property related service on which the charge was predicated) could be revisited on remand. The others were not preserved in the plaintiff’s presuit claim, so no monetary relief could be predicated on those theories. (*Great Oaks*, at pp. 1224, 1232-1234.)

The Agency cites *Great Oaks* repeatedly, principally for the statements that the “provision of alternative supplies of water serves the long-term interests of extractors by reducing demands on the groundwater basin and helping to prevent its depletion,” and that it was not irrational for the defendant water district “to conclude that reduced demands on groundwater supplies benefit retailers by preserving the commodity on which their long-term viability, if not survival, may depend.” (*Great Oaks, supra*, 242 Cal.App.4th at pp. 1248-1249.) These statements, with which we do not disagree, have no bearing on this case, and were made in connection with the court’s holding that the trial court erred in finding the groundwater extraction charge violated the statute that created and empowered the defendant water district. (*Id.* at pp. 1252-1253.)

Certainly the Agency may structure its rates to encourage conservation of the imported water it supplies. (Wat. Code, § 375, subd. (a) [public entities supplying water at wholesale or retail may “adopt and enforce a water conservation program to reduce the quantity of water used by [its customers] for the purpose of conserving the water supplies of the public entity”]. But the Agency has no authority to set rates to encourage conservation of groundwater it does not supply. Moreover, article X’s conservation mandate cannot be read to eliminate Proposition 26’s proportionality requirement. (See *City of Palmdale v. Palmdale Water District* (2011) 198 Cal.App.4th 926, 936-937 [“California Constitution, article X, section 2 is not at odds with article XIII D [Proposition 218] so long as, for example, conservation is attained in a manner that ‘shall not exceed the proportional cost of the service attributable to the parcel.’ ”]; see *id.* at p. 928 [district failed to prove its water rate structure complied with the proportionality requirement of Proposition 218]; see also *Capistrano, supra*, 235 Cal.App.4th at p. 1511, quoting *City of Palmdale* with approval.)

The Agency also insists that basing its rates only on the demand for the imported water it actually supplies – as has long been the case – would “discourage users from employing conjunctive use” The Agency does not explain how this is so, and we are constrained to note that, according to the Agency’s own 2003 Groundwater Management Plan, Newhall and the other retailers “have been practicing the conjunctive use of imported surface water and local groundwater” for many years. And, according to that plan, the Agency and retailers have “a historical and ongoing working relationship . . . to manage water supplies to effectively meet water demands within the available yields of imported surface water and local groundwater.”

In connection, we assume, with its conjunctive use rationale, the Agency filed a request for judicial notice, along with its reply brief. It asked us to take notice of three documents and “the facts therein concerning imported water use and local groundwater production” by Newhall and the other water retailers. The documents are the 2014 and 2015 Water Quality Reports for the Santa Clarita Valley, and a water supply utilization table from the 2014 Santa Clarita Valley Water Report published in June 2015. All of

these, the Agency tells us, are records prepared by the Agency and the four retailers, after the administrative record in this case was prepared. The documents “provide further support” as to the “cooperative efforts of the Agency and the Purveyors in satisfying long-term water supply needs,” and “provide context and useful background to aid in the Court’s understanding of this case.” The Agency refers to these documents in its reply brief, pointing out that since 2011, Newhall has increased its imported water purchases because of the impact of the current drought on certain of its wells, while retailer Valencia Water Company increased groundwater pumping and purchased less imported water in 2014. These cooperative efforts, the Agency says, “reflect the direct benefit to Newhall of having an imported water supply available to it, whether or not it maximizes use of imported water in a particular year.”

We deny the Agency’s request for judicial notice. We see no reason to depart from the general rule that courts may not consider evidence not contained in the administrative record. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 564; cf. *id.* at p. 578 [the exception to the rule in administrative proceedings, for evidence that could not have been produced at the hearing through the exercise of reasonable diligence, applies in “rare instances” where the evidence in question existed at the time of the decision, or in other “unusual circumstances”].) Denial is particularly appropriate where judicial notice has been requested in support of a reply brief to which the opposing party has no opportunity to respond, and where the material is, as the Agency admits, “further support” of evidence in the record, providing “context and useful background.” These are not unusual circumstances.

Returning to the point, neither conservation mandates nor the Agency’s desire to promote conjunctive use – an objective apparently shared by the retailers – permits the Agency to charge rates that do not comply with Proposition 26 requirements. Using demand for groundwater the agency does not supply to allocate its fixed costs may “satisf[y] the Agency’s constitutional obligations . . . to encourage water conservation,”

but it does not satisfy Proposition 26, and it therefore cannot stand.⁶ (Cf. *Capistrano*, *supra*, 235 Cal.App.4th at pp. 1511, 1498 [conservation is to be attained in a manner not exceeding the proportional cost of service attributable to the parcel under Proposition 218; the agency failed to show its tiered rates complied with that requirement].)

d. Other Proposition 26 requirements

We have focused on the failure of the challenged rates to comply with the proportionality requirement of Proposition 26. But the rates do not withstand scrutiny for another reason as well. Proposition 26 exempts the Agency’s charges from voter approval only if the charge is imposed “for a specific government service or product provided *directly* to the payor that is *not* provided to those not charged” (Italics added.) The only “specific government service or product” the Agency provides directly to the retailers, and not to others, is imported water. As the trial court found: the Agency “does not provide Newhall groundwater. It does not maintain or recharge aquifers. It does not help Newhall pump groundwater. Nor does it otherwise contribute directly to the natural recharge of the groundwater Newhall obtains from its wells.”

The groundwater management activities the Agency *does* provide – such as its leadership role in creating groundwater management plans and its perchlorate remediation efforts – are not specific services the Agency provides directly to the retailers, and not to other groundwater extractors in the Basin. On the contrary, groundwater management services redound to the benefit of all groundwater extractors in the Basin – not just the four retailers. Indeed, implementation of any groundwater

⁶ The Agency also cites *Brydon v. East Bay Municipal Utility District* (1994) 24 Cal.App.4th 178 for the principle that, in pursuing a constitutionally and statutorily mandated conservation program, “cost allocations . . . are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity.” (*Id.* at p. 193.) But *Brydon* predated both Proposition 218 and Proposition 26. (See *Capistrano*, *supra*, 235 Cal.App.4th at pp. 1512-1513 [*Brydon* “simply has no application to post-Proposition 218 cases”; “it seems safe to say that *Brydon* itself was part of the general case law which the enactors of Proposition 218 wanted replaced with stricter controls on local government discretion”].)

management plan is “subject to the rights of property owners and with the approval of the retail water purveyors *and other major extractors* of over 100 acre-feet of water per year.” (Wat. Code Appen., § 103-15.2, subs. (b)&(c), italics added.)

Certainly the Agency may recover through its water rates its entire cost of service – that is undisputed. The only question is whether those costs may be allocated, consistent with Proposition 26, based in substantial part on groundwater use. They may not, because the Agency’s groundwater management activities plainly are not a service “that is not provided to those not charged” (Art. XIII C, § 1, subd. (e)(2).)

In light of our conclusion the challenged rates violate Proposition 26, we need not consider the Agency’s contention that the rates comply with Government Code section 54999.7 and the common law. Nor need we consider the propriety of the remedy the trial court granted, as the Agency raises no claim of error on that point.

DISPOSITION

The judgment is affirmed. Plaintiff shall recover its costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.

Transcription

Keith Lewinger (Director, San Diego County Water Authority)
Tom DeBacker (Controller, Metropolitan Water District of Southern California)

3b: Financial highlights

Finance and Insurance Committee Meeting

July 8, 2013

DeBacker (16:53): That was not based on a percentage. There was a point in time when we did use a percentage and that percentage was about 20 percent of the CIP. When we changed from that practice we went to a 95 million dollars and that was just to kind of, you know, get us close to what a 20 percent amount would be, but it was not precisely 20 percent.

Lewinger: So it was meant to represent approximately 20 percent?

DeBacker: Yeah and I was just using that going forward.

The Metropolitan Water District Act

PREFACE

This volume constitutes an annotated version of the Metropolitan Water District Act, as reenacted by the California State Legislature in 1969 and as amended in 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1978, 1981, 1984, 1985, 1995, 1998, 1999, 2001, 2004, and **2008**. Where there is no legislative history given for a section of this act, it is because the section was enacted as part of the nonsubstantive revision of the Metropolitan Water District Act, Statutes 1969, chapter 209. The editorial work was done by the office of the General Counsel of The Metropolitan Water District of Southern California. To facilitate use of the act, catchlines or catchwords enclosed by brackets have been inserted to indicate the nature of the sections which follow. Also, a table of contents has been set at the beginning of the act. Such table of contents and catchlines or catchwords are not a part of the act as enacted by the Legislature. This annotated act will be kept up to date by means of supplemental pages issued each year in which there is a change to the act.

**(Statutes 1969, ch.209, as amended;
West's California Water Code – Appendix Section 109
Deering's California Water Code – Uncodified Act 570)**

A contract between the State and a metropolitan water district for a water supply from the State Water Resources Development System was a contract for the furnishing of continued water service in the future, payments by the district being contingent upon performance of contractual duties by the State and not incurred at the outset, so the district did not incur an indebtedness in excess of that permitted by former Section 5(7) of the Metropolitan Water District Act (now Sec. 123).

Metropolitan Water District v. Marquardt, 59 Cal.2d 159, 28 Cal. Rptr. 724 (1963).

Sec. 124. [Taxes, Levy and Limitation]

A district may levy and collect taxes on all property within the district for the purposes of carrying on the operations and paying the obligations of the district, except that such taxes, exclusive of any tax levied to meet the bonded indebtedness of such district and the interest thereon, exclusive of any tax levied to meet any obligation to the United States of America or to any board, department or agency thereof, and exclusive of any tax levied to meet any obligation to the state pursuant to Section 11652 of the Water Code, shall not exceed five cents (\$0.05) on each such one hundred dollars (\$100) of assessed valuation. The term "tax levied to meet the bonded indebtedness of such district and the interest thereon" as used in this section shall also include, but shall not be limited to, any tax levied pursuant to Section 287 to pay the principal of, or interest on, bond anticipation notes and any tax levied under the provisions of any resolution or ordinance providing for the issuance of bonds of the district to pay, as the same shall become due, the principal of any term bonds which under the provisions of such resolution or ordinance are to be paid and retired by call or purchase before maturity with moneys set aside for that purpose.

Amended by Stats. 1969, ch. 441.

CASE NOTE

An article in a contract between the State and a metropolitan water district for a water supply from the State Water Resources Development System which article is based upon Water Code Section 11652, requiring the district to levy a tax to provide for all payments due under the contract, does not contravene former Section 5(8) of the Metropolitan Water District Act, imposing a limit on taxation, as Section 11652 is a special provision relating only to taxation to meet obligations from water contracts with state agencies, whereas said Section 5(8) is a general provision relating to taxation by a district for all purposes and the special provision controls the general provision.

Metropolitan Water District v. Marquardt, 59 Cal.2d 159, 28 Cal. Rptr. 724 (1963).

Sec. 124.5. [Ad valorem Tax Limitation]

Subject only to the exception in this section and notwithstanding any other provision of law, commencing with the 1990-91 fiscal year any ad valorem property tax levied by a district on taxable property in the district, other than special taxes levied and collected pursuant to annexation proceedings pursuant to Articles 1 (commencing with Section 350), 2 (commencing with Section 360), 3 (commencing with Section 370), and 6 (commencing with Section 405) of Chapter 1 of Part 7, shall not exceed the composite amount required to pay (1) the principal and interest on general obligation bonded indebtedness of the district and (2) that portion of the district's payment obligation under a water service contract with the state which is reasonably

allocable, as determined by the district, to the payment by the state of principal and interest on bonds issued pursuant to the California Water Resources Development Bond Act as of the effective date of this section and used to finance construction of facilities for the benefit of the district. The restrictions contained in this section do not apply if the board of directors of the district, following a hearing held to consider that issue, finds that a tax in excess of these restrictions is essential to the fiscal integrity of the district, and written notice of the hearing is filed with the offices of the Speaker of the Assembly and the President pro Tempore of the Senate at least 10 days prior to that date of the hearing.

Added by Stats. 1984, ch. 271.

Sec. 125. [Investment of Surplus Money]

Investment of surplus moneys of a district is governed by Article 1 (commencing with Section 53600) of Chapter 4, Part 1, Division 2, Title 5 of the Government Code.

Amended by Stats. 1969, ch. 441.

Sec. 125.5 Guidelines for intended use of unreserved fund balances.

On or before June 20, 2002, the board of directors of a district shall adopt a resolution establishing guidelines for the intended use of unreserved fund balances. The guidelines shall require that any disbursement of funds to member public agencies that represents a refund of money paid for the purchases of water shall be distributed based upon each member agency's purchase of water from the district during the previous fiscal year.

Added Stats. 2001 ch 632 §1 (SB350)

Sec. 126. [Dissemination of Information]

A district may disseminate information concerning the activities of the district, and whenever it shall be found by two-thirds vote of the board to be necessary for the protection of district rights and properties, the district may disseminate information concerning such rights and properties, and concerning matters which, in the judgment of the board, may adversely affect such rights and properties. Expenditures during any fiscal year for the purposes of this section shall not exceed one-half of one cent (\$0.005) for each one hundred dollars (\$100) of assessed valuation of the district.

Sec. 126.5.[Proscription on Use of Public Money for Investigations Relating to Elected Officials, Advocacy Groups, or Interested Persons: Right to Public Records]

(a) The Metropolitan Water District of Southern California and its member public agencies may not expend any public money for contracting with any private entity or person to undertake research or investigations with regard to the personal backgrounds or the statements of

board to be equitable, may fix rates for the sale and delivery to member public agencies of water obtained by the district from one source of supply in substitution for water obtained by the district from another and different source of supply, and may charge for such substitute water at the rate fixed for the water for which it is so substituted.

Sec. 134. [Adequacy of Water Rates; Uniformity of Rates]

The Board, so far as practicable, shall fix such rate or rates for water as will result in revenue which, together with revenue from any water stand-by or availability service charge or assessment, will pay the operating expenses of the district, provide for repairs and maintenance, provide for payment of the purchase price or other charges for property or services or other rights acquired by the district, and provide for the payment of the interest and principal of the bonded debt subject to the applicable provisions of this act authorizing the issuance and retirement of the bonds. Those rates, subject to the provisions of this chapter, shall be uniform for like classes of service throughout the district.

Amended by Stats. 1984, ch. 271

Sec. 134.5. [Water Standby or Availability of Service Charge]

(a) The board may, from time to time, impose a water standby or availability service charge within a district. The amount of revenue to be raised by the service charge shall be as determined by the board.

(b) Allocation of the service charge among member public agencies shall be in accordance with a method established by ordinance or resolution of the board. Factors that may be considered include, but are not limited to, historical water deliveries by a district; projected water service demands by member public agencies of a district; contracted water service demands by member public agencies of a district; service connection capacity; acreage; property parcels; population, and assessed valuation, or a combination thereof.

(c) The service charge may be collected from the member public agencies of a district. As an alternative, a district may impose a service charge as a standby charge against individual parcels within the district.

In implementing this alternative, a district may exercise the powers of a county water district under Section 31031 of the Water Code, except that, notwithstanding Section 31031 of the Water Code, a district may (1) raise the standby charge rate above ten dollars (\$10) per year by a majority vote of the board, and (2) after taking into account the factors specified in subdivision (b), fix different standby charge rates for parcels situated within different member public agencies.



San Diego County Water Authority

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

November 17, 2014

Brett Barbre 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: Finance and Insurance Committee Item 6c – Balancing Accounts

Dear Committee Chair Barbre and Members of the Board:

Thank you for placing the balancing accounts issue on the committee agenda this month.

In September, when staff last presented the item for discussion, we noted that the content of the presentation was not responsive to the question, namely, how can revenues from individual rates be tracked to improve accountability and ensure compliance with cost-of-service requirements. We are disappointed to see that the same non-responsive staff presentation will be made again this month.

The concept of balancing accounts is well-known and easy to understand. It is a long-standing accounting practice among private water utilities used to protect both the utility and its customers from changes in costs the utility has no ability to control (for example, the weather,) and at the same time, ensure that rates accurately reflect the costs of providing service. Because MWD now derives significant revenues from transportation services, it is imperative that MWD's accounting methods ensure all of its member agencies and ratepayers that the rates they are paying are fair, and used for the intended purpose as established during the public rate-setting and cost-of-service process.

We are asking that MWD implement an accounting mechanism that tracks revenues from all individual rates and expenditures associated with those rates. To the extent that MWD actual sales differ from forecasted sales, it may collect more or less than the revenue requirement upon which the rate for a particular service is determined. Discrepancies between revenue requirements and actual revenues and expenses are captured through balancing account mechanisms, which "true-up" the actual revenue to the revenue requirement in the following year. This "true-up" ensures that MWD only collects the revenue requirement for the rate that is charged in compliance with applicable law.

We do not understand why MWD would be unwilling to extend its current practice of tracking

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

Committee Chair Barbre and Members of the Board

November 17, 2014

Page 2

treatment and water stewardship rates to also include supply, system access and system power rates. We are asking only that MWD account for all of its rates just as it now does for its treatment and water stewardship rates. Tracking rates and revenue collection in this manner does not impede MWD's ability to meet bond covenants or any other requirement or function described in the staff presentation.

We are also concerned with the position expressed at the last committee meeting that the Water Rate Stabilization Fund (WRSF) requirements should flow into a single fund with board discretion to expend those funds on any purpose. The melding of surplus funds received from different rates and charges would necessarily lead to cross-funding of unrelated services. Furthermore, the priority for fund flows (dollars in/out) could first be to the separate fund accounts for each identified service, rather than flowing first to the WRSF, as is the current practice, or sub-account funds could be created within the WRSF to track and account for sources of the "puts" into the WRSF and the "takes" from the fund. This would ensure collections from the rate for each service are accounted for and attributed to that service. Surplus collections remaining in that account may then be used to mitigate corresponding rate increases in the following years so funds are spent for that service in accordance with cost-of-service and Proposition 26 (2010) requirements.

We look forward to discussing this important transparency issue at the committee and board meeting this month.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director



San Diego County Water Authority

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

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

February 4, 2016

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

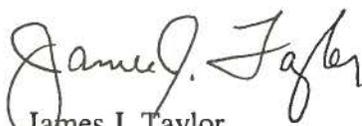
Re: Written Request for Notice (Government Code Section 54999.7(d));
Request for Data and Proposed Methodology for Establishing Rates and Charges
(Government Code Section 54999.7(e))

Dear Ms. Chin:

The San Diego County Water Authority hereby requests notice of the public meetings and to be provided with all of the data and proposed methodology MWD will rely upon for establishing rates, charges, surcharges or fees for 2017 and 2018 (and any other years that may be before the board during the current rate cycle) in accordance with Government Code Section 54999.7(d) and (e).

Please contact me if you have any questions.

Sincerely,


James J. Taylor
Acting General Counsel

cc: Maureen Stapleton, SDCWA General Manager
Jeffrey Kightlinger, MWD General Manager
Marcia Scully, MWD General Counsel

OTHER REPRESENTATIVE

County of San Diego



San Diego County Water Authority

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

January 10, 2016

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

RE: Board Memo 8-3: Adopt the 2015 Integrated Water Resources Plan Update - REQUEST TO DEFER BOARD ACTION ADOPTING 2015 IRP UPDATE, OR IN THE ALTERNATIVE, OPPOSE

Dear Chairman Record and Board Members:

The Water Authority supports action by the Board to **receive and file**, and defer adoption of, the Draft 2015 Integrated Water Resources Plan (IRP) Update and Appendices (Attachments 1 and 2 to Board Memo 8-3), presented to the Board at its December 2015 board meeting, as well as the 2015 IRP Technical Update Issue Paper Addendum, presented to the Board at its October 2015 board meeting (collectively, these documents are referred to in this letter as the staff "Technical Report"). This action would be consistent with the 2015 IRP update process that has previously and consistently been described by MWD staff to the Board as a "two-part process" that would include not only the Technical Report from staff (but instead now presented as the final proposed 2015 IRP Update), but also a subsequent board process that would include "resource policy issues discussion" prior to adoption of the 2015 IRP Update.ⁱ

We do not support adoption of the Draft 2015 IRP Update at this time because the MWD Board of Directors is only now *beginning* the Phase 2 process of reviewing the technical data prepared by staff and deliberating the core planning and policy issues associated with the update and adoption of the IRP. At the board policy level, this review should certainly include deliberation of MWD's reliability and water supply development "targets," *because those targets greatly impact the cost and affordability of MWD Water*. The purpose of the Board's review should be to ensure that the IRP accomplishes the six objectives established by the Board in 1996, and carried forward since that time, namely,

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- Acknowledge environmental and institutional constraints; and ensure:
- Reliability;
- Affordability;ⁱⁱ
- Water quality;
- Diversity; and
- Flexibility

With this set of policy objectives in mind, we wanted to share some preliminary observations at the "50,000 foot view," before the Board reviews the technical data and has an opportunity to discuss policy issues and the assumptions staff has made in the draft 2016 IRP Update, at a workshop or next board meeting. Except where otherwise specifically noted, all analyses contained in this letter are based on the data included in the IRP or taken from other MWD documentary sources. These preliminary observations do not signify agreement with all of the stated assumptions, conclusions and recommendations by staff in the Technical Report, which should more properly be within the province of the Board of Directors during this Phase 2 process.

We request board discussion, and further staff analysis as directed by the Board, of the following issues:

1. Demand for MWD Water. The Technical Report projects an increased demand for MWD Water that is not supported by the underlying data, which evidences instead a declining demand for MWD Water. See Attachment 1. It is critical that the Board consider the near and long term implications of the declining demand for MWD Water over time and how the IRP should be adapted now to plan for it.ⁱⁱⁱ

2. Likelihood of success of member agency projects. The Technical Report understates existing and near-term local water supply development that will further and permanently reduce demand for MWD Water. See Attachment 2. The supply "gap" in the Technical Report^{iv} is driven in large measure by the assumption for planning purposes that all but 20,000 acre-feet (AF) of local water supply projects that are not currently under construction will fail to be implemented. This includes projects that are currently in the full design phase with funds appropriated or at the advanced planning stage with completed certified environmental review. In addition to seven projects within the Water Authority's service area which will be implemented, MWD assumes projects being developed by the following agencies will fail:
 - City of Beverly Hills;
 - City of Torrance;
 - Los Angeles Department of Water and Power;
 - Inland Empire Utility Agency;
 - Upper San Gabriel Valley MWD;
 - Eastern MWD;
 - Municipal Water District of Orange County (MWDOC)/Orange County Water District; and
 - Calleguas MWD

The Technical Report and proposed IRP should "adapt" now to account for the likely success of these projects, or, at a minimum, factor in some percentage of the yield that will be developed.^v If only 50% of the yield from these projects - currently at the advanced planning stage with completed design, funding and/or certified environmental review - is realized, the Technical Report understates local water supply coming on line by more than 100,000 AF annually. This number does not take into account the almost 500,000 AF of additional yield from projects currently under feasibility investigation or in the conceptual planning phase. See Technical Report at Attachment 2, Appendix 5 at pages A.5-1-A.5-13.

3. State Water Project. The Technical Report hardwires a "worst case" assumption regarding the yield of the State Water Project (SWP) that is premature at best, assuming a sudden 400,000 AF reduction of SWP supplies in 2020 based on speculation what regulatory action may be taken (and which MWD would presumably object to). It is, again, the staff's assumption that drives creation of a supply "gap." MWD should identify the factors driving the potential magnitude and timing of a potential SWP export reduction, monitor these factors to see if and when they may occur and define thresholds that when reached would trigger action -by MWD and/or its member agencies to address the risk.
4. Colorado River. MWD has made substantial investments in Colorado River supplies recently; however, only a small portion of the supplies have been included in The Technical Report's forecast of Colorado River Aqueduct supplies. See Technical Report, Attachment 1 at page 3-27, stating that "flexible" supplies including the PVID program and Intentionally Created Surplus are not included in the forecast. As with the SWP, the IRP should present a risk assessment identifying the factors that will impact the magnitude and timing of restrictions on the availability of Colorado River water and the risk of the factors being triggered.
5. LACSD project. The Technical Report has not included or accounted for the water supply proposed to be developed by MWD and the Los Angeles County Sanitation Districts (LACSD) to meet groundwater replenishment demand in Los Angeles, Orange counties and San Bernardino. MWD's groundwater production numbers should be updated to include this water supply which staff has indicated is being developed to meet the water replenishment needs of the Los Angeles, Orange County and San Bernardino groundwater agencies.
6. Reliability objective. The Technical Report continues to use an outdated reliability goal, planning to meet 100% of retail water demands under all hydrologic conditions; this objective is outdated at best and should be changed now by the Board as part of the 2015 IRP Update to be more in line with the state's and MWD's own water conservation ethic, state law and standards.
7. Affordability objective. The Technical Report's "do nothing" approach to analyzing MWD Water demand, coupled with its "do everything PLUS" water supply planning strategy, fails to take the Board's affordability objective into account. The IRP's "belt and suspenders" planning strategy which the Technical Report "builds on," should be reconsidered by the Board against declining MWD Water sales and increasing local water supply development. Can our ratepayers afford for MWD to plan 100% water supply reliability (under "core resources" strategy or "IRP Approach") plus 500,000 or 200,000 AF ("uncertainty" or "buffer" supply) plus "Foundational" or "Future Supply Actions"? At the very least, the Board should be presented with an affordability analysis.^{vi} If the IRP is truly adaptive, as it should be, there is no justification for spending ratepayer money now on projects and programs that may never be necessary and may ultimately end up as stranded investments.
8. Adaptive management. Although the Technical Report calls for an "adaptive management strategy," there is no consideration of phasing investments or identifying "triggers" (for example, a planned local project fails to be developed) that would allow MWD to truly "adapt" in order to avoid unnecessary costs, expenditures, and stranded assets. The strategy described in the

Technical Report is a "do-everything-and-more" strategy that is inconsistent with the Board's affordability objective.

9. Impact of higher MWD Water rates. The Technical Report's discussion of MWD Water demand fails to take into account the inevitable impact of higher MWD rates and charges across a shrinking sales base due to declining sales and demand for MWD Water. Significant MWD Water rate increases are inevitable given the approach recommended in the Technical Report and those higher rates increases will continue to dampen demand for MWD water sales. Higher MWD rates will increase the economic incentive for the development of local water supplies such as is already occurring. See Attachment 2.
10. Stranded costs. The IRP Update should analyze and factor in the risk of stranded investments resulting from the reduced demand for MWD Water and rising MWD Water rates being spread across a shrinking ratepayer base.

Conclusion

An IRP that does not consider and incorporate actual available data and affordability creates a material risk that MWD investments will be made on illusionary foundations. Ultimately, this Board of Directors will be accountable to the public and ratepayers we serve. We sincerely hope that the Board will insist upon having an opportunity to deliberate these and many other issues and questions that should be addressed in the previously planned Phase 2 of the IRP process.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director

Attachment 1: Demand for MWD Water

Attachment 2: Examples of member agency water projects not included by staff in calculation of demand for MWD Water

ⁱ From the beginning of the 2016 IRP Update process, MWD staff said that it would be a two-part process, with the Technical Report scheduled for adoption in January 2016. See April 8, 2015 Member Agency Kick-off Workshop RE 2015 Integrated Water Resources Plan Update ("final IRP Technical Update Report" for Board consideration scheduled for adoption in January 2016 [not the IRP itself]). More recently, see <http://edmsidm.mwdh2o.com/idmweb/cache/MWD%20EDMS/003736313-1.pdf>, where several of the policy issues raised by the Board are outlined for future board discussion. The Board's policy discussion should not be limited to issues relating to "implementation" of the staff's IRP. Nor is there any reason why the IRP needs to be adopted now, prior to the Phase 2 board deliberations.

ⁱⁱ Affordability is not addressed anywhere in the Technical Report or Attachments 1 and 2 to the 2015 Draft IRP and Appendices.

ⁱⁱⁱ The Technical Report notes the importance of identifying and accounting for "changed circumstances" (e.g., Technical Report at Attachment 1, page v: "The 2015 IRP Update focuses on

ascertaining how conditions have changed in the region since the last IRP update in 2010"), but fails to identify or account for the most material change that has occurred, namely, the fact that local water supply development is widely viewed as both more reliable and now, cost-effective when contrasted with the present and anticipated future cost of MWD Water. See Attachment 2 statements by various member agencies seeking support for local projects. The Technical Report appears to acknowledge this, at least indirectly, by noting that if the California WaterFix is implemented, it may need to seek "new markets" for this water supply. Technical Report at Attachment 1, page vi ("[t]he potential completion of the California WaterFix and a modernized water system in the Delta, for example, would create a new physical ability to move additional supplies in average and above-average years. In addition to providing water for storage management, this could also create opportunities for new markets and partnerships." The Water Authority questions this premise and believes that MWD's legal obligation and mission is to provide its own service area and ratepayers with supplemental water, not to develop it for sale to others and not to protect unidentified "broad public interests" that do not pay MWD's rates and charges (see Technical Report at Attachment 1, page vii ("MWD's baseline imported supplies has proven to be a highly cost-effective investment that protects broad public interests as well as Southland ratepayers"). This is also an issue that warrants further examination in the context of the LACSD project where MWD proposes to pay 100% of project costs and assume substantial risks in order to develop a water supply with respect to which member agencies of the LACSD would have a right of first refusal. See Board Memo 8-3, November 2015 MWD Board meeting. Ultimately, MWD must link its rates to the agencies that are benefitting from the costs MWD is incurring (i.e., it must show "cost causation").

^{iv} The Technical Report states that, "[t]hrough the 2015 IRP Update process, foreseeable challenges and risk scenarios were identified that point to the potential of 200,000 AF of additional water conservation and local supplies needed to address these risks." Technical Report at Attachment 1, page iv. However, this "gap" results in part from the planning assumption that more than 200,000 AF of local projects and conservation measures will fail to be implemented (see Technical Report, Attachment 1, Table 3-5 making clear that supply projections only include projects that are currently producing water or are under construction). The "gap" is also the result of the planning assumption that SWP supplies will be reduced by 400,000 AF; and, because the analysis also fails to include the 168,000 AF of supply for groundwater replenishment from the LACSD project.

^v The Technical Report emphasizes MWD's engagement with member agencies but does not explain why or if member agency staff and Board members agreed that it is reasonable to assume for planning purposes that the local projects listed on Attachment 2 would likely fail to be implemented. It isn't possible to reconcile this assumption with the presentations member agencies have made to their respective communities and ratepayers seeking approval and funding of these local projects and the actual progress that is being made toward implementation.

^{vi} The Technical Report describes Future Supply Actions spending as including "exploring the feasibility of new local supply options, investing in water-saving technologies, acquiring land and proposing ways to reduce regulatory impediments to supply development." Staff needs to explain why these actions and spending projects would not already be included in the 100% supply reliability PLUS "buffer" supply. Given this lack of definition or any standard for triggering Foundational Actions spending, it is apparent that the Technical Report isn't a "plan" at all, but is rather, a blank check that could not possibly be a rational basis for establishing MWD's revenue requirements.

Attachment 1 - Demand for MWD Water

The IRP's projection of increased demand for MWD Water is not supported by MWD's own data, which evidences instead, a declining demand for MWD Water

IRP Projections (million AF)¹

	2016	2020	2025	2030	2035	2040
Retail Demand after Conservation²	3.84	4.12	4.19	4.22	4.26	4.27
Local Supply³	2.20	2.31	2.36	2.39	2.41	2.43
MWD Water Demand	1.64	1.81	1.83	1.83	1.85	1.84
Cumulative Increase MWD Demand		0.17	0.19	0.19	0.21	0.20

¹ The retail demand and local supply numbers are taken from the Technical Report, Attachment 1, Draft 2015 IRP Update, Table ES-1. The resulting calculation of MWD Water Demand is simply a mathematical calculation.

² Retail demand as calculated by MWD assumes only 50% compliance with Model Water Efficient Landscape Ordinance (MWELO).

³ MWD does not include in its calculation of local supply any of the Water Authority's independent Colorado River water supplies (280,000 AF over time); it also assumes only 20,000 AF of member agency local projects will be successfully implemented.

IRP Projections (million AF) adjusted only for San Diego's Colorado River water

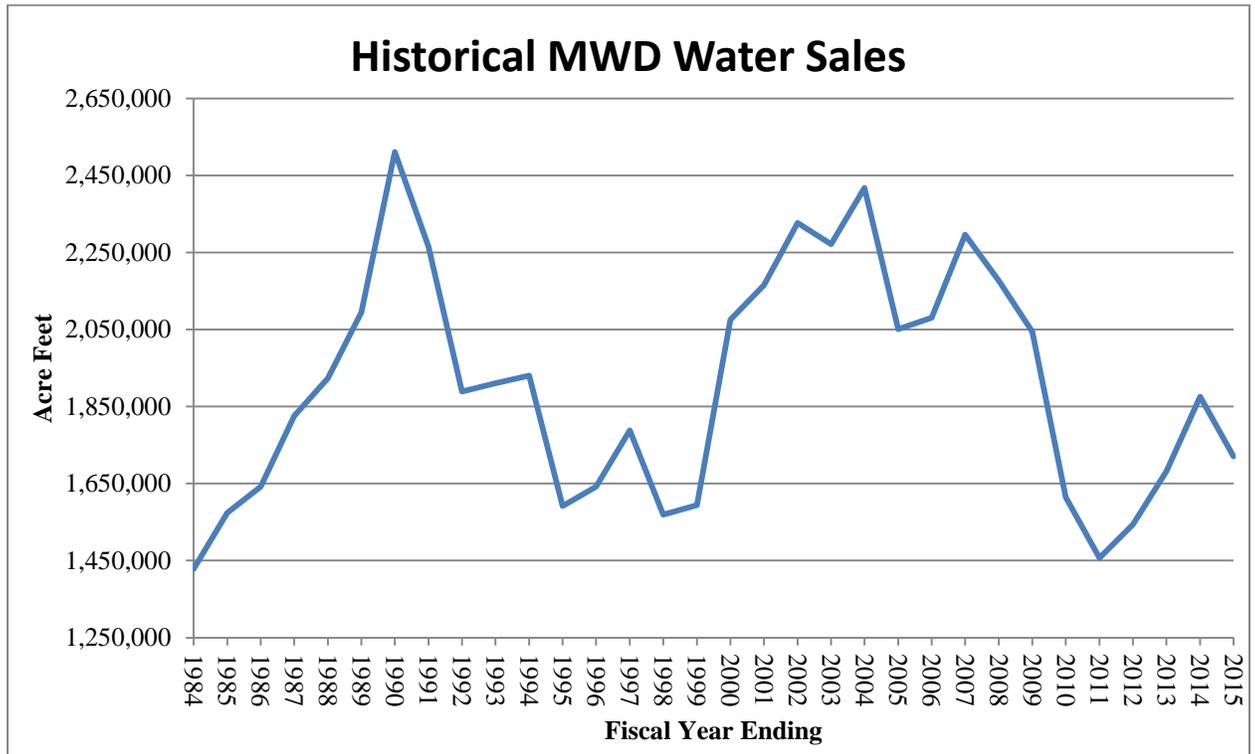
	2016	2020	2025	2030	2035	2040
Retail Demand after Conservation	3.84	4.12	4.19	4.22	4.26	4.27
Local Supply⁴	2.38	2.59	2.64	2.67	2.69	2.71
MWD Water Demand	1.46	1.53	1.55	1.55	1.57	1.56
Cumulative Increase MWD Demand		0.07	0.09	0.09	0.11	0.10

⁴ Local supply corrected to include Water Authority's actual independent Colorado River supplies over time pursuant to fully executed agreements.

IRP Projections (million AF) adjusted for San Diego's Colorado River Water and 50% yield from member agency projects that are currently in full design with funds appropriated or at the advanced planning stage with certified environmental review complete

	2016	2020	2025	2030	2035	2040
Retail Demand after Conservation	3.84	4.12	4.19	4.22	4.26	4.27
Local Supply	2.38	2.59	2.64	2.67	2.69	2.71
50% yield of Member Agencies		0.08	0.10	0.10	0.10	0.10
MWD Water Demand	1.46	1.45	1.45	1.45	1.47	1.46
Cumulative Increase MWD Demand		-0.01	-0.01	-0.01	0.01	0.00

The Technical Report and other historical MWD documents confirm that MWD Water sales are on a long-term declining trend that is no longer based on hydrology but on the development of local water supplies that will permanently replace and reduce demand for MWD Water



Attachment 2

Examples of member agency projects not included by staff in calculation of demand for MWD Water

Member Agency	Status of Member Agency Project
City of Beverly Hills	<p>Feasibility Project Groundwater development- 2,000 AF</p> <p>Status: Water Enterprise Plan- Adopted July 2015 Through a variety of projects and measures including groundwater development, <i>“the City has the potential to decrease its MWD purchases from the current 12,495 AFY to approximately 8,485 AFY by 2024/25.”</i> This amounts to a 4,010 AF (32 percent) reduction of the City's demand for MWD Water.</p> <p>http://www.beverlyhills.org/cbhfiles/storage/files/13699920851488612043/FINALPsomasCBHWEPRreport_08102015V2.pdf</p>
Calleguas MWD	<p>Advanced Planning (EIR/EIS Certified) Projects North Pleasant Valley Desalter- 7,300 AF</p> <p>Feasibility Projects 2 projects 7,800 AF</p> <p>Status: Calleguas is working with several agencies and the City of Oxnard to develop additional water supplies and reclaim brackish groundwater. These projects are in various stages of development with the largest being the EIR certified North Pleasant Valley Desalter. It is also building a regional salinity management pipeline in phases. Phase 1 is completed and Phase 2 is in design and, according to the Los Angeles Regional Water Quality Control Board, <i>expected to be completed within the next permitting cycle in 2018.</i></p> <p>http://www.waterboards.ca.gov/rwqcb4/board_decisions/tentative_orders/individual/npdes/Calleguas_Municipal_Water_District/PublicNoticeCalleguasRSMPLAmendment.pdf</p>
Eastern MWD	<p>Full Design & Appropriated Funds Project Perris Desalter II, 4,000 AF</p> <p>Feasibility Project Indirect Potable Reuse- 24,070 AF</p> <p>Status: <i>Perris Desalter scheduled for bid advertise, November 2016 (9/8/2015 Eastern Presentation)</i></p>

	<p><i>IPR shown to be less expensive than MWD supplies, according to 8/20/2014 Eastern MWD presentation.</i> http://www.emwd.org/home/showdocument?id=13335 page 15</p>
Inland Empire Utility Agency	<p>Advanced Planning (EIR/EIS Certified) Projects IEUA Regional Recycled Water Distribution System- 20,000 AF Status: IEUA's Ten-year Capital Improvement Plan identifies immediate and long term capital projects (including pipelines) needed to <i>"utilize 100% of the region's projected recycled water supplies, increasing recycled water deliveries from approximately 37,000 to 55,000 by 2025."</i> http://www.ieua.org/wp-content/uploads/2015/04/TYCIP-Final-Amended-project-list-3-30-15.pdf</p>
LADWP	<p>Full Design & Appropriated Funds Projects Terminal Island Water Reclamation- 7,880 AF Advanced Planning (EIR/EIS Certified) Projects Downtown and Sepulveda Expansion- 2,600 AF; Tujunga Well Treatment- 24,000 AF Feasibility Projects 9 projects-32,865 AF Conceptual Projects 4 projects -38,270 AF Status: From 11/20/2015 Presentation by David Pettijohn to Los Angeles Chamber of Commerce: <i>Plans to reduce MWD purchases by 145,000 AF</i> Increase Groundwater by 45,535 AF 40,000 AF Water Transfers 25,000 AF Stormwater Capture 50,451 Increased Water Reclamation http://www.lachamber.com/clientuploads/EWE_committee/11.20.15_LADWP%20-%20LA%20Chamber%20Presentation%2011.20.15%20final.pdf</p>
MWDOC	<p>Advanced Planning (EIR/EIS Certified) Projects Huntington Beach Seawater Desalination Project- 56,000 AF Status: <i>Decision from Coastal Commission expected within 2 months</i></p>
City of Santa Monica	<p><i>Plans to eliminate the purchase of MWD Water</i> Status: The following is the first two paragraphs of the City's Water Sustainability Master Plan: The City of Santa Monica (City) supplies imported and local water to approximately 91,000 residents</p>

	<p>covering an area of approximately 8 square miles. Looking to its future, the City hopes to eliminate its reliability on imported water by addressing the challenge of existing groundwater quality, identifying new sources of local water supply, and more effectively reduce and manage its water demands.</p> <p><i>With an adopted goal of water self-sufficiency achieved by eliminating reliance on Metropolitan Water District of Southern California (MWD) supply by 2020</i>, the City of Santa Monica retained Kennedy/Jenks Consultants to develop an integrated Sustainable Water Master Plan (SWMP).</p> <p>This SWMP combines relevant components of existing plans with an evaluation of a broad range of water supply and demand management options to assist the City in meeting its goals.</p> <p>This plan has been prepared with the objective of developing a comprehensive document to define supply and demand management options to cost effectively reduce future water demands and enhance local water supply production capabilities.</p> <p>https://www.smgov.net/uploadedFiles/Departments/Public_Works/Water/SWMP.pdf</p>
City of Torrance	<p>Full Design & Appropriated Funds Projects Madrona Desalter Expansion- 2,400 AF Status: Received \$3.9 Prop 84 funds and \$3.0 M Prop. 50 funding. <i>Estimated Completion 2018</i> http://bondaccountability.resources.ca.gov/Project.aspx?ProjectPK=12317&PropositionPK=4</p>
Upper San Gabriel Valley MWD	<p>Full Design & Appropriated Funds Projects Direct Reuse- 2 projects 730 AF Indirect Reuse Replenishment- 10,000 AF Status: Upper District adopted an Indirect Reuse Action Plan in 2011 which set forth specific tasks to complete the Indirect Reuse Replenishment Project. It has received \$790,000 in grants to date to further the project. <i>According to MWD the project is scheduled to be on-line in 2018.</i></p> <p>http://upperdistrict.org/wp-content/uploads/2012/11/FY-15-16-Budget.pdf</p>
Western MWD	<p>Feasibility Projects Rancho California Reclamation Expansion/Demineralization Western AG- 13,800 AF Status: <i>Scheduled for 2018 completion, according to MWD.</i></p> <p>Link to Rancho California Water Facilities Master Plan: http://www.ranchowater.com/documentcenter/view/1802</p>

