

SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SAN FRANCISCO  
 BEFORE THE HONORABLE CURTIS A. E. KARNOW, JUDGE PRESIDING  
 DEPARTMENT NUMBER 304  
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SAN DIEGO COUNTY WATER AUTHORITY, )  
 )  
 Plaintiff, ) Case No. 510830  
 ) Trial  
 vs. )  
 ) Volume I  
 METROPOLITAN WATER DISTRICT OF )  
 SOUTHERN CALIFORNIA, ) Pages 1 - 181  
 )  
 Defendant, )  
 \_\_\_\_\_ )

Reporter's Transcript of Proceedings  
 Tuesday, December 17, 2013

Reported by:  
 CONNIE J. PARCHMAN, CSR 6137  
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1 DECEMBER 17, 2013 MORNING SESSION  
 2 P R O C E E D I N G S  
 3 ---O0O---  
 4 THE COURT: Good morning.  
 5 Couple of things I think we want to do just  
 6 before we get started.  
 7 I have a stipulation and order regarding  
 8 introduction of evidence at final hearing. I think the  
 9 parties want me to sign this. Correct?  
 10 MR. KEKER: Yes, your Honor.  
 11 MR. HIXSON: Yes, your Honor.  
 12 MR. PURCELL: Yes, your Honor.  
 13 THE COURT: I've done that. There are two of  
 14 them.  
 15 With respect to courtesy copies in the future,  
 16 I only need one set. I know everybody's filing the same  
 17 thing in both cases but if that's the situation, continue  
 18 to do that kind of filing but in terms of courtesy  
 19 copies, I just need one.  
 20 And we have also San Diego's motion in limine  
 21 regarding Christopher Woodcock. It's my view, I think,  
 22 which is the view that was expressed by both San Diego  
 23 and Metropolitan, that we should have a level playing  
 24 field and I should have the same rules for everybody. So  
 25 if I'm going to exclude a certain type of evidence from

4

1 one side, I would be excluding the same thing from the  
 2 other side.  
 3 And I think that takes care of the issue but  
 4 I'm happy to have either side comment.  
 5 MR. HIXSON: Your Honor, Tom Hixson for  
 6 Metropolitan.  
 7 We agree with a level playing field. We go  
 8 second so we would like to see what San Diego puts on  
 9 consistent with the Court's order, and we will comply  
 10 with similar guidelines ourselves.  
 11 THE COURT: That sounds reasonable.  
 12 Anything else anybody wants to talk before we  
 13 get started?  
 14 MR. HIXSON: Your Honor, we filed a request for  
 15 judicial notice of several items: Provisions of the MWD  
 16 Act, provisions of the MWD Administrative Code and  
 17 certain pleadings and other actions.  
 18 I think the request for judicial notice is  
 19 straightforward, but I did want to call that to the  
 20 Court's attention.  
 21 THE COURT: Is that opposed?  
 22 MR. PURCELL: Your Honor, we don't have any  
 23 objection to the Court taking notice of the fact that  
 24 these documents exist and were filed. The truth of the  
 25 matter in the documents is another matter but as far as

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1 taking notice of the fact that their public filings are  
 2 on the record, that's not objectionable.  
 3 THE COURT: Okay. I have -- I'm going to ask  
 4 Mr. Hixson to give me two original orders with respect to  
 5 that to make sure I'm looking at exactly what you want me  
 6 to look at.  
 7 I have one copy marked "Chambers Copy." I'm  
 8 going to ask you to provide two originals and I will sign  
 9 that whenever you bring that.  
 10 MR. HIXSON: We will, your Honor.  
 11 THE COURT: Shall we start with San Diego?  
 12 MR. KEKER: Thank you, your Honor.  
 13 And good morning. I'm John Kecker on behalf of  
 14 San Diego and I plan over the next approximately hour and  
 15 a half to lay out our case in a way, since we have  
 16 realtime reporting and daily transcripts, that I hope at  
 17 the end of it will be like a brief. And at the end, I'm  
 18 going to be showing some exhibits under the stipulation  
 19 they will be admitted into evidence.  
 20 And we will provide a package of those of what  
 21 we're showing you at the end so together, between the  
 22 transcript and that, you will have what we believe is the  
 23 best case we have to put on today.  
 24 And I -- the other preliminary thing I would  
 25 like to say is that I welcome interruptions. This is a

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1 court trial. If something doesn't make sense to you,  
 2 needs to be clarified, our position isn't clear, I would  
 3 be happy to be interrupted. I know what I want to cover,  
 4 so it's not going to cause a problem.  
 5 THE COURT: Yeah. I will tend to do that more  
 6 at the end than at the beginning.  
 7 MR. KEKER: Fair enough.  
 8 But, anyway I'm just saying, please don't worry  
 9 about me.  
 10 As you know, this case involves Met Water  
 11 Districts's rates for system access, water stewardship  
 12 and system power for the years 2011 and '12, that's the  
 13 2010 case, and 2013, '14, that's the case that was filed  
 14 in 2012.  
 15 When those rates were set, Met effectively set  
 16 the rate for conveying non-Metropolitan water through its  
 17 water facilities. That's a service called wheeling.  
 18 It's provided for in the Metropolitan Administrative Code  
 19 and it clearly sets the rates for -- this is current  
 20 code. The rates for wheel is service shall include  
 21 System Access Rate, Water Stewardship Rate, charge for  
 22 power, and that's been in the Administrative Code for  
 23 some time.  
 24 At the outset, there are three important things  
 25 we hope the Court keeps in mind as we go through this.

7

1 The first is what San Diego is asking the Court to do.  
 2 We are not asking the Court to set rates or to substitute  
 3 your judgment for some factual determination that  
 4 Metropolitan has made. We are asking for a pretty  
 5 straightforward application of California law. There  
 6 aren't any seriously disputed facts. There's serious  
 7 dispute about how to interpret certain things, but the  
 8 facts are not disputed.  
 9 We're asking the Court to apply the law and  
 10 find the rates Met charges for non Met water through its  
 11 own facilities invalid, and tell Met that what they did  
 12 violated the law, how it violated the law and send them  
 13 back to do what they should do, do it again.  
 14 Second, we recognize that Met must collect its  
 15 revenue, enough revenue to pay all of its costs. That's  
 16 a given, it's in the statute, so that establishing a  
 17 lawful conveyance rate for non-Met water not just may,  
 18 will have, we believe, an impact on other rates that --  
 19 and other ways that Met collects money.  
 20 But again, we're not asking you to figure that  
 21 out. We're asking Met to figure that out once they  
 22 establish a lawful rate for transportation. Certainly  
 23 that will have an effect on other rates and that's for  
 24 them to figure out once they lose this case.  
 25 The third important thing that we're asking you

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1 to keep in mind is the legal standard, your Honor, and I  
2 think your Honor's on it already because we've been in  
3 here a lot, you've remarked a couple times, more than a  
4 couple times that the various standards in this case sort  
5 of collapse to reasonable cost of service under the  
6 various statutes, whether Met is recovering more than its  
7 reasonable costs of providing these transportation  
8 services.

9 We agree with that. Basically that's Prop. 26,  
10 that's Prop. 13, that's the wheeling statute, that's the  
11 Government Code, that's the common law.

12 But Prop. 26 is particularly important because  
13 it expressly requires that the manner in which Met  
14 allocates its cost to its members bear a reasonable  
15 relationship to the benefits Met provides. And as you've  
16 said, it is their burden to show that.

17 And I'm putting up a part of Prop. 26 just to  
18 emphasize in that last sentence, the local government  
19 bears the burden of proving that it's not a tax, the last  
20 sentence talks about they have to show that the manner in  
21 which those costs are allocated to a payor bear a fair or  
22 reasonable relationship to the payor's burdens or  
23 benefits received from the governmental activity.

24 We're going to come back to this idea of  
25 proportionality as I talk through. We think Met imposes

1 water distribution facilities to service Southern  
2 California areas would place a wasteful and unnecessary  
3 financial burden upon all of the people of California and  
4 particularly the residents of California. And that was  
5 agreed to by Ms. Skillman in her deposition. She is the  
6 Manager of Financial Planning and Budgets at Met and she  
7 was asked whether San Diego has any choice in getting  
8 water to San Diego other than using Met's conveyance  
9 system and she said no, her understanding was that they  
10 don't have any way to get water except through the Met  
11 facilities.

12 The Met facilities, I think you've seen, I'll  
13 go through it quickly, are in yellow down there. That's  
14 the Metropolitan District. And the places it gets water  
15 is from the State Water Project, which is there to the  
16 north. And you can see in the legend -- Jeff, can you  
17 blow up the legend up at the top? The pink is federal  
18 aqueduct, the green is state aqueduct and the sort of  
19 dark is local aqueduct.

20 And let's go back.

21 So the pink and the green are federal, and --  
22 federal and State Department of Water Resources.

23 And then the Los Angeles aqueduct, which brings  
24 water to Los Angeles from the Owens River Valley, is over  
25 there on the right. And then down below from the

1 charges -- I'll be getting more specific about that --  
2 imposing charges far in excess of its cost of providing  
3 transportation services and that Met imposes those  
4 transportation charges completely out of any reasonable  
5 proportion, fair or reasonable proportion to the services  
6 it provides.

7 As I think you know, San Diego sued timely.  
8 Suit was the culmination of a dispute that's been going  
9 on since the 1990s when Metropolitan -- excuse me, when  
10 San Diego first decided that it needed to look elsewhere  
11 for some supplemental water and began to talk about and  
12 propose buying non-Met water and using Met's conveyance  
13 system to get that water to San Diego from the Colorado  
14 River to Southern California.

15 First point I want to make is that Met has a de  
16 facto monopoly -- if not a De jour monopoly but at least  
17 a de facto monopoly on conveying waters based on what's  
18 called the Laguna Declaration, which is embodied in their  
19 Met Administrative Code 4202(b). And there, Met put into  
20 its regulations the fact that the taxpayers and water  
21 users in the district already have obligated themselves  
22 for the construction of an aqueduct supply and  
23 distribution system.

24 And then it goes on to say establishment of  
25 overlapping and regulating government authorities and

1 Colorado River coming across is the Colorado River  
2 aqueduct, and those are the ways that water gets into  
3 this service area other than by God causing it to rain,  
4 which sometimes he doesn't do as we're now in the third  
5 year of a drought.

6 And you can see that if you want to get water  
7 from somewhere else into there, you've got to use the Met  
8 facilities, either State Water Project or the Colorado  
9 River Act.

10 The idea that has been expressed that somehow  
11 these rates are voluntary, you have a choice, if you want  
12 water you have a choice is just plain wrong. These rates  
13 are imposed. The Big Horn case, you've seen before,  
14 talks about that. But San Diego has no choice but to use  
15 Met's conveyance facilities if it wants to bring in  
16 non-Met water to San Diego.

17 After the drought from 1987 to 1992, Met didn't  
18 have enough water, or during the drought they didn't have  
19 enough water for its members' needs and San Diego was  
20 famously cut up to 31 percent of their supply was  
21 missing.

22 After that happened, they decided they had to  
23 find additional resources. They didn't want that to  
24 happen to them again.

25 In 1998, San Diego entered -- when I say "San

1 Diego," I mean San Diego County Water Authority, I won't  
 2 say it all. 1998, it entered the transfer agreement with  
 3 the Imperial Irrigation District to provide up to and  
 4 still ramping up but up to 200,000 acre-feet of water per  
 5 year to Southern California from Imperial's allocation of  
 6 Colorado River water. San Diego, as I said, had no  
 7 choice but to use the Met system to transport this IID  
 8 water and the issue arose how should Met charge for it?  
 9 At the time and to this day, Met has a huge  
 10 fixed cost contract with the Department of Water  
 11 Resources for the State Water Project and that requires  
 12 Met to pay hundreds of millions of dollars per year for  
 13 75 years to the Department of Water Resources for up to  
 14 approximately two million acre-feet of water per year  
 15 whether or not Met wants it. It's a take-or-pay  
 16 contract.  
 17 If one -- and you can see the problem. If one  
 18 of Met's 26 member agencies began buying water from  
 19 someone else, all of the members would have to figure out  
 20 how to pay those fixed costs by paying higher rates for  
 21 the water that they bought from Met. Costs are fixed and  
 22 if one of them begins to buy from somebody else, the  
 23 volume of water that is bought from Met goes down, the  
 24 price to everybody goes up because they have to pay the  
 25 fixed cost.

13

1 I'm going to talk about what happened in the  
 2 '90s when the wheeling issue first came up. And the  
 3 reason I'm going back that far is because what Met  
 4 charges today is based on decisions that it made back in  
 5 the '90s. Met says so, there's really no dispute about  
 6 this. In their answer, they say that SDCWA's claims  
 7 challenge features of Metropolitan's rate structure that  
 8 have been in place for a decade and a half.  
 9 In January, 1997, Metropolitan's board of  
 10 directors voted to adopt a, quote, wheel rate, close  
 11 quote, effective January 15, 1997. In their briefs  
 12 before you there they make the same points.  
 13 When MWD -- this is the first brief that  
 14 you've seen recently. When MWD adopts its general  
 15 wheeling rate, it made written findings that supported  
 16 the rate's reasonableness. And what they cite to there  
 17 is records document number 82, is this 1997 resolution of  
 18 the board of directors of Met, which we're going to look  
 19 at in a minute.  
 20 And the next one, MWD second trial brief, they  
 21 say contrary to San Diego contentions, DTX23, which is  
 22 another copy of 82 and is the 1997 resolution, shows that  
 23 MWD has made written findings that support its  
 24 determination that allocating State Water Project  
 25 transportation cost and water stewardship rate to its

14

1 general rate for wheeling service results in a rate that  
 2 charges fair compensation, and they cite the 1997  
 3 resolution.  
 4 So, we are going to look at that in a moment  
 5 but it's important to know Met bases its charges for  
 6 conveying non-Met water today in 2011, '12, '13 and '14  
 7 on a finding it made and conclusions its reached back in  
 8 this resolution of 1997. There's no better description.  
 9 I'm going to get to the '97 resolution in just  
 10 a minute but there's no better description of the issues  
 11 that they faced, that Met faced in deciding what to  
 12 charge for wheeling than a consultant's report in  
 13 December of 1995. Research Management Group had a  
 14 consulting report. This is in both the administrative  
 15 records. And I'm going to go through it in some I hope  
 16 not tedious but in some detail because it's the important  
 17 explanation for what was the basis of the decision that  
 18 became the 1997 resolution.  
 19 So, this -- the RMI in December of 1995, the  
 20 Resource Management International wrote this paper which  
 21 was an assessment of principals for pricing water  
 22 wheeling services by Met.  
 23 First page, next page shows why they do it.  
 24 They wanted to assist in the development of this policy.  
 25 Resource Management, RMI has prepared the following paper

15

1 on options for pricing Metropolitan's water wheeling  
 2 services.  
 3 And then in the executive summary, next page,  
 4 Metropolitan's current volumetric rate, meaning you pay  
 5 for what you use, design makes it particularly important  
 6 to ensure that wheeling rates do not lead to unrecovered  
 7 costs. Since virtually all expenditures are fixed, the  
 8 volumetric rate design makes revenue recovery highly  
 9 sensitive to the quantity of water sold to member  
 10 agencies.  
 11 Indeed, absent increased sales to other member  
 12 agencies or offsetting revenues from wheeling, if sales  
 13 to a member agency are displaced by wheeling,  
 14 Metropolitan will experience a revenue under collection.  
 15 To maintain Metropolitan's financial integrity, such  
 16 under collections would need to be reallocated to member  
 17 agencies or financed out of reserves. That's what I was  
 18 just explaining.  
 19 Here comes the important part.  
 20 This would be inconsistent with the San Pedro  
 21 Integrated Resources Plan Assembly Statement that the use  
 22 of Metropolitan's system for wheeling must -- quote, must  
 23 not negatively impact the rates or charges to any other  
 24 Member Agency, close quote.  
 25 Given Metropolitan's volumetric rate design,

16

1 the, quote, hold harmless principle is perhaps the single  
 2 most important constraint on pricing Metropolitan's  
 3 wheeling services.  
 4 Goes on to say if Metropolitan retains its  
 5 current volumetric rate design -- and by the way, to jump  
 6 ahead and spoil the story, they did and this is what we  
 7 have today. If they retain the current volumetric rate  
 8 design, initial wheeling rates for Metropolitan agencies  
 9 should be computed by subtracting incremental state water  
 10 power and fish costs from Metropolitan's firm sales  
 11 rates. Under Metropolitan's contracts with SWP, these  
 12 are the only company's costs that would be avoided in the  
 13 short run if Metropolitan did not purchase State Water  
 14 Project water.  
 15 Under this approach, the wheeling customer  
 16 charge would pay this wheeling rate plus incremental  
 17 power fish costs, \$95 per acre-foot, plus the purchase  
 18 price of water. Since the first two components sum to  
 19 Metropolitan's current sales rate, the delivered cost of  
 20 wheeled water would always be higher than the current  
 21 sales rate.  
 22 We'll get -- again, jumping ahead, we'll get to  
 23 the provision in the Water Code that says you have to  
 24 facilitate wheeling and so on.  
 25 But this is what they're talking about.

17

1 They're talking about under this option, the volumetric  
 2 rate design, we're going to have a price that's always  
 3 going to be higher, more expensive to wheel than it is to  
 4 buy from Met. This would ensure -- the next paragraph, I  
 5 mean it's plain as day. This would ensure that member  
 6 agencies do not have an economic incentive to displace  
 7 Metropolitan's sales and thereafter satisfy the San Pedro  
 8 Integrated Plan assembly requirement that member agencies  
 9 be held harmless from cost shifting due to water  
 10 wheeling.  
 11 Then it goes on to say fairly obvious that such  
 12 rates are likely to be criticized as excessive by member  
 13 agencies and others desiring to wheel water. Read San  
 14 Diego.  
 15 But they go on to sort of say that's tough.  
 16 But the next paragraph, by jeopardizing full recovery of  
 17 Metropolitan's revenues, lowering the wheeling rate to  
 18 address such concerns would conflict with the "hold  
 19 harmless" requirement. In other words, if we're going to  
 20 do this, if we're going to conflict, the other agencies  
 21 are going to have to pay more and we can't do that.  
 22 That's the rationale.  
 23 Now, in six, Paragraph 6, the RMI recognized an  
 24 alternative, another way to do it, establishment of  
 25 demand volumetric rate design to substantially lessen the

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1 potential for revenue losses due to displace of  
 2 Metropolitan sales by wheeling.  
 3 For example, if Metropolitan established a  
 4 fixed monthly or annual demand charge to recover the bulk  
 5 of its fixed costs, in short that's going to each Member  
 6 Agency and saying, you have to commit to what you're  
 7 going to buy this year and we'll set the rates based on  
 8 those commitments and make sure that we are going to have  
 9 enough money to pay for the State Water Project, and  
 10 based the demand charge on the volume of water  
 11 denominated by member agencies' displace of sales by  
 12 water would not impair recovery by providing greater  
 13 insurance. Such alternative rate designs could also  
 14 provide more flexibility in pricing wheeling water  
 15 service.  
 16 Now I'm going to jump ahead in this document to  
 17 evaluation of the options and that appears beginning  
 18 on -- well, we begin on 51.  
 19 Let's go to 51 first, Jeff, the one before and  
 20 just highlight the options.  
 21 They're going to look at four options. And I'm  
 22 only going to talk about three but option I -- let's go  
 23 to the next page. Option I is the option that they ended  
 24 up doing, which is basically putting all of the State  
 25 Water Project fixed costs into the rate for wheeling the

19

1 -- all the transportation costs into the rate for  
 2 wheeling.  
 3 You'll see that the member taking untreated  
 4 water, the wheeling rate for that situation would be  
 5 \$285. And then the plan says, note that under this  
 6 option, the delivered cost of non-Metropolitan water to a  
 7 Member Agency would always be higher than Metropolitan's  
 8 firm sales rate by the price paid to the water supplier.  
 9 By removing any economic incentive to displace  
 10 Metropolitan sales, the potential for revenue loss due to  
 11 wheeling are reduced significantly.  
 12 Option II suggested figuring out a wheeling  
 13 rate, subtracting out the State Water Project and CRA,  
 14 Colorado River Aqueduct supply costs from the rate and  
 15 that results, if you look at the next page, in a charge  
 16 instead of \$285, it's \$151.  
 17 And -- but it has the following problem, look  
 18 down at the bottom, if Metropolitan can't -- this would  
 19 encourage wheeling some. If Metropolitan could not  
 20 reasonably forecast at least 17 million in incrementally  
 21 revenues from wheeling or design other mechanisms to  
 22 recover the lost revenues from the members agencies  
 23 responsible for displacing its sales, the wheeling tariff  
 24 would fail to satisfy the requirement that Member Agency  
 25 be "held harmless" against the negative rate impacts of

20

1 wheeling.  
 2 And then finally, the next page, the  
 3 incremental cost approach, which is just that, it would  
 4 be basing the wheeling rate on the variable costs in the  
 5 system, how much more does it cost us to use unused  
 6 capacity to move this water. The member taking untreated  
 7 water there would only pay \$100.  
 8 And then here's how they evaluated it. Under  
 9 option III, member agencies would have no economic  
 10 incentive to displace Metropolitan's sales whenever the  
 11 market price of water fell below \$244 per acre-foot.  
 12 This would create substantially greater opportunities for  
 13 displacement than either of the previous two options.  
 14 And it goes on to evaluate that and say that  
 15 could cost as much as \$26 million a year.  
 16 And then they say if Metropolitan can't  
 17 reasonably forecast at least 26 million in incremental  
 18 revenues from wheeling or design other mechanisms to  
 19 recover the lost revenues from the member agencies  
 20 responsible for displacing its sales, the wheeling tariff  
 21 would fail to satisfy the requirement that member  
 22 allegations be "held harmless" against the negative rate  
 23 impact of wheeling.  
 24 And I'm almost done with this document, I  
 25 promise, but I wanted to look at one other -- a couple of

21

1 other points.  
 2 Later on, they evaluate -- evaluation of  
 3 alternative wheeling and here's what they say about  
 4 option I, which is the one they adopted.  
 5 The wheeling rates developed under option I  
 6 would support the full recovery of Metropolitan's revenue  
 7 requirements by eliminating an economic incentive for the  
 8 displacement of Metropolitan's sales by wheeling.  
 9 Delivered cost of non-Metropolitan water to a Member  
 10 Agency would generally be higher than Metropolitan's  
 11 sales rate. This is the one that says put all the state  
 12 water fixed costs for transportation into the wheeling  
 13 rate.  
 14 Reasonableness. And this is in -- they are  
 15 perfectly aware of 1813(d), which we'll look at in a  
 16 minute, which says we're supposed to be facilitating  
 17 wheeling.  
 18 The rate could be perceived as excessive.  
 19 Member Agencies will likely argue that the rate includes  
 20 costs not incurred to provide wheel services.  
 21 Last sentence: Marketers may argue that the  
 22 rate will distort the market for water transfers and  
 23 discourage the transfer of water from low value to high  
 24 value uses.  
 25 And then when they looked at option II. They

22

1 say basically the same thing: That depending on the  
 2 market price of water, this could lead to displacement of  
 3 Metropolitan sales, violating the hold harmless  
 4 principle. And then they say the lower rate is likely to  
 5 be more favorably received because it's lower although  
 6 some Member Agency may perceive the rate as excessive for  
 7 the type of service provided.  
 8 And finally, option III, this could lead to  
 9 substantial displacement of Metropolitan sales and  
 10 reallocate revenues among agencies, lead to pressures for  
 11 other incremental rate for Metropolitan services, could  
 12 be perceived as reasonable rate for wheeling, and it  
 13 could give Member Agency a powerful tool for displacing  
 14 Metropolitan sales supporting the formation of a market  
 15 for water.  
 16 And then finally -- I'm spending so much time  
 17 on this because this flows right into the 1997  
 18 resolution -- the assessment and recommendations.  
 19 They recommend that option I as the only rate  
 20 method evaluating that would not give Member Agencies an  
 21 economic incentive to displace Metropolitan water sales  
 22 under certain market conditions. As a consequence, the  
 23 only option that could satisfy the requirement of "hold  
 24 harmless."  
 25 And then in the second paragraph, they go --

23

1 they recognize that the incremental power cost method,  
 2 however, is likely to be perceived as highly  
 3 unsatisfactory by member agencies and others that  
 4 strongly desire to wheel water.  
 5 And then it goes on in the last sentence of  
 6 that paragraph to address those such arguments, the  
 7 people who are complaining and saying this is not a  
 8 proper wheeling rate, to address such arguments by  
 9 establishing a lower wheeling rate would jeopardize  
 10 revenue recovery and conflict with the hold harmless  
 11 requirement.  
 12 Then the last paragraph, again they come back  
 13 to the alternative that's out there as an alternative to  
 14 wheeling rates based on avoided costs: Establishment of  
 15 a demand volumetric rate design could substantially  
 16 lessen the potential for revenue losses due to  
 17 displacement Of Metropolitan's sales by the wheeling of  
 18 third party water.  
 19 For example, if Met established a fixed monthly  
 20 or annual demand charge to recover the bulk of its fixed  
 21 cost and based the demand charge on the volume of water  
 22 committed to by agencies, displacement of sales by  
 23 wheeling would not necessarily impair recovery by  
 24 providing greater assurance of revenue recovery,  
 25 alternative rate designs could also provide more

24

1 flexibility in pricing water wheeling services.  
 2 So, I've been mentioning 1813. Let's put it  
 3 up, please.  
 4 Section 1813 of the Water Code, the Court is  
 5 very familiar with but it requires that public agency  
 6 shall act in a reasonable manner consistent with the  
 7 requirements of law to facilitate the voluntary sale,  
 8 lease and exchange of water and shall support its  
 9 determination by written findings. That's what we're  
 10 about to look at.  
 11 The Court shall give due consideration in  
 12 making the decision under all relevant evidence, the  
 13 Court should give due consideration to the purpose and  
 14 policies of this article, which is to facilitate  
 15 wheeling, we believe.  
 16 So, at the same time Los Angeles -- before this  
 17 was all fixed, Los Angeles Department of Water and Power  
 18 and Orange County hired their own experts to weigh in and  
 19 those experts called MBS Lawry agreed that Met's plan to  
 20 load State Water Project costs on to the wheeling rate,  
 21 which they called the equivalent margin method but it's  
 22 the same thing, would discourage wheeling contrary to  
 23 what Water Code section 1813 requires.  
 24 The MBS Lawry report is in both administrative  
 25 records. When I say -- I should clarify. 2010 record,

25

1 if it's in the 2010 record, it's in the '12 record  
 2 because all of 2010 is in '12. And when I say it's in  
 3 both, it means in both. If I say it is only in 2012,  
 4 which I'll get to in a minute, that's what it means, not  
 5 in 2010. But this is in both, just as the RMI report  
 6 was.  
 7 And they say the -- this is Orange County in  
 8 LA's experts -- the equivalent margin method, while  
 9 having a positive financial impact on Metropolitan and  
 10 City of Los Angeles, is according to our legal analysis  
 11 probably illegal and incorrectable.  
 12 And Met's own staff recognized that loading  
 13 State Water Project fixed costs on to the wheeling rate  
 14 would discourage wheeling.  
 15 In a memorandum from Brian Thomas, which is --  
 16 this is only in the 2012 record, not 2010. Brian Thomas,  
 17 who was both -- various points an assistant general  
 18 manager and the chief financial officer Met, and he is  
 19 distinguishing between the equivalent margin method,  
 20 which loads all the State Water Project fixed costs on  
 21 the transportation rate, and a commitment's method, which  
 22 is this demand method, rate structure where you make  
 23 fixed commitments to buy water and rates are set  
 24 accordingly to cover the fixed costs.  
 25 Could we see that matrix?

26

1 He put in his memorandum -- the entire  
 2 memorandum is in the record but on page 7, I think  
 3 there's a matrix which goes through and recognizes  
 4 clearly that the commitments method is the only one that  
 5 encourages wheeling, whereas the equivalent margin  
 6 method, the one that's designed to hold everybody else  
 7 harmless, discourages wheeling.  
 8 So, what did Met do? It chose, of course, the  
 9 equivalent margin method. That's why we're here, which  
 10 discourage wheeling.  
 11 And this 1997 resolution remains today the  
 12 basis of the transportation rate. I won't show again the  
 13 briefs and the slides that we looked at before about  
 14 saying that the 1997 resolution are the findings of fact,  
 15 but I'll just tell you there's been nothing since.  
 16 And let's look at the 1997 resolution. Let's  
 17 go right to that, Jeff.  
 18 And this is another one that I'm going to go  
 19 through in some detail. And I promise, this is --  
 20 there's not going to be anymore like this but these are  
 21 the two biggest ones.  
 22 So, the 1997 resolution is in both records,  
 23 needless to say. It's the same as document 82 we looked  
 24 at before, PTX 23. Thing I'm quoting is a slightly  
 25 different version, which is the 2010-A-R2446. You can

27

1 see the Bates stamps on here. But I'll go through.  
 2 So the second paragraph makes claim that the  
 3 Metropolitan -- the titles, I should -- we should go to.  
 4 This is a resolution of the board of directors of the  
 5 Metropolitan Water District of Southern California fixing  
 6 and adopting wheeling rates. And as we've said, this is  
 7 the basis of today's wheeling rates, findings of fact.  
 8 So among the whereas clauses, I'm not going to  
 9 read them all but one points out they have a contract  
 10 with the State of California which requires them on a  
 11 take-or-pay basis; in other words, a fixed cost, fixed  
 12 costs contract with the State of California.  
 13 The next paragraph is the one where the rabbit  
 14 just jumps right into the hat. Whereas under its  
 15 contract with the State of California, Metropolitan has  
 16 an entitlement to water and associated transportation  
 17 thereof by the SWP and the right to use SWP transport  
 18 facilities for its own purposes subject to certain  
 19 conditions. Metropolitan's conveyance systems -- system  
 20 and its right to the use of the SWP conveyance system  
 21 shall hereinafter be referred to as the conveyance  
 22 system.  
 23 Just asserted it. It's their conveyance system  
 24 is our conveyance system.  
 25 Then they go on in the -- in section 13, couple

28

1 pages later, excuse me, section -- I beg your pardon,  
2 page 2. Page 2, they recognize the fair compensation  
3 definition in the Water Code at section 1811(c). They  
4 recognize that it requires them to account for any  
5 reasonable credit for the benefits for the use of the  
6 conveyance system, benefits to the -- to Met by -- or  
7 Met's members by wheeling water.

8 The next paragraph first went to 1810 and 1812  
9 of the Water Code, use of the Metropolitan -- again, if  
10 you want to find where the rabbit goes into the hat, this  
11 is one too.

12 The use of Metropolitan's water conveyance  
13 system is to be made without injuring any legal user of  
14 water from that system, including financial injury, words  
15 that are nowhere in the statute as we'll see in a minute.

16 So having said that, having said that state  
17 water project's conveyance system is our conveyance  
18 system and that we can't have any financial injury to our  
19 members, in the last paragraph on that page, whereas they  
20 decide that they are going to adopt a charge for the use  
21 of the conveyance system for wheeling -- its conveyance  
22 system for wheel that will recover fair compensation for  
23 such use of its conveyance system, that such charge  
24 should include the properly allocable transmission costs  
25 and unavoidable supply, storage and other costs necessary

1 to a particular wheeling transaction. And regional  
2 benefits, if any, shall be calculated by Metropolitan in  
3 the same manner as it does benefits for the local  
4 projects, groundwater recovery program.

5 And then finally, Section 13, they make a  
6 finding. You're seeing everything that it's based on.  
7 The board finds such charges are reasonable and  
8 consistent with all applicable requirements of law,  
9 including any requirement to facilitate the voluntary  
10 sale, lease or exchange of water while ensuring that the  
11 use of Metropolitan's conveyance system is fairly  
12 compensated and does not injure any other legal user of  
13 Metropolitan's water and conveyance system.

14 So, as you can see, Metropolitan simply assumed  
15 in this resolution, assumed the answer that the State  
16 Water Project fixed costs were met on transportation  
17 costs and set up a transportation rate with one goal, one  
18 goal only, that is rate stability, making sure that its  
19 members were held harmless and that the rates stayed  
20 stable. None of the non-wheeling member agencies would  
21 see their rates go up. That was the sole reason for the  
22 1997 resolution.

23 As you know, Met sued to validate the rate and  
24 the trial court concluded, Judge Kay concluded that the  
25 system-wide costs couldn't be included in wheeling rates

1 to avoid financial injury to its member agencies from  
2 such use.

3 So, by assertion, they are saying we're going  
4 to call the State Water Project fixed costs part of our  
5 conveyance system and we're going to set a rate that  
6 makes sure -- they're taking option I. That makes sure  
7 that our members are not going to be affected.

8 Section 5 on page 4, the allocation of costs is  
9 shown in detachment 1 to Metropolitan's transmission  
10 functionally reflects the cost incurred by Metropolitan  
11 to convey water to its member agencies through  
12 Metropolitan's conveyance system, including  
13 Metropolitan's rights to the State Water Project system  
14 and including those costs in Metropolitan's wheeling rate  
15 as is necessary to ensure recovery of fair compensation  
16 for the use of the system.

17 Again, paragraph 7 makes the point again. The  
18 unavoidable cost in the wheeling rate is necessary in  
19 order to protect Metropolitan's member agencies from  
20 financial injury by avoiding the shifting of those costs  
21 from the wheeling party to Metropolitan's other agencies.

22 Then they say, make a promise, in Section 10,  
23 that the wheeling rates shall be reduced to reflect the  
24 regional water supply benefits provided to Metropolitan  
25 service area, if any, on a case-by-case basis in response

1 as a matter of law. Court of Appeal in Met v. IID  
2 reversed and remanded the case to see whether, quote, Met  
3 quoted properly included specific costs in its wheeling  
4 rate calculation or has adopted a rate that violates the  
5 statutory mandate to facilitate wheeling.

6 That hearing, as you know, never took place.  
7 Rate based on the 1997 resolution was never validated.  
8 Met dismissed the case because it unbundled its rates in  
9 2001, or it dismissed the case in anticipation of  
10 unbundling the rates. And that unbundling happened in  
11 2001 to become effective until 2003. And since then,  
12 just remind the Court what you already know, in 2010,  
13 Prop. 26 became law and applies to the 2012 rate setting  
14 for '13 and '14.

15 In the same year that the unbundled rates went  
16 into effect, 2003, San Diego entered into an amended  
17 exchange agreement -- they had an exchange agreement from  
18 back in 1998 -- 2003, an amended exchange agreement with  
19 Met setting the price for transporting the IID water to  
20 Met's facilities in the future at the rate -- at rate,  
21 quote, generally applicable to the conveyance of water by  
22 Met or member agencies. And we believe that that issue  
23 is for the next case, not this case, what that means.

24 And at the same time, as the Court knows, San  
25 Diego agreed not to sue for five years. They said, okay,



1 we've made this deal, we will accept what you've done for  
 2 five years, but at the conclusion of the first five  
 3 years, nothing herein shall prevent San Diego from  
 4 bringing the action that it brought.

5 So, what are we talking about? Let's -- if we  
 6 could see the rates, this is the 2013 rates but it  
 7 basically applies to any of them. More than 50 percent  
 8 of Met's costs are collected through what it calls its  
 9 Transportation Rate. You see the Water Stewardship Rate,  
 10 you see System Power Rate and you see System Access Rate  
 11 in this chart. More than 50 percent.

12 And from the same -- from the beginning of this  
 13 wheeling rate issue, San Diego has made the same big  
 14 picture point, which is that it was being required to  
 15 subsidize, illegally subsidize other Met members by  
 16 paying more and getting less.

17 Here's what San Diego said about the 2010  
 18 rates. This was a response to -- in April of -- response  
 19 to Met's staff recommendation for the -- for the rates  
 20 that were going to be put in effect in 2003.

21 San Diego says although a new series of labels  
 22 is created for various rate-setting concepts -- this is  
 23 referring to the unbundling -- the necessary economic  
 24 impact of the proposal differs. It is from the existing  
 25 status quo, uniform volumetric water rate that's the

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1 heart of Metropolitan's water problems, including but not  
 2 limited to the fair access distribution system that  
 3 serves Southern California.

4 Under cost of service, they say cost of service  
 5 is standard for the basis of most rate setting in the  
 6 regulated and publicly owned utility sectors, however the  
 7 staff recommendation fails to establish a nexus between  
 8 the cost of service and the proposed rates for those  
 9 services.

10 And on the next page, they raise various things  
 11 but I'll call your attention to one. The staff  
 12 recommendation does not provide a nexus between the cost  
 13 of providing dry-year capacity and rates or charges to  
 14 access this capacity. While dry-year capacity is not  
 15 required to meet base-load demands during average or wet  
 16 years, the cost of providing it is proposed to be  
 17 recovered primarily through sales-based rates and fees  
 18 assessed against those base-load demands.

19 In other words, as we'll see later, there's no  
 20 charge for the insurance in wet years of knowing that in  
 21 a dry year, you're going to be able to get a lot more  
 22 water than you have to pay for this year. There's no  
 23 paying for that benefit.

24 But more specifically, San Diego's issues were  
 25 and always have been that paying to convey water through

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1 Met's facilities should not include Met's fixed cost,  
 2 paying non-Met water through the facilities, shouldn't  
 3 include Met's fixed cost from the State Water Project.  
 4 That's one.

5 Two is that paying to convey non-Met water  
 6 through Met's facilities should not include 100 percent  
 7 of the Water Stewardship Rate which pays for the cost of  
 8 legal water supply and conservation projects for Met  
 9 members.

10 And, three, that paying to convey water through  
 11 the Met facilities should not include a subsidy for Met  
 12 members, most notably Los Angeles, who effectively get  
 13 free drought insurance from Met by depending inordinately  
 14 on Met in dry years only without paying for that  
 15 dependence in wet years, without paying for that  
 16 insurance.

17 So, going back to slide 152, our position is  
 18 that the System Access Rate, the System Power Rate and  
 19 the Water Stewardship Rate, using them to charge for  
 20 transportation of non-Met water ends up overcharging for  
 21 transportation with the result that the supply cost for  
 22 people who have to buy Met water is under collected. So  
 23 that that's where the shift would be, recognizing that  
 24 the pie still has to be round.

25 And the results -- because San Diego wheels,

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1 the result is that anybody who wheels water, uses the  
 2 transportation system is penalized and the members who  
 3 don't but buy water from Met are subsidized.

4 In order to show the order of magnitude about  
 5 what this problem is, if -- and if improper State Water  
 6 Project fixed costs and the Water Stewardship Rate were  
 7 properly allocated to the supply rate instead of the  
 8 Transportation Rate, what you would pay for transporting  
 9 water would be far less. Mr. Denham, our expert who  
 10 works for San Diego, will come in and explain this chart  
 11 but basically today -- or I think this is for today.  
 12 Maybe it's last year but \$372 is the -- excuse me, 2011,  
 13 it says.

14 So the actual wheeling rate was \$372 to  
 15 transport non-Met water and that's because they loaded in  
 16 this Water Stewardship Rate and all of the fixed costs  
 17 from the State Water Project for power and system access.  
 18 If you took out those fixed costs, the proper rate,  
 19 instead of \$372 an acre-foot, would be \$136 because you  
 20 would have no charge for Water Stewardship Rate. You  
 21 would have a vastly reduced charge for System Power Rate,  
 22 only Met's own power and you would have a reduced System  
 23 Access Rate because you would have taken out the State  
 24 Water Project fixed cost.

25 So, highlight of all this, so what? Well, the

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1 so what is the rate is the -- these rates are illegal  
 2 because it's higher than necessary to recover the  
 3 reasonable cost of service provided and the rate for  
 4 wheeling bears no fair or reasonable relationship between  
 5 the benefits received and the burdens imposed.  
 6 Those relationships by the way have not even  
 7 been studied. They admit them, admit that. It didn't  
 8 analyze its actual costs and revenues to determine  
 9 whether it had under- or over-collected for any given  
 10 rate. It did not analyze its actual revenues collected  
 11 from each Member Agency to assess proportionality.  
 12 And then the third reason is that the wheeling  
 13 rate discourage instead of facilitates wheeling in  
 14 violation of Water Code section 1813.  
 15 So, going back to the RMI report, which leads  
 16 up to the 1997 resolution, the evidence shows that the  
 17 reason State Water Project costs were allocated to the  
 18 wheeling rate was to achieve the goal of rate stability,  
 19 to prevent any changes to Met's existing rates for things  
 20 other than wheeling.  
 21 There's no analysis of these so called  
 22 findings, there's no data. There's nothing that shows  
 23 Met's cost of the wheeling service provided or the  
 24 benefits from the wheeling service. There's just a  
 25 handful of conclusions and the statement that Met set its

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1 wheeling rate not according to cost of service but for  
 2 purposes of rate stability.  
 3 Met started with the answer it wanted and  
 4 worked backwards to make sure its rates didn't change.  
 5 Here's what they say in their brief about the 1997  
 6 findings.  
 7 Inclusion of State Water Project costs in MWD's  
 8 general rate for wheeling service is something that was  
 9 contemplated and endorsed by RMI in 1995 because, quote,  
 10 it is the only rate method examined that would satisfy  
 11 the requirement that Member Agency be held harmless from  
 12 any cost shifting due to wheeling.  
 13 They cite various things, including down at the  
 14 bottom DTX23, which is the 1997 resolution. And that's a  
 15 quote from the December RMI report, which you just saw.  
 16 Setting rates by choosing rate stability over  
 17 cost of service illegal. First of all, rate stability is  
 18 not and financial injury is not the injury to any legal  
 19 users of water. That's referred to in the Water Code  
 20 section 1810(d).  
 21 This is that section. And they talk about that  
 22 use of the water conveyance facility is part of wheeling,  
 23 is to be made without injuring any legal user of water  
 24 and without unreasonably affecting fish, wildlife and  
 25 other upstream beneficial uses and without unreasonably

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1 affecting the overall economy or the environment of the  
 2 county from which the water is being transferred.  
 3 Legislative history of this talks about  
 4 depleting groundwater and, you know, depleting the  
 5 quality of the water, all kinds of things like that and  
 6 does not include at all this concept of financial injury  
 7 by causing rate shifting. But we don't have to worry  
 8 about legislative history.  
 9 There's a case right on point, Morro Bay.  
 10 Morro Bay, which the Court is familiar from my earlier  
 11 briefing, was a case where the school district wanted to  
 12 use the city system to bring in some water that it --  
 13 from the county that it thought would be cheaper. City  
 14 didn't want to do it because it was going to require that  
 15 it raise rates to other people, didn't want its  
 16 conveyance system to be used to displace sales and raise  
 17 money.  
 18 And the Court made short work of that. Morro  
 19 Bay claims it cannot let the school district use  
 20 conveyance facility without injuring other legal user of  
 21 waters within the city. Morro Bay's argument is based on  
 22 the rate increase it claims other customers will have to  
 23 bear if it loses the school district as a customer. But  
 24 we do not believe the loss of income from a customer is  
 25 the sort of injury to a legal user of water the

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1 Legislature had in mind. If you look at the Court of  
 2 Appeal, which I think you have to accept, legislative  
 3 history certainly supports them.  
 4 So, there's nothing in the statute about hold  
 5 harmless principle, this no functional injury to other  
 6 users and using that is improperly and illegal,  
 7 particularly when it -- when it conflicts with a cost of  
 8 service analysis. When a water agency has a choice  
 9 between rates that reflect the actual costs of service  
 10 and rates that are designed for rate stability, the  
 11 agency cannot choose rate stability.  
 12 Here, I've said it a couple times. They set  
 13 their rates too high, they possibly will avoid having to  
 14 increase their rates for other services. This means that  
 15 agencies which wheel water are recovering the costs of  
 16 unrelated services to other agencies that don't wheel.  
 17 That's the Palmdale case.  
 18 And the City of Palmdale v. Palmdale Water  
 19 District, another case we discussed in prior hearings,  
 20 Palmdale hires our friend Raftelis. Mr. Raftelis was the  
 21 consultant later in 2010. We will be hearing more about  
 22 him in a minute. Hired Raftelis's firm to recommend a  
 23 new rate. He found one that was consistent with the cost  
 24 of service requirements but that would lead to revenue  
 25 fluctuation, everybody's been worried about, violate the

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1 hold harmless, another rate afforded rate stability but  
 2 charged some customers' disproportionate rates just as  
 3 here.  
 4 The Palmdale Water District chose the rate  
 5 stability option and the Court said no, you don't have  
 6 any choice to do that. That was a 218 case, the Prop. 29  
 7 case. But you cannot do that, you cannot choose rate  
 8 stability over cost of service. Cost of service is the  
 9 rule.  
 10 THE COURT: We should take a ten-minute recess  
 11 at some point that's convenient.  
 12 MR. KEKER: Right now is convenient.  
 13 THE COURT: Just want make sure the court  
 14 reporter can continue to take down everything.  
 15 (Brief break.)  
 16 THE COURT: All right. Let's continue.  
 17 MR. KEKER: Thank you, your Honor.  
 18 I was talking about ways in which the Met's  
 19 rates for transporting non-Met water through its  
 20 facilities violate the law, and another way is that Met  
 21 failed to analyze in its supposed findings, the 1997  
 22 findings or anywhere, and never took into account any  
 23 cost of service study the fact that San Diego's wheeling  
 24 of non-Met water creates benefits for both  
 25 Metropolitan Water District and its members.

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1 Both fair compensation and Prop. 26 require  
 2 that be considered. We looked at Prop. 26 before. Look  
 3 at it again. And one of the things that Prop. 26 says is  
 4 that you've got to take a look at the benefits received  
 5 from the government activity, from the -- in this case  
 6 the wheeling. Water Code section 1811(c), we've also  
 7 looked at. Talks about fair compensation requiring  
 8 reasonable credit for any offsetting benefits for the use  
 9 of the conveyance system.  
 10 The next exhibits that I'm about to cite are  
 11 plaintiff's exhibits. They are not in the administrative  
 12 record, next four, but they are relevant to your legal  
 13 determination that benefits of wheeling were ignored.  
 14 And we'll argue about that later but in making the legal  
 15 determination, you can take into account what's in this  
 16 information.  
 17 The first is Brian Thomas remember is the CFO  
 18 of Met and in 1998, he created some talking points when  
 19 they were talking about what the -- how they should  
 20 charge for this transportation over Met system of non-Met  
 21 water. And among the things that his memorandum, which  
 22 is Exhibit 30, PTX30, which was Member Agency's benefit  
 23 from a full Colorado River Aqueduct.  
 24 In other words, this water that was going to  
 25 come through there was going to keep it full with the

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1 additional supplies of surplus water at near 0 cost and  
 2 resolution of longstanding disputes regarding the  
 3 Colorado River supplies.  
 4 Earlier in 1997, the negotiating committee,  
 5 Met's negotiating committee in a report on wheeling, this  
 6 is exhibit 26, PTX 26, said notwithstanding what we  
 7 consider to be fundamental shortcomings in the San Diego  
 8 proposal, the underlying premises of this proposal, that  
 9 the region could benefit from both the conservation and  
 10 storage of 200,000 acre-feet of IID water, and from the  
 11 adoption of a favorable California plan for Colorado  
 12 River water use based on the availability of the  
 13 conserved IID water are sound.  
 14 The next page of that same document  
 15 concludes -- this is the negotiating committee's notes,  
 16 this is Met staff document. We concluded that Met should  
 17 seek to promote the regional benefits of IID conservation  
 18 and storage so long as those benefits would cost MWD's  
 19 customers no more than if MWD were to undertake the same  
 20 conservation and storage effort as San Diego. On this  
 21 basis, our draft recommendation suggested that MWD offer  
 22 San Diego a discount of more than 50 percent from Met's  
 23 average cost wheeling rate.  
 24 Of course, they never did. And at the same  
 25 time, around the same time the staff actually quantified

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1 the benefit -- this is in PTX 25. I said four exhibits.  
 2 I'm only talking about three.  
 3 In PTX 25, Shane Chapman wrote to Dan Rodrigo  
 4 in 1997, and you see there that they are -- they  
 5 calculated that current you sometimes indicate without a  
 6 California plan for the Colorado River supplies  
 7 Metropolitan may have to raise its water rate by as much  
 8 as \$65 per acre-foot in order to maintain a full Colorado  
 9 River Aqueduct.  
 10 In other words, for the Colorado River Aqueduct  
 11 to do its job and provide enough water to southern  
 12 California, it's got to be full. If we don't put IID  
 13 water in there to fill it up, we're going to go buy water  
 14 from somebody else that has Colorado River water and put  
 15 that in there and that could cost as much as \$65 per  
 16 acre-foot more than putting in IID water.  
 17 They go on to analyze the average person who  
 18 depends -- a household who depends on Met for 50 percent  
 19 of its water will be paying \$41 per month more, a person  
 20 or family or household that depends on Met for all of its  
 21 water will be paying \$2.82 per month more. And then it  
 22 works out to \$37 a year for the rate payers.  
 23 Down at the bottom, S, who we take to be Shane  
 24 Chapman who wrote the memo, wrote to Dan, who we take to  
 25 be Rodrigo, but says how is this being used? Let's not

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1 put ourselves in a position where San Diego County Water  
 2 Authority can say, see, the SDCWA IID transfer is worth  
 3 141 per month to 282 per month for Southern California.  
 4 These are offsetting benefits that nowhere appear in the  
 5 administrative record. Met knew there were offsetting  
 6 benefits. They are estimating the magnitude but chose to  
 7 ignore them when they set the wheeling rate.  
 8 Nothing in the 1997 board resolution about the  
 9 non-Met supplies of water being conveyed through Met's  
 10 facilities although the resolution itself, you will  
 11 remember that paragraph that said we're going to  
 12 calculate that on a case-by-case basis, it recognized  
 13 they needed to do it but they ignoring that promise,  
 14 never did it. That's not a reasonable cost of service  
 15 analysis.  
 16 Violates Prop. 26, Prop. 13, the wheeling  
 17 statute, the Government Code, common law, all.  
 18 Another reason that Met's rates are  
 19 unreasonable and therefore illegal is because the State  
 20 Water Project's fixed costs have nothing to do with the  
 21 cost of conveying water within Met's own conveyance  
 22 system. And by that, I mean Met's own conveyance system.  
 23 The Met conveyance system does not include the State  
 24 Water Project conveyance system. Met doesn't own it, met  
 25 doesn't control it.

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1 And could we see in connection with  
 2 responses to --  
 3 THE COURT: Are you distinguishing in the Met  
 4 that you earlier showed me, the yellow area which would  
 5 be Met's and then the other lines, including the  
 6 statement of federal supply into Met as being the state's  
 7 area?  
 8 MR. KEKER: Absolutely.  
 9 Could we go back to that, Jeff, that map.  
 10 THE COURT: Yeah. I think I recall the map,  
 11 but that's the distinction you are making.  
 12 MR. KEKER: The distinction I'm making, the  
 13 Met's owned and built conveyance system is that  
 14 conveyance system which is inside the yellow area. It  
 15 begins when it gets its water supply from certain  
 16 reservoirs. In one case, the Colorado River Aqueduct  
 17 comes into a reservoir and that's where Met picks up the  
 18 Colorado River water.  
 19 And the State Water Project comes into a  
 20 reservoir that is in the north of the region and that's  
 21 where it picks up -- and actually comes into a couple  
 22 places, and that's where it picks up -- that's where  
 23 Met's conveyance system picks it up. And I'm definitely  
 24 and vociferously distinguishing between what Met's  
 25 conveyance system is in the yellow area and what it

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1 doesn't own, doesn't control, doesn't have ownership  
 2 over.  
 3 And they've admitted, with respect to the State  
 4 Water Project water that comes in through the California  
 5 aqueduct, that it doesn't own -- that Met doesn't own the  
 6 state water project, doesn't operate the State Water  
 7 Project, doesn't transport State Water Project within the  
 8 State Water Project. State Water Project is owned by the  
 9 California Department of Water Resources.  
 10 And this is -- actually, in case law, Supreme  
 11 Court has said that Met has no ownership of any State  
 12 Water Project facilities. They are two separate systems.  
 13 It has, as we'll see in a minute, a supply contract with  
 14 the Department of Water Resources for State Water Project  
 15 water. The State Water Project provides Met with a water  
 16 supply. That's what their contract is called. It's a  
 17 contract for a water supply.  
 18 And it's always been that way. In 1969 -- this  
 19 is a study that's in the 2012 record only, not the 2010  
 20 record. 1969, there was a study done by Met when they  
 21 were trying to figure out how to charge for rates and it  
 22 makes claims that their supply system includes State  
 23 Water Project facilities. They don't own them, they  
 24 don't operate them. That's part of their supply system.  
 25 The -- RMI did another -- excuse me. Second

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1 page, the other page I wanted to show of the 1969 study  
 2 shows very clearly that they are putting the State Water  
 3 Project charges, they pay the delta water charge and they  
 4 pay a transportation charge to DWR. Those are supply  
 5 charges, supply costs to Met and that's how they classify  
 6 it.  
 7 In October of 1995, RMI, getting ready for its  
 8 big assessment that it did in December, issued another  
 9 report and they were talking about categorization. This  
 10 is in both records. They classify State Water Project  
 11 supply as purchases of water. That's where it belongs.  
 12 In their December study, which we looked at  
 13 before, they are still classifying State Water Project  
 14 supply costs as supply costs. There's not -- they're not  
 15 transportation costs, they're supply, they're buying  
 16 supply under their contract with DWR.  
 17 Now, the question you're going to have to  
 18 decide is it reasonable to include most of the State  
 19 Water Project fixed costs, that cost of service analysis  
 20 for transporting non-Met water through its facilities,  
 21 the yellow part of the system, and we believe that the  
 22 answer is no.  
 23 Met is pointing to the record and asking you  
 24 for deference and asking you for deference since we first  
 25 started this case, but there is absolutely nothing in the

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1 record on this point to give deference to. They rely on  
 2 a few documents, which you'll see over and over again.  
 3 Those documents state conclusions, not analysis. They're  
 4 I want see discourage wheeling it, if so, it's because we  
 5 say it's so. It is not reasonable. They're assertions,  
 6 not proof of anything.  
 7 Nothing in this record justifies putting state  
 8 water supply -- State Water Project costs for supply and  
 9 the Water Stewardship Rate for local conservation  
 10 projects on the Transportation Rate for conveying non-Met  
 11 water through its owned facilities in the yellow area.  
 12 The entire record contains 0 substantive  
 13 evidence, but it -- in favor of that, and it contains a  
 14 lot to invalidate it.  
 15 One example, the -- in 2010, Raftelis did what  
 16 he claims was an independent cost of service study, and  
 17 Met is relying on that study today. That study is not  
 18 only wafer thin, it is thin air. It doesn't even pretend  
 19 to quantify the cost of moving non-Met water through Met  
 20 facilities. It simply assumes, as did the 1997  
 21 resolution, that the State Water Project conveyance  
 22 system is Met's conveyance system.  
 23 Raftelis based his assumption on the fact that  
 24 the Department of Water Resources breaks out its  
 25 transportation costs in the bill that it sends to Met and

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1 that somehow how they break out their bill matters. Our  
 2 position is how DWR breaks out its bill is completely  
 3 irrelevant to whether the state water supply project is a  
 4 cost to Met.  
 5 But we also have discovered, as we work through  
 6 this, that it's an argument that was made up by Met  
 7 staff, Met legal staff actually in anticipation of  
 8 litigation and it was force fed to Raftelis.  
 9 So if we could look at the 2010 cost of service  
 10 study, this is what Raftelis said on April 6, 2010, calls  
 11 it independent and on the next page, but the page I  
 12 wanted to show you, he said this is his reasoning, this  
 13 is the sole basis for what he's saying.  
 14 It should be noted a major portion of the  
 15 revenue requirement and the supply category is the State  
 16 Water Project for which the Department of Water Resources  
 17 provides an annual statement of charges to the state  
 18 water contractors.  
 19 This invoice is categorized as Delta water  
 20 charge, transportation charge, variable power and off  
 21 aqueduct power facilities.  
 22 Based on this invoice, MWD, Met has indicated  
 23 they have assigned those components to the respective  
 24 functional categories such as supply and conveyance and  
 25 aqueduct.

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1 Functionalizing SWF costs in this manner is  
 2 appropriate because DWR invoices in a very detailed  
 3 manner that allows MWD staff to functionalize  
 4 costs and DWR does not aggregate invoices to MWD on a per  
 5 acre-foot basis.  
 6 First of all, that is a statement of Raftelis,  
 7 it is not a cost of service analysis. It is simply  
 8 saying that the supply contractor, the people that we  
 9 have a supply contract with say that, break you out their  
 10 costs that way.  
 11 But let's see where that language came from.  
 12 Could we see Plaintiff's Exhibit 116? And this is not in  
 13 the record.  
 14 His service -- his cost of service analysis, by  
 15 the way, is in both records.  
 16 So start at the bottom. And the bottom e-mail  
 17 is from June Skillman to Jamie Roberts and she says,  
 18 "Jamie, I need to get something to RFC pretty quickly.  
 19 What about the following?  
 20 And then she puts in language, which I'm going  
 21 to show you this in a minute, is virtually identical to  
 22 what independent Mr. Raftelis ends up putting in his  
 23 report.  
 24 So, she sends -- so the -- and Ms. Skillman,  
 25 you will remember from that deposition, is the head of

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1 budget planning and financial analysis.  
 2 She sends it on to Sidney Bennion, who the  
 3 record shows is an assistant general counsel at Met.  
 4 Ms. Bennion acknowledges I understand that -- says June,  
 5 we should limit this to conclusions that Raftelis is able  
 6 to make based on the research they've done. I understand  
 7 that they have not reviewed our methodology, but they  
 8 should be able to conclude whether the functionalized SWC  
 9 charges can be passed along to similar functional charges  
 10 in our rate structure.  
 11 And then she writes out essentially the same  
 12 thing with some minor changes as Ms. Skillman had  
 13 written.  
 14 And if we look at the next slide, comparing the  
 15 language, this makes plain that essentially the general  
 16 counsel and the head of budget, the people at Met who  
 17 were trying to defend these rates, are the ones that came  
 18 up with this rationale which the so called independent  
 19 expert put into his report.  
 20 But, that's sort of a gotcha. But the big  
 21 point is what difference does it make? It's not a --  
 22 what the State Water Project is not Met's conveyance  
 23 system, it is not Met's cost except as a source of water  
 24 supply.  
 25 And by the way, the Met staff has been riding

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1 this horse for quite a while. They did the same thing  
 2 back to RMI back in 1985.  
 3 Remember in December of 1995, we just looked at  
 4 RMI classified the State Water Project. This is actually  
 5 October, RMI started out saying state water project was a  
 6 supply cost. But then in a -- and they did it again in  
 7 December. Supply cost. But then after consulting with  
 8 Met staff -- and I put consulting in quotes -- they came  
 9 up with a report in 1996 which is only in the 2012  
 10 record. The other two were in both records.  
 11 And in that, we can see -- this is the 1996  
 12 report -- we can see about -- they talk about the  
 13 consultation, the resulting preliminary  
 14 functionalizations were presented to Met's  
 15 functionalization, are you going to put them here or put  
 16 them there, put them in supply or transportation?  
 17 The resulting preliminary functionalizations  
 18 which you've just seen work to supply were presented to  
 19 Metropolitan's planning staff for review after  
 20 incorporating changes suggested by Met's planning  
 21 commission staff. RMI presented the preliminary  
 22 functionalization to water quality operations, finance  
 23 and engineering divisions for additional review.  
 24 Resulting functionalized revenue requirements were used  
 25 herein for the cost classification and cost allocation

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1 procedures.  
 2 Then you go over to the next page. They have  
 3 now changed the State Water Project from supply, after  
 4 consulting with staff, to transportation. And it says  
 5 Metropolitan pays SWP costs on the basis of billings from  
 6 the Department of Water Resources. Those expenses were  
 7 functionalized as either sources supply or transmission  
 8 distribution. Distinction was drawn on the basis of the  
 9 nature of the expense. DWR breaks the SWP bills into a  
 10 number of different categories. Two categories are  
 11 clearly transmission related, namely the capital charges  
 12 for transmission facilities and the operation and  
 13 maintenance charges for transmission facilities and those  
 14 expenses were functionalized as transmission  
 15 distribution.  
 16 So they did the -- staff did the same thing.  
 17 These are staff arguments that they've been making since  
 18 1995 but they are meaningless in terms of any reasonable  
 19 cost of service analysis.  
 20 Another example of Met's hand waving arguments,  
 21 which don't amount to substantive evidence, is that they  
 22 argue that some, including San Diego have used the State  
 23 Water Project facilities to wheel water from other --  
 24 have used to take non-Met and non-State Water Project  
 25 water and used those facilities to wheel.

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1 And again, we say in terms of reasonable cost  
 2 of service analysis, so what? Met is free to charge the  
 3 Department of Water Resources wheeling rate, which is an  
 4 incremental charge. This is from the contract between  
 5 Metropolitan and the Department of Water Resource and  
 6 makes plain that transporting non-project water through  
 7 the state water process -- State Water Project system is  
 8 charged for incremental -- on an incremental basis.  
 9 What are the additional charges? But that  
 10 doesn't justify charging most of the State Water Project  
 11 fixed costs to conveying water through Met's own system,  
 12 the yellow area. That makes the wheeler pay twice. You  
 13 pay the Department of Water Resource wheeling charges and  
 14 then once you get to the yellow area, where Met owns the  
 15 system, you have to pay for all of the State Water  
 16 Project costs. So you're paying -- you're paying twice.  
 17 It is not a justification.  
 18 And then in any event, this concept of wheeling  
 19 through the State Water Project is de minimis. Only 1.6  
 20 percent only of the water that comes through the State  
 21 Water Project system can be called non-project water and  
 22 only a tiny part of that is San Diego's.  
 23 But in any event, the State Water Project, the  
 24 wheeling or using the State Water Project conveyance  
 25 system for water other than its own is only 1.6 percent.

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1 So that can't provide a justification for putting a vast  
 2 majority of State Water Project costs on what Met charges  
 3 to move water through its own system in Southern  
 4 California. And it certainly has no application  
 5 whatsoever to the Colorado River Aqueduct and the  
 6 Colorado River water.  
 7 The vast majority of wheeling that Met does is  
 8 on the Colorado river aqueduct for San Diego. That's  
 9 the -- that's one big complaint that San Diego has had  
 10 forever, is that there's a disconnect. It is  
 11 unreasonable to put State Water Project fixed charges,  
 12 transportation charges for conveyance, things that you  
 13 don't own, and that is actually a water supply charge on  
 14 the wheeling rate.  
 15 What about the Water Stewardship Rate, I'm  
 16 shifting to that, that's used to fund local supply and  
 17 conservation projects? And Met's position is 100 percent  
 18 of those costs should go on the rate for transporting  
 19 non-Met water.  
 20 Is that reasonable when everybody agrees that  
 21 these projects, these local conservation projects,  
 22 desalination, groundwater projection and so on generate  
 23 local supply benefits. Raftelis in their consultant, in  
 24 his textbook, which is in the 2012 record and which you  
 25 took judicial notice of in your November ruling, in his

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1 textbook, he allocates conservation costs to supply.  
2 Source of apply includes various things, including  
3 conservation costs.

4 Once he started working for Met, he did a  
5 report in 1999, which is in the 2012 record, and there he  
6 decided that he should allocate conservation charges  
7 to -- he said it's appropriate to consider all or at  
8 least a portion of the demand side management programs,  
9 which assists local agencies in the development of  
10 conservation. At least a portion of them would be supply  
11 costs. So he didn't say all of them need to be supply  
12 costs by '99 but he said at least a portion of them  
13 should be.

14 But he also said in that same report that  
15 another way to think about it is that it's appropriate to  
16 consider all or -- excuse me. Next -- as an alternative,  
17 he said the cost of service approach to study benefits,  
18 yeah, there it is. There are alternatives to this simple  
19 allocation approach. What he's saying there is he's  
20 going to -- in '99 he's going to charge half of the  
21 conservation projects to supply and half to transmission,  
22 to transportation.

23 But then he says there's alternatives to this  
24 simple allocation approach. One such alternative would  
25 be to conduct the detailed cost benefit analysis,

1 cost of service was an alternative approach -- cost was  
2 an alternative in 1999, but since Prop. 26 passed in  
3 2010, it's not an alternative, we believe it's required.

4 This idea that Raftelis says we can split it  
5 50/50, that's arbitrary. They should have to do  
6 analysis.

7 But here, it's pretty easy because they didn't  
8 do any arbitrary division. They put 100 percent on the  
9 Water Stewardship Rate. And again, you've got to ask  
10 yourself is it reasonable as a cost of service matter to  
11 load all conservation costs on transportation and none to  
12 supply?

13 We've argued and continue to argue that the  
14 Water Stewardship Rate is a tax, plain and simple. It's  
15 included in the wheeling rate for the exact reason that  
16 Met stated in 1997 rate stability. It's levied equally  
17 on all the member agencies or general revenue purpose,  
18 which is to provide program funding. Nothing in the  
19 record makes the connection between the Water Stewardship  
20 Rate and transporting non-Met water over Met's  
21 facilities, its conveyance system.

22 And then there's the further point that the law  
23 requires proportionality between the charges member  
24 agencies pay and the benefits it receives. There's no  
25 proportionality here. It's never been studied.

1 something that we believe, since the passage of Prop. 26,  
2 is compelled, not just a choice. Nothing like -- but  
3 nobody did. Nothing like that happened here.

4 And Met admitted in its discovery responses  
5 that it has never calculated any benefit to its  
6 transportation system from any of the projects or from  
7 all of these water conservation projects together.

8 And here is the admissions. It's never  
9 calculated the benefit to its service region generally or  
10 to its conveyance system from any individual project  
11 funded through the water stewardship rate. And it's --  
12 and it's never calculated the benefit to its service  
13 region generally or to its conveyance system from all of  
14 the Water Stewardship Rate funded projects in the  
15 aggregate. It just hasn't looked at it. And to us, your  
16 Honor, that is game, set, match on the Water Stewardship  
17 Rate.

18 You have to make a legal decision whether it is  
19 reasonable to put 100 percent of these conservation  
20 projects on the Transportation Rate for non-Met water  
21 moving through the system, and they have admitted that  
22 they don't have -- that they have not studied it and they  
23 have not considered it, whether or not there's any  
24 benefit, what the benefits are and so on.

25 As I said, Raftelis might have thought that the

1 And in fact, you know that Met has declared San  
2 Diego, because it had the temerity to bring this lawsuit,  
3 completely ineligible for future program funding under  
4 the Water Stewardship Rate as revenge for filing the  
5 lawsuit so that San Diego is paying millions of dollars  
6 to the Water Stewardship Rate each year and getting  
7 absolutely nothing for it.

8 Another point about conservation that I've  
9 made, a little bit, is that conservation has been  
10 functionalized in the past as supply. As we just saw in  
11 the Raftelis slides that we just looked at in the 1999  
12 report, one of the things industry standards supports its  
13 classification of costs and we believe that's false.

14 In addition, the Raftelis textbook and report  
15 we've been looking at relies on NARUC, National  
16 Association of Regulatory Utility Commissioners. And it  
17 says that they complied with NARUC, but they don't.

18 Could we see the Bartle and Wells report?

19 This is a report, expert report commissioned by  
20 San Diego that's in both administrative records and  
21 criticizes the Met board in 2010 for saying that its  
22 functional categories developed for Metropolitan's cost  
23 of service process are consistent with the American Water  
24 Works Association rate setting guidelines, a standard  
25 chart of accounts for utilities developed by the National

1 Association -- by NARUC and National Council of  
 2 Governmental Accounting.  
 3 Next page, they point out that -- we'll get to  
 4 AWWA in a minute but they point out that for NARUC,  
 5 purchased water should be -- the account for purchased  
 6 water is supply. As described in our March 5th opinion,  
 7 all the cost Met pays the State Department of Water  
 8 Resources under Met's agreement with DWR are water supply  
 9 costs should be assigned to purchased water or supply  
 10 account. Met does not account for those costs in that  
 11 manner and, as described, those costs to the rates it  
 12 imposes for the cost of transporting water across its own  
 13 system in Southern California.  
 14 The rate structure clearly does not follow the  
 15 NARUC standard.  
 16 Met's rate consultant opines it is appropriate  
 17 for Met to divide its DWR supply costs into functional  
 18 categories such as supply, conveyance and aqueduct and  
 19 hydroelectric because DWR provides sufficient detail that  
 20 Met may do so and Met's contract with DWR staff  
 21 recommendation does not provide for aggregate per foot  
 22 pricing -- per acre-foot pricing.  
 23 This amounts to a statement that Met may  
 24 deviate from industry standards requiring all supply  
 25 costs to be characterized as such because it has received

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1 an itemized billing statement of costs incurred by its  
 2 water supplier and perhaps just because it is possible to  
 3 do so.  
 4 Met's approach is incorrect. Industry  
 5 standards require that Met's financial obligation to the  
 6 DWR be counted as supply costs, as demonstrated by the  
 7 very authorities on which Met's rate consultant claims to  
 8 rely.  
 9 And again, we found an e-mail, not in the  
 10 record, PTX 168, which sheds light on this. This is June  
 11 Skillman, starting at the book, receiving an e-mail from  
 12 somebody who says that the cost of service report states  
 13 that functional categories are consistent with the  
 14 standard chart of accounts for utilities developed by  
 15 NARUC.  
 16 Can we blow up the NARUC?  
 17 And this guy doesn't have a copy. "Doest  
 18 either of you have a copy of the chart of acts that can  
 19 be forwarded to me?"  
 20 And Ms. Skillman replies that she doesn't have  
 21 a copy of the NARUC chart. She checked on the Web site.  
 22 They sell it. They were hoping to get it from  
 23 Mr. Raftelis.  
 24 But was pointing out this is central to the  
 25 argument used by San Diego. Our argument is going to

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1 have to be that accounting should not dictate how we  
 2 charge for services and that generally we follow NARUC.  
 3 They don't follow NARUC with respect to classifying  
 4 supply properly.  
 5 I've talked about the illegality of loading  
 6 State Water Project fixed costs and the water  
 7 resource-water stewardship rates on Met's transportation  
 8 of non-Met water. Now I want to move to a third reason  
 9 the transportation rates are illegal and that is that  
 10 nowhere in its rates does Met account for dry year  
 11 peaking, the benefit that is provided when an occasional  
 12 user of Met water in dry years doesn't have to pay  
 13 anything for that insurance that it will be there in dry  
 14 years during years it doesn't need as much Met water.  
 15 Met admits it doesn't account for that benefit  
 16 and the cost of dry year peaking is at least in part in  
 17 the System Access Rate, which is part of what is being  
 18 charged here.  
 19 Response to interrogatory number 15, we asked  
 20 identify all facts, documents, data, analyses,  
 21 calculations, studies or other information used by MWD to  
 22 calculate the cost associated with maintaining supplies,  
 23 storage and transportation capacity to accommodate MWD,  
 24 Member Agency's dry year peaking demands.  
 25 The answer was: No such information exists.

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1 And it goes on to say in January 2003, MWD unbundled its  
 2 rates, which include the supply rate, the System Access  
 3 Rate and the Readiness-to-Serve Charge among others. The  
 4 cost of which this interrogatory refers are collected  
 5 through those rate elements, including the System Access  
 6 Rate.  
 7 You know that they've admitted in their joint  
 8 statement that was filed back in August that Met did not  
 9 separately allocate costs related to dry year peaking to  
 10 its rates. And you've relied on that admission in  
 11 your -- in a recent order on the motions in limine. You  
 12 said the misrepresentation from Metropolitan was that it  
 13 did not make a separate allocation of dry year peaking,  
 14 so arguably a subject to judicial estoppel, fairest  
 15 approach here is to hold Metropolitan to its  
 16 recommendation.  
 17 What Metropolitan is going to do when it gets a  
 18 chance is talk about what it does do about other kinds of  
 19 peaking, weekly peaking, daily peaking and so on such as  
 20 charging for the water that's actually used, tiered  
 21 pricing, tier 1, tier 2, charging the Readiness-to-Serve  
 22 Charge, capacity charge.  
 23 But they admit they don't even try to calculate  
 24 the benefits to, say, Los Angeles or the burden to steady  
 25 customers like San Diego of the fact as much as 511,000

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1 acre-feet, more than \$30 million worth of water is  
 2 available to Los Angeles in a dry year when it doesn't  
 3 buy nearly that much water in other years. And the cost  
 4 of keeping that capacity available for those dry years is  
 5 borne in those other years by other rate payers.  
 6 This chart, Mr. Denham will talk about, but  
 7 this says three things. They took an everything, which  
 8 is the dotted line that says one, and took an average of  
 9 water use from 1994 to 2000. That is one.  
 10 And then they show from 2000 on through 2012  
 11 how the member agencies react to that average. And you  
 12 can see the blue line is all member agencies except San  
 13 Diego and Los Angeles, and they're -- that's reasonably  
 14 flat. Sometimes they use more than the average but not  
 15 that much more. San Diego's about the same as the  
 16 average, a little bit different in places but basically  
 17 the average.  
 18 And the difference, the dry year peaking is Los  
 19 Angeles, pink line. And you can see that in some years,  
 20 Los Angeles uses very little Met water and some years, it  
 21 uses a lot of Met water. They've quantified that for us  
 22 recently in a bond document that they issued in 2013,  
 23 this is PTX 244 offered to show the volume, sort of what  
 24 we're talking about.  
 25 This is a 2013 bond issue for \$104 million that

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1 Met put out and on --in it describes the Los Angeles  
 2 variance and says the parts that I want to highlight --  
 3 the whole thing is interesting but the -- from fiscal  
 4 year 2001 to fiscal year 2010-11 is the first highlighted  
 5 part, portion, approximately 32 to 71 percent of the  
 6 city's, that's Los Angeles' total water requirements were  
 7 met by Metropolitan. So some years, only -- they only  
 8 needed 32 percent and got the rest from the Los Angeles  
 9 Aqueduct and other sources and in some years, they had to  
 10 get 71 percent from Met.  
 11 For the five fiscal years ending June 30th  
 12 2012, the city's water deliveries from Met averaged  
 13 approximately 301,000 acre-feet per year, which  
 14 constituted approximately 51 percent of the city's total  
 15 water supply. But this is the point: Delivers from  
 16 Metropolitan to the city during this period varied from  
 17 approximately 116,000 acre-feet and approximately 433,000  
 18 acre-feet. So some years they needed two and a half  
 19 times as much water as they needed in some other year.  
 20 And then down -- the last highlighting is  
 21 however, the city may still purchase up to 511,000  
 22 acre-feet per year or 82 percent of its dry year supplies  
 23 from Metropolitan over the next 25 years. This  
 24 corresponds to an increase from normal to dry years of  
 25 approximately 255,000 acre-feet in potential demand for

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1 supplies from Metropolitan, the point being that that  
 2 tremendous insurance for Los Angeles is paid for by  
 3 everyone else except Los Angeles. Benefit to Los Angeles  
 4 has never been studied, has never been calculated and has  
 5 never been properly put into cost of service analysis in  
 6 the rates.  
 7 And there's no question that when agencies --  
 8 when agencies provide for dry year peaking, that requires  
 9 a considerable investment in storage facilities by Met.  
 10 The group hired by FCS Group, hired by  
 11 San Diego made a report which is in the 2012 record, and  
 12 I'll just -- I'll point out some of the highlights of the  
 13 report. And this was submitted to Met about this issue  
 14 of dry year peaking.  
 15 In an attempt to provide an order of magnitude  
 16 estimate of the value of MWD's peak demand capacity, an  
 17 allocation of the fixed asset records was developed.  
 18 Based on this allocation, the investment is estimated to  
 19 be roughly three billion for peak demand capacity.  
 20 Appropriate recovery of capital and operating costs  
 21 related to these facilities could easily represent  
 22 hundreds of millions of dollars per year.  
 23 Next page.  
 24 MWD's volumetric rate structure allows agency  
 25 to roll on and off the system with little financial cost

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1 to those individual Member Agencies.  
 2 What that means is you don't have to -- if you  
 3 don't want to use us this year, don't need to use us this  
 4 year, we rolled off. We need you next year, we roll back  
 5 on.  
 6 And instead, requires all system users to bear  
 7 the cost burden for standby capacity. In effect, NWD  
 8 spends billions of dollars on drought insurance but does  
 9 not require the beneficiaries of that insurance to pay it  
 10 until they actually use it. And then they're not paying  
 11 for it. What they're paying for is water in those years.  
 12 They're not paying more. It does so by requiring other  
 13 customers whose demand is more stable to subsidize those  
 14 whose use of the MWD system is highly variable.  
 15 So, Met's transportation rates are designed to  
 16 force steady customers like San Diego to subsidize  
 17 agencies that role on and off the system. They do that  
 18 by loading State Water Project fixed costs on  
 19 transportation rates that have nothing to do with the  
 20 actual cost of conveying non-Met water through its own  
 21 system. That makes the rates illegal.  
 22 The remedy is to have Met actually conduct  
 23 analysis of who gets the benefits of the costs of dry  
 24 year peaking, account for it in setting cost of service  
 25 rates instead of ignoring it, as they do now.

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1 Now, Met's staff did a portion of this job. I  
 2 thought this would be interesting. In preparation for  
 3 setting the 2010 rates, it had an action item in 2010.  
 4 This came from the office of the CFO, who's Brian Thomas,  
 5 and they were going to consider the change in the cost of  
 6 service methodology.  
 7 Mr. Thomas recognized that storing water with  
 8 the State Water Project for use in dry years, paying the  
 9 State Water Project for storage capacity was a supply  
 10 benefit, yet it was charged to transportation. And  
 11 here's -- here's one of the things that the staff was  
 12 suggesting. This agreement provides a dry year supply  
 13 benefit to Metropolitan, the flex storage in the State  
 14 Water Project.  
 15 Next page.  
 16 The drought storage provides increased dry year  
 17 supply reliability. Drought storage costs are assigned  
 18 to the supply function and recovered through Metropolitan  
 19 supply rates for the Diamond Valley Lake, but for other  
 20 reservoirs that they're paying for, in this case, Castaic  
 21 and Perris, the cost of that storage are recovered  
 22 through the System Access Rate and Readiness-to-Serve  
 23 Charge.  
 24 So, the staff is suggesting an alternative  
 25 approach. Drought storage component could be included in

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1 the supply function. It says that approximately \$10  
 2 million would be assigned to the supply function instead  
 3 of to the transportation, conveyance function.  
 4 And they analyze as they always do how that  
 5 would affect the member agencies. Voters. They conclude  
 6 the initial impacts would be minor. San Diego would save  
 7 less than \$600,000 per year in wheeling and exchange  
 8 water. Other agencies would have to pay more, but nobody  
 9 would have to pay more than \$100,000 based on the  
 10 budgeted sales level of the previous year.  
 11 So, next page.  
 12 The board options are assigns a portion of the  
 13 cost associated with this -- this DWR flexible storage to  
 14 the apply function.  
 15 Option II is to make no changes, keep doing  
 16 what we're doing.  
 17 And option III is direct staff to do the whole  
 18 thing. I mean go figure this out again.  
 19 The recommendation was option I, which is apply  
 20 it to supply. And of course, the board did nothing.  
 21 Your Honor, the reason that the Met board  
 22 refuses to change its rate structure and has since 1997  
 23 should by now be obvious. Nothing sums it up better than  
 24 a letter sent to Met in 2010 signed by 19 of its members.  
 25 This is PTX 71. It is not in the record.

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1 The -- 19 of the member agencies signed this  
 2 letter and if we could look at the first page of the  
 3 letter, it is to the general -- it's to the general  
 4 manager of Met. And what these member agencies are  
 5 saying is that during the rate setting process for 2010  
 6 and '11, San Diego contended that Met's water rates were  
 7 unlawful and that Met's cost of service methodology does  
 8 not comply with industry standards.  
 9 In a letter to Metropolitan dated March 8,  
 10 2010, the water authority demands changes in the cost of  
 11 service methodology that would shift all costs associated  
 12 with the State Water Project and all costs currently  
 13 recovered through the Water Stewardship Rate to  
 14 Metropolitan's tier 1 supply rate. This dramatic shift  
 15 in cost to supply would result in a savings to the water  
 16 authority of over 26 million in calendar year 2010 and  
 17 over \$800 million over the next 20 years and a  
 18 corresponding increase in costs shared by Metropolitan's  
 19 other member agencies.  
 20 If we could look at the attachment A, shows  
 21 it's even more stark than that. First column is the cost  
 22 shift and then down at the bottom, it shows 26 million  
 23 that they're referring to.  
 24 Then the cost -- the net present value of that  
 25 cost shift over 20 years is the next one down at the

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1 bottom. That's 803 million. Cost next shift over 40  
 2 years is a million 7.  
 3 THE COURT: I don't think that's a million 7.  
 4 MR. KEKER: I'm sorry, a billion 7. I don't  
 5 think it's a million 7 either. 800 million, then a  
 6 billion 7 over 40 years. And net present value over 67  
 7 years is almost \$3 billion, \$2.94 billion.  
 8 So, that's what explains the board's reluctance  
 9 to do what the law requires, which is appropriate cost of  
 10 service analysis, apply reasonable costs to that cost of  
 11 service, evaluate the benefits and the burdens of the  
 12 rates that are charged and the service and so on. That's  
 13 the motivation.  
 14 THE COURT: Would this be a good time to stop?  
 15 MR. KEKER: I was going to -- sure, this is a  
 16 good time to stop.  
 17 THE COURT: Unless you've got just a couple  
 18 more minutes. It is the noon hour.  
 19 MR. KEKER: I don't have long. But this is a  
 20 good time to stop. Let's stop now.  
 21 THE COURT: I'll see everybody at 1:30. Thank  
 22 you so much.  
 23 (Noon recess taken.)  
 24 ---o0o---  
 25

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1 DECEMBER 17, 2013 AFTERNOON SESSION  
 2 P R O C E E D I N G S  
 3 ---o0o---  
 4 THE COURT: Good afternoon.  
 5 MR. KEKER: Good afternoon, your Honor.  
 6 THE COURT: Let's go ahead.  
 7 MR. KEKER: I'm happy to say I'm coming to the  
 8 end.  
 9 THE COURT: No need to apologize. This is  
 10 important and it's very helpful from both sides.  
 11 MR. KEKER: But I am coming to the end. So I'm  
 12 going to sum up and go back to what I said at the outset.  
 13 We are not asking in this phase of the trial or  
 14 in any phase of the trial, actually, but we're certainly  
 15 not asking the Court to set a rate. We're just asking  
 16 you to tell Met that its transportation rate is illegal  
 17 and tell them why.  
 18 The current transportation rate is illegal  
 19 because, number one, it unreasonably includes fixed State  
 20 Water Projects in the System Access Rate and System Power  
 21 Rate that have nothing to do with the use of Met's owned  
 22 conveyances, which are those in the yellow on the map  
 23 and, of course, the Colorado River Aqueduct.  
 24 Number two, it unreasonably charges in the  
 25 Water Stewardship Rate, which makes this Water

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1 Stewardship Rate illegal as to transportation of non-Met  
 2 water. It applies to local conservation projects that  
 3 have nothing to do with charging for non-Met water.  
 4 Number three, it unreasonably ignores the  
 5 benefits to Los Angeles and others of being able to count  
 6 on more water in dry years.  
 7 And, number four, it discourages rather than  
 8 facilitates wheeling in violation of the Water Code;  
 9 therefore, the System Access Rate is unlawful, System  
 10 Power Rate is unlawful and the Water Stewardship Rate,  
 11 all of which goes to the transportation rates, is laid on  
 12 the transportation rate, is unlawful.  
 13 Choosing rate stability, as they are doing  
 14 here, continue to do here as they have done since 1997 or  
 15 when the rates were set in 2003, choosing rate stability  
 16 over cost of service is not an option that's available to  
 17 Met under the law.  
 18 And applying your pretrial rulings, without  
 19 recognizing we had some objections to some of them, but  
 20 we're now living with your pretrial rulings, are going to  
 21 try the case based on what you told us the rules were.  
 22 Met cannot carry its burden under Proposition  
 23 26. They have to show that the amount that they charge  
 24 for transportation of Met water through its conveyance  
 25 system is no more than necessary than to cover the

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1 reasonable cost of that activity.  
 2 And they also have to show that the manner in  
 3 which those costs are allocated to a payor, the people  
 4 who are transporting bear a fair and reasonable  
 5 relationship to the payor's burden on or benefits  
 6 received from the government activity.  
 7 And we've emphasized that they've never even  
 8 studied that or thought about it, or they thought about  
 9 it but they've never studied it or tried to apply it.  
 10 That's illegal. It is not a factual decision, we  
 11 believe, for you to make based on your independent  
 12 review.  
 13 Another legal issue for you to decide de novo  
 14 is under Prop. 13. And Prop. 13, as the Court is well  
 15 aware, was codified with an implementing statute, 50076  
 16 of the Government Code, which requires that if you want  
 17 to get out of it being a tax, that you have to have a  
 18 two-thirds vote on, that you not exceed the reasonable  
 19 cost of providing the service for which the fee is  
 20 charged and which is not levied for general revenue  
 21 purposes.  
 22 We believe under your rulings our job is to  
 23 make a prima facie case under Prop. 13, that we've done  
 24 that, that the wheeling rate is invalid because it  
 25 exceeds the reasonable cost of providing the service and

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1 in the case of the Water Stewardship Rate, because it is  
 2 levied for general revenue purposes rather than for some  
 3 specific service.  
 4 Met cannot show -- the burden of production you  
 5 said shifts to them and they cannot show that its  
 6 transportation rate, which includes State Water Project  
 7 fixed costs and this Water Stewardship Rate does not  
 8 exceed the reasonable cost of providing transportation  
 9 service over its own facilities.  
 10 Then moving on to the wheeling statute, the  
 11 legal issue is whether the statute bars inclusion of any  
 12 component of the rate. I think we've all agreed, both  
 13 sides have agreed that's a legal issue for you to decide.  
 14 You've raised another issue of whether the  
 15 wheeling statute applies. We believe there's no question  
 16 the wheeling statute applies.  
 17 This is a challenge to a new wheeling rate that  
 18 was established in 2010 and then again in 2012. Every  
 19 time they set what the System Access Rate or Power Rate  
 20 or Stewardship Rate, given their language, those  
 21 components going into a wheeling rate, every time they do  
 22 it, they are setting a wheeling rate. So 2010, they did  
 23 it and 2012 they did it.  
 24 There is another part of this trial which you  
 25 have severed which is the interpretation of the 2003

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1 exchange agreement between Met and San Diego and our  
 2 contention, as the Court knows, is that the price set in  
 3 that exchange agreement, which is not a wheeling  
 4 agreement, there's no dispute about that, it's not a  
 5 wheeling agreement under the definition of wheeling but  
 6 the price set in it, we assert, is the wheeling rate,  
 7 using that language in 5.2 about generally applicable to  
 8 the conveyance of water by Met on behalf of its member  
 9 agencies.  
 10 But the point about that is that that is not  
 11 for this case, that's for the breach of contract case to  
 12 be held later. And we'll call witnesses and we'll --  
 13 you'll eventually figure out what that language covers  
 14 and what it doesn't.  
 15 We have seen the slides because we exchanged  
 16 them. And I anticipate they're going to spend a lot of  
 17 time talking about the exchange agreement, whether it's a  
 18 wheeling agreement and we said it's not and what price --  
 19 what the price term means. Our position is that's  
 20 irrelevant to this part of the case. We brought  
 21 declaratory relief, we brought other claims this wheeling  
 22 rate that was set, including the System Access Rate and  
 23 so on, those are illegal and we are entitled to a  
 24 declaration saying so. So, our position is all of that  
 25 is irrelevant to this phase.

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1 They ask that this contract claim be tried  
 2 later for some reason. I expect that they want to try  
 3 part of it here. So we're asking you to just ask  
 4 yourself as they're talking about that, why are we  
 5 listening to that in this phase of the case? Our  
 6 position is that it's irrelevant.  
 7 And we believe that the evidence shows, the  
 8 evidence that's in the administrative record that I've  
 9 cited so far, without anything more shows that Met's rate  
 10 discourage wheeling in violation of 1813 and that it's  
 11 neither fair nor reasonable to include charges unrelated  
 12 to the cost of conveying non-Met water through Met-owned  
 13 facilities.  
 14 They've known that for years. We can see that  
 15 matrix again that their CFO put up. They've known for  
 16 years that this way of charging discourages wheeling and  
 17 that the only way to not discourage wheeling is to follow  
 18 the commitments pay out where your fixed costs are taken  
 19 care of because people have to line up at the beginning  
 20 of the year and say, "We promise to take this much water  
 21 and now you figure out how much it's going to cost us."  
 22 Finally, under the Government Code -- couple  
 23 more. 54999.7(c) --  
 24 MR. PURCELL: (a).  
 25 MR. KEKER: I take it back. (a), a fee from a

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1 public agency for a public utility service, which this  
 2 is, shall not exceed the reasonable cost of providing the  
 3 public utility service.  
 4 This is part -- and 66013 says the same thing,  
 5 requires rates no more than the cost of service.  
 6 The Met Act, its -- what they point to us,  
 7 uniformity of rates. They keep talking about how these  
 8 rates are uniform and our position is that the -- the way  
 9 they charge for wheeling is charging for different  
 10 classes of service. They charge everybody the same thing  
 11 and they should be charging at a minimum for  
 12 transportation of Colorado River water. That's a  
 13 different class of service than perhaps something else.  
 14 And certainly it's different from transporting State  
 15 Water Project water, so we're in a different class of  
 16 service.  
 17 And then the common law, which outlaws  
 18 discriminatory rates, we've cited there the City of Inyo  
 19 case but basically that the -- if a water rate under the  
 20 common law is not based on cost of service or some other  
 21 reasonable basis, the rate is invalid. The public  
 22 utilities don't have the right under the common law or  
 23 under public utility law to charge anything they feel  
 24 like.  
 25 We believe all of these are legal questions on

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1 which you must exercise your independent judgment.  
 2 Your pretrial rulings mention various  
 3 presumptions and deference but you recognized also that  
 4 ultimately you have to decide what the law means. And  
 5 here, I emphasize what I started with. The facts are  
 6 really undisputed. It's -- these are legal judgments  
 7 that you have to make about what the law requires.  
 8 We believe Met's rates have been shown and will  
 9 be shown to be unreasonable as a matter of law under each  
 10 and all of these statutes and that's it. I appreciate  
 11 your attention.  
 12 We're going to call -- after the other side has  
 13 a chance to speak, our first witness will be Dennis  
 14 Cushman, who's the assistant general manager of the San  
 15 Diego County Water Authority, and we look forward to  
 16 putting him on.  
 17 Thank you, your Honor.  
 18 THE COURT: Thank you very much.  
 19 I plan to take a break around 3:00 o'clock but  
 20 if the attorney who's speaking at the time wants to call  
 21 a break a little bit sooner or later, depending where you  
 22 are in the presentation, please feel free to suggest it.  
 23 MR. HIXSON: Thank you, your Honor.  
 24 Good afternoon, your Honor. Tom Hixson for the  
 25 Metropolitan Water District of Southern California.

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1 California courts have recognized that rate  
 2 setting is one of the most complicated issues facing  
 3 administrative agencies and that judicial review of rate  
 4 setting decisions is likewise one of the most challenging  
 5 tasks.  
 6 Rate setting involves questions of technical  
 7 expertise, such as how are water facilities used, what  
 8 role do they play operationally, how does a water agency  
 9 benefit from the mix of facilities that it has and how  
 10 are costs appropriately allocated to related functions?  
 11 In addition, rate setting entities differ from  
 12 each other in significant ways. This is especially true  
 13 in the water industry, which presents a vast spectrum  
 14 from relatively simple retail water agencies that sell to  
 15 households and businesses, to the Met Water District with  
 16 its enormous infrastructure over large distances in  
 17 Southern California and the need to transport water from  
 18 distant locations.  
 19 For these reasons, including these technical  
 20 questions and the large differences and rate setting  
 21 entities, courts apply a standard of reasonableness in  
 22 reviewing a water agency's rates and so although San  
 23 Diego asserts a number of different claims in this case,  
 24 ultimately none of them require more than a standard of  
 25 reasonableness.

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1 Prop. 26, for example, requires a reasonable  
 2 relationship for costs or to benefits. The courts have  
 3 interpreted Prop. 13 as requiring a reasonableness  
 4 inquiry as well. This is true as well under the common  
 5 law in the wheeling statute and other claims. So while  
 6 we contend a number of these statutes, constitutional  
 7 provisions are inapplicable, ultimately ones that do  
 8 apply boil down to the standard of reasonableness.  
 9 In this proceeding, we will demonstrate that  
 10 Metropolitan's rates are reasonable. We will show that  
 11 the State Water Project transportation costs are  
 12 reasonably allocated to Metropolitan's transportation  
 13 rates. We will show the Water Stewardship Rate is  
 14 reasonably allocated to transportation rates, and we will  
 15 show that San Diego's claim concerning dry year peak has  
 16 no merit.  
 17 Throughout this demonstration, we will be  
 18 closely trained on this standard of reasonableness. We  
 19 will not attempt to show that Metropolitan's rates are  
 20 the only possible rates it could have, that there is no  
 21 other way it could be done, that this is the best and  
 22 greatest way and nothing else could be done differently  
 23 because first, that loses sight of the government -- the  
 24 governing legal standard and, second, given  
 25 Metropolitan's size and complexities of its operation,

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1 there are surely any number of different rate structures  
 2 which would satisfy the legal standard of reasonableness.  
 3 And as I said, we will be closely trained to show that  
 4 Met's rates are reasonable.  
 5 Before I turn to San Diego's claims, I would  
 6 like to talk about Metropolitan.  
 7 Met was established in 1928 by the California  
 8 Legislature. It is a collective of member agencies in  
 9 Southern California, a water wholesaler. Met is what's  
 10 called a supplemental water provider. That means it  
 11 provides its member agencies with water that they decide  
 12 to buy beyond the local resources they already have, such  
 13 as their own groundwater or other sources of water  
 14 available to them. They can turn to Met as a  
 15 supplemental provider.  
 16 Today, Metropolitan has 26 member agencies,  
 17 they are shown here on the screen, and it serves a  
 18 territory where approximately 19 million Californians  
 19 reside.  
 20 I'm showing now a map of the Metropolitan  
 21 service area, which covers a large area in Southern  
 22 California. It stretches from Calleguas and Los Angeles  
 23 on the west and the north to the Eastern Municipal Water  
 24 District on the east and to San Diego on the south. That  
 25 service area extends all the way to the border with

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1 Mexico.  
 2 Metropolitan obtains its water from two  
 3 principal sources of supply. Chronologically, the  
 4 Colorado River came first. With the construction of the  
 5 Hoover Dam and other dams starting in the late 1920s and  
 6 continuing into the 1930s, a series of lakes were created  
 7 along the Colorado River that became sources of water  
 8 supply for the surrounding states, including California.  
 9 To get Colorado River water to Met, Met  
 10 constructed and continues to own and operate its 242-mile  
 11 long Colorado River Aqueduct, which takes water from Lake  
 12 Havasu on the Colorado River and transports it to Met  
 13 service area.  
 14 We've depicted the Colorado River Aqueduct as a  
 15 red line on this map.  
 16 On the right-hand side of the screen is the  
 17 Colorado River, which is the border between California  
 18 and Arizona, and Lake Havasu is the ending point for  
 19 Met's Colorado River Aqueduct.  
 20 I would like to point out San Diego this  
 21 morning in their opening when they said the Colorado  
 22 River Aqueduct is a federal facility, that's erroneous.  
 23 Met created, built and today owns the Colorado River  
 24 Aqueduct. That's the reason it was formed. The  
 25 individual cities in the area couldn't themselves have

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1 had the resources to construct the aqueduct and so they  
 2 joined together to form Metropolitan to accomplish  
 3 something none of them could have done by themselves.  
 4 They issued bonds and assessed property taxes for the  
 5 construction of this enormous aqueduct.  
 6 Second, in terms of chronology is the  
 7 California State Water Project. Metropolitan signed its  
 8 contract with the Department of Water Resources in  
 9 November of 1960. Met was the first of the state water  
 10 contractors.  
 11 The source of water supply for the State Water  
 12 Project is the Feather River, which is impounded at  
 13 Oroville to form Lake Oroville. We've shown that here in  
 14 Northern California with a blow out indicating where Lake  
 15 Oroville is.  
 16 To transport this water to the 29 state water  
 17 contractors located throughout the state, the Department  
 18 of Water Resources built enormous transportation  
 19 facilities from Northern to Southern California, the most  
 20 prominent of which is the California Aqueduct.  
 21 We've shown the California Aqueduct in blue on  
 22 this slide and you can see it going down the center of  
 23 California. And then as it approaches Met, it divides  
 24 into a west branch and then an east branch connecting  
 25 into Met service area.

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1 THE COURT: That's owned by the state?  
 2 MR. HIXSON: That is owned by the state,  
 3 correct.  
 4 This slide here shows a blowup of  
 5 Metropolitan's service area. In this lighting, it is a  
 6 little hard to distinguish between blue and purple but at  
 7 the top, those are the blue lines showing the State Water  
 8 Project, the west branch and east branch connecting down.  
 9 On the right, you can see in red the Colorado  
 10 River Aqueduct coming in from the east, and we've shown  
 11 Met's distribution and infrastructure facilities in  
 12 purple. And you can see this is a large network of pipes  
 13 and other facilities in Metropolitan's service area that  
 14 transport the water to its member agencies in this large  
 15 area in Southern California. When we refer to the  
 16 distribution network, we mean those purple areas there  
 17 that move the water to Met's member Agencies through the  
 18 various counties and the cities in different locations  
 19 within Metropolitan.  
 20 Let me explain our color coding on this slide.  
 21 Purple is what you get when you mix blue with  
 22 red. We've depicted the State Water Project in blue and  
 23 the Colorado River Aqueduct in red. With some exceptions  
 24 from member agencies that are Met's far western service  
 25 area, the water that Met's member agencies receive is

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1 generally a blend of State Water Project and Colorado  
 2 River water. That's why we show the distribution system  
 3 in purple.  
 4 San Diego is one of the member agencies that  
 5 receives a blend of State Water Project and Colorado  
 6 River water. That's actually an issue that's very  
 7 important in this case because throughout San Diego's  
 8 opening, they have talked as if it were true that they  
 9 have Colorado River water running through Met's system to  
 10 San Diego. That is factually untrue. Water that San  
 11 Diego gets from Met is a blend of State Water Project and  
 12 Colorado River water and that incurs those State Water  
 13 Project costs to have that water to provide to San Diego.  
 14 We've also shown on this map where the  
 15 San Diego County Water Authority is. If you look toward  
 16 the bottom of the purple lines, you see a dotted line  
 17 going from left to right. That's the border with  
 18 San Diego County. And then a few miles south of that, we  
 19 show the line turning to black and those depict the  
 20 pipelines owned by San Diego.  
 21 To understand the rate challenge, it's  
 22 important to understand Met's rates and charges and how  
 23 they're interrelated. We've listed here the various  
 24 sources of revenue that Met has. On the left, we've  
 25 listed the water rates. These are volume metric charges.

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1 What that means is that each rate is a unit charge for  
 2 each acre-foot of water delivered. And an acre-foot is  
 3 the amount of water that will cover an acre one foot  
 4 deep. It's approximately the amount of water that two  
 5 Southern California households would use in one year.  
 6 And so, on the right we've listed the fixed  
 7 charges. Fixed charges mean that the amount of that  
 8 charge doesn't depend in a given calendar year on how  
 9 much water the member agency buys from Metropolitan.  
 10 Now, I should be clear that fixed doesn't mean  
 11 the charge stays the same forever. Fixed charges in fact  
 12 are calculated on past Member Agency uses. And I'll  
 13 explain later the two fixed charges later in this  
 14 presentation, other minor revenues such as investment  
 15 income.  
 16 And then in the bottom in green, Met receives  
 17 ad valorem property taxes. Residents in that area pay  
 18 property taxes. Those supply about five percent of  
 19 Metropolitan's revenues.  
 20 Now, let me turn to Met's rate structure. When  
 21 we say the rate structure, this is what we mean. We mean  
 22 the volumetric water rates and the fixed charges.  
 23 Current structure, the one that is shown up here in this  
 24 chart was adopted by Met's board of directors in October  
 25 of 2001 and it became effective on January 1st, 2003.

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1 And so for any given year, Met's rate structure has both  
2 a mix of variable charges, namely the water rates and  
3 then certain fixed charges. As between the ratio, which  
4 is more and which is less, the large majority fall into  
5 the water rates, variable or volumetric water charges.

6 Now, let's focus on the particular rate  
7 components that are at issue in this lawsuit.

8 Met's volumetric water rates pay for different  
9 things. Indeed, one of the purposes of the unbundled  
10 rate structure was to provide transparency to when member  
11 agencies see their bills and see what the different rates  
12 are, they know what charges are for what. And so the  
13 supply rates, the tier one and tier two supply rates pay  
14 for the water resource itself.

15 We know that Met has three transportation  
16 charges. Those are the System Access Rate, the System  
17 Power Rate and the Water Stewardship Rate. And those are  
18 charged on each acre-foot of water that Met delivers to  
19 its member agencies.

20 And then beneath that, the last of the  
21 volumetric charges is the treatment surcharge. Met sells  
22 both treated water and untreated water. We use that  
23 estimation as a term of art. Treated means you can drink  
24 it. If it's untreated, the Member Agency would have to  
25 treat it themselves before they could obviously sell it

1 January. That's broken out between tier one supply, tier  
2 two supply, and then it's got the three transportation  
3 rates beneath that. And you can see for the full service  
4 untreated water rate, that's listed as being no longer  
5 applicable because Met got rid of that and had just the  
6 unbundled rates.

7 Now, there have been some minor adjustments to  
8 this rate structure since 2003 but none relevant to this  
9 case. So except for those, this is the rate structure  
10 that has been in effect since that time.

11 This particular lawsuit happens to challenge  
12 the rates for 2011 and 2012, '13 and '14. Or I should  
13 say these two cases. There's nothing different about the  
14 challenges that happened in those four years from what  
15 took effect in 2003 because these cost allocations were  
16 implemented in Met's rates as of that time. It just  
17 happened that San Diego sued in 2010 and 2012. We're  
18 talking about those rates because that's when the lawsuit  
19 was, not because the rate structure was different from  
20 2003.

21 Now I want to walk through the unbundled rates  
22 and explain in a bit more detail what they would cover.

23 Focusing on tier 1 and tier 2 supply rates, I  
24 identified earlier that Met has two principal sources of  
25 water supply, State Water Project and Colorado River.

1 to households or businesses. So there's an extra per  
2 acre-foot charge if the water is going to be treated.

3 Now I would like to spend some time going over  
4 this slide here because this covers an issue that's  
5 important in this case and it's one that I think may have  
6 gotten lost during San Diego's opening when they showed  
7 you a study from 1969, which is that Met's unbundled rate  
8 structure has not always been this way. It took effect  
9 in January of 2003.

10 Before 2003, Met didn't have a supply rate and  
11 it didn't have a transportation rate. It had what's  
12 known as a bundled rate. And here, we've put up a chart  
13 from the administrative record. This is the March 2002  
14 board action letter, where the board was being asked to  
15 approve the new rates under the new rate structure that  
16 would go into effect in 2003.

17 And so the staff presented the board with a  
18 comparison showing these are the rates in 2002 versus  
19 2003. And you can see in 2002, there was a full service  
20 untreated water rate of \$349. And then above that, the  
21 individual unbundled rates are labeled not applicable  
22 because there hasn't been any division between supply and  
23 transportation previously.

24 Then on the right-hand side, you can see the  
25 proposed new rate structure that would be effective in

1 Met's supply rates recover the cost of those facilities  
2 and programs maintaining and developing the water  
3 supplies in those purchases, supply associated with  
4 drought storage and Met's reservoirs. And the logic for  
5 that is drought storage is one way Met makes sure they  
6 have water supply available in years double to service  
7 territory.

8 Down here in right on red, we have a notation  
9 that the tier one and tier two supply rates per acre-foot  
10 are the same for all member agencies. This is true for  
11 all of Met's volumetric rates, that the unit charge for  
12 each of the rates is uniform across all the member  
13 agencies.

14 Now, if one Member Agency purchases more water,  
15 obviously its supply cost goes up, but that's just a  
16 function of the quantity of the water. We'll see it is  
17 the same to transportation rates. Everyone has the same  
18 rate, called a postage stamp rate. If you put a postage  
19 stamp on a letter, you can mail it anywhere in the U.S.  
20 Met has postage stamp rates. It doesn't matter how far  
21 is the agency is, but it is based on delivery to the  
22 member agencies.

23 The System Access Rate recovers most of the  
24 cost associated with the facilities for the  
25 transportation of water, so it's going to cover most of

1 the facilities' cost for the State Water Project,  
 2 transportation facilities for the Colorado River  
 3 Aqueduct, which transports Colorado River from its own  
 4 system. There's the purple lines I showed you earlier,  
 5 transport to deliver the water to the Member Agency.  
 6 The System Access Rate also recovers regulatory  
 7 storage costs. That refers to Met uses the storage in  
 8 its distribution system to regulate its delivery of water  
 9 to its member agencies to free up capacity and so those  
 10 are also in the System Access Rate. The System Power  
 11 Rate is the energy cost for pumping water to Southern  
 12 California.  
 13 Met, of course, is south of the Tehachapi  
 14 Mountains, at least on the east branch so water has to be  
 15 pumped over those mountains to get to Met. In addition,  
 16 power costs to move water from Colorado River to Met so  
 17 these energy costs are recovered in the System Power Rate  
 18 recovery.  
 19 The third of the transportation charges is the  
 20 Water Stewardship Rate. This rate covers the cost of the  
 21 demand management programs. What those programs do is  
 22 incentivize local water development for conservation with  
 23 the emphasis being on local as in where that particular  
 24 Member Agency is.  
 25 So if you think about Met's distribution

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1 facility that has lines going all over Southern  
 2 California, for instance, for Santa Monica, one would  
 3 have to develop a local power supply in Santa Monica so  
 4 Met doesn't have to deliver it. Local in this context  
 5 means within the geographic area of that agency that's  
 6 doing it. And of course, the benefit for them, for Met  
 7 is it doesn't have to move water through its distribution  
 8 system to the member agencies.  
 9 And those programs at the local resources  
 10 development program which encourages things like  
 11 recycling of water and treating of contaminated water,  
 12 provide conservation credits if the agency consumes less  
 13 water and then desalination.  
 14 THE COURT: Those are given out on an  
 15 agency-by-agency basis?  
 16 MR. HIXSON: Agencies will apply to the demand  
 17 management for funding to programs that incentivize if  
 18 they have a program they want to run in the Member Agency  
 19 that would clean up water and make more available, so  
 20 yeah, those are funded on agency-by-agency basis or there  
 21 would be credits given to consumers in the area of the  
 22 Member Agency to incentivize low flow toilets or  
 23 something like that as part of the incentive credits in  
 24 the conservation program.  
 25 So these rates were documented by Metropolitan

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1 board of directors. They adopted the structure in 2001.  
 2 Then in March of 2012, the board signed formal numbers to  
 3 each of the elements of each of these rates. Met had  
 4 begun considering a new rate structure in 1998 after  
 5 several years of discussions and participation by the  
 6 member agencies. The rate structure was adopted in 2001  
 7 and then that went into effect in 2003.  
 8 And here, we've just highlighted the  
 9 transportation charges in this board of directors' action  
 10 item.  
 11 At the same time that Met documented this  
 12 unbundled rate structure, the board redefined the rate  
 13 for wheeling service that Met charges. This rate is  
 14 defined in Metropolitan's Administrative Code at Section  
 15 4405 and it states wheeling -- as the Court knows is  
 16 conveying non-Met water through Met's distribution system  
 17 to the Member Agency.  
 18 And Met defined the wheel -- the rate for  
 19 wheeling service as including the System Access Rate and  
 20 Water Stewardship Rate. And as you've just seen, these  
 21 are two of the transportation rates. If it's treated  
 22 water, there's a treatment surcharge, and then wheeling  
 23 parties must pay for their own costs of power.  
 24 There are a couple of things that are  
 25 significant about this rate program that I think are

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1 important to emphasize.  
 2 First, San Diego misdescribed the rate for  
 3 wheeling service in their opening statement. It is not  
 4 the same as the transportation rates. Transportation  
 5 rates have three components: The System Access Rate, the  
 6 System Power Rate and the Water Stewardship Rate. Only  
 7 two of those are in the rate for wheeling service and  
 8 those are the System Access Rate and the Water  
 9 Stewardship Rate. The System Power Rate isn't part of  
 10 the rate for wheeling service. Instead, it says the cost  
 11 of power associated with that particular wheeling  
 12 transaction.  
 13 There is another feature of the rate that's  
 14 important as well that's in Administrative Code 4119.  
 15 That defines what Met's wheeling service is. It means  
 16 the use of Met's facilities, including its rights to use  
 17 State Water Project facilities, to transport water not  
 18 owned or controlled by Met to its member public agencies  
 19 and transactions entered into by Met for a period of up  
 20 to one year.  
 21 In other words, the rate for wheeling service  
 22 applies to transactions with the Member Agency for one  
 23 year or less. If the wheeling service is not with the  
 24 Member Agency for longer than a year, for example, a  
 25 multiyear agreement, there isn't a published wheeling

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1 rate for that transaction.  
 2 Now, Met does enter into contracts such as that  
 3 but those are negotiated separately. For example, if a  
 4 non-Member Agency wants to negotiate or the transaction  
 5 is larger than one year, this rate wouldn't be applicable  
 6 under its own terms, the parties would have to sit down  
 7 and negotiate and agree upon one.  
 8 Here, I have to emphasize as well something  
 9 that San Diego did in their opening statement, which the  
 10 rate for wheeling service includes two of the rates that  
 11 are also in the rate components that are in the -- in  
 12 fact full service rate, because you have the System  
 13 Access Rate and stewardship rate are here and they are  
 14 also in the bundled transportation rate for agency both  
 15 supplying and transportation.  
 16 In the opening statement, San Diego took the  
 17 total amount of money that the System Access Rate, System  
 18 Power Rate and structures take in revenue and said look  
 19 at the huge amount of money being charged to the wheeling  
 20 rate. That's not a very fair comparison because yes,  
 21 this is the System Access Rate and Stewardship Rate also  
 22 in the full service rates that constitute the large  
 23 majority of Metropolitan's water sales.  
 24 To give an analogy of why that's an unfair  
 25 comparison, imagine an argument by someone saying that

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1 people who buy origami posters on Amazon pay shipping  
 2 charges and then they showed your Honor the total amount  
 3 of shipping charges that Amazon charged in a given year  
 4 and they say look, this is an enormous burden on people  
 5 who buy origami posters.  
 6 Surely the response would be yes, people who  
 7 buy that particular product do pay shipping charges but  
 8 so do people who buy everything else on Amazon. And when  
 9 you put the total amount of dollars up on the screen,  
 10 that includes the everything else. And so the numbers  
 11 that San Diego is putting up there about the percentage  
 12 of Met's revenue that comes from the System Access Rate,  
 13 System Power Rate and Stewardship Rate, that includes the  
 14 everything else, the non-wheeling transactions, the ones  
 15 that have nothing to do with the wheeling rate because  
 16 they're paying the supply and transportation rates.  
 17 Now I would like to make a transition in terms  
 18 of the subjects I'm addressing and talk about the first  
 19 of the rate challenges that San Diego is bringing.  
 20 They are challenging the allocation of State  
 21 Water Project transportation costs to Met's  
 22 transportation rates. But there are a number of reasons  
 23 why this allocation is imminently reasonable.  
 24 First, the State Water Project transportation  
 25 costs are Met's transportation costs. That's the true

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1 nature of the cost and the proper characterization of the  
 2 expense. They are to move water.  
 3 Second, Met can use the State Water Project  
 4 facilities as an extension of its own facilities. In  
 5 other words, although it does not own or operate the  
 6 California Aqueduct, it can and does use it to convey  
 7 non-project water and for other purposes as well.  
 8 Met's system is integrated with the State Water  
 9 Project. It can store water in different places and pull  
 10 it back out all because it has these rights to use the  
 11 California Aqueduct and those facilities by virtue of its  
 12 contract with the AWR. It is not a passive recipient of  
 13 water supply.  
 14 In addition, this allocation is consistent with  
 15 industry guidance regarding proper cost allocation. And  
 16 it's also reasonable, as I said earlier, because the  
 17 exchange water San Diego receives, in fact the water that  
 18 San Diego receives and the bulk of what member agencies  
 19 receive is a blend of the State Water Project and  
 20 Colorado River Aqueduct water.  
 21 Let's look at the contract that Met has with  
 22 DWR for the State Water Project.  
 23 I put up on the screen the 2005 amended version  
 24 of the contract. There's the original one in 1960, but  
 25 then because the contract has been amended so many times

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1 since then, the State Water Project analysis office has  
 2 for each of the contractors the up to date one that has  
 3 the strike here and everything. So if you read that,  
 4 that's what it reads like now so that's why I'm putting  
 5 this one up on the screen.  
 6 And we can call out article 22.  
 7 The State Water Project has a specific charge  
 8 for water supply. It's called the Delta water charge,  
 9 and that is the payments by each contractor for the  
 10 project water. And it says here the designated Delta  
 11 water charge and these payments are to recover the cost  
 12 of project conservation facilities. Let me explain what  
 13 the word "conservation" means there because it means  
 14 something different than it does in every day life.  
 15 We normally think of conservation as not using  
 16 quite as much something, take steps to make something  
 17 last longer. In the State Water Project contract,  
 18 conservation is the acquisition of the water supply, the  
 19 collecting it into the dams rather than letting it run  
 20 out into the ocean. It is the capturing of the water  
 21 resource is the conservation charge.  
 22 The Delta water charge is uniform for each  
 23 state water contractor regardless of distance from the  
 24 source of supply, so no matter where we are, the Delta  
 25 water charge is calculated on the basis that is a uniform

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1 thing. Just a supply cost, doesn't matter how far it  
 2 takes to get to the contractor.  
 3 The cost of Delta water charge recovers relate  
 4 to supply. We have put here on the screen a picture of  
 5 Lake Oroville in Northern California, the principal  
 6 source of supply for State Water Project. There are  
 7 costs associated with maintaining this lake, the  
 8 reservoir, dam cost, the maintenance, the electricity  
 9 costs. Those types of costs are in the Delta water  
 10 charge for water supply.  
 11 Separate from that, Met incurs transportation  
 12 costs under its contract with the state. Article 23 of  
 13 the contract states that these transportation charges are  
 14 allocated to the contractor. DWR is not ultimately  
 15 responsible for them, the state water contractor such as  
 16 Metropolitan are the ones responsible to pay these  
 17 transportation charges.  
 18 Let's talk now about the different types of  
 19 transportation charges that there are.  
 20 I put up here on the screen, on the left it's a  
 21 graphic of the State of California with the aqueduct and  
 22 on the right, you can see a picture of the physical  
 23 aqueduct as well as some operations and maintenance being  
 24 performed.  
 25 There are three types of transportation charges

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1 for State Water Project. First two are what's called  
 2 take-or-pay.  
 3 The first type is capital expenses for the  
 4 State Water Project transportation facilities. Those are  
 5 construction and expansion expenses associated with those  
 6 facilities.  
 7 The second is operations and maintenance  
 8 because there's a lot of the maintenance in this enormous  
 9 facility going from Northern to Southern California.  
 10 These are take-or-pay expenses, meaning Metropolitan must  
 11 pay the transportation, capital and operations and  
 12 maintenance charges no matter the amount of water supply  
 13 or if there's any water supply delivered to Met.  
 14 Take-or-pay is a funny term. What it really  
 15 means is you got to pay whether or not you get to take  
 16 any water. But these are called take-or-pay. These  
 17 expenses are allocated based on distance and so the  
 18 transportation charges are different from a supply charge  
 19 in that way. Met as the southernmost contractor in the  
 20 state has a proportionately much greater share of these  
 21 State Water Project transportation expenses.  
 22 The third type of transportation charge is for  
 23 power. It is the charge of moving the water over the  
 24 Tehachapi mountains to Southern California. Depending on  
 25 the contractor, however far it might be, those are the

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1 transportation variable charges. Those are different  
 2 from the first two and they do vary year by year  
 3 depending on the amount of power that is used to deliver  
 4 water to Metropolitan.  
 5 Now let's talk about how the State Water  
 6 Project expenses go into Met's rates.  
 7 They go into two different types of  
 8 Metropolitan's transportation rates. On the left, you  
 9 have the System Access Rate and, as I said before, that's  
 10 a facilities expense so it is going to be covered, the  
 11 transportation capital costs and transportation  
 12 operations maintenance costs because those costs are  
 13 related to the project transportation facilities.  
 14 On the right, you have the System Power Rate  
 15 and that's where the State Water Project variable costs,  
 16 power costs go.  
 17 I want to be clear to avoid a misunderstanding.  
 18 The State Water Project costs aren't the only cost that  
 19 these charges recover, also the Colorado River Aqueduct  
 20 and Met's own distribution facilities. I'm just telling  
 21 where the state water cost end up. This is their  
 22 destination.  
 23 Under its contract with DWR, Met receives  
 24 separate bills for its supply and transportation charges  
 25 reflecting the underlying reality that they recover

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1 different types of costs, and these are allocated to the  
 2 contractors differently. And particularly, the  
 3 transportation ones are much, much larger because of the  
 4 distance.  
 5 We've put up on the screen here an excerpt from  
 6 an invoice from DWR to Met, from the Department of Water  
 7 Resources, and then we highlighted certain areas here.  
 8 You can see that there are costs for the  
 9 capital cost component and DWR breaks out beneath that  
 10 the Delta water charge. And if you look to the right,  
 11 there's a bill for \$27 million.  
 12 And then beneath that, you can see that there's  
 13 a transportation charge that's part of the capital costs,  
 14 and if you look to the right, that's just over  
 15 \$62 million.  
 16 And then if you go down and look at the minimum  
 17 operation maintenance power and replacement component,  
 18 the state has again done the same thing. It's called out  
 19 the Delta water charge, supply charge at 51 million, and  
 20 then it has the transportation charge at 99 million.  
 21 THE COURT: So is it -- are you suggesting  
 22 these are the only two components of the dollars that Met  
 23 pays?  
 24 MR. HIXSON: For the state water.  
 25 THE COURT: For state water.

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1 MR. HIXSON: Those are essentially the only  
2 components, the Delta.

3 THE COURT: So conservation charge, which is  
4 comprehended by the idea of the Delta water charge, is  
5 the cost of the water?

6 MR. HIXSON: The cost of the water resource,  
7 exactly.

8 And the point of showing you this invoice is  
9 that Met doesn't have to guess how much of its costs are  
10 associated with the transportation facilities or the cost  
11 to move water as opposed to supply. Met knows. It is  
12 totaled, it is itemized, it is broken out. It is not a  
13 speculative exercise. In fact, Met is told precisely how  
14 much it has to pay.

15 Met, under its State Water Project contract,  
16 also has certain contractual rights to use the State  
17 Water Project facilities to move non-project water.  
18 That's one of the benefits of being a state water  
19 contractor and paying for the reaches of the aqueduct. A  
20 reach means a part of the aqueduct. There's the two  
21 branches you saw in the earlier slide, the east branch  
22 and west branch. Those are called the reach by virtue of  
23 paying for those and other transportation expenses. Met  
24 can use the state project facilities without paying  
25 additional fees to move non-project water.

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1 to 10,000 acre-feet of water not owned or controlled by  
2 Met. So that's wheeling because wheeling is moving water  
3 that's not Met water.

4 Then they say subject to your determination of  
5 availability system capacity because, as your Honor  
6 knows, the wheeling statute only applies if you've got  
7 the extra capacity. So they reference that.

8 Then they say including Met's rights to use the  
9 State Water Project facilities.

10 And then they go along and mention Met's Admin  
11 Code that describes the definition of wheeling. And  
12 San Diego specifically says since Met's wheeling services  
13 include the right of a Member Agency to use  
14 Metropolitan's rights to State Water Project facilities,  
15 I also ask that you provide the necessary coordination  
16 with DWR and state water contractors to assure all  
17 issues, including delivery schedules through Delta  
18 conveyance capacity, temporary storage and any other  
19 operational matters are timely addressed.

20 This is a significant letter. And it shows San  
21 Diego's own understanding that the wheeling service  
22 Metropolitan provides includes this right to use the  
23 State Water Project facilities and San Diego itself asked  
24 Met to use that right for San Diego's benefit.

25 And this undermines their contention that

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1 And so we've highlighted for you here a letter  
2 to the board of directors from Met staff responding to  
3 some arguments that San Diego made in proceedings before  
4 the board pointing out that one of the reasons why Met  
5 considers the State Water Project transportation expenses  
6 to be transportation expenses, beyond the fact that's  
7 what they do is that Met itself can use them to move  
8 water and not just by receiving state water.

9 So Met isn't like a household or even a retail  
10 water agency that just passively sits there and has water  
11 sent to it. Met has much greater rights to access and  
12 use the State Water Project facilities in ways that would  
13 be unusual for an ordinary purchaser of a water supply.

14 In addition, San Diego itself is familiar with  
15 Metropolitan's ability to use the State Water Project and  
16 San Diego has in fact asked Met to do so.

17 This -- let me see if -- this is a document  
18 worth focusing on and reading in some detail. It is a  
19 letter from the San Diego County Water Authority in  
20 December of 2008, and I'm just showing you an example.  
21 There are others.

22 To Jeffrey Kightlinger, the general manager of  
23 Met, and it's a request for wheeling services. And the  
24 letter says that on behalf of San Diego, the letter is  
25 requesting wheeling service during 2009 to transport up

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1 wheeling service shouldn't recover any of the cost of the  
2 State Water Project. They know that the wheeling service  
3 Met provides includes the State Water Project rights and  
4 they have asked to invoke that.

5 So that's the first of the challenges that San  
6 Diego has, which concerns the allocation of the State  
7 Water Project transportation costs.

8 I want to turn now to the second argument,  
9 which is the Water Stewardship Rate. This is the rate  
10 that recovers the cost for Met's demand management  
11 programs. And I explained before a little bit about what  
12 those are. There's the local resource programs which  
13 encourage the local development of water such as cleaning  
14 up water that's been contaminated, or groundwater  
15 recovery programs.

16 There's the conservation credits program, which  
17 provides incentives for ways to use less water, and  
18 there's desalination. The key point here is the meaning  
19 of the word "local." These programs are designed to  
20 promote development of water or different conservation of  
21 water in the area where the Member Agency is.

22 Met's service area is enormous and covers a  
23 large part of Southern California and Met has this huge  
24 distribution facility to transport water to its Member  
25 Agency and these reduce the drain or demand, sorry, on

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1 the distribution facility.  
 2 There are three reasons why it was reasonable  
 3 and continues to be reasonable for Met to allocate the  
 4 cost of the Water Stewardship Rate to transportation  
 5 rather than supply.  
 6 The first is that these demand management  
 7 programs funded by the Water Stewardship Rate reduce  
 8 transportation costs. Second is that they free up  
 9 capacity for transporting and facilitate wheeling, and  
 10 the third is putting the Water Stewardship Rate in supply  
 11 would permit users of transportation services to avoid  
 12 the costs that they are currently paying and receive  
 13 unwanted subsidy.  
 14 The key to understanding the reduction in  
 15 transportation cost is to go back to Metropolitan's  
 16 integrated water resources plan. This was a plan that  
 17 developed in the mid-1990s and led to the first  
 18 publication of Met's integrated water resources plan in  
 19 1996. And this is something that has been updated in  
 20 years since then.  
 21 The initial 1996 IRP looked at a number of  
 22 things. It did a forward look at the capital facilities  
 23 Met would need to construct in the decades to come and  
 24 that's how Met does plan capital things. Like many  
 25 entities, it look at the decades to come because that's a

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1 long term. They were trying to predict what would be the  
 2 sales they would have to meet. And one of the -- two of  
 3 the scenarios they considered are especially relevant for  
 4 the Water Stewardship Rate.  
 5 Met looked at something called the base case.  
 6 Base case was what if there were no further demand  
 7 management programs in the future? So you assume Met's  
 8 not going to have these programs to promote local  
 9 resource development or conservation, just no additional  
 10 ones. What would the demands on Met system be?  
 11 The other one was the preferred case, and the  
 12 preferred case, as its name suggests, was what Met was  
 13 planning to do and that was if there are additional  
 14 demands management programs. And Met did an analysis to  
 15 see is there a difference in the projected capital  
 16 expenses between the base case and the preferred case.  
 17 And here, we're showing on the screen a 1996  
 18 economic study on the benefits of local water market  
 19 programs.  
 20 And Met did identify that there would be  
 21 effects on infrastructure requirements by comparing the  
 22 base case to the preferred case in the coming decades.  
 23 It identified a number of facilities, including  
 24 constructing a 400,000 acre-foot reservoir and regional  
 25 ocean desalination plants. But Met also identified

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1 capital costs related to its distribution facilities,  
 2 related to the cost of expanding the distribution network  
 3 to transport water to the Member Agency, including the  
 4 central pool augmentation, the West Valley projects and  
 5 San Diego Pipeline No. 6.  
 6 And then Met did a comparison of the  
 7 forward-looking expenses, base case, when no additional  
 8 funded by the Water Stewardship Rate and then the  
 9 preferred case in which there would be this Water  
 10 Stewardship Rate to fund the demand management programs  
 11 and Met concluded the difference in capital expenses  
 12 would be \$2.4 billion over the coming decade.  
 13 So again, these capital expense estimates were  
 14 based on forward looking projections of demand on Met  
 15 system. And here, we've identified a number that  
 16 specifically related to transportation for the  
 17 distribution system.  
 18 As part of the integrated water resources plan,  
 19 Met then identified what would the factors be that could  
 20 affect the future demand on Metropolitan system. And one  
 21 of them was clearly identified, was greater than expected  
 22 local development could decrease the expected demands on  
 23 Met's system, and Met specifically identified that  
 24 capital infrastructure is something that might be  
 25 deferred or avoided if there is greater local supply and

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1 that's one of the programs that's promoted by the Water  
 2 Stewardship Rate.  
 3 And this report went further and specifically  
 4 called out projects such as the central pool augmentation  
 5 projects and San Diego Pipeline No. 6 were more sensitive  
 6 to demands. Those were infrastructure projects within  
 7 Met's distribution system that would transport water to  
 8 the member agencies.  
 9 Lets turn forward, then, to the adoption of the  
 10 unbundled rates and the Water Stewardship Rate and how it  
 11 fits in with these forward looking projections from the  
 12 IRP.  
 13 I'm putting up on the screen the June 2002  
 14 final report on rates and charges that were in place  
 15 before, leading up to the effect of the unbundling of  
 16 rates in January of 2003.  
 17 There's a section on the Stewardship Rate and a  
 18 paragraph describing the benefits of the Water  
 19 Stewardship Rate. And here in Met's final report on  
 20 rates and charges, Met called out what these benefits  
 21 would be. It noted that investment in conservation and  
 22 recycling would do a number of things, including reduce  
 23 and defer system capacity expansion costs and create  
 24 available capacity to be used to complete water  
 25 transfers.

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1 The reference to reducing and deferring system  
 2 capacity costs comes right out of this IRP that did not  
 3 forward, look on the comparison between the base case and  
 4 preferred case and identify certain capital costs for  
 5 Met's distribution system that were sensitive to demand.  
 6 But there's something else that is identified  
 7 here as being a benefit of the Water Stewardship Rate. It  
 8 is the reference to creating available capacity to be  
 9 used to complete water transfers.  
 10 Wheeling is a type of water transfer. And in  
 11 some ways, this is just common sense. If the demand  
 12 market programs free up capacity, then Met doesn't have  
 13 to build out additional capacity in distribution system  
 14 but also means there is no capacity.  
 15 Wheeling is something an entity can do only if  
 16 there is unused capacity within a network such as  
 17 Metropolitan's and this is called out and identified as a  
 18 specific benefit of these demand management programs  
 19 funded by the Water Stewardship Rate. is freeing up  
 20 capacity which will help facilitate water transfers.  
 21 So we think here, and then in additional  
 22 evidence we will show during the course of these  
 23 proceedings, shows the link between the Water Stewardship  
 24 Rate and the transportation related benefits, including  
 25 benefits to wheelers funded by that rate.

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1 Now I would like to turn to the third of the  
 2 challenges that San Diego has in this case. This is what  
 3 they call their dry year peak claim.  
 4 We've put on the screen here paragraph 65 of  
 5 the Third Amended Complaint in the 2012 action, and this  
 6 is what they're alleging. They claim that Met fails to  
 7 fully act for the cost of dry year peaking, that is  
 8 buying more water from Metropolitan in dry years or when  
 9 local water supplies are otherwise reduced or otherwise  
 10 unavailable.  
 11 This is where San Diego points the finger to  
 12 L.A. and said L.A. is doing worse than other agencies  
 13 and, quote, they're rolling off the system in supposed  
 14 contrast to other Member Agency but wherein there's a  
 15 kind of benefit. I think they called it drought  
 16 insurance this morning in terms of what the dry year  
 17 peaking relates to.  
 18 First, I would like to address what peaking  
 19 actually means. When you build a water system, you don't  
 20 build it to handle just the average demands on your  
 21 system because then what happens during the summer.  
 22 Right? You have to build pipes and other facilities in  
 23 your distribution system that can handle the busiest time  
 24 of the year.  
 25 So Metropolitan sizes its distribution facility

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1 to meet peak demands. What that means for Met and for  
 2 any other kind of water agency that has to have these  
 3 pipelines and capacity is that there's a certain amount  
 4 of capacity that exists that is used at peak times of  
 5 year and not at other times of the year. And there are  
 6 costs associated with that capacity. So those are  
 7 traditionally referred to as peaking costs.  
 8 Met calculates what are the peaking costs for  
 9 its distribution system, means the costs of the  
 10 facilities to meet the peak of the system.  
 11 The way Met recovers the peaking costs for the  
 12 distribution system is one of the fixed charges. That's  
 13 called the Capacity Charge and the Capacity Charge is  
 14 allocated to member agencies based on each member  
 15 agency's peak summer day over the three prior years.  
 16 Met has figured out what it needs to have the  
 17 peak capacity in the system and looked back at what are  
 18 the causal locations that, on the peak summer day, which  
 19 is the causal relationship for the way Met has costed its  
 20 distribution system.  
 21 The San Diego reference is to an annual  
 22 variation unfairly changes the denominator, by making the  
 23 denominator so big and including the entire calendar  
 24 year, San Diego flushes away all of the distinctions that  
 25 peaking charges are supposed to recognize. Peaking isn't

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1 supposed to look at the whole calendar year, but when in  
 2 the calendar year recognizing that some of that capacity  
 3 and some of those costs are due to the heavier demands at  
 4 particular times of the year. So if you just focus on  
 5 the whole calendar year and you average January and  
 6 February with -- equate it with August, that's not the  
 7 right way to go about calculating peak.  
 8 So San Diego instead accounts for annual  
 9 variations. Met does account for and appropriately  
 10 allocates the cost associated with annual variations.  
 11 Those should be the cost of selling more or less water  
 12 because that's what San Diego is really focusing on, the  
 13 greater or lesser quantities of water in different  
 14 calendar years.  
 15 And here, Met acts for those in a variety of  
 16 ways. First and most obviously are the volumetric rates.  
 17 And I went through those earlier. You've got  
 18 the supply rates, the System Access Rate, System Power  
 19 Rate and Water Stewardship Rate. These recover large  
 20 amounts of the facilities' expenses, the power expenses  
 21 and so on, that for Met's overall cost of water.  
 22 The tiered water supplies, tiered supply rates  
 23 in particular account for peaking. The tier two rate is  
 24 higher and number of things that happen before an agency  
 25 moved into tier two, but those are higher rates to

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1 reflect greater volume of water consumption by a member  
 2 agency.  
 3 Also a fixed rate that is affected -- or fixed  
 4 charge that's affected by annual variation, that's called  
 5 the readiness to serve charge, and that is one that  
 6 covers the cost of standby service, in other words, the  
 7 value to the member agency that Metropolitan is standing  
 8 by.  
 9 What if there's an earthquake or an emergency?  
 10 There is a benefit to the member agencies of the fact  
 11 that Metropolitan is there. And Metropolitan accounts  
 12 for their standby costs, which are system costs because  
 13 it has to build out the facilities to handle emergencies  
 14 by allocating them into a ten-year rolling average. And  
 15 so if the City of L.A., for example, buys a large amount  
 16 of water in one year, then for the next decade, its  
 17 Readiness-to-Serve Charge is going to be higher. And  
 18 that's true for all of the member agencies.  
 19 So it's not true that the Member Agency can  
 20 supposedly roll on and roll off, that will impact the  
 21 readiness to serve charge because that is calculated by  
 22 this ten-year look back.  
 23 THE COURT: This is the ten-year rolling  
 24 average?  
 25 MR. HIXSON: Yeah, exactly.

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1 San Diego dry year peaking claim has another  
 2 problem. It assumes a factual predicate that's untrue.  
 3 Namely, it assumes that the City of Los Angeles or  
 4 perhaps other member agencies jump up and jump down in  
 5 their annual water consumption and that San Diego itself  
 6 is relatively flat and that the supposed differences  
 7 create an unfair allocation of expenses.  
 8 But San Diego's own experts have disproven that  
 9 factual predicate not once, but twice. They did it first  
 10 in the administrative record.  
 11 This is an expert report by the FCS Group,  
 12 retained by the San Diego group provided review of the  
 13 Metropolitan's cost of service of the -- let me walk you  
 14 through a little bit about what the FCS Group did. They  
 15 looked back at the prior ten years of water purchases by  
 16 all of 26 Metropolitan's member agencies.  
 17 Let me pull out a few here.  
 18 They -- what they did is they did -- they  
 19 calculated an average over the span of a decade, meaning  
 20 on average for that decade, how much did each of the  
 21 member agencies buy in terms of water?  
 22 And then FCS looked at the peak year during  
 23 that decade. What was the highest year for each of the  
 24 member agencies?  
 25 And then FCS did what's called a peak to

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1 average ratio where for each member agencies, they  
 2 divided the peak year by the average year and they came  
 3 up with that number. And then they submitted that to the  
 4 next board.  
 5 But what's interesting is the results. If you  
 6 look at Met's largest customers, namely those that buy  
 7 more than 100,000 acre-foot per year in the years of the  
 8 subject of this study and they together account for more  
 9 than 70 percent of the Met's total water deliveries,  
 10 every single one of them had a peak to arching ratio  
 11 between 1.07 and 1.32.  
 12 In other words, it wasn't the case that some of  
 13 them had, you know, peaks that were like double the  
 14 average or triple the average as would seem to be  
 15 suggested by San Diego's claim. In fact, the peaks were  
 16 only slightly above the averages for the large agencies.  
 17 San Diego itself had a peak to average of 1.11.  
 18 That was higher than West Basin's and other member  
 19 agencies, which is 1.07. The same as Calleguas at 1.11  
 20 and lower than Los Angeles, which was 1.31.  
 21 But if you look at the difference, the two peak  
 22 average between L.A. and San Diego, it is pretty  
 23 unimpressive. Not a big variation.  
 24 You don't just focus on all of Metropolitan,  
 25 not just the largest customers but all of them. The only

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1 customer in the FCS Group that had an outlier peak to  
 2 average, which was a member in San Fernando, which had a  
 3 3.0 and they were literally the smallest of Metropolitan  
 4 agency, 0.1 percent of Met water. Every other agency had  
 5 a peak to average ratio 1.07 to 1.32. None of them hit a  
 6 two to one. A fairly narrow band. Largest ones were  
 7 closer together in the agency when considered as a whole.  
 8 I said San Diego disproved its claim not once  
 9 by twice. The second time was in this litigation when  
 10 they hired their expert Dan Denham. He put as an exhibit  
 11 to his report the sales for the member agencies of --  
 12 sales from Met to the member agencies, including for San  
 13 Diego its exchange water.  
 14 What we did is we took the data in Mr. Denham's  
 15 report and we created this demonstrative simply taking  
 16 his numbers and plugging them in. The timeframe, we  
 17 chose and we'll see why this is significant in a minute,  
 18 was the entire time the rate structure has existed.  
 19 In other words, we looked at 2003 to the  
 20 present because San Diego is challenging Met's existing  
 21 rate structure, and we ran the numbers in Mr. Denham's  
 22 appendix and said for when this rate structure existed,  
 23 this one that's being challenged, what were the  
 24 difference between the member agencies?  
 25 And so we put them up here on this chart. And

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1 what this chart shows in simple terms is in each year,  
 2 what's the quantity of acre-feet of water each member  
 3 agency purchased from Met -- that blue line at the top is  
 4 San Diego -- in every single year.  
 5 THE COURT: This is just purchases?  
 6 MR. HIXSON: Yeah. It includes the exchange  
 7 water.  
 8 THE COURT: It does?  
 9 MR. HIXSON: Yes. So we fight about whether or  
 10 not that's wheeling, but it's in the charge, yeah.  
 11 So every year, San Diego is the highest amount.  
 12 Los Angeles in most years is number two but in some  
 13 years, MWDOC, that is the Municipal Water District of  
 14 Orange County, takes over.  
 15 But there are a number of things interesting  
 16 about this. First, the peak is usually San Diego. And  
 17 second, if you're talking about what really matters,  
 18 San Diego kind of changed it mind. Maybe you can say it  
 19 is not the peak, it is the gap between the top and  
 20 bottom. Maybe that's what matters.  
 21 But if you look at the charts, the gap between  
 22 the top and bottom is basically the same for San Diego  
 23 and Los Angeles. It's a little over 250,000 acre-feet.  
 24 So they're both doing the same thing. In fact, if you  
 25 look at the chart, L.A. and San Diego are peaking and

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1 }troughing roughly around the same time. Their annual  
 2 variations aren't very different from each other.  
 3 So if you're focusing on is the existing rate  
 4 structure an appropriate one or not, looking at this  
 5 chart, you would never conclude that Los Angeles is  
 6 engaging in very different behavior from San Diego.  
 7 Now, earlier this morning, San Diego showed you  
 8 a different chart that they say was also based on  
 9 Mr. Denham's data. I found that chart extremely  
 10 interesting because San Diego went back in time. They  
 11 went back before the rate structure existed. They looked  
 12 at 1994 to 2000. That's several years before the  
 13 existing rate structure was in effect and they called  
 14 that the baseline.  
 15 And then they showed L.A.'s behavior in recent  
 16 years against that old baseline and San Diego's behavior  
 17 in recent years against the old baseline and they showed  
 18 that L.A.'s behavior today is much more different than  
 19 how it used to be in the 1990s, than how different  
 20 San Diego's is from the 1990. And I sat there scratching  
 21 my head thinking, "So what?" If you want to see if the  
 22 existing rate structure is reasonable, presumably you  
 23 would look at the party's behavior under the existing  
 24 rate structure. The before and after isn't relevant.  
 25 And we think that this chart, based on Mr. Denham's own

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1 data, shows there really isn't a significant difference  
 2 between San Diego and L.A. for the time period.  
 3 Now, you will be hearing more about Raftelis  
 4 later on. You already heard San Diego's side of the  
 5 story. But Met retained Raftelis in 2010 to perform an  
 6 evaluation of Met's rate setting methodology and cost of  
 7 service structure and asked Raftelis to review whether  
 8 the rate setting methodology and cost of service are  
 9 consistent with industry guidance, and called out here  
 10 one of the sources of guidance, the Emergency and Water  
 11 Works Association's M1 manual. And Raftelis did a review  
 12 of Met's rates and charges and cost of service  
 13 methodology and concluded that they were consistent with  
 14 industry guidelines as well as with board principles that  
 15 had been established previously and with applicable data  
 16 requirement. And we will be fleshing out in our later  
 17 presentation of the administrative record further what  
 18 Raftelis fleshed out.  
 19 They said San Diego's side of the story is one  
 20 big sham. But if you actually look at the e-mail that  
 21 San Diego picked up and pointed to the Raftelis report,  
 22 it is very interesting what they did.  
 23 Section 4 of the Raftelis report describes  
 24 Met's cost of service methodology, describes what it  
 25 does. And it is true that Met staff contributed language

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1 that ended up in that description of what Met does.  
 2 That's because Met has to provide information to a  
 3 consultant so that they can conduct their review of Met's  
 4 operation.  
 5 Section 5 of the Raftelis report was Raftelis's  
 6 independent review. They set forth the evidence. Met  
 7 didn't contribute any language to section 5. They point  
 8 to an entirely innocuous e-mail and tried imply it  
 9 mirrors the entire Raftelis report.  
 10 There is nothing wrong with Met describing what  
 11 their operations are and letting the consultants do their  
 12 own review to see if that's consistent within industry  
 13 guidelines.  
 14 And despite San Diego's claims, Raftelis  
 15 report's analysis in this 2010 review of Met's rates and  
 16 cost of service methodology was entirely consistent with  
 17 Raftelis reports prior work years before for Met.  
 18 We pull up here Raftelis' Comprehensive Guide  
 19 to Wastewater, Financing, Pricing, here discussed the  
 20 concept of how you functionalize and classify different  
 21 costs.  
 22 San Diego's position in this case is that the  
 23 State Water Project supply and transportation costs can't  
 24 be separated out, they all have to be thrown together  
 25 into supply. But what Raftelis recognized is that supply

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1 and transportation are different functions for purposes.  
 2 He started here with the water costs and Met  
 3 requirements, and Met starts there as well.  
 4 He then identified by functional categories and  
 5 listed different functions. So supply was one. That's  
 6 on the left. Pumping and conveyance is a different one.  
 7 And we don't have a treatment but that was one. And then  
 8 transmission and distribution, all classified as  
 9 different functions for purposes of rate making.  
 10 Then what he showed -- that's consistent with  
 11 what Met has done and what Raftelis validated in the 2010  
 12 study. Met doesn't have extra source of supply with the  
 13 transmission charges, for example.  
 14 He then discusses allocation of customer  
 15 classes and lists out the different customer classes.  
 16 And you heard toward the end San Diego's attorney stating  
 17 that in effective terms, Met has different customer  
 18 classes. In reality, all of Met's 26 member agencies are  
 19 consumers or purchasers of wholesale water. They buy  
 20 wholesale water from Met and they resell it and they're  
 21 all government entities.  
 22 Here, consistent with the Raftelis report or  
 23 Raftelis guide, you can see him identifying government  
 24 utilities as their own class of customer. He separates  
 25 out residential from commercial, from industrial from

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1 institutional, calls out and identifies other government  
 2 utilities as class and outside city and fire protection.  
 3 Again, this is consistent with the way that Metropolitan  
 4 treats its 26 member agencies as one customer class.  
 5 San Diego has also made other attempts to  
 6 suggest that there is industry guidance out there that  
 7 Met is not complying with. You will hear that throughout  
 8 this proceeding, I'm sure.  
 9 One of the things they refer to is the NARUC  
 10 chart of accounts. That was the National Association of  
 11 Regulatory Commissioners. And they say that the NARUC  
 12 chart of accounts says when you are accounting for the  
 13 costs, source and supply means all the cost to point of  
 14 delivery. So San Diego said aha, when you are setting  
 15 your rates, that should mean all the costs to the point  
 16 of delivery should be from -- to have say how far set up  
 17 rates. There are a couple problems with this. First  
 18 off, San Diego is ignoring what the NARUC chart of  
 19 accounts is and what types of entities that applies to.  
 20 Here is a description from the American Water  
 21 Works Association's Water Utility Accounting Manual about  
 22 the NARUC chart of accounts, and it says here that the  
 23 NARUC committee on accounts through its interpretations  
 24 has also defined accounting procedures in detail for the  
 25 uniform system of accounts. So we can see here that the

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1 NARUC chart of accounts is accounting procedures. That's  
 2 what it's about.  
 3 They go on to say that this accounting guidance  
 4 allows regulators to distinguish capital expenditures  
 5 from operating and maintenance expenses and to separate  
 6 utility activities from non-utility operations. So  
 7 again, this accounting guidance, regulators they can look  
 8 at the costs and know what it is.  
 9 They go on to say utility management,  
 10 shareholders and creditors find uniformity and  
 11 consistency important in their use of this accounting  
 12 information. So it is accounting information and its  
 13 primary benefit is for the regulators.  
 14 Met isn't a regulated utility. In California,  
 15 the California Public Utilities Commission regulates  
 16 investor owned utility or private use utilities. So the  
 17 NARUC chart of accounts are not applicable to Met in the  
 18 first instance.  
 19 But there's also something more fundamental and  
 20 it is the move that San Diego makes when they say look at  
 21 this accounting book and it tells you how you should  
 22 account for purchase of water. And then they jump to  
 23 water rates and say that's what that's supposed to  
 24 reflect.  
 25 That move is problematic. And here, we show

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1 the American Water Works Association Manual M1. We focus  
 2 on the chapter, again fixed versus variable charges where  
 3 the manual explains that fixed and variable charges for  
 4 cost recovery in a cost of service water rate analysis is  
 5 not the same as recovering fixed and variable costs from  
 6 an accounting standpoint. In other words, accounting is  
 7 valuable and important and you want the regulators who  
 8 are regulating privately owned utilities to be able to do  
 9 their job.  
 10 But what the American Water Works Association  
 11 manual states here, accounting is also a different thing  
 12 from cost of service rate. You wouldn't want the cost of  
 13 service rates to be dictated by accounting principles of  
 14 water rates, fees and charges. Nothing unusual about  
 15 this point of view about the difference between rate  
 16 making and accounting.  
 17 So we cite another manual. This is the Water  
 18 Environmental Federation Manual, financing and charges  
 19 for waste water systems. And WEF has the same statement  
 20 here. They say that rates should reflect cost causation  
 21 and not be determined by replication of the fixed and  
 22 variable nature of costs from an accounting or budgeting  
 23 perspective. In some ways, this is common sense.  
 24 California courts have recognized the complexity of rate  
 25 setting and various factors that have to be taken into

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1 account.

2 San Diego's reliance on a chart of acts to say

3 that's the way rates should be set has been rejected by

4 agency guidance.

5 I'm about ready to move to a new topic so maybe

6 we should take a break and then come back.

7 THE COURT: That's fine.

8 I'll see everybody in 10.

9 (Brief Break.)

10 THE COURT: Let's continue.

11 MR. HIXSON: Your Honor, I meant to provide you

12 with a chambers copy of the opening presentation. May I

13 approach?

14 THE COURT: Please.

15 MR. KEKER: Your Honor, we're going to do that

16 tomorrow morning, putting together all the slides I

17 showed you.

18 THE COURT: Thank you very much.

19 MR. HIXSON: Your Honor, San Diego has a very

20 different view of this case than we do. Their counsel

21 must have said the word "wheeling" at least 100 times

22 during his opening presentation today. Their entire

23 focus was on the wheeling rate that Met first adopted in

24 January 1997. They discussed at length the development

25 of that and they presented their point of view on certain

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1 documents that Metropolitan will address later in this

2 proceeding.

3 It's safe to say that wheeling is the

4 overwhelming theme of the opening statement we heard from

5 the plaintiff today. They talked at lengths about the

6 movement of non-project water through Met's facilities to

7 San Diego. They talked about their agreement with RWD.

8 They said San Diego purchases a quantity of Colorado

9 River transports to Met.

10 They are referring in their own

11 mischaracterized ways to the exchange agreement that San

12 Diego has with Metropolitan, the one they provide a

13 certain amount of conserved water from IID to Met and in

14 return obtain a quantity of exchange from Met.

15 Peppered throughout the opening statement from

16 the other side was the occasional conception that

17 technically that's not a wheeling agreement. That's what

18 their entire case is. They are arguing they bring in a

19 quantity of Colorado River water and wheel it through to

20 the Met's system and this is the transaction. There's

21 nothing else they have identified factually that would be

22 a wheeling transaction that San Diego met.

23 We believe the agreement San Diego has with

24 Metropolitan is totally irrelevant to the challenge under

25 the exchange agreement that was originally entered into

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1 in 1998. We've put this on the screen here on the far

2 left. This is the November 10, 1998, exchange agreement

3 with San Diego and Met. It was amended in 2003.

4 The essence of the exchange agreement is that

5 San Diego provides to Metropolitan a quantity of

6 conserved water and canal lining water from Lake Havasu

7 and makes it available on the Colorado River and

8 Metropolitan provides to San Diego a quantity of exchange

9 water at Met's point of delivery in San Diego.

10 The exchange agreement originally had a price

11 term of \$90 per acre-foot for the exchange water. In

12 other words, the water that Met provided to San Diego was

13 \$90 an acre-foot, and that rate had nothing to do with

14 what Metropolitan's rates were. It was just fixed. \$90.

15 It is a contract. The parties can enter into contracts,

16 they can decide what the price was. That was the price

17 they had decided. In the later years, it would become

18 \$80 an acre-foot. And that was a 30-year fixed term

19 contracts. So had it not been amended, it would still be

20 in effect today and for several decades to come.

21 Then what happened, in January 2003, Met's

22 unbundled rate structure took effect. Supply rates, we

23 developed the System Access Rate, System Power Rate and

24 Water Stewardship Rate. That's the rate structure that

25 we talked earlier today came back.

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1 In October 2003, San Diego and Met amended the

2 exchange rate between them. It amended a number of

3 things, also changed the price. Instead of being

4 \$90-acre at the time, it would be Met's generally

5 applicable conveyance rates. In other words, the rates

6 that had been in effect since January of that year, as of

7 October, rather than 90, it would just be what those

8 rates were.

9 The price term for the exchange water was

10 pegged at Metropolitan's generally applicable

11 transportation rates. In our view, and we think this is

12 the correct view, that was just a price term in a

13 contract that the parties had adopted. They both knew

14 what generally applicable rates were because they had

15 took effect earlier in that year. They decided for their

16 various reasons to move from a fixed price of \$90 into

17 have it be the price of the generally applicable rates

18 for most transportation rates.

19 We believe San Diego's entire focus on the rate

20 was misplaced and the value of the benefits received and

21 referred to the value of the benefits under the wheeling

22 statutes to the water coming in.

23 And he asked you to compare the value of those

24 benefits to the cost that San Diego was being asked to

25 pay. We think that is a completely invalid comparison.

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1 What San Diego and Met did in the Met exchange agreement  
2 was to have a contract and they simply pegged the price  
3 for the exchange water to the generally applicable rates  
4 rather than to a fixed dollar amount.

5 Let me give an analogy for what San Diego is  
6 doing when they want you to look at the value they  
7 received for the exchange water and the offsetting  
8 benefits under Prop. 26.

9 San Diego is like someone that borrows money  
10 from a friend and agrees to pay the prevailing rate of  
11 return on treasury bills for that amount that they owe.  
12 Then they complain that the interest rate they're paying  
13 doesn't fairly reflect the time value of the money they  
14 borrowed. Response you would make is no, the prevailing  
15 rate on treasury bills reflects the fair value of rate of  
16 return on treasury bills, reason why it's fair to charge  
17 you that rate is because the parties agreed to that as a  
18 matter of contract.

19 We believe that the reasonableness of  
20 Metropolitan's rates should be evaluated on their own  
21 terms, looking at Met's rates, looking at its cost of  
22 service, looking at what it returns rather than looking  
23 at the exchange agreement and the value of consideration  
24 to San Diego in determining whether that is a fair price.

25 THE COURT: So, you're not -- I take it you're

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1 statement and that they have made on the -- and continue  
2 to make throughout this case.

3 And first is focusing on this change in the  
4 exchange agreement, how before the rates were unbundled,  
5 there was the fixed price, and then the rates were  
6 unbundled and then the parties agreed to peg the price of  
7 the exchange water to the unbundled transportation rates.  
8 And I'm going to go more into what else happened with  
9 that because obviously the unbundled transportation rate  
10 is higher than the \$90 before. What was going on?

11 THE COURT: I take it Metropolitan can change  
12 its rates what, on an annual basis?

13 MR. HIXSON: In recent years it set its rates  
14 on a biannual basis. Before that, did it on an annual  
15 basis.

16 So in other words -- maybe I'm anticipating  
17 your question -- when they signed an agreement saying  
18 they would pay the generally applicable conveyance rates,  
19 they would know in the future years, those would be set  
20 by the future board and what it would provide is that  
21 whatever -- San Diego would pay whatever the other member  
22 agencies were paying under those rates.

23 In brief, going into the negotiations in the  
24 2003 amendments, parties considered option I and option  
25 II. Option I was to keep things as is, the 1998 exchange

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1 not suggesting that the analysis stops after -- if I  
2 determine that this is just a freely entered into  
3 contract, that's not the end of the analysis. Your  
4 position is not look here, two responsibility entities,  
5 they agreed on \$5, that's their deal, I should just  
6 enforce the contract, I'm not going to look behind the  
7 contract. That's not your position?

8 MR. HIXSON: What we're saying is take the  
9 contract, put it aside and don't look at it when you  
10 decide if Met's rates are reasonable.

11 You should look at Met's rates, look at the  
12 cost that they recover, look at how they're designed and  
13 that's where the reasonableness inquiry should be.  
14 Whether that is a fair contractual rate or not is just  
15 not relevant to your analysis. It is not part of  
16 analyzing whether Met's rates are lawful or not.

17 In other words, the breach of contract action  
18 has been severed. Courts in any event don't really look  
19 at the fairness of contracts, they look at the signature  
20 line to see people made them and did someone hold a gun  
21 to their head. The comparison of San Diego to their  
22 benefits has no role in their rate challenge.

23 And but because San Diego has raised this a  
24 number of times, I do want to address some of the  
25 arguments that have been built into their opening

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1 agreement which had the initial \$98 per acre-foot for  
2 exchange water for the first 20 years, and then the price  
3 would go down to \$80 for the last ten years of the  
4 contract.

5 San Diego proposed something called option II  
6 and it was a consideration package and it is worth going  
7 through these various different parts.

8 One thing under option II was that Met would  
9 assign to San Diego \$235 million in state funding for  
10 canal lining and conjunctive use programs, and I'm going  
11 to explain what that means in a minute, and that Met  
12 would also assign to San Diego 77,000 acre-feet per year  
13 of canal lining water for 110 years. And then the third  
14 component of option II was that San Diego would pay the  
15 Met's conveyance rates for the exchange water.

16 MR. KEKER: Excuse me, your Honor. I hate to  
17 interrupt. He says this is irrelevant. We said it is  
18 irrelevant. And now they're going to go through 18  
19 slides about what we've all agreed is irrelevant. I  
20 don't really get it.

21 THE COURT: It may -- this is the benefit of  
22 time limits. They impose their own discipline. So if he  
23 wants to spend his time doing this, that's fine.

24 MR. HIXSON: Thank you, your Honor.

25 I would like to explain what the canal lining

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1 water is so you get a sense of what is the water that  
 2 San Diego is providing to Met under the exchange  
 3 agreement. And here, I put up a map of a number of  
 4 canals in Southern California and it is worth explaining  
 5 what these are.  
 6 On the right, as we've seen before, we've got  
 7 the Colorado River on the border between California and  
 8 Arizona. There's the in-take at Lake Havasu and that's  
 9 Colorado River Aqueduct. This is slide 42.  
 10 And the Colorado River Aqueduct goes west,  
 11 connects to the service area. And you can see on the  
 12 left-hand side the State Water Project Aqueduct going  
 13 down the two reaches and Met's distribution system, down  
 14 further along, continues downward south to the green, the  
 15 All American Canal comes off the back. So the Colorado  
 16 River goes into the All American Canal. And off the All  
 17 American Canal is the Coachella Canal, also green, and it  
 18 goes almost all the way up to San Diego.  
 19 Canals leak water and the amount of water they  
 20 leak can be affected by the lining that they have. So  
 21 the canal lining water is the amount of water that would  
 22 be saved and not leaked when the canal lining is put in  
 23 with that \$235 million, state funded.  
 24 So when we're talking about the canal lining  
 25 with water in option II, that's what we're talking about,

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1 is the water that wouldn't leak, that the Bureau of  
 2 Reclamation would determine was conserved. This is the  
 3 package that was in option II. And again, what that did  
 4 is it changed the price term that initially San Diego  
 5 paid \$90 per year -- exchange water per acre-foot and Met  
 6 changed to \$80. And this is the original 1998 exchange  
 7 agreement.  
 8 And we showed here how that changed in the  
 9 amended 2003 agreement. This is section 5.2, and what it  
 10 says is that the price of that exchange water shall be  
 11 \$253 per acre-foot. Thereafter, the price shall be equal  
 12 to the charge or charges set forth by Met's board of  
 13 directors pursuant to applicable law and regulation and  
 14 generally applicable through the conveyance of water by  
 15 Met.  
 16 Now, the \$253 amount, we've explained that by  
 17 pointing to the final cost of service study over there  
 18 showing the unbundling of the rates. That was if you add  
 19 up the System Access Rate and the System Power Rate and  
 20 Water Stewardship Rate, that's the 253 because in '03,  
 21 these rates were in effect and saying from that point  
 22 forward, it would be whatever those rates are going to be  
 23 set.  
 24 We've broken this out into a chart that  
 25 explains the difference between what San Diego pays to

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1 Met normally when it pays the full service water -- pays  
 2 full service water. San Diego pays the supply rate for  
 3 the water resource and they pay the System Access Rate,  
 4 the System Power Rate and Water Stewardship Rate for the  
 5 transportation.  
 6 But then for the exchange water, there's a  
 7 credit because San Diego is providing Met a quantity of  
 8 Colorado River water, so Met does a price discount when  
 9 it gives the exchange water to San Diego and takes off  
 10 the exchange charge.  
 11 What San Diego is paying are the three  
 12 transportation rates. And the statement that San Diego  
 13 made earlier today that although the exchange agreement  
 14 may not itself be an agreement, supposedly the parties  
 15 agreed that San Diego would pay the wheeling rate, that's  
 16 not true.  
 17 And we discussed this earlier today, the  
 18 wheeling rate for transactions of one year or less is the  
 19 System Access Rate and the Water Stewardship Rate but not  
 20 the System Power Rate, whereas the transportation rates  
 21 are what San Diego is paying here, full service minus  
 22 this, so this isn't -- the wheeling rate is not being  
 23 paid.  
 24 The other reason it doesn't exist, the  
 25 transaction for a decade, Met's published wheeling rate,

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1 those are transactions for one year or less. So this is  
 2 just the full service rate minus supply. It is not a  
 3 contract to pay the wheeling rate.  
 4 San Diego proposed option II because they  
 5 thought it was a good deal. And this is certainly  
 6 relevant to the wheeling statute requirement that San  
 7 Diego receive fair compensation. They are contending in  
 8 this case they are not fairly compensated under the  
 9 exchange agreement because the generally applicable  
 10 conveyance rates they allege are too high.  
 11 So Metropolitan took the person most  
 12 knowledgeable on this question at San Diego and they  
 13 designated Mark Slater, who is the attorney who  
 14 negotiated the amendments to the exchange agreement, and  
 15 Mr. Slater testified that San Diego proposed option II.  
 16 He outlined what were the elements of option II. And  
 17 then San Diego chose option II because it believed it was  
 18 a good deal, and that's relevant to the fair compensation  
 19 inquiry under the wheeling statute.  
 20 I would like to play these clips from  
 21 Mr. Slater's deposition.  
 22 (Video played.)  
 23 MR. HIXSON: We believe San Diego has no  
 24 wheeling statute claim as a matter of law. But if they  
 25 did, this is the answer to the fair compensation inquiry.

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1 They thought this was absolutely a good deal, this  
 2 consideration package that they had proposed.  
 3 Let's talk more about why San Diego at last  
 4 acknowledges that the exchange agreement is not a  
 5 wheeling transaction and that's -- one reason is because  
 6 it involves an exchange of different water.  
 7 Under the exchange agreement, Metropolitan  
 8 provides exchange water. We quoted from the exchange  
 9 agreement in the slide itself. The exchange water may  
 10 have be whatever source or sources and shall be delivered  
 11 using such facilities as may be determined by  
 12 Metropolitan.  
 13 So there isn't a wheeling of water through  
 14 Met's system, there isn't a conveyance of non-Met water  
 15 by San Diego that's delivered to them. What Met gives to  
 16 San Diego can be from any of Metropolitan's sources,  
 17 State Water Project, Colorado River. It is not at all  
 18 the same water or even from the same source that San  
 19 Diego is provided.  
 20 Further, the exchange agreement does not  
 21 condition the exchange on there being unused capacity,  
 22 which is again one of the provisions of the wheeling  
 23 statute. It is uninterruptible, it is firm capacity.  
 24 We have another graphic up here, similar to one  
 25 we showed before that explains how the actual exchange of

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1 water works, your Honor, approximated exchange agreement  
 2 and why the wheeling statute is inapplicable.  
 3 On the right, you have the San Diego point of  
 4 delivery and that's at Lake Havasu on the Colorado River  
 5 and that's where San Diego makes available to Met the  
 6 conserved water and the canal lining water. And then Met  
 7 takes it into the Colorado River Aqueduct.  
 8 On the bottom left, you see the MWD point of  
 9 delivery for exchange water in purple and that's where  
 10 Met delivers exchange water to San Diego.  
 11 The timing of these deliveries are different.  
 12 Met delivers water to San Diego 24/7, around the year.  
 13 It doesn't wait until it gets the water on the Colorado  
 14 River to then deliver exchange water to San Diego. What  
 15 happened is San Diego makes an estimate of how much water  
 16 it's likely to provide in the next calendar year to Met.  
 17 Met just continues going on along delivery of water  
 18 throughout the year and then after the year is over,  
 19 there's a final determination of how much water San Diego  
 20 actually did provide to Met and then there may be an  
 21 after-the-fact reconciliation.  
 22 In other words, Met is just delivering all the  
 23 same water to San Diego, its blend of State Water Project  
 24 and Colorado River water 24/7, around the year.  
 25 The exchange agreement is just a price discount

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1 on a certain amount of water that's finally determined,  
 2 the amount after the fact as part of that agreement.  
 3 It's not different water, it is all the same water and  
 4 just a price discount reflecting that transaction.  
 5 But again, this isn't -- the exchange agreement  
 6 doesn't transport anything to anyone. It is a way of  
 7 reducing the price on the quantity of water. But  
 8 regardless of when San Diego provides that water to Met,  
 9 Met is constantly 24/7 supplying water to San Diego.  
 10 Here, we have a blowup that shows more  
 11 specifically the facilities involved. We've got Met's  
 12 distribution system here in purple, and we've got the  
 13 east branch of the state aqueduct coming in, and then  
 14 you've got the Colorado River coming in from the east.  
 15 You can see there's Diamond Valley Lake, which is after  
 16 both the State Water Project and Colorado River have come  
 17 into the Met system.  
 18 Lake Skinner, which is a blend of State Water  
 19 Project water and Colorado River water, water that goes  
 20 to San Diego comes from the Lake Skinner area, or it goes  
 21 through the Lake Skinner area to get to San Diego.  
 22 That's where the pipe comes from to get to San Diego and  
 23 it carries that blend of the water.  
 24 THE COURT: Are you going to be introducing any  
 25 evidence of other situations in California which you

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1 would contend truly are wheeling in which it is exactly  
 2 the same water?  
 3 MR. HIXSON: We'll have to consider the  
 4 evidence. There are a lot of wheeling transactions as  
 5 entered into, but I don't want to bog down our 12 hours  
 6 on things that aren't going to be factually similar to  
 7 this.  
 8 THE COURT: Okay.  
 9 MR. HIXSON: So, wheeling under the California  
 10 Water Code, which is one of the claims that San Diego is  
 11 alleging in this case, alleging that Met has not been  
 12 complying with the wheeling statute, wheeling involves  
 13 the actual conveyance of water. That's what wheeling is  
 14 defined as in the statute. But as we can see, what is  
 15 actually happening under the exchange agreement isn't the  
 16 conveyance of anything, it's not the transportation, it  
 17 is just a swap of different types of water.  
 18 Wheeling under the California Code is only  
 19 conveyance of unused capacity. But that's not true with  
 20 the exchange agreement.  
 21 And another reason the wheeling statute isn't  
 22 applicable, wheeling is only when water is provided to  
 23 whoever. In other words, one party will provide another  
 24 supplier of water, "please wheel this through your  
 25 system." But as we see here, it is not what happened.

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1 It is more an exercise for price discount.  
 2 San Diego has also previously testified about  
 3 why the exchange agreement is not a wheeling transaction  
 4 and that testimony is consistent with this slide that we  
 5 have up here today.  
 6 When San Diego entered into its deal with IID  
 7 to get that conserved water from IID, San Diego and IID  
 8 need to get approval from the State Water Resources  
 9 Control Board concerning that change in water. And so  
 10 the state board held a hearing to evaluate that. And  
 11 this is a quote from a public hearing before the State  
 12 Water Board in April of 2002 concerning the approval of  
 13 that petition.  
 14 At that hearing, one person who testified is  
 15 Maureen Stapleton. She was and is the general manager of  
 16 San Diego County Water Authority and she was put on the  
 17 stand by Mr. Slater, who was their attorney and their  
 18 person most knowledgeable. And you heard an excerpt of  
 19 his deposition a few minutes ago.  
 20 And he asked her to explain the difference  
 21 between an exchange and a wheeling agreement. And here,  
 22 we've excerpted her testimony to the state board where  
 23 she explained that an exchange is radically different  
 24 than a wheeling agreement. And she identified that it  
 25 wasn't for space available, it was for firm deliveries.

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1 And using the word radical there, she described the  
 2 differences.  
 3 And then Mr. Slater continued to ask her about  
 4 that. He said, "So in effect, it is different from a  
 5 Katz Wheeling Law transfer in two regards." Katz was the  
 6 Assembly member who sponsored the wheeling law.  
 7 That's -- one is water supply to another. And second, it  
 8 is firm capacity as opposed to space available. And  
 9 Ms. Stapleton's answer was, "That's correct."  
 10 So we think this helps underscore why San Diego  
 11 has no wheeling claim in this case. And although they  
 12 talk about it at length this morning, the wheeling  
 13 statute at length and they talk a lot about the movement  
 14 of non-Met water through Met system, they are not  
 15 pointing to anything factual when they say that. They're  
 16 not referring to actual transactions within the wheeling  
 17 statute. This exchange agreement is not one of those  
 18 transactions. It doesn't come within the terms of the  
 19 wheeling statute.  
 20 I talked a lot about the blend of the water  
 21 that Met provides to San Diego and how Met blends water  
 22 from the State Water Project, from the Colorado River  
 23 Aqueduct. Reason -- there's a reason I'm talking about  
 24 that. That's because there are differences in water  
 25 quality between the Colorado River and the State Water

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1 Project.  
 2 And here, I'm citing to an April 5th, 2012  
 3 letter to Met's board of directors, and this is from the  
 4 general manager and the general counsel and they are  
 5 responding to some of the comments by the San Diego  
 6 County Water Authority before the board.  
 7 And in particular, they're responding to the  
 8 argument that it is unfair to charge San Diego State  
 9 Water Project transportation costs because San Diego says  
 10 that its transaction doesn't have anything to do with the  
 11 State Water Project. And they respond by saying, wait a  
 12 second. Metropolitan's ability to blend water from  
 13 various sources means that the exchange water delivered  
 14 to San Diego is less saline than the conserved water  
 15 transferred to Metropolitan at Lake Havasu.  
 16 In other words, Colorado River has higher  
 17 saline, so the blend that Met gives San Diego, including  
 18 in that exchange water that provides has valuable  
 19 benefits because it's a combination of these two sources.  
 20 This is not just Metropolitan's position, it is also  
 21 San Diego's.  
 22 We put up here a presentation by San Diego  
 23 staff to their board of directors in August of this year,  
 24 so four months ago in which they provide an update on the  
 25 Colorado River salinity control, and this is before the

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1 imported water committee at the San Diego board of  
 2 directors.  
 3 In it, the staff summarized the following.  
 4 Colorado River has relatively high salinity. And the  
 5 San Diego staff estimated that this excess salinity in  
 6 the Colorado River causes about \$375 million a year in  
 7 economic damage.  
 8 And then the San Diego staff also identified  
 9 high salinity can create environmental impacts. And they  
 10 put up a picture of a rusted-through pipe. I guess we're  
 11 supposed to infer that was due to the high salinity. And  
 12 then the farmland with the salt caked into it  
 13 illustrating the damage that high salinity can cause.  
 14 And then the San Diego staff demonstrated how  
 15 San Diego can control the salinity of the water it gets.  
 16 They identified that San Diego's goal is to maintain  
 17 salinity no greater than 500 million grams per liter.  
 18 And then they specifically noted that the salinity  
 19 depends on the mix of the State Water Project and the  
 20 Colorado River water. And this is exactly consistent  
 21 with what the Metropolitan staff said in San Diego when  
 22 they said why it is fair to charge San Diego for the  
 23 State Water Project transportation costs.  
 24 And so, when San Diego has talked today about  
 25 cost causation and about how Metropolitan should provide

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1 charges that are commensurate with the cost or benefits  
 2 it provides, here is an important thing they're  
 3 overlooking. That water that San Diego receives, that  
 4 blend of water, including under the exchange agreement  
 5 isn't the Colorado River water that San Diego provided to  
 6 Met. Met didn't simply wheel that through its system.  
 7 What Met provided is something different and more  
 8 valuable, blend of water that's less saline, which is  
 9 something that San Diego benefits from and desires to  
 10 have.  
 11 What San Diego is trying to do in this lawsuit  
 12 is to not have to pay for the cost of the water it  
 13 receives because in order for Met to provide that blend  
 14 of water to San Diego, that valuable blend that's less  
 15 saline, Met must purchase State Water Project water and  
 16 incur the State Water Project costs to move it down. So  
 17 it is entirely fair to San Diego to pay those payments.  
 18 Again, we think Met's rates should be evaluated  
 19 on their own. But if you're going to look at the  
 20 particular transaction with San Diego and address their  
 21 contention that they're moving Colorado River water, part  
 22 of the analysis should go into that, what are the real  
 23 costs Metropolitan incurs to provide the benefits to San  
 24 Diego and the blend does have benefits and they do have  
 25 State Water Project costs that Met incurs.

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1 I would like to end where I began, which is on  
 2 the standard of reasonableness because at the end of the  
 3 day, that is the nature of the Court's inquiry. The  
 4 Court is not here to decide what is the best rate  
 5 structure Metropolitan could have or whether this is the  
 6 only one which could be, or if better one could be  
 7 imagined.  
 8 For an entity Met's size and geographic reach  
 9 and complexity and given its 26 different member  
 10 agencies, there are undoubtedly a lot of different ways  
 11 for Metropolitan to structure its rates. Court should  
 12 focus whether the rates satisfy the reasonableness and we  
 13 believe they do and intend to show you that Met's rates  
 14 should be upheld.  
 15 THE COURT: Appreciate that very much. Thank  
 16 you.  
 17 Why don't we take one more short recess of ten  
 18 minutes and then we'll --  
 19 MR. KEKER: What time are you planning to go  
 20 tonight?  
 21 THE COURT: 4:30. We can't go further than  
 22 that.  
 23 MR. KEKER: Yes, sir.  
 24 (Brief break.)  
 25 THE COURT: First of all, any other parties

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1 that want to provide an opening statement?  
 2 I should at least offer that no one else has  
 3 volunteered, but I know there are other parties involved.  
 4 I take it the answer is no so San Diego will  
 5 start with their case.  
 6 MR. KEKER: Your Honor, with your permission, I  
 7 was going to take another ten minutes of talk, of our  
 8 time to talk because I think the issues are joined and I  
 9 think it would be useful time in the case to say exactly  
 10 how the issues have been joined. But again, with your  
 11 permission.  
 12 THE COURT: Go ahead, although if Mr. Hixson  
 13 wants to respond, we can go back and forth.  
 14 MR. KEKER: We agree with Met's rates in this  
 15 phase of the case should be evaluated on their own. We  
 16 agree with that.  
 17 We agree with Met that the exchange agreement  
 18 is irrelevant to this phase of the case. The issue in  
 19 the first three causes of action is whether or not the  
 20 System Access Rate, System Power Rate, Water Stewardship  
 21 Rate as they were set and used as transportation rates in  
 22 2010 and again in 2012 were lawful rates when this  
 23 happened.  
 24 Any Southern California member agency, any  
 25 Southern California rate payor could be here standing in

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1 front of you saying these rates are not proper, you  
 2 should send them back and tell them to do that -- do them  
 3 again. So, if it's San Diego versus L.A., San Diego  
 4 versus -- this is a challenge to the efficacy of those  
 5 rates.  
 6 We disagree strenuously, though, that this  
 7 emphasis only on some abstract idea of reasonableness is  
 8 enough. The law requires reasonable cost of service  
 9 analysis, it requires reasonable application of cost of  
 10 service principles. It's not just reasonable in some  
 11 intergalactic sense.  
 12 So, with respect to the water -- State Water  
 13 Project, very, very briefly could we put back up slide 22  
 14 that Mr. Hixson just showed you.  
 15 And, Jeff, if you would, this is the State  
 16 Water Project bill. Would you highlight the tiny type  
 17 that's illegible? This is a statement of charges. Do  
 18 you see that line? Blow that up, please.  
 19 And it says the statement -- still hard to  
 20 read. This is a statement of charges referred to in  
 21 article 29 of your agency's contract for a water supply  
 22 from the State Water Project. This is a bill for a water  
 23 supply. Only evidence that they have in this entire  
 24 record is what they have been beating on, which is the  
 25 Department of Water Resources in their bill for their

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1 water supply divides Delta water charges from conveyance  
2 charges.

3 The question -- and our point is this is what I  
4 say we're joined. I'm not going to argue this, I'm just  
5 going to say it again. Our point is who cares what  
6 Department of Water Resources says. Is it reasonable  
7 that all of these fixed costs related to the State Water  
8 Project are for -- are loaded on to the rate that they're  
9 setting for conveying non-Met water through their own  
10 system in the -- through the Colorado River Aqueduct and  
11 in the yellow?

12 We think we've shown the only reason that  
13 they've loaded that on, the only reason is so that for  
14 rate stability so the non-wheelers won't have to pay any  
15 more, and we think we've shown that that is an illegal  
16 reason.

17 Now, this distinction about bundling versus  
18 unbundling, irrelevant to what we're trying to decide  
19 here.

20 We've seen in the 1997 resolution that they  
21 decided to keep as much of the State Water Project fixed  
22 cost as possible in the -- in the rates. When they're  
23 figuring out what to charge for transportation, for  
24 non-Met water, let's put the fixed cost in there for the  
25 State Water Project. When they unbundled the rates, they

1 allotment enters, there's water in there. When the  
2 Placer water we want to wheel comes in, there's somebody  
3 else's water in there. You can't be too literal.  
4 Transportation of somebody's water means putting it in a  
5 pipe with other people's water and then moving that --  
6 those fungible molecules someplace. And at the other  
7 end, you take out what you're entitled to.

8 So, that's State Water Project. I'm going to  
9 stop talking about it.

10 Water Stewardship Rate joined issue, they  
11 didn't address at all. How can 100 percent of  
12 conservation be conveyed conveyance to transportation.  
13 Can we see their slide 29 and just read it? It's hard  
14 for me to read from here, but this is what they said  
15 supports them. It says investments in conservation and  
16 recycling decrease the region's overall -- investments  
17 and conservation recycling decrease the region's overall  
18 dependence on imported water supplies from  
19 environmentally sensitive areas like the Bay Delta,  
20 increasing the overall level of water supply reliability  
21 in Southern California.

22 These are people citing this to prove that  
23 putting 100 percent of conservation costs into the  
24 transportation rate that you're charging for non-Met  
25 water is a reasonable cost of service analysis. And we

1 did the same thing. They said this is -- we're going to  
2 call all of this transportation and we're going to put  
3 that into the -- so when -- and when they unbundled,  
4 they've admitted over and over again, we've shown the  
5 briefs, we've shown the slides and they still say our  
6 findings of fact under the wheeling statute that says  
7 this is a fair rate is that '97 resolution which is based  
8 on rate stability.

9 Their second argument about using the state --  
10 look, they used the state water resources project to  
11 wheel, notwithstanding it's a tiny amount. Answer to  
12 that is feel free to charge anybody that's asking you to  
13 do that what the Department of Water Resources charged  
14 you, which we showed in the contract is an incremental  
15 rate. Instead, they used that, that tiny amount of  
16 wheeled water to justify taking the entire fixed cost in  
17 the State Water Project and dumping them on  
18 transportation rates, including the place where the vast  
19 amount of transportation takes place, the Colorado River  
20 Aqueduct, which doesn't connect with the State Water  
21 Project.

22 So, in answer by the way to your question about  
23 is there any wheeling transaction that doesn't involve  
24 blending water, the answer quite obviously is no. These  
25 pipes aren't empty. When the orange water that's IID's

1 submit that they haven't even addressed the issue of the  
2 fact that it's a general revenue to pay for local  
3 projects and that in terms of proportionality, the fact  
4 that they cut San Diego out completely means San Diego's  
5 burden is 100 percent and benefit is zero.

6 And then finally, on dry creek -- dry year  
7 peaking, there's a lot of obfuscation there. We assert  
8 they agree and they've never addressed the issue that  
9 they've never studied it, that they don't know what it  
10 is, they don't know what the benefits are. They agree  
11 there's no analysis of it. They don't dispute that it is  
12 a huge benefit to Los Angeles.

13 Their answer seems to be well, it looks -- we  
14 have got some that says maybe it is a benefit to San  
15 Diego as well. Well, so what? If dry year peaking is --  
16 should be calculated and the benefits and the burdens  
17 should be analyzed, that affects the supply -- the System  
18 Access Rate, where it appears. That means the System  
19 Access Rate is wrong and somebody ought to go back and  
20 study the benefits from dry year peaking to whoever gets  
21 them and figure out how to allocate that when you set the  
22 System Access Rate.

23 So, that's what we're saying. We're saying it  
24 is substantial. And we're saying do it right. Their  
25 argument is well, San Diego probably gets some benefit

1 from it too. So what for this purpose -- for purposes of  
 2 this particular phase of the trial.  
 3 That's all I have. Thank you very much. And  
 4 now we're going to call --  
 5 THE COURT: Let me just ask Met if they wanted  
 6 to also take the opportunity at this moment to say any  
 7 further words.  
 8 MR. HIXSON: No, your Honor. We made our  
 9 opening statement.  
 10 THE COURT: Thank you very much.  
 11 MR. KEKER: Okay.  
 12 MR. PURCELL: Your Honor, before we bring  
 13 Mr. Cushman up, I would like to move some exhibits into  
 14 evidence pursuant to the parties' stipulation.  
 15 THE COURT: All right, go ahead.  
 16 MR. PURCELL: I don't know what the easiest way  
 17 to do this is. I can list them.  
 18 THE COURT: Is there a stipulation that I  
 19 signed already?  
 20 MR. PURCELL: This is the stipulation about  
 21 admissibility of evidence used in the parties' pretrial  
 22 briefs or opening statement.  
 23 THE COURT: I suggest you just read -- you can  
 24 stand here and read it if you want, but reduce it to a  
 25 piece of writing, I'll sign it.

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1 MR. HIXSON: We're doing the same thing.  
 2 MR. PURCELL: I think writing is easier, your  
 3 Honor. We won't waste the time.  
 4 THE COURT: I don't want to use up your time.  
 5 MR. BRAUNIG: Good afternoon, your Honor.  
 6 Warren Braunig for San Diego. San Diego calls as its  
 7 first witness Dennis Cushman.  
 8 THE COURT: Thank you, sir. If you will join  
 9 us up here.  
 10 DENNIS CUSHMAN,  
 11 having been called as a witness by the Plaintiff and  
 12 having been duly sworn under the standard oath, was  
 13 examined and testified as follows:  
 14 MR. BRAUNIG: Your Honor --  
 15 THE CLERK: If you will please adjust the  
 16 microphone and state and spell your first and last name  
 17 for the record.  
 18 THE WITNESS: Dennis Cushman, D-E-N-N-I-S,  
 19 C-U-S-H-M-A-N.  
 20 THE COURT: Thank you. Yes, sir.  
 21 MR. BRAUNIG: Your Honor, I have a binder of  
 22 documents that we're -- rather than having to approach  
 23 and hand them to him, I'm going to take that up now if  
 24 that's all right.  
 25 THE COURT: Please. Appreciate that.

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1 MR. BRAUNIG: I have a copy for you as well,  
 2 your Honor. We've also provided a copy to counsel,  
 3 opposing counsel.  
 4 DIRECT EXAMINATION  
 5 BY MR. BRAUNIG:  
 6 Q. Good afternoon, Mr. Cushman.  
 7 A. Good afternoon.  
 8 Q. How are you presently employed?  
 9 A. Assistant general manager of the San Diego  
 10 County Water Authority.  
 11 Q. How long have you held that position?  
 12 A. A little over 11 years.  
 13 Q. What responsibilities does that entail, being  
 14 the assistant general manager?  
 15 A. My areas of responsibility include the  
 16 externally focused policy areas for the Water Authority,  
 17 our Metropolitan district program, including our imported  
 18 water supplies that we obtain from Metropolitan Water  
 19 District. I oversee the agency's public outreach and  
 20 conservation department as well as its lobbying programs  
 21 in Sacramento and Washington, D.C.  
 22 Q. In those roles, have you become familiar with  
 23 San Diego's purchase and transportation of water from  
 24 third parties other than MWD?  
 25 A. Yes.

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1 Q. How so?  
 2 A. First, I supported the general manager }and  
 3 her team during much of the negotiations for the IID  
 4 water transfer agreement, the canal lining agreement as  
 5 well as serving as the Water Authority's lead negotiator  
 6 for dry year water transfers. We negotiated with  
 7 Northern California entities.  
 8 Q. Have you had any involvement in the setting of  
 9 Metropolitan's rates over the last -- over the last few  
 10 years?  
 11 A. Yes. I've been an active participant at  
 12 Metropolitan in a series of processes at Metropolitan  
 13 involving rates, refinement, cost of service discussions,  
 14 general manager monthly meetings with Metropolitan with  
 15 the other member agency managers.  
 16 I attend Metropolitan board of directors and  
 17 committee meetings regularly. I've been involved in --  
 18 THE COURT: Are you on the board?  
 19 THE WITNESS: No, I'm not a member of the board  
 20 of directors. I am the Water Authority's chief  
 21 representative to a series of processes or committees  
 22 that Metropolitan puts together of representatives from  
 23 member agencies that are not members of the board of  
 24 directors.  
 25 //

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1 BY MR. BRAUNIG:  
 2 Q. Through the -- I'm sorry.  
 3 A. I also testified extensively at the rate  
 4 setting hearings in 2010 in which Metropolitan adopted  
 5 rates for 2011 and 2012, provided written and oral  
 6 testimony at the public hearing.  
 7 I did the same in 2012 during the rate setting  
 8 hearing held at Metropolitan for the setting of the 2013,  
 9 2014 rates and oversaw the efforts of our staff to  
 10 provide information to the board of directors of  
 11 Metropolitan.  
 12 Q. Okay. Through those activities, have you  
 13 become familiar with Metropolitan and its finances?  
 14 A. Yes. I've been involved in Metropolitan  
 15 matters for approximately 15 years in various processes,  
 16 particularly more intensive over the last 11 years as the  
 17 assistant general manager involved in a host of  
 18 discussions, debates about Metropolitan rates, the  
 19 appropriateness of those rates, what costs should go into  
 20 various allocations among the rates throughout those  
 21 processes at Metropolitan.  
 22 Q. Did you have any involvement in Metropolitan's  
 23 long-range finance planning?  
 24 A. Yes. In 2007, Metropolitan began an effort to  
 25 develop a new long-range finance plan that was a process

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1 that went through fits and starts over a number of years.  
 2 There were periods of time where there was an intensive  
 3 level of activity, a number of regular meetings, monthly,  
 4 perhaps more than once a month in an attempt to address  
 5 water rates issues, allocation issues as part of the  
 6 broader Metropolitan long-range finance plan.  
 7 They also had a process such as rate refinement  
 8 process in which they attempted to grapple with the  
 9 issues involving where Metropolitan's cost should  
 10 appropriately be allocated ultimately with a long-range  
 11 finance plan that went through a series of fits and  
 12 starts with activity, flurry of activity to no activity.  
 13 And ultimately in 2012, they abandoned all  
 14 efforts to develop a long-range finance plan. And  
 15 ultimately, no changes came out of any of the rate  
 16 refinement processes that they undertook, and there's no  
 17 activity on those today.  
 18 Q. Okay. Based on your knowledge and experience,  
 19 what service does Metropolitan provide for the citizens  
 20 of Southern California?  
 21 A. Metropolitan supplies imported water to its 26  
 22 member agencies from its two primary sources of supply:  
 23 The State Water Project and the Colorado River.  
 24 Q. Let's take those in turn. How does  
 25 Metropolitan supply water to -- state water -- strike

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1 that.  
 2 How does Metropolitan provide water to its  
 3 member agencies that comes from the State Water Project?  
 4 A. Metropolitan has a long-term water supply  
 5 contract with the State of California that it signed in  
 6 November of 1960.  
 7 It became the basis of all subsequent State  
 8 Water Project contracts that the state Department of  
 9 Water Resources signed with 27, 28 contractors that  
 10 entitle Metropolitan up to earn 1.91 million-acre feet of  
 11 water under that water supply contract. That today is  
 12 commonly referred to as its Table A Entitlements of the  
 13 State Water Project water.  
 14 Q. Where does Metropolitan receive that water?  
 15 A. Metropolitan receives that water at two  
 16 terminal reservoirs on State Water Project system,  
 17 Castaic Lake on the west branch of the State Water  
 18 Project and Lake Perris on the east branch of the State  
 19 Water Project system.  
 20 Q. What about the second category that you  
 21 mentioned, Colorado River water? How does Metropolitan  
 22 get Colorado River water into its service territory?  
 23 A. Metropolitan built, constructed, maintains the  
 24 Colorado River Aqueduct, which takes water off the  
 25 Colorado River at Lake Havasu, moves it approximately 242

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1 miles to Lake Matthews, the terminal reservoir in the  
 2 county where the Colorado River flows into and  
 3 distributes by Metropolitan there to its member agencies.  
 4 Q. Can I ask Mr. Dahm to put up PTX 348, which you  
 5 should have that also in your book, Mr. Cushman, PTX 348.  
 6 What does PTX 348 represent?  
 7 A. It is a map of the major water conveyance  
 8 facilities in California.  
 9 Q. Where did San Diego obtain this map?  
 10 A. From the Metropolitan Water District Web site.  
 11 Q. I want to ask you also to take a look at PTX  
 12 348, which is a different version -- 348A, I'm sorry. Of  
 13 the PTX 348A just a cleaned up version of PTX 348?  
 14 A. Yes. It's been reoriented and they deleted the  
 15 call out of the Bay Delta area.  
 16 Q. Is this a true and correct representation of  
 17 the major water conveyance facilities in California?  
 18 A. Yes.  
 19 Q. Okay. We would move PTX 348 and 348A into  
 20 evidence.  
 21 MR. WEST: No objection, your Honor.  
 22 THE COURT: 348 and 348A are admitted.  
 23 (Whereupon Exhibit 348 was  
 24 admitted into Evidence.)  
 25 (Whereupon Exhibit PTX 348A  
 was admitted into Evidence.)  
 //

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1 BY MR. BRAUNIG:

2 Q. Mr. Cushman, there's a laser pointer up there.  
3 Could you please point the Court on the screen to the  
4 Metropolitan's Colorado River Aqueduct?

5 A. Yes. The Colorado River Aqueduct is depicted  
6 in black, picking up at Lake Havasu and going all the way  
7 to Lake Matthews in the Metropolitan service area.

8 Q. And when you look up in the legend, how is the  
9 Colorado River Aqueduct identified?

10 A. As a local aqueduct.

11 Q. And what do you understand that to mean, that  
12 it's a local aqueduct?

13 A. That it is not a -- neither a state aqueduct or  
14 a federal aqueduct.

15 Q. Can you use the pointer to direct the Court to  
16 the State Water Project and the California Aqueduct?

17 A. The State Water Project begins at Lake Oroville  
18 and on this map, the line is depicted in green as the  
19 California aqueduct in various spurs along the path  
20 through Southern California off the State Water Project  
21 System, the California aqueduct. And it comes into this  
22 area in two locations, Castaic Lake over on the west  
23 branch and Lake Perris here, over here. So Castaic and  
24 Perris.

25 Q. How is the California Aqueduct identified in

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1 the legend?

2 A. It's identified in green as a state aqueduct.

3 Q. What does it mean to call a State Water Project  
4 in California aqueduct a state aqueduct?

5 A. It means it's owned by the State of California.

6 Q. Can you use the pointer to direct the Court to  
7 the Los Angeles aqueduct?

8 A. Yes. The Los Angeles aqueduct is identified in  
9 black, begins at the Mono Lake basin and Owens Valley and  
10 traverses southward to where it reaches the City of Los  
11 Angeles facilities in the City of Los Angeles.

12 Q. And how is that identified on the map?

13 A. It's depicted in black and indicates it's a  
14 local aqueduct.

15 Q. And who gets the benefit of water conveyed  
16 through the Los Angeles aqueduct?

17 A. The City of Los Angeles, Department of Water  
18 and Power.

19 Q. Other than Los Angeles, do any of Metropolitan  
20 member agencies have means for importing water into the  
21 Met service area?

22 A. No.

23 Q. Are there any other ways for a member agency  
24 like San Diego to get water into the -- into its own  
25 service area, imported water?

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1 A. No. The only facilities are through State  
2 Water Project and ultimately through Metropolitan's  
3 facility and Colorado River Aqueduct.

4 Q. What are the different mechanisms that Met uses  
5 to collect revenues to pay for its costs?

6 A. Metropolitan sets various fees and charges,  
7 rates and charges. They include rates discussed earlier  
8 today, commodity rates such as the Water Supply Rate,  
9 System Access Rate, System Power Rate, the Water  
10 Stewardship Rate. They have some fixed charges,  
11 including the readiness to serve charge, which is  
12 commonly referred to as the RTS and Capacity Charge.

13 They have some property taxes that it collects  
14 from within the service area. Then it has small amounts  
15 of miscellaneous revenue like interest income and small  
16 amounts of de minimis sources of income.

17 Q. What you described as commodity rates, could  
18 those also be described as volumetric rates?

19 A. Yes.

20 Q. What is a volumetric rate?

21 A. It is a rate charged based upon the volume or  
22 increment of the commodity you're buying, in this case  
23 water and the increments that we sell and buy water at  
24 our level as acre-feet of water.

25 Q. So of the three sources that you described,

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1 fixed charges, property taxes and volumetric rates, how  
2 do Metropolitan's revenues break down between those three  
3 sources?

4 A. Metropolitan's volumetric rates generate  
5 approximately 80 percent, a little bit over 80 percent of  
6 all of Metropolitan -- its revenues come from the  
7 volumetric rates. Property taxes generates approximately  
8 5 percent of the Metropolitan's overall revenues.

9 The RTS and Capacity Charge comprise the rest  
10 of the small amount of fixed charges that Metropolitan  
11 has along with that miscellaneous income, the interest  
12 and income and other small sources of income.

13 Q. From your experience working with Met on  
14 finance-related issues, does Metropolitan's decision to  
15 collect 80 percent of its costs through volumetric rates  
16 affect Met's year-to-year finances?

17 A. Yes. Metropolitan is heavily reliant on  
18 variable sources of revenue in the sale of the commodity.  
19 But conversely, its expenses are largely fixed. So  
20 80 percent or more of all Metropolitan's expenses in any  
21 given year are fixed expenses, the mortgage, if you will,  
22 on its investments and obligation.

23 And only about 15, 17 percent, perhaps, of  
24 their revenues are fixed. So they have this significant  
25 disconnect between fixed obligations and fixed sources of

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1 revenues and instead have heavily fixed obligations and  
2 largely variable sources of revenue.

3 Q. Is it --

4 A. And that becomes an issue in years in which  
5 it's wet in the Met service areas and member agencies buy  
6 less water. Then Met may budget, and many times has  
7 budgeted, and they run a significant deficit in their  
8 water sales revenues.

9 Conversely, in dry years when member agencies  
10 that rely on Met for dry year supplies roll onto  
11 Metropolitan, Metropolitan may generate more revenue than  
12 it budgeted in its budget, so they have wild swings in  
13 hundreds of millions of dollars from year to year or over  
14 the course of very few short years in their water sales  
15 revenues.

16 Q. Is Met obligated to collect 80 percent of its  
17 revenues through volumetric rates?

18 A. No.

19 Q. What else could they do?

20 A. They could do any number of things to improve  
21 their sources of fixed revenues. They could increase the  
22 fixed sources of fixed charges they have today, like  
23 their RTS charge, Capacity Charge. They could adopt new  
24 fixed charges, customer service charge, demand charges.  
25 They could obtain take-or-pay contracts with their 26

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1 member agencies a safe and reliable water supply to  
2 support our region's economy and the quality of life for  
3 3.1 million people.

4 THE COURT: It is just limited to Diego County,  
5 correct?

6 THE WITNESS: Yes, its service area is roughly  
7 the one third of the western portion of San Diego County.

8 THE COURT: I see.

9 THE WITNESS: But all service territory is  
10 within San Diego County.

11 BY MR. BRAUNIG:

12 Q. Did the Water Authority come to be a member of  
13 Metropolitan?

14 A. Through annexation. In 1946, during World War  
15 II, President Roosevelt ordered the United States Navy to  
16 build a pipeline to connect San Diego Navy industrial  
17 complex to the recently completed Met Colorado River  
18 Aqueduct.

19 San Diego was short on water. They wanted for  
20 the war effort to have imported water brought to San  
21 Diego. Navy built that pipeline, and the president  
22 encouraged Metropolitan and the San Diego County Water  
23 Authority to enter into negotiations for annexation,  
24 which ultimately occurred at the end of 1946.

25 MR. WEST: Your Honor, I'm going to object to

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1 member agencies in which those agencies would make  
2 commitments to buy Metropolitan water in the same manner  
3 in which Metropolitan is under a take-or-pay contract to  
4 buy State Water Project water through its long-term  
5 take-or-pay contract.

6 Q. Does a member agency have any discretion about  
7 paying Met's rates?

8 A. No, not if they want to buy Met water.

9 Q. And has San Diego ever asked to opt out from  
10 any Met rates?

11 A. Yes. In the battle over the rate structure  
12 integration in 2011 and after the Water Authority was  
13 disqualified from receiving any of the money that it pays  
14 in through the Water Stewardship Rate, the Water  
15 Authority in formal correspondence to Metropolitan asked  
16 Metropolitan that if it was going to deny us the benefit  
17 of the money raised through the Water Stewardship Rate,  
18 that we should be relieved of paying the Water  
19 Stewardship Rate. And Metropolitan's response to that  
20 was no, that's not optional. You pay.

21 Q. Turning your attention now to San Diego County  
22 Water Authority, what's the public mission of the water  
23 authority?

24 A. The mission of the Water Authority is to  
25 provide the San Diego region service area and its 24

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1 this. San Diego presented they wouldn't be presenting  
2 evidence about history.

3 THE COURT: I appreciate that. A little bit of  
4 background won't hurt.

5 MR. BRAUNIG: Thank you, your Honor.

6 Q. How -- what input does San Diego have to the  
7 Metropolitan Board?

8 A. The Water Authority appoints four members of  
9 the Metropolitan board of directors. Board of directors  
10 has 37 members. The Water Authority has four of those  
11 members.

12 Voting on the Metropolitan Water District is  
13 not one person, one vote, however. It is a weighted  
14 voting system based upon the assessed value of property  
15 within the agency from which your directors are appointed  
16 and it is a percentage of the whole.

17 So in the case that San Diego Water Authority,  
18 I think our weighted voting percentage this year is about  
19 17 and a half percent.

20 Q. Are San Diego's appointed delegates able to  
21 bind the Water Authority?

22 A. No.

23 Q. Who can bind the Water Authority?

24 A. The Water Authority board of directors can bind  
25 the Water Authority.

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1 Q. Historically where has San Diego gotten its  
2 water?

3 A. Over the most of its existence, from mid-1940's  
4 up until about ten years ago, the vast majority of water  
5 that the Water Authority served was purchased water from  
6 the Metropolitan water districts.

7 Q. Was there an event that caused San Diego to  
8 change its approach to where it gets its water?

9 A. Yes. California, 1987 to 1992, experienced a  
10 prolonged six-year drought on the watershed that serves  
11 the State Water Project, produces water for the State  
12 Water Project. The Metropolitan Water District imposed  
13 water shortages to its member agencies that to the Water  
14 Authority amounted to a 31 percent shortage in water  
15 supplies to the Water Authority.

16 Metropolitan was providing 95 percent of all  
17 water used in San Diego County, so missing 31 percent of all  
18 95 percent of your water supplied, missing about a third  
19 of your water supply, those shortages from Met lasted for  
20 13 months. And it was a seriously detrimental period of  
21 time for our economy and our quality of life in  
22 San Diego. And from that, the Water Authority embarked  
23 on a water supply diversification and water supply  
24 reliability improvement program.

25 MR. WEST: Your Honor, I'm going to object and

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1 Our annual reports delineate in great detail in the  
2 tables of the reports sources of supply, where we got the  
3 water and even how we sell it and divide it among our  
4 sales to our member agencies in each and every year.

5 Q. And is learning that information and reviewing  
6 that information part of your role as the assistant  
7 general manager?

8 A. Yes, we have all of those records at the Water  
9 Authority.

10 Q. Have you reviewed those reports in preparing  
11 PTX 382?

12 A. Yes.

13 Q. Now, what does -- what's the pie chart on the  
14 left, the 1991 pie chart? What does that represent?

15 A. That represents San Diego County's water supply  
16 portfolio in 1991. 95 percent of all the water used in  
17 San Diego County in that year came from the Water  
18 Authority's purchase of water from the Metropolitan Water  
19 District and 5 percent were local supplies. Almost all  
20 of that was surface water run-off into local reservoirs  
21 owned by other member agencies.

22 Q. Okay. Can we get the second pie chart?

23 Okay. And the second pie chart, what does the  
24 pie chart on the right represent?

25 A. The pie chart on the right represents San Diego

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1 move to strike that testimony. Lacks foundation. It has  
2 not been established that the witness was even at the  
3 Water Authority at the time in question, or that he has  
4 any basis upon which to give the narrative he gave about  
5 events that happened in 1987 to 1991. I think that the  
6 testimony should be stricken.

7 THE COURT: Overruled. Go ahead.

8 MR. BRAUNIG: Thank you.

9 Q. Is there a chart that you developed that  
10 conveys the change in San Diego supply portfolio over the  
11 years?

12 A. Yes. It's recreated the water supply pie chart  
13 that shows that.

14 Q. Okay. We've -- you've got in front of you an  
15 exhibit that's marked PTX 382. I may also say it's at  
16 the very back because it's also a -- it's a new exhibit.  
17 It also says SWA 051. Do you see that?

18 A. Yes.

19 THE COURT: In view of the objection, you might  
20 want to just lay a little bit of a foundation.

21 MR. BRAUNIG: Sure.

22 Q. And how are you knowledgeable about San Diego's  
23 water portfolio, supply portfolio from 1991, versus the  
24 present?

25 A. Through the records of the Water Authority.

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1 County' water supply portfolio in 2013 and it depicts the  
2 diversification of San Diego County's water supply assets  
3 over that period of time, a little over two decades.

4 Q. Okay. Can you walk the Court through some of  
5 the -- let's take a couple of them. Take them one at a  
6 time.

7 What percentage in 2013 of San Diego's water  
8 was purchased as Met water?

9 A. Depicted in light blue on the right,  
10 46 percent.

11 Q. Okay. What about the 16 percent, what does the  
12 16 percent that's in the sort of pink part of the chart?

13 A. Yeah, down at the bottom of the pie, that  
14 16 percent is our purchases in 2013 of water from  
15 Imperial Irrigation District.

16 Q. What about the next piece of the pie, the green  
17 piece of the pie?

18 A. That's the water supply from the canal lining  
19 project, lining the All American and Coachella canals.

20 Q. And does this chart accurately reflect the  
21 change in San Diego's supply portfolio from 1991 to 2013  
22 based on the data that you've reviewed?

23 A. Yes.

24 Q. Okay.

25 MR. BRAUNIG: We would move PTX 382 into

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1 evidence.  
 2 MR. WEST: No objection, your Honor.  
 3 THE COURT: PTX 382 is admitted.  
 4 (Whereupon Exhibit PTX 382 was  
 admitted into Evidence.)  
 5 BY MR. BRAUNIG:  
 6 Q. Let's talk a little bit about what's listed  
 7 there as Imperial Irrigation District transfer.  
 8 What does that refer to? What water does that  
 9 refer to?  
 10 A. That refers to the long-term water conservation  
 11 and transfer agreement that the Water Authority and the  
 12 Imperial Irrigation District entered into in October of  
 13 2003.  
 14 Under that agreement, the water transfers from  
 15 IID, that is the Imperial Irrigation District to the  
 16 Water Authority ramps up to 200,000 acre-feet of water  
 17 per year when it is fully ramped in in 2021.  
 18 Q. Does San Diego pay for that water from IID?  
 19 A. Yes, we make a payment for each acre-foot of  
 20 water to IID under the terms of our contract with IID for  
 21 that water.  
 22 Q. How does the Water Authority get the Imperial  
 23 Irrigation District water to San Diego County?  
 24 A. We executed the 2003 exchange agreement with  
 25 Metropolitan Water District and under that agreement, set

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1 water is moved by Metropolitan. Does Metropolitan  
 2 deliver the exact molecules of water that San Diego  
 3 purchases from IID?  
 4 A. No, that's not possible.  
 5 Q. Why not?  
 6 A. Well, when the water goes into the Colorado  
 7 River Aqueduct, it goes into the aqueduct along with  
 8 Metropolitan's own water off the Colorado River. And  
 9 from there, Metropolitan takes control of the water and  
 10 has total control over the delivery of what water shows  
 11 up at our service connections in San Diego County, except  
 12 it has to be a like quantity of water and like quality of  
 13 water as that water that was delivered to Metropolitan at  
 14 Lake Havasu.  
 15 Q. Does the IID water -- does the IID transfer  
 16 water go through the State Water Project?  
 17 A. No.  
 18 MR. BRAUNIG: Your Honor, I'm looking at the  
 19 clock and seeing it is 4:30. This is probably a decent  
 20 place to stop.  
 21 THE COURT: We'll get back together at 10:00  
 22 o'clock.  
 23 MR. WEST: We have a housekeeping matter for  
 24 the Court. We had filed and served a glossary to be use  
 25 in the trial and filed and served an amend pretrial brief

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1 the terms and conditions for Metropolitan to move that  
 2 water from the Colorado River to us in San Diego at our  
 3 service connections located approximately six miles into  
 4 San Diego County from the north -- northern part of  
 5 San Diego County.  
 6 Q. Is there any other way that San Diego could get  
 7 that Imperial Irrigation District water to San Diego?  
 8 A. No.  
 9 Q. Can we pull -- can we pull the map back up?  
 10 348A?  
 11 Okay. And can you -- can you, maybe using your  
 12 laser pointer again, show the Court sort of where the  
 13 Imperial Irrigation District, how the Imperial Irrigation  
 14 District water is conveyed to San Diego?  
 15 A. Okay. So the Imperial Irrigation District is  
 16 located in eastern -- southeastern corner of California,  
 17 generally in this area, south of the Salton Sea.  
 18 Imperial Irrigation District's take off the  
 19 Colorado River is located down here. But under the  
 20 exchange agreement, the United States Bureau of  
 21 Reclamation makes that water available, the transfer  
 22 water from the IID, and canal lining water is made  
 23 available and diverted at Lake Havasu into the Colorado  
 24 River Aqueduct here.  
 25 Q. Does -- you testified a moment ago that the

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1 in which we put hyperlinks to .pdf's. And we wanted to  
 2 provide your Honor chambers copies of those items that  
 3 have been filed and served.  
 4 THE COURT: Okay. You have a CD?  
 5 Any objection?  
 6 MR. KEKER: We would like to look at the  
 7 glossary because I think some of it is argumentative. We  
 8 will have some objections.  
 9 THE COURT: Have a look and let me know what  
 10 you think.  
 11 See you tomorrow at 10:00.  
 12 (Proceedings concluded.)  
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<p style="text-align: center;"><b>A</b></p> <p><b>\$10</b> 70:1  <b>\$100</b> 21:7  <b>\$100,000</b> 70:9  <b>\$104</b> 65:25  <b>\$136</b> 36:19  <b>\$151</b> 20:16  <b>\$2.4</b> 111:12  <b>\$2.82</b> 44:21  <b>\$2.94</b> 72:7  <b>\$235</b> 136:9 137:23  <b>\$244</b> 21:11  <b>\$253</b> 138:11,16  <b>\$26</b> 21:15  <b>\$27</b> 104:11  <b>\$285</b> 20:5,16  <b>\$3</b> 72:7  <b>\$30</b> 65:1  <b>\$349</b> 90:20  <b>\$37</b> 44:22  <b>\$372</b> 36:12,14,19  <b>\$375</b> 148:6  <b>\$41</b> 44:19  <b>\$5</b> 134:5  <b>\$600,000</b> 70:7  <b>\$62</b> 104:15  <b>\$65</b> 44:8,15  <b>\$80</b> 131:18 136:3 138:6  <b>\$800</b> 71:17  <b>\$90</b> 131:11,13,14  132:16 135:10 138:5  <b>\$90-acre</b> 132:4  <b>\$95</b> 17:17  <b>\$98</b> 136:1  <b>abandoned</b> 162:13  <b>ability</b> 106:15 147:12  <b>able</b> 34:21 52:5,8 74:5  128:8 172:20  <b>above-mentioned</b>  181:7  <b>absent</b> 16:11  <b>absolutely</b> 46:8 48:25  60:7 141:1  <b>abstract</b> 152:7  <b>accept</b> 33:1 40:2  <b>access</b> 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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
BEFORE THE HONORABLE CURTIS A. E. KARNOW, JUDGE PRESIDING  
DEPARTMENT NUMBER 304

---oOo---  
SAN DIEGO COUNTY WATER AUTHORITY, )

Plaintiff, ) Case No. 510830

) Trial

vs. )

) Volume II

METROPOLITAN WATER DISTRICT OF )

SOUTHERN CALIFORNIA, ) Pages 182 - 366

)

Defendant, )

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Reporter's Transcript of Proceedings  
Wednesday, December 18, 2013

Reported by:  
CONNIE J. PARCHMAN, CSR 6137  
CERTIFIED REALTIME REPORTER

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1 DECEMBER 18, 2013 MORNING SESSION

2 P R O C E E D I N G S

3 ---000---

4 THE COURT: Good morning.

5 Yes, sir?

6 MR. KEKER: Your Honor, to begin, can I hand up  
7 a set of the slides that we showed yesterday --

8 THE COURT: Of course.

9 MR. KEKER: -- in the opening? And this is  
10 just what I showed you. It's not full documents in some  
11 cases.

12 THE COURT: I appreciate that.

13 Are we ready to start up with our questions?

14 DIRECT EXAMINATION (Cont.)

15 BY MR. BRAUNIG:

16 Q. Good morning, Mr. Cushman.

17 A. Good morning.

18 Q. When we left off yesterday, you had just  
19 finished talking to the Court about the IID transfer  
20 water and how that gets to San Diego. I want to turn  
21 your attention now to what you referred to as the canal  
22 lining water. Can you explain to the Court what the  
23 canal water -- canal lining water is?

24 A. The canal lining water is water that's  
25 conserved by the Water Authority building modern

1 concrete-lined canals in the Imperial Valley and  
2 Coachella Valley desert to replace unlined earthen  
3 canals. The Federal Government calculated the amount of  
4 water saved from not seeping into the ground anymore and  
5 that conserves water. About 80,000 acre-feet of that  
6 saved water goes to San Diego by the United States per  
7 year, 80,000 acre-feet per year, and we get that for the  
8 110-year term of that agreement.

9 Q. Can you adjust your microphone a little bit?

10 Can we pull up Exhibit 348A, please, PTX 348A.

11 Mr. Cushman, can you, using your laser pointer,  
12 direct the Court to where these canals are that were  
13 lined as part of the canal lining project?

14 A. Yes. This is the All-American Canal which  
15 connects to -- takes water off of the Colorado River at  
16 this point. And the All-American Canal for most of its  
17 length hugs the U.S. Mexican border on the U.S. side for  
18 approximately 82 miles heading due east. The Coachella  
19 branch of the All-American Canal is a spur off the  
20 All-American Canal at this location and travels up to the  
21 Coachella Valley in this lotion.

22 Q. How does the Water Authority get canal lining  
23 water to the citizens of the San Diego?

24 A. Met conveys that water to the San Diego, which  
25 is delivered by the United States to Met at this location

1 **Joaquin Bay Delta.**

2 Q. Turning your attention now to Met's wheel rate,  
3 why does San Diego believe that Met's rates are unlawful  
4 in connection with State Water Project costs?

5 A. Because Metropolitan adds to the price it  
6 charges for using the Metropolitan transportation  
7 facility, the Metropolitan aqueduct, Metropolitan  
8 pipelines. They add into the cost of using those  
9 pipelines the unrelated cost of purchasing the water  
10 supply through the State of California through its water  
11 supply contract with the Department of Water Resources.

12 When we go to Metropolitan to purchase  
13 transportation service for moving our third party water,  
14 we're not going to Metropolitan to buy Metropolitan water  
15 supplies and yet Metropolitan is adding the cost of the  
16 State Water Project supplies into the cost, into the  
17 charges they're charging us to move our independent IID  
18 and canal lining water.

19 Q. Putting aside for now Met's transportation of  
20 IID and canal lining water, which is the subject of a  
21 later trial, does San Diego engage in any wheel  
22 transactions with Met?

23 A. Yes. We have executed several one-year dry  
24 year water transfers for water supplies to supplement  
25 available supplies during water shortage allocations from

1 and travels through the aqueduct and ultimately to  
2 San Diego service connections in northern San Diego  
3 County.

4 Q. And when you said "the aqueduct," which  
5 aqueduct are you referring to?

6 A. The Colorado River Aqueduct.

7 Q. Does the canal lining water travel through the  
8 State Water Project?

9 A. No.

10 Q. How does the reliability of the canal lining  
11 water and the IID water compare to buying Met water?

12 A. Both of them are more reliable than  
13 Metropolitan Colorado River water. IID water is priority  
14 3 water on the Colorado River. Metropolitan has lower  
15 priorities on the Colorado River. They have priority 4  
16 and priority 5. Metropolitan's priority 5 Colorado River  
17 water is surplus only water, water only available in  
18 times of surplus on the Colorado River.

19 The canal lining water is simply provided under  
20 a contract with the United States Secretary of the  
21 Interior so it's superior reliability and the water shall  
22 be delivered over the term of that agreement. It's a  
23 commitment for the investments we made in lining the  
24 canals. And both of those supplies are more reliable  
25 than Bay Delta water that Metropolitan gets from San

1 Metropolitan. We executed three agreements in 2008 and  
2 2009 for supplemental dry year transfer supplies to  
3 supplement the supplies we're receiving overall and from  
4 Metropolitan.

5 Q. And why does San Diego enter into these kind of  
6 transactions?

7 A. Because we were in a water shortage allocation  
8 for nearly two years from Metropolitan. Metropolitan was  
9 in a shortage allocation from July 2008 to April of 2010,  
10 I believe mid-April 2010. And we went out into the  
11 market to buy additional water to help cover those  
12 shortages and serve our customers' needs.

13 Q. When Metropolitan transports this third party  
14 water for San Diego, what rate does Metropolitan charge?

15 A. It's wheeling rates.

16 Q. In the next drought cycle will San Diego seek  
17 to have Metropolitan once again transport third party  
18 water for it?

19 A. Yes.

20 Q. And what rate would you expect to be charged  
21 for that?

22 A. The wheeling rate.

23 Q. You said that there were a few times over the  
24 last few years when San Diego wheeled water -- or strike  
25 that.

1 When San Diego engages in these wheeling  
 2 transactions with Met, can they be on the Colorado River  
 3 or involving the State Water Project?  
 4 **A. Yes.**  
 5 Q. Over the last decade, how many times has  
 6 San Diego wheeled water that went through the State Water  
 7 Project?  
 8 **A. About three times.**  
 9 Q. What were those?  
 10 **A. In 2008, we negotiated water sale agreements**  
 11 **with the Butte Water District and the Sutter Extension**  
 12 **Water District. Those were for 10,000 acre-feet and**  
 13 **about 13,000 acre-feet respectively.**  
 14 **In that agreement, we also executed an**  
 15 **agreement with Metropolitan Water District to transport**  
 16 **that water. That water also involved an exchange with**  
 17 **Metropolitan where Metropolitan took the water and served**  
 18 **it, moved it all the way down to the service area and**  
 19 **moved it and exchanged the amount of that water in the**  
 20 **other storage aqueduct in the Semitropic Groundwater**  
 21 **Storage Bank.**  
 22 **That water remains in that storage bank. Under**  
 23 **the terms of that wheeling agreement, at such time the**  
 24 **Water Authority calls upon that water, Metropolitan will**  
 25 **transport that water from the storage bank through the**

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1 **State Water Project public facilities, through the**  
 2 **Metropolitan facilities and to the Water Authority and**  
 3 **charge us the wheeling rate in effect at that time in the**  
 4 **year of that transfer.**  
 5 Q. Okay.  
 6 **A. In 2009, we executed an agreement with the**  
 7 **Placer County Water Agency for 20,000 acre-feet of water**  
 8 **and that agreement was executed with Placer. A separate**  
 9 **wheeling agreement was executed with Metropolitan and**  
 10 **that water was fully conveyed by Metropolitan through the**  
 11 **State Water Project, through the State Water Project by**  
 12 **DWR, by Metropolitan through its system and to us in**  
 13 **San Diego by the end of 2009.**  
 14 Q. Over the last decade how many total acre-feet  
 15 of water have those transactions involved, those  
 16 transactions involving wheeling that goes through the  
 17 State Water Project?  
 18 **A. About 33,000 acre-feet.**  
 19 Q. And during that same period of time, how much  
 20 Met water has San Diego bought?  
 21 **A. About 5 million acre-feet.**  
 22 Q. And in that same period of time, how much IID  
 23 and canal lining water has San Diego paid to have  
 24 Metropolitan convey through the Colorado River Aqueduct?  
 25 **A. A little over a million acre-feet.**

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1 Q. I want to ask you a couple questions about the  
 2 Placer County Water -- Placer County Water Agency  
 3 transfer.  
 4 How much did San Diego pay to purchase that  
 5 water from Placer County?  
 6 **A. \$275 an acre-foot.**  
 7 Q. When Metropolitan delivered that water to you,  
 8 was it the same molecules of water that San Diego had  
 9 purchased from Placer County?  
 10 **A. No.**  
 11 Q. Why not?  
 12 **A. Because that small amount of water is**  
 13 **intermingled with all the water that's in the Bay Delta**  
 14 **itself that enters into the Banks Pumping Plant and State**  
 15 **Water Project, the northern part of the California**  
 16 **aqueduct and commingled with all the water that's flowing**  
 17 **through the aqueduct, California Aqueduct itself and**  
 18 **ultimately mingled with the water that's in the**  
 19 **Metropolitan facility when we're moving it through the**  
 20 **Metropolitan facility.**  
 21 Q. So was the mechanism an exchange?  
 22 **A. An exchange is the practical way which all**  
 23 **water transfers are conducted. Unless you have a**  
 24 **completely empty pipeline and aqueduct and there's no**  
 25 **transfers involved, or that we're talking about today**

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1 **where that existed, all transfers are functionally**  
 2 **executed through an exchange.**  
 3 Q. And just so we're clear, what rate did you pay  
 4 in connection with this Placer County transfer? What  
 5 rate did you pay to Metropolitan?  
 6 **A. The wheeling rate.**  
 7 Q. You mentioned as part of the -- this  
 8 transaction, Metropolitan had to wheel the Placer County  
 9 water through DWR's facilities. Through your  
 10 interactions with Met, have you gained an understanding  
 11 of what Metropolitan pays DWR when it wheels water  
 12 through the State Water Project?  
 13 **A. Yes. They pay the incremental cost of moving**  
 14 **that water through the DWR facilities.**  
 15 Q. Is that on top of Met's take-or-pay contract  
 16 for State Water Project water?  
 17 **A. Yes.**  
 18 Q. Was the Water Authority charged only those  
 19 incremental costs that DWR charged to Met?  
 20 **A. We were charged the Metropolitan wheeling rate**  
 21 **so no, not just the DWR incremental cost.**  
 22 Q. What else were you charged for?  
 23 **A. We were charged Metropolitan System Access**  
 24 **Rate, the Water Stewardship Rate and the power necessary**  
 25 **to move the water through DWR and Metropolitan's**

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1 facilities.

2 Q. When San Diego engages in wheeling transactions  
3 that include State Water Project facilities, does  
4 San Diego object to paying the costs it causes DWR to  
5 incur in wheeling that water?

6 A. No, we don't. We believe we ought to pay the  
7 cost of service of actually moving the water either from  
8 DWR's facilities and Metropolitan's facilities.

9 Q. Still keeping aside the exchange agreement,  
10 does San Diego have any open or pending wheeling  
11 transactions with Met?

12 A. Yes. Butte Water District, Sutter Extension  
13 Water District water transfer agreement with Metropolitan  
14 is still an open and active agreement. It only  
15 terminates after we have called upon the water and  
16 Metropolitan has delivered all of the water in that  
17 agreement to our service connections in Diego County.

18 Q. Where is that water right now?

19 A. It's in storage underground in the Semitropic  
20 Water Storage Bank in the Central Valley.

21 Q. When -- and when Metropolitan delivers that  
22 water to you, what rate will San Diego pay?

23 A. The agreement calls for Metropolitan to charge  
24 us the wheeling rate that is then in effect in the year  
25 that transfer water moves.

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1 acre-foot of water that Metropolitan sells -- excuse me,  
2 that Metropolitan transports through the Metropolitan  
3 facilities. It is a transportation charge.

4 Q. How does Metropolitan decide how to -- based on  
5 your experience and knowledge working with Metropolitan,  
6 how does Metropolitan divvy up the funds collected  
7 through the Water Stewardship Rate?

8 A. They receive applications from their member  
9 agencies to provide subsidy funds for local water supply  
10 development and they evaluate those and they bring those  
11 that they want to fund to the board of directors for  
12 approval.

13 Q. Okay. How much -- what's the size of the  
14 subsidy that Metropolitan provides?

15 A. It is a sliding scale, subsidy of up to \$250  
16 acre-foot produced by the local water supply project or  
17 program. And that sliding scale is dependent on the  
18 difference between the cost of producing that water, that  
19 local water supply and whatever the cost of  
20 Metropolitan's water is at that time.

21 So, such that over time, as the Metropolitan  
22 water rates increase and Delta, the difference between  
23 that and the local supply development decrease, the  
24 subsidy decreases, that's why it is called a sliding  
25 scale.

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1 Q. I want to ask you to turn your attention now to  
2 Metropolitan's Water Stewardship Rate. What is  
3 San Diego's complaint about the Water Stewardship Rate in  
4 the context of Met's wheeling rate?

5 A. Metropolitan includes 100 percent of the Water  
6 Stewardship Rate as a Transportation Rate for the use of  
7 Metropolitan's facilities. The water stewardship  
8 revenues recovered from the Water Stewardship Rate pay  
9 for water supply projects and programs.

10 Water recycling programs, groundwater recovery  
11 programs, water conservation programs and devices, sea  
12 water desalination development, whenever they pay a  
13 subsidy under that, all of those are local water  
14 supplies, all of those are the supply development or  
15 supply conservation programs, yet they charge 100 percent  
16 of those costs to the Transportation Rate and zero to  
17 Metropolitan's Water Supply Rate.

18 Q. Is water stewardship a service that  
19 Metropolitan provides?

20 A. No, a way to charge acre-feet that Metropolitan  
21 redistributes to its -- the member agencies it chooses to  
22 provide subsidy funds to.

23 Q. How are member agencies charged for the Water  
24 Stewardship Rate?

25 A. It is added -- it is a charge added to every

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1 Q. Do you know the standards Metropolitan uses in  
2 evaluating these applications?

3 A. Yes. They call it the open and sliding scale  
4 evaluation.

5 Q. Are you aware of -- let's -- can I ask the --  
6 Mr. Dahm to bring up -- actually, first can I ask you to  
7 turn in your binder to PTX 123. PTX 123 is the  
8 April 10th, 2007 board action.

9 Mr. Cushman, what is PTX 123?

10 A. It is a board memo from the Metropolitan Water  
11 District staff to its board of directors Water Planning  
12 and Stewardship Committee dated April 10th, 2007 and  
13 entitled "Authorized and Updated Policy and Procedure for  
14 Local Resources Program."

15 MR. BRAUNIG: Plaintiff's would move PTX 123  
16 into evidence.

17 MR. HIXSON: No objection.

18 THE COURT: 123 is admitted.

19 (Whereupon Exhibit PTX 123 was  
20 admitted into Evidence.)

21 BY MR. BRAUNIG:

22 Q. So what events at Metropolitan are reflected in  
23 PTX 123, this board meeting -- this board memo?

24 A. This is an action item presented to the  
25 committee and to the board to approve how Metropolitan  
will consider and award subsidy money under the local

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1 **resources program.**  
 2 Q. And was Metropolitan considering various  
 3 options for how to do -- how to disburse these funds?  
 4 **A. Yes. There are two alternatives delineated in**  
 5 **the memo and its attachments.**  
 6 Q. Can you go to attachment 3, please, which is  
 7 the -- attachment 3 is 156 at the bottom.  
 8 Mr. Cushman, is this one of the -- this  
 9 alternative number one, open program with sliding scale  
 10 incentive, is this one of the options that was being  
 11 considered?  
 12 **A. Yes.**  
 13 Q. Okay. And can you describe this option,  
 14 please?  
 15 **A. Yes. Under this option, Metropolitan would**  
 16 **accept applications on an open and continuous basis and**  
 17 **they would award subsidy agreements to projects on --**  
 18 **basically based on readiness to proceed basis.**  
 19 Q. And what was the second option -- let's go to  
 20 alternative number two, which is the next page.  
 21 **A. Alternative number two was called the priority**  
 22 **selection with fixed incentive schedule and it had a set**  
 23 **of specific evaluation or selection criteria under which**  
 24 **applications under this alternative would be evaluated.**  
 25 Q. Okay. What were the selection criteria on

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1 alternative two?  
 2 **A. The four selection criteria were probability of**  
 3 **success, which was weighted with a 40 percent weighting**  
 4 **factor in the evaluation, regional water supply and**  
 5 **facility benefits, which was weighted at 30 percent, cost**  
 6 **to Metropolitan was weighted at 20 percent, and regional**  
 7 **water quality and environmental benefits was weighted at**  
 8 **ten percent.**  
 9 Q. And I want to draw your attention to two  
 10 paragraphs down where regional water supply benefits are  
 11 sort of broken out. What -- in this evaluation, what did  
 12 Metropolitan understand regional water supply benefits to  
 13 be as a selection criteria?  
 14 MR. WEST: I'm going to object. Calls for  
 15 speculation. He's testifying about what Metropolitan  
 16 believed.  
 17 THE COURT: Well, are you just asking him to  
 18 read this, basically? Does he have anything to add to  
 19 what I might read? I'm not sure what your question is.  
 20 MR. BRAUNIG: I was asking if he understands  
 21 what Metropolitan was considering as the water supply  
 22 benefits as a criteria.  
 23 THE COURT: Why would he know?  
 24 BY MR. BRAUNIG:  
 25 Q. Do you know, Mr. Cushman?

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1 **A. Just what they put in the program, which are**  
 2 **those four criteria as listed on the memo.**  
 3 Q. I'll move on, then.  
 4 Which approach was taken, alternative number  
 5 one or alternate number two?  
 6 **A. Alternative one, the open and sliding scale**  
 7 **alternative.**  
 8 Q. In the course of your job, do you review Met  
 9 board memoranda prepared in support of specific local  
 10 resource programs and conservation programs?  
 11 **A. Yes.**  
 12 Q. In reading those memoranda, does Metropolitan  
 13 indicate the avoided costs it believes those specific  
 14 programs will generate?  
 15 **A. No.**  
 16 Q. Okay. To the best of your knowledge, does  
 17 Metropolitan attempt to monitor what benefits there might  
 18 be from those specific programs?  
 19 MR. WEST: I'm going to object again as calls  
 20 for speculation.  
 21 THE COURT: Overruled. This is just a question  
 22 based on his information. It may be incomplete and I  
 23 understand that.  
 24 Go ahead.  
 25 THE WITNESS: No. The only monitoring or

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1 auditing that Metropolitan does is to assure that the  
 2 acre-foot produced by the project or the program that  
 3 Metropolitan provides the subsidy for, subsidy payment  
 4 for was actually produced. So there's a reconciliation  
 5 of that but there isn't an evaluation or reconciliation  
 6 of what benefits provided to Metropolitan in terms of  
 7 regional water supply or facilities.  
 8 BY MR. BRAUNIG:  
 9 Q. Is the Water Authority allowed to receive  
 10 benefits under the local resource program?  
 11 **A. No. We've been barred from receiving funding**  
 12 **from the program.**  
 13 Q. Why?  
 14 **A. Through Metropolitan's execution of the rate**  
 15 **structure integrity provision in 2011, they canceled**  
 16 **existing agreements that were in place that had that**  
 17 **provision in it.**  
 18 **They deferred any action and refused to**  
 19 **consider three specific pending agreements that were**  
 20 **pending for final execution by Metropolitan at the time**  
 21 **and they barred us from any future subsidy money from**  
 22 **future applications to Metropolitan.**  
 23 Q. I think I asked that question in the context of  
 24 the local resources program but is the same true for the  
 25 Water Authority's ability to participate in the

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1 conservation or sea water desalination programs?  
 2 **A. Yes.**  
 3 Q. Can I ask you to turn to PTX 179 in your  
 4 binder, please?  
 5 And, Mr. Cushman, what is PTX 179?  
 6 **A. It is a letter dated August 25th, 2010 from**  
 7 **Metropolitan's general manager Jeffrey Kightlinger to the**  
 8 **Water Authority's general Maureen Stapleton titled**  
 9 **"Notice of intent to initiate process to consider**  
 10 **termination of incentive agreements with the Water**  
 11 **Authority."**  
 12 MR. BRAUNIG: We would move PTX 179 into  
 13 evidence.  
 14 MR. WEST: No objection.  
 15 THE COURT: 179 is admitted.  
 16 (Whereupon Exhibit PTX 179 was  
 17 admitted into Evidence.)  
 18 BY MR. BRAUNIG:  
 19 Q. Is this the letter that was sent at the  
 20 beginning of the RSI process?  
 21 **A. Yes.**  
 22 Q. Okay. And can you look -- looking at sort of  
 23 the list of programs there, did Metropolitan identify  
 24 specific programs that it intended to cancel that  
 25 otherwise would provide subsidy benefits to San Diego?  
**A. Yes. They're listed in that table with the**

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1 **agreement numbers in the right-hand column.**  
 2 Q. And did Metropolitan in PTX 179, did  
 3 Metropolitan also identify the programs that it would no  
 4 longer consider that were pending before the board at  
 5 that time?  
 6 **A. Yes. They're on page 2 in a similar table and**  
 7 **they're listed there: Conservation, innovative**  
 8 **conservation and sea water desalination, and the**  
 9 **agreement numbers were shown in the right-hand column.**  
 10 Q. Did Metropolitan ultimately follow through on  
 11 its threats to cancel San Diego's LRP and conservation  
 12 programs and desalination programs?  
 13 **A. Yes. They canceled the local resource program,**  
 14 **recycling agreement and most of the conservation**  
 15 **agreements and deferred -- they canceled the agreements.**  
 16 **They retooled some of the conservation for payments**  
 17 **directly to consumers but by and large, they were**  
 18 **canceled.**  
 19 Q. Can I ask you to turn in your binder to PTX  
 20 201?  
 21 What is PTX 201?  
 22 **A. It is a letter dated June 23rd, 2011, from MWD**  
 23 **general manager Jeffrey Kightlinger to Water Authority**  
 24 **general manager Maureen Stapleton regarding board action**  
 25 **regarding rate structure integrity provisions and**

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1 **termination of agreements.**  
 2 MR. BRAUNIG: We would move it into evidence as  
 3 well.  
 4 THE COURT: That includes the attachments,  
 5 which is agreements, for example 94278?  
 6 MR. BRAUNIG: Yes. I believe it was all one  
 7 document.  
 8 MR. WEST: No objection.  
 9 THE COURT: 201 is admitted.  
 10 MR. BRAUNIG: Thank you.  
 11 (Whereupon Exhibit 201 was  
 12 admitted into Evidence.)  
 13 BY MR. BRAUNIG:  
 14 Q. Drawing your attention to the paragraph at the  
 15 bottom of the first page with 323 at the bottom, starting  
 16 with "pursuant," what is it that Metropolitan informed  
 17 the Water Authority in this June 23rd, 2011 letter?  
 18 **A. That it's terminating in item number one at the**  
 19 **bottom of the agreement, ECP24-2007, effective on the**  
 20 **date noted, July 25th, 2011, terminates agreement 94278**  
 21 **effective August 8, 2011, and that it would modify or**  
 22 **issue addendas to two other agreements to eliminate**  
 23 **approval of funding for the Water Authority's member**  
 24 **agency administered conservation programs -- or projects,**  
 25 **rather.**  
 Q. Okay. Did Metropolitan give any indication of

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1 whether or not it would consider from San Diego any  
 2 future requests to participate in these local resource  
 3 program, conservation and desalination programs?  
 4 **A. Yes. It's on page 2 of the letter. Item 4**  
 5 **listed at the top says that pending incentive agreements**  
 6 **that have been or may be submitted to Metropolitan will**  
 7 **not be executed prior to further action and direction**  
 8 **from the Metropolitan board.**  
 9 Q. Since June of 2011, when the Water Authority  
 10 received this letter, has San Diego submitted any  
 11 applications for local resource program conservation or  
 12 desalination programs?  
 13 **A. No.**  
 14 Q. Why not?  
 15 **A. They would be dead on arrival. Metropolitan**  
 16 **has told us they will not be executed.**  
 17 Q. If Met had not declared that San Diego couldn't  
 18 participate in these programs, would San Diego have  
 19 applied for funding for local resource conservation and  
 20 sea water programs?  
 21 **A. Yes. We always did.**  
 22 Q. Does San Diego still have to pay into the Water  
 23 Stewardship Rate though?  
 24 **A. Yes.**  
 25 Q. How much did San Diego pay in Water Stewardship

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1 rates in 2012, including payments under the exchange  
2 agreement?

3 **A. Between 15 and \$20 million. Probably closer to**  
4 **\$20 million.**

5 Q. When San Diego received money from Met for  
6 local resource program and conservation programs, who  
7 benefited from those programs?

8 MR. WEST: Objection. This calls for  
9 speculation.

10 THE COURT: Overruled. He may have some idea.  
11 Go ahead.

12 THE WITNESS: The agencies that received the  
13 funding from the agreements and their rate payers.

14 BY MR. BRAUNIG:

15 Q. So when San Diego received those funds, who do  
16 you -- who benefited from those?

17 **A. San Diego.**

18 Q. When Metropolitan funds local resource program  
19 and conservation programs within other member agencies,  
20 does San Diego benefit from those?

21 **A. No, not directly.**

22 THE COURT: Does it benefit indirectly by  
23 increased water supply or something like that?

24 THE WITNESS: Yeah. Theoretically, development  
25 of local water supplies, as long as an agency is actually

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1 Q. In this case --

2 **A. They're peaking in that dry year. Excuse me.**

3 Q. Excuse. I'm sorry.

4 In this case, what does San Diego believe Met  
5 has done or not done with respect to dry year peaking?

6 **A. They have not collected revenues from the**  
7 **agencies that cause the dry year peaking on Metropolitan**  
8 **proportionate to their burdens on Metropolitan for that**  
9 **dry year peaking, so they don't recover revenues on that**  
10 **basis.**

11 Q. How do the dry year peaking allegations that  
12 San Diego are making relate to Met's wheeling rate?

13 **A. To the extent that Metropolitan is not**  
14 **recovering the costs caused by that dry year peaking from**  
15 **those who are causing the dry year peaking, they're**  
16 **recovering the revenues to pay for those benefits to**  
17 **those agencies through their volumetric rates that**  
18 **include the rates they're charging for wheeling.**

19 Q. Do you have any factual basis for asserting  
20 that Metropolitan is collecting dry year peaking costs  
21 through its volumetric rates?

22 **A. Yes.**

23 Q. What is that?

24 **A. Well, first Metropolitan told us they do that**  
25 **in response to interrogatory -- special interrogatory 15**

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1 deferring the purchase of Metropolitan supplied water,  
2 there could be a benefit to it, but it's never been  
3 calculated or analyzed by Metropolitan that it actually  
4 does that.

5 BY MR. BRAUNIG:

6 Q. You testified earlier that Metropolitan  
7 charges the Water Stewardship Rate as part of its  
8 wheeling rate. Have you seen any report or study that  
9 connects wheeling with Metropolitan's need to spend  
10 \$60 million a year on conservation and water supply  
11 programs?

12 **A. No.**

13 Q. Are you aware of any Metropolitan analysis or  
14 report that attempts to determine whether Metropolitan  
15 collects the Water Stewardship Rate rate proportionately  
16 to the agencies who benefit from Water Stewardship Rate  
17 funding?

18 **A. No.**

19 Q. I want to turn your attention now to dry year  
20 peaking. What does the "term dry year peaking" refer to?

21 **A. Refers to the practice of some member agencies**  
22 **at Metropolitan who rely on methodology in normal or wet**  
23 **years for comparatively less water but in dry years, roll**  
24 **on to Metropolitan with far greater demands for water**  
25 **from Metropolitan in the dry year.**

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1 **in this litigation.**

2 **Secondly, they demonstrated that and told that**  
3 **to their board of directors in November of 2009 when they**  
4 **came to the board and recommended the board change their**  
5 **cost allocation to move the cost of their dry year**  
6 **storage in the terminal reservoirs from their**  
7 **transportation charge which is charged on wheeling to**  
8 **their supply rate.**

9 **And third, we know that through the engineer's**  
10 **report attached to Metropolitan's rate setting board**  
11 **memos and which describes the RTS charge and what the RTS**  
12 **charge recovers and doesn't recover.**

13 Q. And how does that -- how did that engineer's  
14 report shed light on this question of whether  
15 Metropolitan recovers dry year peaking costs through its  
16 rate agreement?

17 **A. Shows Metropolitan calculated the standby needs**  
18 **of the certain categories recovered by the RTS, they came**  
19 **up with a number and then they only recovered less than**  
20 **half of that number from the RTS.**

21 **So to the extent that they're recovering less**  
22 **than half of the actual charge that they calculated for**  
23 **the RTS from the RTS itself, they were recovering the**  
24 **rest of those revenues through their commodity rates that**  
25 **included the transportation rates that they --**

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1 MR. WEST: Belated objection, your Honor. Best  
 2 evidence rule. He's testifying to the contents of a  
 3 document. Best evidence of the content of the document  
 4 is the document itself.  
 5 THE COURT: I agree. I'm just going to take  
 6 this as sort of a summary of the allegations. I'll be  
 7 relying on the actual document and we'll figure out what  
 8 that actually says.  
 9 MR. BRAUNIG: Of course, your Honor. That's a  
 10 document in the administrative record and we're going to  
 11 be talking about that more later.  
 12 Q. I would like to -- Mr. Cushman, I would like to  
 13 direct your attention in your binder to the tab  
 14 AR2010-10753 and that's in the administrative record  
 15 document. Let's go ahead and put it up on the board.  
 16 Mr. Cushman, you were referring -- you were  
 17 testifying a few moments ago about a November -- or fall  
 18 of 2009 presentation made to Metropolitan's board of  
 19 directors that addressed dry year peaking related issues.  
 20 Is this the document that you were referring to?  
 21 **A. Yes. This is the Metropolitan staff**  
 22 **presentation to its board on that issue.**  
 23 Q. Okay. I would like to turn your attention to  
 24 page 4 of this document, and this is the page that has at  
 25 the top "one adjustment is recommended, State Water

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1 Project flex storage."  
 2 There is a reference in this document to  
 3 Castaic Lake and Lake Perris. What are Castaic lake And  
 4 Lake Perris?  
 5 **A. Castaic Lake and Lake Perris are the terminal**  
 6 **reservoirs on the State Water Project System in Southern**  
 7 **California.**  
 8 **Castaic Lake is the terminal reservoir on the**  
 9 **west branch of the State Water Project and Lake Perris is**  
 10 **the terminal reservoir on the east branch of the State**  
 11 **Water Project.**  
 12 Q. And what's your understanding of what flex  
 13 storage refers to?  
 14 **A. Flex storage is Metropolitan's dry year storage**  
 15 **that it maintains in those two reservoirs for use in the**  
 16 **dry year supply needs.**  
 17 Q. There is a reference in the second bullet below  
 18 the second sub bullet that says this agreement provides a  
 19 dry year supply benefit to Metropolitan. What do you  
 20 understand that to mean?  
 21 **A. That means in dry years, Metropolitan is able**  
 22 **to withdraw water from this flex storage in each of those**  
 23 **two reservoirs to meet the dry year supply needs of its**  
 24 **member agencies in the year in which they're withdrawing**  
 25 **the water.**

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1 Q. How currently does Metropolitan recover the  
 2 costs associated with this State Water Project flex  
 3 storage?  
 4 **A. Through the transportation charges at**  
 5 **Metropolitan.**  
 6 Q. Okay. Can we turn to page 6 of this document?  
 7 Is that fact reflected on page 6 of this  
 8 document?  
 9 **A. Yes, on the first bullet, that Castaic and**  
 10 **Perris reservoir costs are included in the conveyance**  
 11 **function.**  
 12 Q. Does this document indicate the specific rates  
 13 or charges through which these costs are recovered?  
 14 **A. Yes. The second sub bullet says the costs are**  
 15 **recovered in the System Access Rate and RTS charge.**  
 16 Q. And in this presentation, what is it that  
 17 Metropolitan staff was recommending?  
 18 **A. In this presentation, Metropolitan staff was**  
 19 **recommending moving the costs of flex storage from the**  
 20 **conveyance function or from the SAR and RTS charge to the**  
 21 **Water Supply Rate at Metropolitan.**  
 22 Q. Turning your attention to page 7, is page 7  
 23 where the Metropolitan staff laid this out?  
 24 **A. Yes. On page 7, they are saying that a portion**  
 25 **of the Castaic and Perris reservoirs is used for drought**

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1 **storage and their costs should be treated as a supply**  
 2 **cost as discussed in the first bullet on page 7.**  
 3 Q. As part of this -- as part of this approach  
 4 that the Met staff was recommending, was it able to  
 5 calculate the portion of costs that are associated with a  
 6 dry year benefit?  
 7 **A. Yes. In the second sub bullet to the second**  
 8 **bullet the drought share or the flex storage amount of**  
 9 **the total storage in those two reservoirs was 219,000**  
 10 **acre-feet out of 454,000 acre-feet of total storage.**  
 11 Q. And did the Met staff indicate in any way  
 12 whether taking that -- that change to the allocation of  
 13 these costs would be consistent with its -- with other  
 14 decisions that it makes in its cost of service analysis?  
 15 MR. WEST: I'm going to object, your Honor.  
 16 Can we clarify the record whether the witness is talking  
 17 about the document itself or the representation made at  
 18 the board meeting, which I don't believe we've  
 19 established he's been there.  
 20 THE COURT: I agree. I take it we're just  
 21 walking through the document here. Is that what's going  
 22 on?  
 23 MR. BRAUNIG: For the moment, yes.  
 24 THE COURT: That's the way I'll take it.  
 25 Go ahead.

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1 THE WITNESS: I'm sorry. Could you repeat the  
 2 question?  
 3 BY MR. BRAUNIG:  
 4 Q. Yeah. The question was during this process --  
 5 let me ask you this. Were you involved at all in the  
 6 cost of service review that led -- that led up to this  
 7 decision?  
 8 A. Yes. I was involved in quite a number of  
 9 meetings and discussions at Metropolitan during those  
 10 various processes: The long-range finance plan  
 11 discussions, the rate refinement process discussions at  
 12 Metropolitan in which the Water Authority was identifying  
 13 these and other costs do not belong on the transportation  
 14 charges and belong on Metropolitan's supply rate. And in  
 15 this instance, Metropolitan took this item to the board  
 16 with the acknowledgment it's in the wrong category and  
 17 recommended putting it in the supply rate category.  
 18 Q. And do you know how -- how the board ultimately  
 19 responded to this proposal by the Met staff?  
 20 A. They did not take the action to make the change  
 21 so the change was not made.  
 22 Q. As far as you know, were these dry year drought  
 23 storage costs still on Metropolitan's System Access Rate?  
 24 A. Yes.  
 25 Q. Let me ask you this as well. Is San Diego

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1 challenging Met's Capacity Charge in this case?  
 2 A. No.  
 3 Q. Does San Diego claim that Met has failed to  
 4 account for the costs of peak day capacity?  
 5 A. No.  
 6 Q. Let me ask you another question relating to  
 7 peaking. Are you aware of any other Metropolitan --  
 8 documents where Metropolitan has spelled out the amount  
 9 of annual variation or peaking that any of its member  
 10 agencies engage in?  
 11 A. Yes. Their official statement in their bond  
 12 offering quantified the dry year peaking done by the Los  
 13 Angeles Department of Water and Power.  
 14 MR. WEST: Best evidence objection, your Honor.  
 15 THE COURT: Overruled. He's just describing  
 16 the document.  
 17 BY MR. BRAUNIG:  
 18 Q. Okay. The document is, per the parties'  
 19 stipulation, in evidence, PTX 244.  
 20 Mr. Cushman, is this the official statement you  
 21 are referring to?  
 22 A. Yes.  
 23 Q. If you look at the date in the bottom left  
 24 corner of the first page, when was this generated by  
 25 Metropolitan?

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1 A. June 19th, 2013.  
 2 Q. What's the -- do you have experience with  
 3 official statements in your role as an assistant general  
 4 manager at San Diego County Water Authority?  
 5 A. Yes. I reviewed quite a number of official  
 6 statements, both of Metropolitan and the Water Authority.  
 7 Q. What's the purpose of an official statement?  
 8 A. Official statement's purpose is to disclose to  
 9 bond buyers or investors the various risks and public  
 10 potential issues they should be aware of when evaluating  
 11 whether to invest in or buy these bonds.  
 12 Q. Okay. In Metropolitan's official statement,  
 13 did it disclose information about Los Angeles's dry year  
 14 peaking behavior?  
 15 A. Yes, they quantified it in this document.  
 16 Q. Okay. Can I ask you to turn to page A30.  
 17 Let's blow up -- let's go to A29 and the  
 18 header. This is -- what's the header in which  
 19 Metropolitan did this -- in which Metropolitan disclosed  
 20 this information?  
 21 A. It's a section of the bond disclosure titled  
 22 "Los Angeles Aqueduct."  
 23 Q. Okay. And now turning your attention to page  
 24 A30, is this the page you're referring to in which you  
 25 testified Metropolitan disclosed information about Los

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1 Angeles's dry year peaking?  
 2 A. Yes.  
 3 Q. Okay. Can we blow up the second paragraph,  
 4 please?  
 5 And what specifically were you referring to in  
 6 giving the testimony that you just gave about  
 7 Metropolitan's disclosure?  
 8 A. They disclosed that during a ten-year period,  
 9 from fiscal year 2000-2001 through fiscal year 2010-'11,  
 10 that the City of Los Angeles has total requirements from  
 11 Metropolitan varied from approximately 32 percent to  
 12 71 percent of the city's total water needs.  
 13 It discloses later on in the paragraph that  
 14 deliveries from Metropolitan to the city during the  
 15 period varied between approximately 167,000 acre-feet per  
 16 year and approximately 433,000 acre-feet per year.  
 17 Q. Did Metropolitan disclose any information about  
 18 long-term expectations of Los Angeles's peaking?  
 19 A. Yes. At the very end, the last couple of  
 20 sentences in the paragraph talked about the city may  
 21 still purchase up to 511,000 acre-feet or 82 percent of  
 22 its dry year supplies from Metropolitan over the next 25  
 23 years and corresponds to their normal or dry year  
 24 purchases from Metropolitan of 255,000 acre-feet over  
 25 that period.

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1 Q. And in your view, what does this document  
 2 demonstrate about Metropolitan's dry year peak -- or  
 3 about dry year peaking issues?  
 4 **A. That the purchases from L.A. Department of  
 5 Water and Power vary greatly in multiples of twice to two  
 6 and a half times their demands in dry years compared to  
 7 their wet or normal year demands.**  
 8 Q. Which rates -- which rates is San Diego  
 9 challenging in these two chases?  
 10 **A. Challenging the System Access Rate, the Water  
 11 Stewardship Rate and the Power Rate.**  
 12 Q. In what specific years?  
 13 **A. In calendar years 2011 through '14 inclusive.**  
 14 Q. When were the rates set for 2011 and 2012?  
 15 **A. They were adopted by the Metropolitan board in  
 16 2010.**  
 17 Q. Did the San Diego County Water Authority oppose  
 18 those rates?  
 19 **A. Yes.**  
 20 Q. How so?  
 21 **A. The Water Authority submitted testimony, both  
 22 written testimony, oral testimony, cost of service  
 23 reports conducted by -- produced by experts. We provided  
 24 oral testimony at the public hearing in March of 2013,  
 25 written testimony at the public hearing, additional**

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1 **written and oral correspondence at the April board of  
 2 directors meeting at Metropolitan before Metropolitan  
 3 adopted these rates.**  
 4 Q. How did San Diego's delegates to the Met board  
 5 vote on Met's 2011 and 2012 rates?  
 6 **A. They voted no.**  
 7 Q. When were the rates set for calendar years 2013  
 8 and 2014?  
 9 **A. Metropolitan adopted those rates in April of  
 10 2012.**  
 11 Q. Did San Diego -- did San Diego County Water  
 12 Authority oppose those rates?  
 13 **A. Yes.**  
 14 Q. Again, how so?  
 15 **A. Just as we did in 2010, we submitted quite a  
 16 lot of correspondence and documents to the Metropolitan  
 17 board of directors, we provided written and oral  
 18 testimony at the public hearing in March of 2012, again  
 19 at the April board meeting, Metropolitan submitted  
 20 additional testimony and documents. We were well on the  
 21 record opposing those rates.**  
 22 Q. Okay. How did San Diego delegates vote on the  
 23 2013-2014 rates?  
 24 **A. They voted no.**  
 25 Q. How long has San Diego been complaining about

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1 Met's allocation of State Water Project costs to its  
 2 transportation rates?  
 3 **A. As far back as the 1990s. We have a rich and  
 4 lengthy catalog of correspondence to Metropolitan on this  
 5 subject of allocation of State Water Project rates to its  
 6 transportation rates. We have participated in countless  
 7 processes and committees of both management as well as  
 8 board committees by our directors at Metropolitan  
 9 putting forth our opposition to how Metropolitan  
 10 misallocates its rates among its various rates and  
 11 charges and how it misallocates State Water Project  
 12 supply costs to its transportation rates.**  
 13 Q. What about Metropolitan's inclusion of the  
 14 Water Stewardship Rate in its transportation rates?  
 15 **A. Yes, we've made clear our opposition to  
 16 charging 100 percent of local water supply development  
 17 and conservation costs on transportation and zero of  
 18 those costs on the Water Supply Rate at Metropolitan.  
 19 We've made clear those are water supply costs that should  
 20 be recovered through Metropolitan's Water Supply Rate.**  
 21 Q. How about the dry year peaking issue? Is that  
 22 an issue that San Diego has been raising for a long  
 23 period of time?  
 24 **A. Yes. Similar to the other objections we've  
 25 had, we've raised the issue that Metropolitan is not**

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1 **recovering the cost of dry year peaking from those  
 2 entities that are causing the dry year peaking costs and  
 3 that they're recovering those costs through their other  
 4 rates and charges, which again burden inappropriately the  
 5 transportation charges for using Met's transportation  
 6 system.**  
 7 Q. Metropolitan unbundled its rates in 2003.  
 8 Without asking you to disclose attorney-client  
 9 information within the Water Authority, why didn't  
 10 San Diego sue before 2010?  
 11 **A. Because we have in the exchange agreement with  
 12 Metropolitan a five-year litigation time out provision  
 13 under which the Water Authority agreed not to challenge  
 14 Metropolitan's rates for a period of five years from the  
 15 execution of that agreement.**  
 16 Q. Okay. What about after five years? Were there  
 17 any reasons that San Diego didn't sue before 2010?  
 18 **A. Yes. We were involved throughout 2008 and '9  
 19 in various internal process at Metropolitan, both within  
 20 the Metropolitan general managers of its member agencies,  
 21 the rate requirement process, the long-range finance plan  
 22 process where Metropolitan said it was going to address  
 23 these concerns and these issues about the allocation of  
 24 its costs among its rates. So we worked in good faith  
 25 with Metropolitan both from a staff to staff, management**

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1 to management and at the board of directors by our  
2 delegates to try to get these issues addressed by  
3 Metropolitan.

4 Q. Does San Diego take the decision to bring this  
5 lawsuit lightly?

6 A. No. It's a very serious, costly endeavor. It  
7 was made aafter considerable discussion by our board.

8 Q. San Diego has alleged in this case that  
9 Metropolitan's wheeling rates include costs that are  
10 unrelated to wheeling. And how does that affect  
11 San Diego?

12 A. Well, first it results in tens of millions of  
13 dollars of overcharges to the Water Authority each year  
14 and to our rate payers.

15 It also overburdens improperly the wheeling  
16 rate and discourage us from doing more wheeling  
17 transactions where we could acquire additional water  
18 supplies from other parties.

19 Q. Let me ask you this as well. Do any other  
20 member agencies besides San Diego use Met to provide  
21 transportation services for third party water?

22 A. No, not really.

23 Q. You understand that you're testifying today  
24 about primarily about Metropolitan's wheeling rates but  
25 does San Diego also challenge Met's transportation rates

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1 (Brief break.)

2 THE COURT: Let's continue with  
3 cross-examination.

4 MR. WEST: Your Honor, we have a binder of  
5 documents and also a copy for Mr. Cushman's deposition we  
6 would like to provide your Honor.

7 THE COURT: I appreciate it.

8 MR. HIXSON: Thank you.

9 MR. WEST: No problem.

10 CROSS-EXAMINATION

11 BY MR. WEST:

12 Q. Good morning, Mr. Cushman. Good to see you  
13 again.

14 A. Good morning.

15 Q. Remember, I deposed you a couple months ago;  
16 right?

17 A. Yes.

18 Q. And at your deposition, you admitted you were  
19 not a rate allocation expert; right?

20 A. Correct.

21 Q. And I think you testified that MWD adopted its  
22 current unbundled rate structure in January of 2003; is  
23 that right?

24 A. That's when it first took effect.

25 Q. But it was actually voted on in -- earlier than

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1 more broadly?

2 A. Yes. We're challenging the System Access Rate,  
3 the Water Stewardship Rate and the System Power Rate.

4 Q. Is that for the same reasons you've articulated  
5 today?

6 A. Yes. They've overburdened the System Access  
7 Rate, the System Power Rate with their cost of their  
8 water supply from the State Water Project. And they  
9 burdened the transportation charge with 100 percent of  
10 the costs of developing local water supplies and  
11 conservation, and they burdened the Transportation Rate  
12 with that -- with all of those costs.

13 MR. BRAUNIG: Pass the witness.

14 THE COURT: Your understanding is that no other  
15 member agency wheels water through the Metropolitan  
16 system?

17 THE WITNESS: No. The Water Authority is the  
18 only agency that goes to Metropolitan every year to buy  
19 separate transportation service for independent supplies.  
20 Metropolitan, I'm not aware in the last ten years of them  
21 doing any transactions for any other parties.

22 THE COURT: Would you like to take a recess now  
23 before cross?

24 MR. WEST: Sounds good, your Honor.

25 THE COURT: Ten minutes.

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1 that, in 2001; is that right?

2 A. Yes. The Metropolitan unbundled its rates in  
3 2001 for -- to take effect in January of 2003.

4 THE COURT: If you could just keep your voice  
5 up a little bit. Thank you.

6 BY MR. WEST:

7 Q. I want do direct your attention to an exhibit  
8 which is Defendants' Exhibit 49, which is tab 4 in your  
9 binder.

10 Do you recognize this document, Mr. Cushman?

11 A. Yes.

12 Q. What is it?

13 A. It's a board of directors memo from  
14 Metropolitan staff to its board of directors Budget  
15 Finance and Investment Committee dated March 11th, 2003  
16 titled "Adopt recommended water rates and charges and  
17 resolutions to impose charges for fiscal year 2003 and  
18 '04."

19 Q. And turn to Bates number 7121 in the bottom  
20 right corner. Do you see that?

21 A. Yes.

22 Q. Do you recognize that document also?

23 A. Yes.

24 Q. What is that?

25 A. That is a letter to Ron Gastelum, who was then

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1 **the president and CEO of Metropolitan Water District,**  
2 **from Maureen Stapleton, the engineering manager of the**  
3 **Water Authority.**

4 Q. And at the time, you were assistant general  
5 manager of the Water Authority; correct?

6 A. Yes.

7 THE CLERK: I'm sorry. This a different  
8 exhibit or part of the first exhibit?

9 MR. WEST: It is part of the first exhibit.

10 Q. And that's the document we were talking about,  
11 the letter from Ms. Stapleton?

12 A. Yes.

13 Q. And this letter says, if you see the first  
14 line, the Water Authority has identified issues in the  
15 setting and adoption of proposed rates and charges  
16 deserving of comment?

17 A. Yes.

18 Q. Do you see that?

19 A. Yes.

20 Q. This letter was laying out the Water  
21 Authority's issue with the rates that were then in  
22 effect; correct?

23 A. **It is laying out the issues with the rates that**  
24 **were being considered at the time, yes.**

25 Q. And I want to direct your attention -- I want

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1 these goals can be met without unnecessarily increasing  
2 the system access charge and the Water Stewardship Rate  
3 this year.

4 This letter says nothing else about the Water  
5 Stewardship Rate; correct?

6 A. **Without having read the entire letter, as I sit**  
7 **here, I don't see that.**

8 Q. You can take your time to read it, sir.

9 A. Okay.

10 THE COURT: Do you want him to read the whole  
11 letter now? It's up to you.

12 MR. WEST: Yeah. It is not that long of a  
13 letter.

14 THE WITNESS: Not that I can see, no.

15 BY MR. WEST:

16 Q. As far as you were aware, in terms of how it  
17 allocated the Water Stewardship Rate, the transportation  
18 rates, MWD did nothing differently in 2003 than it is  
19 currently doing with respect to those transportation  
20 rates; correct?

21 A. **I'm sorry. Could you repeat the question,**  
22 **please?**

23 Q. Sure. As far as you were aware, MWD allocated  
24 the Water Stewardship Rate to transportation rates back  
25 then just like it is doing now; correct?

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1 to talk about the Water Stewardship Rate. This letter  
2 talks about the Water Stewardship Rate, doesn't it?

3 If you go to the page ending 7122, the last  
4 paragraph there, do you see that?

5 A. Yes.

6 Q. And this is after the Water Stewardship Rate  
7 had been adopted; correct?

8 A. **When -- it was after, when the rates were**  
9 **unbundled but before the rates were adopted.**

10 Q. The rates were adopted on January 1, 2003.  
11 This is --

12 A. **I'm sorry. Yes, you're right.**

13 Q. This letter says the Water Authority supports  
14 the goal of increasing the production of recycled water  
15 and increasing support for economic water conservation  
16 programs, requiring an increase in the Water Stewardship  
17 Rate.

18 (Interruption by court reporter.)

19 BY MR. WEST:

20 Q. The Water Authority wants to continue to  
21 support local resource management and development  
22 programs like these and the emerging sea water  
23 desalination program as valuable contributions to the  
24 region's long-term water stability.

25 However, the Water Authority believes that

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1 A. **Correct, yes.**

2 Q. I want to talk about -- this talks about the  
3 System Power Rate; correct?

4 A. Yes.

5 Q. And if you go to the -- it's actually in the  
6 middle of the page. You see the heading there, the  
7 System Power Rate?

8 A. Yes.

9 Q. And at this point in time, the San Diego Water  
10 Authority knew that the System Power Rate included State  
11 Water Project power costs, didn't it?

12 A. Yes.

13 Q. And this letter says the System Power Rate  
14 provides an excellent example of rate component  
15 transparency. As energy markets have returned to near  
16 normal prices, the anticipated costs of energy for  
17 pumping operations have decreased dramatically. The  
18 Water Authority supports the decrease in System Power  
19 Rate.

20 This letter says nothing else about the System  
21 Power Rate; correct?

22 A. **Not that I can see, no.**

23 Q. Then again -- strike that.

24 I want to jump ahead a few months. You are  
25 familiar with the 2003 exchange rate; correct?

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1           **A. Yes.**  
2           Q. And if you could go to Plaintiff's Exhibit 65,  
3 Barbara.  
4           Mr. Cushman, it's tab 6 in your binder.  
5           And MWD and San Diego entered into this  
6 agreement in October of 2003; right?  
7           **A. Yes.**  
8           Q. Nine months after these unbundled rates were  
9 first implemented?  
10          **A. Ten months, yeah.**  
11          Q. Eight months after Ms. Stapleton's letter?  
12          **A. Yes.**  
13          Q. And if you go to article 5.2, which is at page  
14 16 of 17 of this letter --  
15          THE COURT: Of this agreement?  
16          MR. WEST: I'm sorry. Thank you, your Honor.  
17 Of this agreement.  
18          Q. That's the price provision; correct?  
19          **A. Yes.**  
20          Q. There's no fixed price in this agreement,  
21 right, like a dollar per acre-foot?  
22          **A. Yes. The initial price is a specific number,**  
23 **\$253.**  
24          Q. And that price at that time -- well but  
25 thereafter, there's no fixed price; correct?

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1           **A. Correct.**  
2           Q. The price is what?  
3           MR. BRAUNIG: Your Honor, I object. I mean the  
4 Metropolitan moved to bifurcate. They sought a  
5 bifurcation that would keep the exchange agreement out of  
6 this phase of the trial and I object to this line of  
7 questioning.  
8           THE COURT: Overruled.  
9 BY MR. WEST:  
10          Q. I'm sorry. What was -- could I have the  
11 question read back, madame reporter?  
12          THE COURT: I think it's helpful if I just tell  
13 you that you were looking at the word thereafter and  
14 trying to get him to discuss how the price was fixed  
15 after the initial dollar number.  
16 BY MR. WEST:  
17          Q. And what's the price reflected there?  
18          **A. The price shall be equal to the charge or**  
19 **charges set by Metropolitan's board of directors pursuant**  
20 **to applicable law and regulation and generally applicable**  
21 **to the conveyance of water by Metropolitan on behalf of**  
22 **its member agencies.**  
23          Q. And to your understanding, the exchange  
24 agreement does not require adoption of a specific rate  
25 structure, does it?

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1           **A. No.**  
2           Q. And the price that San Diego pays under the  
3 exchange agreement has three components: The System  
4 Access Rate, the System Power Rate and Water Stewardship  
5 Rate; correct?  
6           **A. Well, it refers to the rate generally**  
7 **applicable to the conveyance of water to Metropolitan to**  
8 **its member allegations, doesn't specify those three**  
9 **rates, but today those three rates are the System Access**  
10 **Rate, the System Power Rate and Water Stewardship Rate.**  
11          Q. And that's been the case since the agreement  
12 was first executed; correct?  
13          **A. Yes.**  
14          Q. There's no language in this agreement which  
15 purports to give San Diego any benefit from Colorado  
16 River Aqueduct; right?  
17          **A. I'm not sure I understand the question.**  
18          Q. Your counsel referred to some sort of benefit  
19 that the region gets by virtue of the Colorado River  
20 Aqueduct water. Are you aware of any language in this  
21 agreement which purports to give San Diego an additional  
22 benefit or break on the price for Colorado River Aqueduct  
23 water?  
24          **A. No.**  
25          Q. And the word "wheel" does not -- wheeling is

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1 not mentioned once in this agreement, is it?  
2          **A. I don't recall. I could review it but I don't**  
3 **think so.**  
4          Q. And the word "wheel" was not mentioned?  
5          **A. Again, I don't know for certain.**  
6          THE COURT: I'm a little concerned the time  
7 we're spending on the language of this agreement.  
8          Is this part of your case, is to do something  
9 with this agreement and the terms? I think the people  
10 who opened up on both sides agreed that we were going to  
11 be looking at these rates regardless of what the impact  
12 of the contract was but maybe I'm mistaken.  
13          MR. WEST: We are going to be looking at these  
14 rates.  
15          THE COURT: Okay.  
16          MR. WEST: But I'm addressing a couple of  
17 points, first off the contention that this is a wheeling  
18 agreement, which was made by the plaintiff.  
19          MR. KEKER: By whom?  
20          THE COURT: Excuse me. I'll take care of this.  
21          I don't think the thought is that this  
22 agreement is a wheeling agreement. I think the thought  
23 is that the rates that they're paying are wheeling  
24 charges. But why don't you just go ahead with your  
25 questions. I want to alert you to the time you're taking

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1 on this.  
 2 Go ahead.  
 3 MR. WEST: Sure.  
 4 Q. Are you familiar with the concept of losses  
 5 associated with wheeling?  
 6 A. **With losses?**  
 7 Q. Yes, the concept.  
 8 A. **Like conveyance losses?**  
 9 Q. Yes.  
 10 A. **Yes.**  
 11 Q. It means when you move something through a  
 12 facility, water from the facility, you lose some water;  
 13 right?  
 14 A. **Yeah, you may, yes.**  
 15 Q. There's no provision for losses in the  
 16 exchange, is there?  
 17 A. **Not that I'm aware of.**  
 18 Q. And there's nothing in there making MWD's  
 19 obligations contingent on any capacity being available  
 20 anywhere, is there?  
 21 A. **No.**  
 22 Q. Now, you talked earlier about IID water and  
 23 canal lining water. Do you remember that?  
 24 A. **Yes.**  
 25 Q. Now, under the exchange agreement, San Diego

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1 makes a certain amount of water available at one place in  
 2 the State of California to MWD; correct?  
 3 A. **I'm sorry. Could you repeat the question?**  
 4 Q. Sure. Under the exchange agreement, San Diego  
 5 makes a certain amount of water available to MWD at one  
 6 place in California; right?  
 7 A. **Yes.**  
 8 Q. And MWD makes an equivalent amount of water  
 9 available to San Diego in another place in California;  
 10 right?  
 11 A. **Yes.**  
 12 Q. And there's no provision in the agreement  
 13 requiring that MWD move that water through the Colorado  
 14 River Aqueduct, is there?  
 15 MR. KEKER: Objection. Calls for legal  
 16 conclusion.  
 17 THE COURT: Overruled. I don't think this is  
 18 seriously in dispute.  
 19 THE WITNESS: The agreement gives Metropolitan  
 20 the total discretion in what facilities it uses to  
 21 transport the water to San Diego and San Diego does not  
 22 get the use of any Metropolitan facilities.  
 23 BY MR. WEST:  
 24 Q. The terms of the agreement specifically  
 25 contemplate MWD will provide State Water Project water to

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1 San Diego under it, doesn't it?  
 2 A. **What the Water Authority bargained for was**  
 3 **water of a like quality and a like quantity of water at**  
 4 **our service connection to what we provide to Metropolitan**  
 5 **at the intake at Lake Havasu.**  
 6 **Metropolitan asked for and received total**  
 7 **discretion what actual molecules of water it provides to**  
 8 **the Water Authority and it could be from any sources**  
 9 **available to Metropolitan.**  
 10 Q. You understand, don't you, that Metropolitan  
 11 provides a blend of State Water Project water and  
 12 Colorado River water to San Diego under this exchange  
 13 agreement?  
 14 A. **The agreement allows Metropolitan at its sole**  
 15 **discretion to provide any blend of water so long as it**  
 16 **meets the same quality, at least the same quality of the**  
 17 **water they deliver -- we deliver to Metropolitan at Lake**  
 18 **Havasu.**  
 19 Q. I'm not talking about what the agreement  
 20 provides for, I'm talking about what Met actually does.  
 21 MWD actually provides exchange water under the exchange  
 22 agreement that is a blend of State Water Project water  
 23 and Colorado River Aqueduct water?  
 24 A. **I've never seen a break out by Metropolitan.**  
 25 **Metropolitan has a separate duty to the Water Authority**

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1 **under the water we purchase from Metropolitan to provide**  
 2 **a blend of State Water Project and Colorado River water.**  
 3 **That's a provision in the Metropolitan Water District**  
 4 **Aqueduct.**  
 5 **So Metropolitan does produce reports that show**  
 6 **the blend in any given time, month or year of the water**  
 7 **blend they provided to us from Metropolitan, but I'm not**  
 8 **aware that Metropolitan distinguishes between the water**  
 9 **we're buying from Metropolitan under which it has a duty**  
 10 **to provide us a blend of State Water Project water,**  
 11 **50 percent to the -- to what water blend they were at the**  
 12 **same time providing under the exchange agreement.**  
 13 Q. You don't have any basis to believe, following  
 14 your answer, that MWD provides different water under the  
 15 exchange agreement than it does to San Diego otherwise,  
 16 do you, as far as the blend is concerned?  
 17 A. **No. I believe the blend comes into San Diego**  
 18 **with all the molecules mixed, but Metropolitan has a**  
 19 **separate duty to the Water Authority to blend the water**  
 20 **we're buying from Metropolitan. We're still buying more**  
 21 **Metropolitan water than we're buying exchange water.**  
 22 Q. And I want to be clear. When you refer to  
 23 "separate duty," what are you referring to?  
 24 A. **The provision in the Met Act that requires**  
 25 **Metropolitan to provide a blend of State Water Project**

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1 **water to its customers and Water Authority. That's a**  
 2 **provision in the Met Act. I think it's section 136 of**  
 3 **the Met Act.**  
 4 Q. And it is your understanding this provides a  
 5 legal obligation for MWD to provide this blend?  
 6 **A. Well it is in the Met Act and Met Act is**  
 7 **statute.**  
 8 Q. I just want to make sure. To your  
 9 understanding, this creates a legal obligation for MWD to  
 10 provide this blend?  
 11 **A. Yeah.**  
 12 Q. And the only way MWD can make State Water  
 13 Project available under the exchange agreement or  
 14 otherwise to San Diego is if it pays the cost to bring  
 15 that water down the aqueduct to Met service area;  
 16 correct?  
 17 **A. I'm sorry. Could you repeat the question?**  
 18 Q. Sure. Only way MWD can provide State Water  
 19 Project water to its member agencies is if it pays the  
 20 cost of transporting that water down the Colorado River  
 21 Aqueduct; correct?  
 22 **A. They have to pay all of the costs of that water**  
 23 **supply from the State Water Project.**  
 24 Q. And that includes transportation charges;  
 25 correct?

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1 **A. Includes DWR's transportation charges.**  
 2 Q. I want to get back to a question I was asking  
 3 earlier.  
 4 The agreement itself, the exchange agreement  
 5 specifically contemplates that some of the water that  
 6 San Diego will get is from the State Water Project?  
 7 **A. It gives Metropolitan total and sole discretion**  
 8 **to provide any water from any of its sources to the Water**  
 9 **Authority so long as it meets the quality and quantity**  
 10 **provided to Metropolitan at Lake Havasu.**  
 11 Q. If you could go to -- back to the exchange  
 12 agreement, paragraph 3.2, which is at page 12 of the  
 13 agreement, Bates ending 701.  
 14 Do you see that, sir?  
 15 **A. Yes.**  
 16 Q. And this is the provision of the exchange  
 17 agreement dealing with what water MWD will provide;  
 18 correct?  
 19 **A. Yes.**  
 20 Q. The term "exchange water" is a defined term in  
 21 the contract?  
 22 **A. Yes.**  
 23 Q. And this is -- this -- if you go ahead to  
 24 paragraph 3.3 of the contract, on the next page -- have  
 25 you seen this provision before?

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1 **A. Yes.**  
 2 Q. And you've read it?  
 3 **A. Yes.**  
 4 Q. And if you could -- I want to focus on this  
 5 deals with when MWD cannot -- circumstances in which MWD  
 6 might not be able to provide exchange water; right?  
 7 MR. BRAUNIG: Your Honor, can I make a  
 8 continuing objection to this line of questioning as  
 9 beyond the scope of what this trial is supposed to be  
 10 about?  
 11 THE COURT: It may be but I'm going to let them  
 12 use their time as they wish in this context.  
 13 This is -- it is harmless if you're right and  
 14 it is useful to them if you're wrong.  
 15 Go ahead.  
 16 THE WITNESS: I'm sorry. Could you repeat the  
 17 question?  
 18 BY MR. WEST:  
 19 Q. Sure. This is the provision that deals with  
 20 when MWD due to shut down of MWD facilities might be  
 21 unable to provide exchange water?  
 22 **A. Yes.**  
 23 Q. And the second sentence of that provision says,  
 24 San Diego understands that any number of factors,  
 25 including emergencies, inspections, maintenance or repair

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1 of Metropolitan facilities or State Water Project  
 2 facilities may result in temporary and incidental  
 3 modification of the delivery schedule contemplated under  
 4 Section 3.2?  
 5 **A. Yes.**  
 6 Q. And that's been -- that was part of the 1998  
 7 agreement too; correct?  
 8 **A. I don't recall.**  
 9 Q. I want to jump to tab 8, which is  
 10 Defendants' -- this exhibit has already been entered in  
 11 evidence, I believe.  
 12 THE COURT: For the record, which exhibit is  
 13 this?  
 14 MR. WEST: I will tell you in a moment, your  
 15 Honor.  
 16 I apologize. Exhibit 128.  
 17 THE COURT: All right.  
 18 BY MR. WEST:  
 19 Q. Defendants' 128, this is an internal -- have  
 20 you seen this document?  
 21 **A. Yes.**  
 22 Q. What is it?  
 23 **A. It's an internal Water Authority document**  
 24 **titled "Water Authority's 2008 Northern California's**  
 25 **Transfers Implementation Strategy."**

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1 Q. And this document -- and at the bottom of the  
 2 page -- will you pull that up, please, Barbara?  
 3 This document tasks certain San Diego employees  
 4 with certain jobs relating to that implementation  
 5 strategy; correct?  
 6 A. **And the Water Authority directors.**  
 7 Q. And these included you?  
 8 A. **Yes.**  
 9 Q. And if you go back to the top of the page  
 10 again, this agreement, does it not, distinguishes between  
 11 wheeling services on the one hand, wheeling service  
 12 agreements on the one hand and exchange agreements on the  
 13 other?  
 14 A. **Yes.**  
 15 Q. And it gives us an example of an exchange  
 16 agreement as opposed to a wheeling agreement, a proposal  
 17 similar to the IID exchange agreement; right?  
 18 A. **Yes.**  
 19 Q. And that's the agreement, the exchange  
 20 agreement we were just talking about; right?  
 21 A. **Similar to it, yes.**  
 22 Q. It's -- is there another IID exchange agreement  
 23 other than the 2003 exchange agreement?  
 24 A. **The exchange agreement between the Water**  
 25 **Authority for -- no, not that I'm aware of.**

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1 Q. I want to talk about one of the agreements you  
 2 talked about this morning, tab 9, Defendants' 698, and it  
 3 is right after page 13 of the document.  
 4 What is this agreement? Do you recognize it?  
 5 A. **Yes, I do. This is the agreement between**  
 6 **Metropolitan Water District, Placer County Water Agency**  
 7 **and the Department of Water Resources for the conveyance**  
 8 **and storage of the Water Authority's Placer County Water**  
 9 **Agency transfer water.**  
 10 Q. And if you go to page -- right after page 13 of  
 11 the document, it starts up again at page 1.  
 12 And do you recognize this agreement,  
 13 Mr. Cushman?  
 14 A. **Yes.**  
 15 Q. And this is an agreement between MWD on the one  
 16 hand and San Diego on the other regarding wheeling on the  
 17 State Water Project?  
 18 A. **Yes.**  
 19 Q. On San Diego's behalf?  
 20 A. **Well, it's for the -- the transaction, yes.**  
 21 Q. And that's the Placer County transaction you  
 22 were testifying about this morning?  
 23 A. **One of them. Yes, I believe so, yes.**  
 24 Q. And if you go to bullet -- all of paragraph A,  
 25 please, Barbara.

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1 It says San Diego has requested that  
 2 Metropolitan convey, wheel these transfer supplies in an  
 3 amount -- the amount to be determined by the California  
 4 Department of Water Resources for transfer less Delta  
 5 carriage and conveyances losses.  
 6 There's a specific reference to wheeling in  
 7 this document; right?  
 8 A. **Yes.**  
 9 Q. And it appears several times in this document;  
 10 right?  
 11 A. **Yes.**  
 12 Q. And it specifically refers to MWD's  
 13 Administrative Code, which is the Administrative Code  
 14 addressing the price for wheeling; right?  
 15 A. **Yes.**  
 16 Q. If you go to paragraph G, see the part that  
 17 begins Metropolitan will uses best efforts? See that  
 18 sentence there?  
 19 A. **Yes.**  
 20 Q. Will use best efforts consistent with its  
 21 historic delivery procedures to beneficially use and  
 22 avoid loss through the spill of the full amount of the  
 23 transfer water.  
 24 And it goes on to say in the second part of  
 25 that, that MWD promptly advise San Diego in advance if

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1 Metropolitan reasonably anticipates there will be  
 2 insufficient capacity in its system for delivery of  
 3 transfer water?  
 4 A. **Yes, I see that.**  
 5 Q. So unlike the exchange agreement, which  
 6 specifically refers to capacity constraints and  
 7 specifically refers to losses; right?  
 8 A. **Yes.**  
 9 Q. I want to talk now about the dry year peaking  
 10 issue. This is an important issue to San Diego; correct?  
 11 A. **Yes.**  
 12 Q. And you are very familiar with San Diego's  
 13 claims in this case; right?  
 14 A. **I'm sorry. I'm familiar with what?**  
 15 Q. San Diego's claims in this case?  
 16 A. **Yes.**  
 17 Q. And you give regular presentations about this  
 18 lawsuit on television, at board meetings, all sorts of  
 19 different forums?  
 20 A. **Yes.**  
 21 Q. And you talked earlier about public hearings  
 22 that occurred in 2010 for rates that were going to be  
 23 adopted in 2011 and 2012; right?  
 24 A. **That were implemented in '11 and '12, yes.**  
 25 Q. And you talked earlier about some submissions

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1 that San Diego made in connection with that board hearing  
 2 regarding rates and charges to be adopted in 2011 and  
 3 2012; right?  
 4 **A. Yes.**  
 5 Q. And I want to direct your attention to tab 10,  
 6 which is Defendants' Exhibit 90.  
 7 Do you recognize this document, Mr. Cushman?  
 8 **A. Yes.**  
 9 Q. What is it?  
 10 **A. It's the board package that Met staff put**  
 11 **together in presenting to its board for the April 13th**  
 12 **board of directors meeting at which Met adopted rates for**  
 13 **'11 and '12.**  
 14 Q. And you made a written submission that was  
 15 attached to this board packet; correct?  
 16 **A. Yes.**  
 17 Q. And if you could go to Bates ending 11454, that  
 18 is what you -- once you get there.  
 19 That's your written submission to the board  
 20 concerning the rates that were under consideration at  
 21 that period of time; right?  
 22 **A. Yes.**  
 23 Q. And this letter articulated San Diego's  
 24 positions about allocating state water project costs to  
 25 transportation rates; right?

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1 **A. Yes.**  
 2 Q. And allocating the Water Stewardship Rate to  
 3 the transportation rates too; right?  
 4 **A. Yes.**  
 5 Q. And you were allowed to put in letters like  
 6 this all issues that you believe are important to the  
 7 rate -- rates that are then under consideration; right?  
 8 **A. Allowed to at the Met meetings?**  
 9 Q. I mean these letters, you can -- there's no  
 10 page limit on them, for example; right?  
 11 **A. No, there's no page limits.**  
 12 Q. This letter is completely silent on dry year  
 13 peaking, isn't it?  
 14 **A. Yes.**  
 15 Q. And your letter attached a report from Bartle  
 16 Wells Associates; correct?  
 17 **A. Yes.**  
 18 Q. And San Diego had engaged Bartle Wells  
 19 Associates to look at MWD's rates in connection with  
 20 their consideration in 2010 or 2011 and 2012?  
 21 **A. Yes.**  
 22 Q. And according to you, Bartle Wells are experts  
 23 in public utility rates?  
 24 **A. Yes.**  
 25 Q. I want to turn your attention to Bates ending

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1 1457. That is a Bartle Wells report that was attached to  
 2 your letter; right?  
 3 **A. Yes.**  
 4 Q. And the Bartle Wells letter is completely  
 5 silent on dry year peaking too, isn't it?  
 6 **A. Yeah. I don't recall without relooking at it.**  
 7 Q. Well, you testified at your deposition that it  
 8 was completely silent in dry year peaking. If you like,  
 9 I think we can play the clip.  
 10 **A. Sure.**  
 11 MR. BRAUNIG: Objection. Improper impeachment.  
 12 THE COURT: That's improper. You can -- you  
 13 don't have an agreement between the two of you whether  
 14 you want to play a clip or not?  
 15 MR. WEST: Well --  
 16 THE COURT: There may be other reasons why you  
 17 can play it but --  
 18 BY MR. WEST:  
 19 Q. Take your time.  
 20 This letter is silent on dry year peaking,  
 21 isn't it, this report?  
 22 **A. The report? Yes, it appears it is.**  
 23 Q. At the same time, San Diego engaged some  
 24 lawyers to look at MWD's rates?  
 25 **A. Yes.**

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1 Q. And those were Colantuono & Levin?  
 2 **A. Colantuono & Levin, yes.**  
 3 Q. If you could turn to tab 11 of your binder.  
 4 And do you recognize this document?  
 5 **A. Yes.**  
 6 Q. It's Defendants' 89?  
 7 **A. Yes.**  
 8 Q. And this is the letter that Colantuono & Levin  
 9 submitted in connection with the rates then submitted;  
 10 right?  
 11 **A. Yes.**  
 12 Q. And this letter lays out some issues with the  
 13 rates; right?  
 14 **A. Yes.**  
 15 Q. And there's no mention of the dry year peaking  
 16 in this letter either; right?  
 17 **A. No, it doesn't appear to.**  
 18 Q. It is nonetheless San Diego's contention that  
 19 the rates adopted -- I'll put it a different way.  
 20 Isn't it nonetheless San Diego's contention  
 21 that the rates adopted in 2011 and 2012 are unlawful for  
 22 their failure to address an issue that neither your  
 23 letter nor the Bartle Wells report nor the letter from  
 24 your counsel submitted to the board?  
 25 **A. Yes.**

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1 Q. I want to go back to March 8th, 2010, which is  
 2 tab 10, the Bates ending 11454. Do you see that?  
 3 And again, that's Exhibit 90.  
 4 **A. Yes.**  
 5 Q. And this letter doesn't say -- this memo  
 6 doesn't mention the exchange rate at all?  
 7 **A. I don't think so.**  
 8 Q. And it lays out some reasons why it's improper  
 9 in your opinion to include State Water Project costs in  
 10 MWD's transportation rates?  
 11 **A. Yes.**  
 12 Q. And if you go to the second par -- second  
 13 sentence. We're going to 11455.  
 14 And if you go to the second sentence in the  
 15 second paragraph and you are talking about the reasons  
 16 why it is inappropriate to include State Water Project  
 17 costs in MWD's transportation rates; right?  
 18 **A. Yes.**  
 19 Q. And one of the things you say is in fact, it's  
 20 State Water Project supply costs are to Metropolitan the  
 21 same as Metropolitan's cost to its member agencies,  
 22 they're plainly and solely a cost of supply. Do you see  
 23 that?  
 24 **A. Yes.**  
 25 Q. But MWD gets its water from the State Water

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1 Project under a take-or-pay contract with the Department  
 2 of Water Resources; right?  
 3 **A. Yes.**  
 4 Q. And MWD doesn't have take-or-pay contracts with  
 5 its member agencies for delivery of water, does it?  
 6 **A. No.**  
 7 Q. Had you read the State Water Project contract  
 8 before you sent this letter?  
 9 **A. No. Not in its entirety, no.**  
 10 Q. Had you read article 23 of it?  
 11 **A. No.**  
 12 Q. You go on to refer to -- in the -- going back  
 13 to your letter, it says, the last sentence of that  
 14 paragraph, indeed neither Bartle Wells nor the Water  
 15 Authority's own professional staff have been able to find  
 16 any other State Water Project contractor that allocates  
 17 payments for SWP water in a manner similar to  
 18 Metropolitan's practice?  
 19 **A. Yes.**  
 20 Q. Your letter doesn't identify any specific State  
 21 Water Project contractor's information you reviewed, does  
 22 it?  
 23 **A. No.**  
 24 Q. Or how many of them you reviewed?  
 25 **A. No.**

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1 Q. The Bartle Wells study does list a number of  
 2 people, both contractors whose information they looked  
 3 at; right?  
 4 **A. I believe so.**  
 5 Q. Do you want to look at that, which is the  
 6 attachment at 11459? We're still on Exhibit 90.  
 7 THE COURT: What's the question?  
 8 MR. WEST: I'm not there yet. I just wanted to  
 9 reference him to it.  
 10 Q. And this letter says that Bartle Wells received  
 11 information from three other State Water Project  
 12 contractors; correct?  
 13 **A. Yes.**  
 14 Q. Do you know how many State Water Project  
 15 contractors there are?  
 16 **A. I believe 29.**  
 17 Q. So three out of 29. How many of them have an  
 18 unbundled rate structure like MWD, do you know?  
 19 **A. No.**  
 20 Q. How many of them even pay a Transportation  
 21 Rate, do you know?  
 22 **A. To DWR?**  
 23 Q. Yeah.  
 24 **A. My understanding is that all state water**  
 25 **contractors pay transportation rates as part of their**

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1 **supply contracts.**  
 2 Q. Aren't there contractors north of the Delta who  
 3 pay none at all?  
 4 **A. I don't know.**  
 5 Q. Do you know how many of these -- certain of the  
 6 State Water Project contractors don't have rates they  
 7 charge at all, right, they just get -- they get paid  
 8 through property taxes?  
 9 **A. I don't know how all state water contractors**  
 10 **recover the cost of the State Water Project's supply**  
 11 **contracts.**  
 12 Q. I want to get back to an issue we talked about  
 13 a little earlier today, salinity and the board. I want  
 14 to talk about a board meeting that happened on  
 15 August 22nd of this year. Do you recall that, at  
 16 San Diego?  
 17 **A. I was in attendance.**  
 18 Q. And you gave two presentations at this  
 19 meeting -- or one, actually; right?  
 20 **A. I can't recall from board meeting to board**  
 21 **meeting how many presentation I've given. I'm sorry.**  
 22 Q. No problem at all.  
 23 Halla Razak was at the time San Diego Water  
 24 Authority's Colorado River program director; right?  
 25 **A. Yes.**

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1 Q. And at this meeting, she gave a presentation  
 2 called Colorado River Salinity Control Update?  
 3 A. Yes.  
 4 Q. And I want to direct your attention to the  
 5 PowerPoint for that presentation. Do you recall she gave  
 6 a PowerPoint presentation?  
 7 A. Yes.  
 8 Q. It's Defendants' 116, which is tab 14.  
 9 And do you recall Ms. Razak -- if you go to  
 10 page 2, Ms. Razak's presentation was talking about the  
 11 salinity control background. The Colorado River has  
 12 relatively high salinity and excess salinity causes  
 13 375 million a year in economic damages and high salinity  
 14 can create environmental impact.  
 15 That's all true as far as you understand;  
 16 right?  
 17 A. Yes.  
 18 Q. And if you go to page 17 of this PowerPoint  
 19 presentation, it talks about the salinity of the  
 20 San Diego supply. It says the Water Authority goal to --  
 21 is to maintain salinity no greater than 500 million grams  
 22 per liter and salinity depends on the mix of State Water  
 23 Project and Colorado River water?  
 24 A. Yes.  
 25 Q. And all of this is true to your understanding;

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1 right?  
 2 A. Yes.  
 3 Q. And Ms. Razak took questions after her  
 4 presentation, didn't she?  
 5 A. I don't recall.  
 6 Q. Do you recall she said that one of the -- these  
 7 presentations are recorded; right?  
 8 A. Yes.  
 9 Q. And I would like to play a portion of that  
 10 recording. They're on San Diego's Web site, Defendants'  
 11 Exhibit 319.  
 12 MR. BRAUNIG: Objection. Hearsay.  
 13 MR. WEST: Not offered for the truth, your  
 14 Honor.  
 15 THE COURT: Overruled.  
 16 MR. WEST: 5344 through 5432.  
 17 (Audio file played.)  
 18 THE COURT: What is it offered for?  
 19 MR. WEST: Pardon me?  
 20 THE COURT: What is it offered for?  
 21 MR. WEST: I'm sorry?  
 22 THE COURT: If it's not for the truth, what is  
 23 it offered for?  
 24 MR. WEST: It's to show San Diego's knowledge  
 25 that they, MWD, provides a blend and the benefit to

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1 San Diego from that blend of State Water Project and  
 2 Colorado River water.  
 3 THE COURT: Their knowledge is relevant?  
 4 MR. WEST: It is, your Honor.  
 5 THE COURT: All right. Let's go ahead.  
 6 (Audio file played.)  
 7 BY MR. WEST:  
 8 Q. And that's true to your understanding too,  
 9 isn't it?  
 10 A. That Metropolitan blends the water doesn't  
 11 always achieve keeping it under 500 million grams per  
 12 liter.  
 13 MR. WEST: And one quick point. My counsel  
 14 reminded me that they stipulated to no hearsay objections  
 15 to the exhibit that were on the exhibit list, including  
 16 this one so for the Court's consideration.  
 17 Q. Now, I want to get back to the wheeling  
 18 agreement regarding Placer County that we spoke about  
 19 earlier. Okay. It is Exhibit 698.  
 20 THE COURT: Which tab is that?  
 21 MR. WEST: That is tab 9, your Honor.  
 22 THE COURT: Okay.  
 23 BY MR. WEST:  
 24 Q. And again, the pagination starts after page 13.  
 25 And I want to direct your attention to that particular

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1 agreement between MWD and San Diego regarding the MWD and  
 2 State Water Project. And if you go to paragraph H, which  
 3 is on page 2 of this agreement, that is the price  
 4 provision; correct?  
 5 A. Payment provision, yes.  
 6 Q. Payment provision.  
 7 And those -- that lays out the payments that  
 8 San Diego is going to make to MWD for the wheeling of  
 9 this water on the State Water Project; right?  
 10 A. For the wheeling of the water the entire  
 11 distance.  
 12 Q. And it says the System Assess Rate, the Water  
 13 Stewardship Rate, the treatment surcharge and -- if  
 14 applicable, and it says in addition, San Diego will pay  
 15 actual costs of power DWR charged Metropolitan to convey  
 16 the transfer water from Banks Pumping Plant to  
 17 Metropolitan's turnouts.  
 18 That's your understanding of what San Diego  
 19 paid to MWD pursuant to this?  
 20 A. Yes.  
 21 MR. WEST: I have no further questions.  
 22 THE COURT: I'll see everybody at 1:30. Thank  
 23 you.  
 24 (Noon recess taken.)  
 25 ---o0o---

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1 DECEMBER 18, 2013 AFTERNOON SESSION  
 2 P R O C E E D I N G S  
 3 ---000---  
 4 THE COURT: Some redirect?  
 5 REDIRECT EXAMINATION  
 6 BY MR. BRAUNIG:  
 7 Q. Good afternoon, Mr. Cushman.  
 8 A. **Good afternoon.**  
 9 Q. You recall you were asked during  
 10 cross-examination some questions about a 2003 letter from  
 11 Ms. Stapleton to Mr. Gastelum?  
 12 A. **Yes.**  
 13 MR. BRAUNIG: Can you pull that up, please, DTX  
 14 49?  
 15 And specifically on the page that's got 7122 at  
 16 the bottom, can we blow up the first paragraph? I'm  
 17 sorry, the paragraph with the number one.  
 18 Q. Okay. Mr. Cushman, you recall you were asked  
 19 some questions about this particular paragraph that talks  
 20 about rate component transparency?  
 21 A. **Yes.**  
 22 Q. Do you recall that?  
 23 What -- what was -- what did San Diego mean  
 24 when it says the System Power Rate is transparent?  
 25 A. **This is time that Metropolitan showed**

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1 **separately and gave visibility to the cost of power to**  
 2 **import water into the Metropolitan service area.**  
 3 Q. In 2003 was San Diego raising concerns about  
 4 the allocation of State Water Project costs?  
 5 A. **Yes.**  
 6 MR. BRAUNIG: Can we actually blow up the next  
 7 paragraph, please?  
 8 Q. And is this -- is this paragraph in the same  
 9 letter, DTX 49?  
 10 Is this the same place San Diego was raising  
 11 concerns with Met about the allocation of State Water  
 12 Project costs to its transportation rates?  
 13 A. **Yes.**  
 14 Q. Did San Diego raise concerns with the  
 15 allocation of State Water Project costs to the System  
 16 Power Rate between 2003 and when it filed suit in 2010?  
 17 A. **Yes.**  
 18 Q. Did -- in what forums?  
 19 A. **In the meetings, I believe in providing**  
 20 **feedback to Metropolitan on that issue, also engaged in**  
 21 **rate discussions throughout the development of the**  
 22 **unbundled rate structure and expressed our concerns at**  
 23 **that time in those meetings, and we made that clear**  
 24 **throughout the process.**  
 25 Q. Okay. Did San Diego raise concerns with the

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1 allocation of State Water Project costs to the system  
 2 power rate in connection with 2010 rate hearing?  
 3 A. **Yes.**  
 4 MR. BRAUNIG: Can we bring up administrative  
 5 record page 11454?  
 6 Q. Is this document, a letter, March 8, 2010, is  
 7 this a letter written by you to Tim Brick, the chairman  
 8 of the Metropolitan Water District?  
 9 A. **Yes.**  
 10 MR. BRAUNIG: Okay. And let's turn to the  
 11 second page, please.  
 12 Q. Is the second paragraph, the paragraph that  
 13 starts "Met does not own," is this an example of a  
 14 situation -- a place in which San Diego was specifically  
 15 complaining about the allocation of State Water Project  
 16 costs to Metropolitan's System Power Rate?  
 17 A. **To its --**  
 18 Q. To its transportation rates.  
 19 A. **Yes, to transportation rates.**  
 20 Q. Okay. You were asked -- you were asked  
 21 questions about -- do you recall you were asked questions  
 22 during cross-examination about whether submissions in  
 23 2010 included reference to dry year peaking?  
 24 A. **Yes.**  
 25 Q. Okay. When Metropolitan was unbundling its

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1 rates back in the early 2000's, did San Diego raise  
 2 concerns about dry year peaking?  
 3 A. **Yes.**  
 4 MR. BRAUNIG: Can we please pull up PTX 044?  
 5 Q. Okay. What is PTX 044?  
 6 A. **It is the water board's response to**  
 7 **Metropolitan's district staff recommendation regarding**  
 8 **the composite rate structure framework.**  
 9 Q. And this was a document submitted by San Diego  
 10 to the -- to Metropolitan in April of 2000?  
 11 A. **Yes.**  
 12 MR. BRAUNIG: Okay. Can we please turn to the  
 13 second page under the heading "most notably" sort of at  
 14 the very top, just the first -- just isolate the first  
 15 paragraph.  
 16 Q. Okay. Mr. Cushman, is PTX 044 an example of  
 17 where San Diego was raising concerns with Metropolitan  
 18 about dry year peaking as early as 2000?  
 19 A. **Yes.**  
 20 Q. Did -- and what specifically was San Diego  
 21 raising concerns about?  
 22 A. **The fact that they were recovering the cost of**  
 23 **dry year peaking on its rates and charges and not charged**  
 24 **on the basis of those that are causing the dry year**  
 25 **peaking.**

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1 Q. Between 2000 and 2010, when San Diego filed  
 2 this first lawsuit, did San Diego continue to raise  
 3 concerns about Metropolitan's failure to account for dry  
 4 year peaking costs?  
 5 A. Yes.  
 6 Q. In what forums?  
 7 A. **In our meetings with Metropolitan and meetings  
 8 that involved the Metropolitan member agencies to discuss  
 9 and debate the issues around the rates, the rate  
 10 structure, the various proposals being advanced and  
 11 debated and discussed about the proper allocation of  
 12 rates. The Water Authority made clear continuously about  
 13 our objections to and concerns with failure to account  
 14 for and collect for the dry year peaking costs at  
 15 Metropolitan.**  
 16 Q. Did San Diego make allegations in its 2010  
 17 complaint about dry year peaking?  
 18 A. Yes.  
 19 MR. BRAUNIG: Can we pull up the complaint,  
 20 please, the third and -- thank you.  
 21 Q. And specifically, paragraph 56, is paragraph 56  
 22 in the 2010 complaint a place where San Diego explicitly  
 23 called out its concerns about dry year peaking in -- in  
 24 the 2010 complaint?  
 25 A. Yes.

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1 Q. Now, what did San Diego do in connection with  
 2 the 2013 and 2014 rate hearing to bring -- to try to  
 3 bring the dry year peaking issue to the Met board's  
 4 attention?  
 5 A. **It brought it to the Met board attention in  
 6 documents and studies that we submitted to the Met board  
 7 as part of the public hearing and other hearings during  
 8 the establishment of the rate by Metropolitan for 2013  
 9 and 2014.**  
 10 Q. Did that -- sorry?  
 11 A. **That included a study by a rate expert that we  
 12 hired whose report addressed the dry year peaking issue  
 13 as parts of its -- part of its report.**  
 14 Q. Is that report from your expert in the record  
 15 in this case?  
 16 A. Yes, it is.  
 17 MR. BRAUNIG: Pass the witness.  
 18 THE COURT: Any recross?  
 19 MR. WEST: Just a couple.  
 20 THE COURT: All right.  
 21 RE-CROSS-EXAMINATION  
 22 BY MR. WEST:  
 23 Q. To be clear, Mr. Cushman, in 2003 when  
 24 Ms. Stapleton sent that letter, the Water Stewardship  
 25 Rate was being allocated to transportation; right?

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1 A. Yes.  
 2 Q. And you knew that. San Diego knew that; right?  
 3 A. Yes.  
 4 Q. And there was no complaint in that letter about  
 5 that at all, was there?  
 6 A. **Not in that letter.**  
 7 Q. And the same thing with the System Power Rate.  
 8 San Diego knew that the System Power Rate included State  
 9 Water Project power costs; right?  
 10 A. Yes.  
 11 Q. And there was no complaint about that in that  
 12 letter, was there?  
 13 A. **No, not in that letter.**  
 14 Q. And we're going to talk -- the dry year peaking  
 15 issue, we've seen a document from 2000 when you raised  
 16 this issue. This was before the adoption of the  
 17 unbundled rate structure; correct?  
 18 A. **It was during discussions about the unbundling  
 19 of the rate structure but before it was adopted.**  
 20 Q. Right. And then Ms. Stapleton's letter in  
 21 2003, February 10th, 2003 doesn't talk specifically about  
 22 annual variations in purchases causing costs to be  
 23 incurred by other member agencies, does it?  
 24 A. **No, that letter does not.**  
 25 Q. So we have a 12-year gap as far as the record

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1 before the board is concerned, beginning with the time  
 2 before the rates were even adopted and ending in 2012  
 3 where this issue is not mentioned by San Diego?  
 4 A. **No, I don't believe that's correct, in fact.  
 5 The Water Authority -- the Water Authority during that  
 6 period of time was continuously engaged in the various  
 7 processes at Metropolitan where we were communicating to  
 8 Metropolitan our concerns over that and the other  
 9 misallocation issues.**  
 10 Q. Not reflected in a document in that 12-year  
 11 gap, though, is it? Not that we've seen today?  
 12 A. **None that we've seen today.**  
 13 MR. WEST: Nothing further.  
 14 THE COURT: Thank you.  
 15 Anything else?  
 16 MR. BRAUNIG: Nothing further.  
 17 THE COURT: Thank you very much, sir. You are  
 18 excused.  
 19 MR. PURCELL: Good afternoon, your Honor.  
 20 Before we call our next witness, I would like  
 21 to use a little bit of our time to present some of the  
 22 evidence that's in the administrative record and discuss  
 23 it. I think both parties are planning to present some of  
 24 their evidence through --  
 25 THE COURT: Absolutely.

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1 MR. PURCELL: -- discussion by counsel.  
 2 So, what I'm hoping is that this is going to be  
 3 a targeted focused presentation that's going to address  
 4 some narrow issues that might go to questions in your  
 5 Honor's mind based on what the parties have talked about  
 6 so far.  
 7 And I have four specific issues that I want to  
 8 talk about.  
 9 The first is this issue of storage, which  
 10 relates to the dry year peaking question. Met had  
 11 suggested in its opening that dry year peaking doesn't  
 12 actually impose costs on Met's system but Met's own  
 13 documents show that it buys and stores massive amounts of  
 14 water in order to have supplies on hand in order to meet  
 15 dry year demands.  
 16 The document I would like to point you to is  
 17 the 1996 integrated resources plan, which is an important  
 18 foundational document that Met discussed in its opening.  
 19 And this is in the administrative record in the -- well,  
 20 in both cases. This is A-R1465 and -66 and it says it  
 21 pretty plainly. It says storage is a critical element of  
 22 Southern California's water resources strategy. Because  
 23 Southern California experiences dramatic swings in water  
 24 and hydrology, storage is important to regulate those  
 25 swings and mitigate against possible supply short answer.

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1 Simply put, storage provides a means of storing  
 2 surplus water during normal and wet weather years for  
 3 later use during dry years when imported supplies are  
 4 limited. Like water transfers, storage is a flexible  
 5 supply. However unlike many transfers, it can require  
 6 large capital investments. When identifying the need for  
 7 storage, it is important to understand the different  
 8 benefits storage provides.  
 9 This same document, which is in the record,  
 10 also talks about L.A.'s roll on and roll off of Met's  
 11 systems and quantifies specifically the acre-feet per  
 12 year that this storage benefit is providing to L.A.  
 13 This is 1487 in the administrative record. And  
 14 here, you see when runoff conditions in the Owens Valley  
 15 are above normal, L.A. deliveries increase, reducing the  
 16 reliance -- the City of Los Angeles's reliance on Met's  
 17 system.  
 18 Conversely, below normal runoff in the Owens  
 19 Valley increases the need for Metropolitan's deliveries.  
 20 And it's quantified up there at the top. It says that  
 21 Los Angeles aqueduct deliveries have varied from 200,000  
 22 acre-feet per year to about 500,000 acre-feet per year.  
 23 So you've got about a 300,000 acre-foot gap between the  
 24 high and the low.  
 25 And the only agency that's mentioned in the IRP

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1 as a peaker is Los Angeles. There's not any discussion  
 2 of San Diego or any other agency in there. And though  
 3 Met has suggested everybody peaks, you will hear more  
 4 from Mr. Denham on that, but the only agency they saw fit  
 5 to mention in this document was Los Angeles.  
 6 Now, this is a 1996 document so your Honor  
 7 might ask well, what's the situation like today? So I  
 8 would like to go to a more recent document that shows  
 9 that it's basically the same. And this is PTX 244, which  
 10 I think is either in the record or will be because it was  
 11 used in opening and earlier today.  
 12 And this is Met's official statement to its  
 13 bond holders, June of 2013. I would like to go to  
 14 page --  
 15 MR. WEST: Your Honor, I'm going to object.  
 16 This was presented as a presentation of administrative  
 17 record documents. This is not an administrative record  
 18 document.  
 19 MR. PURCELL: It wasn't presented.  
 20 THE COURT: Is it in the record of this trial?  
 21 MR. WEST: It is an exhibit in this trial but  
 22 it is not an administrative record document.  
 23 THE COURT: I'll make a note of that. Thank  
 24 you.  
 25 MR. PURCELL: Yeah, your Honor. I didn't mean

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1 any confusion. This is not in the administrative record,  
 2 but the parties' stipulation didn't distinguish between  
 3 record documents and non-record documents for purposes of  
 4 presentation of counsel.  
 5 So, if we can go to page A30, remember that  
 6 300,000 acre-foot gap that you saw in the previous  
 7 document? Well, you've seen this before. We talked  
 8 about this in opening.  
 9 Here, the gap that is mentioned -- and this is  
 10 different. This is not the flows off the L.A. aqueduct,  
 11 this the converse. This is Metropolitan sales to L.A.,  
 12 but you see again 167 there in the middle of the  
 13 paragraph is the low acre-feet per year and then 433 is  
 14 the high so not quite 300,000 but getting there.  
 15 And then down at the bottom of paragraph, you  
 16 see 511,000 acre-feet as a potential high in the future,  
 17 255 as a low. So again, you're talking about close to  
 18 300,000 acre-feet.  
 19 So, what does Met do to accommodate this?  
 20 Well, they keep a lot of water in storage. And I would  
 21 like to go back to a document that is in the record.  
 22 This is in the 2012 record only, it's page 16518. This  
 23 is an April 10, 2012 board memo and this is a table of  
 24 Metropolitan's water storage capacity and water and  
 25 storage.

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1 And if we can go to the bottom of the page,  
 2 there you see -- and actually, Jeff, maybe you can  
 3 highlight the headers of the columns so we can see what  
 4 these columns consist of.  
 5 Perfect.  
 6 So, you see that Metropolitan's total storage  
 7 capacity as of the end of 2012 is just shy of six million  
 8 acre-feet. It's got close to three million acre-feet in  
 9 storage so that's ten times. It is fairly easy math.  
 10 It's ten times 300,000. And it's been ramping up  
 11 substantially over the previous three years, 2011, 2010  
 12 and 2012.  
 13 The bond document that we looked at before --  
 14 by the way, PTX 244 has a figure as of the end of -- or  
 15 the beginning of 2013, which is even higher than that.  
 16 It's about 3.3 acre-feet, and that's at page A26 of that  
 17 document.  
 18 So, again, how much is three million acre-feet?  
 19 Well, it's a lot. It's ten times the variance in Los  
 20 Angeles's take between wet and dry years.  
 21 And if we could go actually back to the bond  
 22 statement, PTX 244, A46, this is a summary of water sold  
 23 and water sales receipts by Metropolitan. This is their  
 24 total sales over these fiscal years. You can see first  
 25 off that their sales have been decreasing substantially

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1 from 2.3 million acre-feet in fiscal 2008 to 1.67  
 2 acre-feet, a fairly steady downward trend over five  
 3 years.  
 4 So the 3 million acre-feet in storage that Met  
 5 had in the end of 2012 was enough to essentially satisfy  
 6 two 2012s of complete Met sales. So there is an awful  
 7 lot of infrastructure that Met has invested in to  
 8 maintain those levels of storage. That's the  
 9 significance of peaking.  
 10 Now, the second thing I want to talk about is  
 11 the Readiness-to-Serve Charge and the way Met doesn't  
 12 recover for peaking.  
 13 Met has pointed to a couple of things in this  
 14 case when they've said well, peaking doesn't matter and  
 15 if it did, we recover for it. They point to their  
 16 volumetric rate. That doesn't get at the point. The  
 17 point is that the volumetric rates are charged only when  
 18 water is purchased. And dry year peaking is insurance.  
 19 It is a benefit that's given when water is not being  
 20 purchased. It's a benefit that's given to have the water  
 21 ready when you need it in years when you're not taking  
 22 it.  
 23 So the volumetric rates don't capture that.  
 24 The volumetric rates, you only pay them when you actually  
 25 take the water, not when you may need it but don't take

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1 it.  
 2 So Met's fallback position is it's not captured  
 3 in the volumetric rates, it is captured in the RTS  
 4 charge. And the first answer to that is well, their  
 5 interrogatory answer number 15 says that peaking costs  
 6 are spread across the System Access Rate and other rate  
 7 elements. But I would like to go to the administrative  
 8 record and show you their engineer's reports from their  
 9 2010, 2012 rate setting cycles.  
 10 Mr. Cushman discussed this a little bit earlier  
 11 in his testimony. I would like to show you the best  
 12 evidence of it.  
 13 So, this is an April 2010 engineer's report  
 14 prepared by Met as part of the rate setting cycle for  
 15 2011 and 2012. This is page 11509 in the administrative  
 16 record. And I would like to forward to page 11512,  
 17 fourth page of the report, and you see a section on the  
 18 Readiness-to-Serve Charge.  
 19 The first thing I would like to say is just,  
 20 you know, the beginning paragraph describes what the  
 21 charge is. Metropolitan levies the RTS charge on its  
 22 member agency to recover a portion of the debt service on  
 23 bonds issued to finance capital facilities needed to meet  
 24 existing demands on Metropolitan's system.  
 25 There's nothing in there about peaking

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1 specifically, but Met might say capital facilities, that  
 2 captures peaking somehow.  
 3 Couple of things are important. One thing that  
 4 Mr. Cushman mentioned, you see that the total benefit  
 5 there in paragraph 1 is \$330 million.  
 6 What is the next paragraph say? It starts off  
 7 by saying although the RTS charge could be set to recover  
 8 the entire potential benefit, the general manager is  
 9 recommending that the RTS charge only recover a portion  
 10 of the total potential benefit. For fiscal year  
 11 2010-2011, this amount is estimated to be \$123,500,000.  
 12 So the RTS charge, whatever it is recovering, is  
 13 recovering only about 37.4 percent by my math of the 330  
 14 million, just 123 and a half million.  
 15 The second point about the RTS charge, which is  
 16 down near the bottom, it explains how it's calculated.  
 17 It says the RTS charge for fiscal 2010-'11 is allocated  
 18 to each member agency on the basis of a ten-year rolling  
 19 average of historic water purchases. And there was a  
 20 discussion of this in the parties' opening but this is  
 21 important because a ten-year average by its very nature  
 22 doesn't capture the entire peak. An average smooths out  
 23 peaks. So you're not measuring the variance between the  
 24 average and the peak, you are just taking the total and  
 25 you're averaging it per year.

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1 And so that's where the RTS charge isn't really  
 2 designed to capture dry year peaking. But if it were, as  
 3 you can see, it doesn't recover anywhere near the costs  
 4 that are incurred.  
 5 I would like to briefly go to the engineer's  
 6 report from 2012. This is from March of 2012. It is  
 7 pretty much the same thing so I will do it more quickly.  
 8 There you see it. This is in the 2012 record.  
 9 This is 15122 is the page and 15125 is the relevant page.  
 10 Again, you see the Readiness-to-Serve Charge  
 11 heading. Paragraphs look pretty similar. Most of the  
 12 text is the same, numbers are a little bit different.  
 13 This time the estimated potential benefits in the first  
 14 paragraph, they exceed \$322 million and Met has set the  
 15 RTS charge to recover between 142 and 146 million, so a  
 16 little bit higher percentage but still about 45 percent,  
 17 still less than half.  
 18 Now, the third thing I want to mention is Met's  
 19 usage of the State Water Project to wheel. Met's made a  
 20 very big deal about the fact that it can wheel water,  
 21 non-project water on the State Water Project. In our  
 22 openings, we put up a slide that I would like to put up  
 23 again. And really, the purpose of this is I just want to  
 24 explain to the Court where these numbers come from so  
 25 your Honor can double check them and make sure that we

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1 got them right.  
 2 What this slide shows --  
 3 THE COURT: Which slide number is this?  
 4 MR. PURCELL: Sorry. This is 6202. I don't  
 5 know that they're in order in the book.  
 6 THE COURT: But I think -- I had some -- you're  
 7 right.  
 8 That's fine. Go ahead.  
 9 MR. PURCELL: Okay. What this shows is the  
 10 water that's moved through the State Water Project and  
 11 delivered to Met, it's either delivered to Met or stored  
 12 by Met. That's 97.3 percent of the water. Another  
 13 1.1 percent of the water, that's still State Water  
 14 Project water but it's transfers and exchanges with other  
 15 State Water Project contractors. So, that's one of the  
 16 other 20 some contractors giving their water to Met in  
 17 exchange for some other benefit but still State Water  
 18 Project water.  
 19 And then third party water, non-project water  
 20 is 1.6 percent, so it really is de minimis.  
 21 And where did we get these numbers? We got  
 22 them from the State Water Project. The PTX exhibits at  
 23 the bottom, 328 through 341 and 380 are 15 years' worth  
 24 of reports from the State Water Project from 1995 to  
 25 2009.

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1 And the reason 2009 is the last year is that  
 2 that's the last year for which data is available. The  
 3 2009 report, which I believe is PTX 341, that was  
 4 published in June of this year.  
 5 Now, these are long, thick documents and  
 6 really, we thought it would be useful to point the  
 7 Court's attention to the place in the document where  
 8 there's actually a table that shows this information.  
 9 And so we've prepared excerpts from these documents which  
 10 we've marked and shown to Met as Exhibit 328A through  
 11 341A and 380A.  
 12 And what those documents are is a single table  
 13 which shows the water deliveries Met makes to each of the  
 14 State Water Project contractors. There's a line item for  
 15 Metropolitan and there's columns for project water,  
 16 project water to storage, transactions with other  
 17 contractors and then non-project water. So it involves a  
 18 little bit of arithmetic, but that's where the backup  
 19 data is for this slide. Again, we're talking about  
 20 13 million acre-feet of project water and 216,000  
 21 acre-feet, 1.6 percent of non-project water.  
 22 Another thing about those documents that is  
 23 interesting is that they show out of the 15 years, that  
 24 there's nine years where Met didn't actually wheel any  
 25 state -- non-State Water Project water through the State

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1 Water Project facilities. So to the extent Met is  
 2 relying on this right it has, it's not exercised all that  
 3 often, six out of 15 years.  
 4 The fourth thing and final thing I want to  
 5 mention is the Water Stewardship Rate. And I would just  
 6 like to discuss a few documents again.  
 7 The first thing, I would like to go back to the  
 8 IRP because it is a pretty important historical document  
 9 and it shows what Met was thinking around the time that  
 10 it first set its wheeling rate. This is in the record,  
 11 page 1448. And in the middle of the page, you've got a  
 12 section on water conservation, which of course that's  
 13 what the Water Stewardship Rate funds is, water  
 14 conservation projects.  
 15 Here's what Met said in 1996. It says the  
 16 relationship between urban water conservation and  
 17 projection of water demands was discussed in section 2.  
 18 However, during the IRP conservation was also considered  
 19 as a supply option, much like any other traditional  
 20 supply project. And of course conservation does provide  
 21 a water supply. It provides a certain number of  
 22 acre-feet of water conserved, which is San Diego's point.  
 23 Met has allocated all of that expense to its  
 24 transportation rates rather than to its supply rate.  
 25 The next document I would like to show is PTX

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1 41. This is a preliminary report on the rate structure  
 2 framework proposal, March of 2000 generated by Met. If  
 3 we go to the next page, we can see that it was prepared  
 4 by Shane Chapman in March of 2000. Shane Chapman, you  
 5 might have heard his name yesterday, he was the one who  
 6 wrote PTX 25, the memo and handwritten note to Dan  
 7 Rodrigo about how the IID San Diego transfer arrangement,  
 8 exchange arrangement would potentially reduce Met's cost  
 9 by \$65 an acre-foot.  
 10 So, here's what Mr. Chapman said. Let's go to  
 11 page 15 of the document and let's go to the first  
 12 paragraph first.  
 13 So he's explaining the Water Stewardship Rate  
 14 here and what he's saying is the cost of continuing to  
 15 provide financial support for the development of local  
 16 resources and conservation are recovered by the Water  
 17 Stewardship Rate. WSR is a uniform commodity charge  
 18 applied to every acre-foot of water that moves through  
 19 the Metropolitan system, including wheeled water. The  
 20 surcharge is applied to wheeled water as well as water  
 21 sold by Metropolitan in order to ensure the continued  
 22 strong regional support of local resources and  
 23 conservation investments and to create a level playing  
 24 field between sellers of wheeled water and Metropolitan.  
 25 So that's again the rate stability purpose that

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1 Met is very -- they're not bashful about stating it, that  
 2 they want to basically prevent wheeled water from having  
 3 a competitive advantage with them.  
 4 Now, let's go to the third paragraph. One up,  
 5 actually.  
 6 There we go.  
 7 And this really goes to a point which I don't  
 8 think is in dispute. It's about the monopoly nature of  
 9 Metropolitan's distribution system and the fact that  
 10 their rates are imposed, which I know Met has disputed  
 11 but I don't think it's really in dispute.  
 12 The ultimate consumer is captive within  
 13 Metropolitan system, Mr. Chapman writes. That means with  
 14 respect to the purchase of imported water, the retail  
 15 purveyor only has two choices. It can buy imported water  
 16 from Metropolitan or it can acquire imported supplies  
 17 from another source and have the water wheeled through  
 18 the system. So, that, again, shows the monopoly point.  
 19 But, really the key part of this document is  
 20 the next page. And I would like to go to this second  
 21 paragraph and the top of the third paragraph of this  
 22 page.  
 23 So, Mr. Chapman writes therefore in addition to  
 24 implementing the WRS, it is proposed that the framework  
 25 also contain an accounting mechanism administered by

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1 Metropolitan that demonstrates the relationship between  
 2 the costs and benefits of local resourcing conservation  
 3 investments. Such assist and properly implemented should  
 4 generate regionally efficient resource investment  
 5 decisions and reduce, if not altogether eliminate  
 6 perceived and/or real customer equity issues.  
 7 So here, Metropolitan is saying we could  
 8 evaluate the costs and benefits of these programs. If we  
 9 did, that would lead to a greater perception of fairness  
 10 and perhaps actual fairness, the customers wouldn't be  
 11 upset about it.  
 12 And then the next paragraph says table 6.1  
 13 provides a summary example of such an accounting  
 14 mechanism. We can go to the next page, which has table  
 15 6.1 on it.  
 16 And this is obviously a model but what it shows  
 17 is a couple of things. Number one, Metropolitan could do  
 18 this type of analysis if it wanted to. It has the data.  
 19 It could calculate the costs and benefits of each  
 20 program. It hasn't done it. It's admitted it hasn't  
 21 done it. That's in the responses to our request for  
 22 admission.  
 23 The second interesting thing about this is what  
 24 metric does Metropolitan use to measure the effect of  
 25 these local resource programs? Well, it's supply. It is

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1 not transportation benefit, it's supply. You see at the  
 2 bottom there, net change in total supply of 100,000  
 3 acre-feet and the table speaks in terms of supply.  
 4 Now, this is pretty critical, this sort of  
 5 analysis for Prop. 26 purposes in particular because what  
 6 you're really dealing with here is the question of who  
 7 benefits and who's paying. And that's not just a rate by  
 8 rate issue. You know, is the rate supply, is the rate  
 9 transportation? It also has to do with what agencies are  
 10 benefiting from these projects. As Mr. Cushman said,  
 11 these projects are handed out agency to agency. Some  
 12 agencies got a lot, others get less. Everybody pays the  
 13 volumetric Water Stewardship Rate.  
 14 When an agency gets a benefit -- a program for  
 15 local conservation, the acre-feet of water that are  
 16 conserved are conserved locally in that agency's service  
 17 area. They're not conserved in any other agency's  
 18 service area. That supply benefit is felt locally.  
 19 Metropolitan says there are also distribution  
 20 benefits that are regional. It admits it hasn't ever  
 21 quantified those, so it hasn't done enough to meet any  
 22 sort of burden it might have. But in any event, it needs  
 23 to account for the local supply benefit and give credit  
 24 for that in the way it assesses its rates.  
 25 So where is the analysis? Metropolitan hasn't

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1 done it.  
 2 One document that I would like to show you.  
 3 The Water Authority actually has done analysis of the  
 4 money that's paid into the WSR and the money that's doled  
 5 out in these subsidy programs, and that's PTX 214. This  
 6 is for four years and I would like to go through them  
 7 year by year. The data on this comes from Metropolitan.  
 8 It was forwarded to San Diego, and that's PTX 209.  
 9 Here, we have --  
 10 MR. WEST: Your Honor, sorry to interrupt  
 11 counsel. If this regards Prop. 26, this court has  
 12 already determined this is administrative record only for  
 13 Prop. 26, so this document's irrelevant to the Court's  
 14 inquiry into Prop. 26. This is not.  
 15 THE COURT: This is being used for which claim?  
 16 MR. PURCELL: Your Honor, this is being used  
 17 for all claims. This is being shown that these --  
 18 proportionality is not merely an inquiry under Prop. 26.  
 19 Prop. 26 makes it explicit. Proportionality is a  
 20 requirement of law generally.  
 21 THE COURT: Objection is overruled. But these  
 22 sorts of objections, generally speaking I'm going to be  
 23 overruling them. It doesn't mean you're wrong, it just  
 24 means let's make the record in this trial. And when we  
 25 get to subsequent briefing stages, if people are using

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1 evidence in the wrong way for the wrong claim, I invite  
 2 you to point that out.  
 3 MR. WEST: I appreciate that, your Honor.  
 4 Thank you for that clarification.  
 5 MR. PURCELL: Under the Metropolitan Act, it  
 6 speaks to providing similarly situated customers under  
 7 Prop. 13 and other constitutional requirements the idea  
 8 of providing a huge benefit to one and a penalty to  
 9 another is still unconstitutional.  
 10 What this shows again is an in out. The in is  
 11 the Water Stewardship Rate payments, the out is the  
 12 program funding. You see people are all over the map.  
 13 San Diego is taking the worst of it. They're at minus  
 14 \$4.3 million for 2007.  
 15 Western, you see at the bottom is one of the  
 16 big winners there. They're 2.1.  
 17 I'll come back to Western in a minute.  
 18 You go to 2008.  
 19 THE COURT: Tell me again what you said that  
 20 this represents? I'm unclear.  
 21 MR. PURCELL: Sorry. This is -- that's my  
 22 fault, your Honor.  
 23 So this is a chart provided -- that San Diego  
 24 created based on data provided to it by Met of the amount  
 25 of each agency's payments under the Water Stewardship

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1 Rate. That's the in column. And then the amount of  
 2 money disbursed by Met to each agency.  
 3 THE COURT: I see.  
 4 MR. PURCELL: Under the local resource projects  
 5 conservation credit programs and desalination programs  
 6 that are funded by the Water Stewardship Rate.  
 7 So when you go to 2008, again you see people  
 8 are all over the map. Some are way up, some are way  
 9 down. San Diego is way down at \$5.8 million in the hole.  
 10 Western down at the bottom, 1.8 million to the good.  
 11 2009 and 2010 show similar figures. There's  
 12 2009. San Diego deficit here has increased to  
 13 \$10.5 million. And then 2010, looking forward, it's  
 14 about the same, \$10.6 million. And Western down at the  
 15 bottom is 2 million -- coming out \$2 million ahead.  
 16 Now, the reason I'm mentioning Western is that  
 17 Western actually created their own analysis which was  
 18 produced to us in this case of the benefit that they  
 19 received under the Water Stewardship Rate from the local  
 20 resource programs, and that's PTX 266. This is already  
 21 in the record. It's also in the administrative record so  
 22 we won't separately mark it. You can't really read it  
 23 too well on the screen, unfortunately.  
 24 Let's go to page 2. So, this is unfortunately  
 25 very hard to read.

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1 Jeff, can you highlight just the very bottom?  
 2 So this is eight fiscal years' of payments  
 3 under the Water Stewardship Rate by Western in 2003 to  
 4 2010. And the payments of the Water Stewardship Rate,  
 5 it's hard to read, but it's about \$14.3 million.  
 6 THE COURT: 14.  
 7 MR. PURCELL: 14.833.  
 8 So let's go to the last page. Western actually  
 9 calculated how much money it got out for its \$14.8  
 10 million payments. Page 9.  
 11 And this is a little clearer. That's good.  
 12 So there's the same \$14.8 million figure on the  
 13 top, fees paid to MWD under the Water Stewardship Rate,  
 14 which they call a fee, which it is. And then you add up  
 15 all of the regional program funding that they received  
 16 and the net benefit is \$23.2 million. So that's how much  
 17 more they got out of it than they paid in.  
 18 And now briefly, just a couple of documents on  
 19 the Water Stewardship Rate that shows really the Water  
 20 Stewardship Rate is not even collecting all of the costs  
 21 of the desalination conservation local resource programs.  
 22 PTX 142, this is a Met document. It's a memo,  
 23 July 6th, 2009 from Stathis Kostopoulos, one of the  
 24 people who administered Met's financial planning model to  
 25 Tom DeBacker, I believe is the comptroller.

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1 And Mr. DeBacker asked Mr. Kostopoulos to  
 2 calculate how much money Met collected from the Water  
 3 Stewardship Rate and their costs of providing those, I  
 4 guess you could call them services, the subsidy programs.  
 5 Fiscal 2008-2009, the second paragraph says  
 6 that Metropolitan from its sales of water and its  
 7 volumetric Water Stewardship Rate generated \$52.8 million  
 8 in WSR revenue. But, in the next paragraph, total demand  
 9 management costs were about \$93.9 million for fiscal  
 10 2009.  
 11 Scroll down to the bottom.  
 12 Demand management cost exceeded receipts from  
 13 the Water Stewardship Rate by \$41.2 million during fiscal  
 14 2008-2009. So those costs had to be borne elsewhere.  
 15 We're not sure where they were put but they're not put on  
 16 the Water Stewardship Rate. It is not aligned to the  
 17 costs of the service being provided.  
 18 And then just briefly, 173, PTX 173, basically  
 19 the same memo from the following year, June 22, 2010,  
 20 again Mr. Kostopoulos writing to Mr. DeBacker. The  
 21 format's the same.  
 22 This time, in the second paragraph, Met's  
 23 volumetric Water Stewardship Rate netted at \$62.9  
 24 million. Its total management costs in the following  
 25 paragraph were 85.7 million. And this led in the last

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1 paragraph to a deficit of \$21.8 million for fiscal  
 2 2009-2010. Those costs were spread over Metropolitan's  
 3 other rates.  
 4 So hopefully that was helpful, your Honor.  
 5 Before I sit down, actually one other thing  
 6 that was raised on Mr. Cushman's cross-examination was  
 7 this idea that Metropolitan was sort of taken unawares  
 8 that San Diego hasn't really complained too much about  
 9 Metropolitan's practices. That's not right.  
 10 And I would just like to point out a few  
 11 documents that provide this history. First is PTX 22.  
 12 These objections really have been persistent and they  
 13 stretch back pretty much in all phases of this case,  
 14 before the wheeling rate was set, during the pendency of  
 15 the first wheeling rate before unbundling, after  
 16 unbundling. This is a 1996 document, December of 1996.  
 17 1996, it is a letter to John Foley who had been  
 18 the chairman of Met. This is about Met's proposed  
 19 resolution establishing a short term wheel rate so right  
 20 at the beginning when Met was first establishing the  
 21 wheeling rate.  
 22 Let's go to page 2 of this.  
 23 Here is the key paragraph. So in short summary  
 24 the Authority objects to most imposition of costs upon a  
 25 party requesting the use of excess capacity because the

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1 costs bear no relationship to the actual implemental cost  
 2 of wheeling the water through the conveyance facility  
 3 slash system. That's pretty much exactly what we're  
 4 talking about today.  
 5 And two paragraphs later, San Diego explained  
 6 in more specificity what it was talking about, and this  
 7 again goes to this sort of protectionist approach, this  
 8 hold harmless approach.  
 9 The Authority believes the intended result of  
 10 Metropolitan's pricing approach is to remove any  
 11 incentive for its customers or member agencies to request  
 12 the use of excess capacity. In turn, this will allow  
 13 Metropolitan to sustain its monopoly on imported water  
 14 supplies within its boundaries. As such the proposed  
 15 resolution is contrary to the policy behind the wheeling  
 16 statute and raises state and federal antitrust issues in  
 17 the process.  
 18 So, we know from the documents already reviewed  
 19 that Met set its wheeling rate with this rate stability  
 20 purpose in mind and couldn't overcome it, and that's  
 21 exactly what San Diego is complaining about.  
 22 PTX 38, this is a September 1999 letter from  
 23 San Diego to Ron Gastelum. He succeeded Mr. Foley as  
 24 general manager of Met. And if you look at the bottom of  
 25 the first page, there's a paragraph called cost shifting.

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1 Now September of 1999, this was before the unbundling,  
 2 but the wheeling, the prior wheeling litigation was  
 3 ongoing.  
 4 And here's what San Diego said about cost  
 5 shifting. It said there's significant problems with the  
 6 division of cost categories in the rate model between  
 7 supply, conveyance and distribution.  
 8 Inappropriate allocation between these  
 9 categories shift costs and make it appear that  
 10 Metropolitan is designing the model to predetermine the  
 11 outcome and achieve two goals: One, artificially  
 12 suppress supply costs to appear competitive with  
 13 potential alternative suppliers and to inflate conveyance  
 14 costs to effectively preclude wheeling within  
 15 Metropolitan's system.  
 16 The next page, again, more specificity, we see  
 17 exactly what sort of costs are being shifted in the first  
 18 paragraph. And San Diego talks about the State Water  
 19 Project. The State Water Project, SWP, is a Metropolitan  
 20 water supply cost but model assumption assign only 15 to  
 21 20 percent of Metropolitan's water supply contract with  
 22 the SWP, the Delta water charge, as a water supply costs.  
 23 The model should treat the SWP as a supply cost to the  
 24 point where water is introduced to Metropolitan's service  
 25 area.

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1 And this paragraph really lays out San Diego's  
 2 complaints in this case. It could have been taken from  
 3 our complaint.  
 4 So, there's no question these complaints were  
 5 being made back then.  
 6 Mr. Cushman, Mr. Braunig showed you on  
 7 Mr. Cushman's redirect PTX 244, which was the 2000  
 8 letter. I won't get into that. You've already looked at  
 9 that. But that -- I will just say once again that that  
 10 document did call out the dry year peaking issue in some  
 11 detail.  
 12 So, March 2002, Met adopted the rate allocation  
 13 that's in effect today and became effective in  
 14 January 2003.  
 15 And during the process of leading up to that  
 16 unbundling and the current rate allocation, San Diego  
 17 again made its objections explicit. This document is in  
 18 the record. This is in both records. 6294 is the  
 19 number. March 2012, 2002 board meeting. This is the  
 20 proposal for the 2003 rates. And if we go to page 6300,  
 21 which is page 7 of the document, you see number 7 there  
 22 at the bottom of the page. And this goes on for several  
 23 pages more.  
 24 Bob Campbell, who's in the courtroom today, the  
 25 executive assistant to the general manager for San Diego

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1 submitted written comments and made it clear that  
 2 San Diego opposed the rate structure. San Diego  
 3 appreciates this opportunity to comment.  
 4 Metropolitan's board adopted a rate structure  
 5 plan, including a concept for proposed rate structure on  
 6 December 12th, 2000, then established the work plan.  
 7 And if we go to the next page, and there in the  
 8 second paragraph, the Water Authority opposed the  
 9 proposed rate structure for a number of reasons that have  
 10 previously been presented to the board. However, the  
 11 Water Authority has continued to work with Metropolitan  
 12 and its member agencies in an effort to develop  
 13 implementation approaches that would be consistent with  
 14 the objective stated in Metropolitan by Metropolitan's  
 15 board and also address the Water Authority's stated  
 16 objectives and concerns.  
 17 THE COURT: Off the record for a moment.  
 18 MR. PURCELL: All right. The point here is the  
 19 complaints were well known. Metropolitan on the one hand  
 20 says we should have worked with the board. We were duty  
 21 bound to work with the board, we shouldn't have run off  
 22 and sued. We worked with the board for a long time.  
 23 This was right before the five-year litigation stand  
 24 still came into effect. Obviously there couldn't be a  
 25 lawsuit during that period of time.

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1 PTX 25, you've seen Mr. West used that on cross  
 2 with Mr. Cushman. I won't go through it in detail but  
 3 there's a number of specific complaints in February of  
 4 2003, although not as specific apparently as Met feels we  
 5 should have been.  
 6 And then PTX 81, it's the last document I want  
 7 to show you, and this makes perfectly clear. This is  
 8 during the five-year litigation time out. This is a memo  
 9 from Kevin Hunt, who was the general manager of MWDOC,  
 10 the Metropolitan Water District of Orange County to his  
 11 own board of directors in June of 2004.  
 12 The subject is a telephone conversation he had  
 13 with Maureen Stapleton, San Diego general manager. And  
 14 Paragraph 2 is the interesting part of this document.  
 15 Ms. Stapleton asked about the status of section  
 16 7 of the LRP agreement. She said that she was surprised  
 17 by the hostile tone of Mr. Gastelum. That's Met's  
 18 general manager, Mr. Gastelum's June 18, 2004 letter on  
 19 rate structure integrity. She said that her board had  
 20 just approved a \$1.9 billion capital improvement plan  
 21 addition and that they were not intimidated by financial  
 22 threats nor swayed by financial offers.  
 23 And then there's the underlined part. This is  
 24 Mr. Hunt's underlining. I asked whether SDCWA would be  
 25 pursuing legal or legislative remedies at the end of the

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1 five years QSA delay. She said absent any negotiated  
 2 changes, yes.  
 3 So this was no secret that San Diego objected  
 4 to the rate structure, reserved all rights, planned to  
 5 litigate if they couldn't resolve it in the Met  
 6 boardroom. Couldn't resolve it in the Met boardroom,  
 7 filed suit. Nobody is surprised by any of this,  
 8 including the specific complaints that San Diego is  
 9 making in this case. Even if that were an issue with  
 10 respect to these rate claims, which we think it's not,  
 11 because the rates were set anew in 2010 and 2012, statute  
 12 of limitations started running then, we sued timely.  
 13 But to the extent the Court is interested in  
 14 this and thinks this is meaningful, there is not any  
 15 question that San Diego complained about this  
 16 incessantly.  
 17 That's all I've got, your Honor.  
 18 Before I sit down, I would like to raise the  
 19 issue of deposition designations, which both parties  
 20 submitted on Monday. We would like to submit those as  
 21 part of our case-in-chief. There have been objections.  
 22 Your Honor hasn't ruled. Not rushing you at all but we  
 23 don't want to lose the right to submit those.  
 24 THE COURT: Sure.  
 25 Let's go off the clock.

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1 The -- I'm not going to be ruling on them  
 2 tonight, tomorrow morning or any time in time to do you  
 3 any good. So my suggestion is that those be submitted  
 4 with the objections. And the odds are, I will say if  
 5 past experience is any guide, that not all of them will  
 6 be used by me in my proposed statement of decision.  
 7 So there are two ways to go about this. I'll  
 8 look at the volume of objections and if it's just as easy  
 9 to go through them and rule on them, this will be after  
 10 we've terminated the court proceedings, I might do that.  
 11 The other thing I've done in the past is to the  
 12 extent I found them useful, I go ahead and I incorporate  
 13 them and -- but as I incorporate them, I in effect rule.  
 14 So if they're in the statement of decision, then the  
 15 objections have been overruled.  
 16 Now, maybe for your record and for appellate  
 17 purposes you think it's best if I actually walk through  
 18 all of the objections, so I'm open to doing that. I  
 19 don't know what the volume of objections are.  
 20 MR. PURCELL: I think your Honor's plan is fine  
 21 with us as far as if you cite them, you've overruled the  
 22 objection.  
 23 THE COURT: What do you think?  
 24 MR. WEST: That's fine by us too, your Honor.  
 25 THE COURT: Let's just make sure before we wrap

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1 up in court at the end of the week or on Monday, whenever  
 2 it is, that I know that I have what you want me to have.  
 3 I want to make sure that you've seen what I got because I  
 4 don't see them right here. So I want to make sure I have  
 5 what you think I've got with respect to the objections.  
 6 MR. PURCELL: They should have been filed on  
 7 Monday, I believe, both sides.  
 8 THE COURT: I'm sure they were, I'm sure they  
 9 were but I want to make sure all of us sort of stare at  
 10 them at the same time.  
 11 MR. WEST: Another minor housekeeping matter,  
 12 your Honor.  
 13 THE COURT: Sure.  
 14 MR. WEST: I apologize. I meant to at the end  
 15 of Mr. Cushman's cross-examination to move the exhibits I  
 16 presented to him in connection with that  
 17 cross-examination into evidence to the extent they were  
 18 not already.  
 19 THE COURT: Well, let's go through them. I  
 20 don't know what --  
 21 MR. KEKER: We have no objection.  
 22 MR. PURCELL: We have objection to them and --  
 23 THE COURT: We need to have a clear record. I  
 24 don't usually say everything you said was admitted. I  
 25 actually want a record so somebody who's reading it can

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1 see A, B, C was admitted. So you can do it by written  
 2 stipulation or we can walk through it on the record at  
 3 some point.  
 4 MR. WEST: Thank you, your Honor.  
 5 THE COURT: Okay.  
 6 MR. KEKER: Your Honor, in the nature of  
 7 housekeeping, you just mentioned briefing. Can you give  
 8 us some idea of what you picture happening at the end of  
 9 this?  
 10 THE COURT: Well, I'm -- eventually I'm more  
 11 interested in what the parties want to do. So I think  
 12 the parties ought to think about it.  
 13 But what might be typical, one idea would be to  
 14 have some briefing after this is finished where you in  
 15 effect lay out the evidence that has been -- that is in  
 16 the record and wrap it up with the positions that you  
 17 have in the case, final post-trial brief. That would  
 18 probably be pretty helpful. And it would also be  
 19 submitted in a Word editable format so I could crib.  
 20 There are a lot of pages and lot of record  
 21 citations and the parties are in the best position to  
 22 sort of glue together what those citations are with what  
 23 their arguments are. After a session like this,  
 24 typically you would probably want to have an opportunity  
 25 to do that. But I think you ought to talk about it and

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1 see what you think is in your interests.  
 2 MR. PURCELL: We'll talk about it.  
 3 In talking about it, could you give us some --  
 4 the day we finish is the 23rd. Next day is the 24th and  
 5 then the 25th and then there's -- do you have any sense  
 6 of when you want this? I mean --  
 7 THE COURT: No, no, I have no schedule. It's a  
 8 question of how much time you need to get it done.  
 9 There's also a little bit of press of time that I've  
 10 heard not from my part but from your part that you want  
 11 to try to get some resolution of some of --  
 12 MR. KEKER: April rates.  
 13 THE COURT: So that's not my concern, it's your  
 14 concern. I would like to attend to it but you're in the  
 15 best position to know what the timetable would be like  
 16 that would accommodate your interests.  
 17 MR. KEKER: We will talk amongst ourselves.  
 18 THE COURT: I will defer to you on this. I  
 19 really will.  
 20 MR. KEKER: Then the other thing is yesterday  
 21 they submitted a glossary. We have significant  
 22 objections to the glossary. It's argumentative and so  
 23 on.  
 24 Ms. Walton-Hadlock can give you specifics, but  
 25 basically we just object to the glossary. We don't need

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1 a glossary. Everybody can argue what they think the  
 2 evidence shows.  
 3 THE COURT: Okay.  
 4 MR. HIXSON: Your Honor, if they don't agree  
 5 with our glossary, they believe we've misdefined  
 6 something, why don't they put it in writing? We would  
 7 like the chance to submit to the Court our glossary that  
 8 we believe is accurate but we have no objection to them  
 9 submitting something different or putting it in writing  
 10 so you can hear from both sides.  
 11 THE COURT: I haven't seen it but what  
 12 sorts of --  
 13 MR. KEKER: Peaking is defined their way,  
 14 wheeling is defined their way. It's just this  
 15 argumentative list of things about this case.  
 16 MR. HIXSON: Your Honor --  
 17 MR. KEKER: And it doesn't seem -- it doesn't  
 18 seem to make any sense to have a separate fight. It's  
 19 just a waste of time to try to agree with them on what --  
 20 they say peaking means one thing, we say dry year peaking  
 21 means another thing.  
 22 THE COURT: Why don't you make sure at the end  
 23 of the day I have a copy of your glossary, working copy.  
 24 I'll look at it tonight and I'll figure out the extent to  
 25 which it looks argumentative. If it is, we'll just throw

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1 it out.  
 2 MR. HIXSON: Your Honor, our other housekeeping  
 3 matter along those lines, we had a version of our  
 4 pretrial brief where we put in hyperlinks in .pdfs and  
 5 the clerk said we should check with you if you would like  
 6 a chambers copy. We think it is helpful in reading  
 7 through.  
 8 THE COURT: Oh, yes. I think .pdf with links  
 9 and electronic format is helpful, obviously with a copy  
 10 to the other side.  
 11 Shall we take a recess now or do you want to  
 12 call your next witness now?  
 13 MR. BRAUNIG: Why don't we break?  
 14 THE COURT: I'll see everybody in ten minutes.  
 15 (Brief break.)  
 16 THE COURT: Let's continue.  
 17 MR. BRAUNIG: San Diego calls as its next  
 18 witness, Dan Denham.  
 19 DAN DENHAM,  
 20 having been called as a witness by the Plaintiff, and  
 21 having been duly sworn under the standard oath, was  
 22 examined and testified as follows:  
 23 THE CLERK: Thank you. Please be seated.  
 24 If you would adjust the microphone and state  
 25 and spell your first and last name.

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1 THE WITNESS: My first name is Dan, D-A-N,  
 2 Denham, D-E-N-H-A-M.  
 3 THE COURT: Okay.  
 4 MR. BRAUNIG: Thank you, your Honor.  
 5 Mr. Purcell, if it's okay, will hand up a  
 6 binder of some documents and which has also been provided  
 7 to opposing counsel.  
 8 And, Mr. Denham, do you have the binder in  
 9 front of you?  
 10 THE WITNESS: I do.  
 11 MR. BRAUNIG: All right. Thank you.  
 12 DIRECT EXAMINATION  
 13 BY MR. BRAUNIG:  
 14 Q. Mr. Denham, how are you presently employed?  
 15 **A. I am currently employed by San Diego County**  
 16 **Water Authority.**  
 17 Q. Okay. In what role?  
 18 **A. I am the acting Colorado River program**  
 19 **director. I'm also the chief administrative officer for**  
 20 **the Joint Powers Authority environmental program in**  
 21 **Imperial Valley.**  
 22 Q. I think maybe you may want to speak into your  
 23 microphone and speak up a little bit for the court  
 24 reporter.  
 25 Can you describe, Mr. Denham, for the Court any

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1 portions of your role at the Water Authority that involve  
 2 financial analysis and modeling?  
 3 **A. Sure.**  
 4 **There's certainly portions of the two roles**  
 5 **that I previously described as the CAO of the Joint**  
 6 **Powers Authority and the acting Colorado River program**  
 7 **director of the Water Authority. There's multiple**  
 8 **financial resource problems that I administer and**  
 9 **oversee.**  
 10 **In addition to those, I work collaboratively**  
 11 **with our own finance department on rate modeling issues**  
 12 **as well as debt issuance.**  
 13 Q. Anything else beyond that?  
 14 **A. At the Water Authority?**  
 15 Q. Yeah.  
 16 **A. That sums it up.**  
 17 Q. Okay. Prior to working for the Water  
 18 Authority, what experience did you have with respect to  
 19 financial analysis and modeling?  
 20 **A. Prior to the Water Authority, I worked for the**  
 21 **City of San Diego. Just before, I was the finance rates**  
 22 **and bonds manager for the city's Waste Water Department.**  
 23 **In that capacity, I had a team of financial analysts that**  
 24 **I oversaw, more debt rates, bonds, financial forecasting.**  
 25 **Prior to that, I worked in the Financial**

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1 **Management Department in the City of San Diego. We were**  
2 **sort of the analytical arm of the City Manager's Office**  
3 **where I was the capital improvements program coordinator**  
4 **for the entire city.**

5 Q. Can you describe your educational background?

6 **A. Yes. I have a bachelor's degree in public**  
7 **administration with a minor in economics. I also have a**  
8 **master's degree in public administration with a**  
9 **concentration in public finance.**

10 Q. Are you working toward board certifications  
11 relating to financial analysis and modeling?

12 **A. There's a group called the National Association**  
13 **of Certified Valuation Analysts, NACVA. The**  
14 **certification there is a certified valuation analyst. It**  
15 **really involves asset valuation. I have done course work**  
16 **in that and in -- let's characterize it as a test or so**  
17 **away from completing that certification.**

18 Q. Have you ever given testimony as an expert in  
19 the field of financial analysis and modeling?

20 **A. I have. Approximately three to four years ago,**  
21 **I served as an expert witness in an arbitration that the**  
22 **San Diego County Water Authority had on a price dispute**  
23 **with the Imperial Irrigation District. In that capacity,**  
24 **I gave testimony and did various calculations related to**  
25 **the price paid for water.**

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1 Are you saying that between 232 and 315  
2 acre-feet is -- was erroneously put into the  
3 transportation charge?

4 THE WITNESS: If I'm saying yes, that's the  
5 overcharge.

6 THE COURT: That's the overcharge?

7 THE WITNESS: Yes.

8 THE COURT: Thank you. Go ahead.

9 MR. BRAUNIG: And, your Honor, we will develop  
10 that obviously for you to explain that.

11 Q. Have you developed, Mr. Denham, a slide to show  
12 how you went about backing State Water Project costs out  
13 of the transportation rates?

14 **A. I did.**

15 MR. BRAUNIG: Can I ask to pull up document  
16 162-01.

17 Q. Before you get into this, can you maybe  
18 describe for the Court how you -- how you identified the  
19 costs that are State Water Project costs associated with  
20 the different rates?

21 **A. Sure.**

22 **As part of Metropolitan's board approved rate**  
23 **and charges for any given year, there's a cost of service**  
24 **report that is produced to support those rates.**  
25 **Contained in that cost of service report are various**

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1 Q. Are you a member of any professional  
2 associations relating to public finance?

3 **A. The America Water Works Association and by**  
4 **virtue of the fact that I'm in the process of training**  
5 **for that certification, the National Association of**  
6 **Certified Valuation Analysts as well as the American**  
7 **Water Works. I can't remember if I actually just said**  
8 **that. Yeah.**

9 Q. You understand you're not being asked today to  
10 offer opinions about contractual damages?

11 **A. I do.**

12 Q. Were you asked to perform an analysis of what  
13 Metropolitan's transportation rates would look like if  
14 you backed out State Water Project costs from the System  
15 Access Rate and System Power Rate and removed the Water  
16 Stewardship Rate as a cost?

17 **A. Yes, I did.**

18 Q. What did you conclude based on that analysis?

19 **A. Based on that analysis, I concluded that there**  
20 **was a range of from approximately \$232 an acre-foot to**  
21 **\$315 an acre-foot worth of transportation services that**  
22 **were misallocated.**

23 Q. Have you developed a slide --

24 THE COURT: Excuse me. I'm not -- if I could,  
25 I don't really understand the testimony.

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1 **assumptions, including deliveries to member agencies,**  
2 **supply assumptions and most certainly revenue**  
3 **requirements.**

4 **Based on those assumptions, I was able to go in**  
5 **and take a look at State Water Project costs and isolate**  
6 **them and apply them to the System Access Rate and System**  
7 **Power Rate.**

8 Q. Okay. And so looking at 162-01, the slide  
9 that's up here right now, what's the total amount of  
10 costs in Metropolitan's revenue requirements associated  
11 with the State Water Project?

12 **A. The revenue requirement for the transportation**  
13 **and supply elements as displayed on the screen is**  
14 **407 million.**

15 **I would note -- I would pause there because**  
16 **there are additional revenue requirements as part of the**  
17 **State Water Project that are not contained on this slide,**  
18 **which are not relevant to the transportation.**

19 Q. Okay. What's the amount of state water -- this  
20 is for fiscal year 2011. What was the amount of State  
21 Water Project costs that was assigned to the System  
22 Access Rate based on your analysis and review?

23 **A. You see the number there in yellow,**  
24 **195,000,205,670.**

25 Q. And what was the amount of State Water Project

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1 costs that were assigned to Metropolitan System Power  
 2 Rate in 2011?  
 3 **A. The System Power Rate revenue requirement for  
 4 the State Water Project was 181,389,515.**  
 5 Q. And what is the column -- let's look at the  
 6 System Access Rate. There's a column on the right that  
 7 says "Other District Requirements." What are other  
 8 district requirements, say, for the System Access Rate?  
 9 What does that generally refer to?  
 10 **A. I think the easiest way to explain what other  
 11 district requirements are is to take a look at the column  
 12 labeled "Total" and you'll see 387 million for the total  
 13 System Access Rate.**  
 14 **The other district requirements are simply the  
 15 total amount of 387 less the State Water Project amount  
 16 of 195, essentially the balance of the revenue  
 17 requirement for the System Access Rate. I chose to place  
 18 it in that category as allocated catchall for lack of a  
 19 better word.**  
 20 Q. For purposes of your analysis, did you assume  
 21 that State Water Project costs that are on the System  
 22 Access Rate and System Power Rate shouldn't be on that  
 23 rate -- shouldn't be on those rates?  
 24 **A. Yes, that's correct. And so the approach that  
 25 I took was the 195 million for the System Access Rate and**

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1 **181 million for the System Power Rate, I removed those.**  
 2 Q. Okay. How did you go about identifying and  
 3 backing out the Transportation Rate costs associated with  
 4 local water development and conservation?  
 5 **A. The local water supply development and  
 6 conservation is a little bit straightforward, a little  
 7 bit more straightforward.**  
 8 **The revenue requirement for that function is  
 9 completely collected under the Water Stewardship Rate and  
 10 so there was no method of isolating different functional  
 11 costs.**  
 12 Q. Were you able to take these amounts that you --  
 13 that you backed out and reduce them to a per acre-foot  
 14 amount in each fiscal year?  
 15 **A. Yes, I was. And I was able to do that based on  
 16 the sales assumptions contained in the cost of service  
 17 report from which I gathered these revenue requirements.**  
 18 Q. Do you have a slide that shows how you  
 19 calculated this on a per acre-foot basis?  
 20 **A. Yes, I do.**  
 21 MR. BRAUNIG: Can you please pull up 170-01?  
 22 Q. All right. Can you explain to the Court  
 23 what -- how this slide, 170-01, explains your analysis?  
 24 **A. Yes. So, this slide is for the calendar year  
 25 2011, rates and charges, specifically the System Access**

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1 **System Power and Water Stewardship Rate.**  
 2 **I would draw your attention to the number in  
 3 the second column in yellow, \$372 in acre-foot. That  
 4 would be the board approved rate in calendar year 2011.**  
 5 **Based on the analysis that I did of the cost of  
 6 service study, the previously identified revenue  
 7 requirements for the System Access Rate and System Power  
 8 Rate, I removed those from the overall rate elements for  
 9 those two categories to develop a corrected rate, which  
 10 in this case is \$136 an acre-foot.**  
 11 **In the end, the difference between the two  
 12 columns, the column labeled "Current" and column labeled  
 13 "Corrected" is the \$236 I previously referenced.**  
 14 THE COURT: Are these part of an exhibit, what  
 15 PTX 357?  
 16 MR. BRAUNIG: I believe PTX 357 is the source  
 17 of the current rates.  
 18 THE COURT: What exhibits are these?  
 19 MR. BRAUNIG: These -- this is a demonstrative  
 20 showing his analysis.  
 21 THE COURT: Okay. So we're not going to mark  
 22 it as an exhibit?  
 23 MR. BRAUNIG: We can mark it as an exhibit if  
 24 it will be helpful to the Court.  
 25 MR. HIXSON: We object because it is not

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1 evidence.  
 2 THE COURT: We'll just use it as a  
 3 demonstrative.  
 4 Go ahead.  
 5 BY MR. BRAUNIG:  
 6 Q. Sorry.  
 7 So, let's talk about these one at a time. The  
 8 System Access Rate, what is the current rate for the  
 9 System Access Rate as of -- let me ask that a different  
 10 way. What was the System Access Rate, the Met System  
 11 Access Rate in 2011?  
 12 **A. The System Access Rate in 2011 was \$204 an  
 13 acre-foot.**  
 14 Q. And how did you establish the corrected System  
 15 Access Rate that's in the next column?  
 16 **A. As I sort of previously described, the revenue  
 17 requirements that you saw in the previous slide that were  
 18 labeled in a different court, I removed that revenue  
 19 requirement as it was related to State Water Project  
 20 costs of the System Access Rate. By removing that  
 21 revenue requirement and then taking the rate and  
 22 spreading it across the sales assumption in the 2011 cost  
 23 of service study, you get to an approximation of a  
 24 corrected rate.**  
 25 Q. Okay. What was the corrected rate that you

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1 calculated for the System Access Rate in 2011?

2 **A. \$103 an acre-foot.**

3 Q. And what was the difference between the  
4 actual -- the charged rate and the -- and what you  
5 calculated as the corrected rate for the System Access  
6 Rate?

7 **A. \$101 an acre-foot.**

8 Q. Okay. Let's move down to the next row.

9 What was Metropolitan's System Power Rate in  
10 2011?

11 **A. In 2011, the System Power Rate was \$127.**

12 Q. Okay. And --

13 **A. An acre-foot.**

14 Q. Per acre-foot?

15 **A. Yes.**

16 Q. When you backed out the State Water Project  
17 costs from the System Power Rate, what was the remaining  
18 -- what was the corrected rate?

19 **A. The corrected rate for the System Power Rate  
20 was \$33 an acre-foot.**

21 Q. And what was the difference between those two?

22 **A. \$94 an acre-foot.**

23 Q. Going down to the next row, Water Stewardship  
24 Rate, the 2011 Water Stewardship Rate was how much?

25 **A. \$41 an acre-foot.**

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1 Q. Did you --

2 THE COURT: Just make sure to keep your voice  
3 up.

4 THE WITNESS: Sure.

5 BY MR. BRAUNIG:

6 Q. Mr. Denham, did you perform a similar analysis  
7 for calendar years 2012, '13 and '14?

8 **A. I did. I provided the exact analysis, the same  
9 approach for 2012, '13 and '14.**

10 MR. BRAUNIG: Okay. Can we pull up slide  
11 170-02.

12 Q. Does this demonstrative exhibit indicate the  
13 rates that you calculated as Metropolitan's  
14 transportation rates for 2012?

15 **A. It does.**

16 Q. Okay. And what were Metropolitan's combined  
17 transportation rates as charged in 2012?

18 **A. The 2012 board approved rate was \$396 an  
19 acre-foot.**

20 Q. When you -- you know, I'm actually -- I'll just  
21 say this for the record so that we don't -- so we're  
22 clear for later. I'm seeing the PTX down at the bottom  
23 is 244. I believe that's actually supposed to be 224, so  
24 if we may -- and we'll seek at the end to move 224 into  
25 the record. It's one that's subject to our stipulation.

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1 Q. And where is there a zero or sort of a little  
2 hyphen under corrected rate?

3 **A. The Water Stewardship Rate is 100 percent  
4 charged to the transportation rates, so I removed that.**

5 Q. And the difference therefore is \$41?

6 **A. That's correct.**

7 Q. Okay. So at the bottom, the combined  
8 transportation rates of Metropolitan in 2011, the actual  
9 rates charged were what?

10 **A. \$236 an acre-foot.**

11 Q. Let me make sure I've got the record really  
12 clear.

13 The rates that were charged by Metropolitan in  
14 2011, the current rates --

15 **A. Excuse me.**

16 Q. -- were what in totals?

17 **A. Yes. Total rate charged by Metropolitan was  
18 \$372 an acre-foot.**

19 Q. And your corrected rate, adding up the numbers  
20 that you calculated as a corrected rate was what?

21 **A. \$136 an acre-foot.**

22 Q. And therefore, the difference between the  
23 actual rate and what you calculated is the corrected rate  
24 for 2011 was what amount?

25 **A. \$236 an acre-foot.**

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1 THE COURT: Okay.

2 THE CLERK: So which is exhibit --

3 THE COURT: No, this is not. We're still  
4 looking at demonstrative exhibits. The parties are not  
5 entering them into evidence at this time.

6 BY MR. BRAUNIG:

7 Q. When you did the analysis that you did and took  
8 out from transportation rates State Water Project costs  
9 and local water supply development costs, what was the  
10 resulting total corrected rate for 2012?

11 **A. The total corrected rate for 2012 was \$164 an  
12 acre-foot.**

13 Q. And what was the calculated difference between  
14 those -- between the current rates and corrected rates?

15 **A. The calculated difference in 2012 was \$232 an  
16 acre-foot.**

17 MR. BRAUNIG: Can we please pull up 170-03?

18 Q. Mr. Denham, is this demonstrative reflective of  
19 the data that you calculated for calendar year 2013?

20 **A. Yes, it is.**

21 Q. Okay. And what were the -- what was  
22 Metropolitan's Transportation Rate in 2013, combining the  
23 System Access Rate, System Power Rate and Water  
24 Stewardship Rate?

25 **A. That rate was \$453 an acre-foot.**

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1 Q. When you removed from that State Water Project  
 2 costs and water -- and the costs of local water supply  
 3 development, what was the resulting corrected rate for  
 4 2013?  
 5 A. **The resulting corrected rate for 2013 was \$138**  
 6 **an acre-foot.**  
 7 Q. And what was the difference between those?  
 8 A. **The difference being \$315 an acre-foot.**  
 9 MR. BRAUNIG: Let's pull up 170-04.  
 10 I promise, your Honor, this will be the last  
 11 one.  
 12 THE COURT: That's all right.  
 13 BY MR. BRAUNIG:  
 14 Q. The -- for 2014, what -- based on  
 15 Metropolitan's approved boards and charges, what will  
 16 Metropolitan's 2014 transportation rates be, combining  
 17 the System Access Rate, System Power Rate and Water  
 18 Stewardship Rate?  
 19 A. **It will be \$445 an acre-foot.**  
 20 Q. When you removed State Water Project and local  
 21 supply and local water development costs, what was the  
 22 corrected rate that you calculated?  
 23 A. **\$143 an acre-foot.**  
 24 Q. And what's the difference between those two?  
 25 A. **The difference is \$302 an acre-foot.**

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1 Q. Let's switch gears now and talk about dry year  
 2 peaking. What do you understand dry year peaking to  
 3 mean, Mr. Denham?  
 4 A. **I understand dry year peaking to mean annual**  
 5 **variations based on dry years in Metropolitan's member**  
 6 **agencies' purchases and deliveries.**  
 7 Q. Have you developed an opinion about the  
 8 benefits to member agencies of dry year peaking under  
 9 Metropolitan's current rates?  
 10 A. **I have. The opinion that I've developed is**  
 11 **that there's a substantial benefit to member agencies**  
 12 **that peak above an average or above the peaking profile,**  
 13 **if you will, of a normal Metropolitan member agency.**  
 14 Q. Were you asked to assume for purposes of  
 15 forming an opinion that Metropolitan recovers some of its  
 16 dry year peaking costs through its volumetric rates?  
 17 A. **Yes, I was.**  
 18 Q. Do you have a slide that shows the steps you  
 19 went through in forming your dry year peaking opinion?  
 20 A. **Yes, I do.**  
 21 MR. BRAUNIG: Okay. Could I ask Mr. Dahm to  
 22 pull up 164-01?  
 23 Q. All right. And without reading this to the  
 24 judge because he can read it himself, could you please  
 25 explain to the Court in general terms the steps you took

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1 in developing your dry year peaking opinion?  
 2 A. **Yes. So what I did was take some data from**  
 3 **Metropolitan's Web site, operational data as well as data**  
 4 **provided by Met staff, and I tried to develop in many**  
 5 **ways the average peaking profile of all Met member**  
 6 **agencies.**  
 7 **Then I removed the Los Angeles Department of**  
 8 **Water Power, who has been well known as Met's largest**  
 9 **peaker, and essentially what I'm doing is solving for the**  
 10 **impact of LADWP. By comparing the average peaking**  
 11 **profile to that of LADWP, you can determine some level of**  
 12 **benefit from LADWP peaking above an average member**  
 13 **agency.**  
 14 THE COURT: When you were doing the average,  
 15 did you include Los Angeles in that calculation?  
 16 THE WITNESS: No. I removed Los Angeles.  
 17 MR. BRAUNIG: And we'll talk about that in a  
 18 minute.  
 19 Q. Let's start with the first step where you  
 20 measured member agencies' dry year peaking. Did you  
 21 develop a data file that allowed you to analyze member  
 22 agency annual sales?  
 23 A. **Yes. This data file, what I alluded to**  
 24 **earlier, where we frequently have data exchange between**  
 25 **Metropolitan staff and Water Authority staff, so we have**

316

1 **a running sort of tab on data, historical data.**  
 2 Q. That along with information obtained from  
 3 Metropolitan's Web site?  
 4 A. **I was able to manipulate that data and create**  
 5 **averages and this peaking profile that I was describing.**  
 6 Q. Let's take those one step at a time.  
 7 Can I ask you to turn in your binder to PTX  
 8 383.  
 9 Mr. Denham, is PTX 383 the raw data file from  
 10 when you performed some of your analyses?  
 11 A. **Yes, that's correct. That's the file that I**  
 12 **created.**  
 13 Q. Okay. And was this developed -- was this  
 14 developed based on the categories of information that you  
 15 described earlier, Metropolitan data that's been  
 16 exchanged with the Water Authority and Metropolitan data  
 17 that you were able to take from their Web site?  
 18 A. **That's correct.**  
 19 Q. And there are exhibit numbers down here at the  
 20 bottom. Do those exhibit numbers reflect the data  
 21 sources that you relied on?  
 22 A. **The PTX 203, 347, those?**  
 23 Q. Yes.  
 24 A. **Yes.**  
 25 Q. We would move Plaintiff's Trial Exhibit 383

317

1 into evidence.  
 2 THE COURT: Any objection?  
 3 MR. WEST: We have no objection to this  
 4 particular document.  
 5 THE COURT: 383 is admitted.  
 6 (Whereupon Exhibit 383 was  
 7 admitted into Evidence.)  
 8 BY MR. BRAUNIG:  
 9 Q. In measuring member agency's dry year peaking,  
 10 did you develop a baseline against which to measure  
 11 peaking?  
 12 A. **I did and I created a slide for that.**  
 13 MR. BRAUNIG: Can we please pull up slide  
 14 171-01?  
 15 Q. Okay. Can you explain to the Court what 171-01  
 16 represents?  
 17 A. **This slide is a graphical representation or**  
 18 **intended to be one that shows the peaking behavior, which**  
 19 **you see in front of you, of San Diego. And I'll further**  
 20 **develop this peaking profile for LADWP and, as I**  
 21 **mentioned, this composite member agency.**  
 22 **What I've done is for the period 1994 to 2000,**  
 23 **is I've created a baseline from which to measure the**  
 24 **period 2001 through '12.**  
 25 **So this is to say that any member agency in**  
**this five-year period in which I created a baseline**

318

1 **starts at 1.**  
 2 **Going from this baseline, I measured the**  
 3 **agencies peaking for the period 2001 through '12 based on**  
 4 **the index you see on the Y axis to your left.**  
 5 Q. Mr. Denham, when you said you measured the  
 6 peaking, are those -- are you measuring sales against the  
 7 index?  
 8 A. **That's correct, I'm measuring the peak year**  
 9 **sales compared to this average period of '94 to 2000.**  
 10 **That '94 to 2000 is intended to be a baseline from which**  
 11 **to compare the period 2001 through '12.**  
 12 Q. So, if San Diego let's say purchased 500,000  
 13 acre-feet a year on average between 1994 and 2000, how  
 14 would that be represented on this chart?  
 15 A. **That 500,000 acre-feet would be reflected as 1**  
 16 **in the baseline.**  
 17 Q. Okay. So when San Diego by 2002 looks like  
 18 it's buying about -- sort of the line appears to be near  
 19 1.4, what does that represent or what does that signify?  
 20 A. **For 2002, it is, as you noted, 1.5 as the**  
 21 **peaking index. That is to say that they purchased 1.5**  
 22 **times more water in that period, 50 percent.**  
 23 Q. So that would mean that in 2002, they bought 40  
 24 or 50 percent more than they did over the '94 to 2000  
 25 average?

319

1 **A. That's correct.**  
 2 Q. And where it -- when it dips back down sort of  
 3 in 2012 and looks like it's right near 1 again, would  
 4 that mean that those sales were back at 500,000?  
 5 A. **If it dips below the dotted line, that's**  
 6 **indicative of a member agency, in this case San Diego,**  
 7 **purchasing less than its average that I established, or**  
 8 **its baseline average.**  
 9 Q. Why did you use a multiyear average instead of  
 10 just picking a date?  
 11 A. **I believe that, you know, creating a baseline,**  
 12 **it is a good approach from which to measure future**  
 13 **results. I think it prevents selection bias when you are**  
 14 **doing this type of analysis.**  
 15 **If I was to choose 2003 a starting point, for**  
 16 **instance, you would lose a basis from which to compare.**  
 17 **In addition, I believe that this period that I've**  
 18 **captured, it takes into account different hydrology,**  
 19 **things of that nature.**  
 20 Q. All right. Did you -- did you create a similar  
 21 analysis for a composite of all member agencies other  
 22 than San Diego and Los Angeles?  
 23 A. **I did, and there's a slide for that.**  
 24 MR. BRAUNIG: Okay. Can we please pull up  
 25 171-02?

320

1 Q. All right. So what's represented by the blue  
 2 line on this current slide?  
 3 A. **The blue line is as the box there represents,**  
 4 **is all member agencies except San Diego and L.A., and it**  
 5 **was calculated in the same manner that I described**  
 6 **San Diego calculation.**  
 7 Q. Did you add all those member agencies together  
 8 to create the composite?  
 9 A. **That's correct.**  
 10 Q. And is it accurate to say that the profile of  
 11 purchases from 2000 to 2012 at points is a little bit  
 12 below San Diego, at points appears to be about even and  
 13 toward the end, even appears to be a little bit higher  
 14 relative to the index?  
 15 A. **Yes. It tracks very closely with San Diego.**  
 16 Q. Okay. And how do you interpret that?  
 17 A. **The tracking with San Diego? I think perhaps**  
 18 **when you compare -- when you look at this compared to the**  
 19 **demand Los Angeles places on it, which we're going to see**  
 20 **soon, you can see the fluctuations with the L.A. average**  
 21 **compared to the San Diego and all other member agencies.**  
 22 **That's how I would answer it.**  
 23 Q. According to -- is it your opinion that based  
 24 on this data, San Diego's peaking is similar to that of  
 25 other member agencies except L.A.?

321



1 **A. Yes, that's correct.**  
 2 Q. Okay. Did you do this analysis for Los Angeles  
 3 as well?  
 4 **A. I did, and there's --**  
 5 MR. BRAUNIG: Can we please pull up 173?  
 6 Q. We also have this marked as PTX 384, which you  
 7 can find in your binder, Mr. Denham.  
 8 You see that; right?  
 9 **A. I do.**  
 10 Q. Is PTX 384 the same as what's displayed on the  
 11 screen right now?  
 12 **A. Yes, it is.**  
 13 Q. And is PTX 384 a summary of the evidence that  
 14 you collected through your various data collection?  
 15 **A. Yes, it is.**  
 16 MR. BRAUNIG: We would move PTX 384 into  
 17 evidence.  
 18 MR. WEST: We object. It's a demonstrative.  
 19 THE COURT: Objection's overruled.  
 20 (Whereupon Exhibit 384 was  
 21 admitted into Evidence.)  
 22 THE COURT: It comes in to explain his  
 23 testimony.  
 24 BY MR. BRAUNIG:  
 25 Q. Okay. Now you have PTX 384, which is in  
 evidence in front of you. What -- how does Los Angeles's

322

1 behavior or peaking behavior, sales behavior compare to  
 2 that of San Diego and other member agencies?  
 3 **A. Well, I think the obvious point is that it's**  
 4 **much higher, but I do think that there are two really big**  
 5 **take aways from this data, one of which is that as you**  
 6 **can see, everybody peaks. And the point here is that we**  
 7 **are trying to measure how much Los Angeles in this case**  
 8 **peaks above an average.**  
 9 **This time period that I have, 2001 through '12,**  
 10 **takes into account different hydrology. I would note**  
 11 **that.**  
 12 THE COURT: What do you mean by that phrase,  
 13 "takes into account different hydrology"?  
 14 THE WITNESS: Well, I think the best way to  
 15 describe it, if you look at the period 2001 through 2004  
 16 for not only Los Angeles but San Diego and all other  
 17 member agencies, you do see that increase in the height  
 18 of the lines there. Those are dry years. And it's no  
 19 coincidence that there is a spike in the lines.  
 20 When you take a look at 2006 and 2011, those  
 21 are dry years -- sorry, wet years.  
 22 THE COURT: Wet --  
 23 THE WITNESS: Yes. And there's no coincidence  
 24 there. That's what I mean by fluctuations in hydrology.  
 25 Now, I talked about selection bias previously.

323

1 If you were to cut off a portion of this graph, you don't  
 2 see the variations or the baseline from which to give it  
 3 real understanding of how this works.  
 4 THE COURT: But is it also true if you take a  
 5 different set of years other than 1994 to 2000, you would  
 6 have gotten a different baseline as well; right?  
 7 THE WITNESS: That's correct.  
 8 BY MR. BRAUNIG:  
 9 Q. Okay. You -- turning back to the -- turning  
 10 back to the -- sorry. One second.  
 11 Going to the second and third steps of your  
 12 slide in which you tried to create a member agency  
 13 average profile, average peaking profile and compare that  
 14 to Los Angeles, why are you doing that analysis?  
 15 **A. I'm sorry. I'm just trying to get back to the**  
 16 **slide, if you don't mind.**  
 17 Q. Yeah, no problem.  
 18 **A. Okay. Would you repeat the question?**  
 19 Q. Yeah. Question is in the second and third  
 20 pieces of your analysis where you're creating a member  
 21 agency average peaking profile and comparing that to Los  
 22 Angeles, why are you -- why do you do that?  
 23 **A. You do that to determine the benefit that Los**  
 24 **Angeles receives. Benefit is the amount of water and**  
 25 **capacity held in reserve for Los Angeles above that**

324

1 **average of a normal, or the composite member agency.**  
 2 **That water, when Los Angeles comes on and off the system,**  
 3 **which I think the Court has heard, there's a value to**  
 4 **that.**  
 5 Q. Okay. Do you have a slide that displays how  
 6 you created this average peaking profile?  
 7 **A. Yes, I do.**  
 8 MR. BRAUNIG: Could you please pull up 165.01?  
 9 Q. Now this is a busy slide so I'm going to ask  
 10 you to walk through it fairly slowly.  
 11 First, in the first column, what are the  
 12 entities that are going down the left side?  
 13 **A. Those entities are Metropolitan's member**  
 14 **agencies.**  
 15 Q. And then what about the next two columns?  
 16 Average annual sales and peak sales, what are those?  
 17 **A. The average annual sales, in this case you see**  
 18 **the title in the upper left hand there. This is the**  
 19 **20-year analysis from 1994 to 2013 and that's simply the**  
 20 **average, the first column of that time period. The peak**  
 21 **sales represent the highest single year during that**  
 22 **period.**  
 23 Q. From that data, did you calculate a peak  
 24 factor?  
 25 **A. I did.**

325

1 Q. Okay. Can you explain to the Court what you  
 2 mean by "peak factor"?

3 A. So, the peak factor in terms of its actual  
 4 calculation is simply peak sales divided by average  
 5 annual sales.

6 In the case of Anaheim, if we look at that line  
 7 for an example, 31,271 acre-feet divided by an average  
 8 sales figure of 22,018 acre-feet gets you to a peak  
 9 factor of 1.42. Quite simply, that 1.42 is to say that  
 10 peak sales are 42 percent higher than the annual average  
 11 sales.

12 Q. And to calculate that, you did peak sales over  
 13 average annual sales?

14 A. That's correct.

15 Q. When you did that calculation, what was Los  
 16 Angeles's peak factor?

17 A. In that calculation, Los Angeles's peak factor  
 18 was 1.6752 or nearly 68 percent higher.

19 Q. What was San Diego's peak factor?

20 A. San Diego's peak factor during that time was  
 21 1.2652 percent or nearly 27 percent higher than average.

22 Q. What about the Municipal Water District of  
 23 Orange County or MWDOC?

24 A. It was 1.4635.

25 Q. Can you describe sort of what you did to get to

326

1 a member agency's weighted average peak factor and why  
 2 you did that?

3 Why don't we ask that question first. Why did  
 4 you create a weighted average member agency peak factor?

5 A. Generally when you weight something, you're  
 6 giving significance to, in this case, a member agency's  
 7 impact on a total. So, it's important to weight the  
 8 sales because you want to get rid of the outliers in this  
 9 case.

10 And I would draw your attention to the line for  
 11 San Fernando. If you look at the peaking factor of  
 12 3.5866 percent, that is suggesting that they peak much  
 13 greater than any other Met member agency. But drawing  
 14 your attention to their average annual sales of 251 and  
 15 the peak sales of 902 acre-feet, it's statistically  
 16 insignificant and therefore, you want to make sure that  
 17 you weight your data according to outliers such as San  
 18 Fernando.

19 Q. In order to weight the data, how did you use  
 20 average annual sales to do that?

21 A. To weight the data, I took the average annual  
 22 sales -- again let's use Anaheim as an example of 22,018  
 23 acre-feet and divided that by the total you see at the  
 24 very bottom of column one of 1.671459 acre-feet. And you  
 25 will note that Los Angeles is excluded from these

327

1 **weighting factors.**

2 Q. Why is Los Angeles excluded from the weighting  
 3 factors?

4 A. This is, as I previously described, because we  
 5 are attempting to solve for the impact of Los Angeles.  
 6 We want to compare a composite member agency profile  
 7 which in this case, the far right column, is 1.3592, to  
 8 the Los Angeles peaking factor of 1.6752.

9 Q. Okay. And when you did that, what was -- so  
 10 we're clear, what was the member agency's weighted  
 11 average peak factor that you calculated?

12 A. The member agency's weighted average peak  
 13 factor was 1.3592.

14 Q. And that's compared to Los Angeles's peak  
 15 factor of 1.675?

16 A. That's correct.

17 Q. Did you perform this analysis over five and  
 18 ten-year spans as well?

19 A. I did. I produced five, ten and 20-year  
 20 results and they're quite similar.

21 Q. Do you have a slide that displays the results?

22 A. Yes, I do.

23 MR. BRAUNIG: Can we please pull up 166-01?

24 Q. Okay. Are these the results that you  
 25 calculated as member agency weighted average peaking

328

1 factor versus Los Angeles average peaking factor in each  
 2 of your five year, ten year and 20 year analyses?

3 A. Yes, they are.

4 Q. Okay. When you did the five-year analysis,  
 5 what was the member agency weighted average peaking  
 6 factor?

7 A. In the five year, the weighted average peaking  
 8 factor for member agencies was 1.18.

9 Q. And what was Los Angeles's peaking factor?

10 A. 1.49.

11 Q. In the ten-year analysis, what was the member  
 12 agency weighted average peaking factor?

13 A. 1.28.

14 Q. Compared to Los Angeles's peaking factor?

15 A. 1.45.

16 Q. And then the 20-year analysis which we talked  
 17 about on the other slide, what was the member agency  
 18 weighted average peak factor?

19 A. 1.36.

20 Q. And Los Angeles's peaking factor?

21 A. 1.67.

22 Q. Now, I want to discuss step 4 of your analysis  
 23 where you tried to quantify the benefit to Los Angeles  
 24 from Metropolitan's failure to account for dry year  
 25 peaking costs. Is what you calculated a damage

329

1 calculation?

2 **A. No, it was not.**

3 Q. What were you trying to do?

4 **A. I'm trying to reasonably estimate the amount of**

5 **capacity held in reserve, some volume that's set aside**

6 **for Metropolitan to -- excuse me, for Los Angeles to come**

7 **on and off of Metropolitan's system.**

8 Q. Okay. And what did you conclude was the

9 benefit to Los Angeles in quantifiable terms?

10 **A. I have some slides to help answer that**

11 **question. If you --**

12 MR. BRAUNIG: Sure. Can we pull up 168-01.

13 Q. So start us off with this. First of all, is

14 this under your 20-year analysis?

15 **A. Yes, this is reflective of the 20 year**

16 **analysis.**

17 Q. Okay. And what do the yellow lines going

18 across the X axis represent?

19 **A. The top line you see there is the L.A. peak**

20 **demand during this 20-year period. So this would be the**

21 **single high year during the period of 1994 to 2013.**

22 **During that same period, the average demand is**

23 **259,000 acre-feet. What this is indicative of is a 1.67**

24 **or 67 percent variance from peak to average.**

25 Q. Did you attempt to calculate or did you analyze

330

1 what Los Angeles's average demand would be if it behaved

2 like a norm -- like an average member agency?

3 **A. Yes, I did. The next slide gets to that.**

4 Q. Okay. And so on this new slide, there's a

5 dashed line that appears to go off to 319,000 acre-feet.

6 Can you explain to the Court what that represents?

7 **A. Yes. So if you recall from the sort of busy**

8 **slide that you have with all the data before, you saw the**

9 **composite member agency peaking profile of 1.36.**

10 **And I have said a couple times that I'm solving**

11 **for the impact of Los Angeles. What this 319 represents**

12 **is what Los Angeles would look like if it behaved as a**

13 **normal member agency. And so, when we try to measure**

14 **what the impact is of the benefit to L.A., if we can go**

15 **to the next slide, the volumetric estimate for this**

16 **average 20-year period is roughly 60,000 acre-feet.**

17 Q. And that's 60,000 acre-feet per year?

18 **A. Yes.**

19 Q. And why is that -- why do you characterize that

20 as a -- a benefit to Los Angeles?

21 **A. Well, the -- I characterize it as such because**

22 **this represents 60,000 acre-feet that is available to Los**

23 **Angeles, as we've described, coming on and off of**

24 **Metropolitan's system. It is a benefit that is there**

25 **when Los Angeles needs it at a cost to other member**

331

1 **agencies.**

2 THE COURT: Are you suggesting that that black

3 area on the slide, that difference between the member

4 composite and the L.A. number is to suggest that only Los

5 Angeles benefits from that capacity?

6 THE WITNESS: That is capacity, yes. That's

7 what I'm suggesting. Capacity held in reserve. What's

8 important is it's capacity held in reserve in excess to

9 the average member agency.

10 THE COURT: Right. But are you suggesting

11 through this -- and you may not be so don't let me put

12 words in your mouth.

13 THE WITNESS: Sure.

14 THE COURT: But are you trying to suggest

15 through this that only Los Angeles benefits from that

16 what I'll call surplus capacity, surplus over the member

17 average?

18 THE WITNESS: Yes, I am.

19 BY MR. BRAUNIG:

20 Q. Did you perform this analysis again under

21 the -- let me ask you a question first before we do that.

22 Would every member agency under this analysis

23 show up as having a benefit?

24 **A. No, not necessarily.**

25 **Member agencies that peak at a level below the**

332

1 **composite or below the average are, in effect,**

2 **subsidizing those agencies that peak above the average.**

3 **So, in this case, a member agency under this composite of**

4 **1.36 would subsidize an agency such as Los Angeles at**

5 **1.67.**

6 Q. Did you perform this analysis on a five-year,

7 ten-year and -- on a five-year and ten-year schedule as

8 well as the 20-year analysis?

9 **A. Yes, I did. And I have a slide for that.**

10 Q. Okay. We're looking at 169-01. When you

11 calculated this using the five-year analysis, how many

12 acre-feet per year did you calculate as the quantified

13 benefit to Los Angeles from having this dry year peaking

14 capacity available?

15 **A. The five-year analysis indicates that on**

16 **average 77,540 acre-feet are available.**

17 Q. What about when you did the ten-year analysis?

18 **A. Under the ten-year, 39,166,000 [sic] acre-feet.**

19 Q. Would you say that again? I think you said

20 166,000 acre-feet.

21 **A. Yes.**

22 Q. What's the amount -- hold on. What's the

23 amount under the ten-year analysis?

24 **A. The amount under the ten-year analysis is**

25 **39,166 acre-feet.**

333

1 Q. Per year?  
 2 A. Per year.  
 3 Q. Thank you.  
 4 And what about under the 20-year analysis?  
 5 A. Under the 20 year analysis, 60,331 acre-feet  
 6 per year.  
 7 MR. BRAUNIG: Pass the witness.  
 8 THE COURT: Why don't we take a ten-minute  
 9 recess. Thank you.  
 10 (Brief break.)  
 11 THE COURT: Cross-examination.  
 12 MR. WEST: Thank you, your Honor.  
 13 CROSS-EXAMINATION  
 14 BY MR. WEST:  
 15 Q. Mr. Denham, good to see you again.  
 16 A. Good to see you.  
 17 Q. You recall I deposed you a month and a half  
 18 ago, something like that?  
 19 A. Yes.  
 20 Q. Seems like a lifetime.  
 21 And we went through your expert report at that  
 22 deposition. Do you remember that?  
 23 A. I do.  
 24 Q. And there was some calculations that you had  
 25 done of member agency purchases over a roughly 20-year

334

1 period. Do you remember that?  
 2 A. I do.  
 3 Q. And those calculations are reflected in -- do  
 4 you have Exhibit 383 of your -- in your binder there that  
 5 counsel for the plaintiffs have given you?  
 6 A. If you don't mind giving me a second.  
 7 Q. Absolutely.  
 8 THE COURT: What was the number you said?  
 9 MR. WEST: Plaintiff's 383.  
 10 THE WITNESS: Yes, I do see this.  
 11 BY MR. BRAUNIG:  
 12 Q. You were here during the opening statement,  
 13 yes?  
 14 A. Yes.  
 15 Q. And you recall we used your numbers that you  
 16 had provided to create a graph. Do you remember that?  
 17 A. Yes.  
 18 MR. WEST: Could we show slide 34?  
 19 Q. This is a demonstrative that shows sales by --  
 20 purchases by member agency from 2003 forward; right?  
 21 A. Yes.  
 22 Q. And it accurately depicts, at least for this  
 23 time period those sales such as are reflected in Exhibit  
 24 383?  
 25 A. Yes, it accurately depicts sales.

335

1 MR. WEST: Your Honor, I move to enter slide 34  
 2 in evidence.  
 3 MR. BRAUNIG: No objection.  
 4 THE COURT: Slide 34 is admitted.  
 5 What exhibit number are you calling this?  
 6 Slide 34, surely not.  
 7 MR. BRAUNIG: 701. Defendants' -- I'm sorry.  
 8 Your Honor, I'm sorry. It says DTX 691.  
 9 MR. WEST: That's the source of the material.  
 10 MR. BRAUNIG: I'm sorry. Okay. So this is --  
 11 you are seeking to put this in as 701?  
 12 THE COURT: That's my understanding.  
 13 MR. WEST: Yes, 701 is fine by me.  
 14 THE COURT: 701 is admitted.  
 15 (Whereupon Exhibit 701 was  
 16 admitted into Evidence.)  
 17 BY MR. WEST:  
 18 Q. I want to talk a little bit more about your dry  
 19 year peaking opinion.  
 20 You recall when I deposed you earlier this  
 21 year, one of the things counsel asked you to do during  
 22 his direct examination is he asked you to assume -- he  
 23 pointed out that you were asked to assume that MWD  
 24 recovers some of its dry year peaking costs through its  
 25 volumetric rates. Do you recall that assumption?  
 A. I do.

336

1 Q. And you, yourself, tested none of the  
 2 assumptions upon which you based your expert testimony;  
 3 is that correct?  
 4 MR. BRAUNIG: Objection. Vague.  
 5 THE COURT: Sustained.  
 6 THE WITNESS: Could you explain what you mean  
 7 by --  
 8 THE COURT: That's okay. We're going to  
 9 slightly rephrase it.  
 10 THE WITNESS: Okay.  
 11 BY MR. WEST:  
 12 Q. You can make a certain assumption in coming up  
 13 with an expert opinion; right?  
 14 A. That's correct.  
 15 Q. One might -- but one could test whether that  
 16 assumption is in fact true.  
 17 For example, if I wanted to test my assumption  
 18 that it was raining outside, I would look out the window.  
 19 A. Yes.  
 20 Q. I would undertake some sort of critical  
 21 analysis to determine the validity of your assumptions.  
 22 A. Correct.  
 23 Q. Do you understand what I mean by test now?  
 24 A. Yes, I do.  
 25 Q. Did you test any of the assumptions that you

337

1 made in connection with offering your expert opinion?  
 2 MR. BRAUNIG: Objection. Vague.  
 3 THE COURT: Sustained.  
 4 The problem with the question is that we're not  
 5 sure what you mean by "assumptions." There are a lot of  
 6 different things that he could have assumed like math  
 7 works and things like that.  
 8 So, I'm not sure exactly which assumptions.  
 9 Maybe it's the one that you had in mind.  
 10 MR. WEST: Your Honor, thank you for that  
 11 clarification.  
 12 Q. Did you test that assumption?  
 13 A. I'm sorry. What was --  
 14 THE COURT: Which one?  
 15 BY MR. WEST:  
 16 Q. The assumption that MWD recovers some of its  
 17 dry year peaking costs through volumetric rates.  
 18 A. I did not personally attest -- test that  
 19 assumption because Metropolitan indicated that it itself  
 20 did not test that assumption. And that was referred to,  
 21 I believe, in a couple cases today and yesterday in  
 22 interrogatory responses number 15 to be exact, that those  
 23 were just collected in general on rates. The data does  
 24 not exist. Assumptions do not exist from which to test  
 25 that.

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1 Q. So your assumption is based on those  
 2 interrogatory responses?  
 3 A. No, it's not.  
 4 Q. What is it based on?  
 5 A. My assumption for the L.A. peaking analysis?  
 6 Q. No. I'm talking about the assumption that MWD  
 7 recovers some of its dry year peaking costs through  
 8 volumetric rates. You were asked to assume that?  
 9 A. Yes, I was asked by counsel to assume that.  
 10 Q. But as part of your expert opinion, you didn't  
 11 test that particular assumption?  
 12 A. Test whether or not -- I'm still failing to  
 13 understand.  
 14 Q. Let's move on.  
 15 You can leave that up there a little while.  
 16 You did a new -- well, at your expert  
 17 deposition, I had asked you, do you remember whether you  
 18 completed your work with regard to the opinion contained  
 19 in your report. Do you remember that?  
 20 A. I recall that.  
 21 Q. And you said that you had?  
 22 A. I don't believe that's what I said.  
 23 Q. Let's -- your Honor, I would like to provide  
 24 the deposition --  
 25 THE COURT: All right.

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1 MR. WEST: -- of Mr. Denham. We've already  
 2 provided copies to opposing counsel. I have my own copy  
 3 here.  
 4 Your Honor, may I approach?  
 5 THE COURT: Please.  
 6 MR. WEST: This is yours.  
 7 THE COURT: Thank you.  
 8 BY MR. WEST:  
 9 Q. So you don't believe it's accurate to say you  
 10 completed your work with regard to your opinions  
 11 contained in your expert report?  
 12 A. If I can clarify my previous statement, what I  
 13 inferred from your question is I would be providing  
 14 additional analysis or opinions today if asked and so  
 15 therefore, I deemed that not complete.  
 16 Q. Okay. So this -- I want to talk about your  
 17 annual demand versus index opinion. Do you recall that?  
 18 A. Yes.  
 19 Q. That was the calculation you did where you  
 20 established a baseline for -- from 1994 through 2000 and  
 21 then you calculated some variation from that.  
 22 A. Yes, I recall that.  
 23 Q. That wasn't part of your expert report or  
 24 opinion at the time of your deposition, was it?  
 25 A. That graphic?

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1 Q. Yes.  
 2 A. It was not included as part of my expert  
 3 report.  
 4 Q. And that calculation was not reflected in your  
 5 expert report directly, was it?  
 6 A. The data contained in that graphic that you  
 7 saw, the peaking factors that were presented just moments  
 8 ago were in that report. They are in the data tables.  
 9 Q. But you didn't do an index against an annual  
 10 demand, did you?  
 11 A. Oh, I see what you're saying. The baseline.  
 12 Q. Yes.  
 13 A. This is what you're referring to? No, I did  
 14 not.  
 15 Q. So this is something you've done since your  
 16 deposition?  
 17 A. Yes.  
 18 Q. So I apologize. I'm going to ask some  
 19 questions about it, but I want to know -- so with this  
 20 and what you've testified to, now we have pretty much  
 21 your expert opinion?  
 22 A. Yes, unless -- I'll serve the right if I'm  
 23 asked later to provide more of my expert opinion.  
 24 Q. Okay. So getting back to your annual demand  
 25 versus index, you recall you started with 1994 through

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1 2000; right?  
 2 **A. Yes, I recall that.**  
 3 Q. And you didn't testify as part of your direct  
 4 examination -- strike that.  
 5 Your Honor asked if you changed that baseline,  
 6 you would change the -- you change the years, you could  
 7 change the baseline?  
 8 **A. Yes.**  
 9 Q. And the years you chose, 1994 through 2000,  
 10 were years in which the unbundled rate structure at issue  
 11 in this case wasn't in effect?  
 12 **A. That's correct. It went into effect in 2003.**  
 13 Q. And if you moved that baseline up to 2003, how  
 14 would it affect the variation?  
 15 **A. You would cut off a significant piece of what's**  
 16 **going on, the true picture of peaking.**  
 17 Q. But the variations would look smaller, would  
 18 they not?  
 19 **A. When you exclude or have selection bias, as I**  
 20 **alluded to earlier, over the period in which you analyze**  
 21 **your data, in the case that you're referring to, 2003**  
 22 **through present, that would slice out a significant**  
 23 **portion of a variability in L.A.'s peaking behavior.**  
 24 Q. So, as depicted on that graph, which is 171.03,  
 25 which I think is 394 -- would you mind throwing that up?

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1 THE COURT: 384, perhaps?  
 2 MR. WEST: Your Honor, may I walk to the jury  
 3 box? I don't have a pointer.  
 4 THE COURT: We're talking about Plaintiff's 384  
 5 now. I have another laser pointer if you want it.  
 6 MR. WEST: I'm very bad with a laser pointer.  
 7 I might hurt somebody too, so I don't want to do that.  
 8 I'm going to make shadow puppets here.  
 9 Q. So if you move this baseline up to including  
 10 2003, when the actual rate structure at issue in this  
 11 case, you capture a lot of the variation that happened --  
 12 that is the basis of your baseline; right?  
 13 **A. Yes, you do but that's not the point of this**  
 14 **graphic.**  
 15 Q. I understand that. But my selection bias is I  
 16 want to focus on the years since this unbundled rate  
 17 structure has been in effect.  
 18 So, this line of variation, if you include  
 19 those years would look significantly smaller, would it  
 20 not, for Los Angeles?  
 21 **A. By slicing off the baseline and years prior to**  
 22 **2003, it would look different.**  
 23 Q. It would be included in your average. If you  
 24 included those amounts in your average, L.A.'s variation  
 25 would look very different, wouldn't it?

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1 **A. I can't be certain.**  
 2 Q. You didn't do that calculation?  
 3 **A. No, I did not.**  
 4 Q. And when you talked today about your expert  
 5 opinion, you didn't offer any testimony regarding how you  
 6 arrived at 1994 through 2000 as representative years?  
 7 **A. Representative years?**  
 8 Q. You chose those years?  
 9 **A. I -- I chose those years based on the data that**  
 10 **I had available. 1994 was the beginning year.**  
 11 Q. You could have moved it up to 2003 to establish  
 12 your average; right?  
 13 **A. No.**  
 14 Q. You couldn't have done that?  
 15 **A. I could have done that, yes. I chose not to.**  
 16 MR. WEST: Okay. Would you put up 34 again?  
 17 Q. Now, this accurately depicts the information  
 18 contained in your expert report?  
 19 **A. No, it does not.**  
 20 Q. It doesn't?  
 21 **A. Well, I --**  
 22 Q. It --  
 23 **A. What I said was it accurately reflects volumes,**  
 24 **it inaccurately reflects peaking.**  
 25 Q. I understand that.

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1 But this actually reflects purchase volumes  
 2 during the time period at issue; right?  
 3 **A. Yes. One's take away from this slide is**  
 4 **San Diego is Metropolitan's largest purchaser of water.**  
 5 Q. Yes.  
 6 THE COURT: Just so the record is clear, we're  
 7 actually looking at 701.  
 8 Go ahead, please.  
 9 MR. WEST: 701.  
 10 Q. Okay. Now, another thing you did in connection  
 11 with coming up with your expert report, is you did that  
 12 20-year timeframe, that ten-year timeframe and that  
 13 five-year timeframe; right?  
 14 **A. That's correct.**  
 15 MR. WEST: Barbara, if you could put up  
 16 Mr. Denham's expert report itself, PTX 686.  
 17 MR. BRAUNIG: Your Honor, I believe we objected  
 18 to this coming into evidence. Obviously it can be used  
 19 as impeachment if they try to do that.  
 20 THE COURT: We're looking at 687. He hasn't  
 21 moved it in yet.  
 22 MR. WEST: I have not moved it in yet. I just  
 23 want to use it as a demonstrative at this point.  
 24 THE COURT: Absolutely.  
 25 I'm looking at Defendants' 687, which is the

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1 declaration.  
 2 MR. WEST: Yes. I'm going slightly out of  
 3 order, your Honor, because of this new chart that we saw.  
 4 THE COURT: Absolutely.  
 5 MR. WEST: Yes, it is.  
 6 And I apologize, your Honor. You might have to  
 7 blow that up a little bit. And I believe it is -- what  
 8 tab number is that?  
 9 It is the second tab in your binder. And this  
 10 chart itself is actually the third to the last page.  
 11 I want to talk about some of the data reflected  
 12 in this. Do you see that, your Honor? It is called peak  
 13 sales calculation by MWD member agency.  
 14 THE COURT: It is the third to last page of  
 15 Exhibit 687.  
 16 Thank you.  
 17 BY MR. WEST:  
 18 Q. And for each -- San Diego's peak sales for each  
 19 of these periods, the 20-year, the ten-year and  
 20 five-year, is substantially higher than Los Angeles';  
 21 correct?  
 22 MR. BRAUNIG: Objection. Misstates the  
 23 document.  
 24 THE COURT: If you could rephrase that. I'm  
 25 not clear what the question is.

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1 MR. WEST: Sure.  
 2 Q. There is a peak sales column, do you see that,  
 3 reflecting the peak sales of each member agency. Do you  
 4 see that?  
 5 A. Yes.  
 6 Q. And the peak sales for the 20-year period for  
 7 San Diego is 667,000 feet, acre-feet roughly; right?  
 8 A. I see that number.  
 9 Q. And that's the highest of any member agency?  
 10 A. In terms of sales volume, it is.  
 11 Q. As far as what you call peak sales volume, it  
 12 is, right, in your chart?  
 13 A. That's the highest single year purchased from  
 14 Metropolitan in any year on this chart.  
 15 Q. And you call that peak sales; correct?  
 16 A. That's correct.  
 17 Q. And for the ten-year period, peak sales,  
 18 San Diego, the highest of anybody; right?  
 19 A. Yes.  
 20 Q. And for the five-year period too; right?  
 21 A. The sales volume, San Diego is the largest  
 22 purchaser. That's not surprising.  
 23 Q. And for each one of these timeframes, L.A.  
 24 never has the highest peaking -- peak -- what do you call  
 25 it, peak factor; right?

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1 A. That's correct.  
 2 Q. And for each of the timeframes listed here, the  
 3 difference between San Diego's average sales and its peak  
 4 sales as an absolute number is higher than any other  
 5 member agency, than Los Angeles; correct?  
 6 MR. BRAUNIG: Objection. Vague.  
 7 THE COURT: Overruled.  
 8 Do you understand the question?  
 9 THE WITNESS: Yeah. It -- I do understand the  
 10 question.  
 11 THE COURT: What's the answer?  
 12 THE WITNESS: The answer's yes.  
 13 BY MR. WEST:  
 14 Q. And, Mr. Denham, you're not an engineer?  
 15 A. No.  
 16 Q. You didn't do any sort of engineering analysis  
 17 as part of your expert opinion?  
 18 A. No, I did not.  
 19 Q. So you didn't do an engineering analysis to  
 20 determine how MWD sizes its facilities to meet peaks?  
 21 A. The point of my analysis was not an engineering  
 22 analysis, it's a variation in sales analysis.  
 23 Q. But my question was you didn't do any sort of  
 24 engineering analysis to determine how MWD sizes its  
 25 facilities to meet peaks?

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1 A. I did not.  
 2 Q. Now before you did this expert opinion, you've  
 3 never performed an analysis of the cost to a water agency  
 4 associated with peaking, have you?  
 5 A. As I indicated in my deposition, peaking, no.  
 6 In terms of math and peaking factors, weighted averages  
 7 and things of that nature, absolutely.  
 8 Q. And I don't deny that you've done math before  
 9 this and done weighted average. My question was, you've  
 10 never done an analysis, performed an analysis of the cost  
 11 to a water agency associated with peaking before you did  
 12 your expert report?  
 13 A. That's correct.  
 14 Q. And you didn't review any literature about  
 15 quantifying the impact of annual sales variation with a  
 16 water agency before coming up with your expert report,  
 17 did you?  
 18 A. Could you repeat that?  
 19 Q. Sure. In doing the calculation reflecting your  
 20 expert report, you didn't actually review any literature  
 21 about quantifying the impact of annual sales variation on  
 22 a water agency?  
 23 A. I would say that that is sort of a broad  
 24 statement that isn't exactly true.  
 25 Q. We talked about that at your deposition. Do

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1 you remember that?  
 2 **A. I do.**  
 3 Q. I would like to play 216, 19 through 23.  
 4 MR. BRAUNIG: Hold it.  
 5 Your Honor, can we -- before we object --  
 6 THE COURT: The page is 216.  
 7 MR. WEST: I apologize for playing too soon,  
 8 your Honor.  
 9 MR. BRAUNIG: Okay.  
 10 THE COURT: Ready to go. Thank you.  
 11 (Video played.)  
 12 BY MR. WEST:  
 13 Q. You didn't run any part of your opinion past an  
 14 expert in economics, cost benefit analysis, financial  
 15 planning or any other relevant field; right?  
 16 **A. That's correct.**  
 17 Q. And you've never seen somebody undertake the  
 18 exact same steps to determine the economic impact  
 19 resulting from dry year peaking that you are talking  
 20 about as expert of your expert opinion; is that correct?  
 21 **A. The steps that I took are presenting -- or**  
 22 **creating a ratio. I most certainly have seen someone and**  
 23 **I have in the past created ratios.**  
 24 **When I say that a peaking factor is**  
 25 **1.67 percent, that is math and that is 67 percent higher**

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1 **than average. Whether it's peaking factor or rating**  
 2 **factor, call it what you want, yes, I have seen that and**  
 3 **done that.**  
 4 Q. I'm not talking about whether you've done math  
 5 to do ratios, you've seen other people do math or other  
 6 people do ratios. I'm talking about using this type of  
 7 calculation that you did either in your expert report or  
 8 in this new chart -- I don't mean that pejoratively, it  
 9 is new to me -- to come up with a measuring impact of  
 10 annual variation on a member agency on -- strike that.  
 11 You've never seen any other -- anyone else do  
 12 this kind of calculation in order to determine the impact  
 13 on annual variations on cost to a water agency?  
 14 **A. I've seen similar things. The exact approach**  
 15 **as mine, not necessarily.**  
 16 Q. I think I asked you this before. You are not a  
 17 rate expert, are you?  
 18 **A. I'm not a rate expert.**  
 19 Q. And you kind of -- strike that.  
 20 And it's true that if Los Angeles purchases go  
 21 up in a particular year, L.A. has to pay more through its  
 22 volumetric rates; right?  
 23 **A. In the year that it purchases more water, L.A.**  
 24 **certainly pays more, but I don't believe that to be the**  
 25 **important focus of a peak analysis. Important focus**

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1 **should be the years in which Los Angeles doesn't pay.**  
 2 Q. I understand that. Your calculation doesn't  
 3 consider the -- on its terms and your testimony and  
 4 expert report doesn't consider the Readiness-to-Serve  
 5 Charge?  
 6 **A. No, it does not.**  
 7 Q. Or the Capacity Charge?  
 8 **A. It does not.**  
 9 Q. Or tier 2 supply rates?  
 10 **A. It does not.**  
 11 Q. I might have a couple other questions about  
 12 your dry year peaking analysis but I want to go back to  
 13 your other opinion regarding the costs, the reallocation  
 14 of State Water Project and the Water Stewardship Rate  
 15 computation to supply.  
 16 Now, at your deposition, you told me that you  
 17 intended to offer expert opinions about contract damages  
 18 and about dry year peaking; correct?  
 19 **A. That's correct.**  
 20 Q. And you said those opinions were contained in  
 21 your expert report?  
 22 **A. Yes.**  
 23 Q. And you completed all the work that you were  
 24 going to do as far as you thought?  
 25 **A. Yes.**

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1 Q. And you relied on certain assumptions in coming  
 2 up with your expert report. Do you remember that?  
 3 **A. Yes.**  
 4 Q. And that's still true?  
 5 **A. Certain assumptions I made, yes.**  
 6 Q. You're not -- with regard to this opinion,  
 7 you're not testifying about damages per se, right, you're  
 8 doing impact?  
 9 You're testifying -- you're not saying that  
 10 these represent contractual damages, are you?  
 11 **A. I'm not testifying about contractual damages.**  
 12 Q. But you're applying the same contractual  
 13 damages analysis that you did to measure impact; right?  
 14 MR. BRAUNIG: Objection. Vague.  
 15 THE COURT: Overruled.  
 16 Is there a relation between the contractual  
 17 damage analysis you did and what we saw today?  
 18 THE WITNESS: The analysis that I presented  
 19 today was the overcharge or difference between what I  
 20 determined to be a corrected rate and the board approved  
 21 rate. There are some other steps in the contractual  
 22 damage component of my analysis that were not addressed  
 23 today.  
 24 BY MR. WEST:  
 25 Q. But in your contractual damages analysis, you

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1 moved over certain State Water Project costs from the  
 2 Transportation Rate to the supply rate; right?  
 3 **A. I removed them from the transportation rates,**  
 4 **yes.**  
 5 Q. And you put them on -- well, you moved them  
 6 somewhere. You removed them entirely?  
 7 **A. Yes, I did.**  
 8 Q. And you took water stewardship and you moved  
 9 that off transportation entirely; right?  
 10 **A. Yes.**  
 11 Q. And those costs have to go somewhere, don't  
 12 they?  
 13 **A. Absolutely, if Metropolitan wants to maintain a**  
 14 **revenue requirement that it approved its rates on.**  
 15 Q. For example, they have to go over to some other  
 16 rate, like a supply rate; right?  
 17 **A. It could be the supply rate or it could be a**  
 18 **rate that no one knows about yet, but that's certainly a**  
 19 **reasonable assumption.**  
 20 Q. And so when you said earlier, you talked about  
 21 these amounts were misallocated, again you're not a rate  
 22 expert so you're saying -- you're not offering an opinion  
 23 whether they should be allocated to transportation,  
 24 you're just saying what if we just moved them all over;  
 25 right?

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1 **A. What I did is based on the direction I was**  
 2 **given by counsel and what San Diego is alleging in this**  
 3 **case.**  
 4 Q. I understand that. But my question was, you  
 5 are not -- you don't have an expert opinion as to the  
 6 propriety of allocating these to transportation rates,  
 7 you're just moving them over; is that right?  
 8 **A. As I stated, I'm not a rate expert and that's**  
 9 **what I did based on the direction from counsel.**  
 10 Q. But my specific question, you're not opining  
 11 about the propriety of these being allocated to the  
 12 transportation rates. You just went through the exercise  
 13 of taking these costs out; right?  
 14 **A. If I can, there's a bit more to it than simply**  
 15 **taking costs and moving them. But to directly answer**  
 16 **that portion, yes, I moved revenues from the**  
 17 **Transportation Rate over to the supply rate after a**  
 18 **thorough analysis of Metropolitan's cost of service**  
 19 **assumptions, things of that nature.**  
 20 Q. And you don't -- you didn't do a calculation as  
 21 to how much more any other member agency might pay if you  
 22 did you this; right?  
 23 MR. BRAUNIG: Your Honor, I object. I feel  
 24 like a broken record here but they moved in limine to  
 25 prevent him from testifying about his contractual damage

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1 analysis and now they're asking questions about his  
 2 contractual damages.  
 3 THE COURT: Not exactly.  
 4 I interpret these questions as trying to make  
 5 sure that they understand the limits of the testimony  
 6 that he's presenting today. So in that spirit, it's  
 7 overruled.  
 8 MR. WEST: And my in limine lost, your Honor,  
 9 so I think I'm allowed to --  
 10 Q. So, your -- you -- you didn't account for how  
 11 much more other member agencies might have to pay if you  
 12 moved these all out to some other rate, did you, in your  
 13 expert opinion?  
 14 **A. That's not what I was asked to do.**  
 15 Q. You were asked to just take them out and not  
 16 opine on where they might go?  
 17 **A. I'm not a lawyer.**  
 18 Q. You didn't opine on where these costs might go?  
 19 **A. How such?**  
 20 Q. You didn't say they went to the tier 1 supply  
 21 rate or tier two supply rate?  
 22 THE COURT: I think the record is clear that he  
 23 doesn't have an opinion, at least today as to where they  
 24 should go. I heard him saying that they might go in a  
 25 half variety of places, including rates that may or may

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1 not exist.  
 2 BY MR. WEST:  
 3 Q. And you didn't make any effort to -- thank you,  
 4 your Honor.  
 5 You didn't make any effort just generally to  
 6 determine whether San Diego would have been better off  
 7 had these been moved over, did you?  
 8 **A. In the analysis that I did, I was not asked to**  
 9 **do that.**  
 10 Q. And you didn't?  
 11 **A. In my analysis, no, I did not.**  
 12 Q. And you didn't actually determine whether  
 13 it's -- your report is not a projection of Met damages  
 14 and Met impact to San Diego, is it?  
 15 **A. It is a -- my expert report is an estimation of**  
 16 **money that should be placed in what I term the escrow**  
 17 **account, which is the interest bearing account per the**  
 18 **terms of the exchange agreement.**  
 19 Q. The escrow account. You didn't talk about that  
 20 during your direct examination?  
 21 **A. Yes.**  
 22 Q. That's a somewhat different opinion, isn't it?  
 23 **A. I'm not sure I understand what you're talking**  
 24 **about.**  
 25 THE COURT: Let's continue with another

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1 question.  
 2 MR. WEST: Sure, absolutely.  
 3 Q. Just a couple more questions, Mr. Denham.  
 4 Annual variations can occur for a lot of  
 5 different reasons; right?  
 6 A. Absolutely.  
 7 Q. For example, the economy can lead to annual  
 8 variations --  
 9 A. Yes.  
 10 Q. -- in purchases. Did you take that into  
 11 account at all in your expert opinion?  
 12 A. **In the economy as a whole, the U.S. economy?**  
 13 **Unfortunately, I didn't.**  
 14 Q. For example, if the economy's bad, people might  
 15 not have enough money to buy stuff, like water; right?  
 16 A. **That's accurate.**  
 17 Q. And you didn't take that into account. You  
 18 just assumed it was because of, quote, dry years?  
 19 A. **I believe that the graphic representation that**  
 20 **I made, there's a statistically valid correlation between**  
 21 **dry year peaking or hydrology and weather, one that is by**  
 22 **far the greatest impact on, in this case, Los Angeles's**  
 23 **peaking behavior.**  
 24 **To put a number on how the U.S. economy impacts**  
 25 **household sales, that's a large task.**

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1 Q. And it's one you didn't do?  
 2 A. **No, it is not.**  
 3 Q. Before we throw up this -- I apologize.  
 4 Can you throw up that chart again, his annual  
 5 demand versus index chart?  
 6 Now, putting aside the other issues we talked  
 7 about, the blue line at the bottom --  
 8 THE COURT: So we're looking at 701?  
 9 MR. WEST: 701. Thank you, your Honor.  
 10 MR. BRAUNIG: I believe this is actually 384.  
 11 THE COURT: All right.  
 12 MR. WEST: Yeah. 701 is the chart we made,  
 13 your Honor.  
 14 THE COURT: Right. Thank you. I appreciate  
 15 that. I just want to make sure we get the record  
 16 correct. 384.  
 17 BY MR. WEST:  
 18 Q. The blue line, that is an average of all member  
 19 agencies on the bottom; right?  
 20 A. **Yes. I've been describing it as a composite.**  
 21 **It's an average.**  
 22 Q. So as an average, it is going to obscure  
 23 individual variations by individual member agencies;  
 24 right?  
 25 A. **Yes.**

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1 Q. And as we saw, on your own chart attached to  
 2 your expert opinion, for many of those years, individual  
 3 variations by member agencies exceeded Los Angeles';  
 4 correct?  
 5 A. **Yes. I believe your chart, which shows all of**  
 6 **those member agencies, would show them within this type**  
 7 **of band.**  
 8 MR. WEST: Throw up the chart again, if you  
 9 could, please. 701.  
 10 Q. You do see some spiking down there at the  
 11 bottom, don't you?  
 12 A. **I do but they're not statistically relevant.**  
 13 **May I explain that?**  
 14 Q. Sure.  
 15 A. **The important thing to point out in your slide**  
 16 **is the slope from high to low, here to here.**  
 17 **Here to here.**  
 18 **Here to here.**  
 19 **That is an indicator of peaking, not sales**  
 20 **volume.**  
 21 **These slopes are not statistically relevant.**  
 22 **This line here, my hand is steady and I have the ability**  
 23 **to draw this line. You would see that this slope and**  
 24 **this slope are what you want to be looking at, not volume**  
 25 **increases or decreases.**

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1 Q. And you see that big slope going down for  
 2 San Diego; right?  
 3 A. **It's a big -- it's a slope for San Diego. It's**  
 4 **a larger slope for Los Angeles. And I think what I said**  
 5 **earlier is that everybody peaks and there's no denying**  
 6 **that. It's what you peak above an average is what's**  
 7 **important.**  
 8 MR. WEST: Thank you. I have no further  
 9 questions.  
 10 THE COURT: Any redirect?  
 11 MR. BRAUNIG: May I have just a moment to  
 12 confer?  
 13 THE COURT: Of course.  
 14 MR. BRAUNIG: Nothing further. Thank you.  
 15 THE COURT: Thank you very much. You are  
 16 excused.  
 17 MR. KEKER: Your Honor, we are very close to  
 18 resting. We want to move in our discovery responses,  
 19 which I believe are being prepared in a document.  
 20 We also, on reflection, believe that since  
 21 there's going to be briefing at the end of the case,  
 22 which we think is a good idea and we heard what you said,  
 23 that we would like you to rule on the deposition  
 24 designations so that we know what the record is that  
 25 we're providing briefs on. You can do it at your --

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1 whenever is convenient for you but if we're going to be  
2 filing, we want to make sure that we're referring to what  
3 is going to be part of the record in the case.

4 The other request -- we don't have any other  
5 witnesses now but we would like tonight, given that it's  
6 4:15, tonight to be able to think about and review and  
7 make sure that we put in everything that we need to put  
8 in without prejudice. But other than that, we're  
9 prepared to rest.

10 THE COURT: Okay.

11 MR. KEKER: I guess the only other thing I want  
12 to say is that we think there's plenty of time, but I  
13 just want to bring to the Court's attention we're getting  
14 about four hours and 15 -- we're going to end up with  
15 about 21 hours of trial time over the five days and I  
16 hope what the Court will do is instead of telling us  
17 you've got a fixed 24 hours, which we're not going to get  
18 in these five days, you tell us split the 21 hours, which  
19 we're prepared to do.

20 THE COURT: I'm not tracking.

21 I'm sorry?

22 MR. KEKER: You told us before that each side  
23 had 12 hours.

24 THE COURT: Right.

25 MR. KEKER: And I think we're not going to get

1 accommodate counsel. If we run out of time on my  
2 calendar, I'll find some other time that's convenient so  
3 everybody gets the time I promised. That's fine.

4 Just so you have it, the plaintiff is now at a  
5 couple minutes past five hours and the defendant has used  
6 almost exactly three hours of time.

7 Let me make sure that I have what I need to  
8 look at this evening.

9 I've got the amended -- second pretrial brief  
10 from San Diego and a glossary.

11 MR. HIXSON: Metropolitan.

12 THE COURT: I'm sorry, from Metropolitan.  
13 Thank you.

14 And the glossary, and I'll have a look at that  
15 tonight, see if --

16 MR. KEKER: Your Honor, with respect to that  
17 glossary, we have such strenuous objections to it that we  
18 would appreciate greatly if you would wait until tomorrow  
19 to look at it so that we could file something objecting  
20 to it because it really is argumentative.

21 THE COURT: I think you should reserve that  
22 right. Let me look at it tonight. I think I can decide  
23 it appears argumentative. If I think it is, I just won't  
24 accept it. If my tentative thought is it doesn't appear  
25 argumentative, of course I'll let you have a chance to --

1 24 hours of actual time. Given the breaks and the  
2 schedule, we're going to get about 21 hours. Yesterday  
3 we had four hours --

4 THE COURT: I see.

5 MR. KEKER: -- 15 minutes. It's going to work  
6 out to about 21. We're happy to split the 21 so that  
7 each side gets ten hours -- 10.5 hours but we just want  
8 to make sure that everybody understands that we're  
9 getting this thing done within the time that we have,  
10 which is going to be about 21 hours total.

11 THE COURT: Okay.

12 MR. HIXSON: Your Honor, I would like to  
13 respond.

14 THE COURT: Yes.

15 MR. HIXSON: As you know, Metropolitan  
16 requested a substantially more greater amount of time to  
17 present its case and San Diego had represented that it  
18 could be done in a much shorter period of time.

19 San Diego prevailed and we are limited to the  
20 time that we have. We were very protective of the time  
21 that the Court had allocated to us and we feel it is  
22 important for us to present our case and our defense and  
23 we don't want to be cut short of our 12 hours.

24 THE COURT: I don't want to cut you short. If  
25 we have to go past Monday, we'll find some time to

1 MR. KEKER: Look at peaking, look at wheeling.

2 THE COURT: All the sensitive terms.

3 MR. KEKER: Yeah. The sensitive terms are all  
4 done for them.

5 THE COURT: Okay. With respect to the depo  
6 designations, if you can make sure with the clerk that I  
7 have a stack which is the deposition designations that  
8 you want me to rule on, and I have courtesy copies of  
9 that. They're probably somewhere in here but work with  
10 the clerk on that.

11 We have a little bit of time today if we stop  
12 now and I will see you at 10:00 o'clock tomorrow.

13 Thank you.

14 (Proceedings concluded.)

15 ---o0o---

1 State of California )  
2 ) ss.  
3 County of San Francisco )  
4  
5

6 I, Connie J. Parchman, CSR #6137, do hereby  
7 certify that I am a certified shorthand reporter; that I  
8 was personally present in the above-mentioned  
9 proceedings; that I took down in shorthand the  
10 proceedings and thereafter transcribed said notes into  
11 longhand; that the forgoing pages constitute a full, true  
12 and correct transcript of the said notes in said  
13 proceedings; and that I have no interest in the outcome  
14 of the case.  
15

16 Dated: December 19, 2013  
17  
18

19   
20 \_\_\_\_\_  
21 Connie J. Parchman, CSR #6137  
22  
23  
24  
25

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SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SAN FRANCISCO  
 BEFORE THE HONORABLE CURTIS A. E. KARNOW, JUDGE PRESIDING  
 DEPARTMENT NUMBER 304  
 ---oOo---  
 SAN DIEGO COUNTY WATER AUTHORITY, )  
 ) Case No. CPF-10-510830  
 Plaintiff, ) Case No. CPF-12-512466  
 ) Trial  
 vs. )  
 ) Volume III  
 METROPOLITAN WATER DISTRICT OF )  
 SOUTHERN CALIFORNIA, ) Pages 367 - 549  
 )  
 Defendant, )  
 \_\_\_\_\_ )

Reporter's Transcript of Proceedings  
 Thursday, December 19, 2013

Reported by:  
 CONNIE J. PARCHMAN, CSR 6137  
 CERTIFIED REALTIME REPORTER

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1 submission of evidence, Mr. Braunig has a few things that  
 2 we're going to put in now and then we're prepared to rest  
 3 subject to reviewing things over the weekend.  
 4 THE COURT: Okay.  
 5 MR. BRAUNIG: Your Honor, good morning. Warren  
 6 Braunig for San Diego.  
 7 Some of the things I'm going to do are going to  
 8 be just to make sure we make a record of putting things  
 9 in.  
 10 So yesterday, we provided to Metropolitan the  
 11 excerpts of -- we had previously given to them the  
 12 excerpts of discovery responses that we're going to ask  
 13 to be included in the record. And so we would officially  
 14 move into evidence Plaintiff's Trial Exhibit 235A, 237A,  
 15 245A, 246A, 247A, 250A and 381A.  
 16 MR. WEST: And just to clarify, Counsel, if I  
 17 may, these are just excerpts of discovery responses?  
 18 MR. BRAUNIG: That's correct, these are  
 19 excerpts of discovery responses.  
 20 MR. WEST: Then we have no objection.  
 21 THE COURT: The following exhibits are  
 22 admitted: 235A, 237A, 245A, 246A, 247A, 250A, 381A.  
 23 (Whereupon Exhibits 235A,  
 24 237A, 245A, 246A, 247A, 250A  
 25 and 381A were admitted into  
 Evidence.)  
 MR. BRAUNIG: The next order of business is if

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1 DECEMBER 19, 2013 MORNING SESSION  
 2 P R O C E E D I N G S  
 3 ---OOO---

4 THE COURT: Good morning. I've had a chance to  
 5 look at the glossary prepared by Metropolitan and I am  
 6 going to reject it. I think it's -- there are lots of --  
 7 parts of it are very helpful, I don't think there's any  
 8 question about that, but there are other parts which more  
 9 embody Metropolitan's views on some of the issues on the  
 10 merits. It doesn't mean they're wrong, it just means  
 11 that I think instead of spending time going back and  
 12 forth and arguing about it, it is better for me to reject  
 13 it and ask Metropolitan to express its views in  
 14 post-trial briefing. It's just -- I just don't want to  
 15 spend the time on it frankly. That's all it comes down  
 16 to.

17 Again a lot of it is extremely helpful. There  
 18 are explanations for acronyms, for example, which are  
 19 very helpful but as a matter of record, I think I should  
 20 reject it at this point so we don't have to have a  
 21 sideshow on competing definitions of terms. That's all.  
 22 So let's proceed with any further work that  
 23 San Diego would like to get done.  
 24 MR. KEKER: Your Honor, subject to gathering  
 25 ourselves over the weekend and making one final

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1 I may hand up to the judge PTX -- what's been marked PTX  
 2 385, and maybe Mr. Dahm can pull this up as well.  
 3 Thank you. I apologize that we didn't have  
 4 access to a color printer this morning, so the version  
 5 that we submit when we submit all the admitted exhibits  
 6 will include a color version.  
 7 This is a slide that your Honor has seen  
 8 before. What's changed about it is that we removed the  
 9 argumentative title from it so what it reflects is  
 10 Metropolitan's use of State Water Project facilities from  
 11 1995 to 2009.  
 12 The PTX documents are lengthy bulletins by the  
 13 Department of Water Resources. And yesterday, we --  
 14 yesterday we provided and discussed and therefore we move  
 15 into evidence A versions of some of these -- of all of  
 16 these documents down here at the bottom that include the  
 17 critical page. But the data even still is voluminous,  
 18 documents are voluminous. And this is a -- we believe an  
 19 appropriate summary of voluminous evidence and would be  
 20 useful potentially to the Court and so we would move PTX  
 21 385 into evidence on that basis.  
 22 MR. WEST: We object for lack of foundation,  
 23 your Honor.  
 24 This is the first we've seen this version of  
 25 this document. We are not able to determine whether it

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1 is, in fact, a summary or an accurate summary of the  
 2 information that is purported to be contained within it  
 3 and thus we object to its introduction at this point.  
 4 THE COURT: Would you like to get back to me on  
 5 your position on, for example, on Monday? Would that be  
 6 helpful?  
 7 MR. WEST: That would be fine, your Honor.  
 8 THE COURT: Why don't we postpone a ruling and  
 9 ask San Diego to take it up again Monday.  
 10 MR. BRAUNIG: We will remember to do that.  
 11 The next item of business, your Honor, this is  
 12 something that we've talked about a little bit before and  
 13 Mr. Purcell alluded to and others have alluded to as  
 14 well.  
 15 The idea that when Metropolitan seeks approval  
 16 of these local resource programs, the programs that are  
 17 funded by the Water Stewardship Rate, it provides to the  
 18 board a summary of "here's what the program is and here's  
 19 what it's going to create." And because we've alluded to  
 20 this, I wanted to present just a few of these to the  
 21 Court so that the Court can see what we're talking about  
 22 and we'll have these in evidence for consideration.  
 23 These are all documents that are subject to the  
 24 parties' stipulation and have been provided before.  
 25 THE COURT: So these are sample programs?

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1 MR. BRAUNIG: These are sample programs and the  
 2 board memos in which they are approved.  
 3 So the first one is PTX 221. And PTX 221, this  
 4 is a March 13, 2012 board action memo of Metropolitan's  
 5 relating to authorized entering into a local resources  
 6 program agreement with Eastern Municipal Water District  
 7 for a recycled water system expansion project.  
 8 And can we blow up the first paragraph of that  
 9 description?  
 10 So as it says, this is seeking authorization.  
 11 The project, as it says, would provide up to 5,000  
 12 acre-feet per year of recycled water within Eastern's  
 13 service area. Eastern would own and operate the project.  
 14 And it says simply that the project would strengthen  
 15 regional water supply reliability.  
 16 You will notice that it says here's -- here are  
 17 the standards that it needs to meet in order to be  
 18 approved by Metropolitan.  
 19 And there's no reference in that to it avoids  
 20 facility costs, even that it avoids particular water  
 21 supply costs on a regional basis. It simply says we're  
 22 going to pay you for performance, you'll get up to \$250  
 23 per acre-foot, there will be a termination for  
 24 nonperformance if you don't start construction and if  
 25 the -- you'll lose money if the project falls short, you

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1 will lose the amount of subsidies. And then below that,  
 2 it says kind of here's the business case for it.  
 3 It says in 2007, the board established a goal  
 4 of 174,000 acre-feet per year of new LRP, Local Resources  
 5 Program, yield. The board has approved a bunch of  
 6 projects, those have created 74,000 acre-feet per year  
 7 and Metropolitan, as it says, provides financial  
 8 assistance for the production of new water supplies and  
 9 has done that to the tune of about 206,000 acre-feet in  
 10 the prior year.  
 11 THE COURT: So your view of this, just so I  
 12 understand, is that this is an example of a situation in  
 13 which Metropolitan is spending money to produce water.  
 14 MR. BRAUNIG: That's right. They're spending  
 15 money to produce water and not just produce water for  
 16 Metropolitan, produce water within particular member  
 17 agencies. So this goes to the point that these are  
 18 supply costs, not -- they should not be allocated to  
 19 Metropolitan's transportation rate because what they're  
 20 doing is creating new supply.  
 21 And I think that becomes even clearer in PTX  
 22 227, which is another one of these board action memos to  
 23 approve a -- in this case another recycled water system  
 24 expansion project, this one in Orange County. And as  
 25 your Honor can see, the subject, you know, sort of says

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1 precisely that.  
 2 And then the executive summary lays it out.  
 3 The executive summary says look, here's what we want to  
 4 do, here's the agreement. This project would provide up  
 5 to 1175 acre-feet per year of recycled water for  
 6 landscape irrigation within El Toro's service area. El  
 7 Toro is part of the Municipal Water District of Orange  
 8 County.  
 9 And then it says this project would help  
 10 achieve Metropolitan's LRP goal of 174,000-acre-feet of  
 11 new supply. Again, sort of at the end of that detailed  
 12 paragraph it says the project would strengthen regional  
 13 water supply reliability.  
 14 And when your Honor has this back in chambers  
 15 and is looking at it, what you'll see is there's no  
 16 reference anywhere in this document to particular avoided  
 17 supply -- even avoided supply costs, much less avoided  
 18 conveyance or transportation costs or avoided facilities  
 19 costs. And I think that sort of goes to the point that  
 20 it's not that these programs couldn't conceivably have  
 21 regional benefits, San Diego isn't taking that position  
 22 either in this litigation or in the Metropolitan process,  
 23 it's that Metropolitan hasn't even begun to assess that  
 24 on a case-by-case basis.  
 25 And the last one I want to draw your Honor's

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1 attention to is PTX 252. PTX 252 is, again, this time  
 2 authorizing entering into three local resources programs  
 3 agreements -- Local Resources Program agreements with the  
 4 Three Valleys Municipal Water District, which is again  
 5 one of Metropolitan's member agencies. And again, they  
 6 lay it out in the description in that first paragraph.  
 7 If we can highlight that, please.  
 8 They're seeking authorization to enter into  
 9 three separate LRP agreements. These are going to be  
 10 again about regional recycled water projects. And then  
 11 it says the 8,867 acre-feet per year project would  
 12 increase regional water supply reliability by replacing  
 13 demand for imported water supply and increasing  
 14 groundwater in the Fuente and Spadra groundwater basins.  
 15 Benefits to Metropolitan include improved  
 16 regional supply reliability and reduced regional costs  
 17 for water importation.  
 18 This is Metropolitan admitting, acknowledging  
 19 when it tells its board, here's why we should approve it,  
 20 it's going to create supply and it's going to avoid  
 21 supply costs.  
 22 Now, they haven't even articulated what  
 23 specifically those avoided supply costs are, because  
 24 without knowing whether or not you would have had to --  
 25 you know, whether or not there was a capacity constraint

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1 that would require you to go out and buy new supply, you  
 2 can't even say for sure that you've avoided a supply  
 3 cost.  
 4 But certainly the notion that the costs  
 5 associated with this program, which is all about  
 6 increasing supply, should be allocated 100 percent to  
 7 Metropolitan's transportation rates, just makes no sense.  
 8 Just doesn't make any sense. And it is certainly not  
 9 supported by the record that Metropolitan made in asking  
 10 for approval of these projects.  
 11 Let me see if there was anything else that I --  
 12 let's do --  
 13 And this is just a summary of some of the --  
 14 some of the other projects, similar type projects that  
 15 Metropolitan has entered into, you know, under the LRP  
 16 program and again, as your Honor can see, the only thing  
 17 that they're tracking is the ultimate yield.  
 18 Can we maybe blow up the top two or three lines  
 19 of that?  
 20 THE COURT: Which exhibit is this?  
 21 MR. BRAUNIG: This is still within 252. And  
 22 it's laying out the selected projects, says here's the  
 23 title, here's the member agency, here's the type of  
 24 project, project is groundwater, recycled water.  
 25 What's the yield? The yield is an in

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1 acre-feet, acre-feet of supply created, which is what  
 2 they're doing.  
 3 So those are the -- those are the ones that I  
 4 wanted to talk about and we'll move all of those three  
 5 into evidence, 221, 227 and 252.  
 6 MR. WEST: No objection, your Honor.  
 7 THE COURT: 385, 221 -- I'm sorry, not 385 at  
 8 this point.  
 9 221, 227 and 252?  
 10 MR. BRAUNIG: Yes.  
 11 THE COURT: Those are admitted.  
 12 (Whereupon Exhibit 221, 227  
 13 and 252 was admitted into  
 14 Evidence.)  
 15 MR. BRAUNIG: Thank you.  
 16 The last thing I wanted to raise before I sit  
 17 down is with the deposition designations that your Honor  
 18 is reviewing or will be reviewing, there are documents  
 19 that are authenticated and discussed with those  
 20 witnesses. And so to be clear, any of those that are in  
 21 there -- anything that is on there is also on the PTX  
 22 list. It is also a trial exhibit that's been designated  
 23 as part of our stipulation with Metropolitan, but to the  
 24 extent that those deposition designations include a  
 25 discussion of plaintiff's trial exhibits, we will ask the  
 Court to move those into evidence, assuming those depo

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1 designations are accepted.  
 2 THE COURT: That's a little too vague for me  
 3 right now.  
 4 MR. BRAUNIG: I wanted to make it clear. And  
 5 we'll end up discussing this with counsel and when we put  
 6 together a stipulation of exhibits that are admitted, I  
 7 just wanted to make clear that that's our intention  
 8 and --  
 9 THE COURT: Okay.  
 10 MR. BRAUNIG: -- hopefully that won't be an  
 11 issue.  
 12 THE COURT: Okay. That's fine.  
 13 MR. BRAUNIG: And with that, subject to  
 14 Mr. Kecker's explanation that we're going to rest subject  
 15 to issues around the admission of documents, we rest.  
 16 THE COURT: Okay. Thank you.  
 17 Why don't we turn it over to Metropolitan.  
 18 MR. HIXSON: Thank you, your Honor.  
 19 First a housekeeping matter. The first day of  
 20 trial, the Court granted our request for judicial notice  
 21 and asked us to provide a proposed order. We have one  
 22 here that I've provided to San Diego and they've signed  
 23 off on that so I would like to approach and hand it to  
 24 the Court.  
 25 THE COURT: Please. I would be happy to sign

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1 that.  
 2 All right. Let's continue.  
 3 MR. HIXSON: The next thing, your Honor, is  
 4 that we are going to do a presentation of evidence in the  
 5 administration record and if I can provide the Court with  
 6 a chambers copy.  
 7 THE COURT: Great. Thanks.  
 8 MR. HIXSON: Your Honor, as the Court is aware,  
 9 the rate challenge is almost entirely an administrative  
 10 record only proceeding. The Wheeling Statute claim has  
 11 been carved out and the Court is accepting extra record  
 12 evidence, but the remaining claims that are in the rate  
 13 challenge are admin record only and so in this  
 14 presentation, I'm going to highlight key evidence in the  
 15 administrative record that is relevant on the claims in  
 16 this case.  
 17 The admin record itself is enormous. It is  
 18 more than 22,000 pages long. This reflects the multiple  
 19 years spanning over a decade and a half, nearly two  
 20 decades and Metropolitan's lengthy deliberative process  
 21 and rate setting. And so one of the goals of this  
 22 presentation is to highlight those documents in this  
 23 lengthy record that are of particular importance for the  
 24 claims in this case.  
 25 Before I go in, I would like to explain the

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1 citation format that is in the footer on each page.  
 2 In this presentation, I will be citing only to  
 3 documents in the administrative record, or to statutes  
 4 like the MWD Act or the MWD Administrative Code.  
 5 In the footer we have put citation to the  
 6 administrative record. They are sometimes in the format  
 7 DTX, defense trial exhibit, or JTX 1 and 2, which are the  
 8 two administrative records. And then we've briefly  
 9 identified what the item is that we're referring to. The  
 10 intent there is if your Honor later wants to go back in  
 11 chambers and review it, you know what we were talking  
 12 about in this particular document.  
 13 Often what I will do is have a document on the  
 14 screen that is from the 2010 or 2012 rate setting cycle  
 15 and then in the footer, we'll have the equivalent  
 16 document from the other rate setting cycle. For example,  
 17 in a cost of service study, the basic elements or the  
 18 content are similar and so rather than showing you the  
 19 same document twice from different rate setting cycles, I  
 20 would show one and then in the footer we would have the  
 21 equivalent in the other rate setting cycle.  
 22 At various times in this presentation, I will  
 23 call out particular documents that I think are especially  
 24 important. Obviously the Court has the entire  
 25 administrative record and the goal is simply to identify

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1 ones that stand out, that may be documents that the Court  
 2 can focus on, recognizing the review extends to the  
 3 entire record.  
 4 First let me talk about the ten topics that I  
 5 intend to address to in the presentation.  
 6 The first is to go into some detail about  
 7 Metropolitan's rate setting process, the requirements in  
 8 the MWD Act and in the Administrative Code, the steps  
 9 that Met should go through to set its rates and charges.  
 10 And then I want to spend some time on  
 11 Metropolitan's cost of service methodology which gets  
 12 into the nuts and bolts of how different costs are  
 13 functionalized and how they're classified and how those  
 14 dollar amounts get allocated to rate elements because I  
 15 think it's important to go into that level of detail,  
 16 particularly because this case is a rate challenge.  
 17 Then I'm going to discuss the rates and charges  
 18 that result from this cost of service methodology. I'm  
 19 going to talk about the three elements of the rate  
 20 challenge: The State Water Project transportation costs,  
 21 the Water Stewardship Rate, and the peaking -- the dry  
 22 year peaking claims.  
 23 I'm also going to focus on the Raftelis report  
 24 review. I alluded to it briefly in the opening  
 25 statement, but it is something that is important and that

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1 courts look to in reviewing an administrative record only  
 2 case to see what kind of review an agency has had of its  
 3 rates.  
 4 Then I'm going to turn to a number of documents  
 5 that San Diego added to the administrative record. In  
 6 the spring of 2012, San Diego, being members of the  
 7 board, they are entitled to, like anyone can, put  
 8 documents in the record and they added a number of  
 9 documents in the administrative record, such as a 1969  
 10 study by Brown and Caldwell and a number of other  
 11 documents from the 1990s.  
 12 It -- because anyone, any member agency or  
 13 participant in the board meetings can put documents in  
 14 the record, it sometimes might not be clear; for example,  
 15 if you see something in the record that says 1969 on it,  
 16 when did it become part of the record. But I do want  
 17 to -- because those items are in the record and/or  
 18 available for the board to consider at least at the 2012  
 19 meeting, I do want to speak to them as well.  
 20 I want to briefly address the issue of written  
 21 determinations under the Wheeling Statute, something that  
 22 was in dispute earlier in this case and I'm not sure if  
 23 it still is, and then to wrap up with some other  
 24 references why the exchange agreement doesn't undermine  
 25 Metropolitan's rates.

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1 First let me turn to Metropolitan's rate  
 2 setting process and its cost of service methodology. And  
 3 so this -- we're focused here today on cost allocations  
 4 that were decided in October of 2001, that became  
 5 effective in January 2003. And just as a recap, prior to  
 6 2003, Met had a bundled inclusive charge that included  
 7 conveyance and supply. There wasn't a distinction  
 8 between supply and transportation and so these arguments  
 9 about where should State Water Project transportation  
 10 costs go or where should Water Stewardship Rate costs go,  
 11 those wouldn't have been relevant at the time. We're  
 12 talking about the unbundling.  
 13 This was a multiyear process that led to the  
 14 unbundling again in 1998 with Met's evaluation of  
 15 strategic processes and discussions with a number of  
 16 agencies.  
 17 In December of 99, there was strategic and  
 18 planned policy principles that were adopted. I'll talk a  
 19 little bit more about what those were and how they  
 20 informed the rate making.  
 21 In October of 2001, the Met board voted to  
 22 adopt the unbundled rate structure. That means putting  
 23 the cost allocations in different categories. There's  
 24 then the next step of doing cost of service and deciding  
 25 what dollar amounts go in those different categories.

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1 And so the vote on particular dollar amounts was  
 2 March 12, 2002 and those were effective then the  
 3 following year in January 2003.  
 4 On the bottom right you'll see our footer here.  
 5 It is a busy one because we've summarized a number of  
 6 documents in the administrative record, but those refer  
 7 to the different events that are depicted in this  
 8 timeline.  
 9 In terms of the rate setting process, the  
 10 cornerstone, obviously, is the board of directors. This  
 11 is the MWD Act, Section 134, this is a statute passed by  
 12 the California Legislature, the enabling act for  
 13 Metropolitan that vests the authority in the board to fix  
 14 the rates or rates for water. And so this becomes the  
 15 starting point for Met's rate setting process.  
 16 I would like to address some of the principles  
 17 that the board follows. Here I've cited an April 2012  
 18 memorandum to the board that's in the administrative  
 19 record, and it helps to explain what Metropolitan is and  
 20 the services it's providing.  
 21 It explains that Metropolitan system is a  
 22 wholesale system and that it provides supplemental  
 23 supplies.  
 24 Met has no exclusive right to serve in its  
 25 service area to the degree a member agency has local

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1 resources, develops local resources and implements or  
 2 conserves or demands they don't require Met services.  
 3 This is significant for a couple reasons. One  
 4 is it highlights the difference between Met and a retail  
 5 water agency, because a retail water agency normally does  
 6 have an exclusive right to serve. They are the only ones  
 7 that can serve in a particular area. But Met doesn't  
 8 have that with respect to its service area. Each of its  
 9 member agencies or their subagencies may have that right  
 10 as retail providers, but Met is just a wholesaler beyond  
 11 that.  
 12 This is also significant because it gets into  
 13 Prop. 26 issues, which is what exactly is the service  
 14 that Metropolitan is providing? Because under certain  
 15 cost of service methodologies, you're supposed to compare  
 16 the cost or benefits of the service that's being  
 17 provided.  
 18 What Met is providing is supplemental water  
 19 service. And it has 26 member agencies that have varying  
 20 demands. Those demands can be different at each moment  
 21 in time and they can change over time.  
 22 And the service Met is providing is being able  
 23 to handle their supplemental demands as they may change.  
 24 In particular, this becomes relevant to San Diego's dry  
 25 year peaking claim, where they say that the member

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1 agencies are quite differently situated. And we don't  
 2 agree with that factual predicate, but Met in its role as  
 3 a supplemental provider has the reality that it has  
 4 member agencies that are differently situated and that  
 5 Met's role is to be a supplemental provider, that's the  
 6 nature of the service that is provided.  
 7 In addition, as a supplemental provider, there  
 8 is the basic truth that Met's member agencies aren't  
 9 obligated to purchase water from Met. If they have their  
 10 own resources, their own groundwater resources or other  
 11 resources available to them, there's no requirement that  
 12 they purchase water from Met in the way that there would  
 13 be a requirement that a household or a business purchase  
 14 retail water from their local retail water provider.  
 15 For operational convenience, most of Met's  
 16 member agencies have entered into voluntary ten-year  
 17 water supply purchase orders. I didn't want to leave  
 18 that part of it out because it's true that they don't  
 19 have to purchase water from Met but for planning  
 20 purposes, often they do enter into purchase orders that  
 21 are forward looking for about ten years.  
 22 Another principle that comes through in rate  
 23 making, and here I said I would refer to the strategic  
 24 planned policy principles in December of 1999, is that  
 25 Met is a voluntary cooperative. It was created for the

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1 member agencies that have a common purpose of developing,  
 2 storing and distributing water.  
 3 We are often accused of making up the voluntary  
 4 cooperative language for purposes of litigation because  
 5 of the Prop. 26 issue that Prop. 26 applies only to rate  
 6 surcharges that are imposed.  
 7 So that's why I wanted to highlight this  
 8 document in the administrative record from 14 years ago  
 9 at the time that unbundling was being considered that  
 10 highlighted this principle that Met is a voluntary  
 11 cooperative of member public agencies.  
 12 Let's turn now more into the specific way that  
 13 Metropolitan is governed, according to its enabling  
 14 statute.  
 15 Section 51 of the MWD Act -- I should clarify.  
 16 All of the provisions of the MWD Act and Administrative  
 17 Code that I'm citing to during the presentation today  
 18 were included in our request for judicial notice that's  
 19 before the Court.  
 20 So section 51 provides that the board has a --  
 21 at least one representative from each member public  
 22 agency. This ensures representation by each of the  
 23 members. Each of them is entitled to vote on every  
 24 question that comes before the vote -- that comes before  
 25 the board. Their votes of course are weighted according

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1 to the assessed value in each of the member agencies.  
 2 Section 57 is an important part of  
 3 Metropolitan's Act because it provides that the  
 4 affirmative votes of members representing more than  
 5 50 percent of the total number of votes shall be  
 6 necessary to carry a resolution. In other words, this  
 7 establishes that basic democratic mechanism within  
 8 Metropolitan's board that votes are by a majority vote.  
 9 That is intentional, it's by design, it's a requirement  
 10 of the act passed by the California Legislature.  
 11 Separate from the MWD Act, Metropolitan has its  
 12 own Administrative Code. This is a law. It is -- but it  
 13 is a law adopted by Metropolitan's board and governs a  
 14 lot of the processes and procedures that Metropolitan  
 15 follows.  
 16 In particular there are a number of  
 17 requirements in here concerning the rate making process.  
 18 Section 4304 provides that not later than at the February  
 19 meeting, the general manager shall provide to the board  
 20 determinations of revenue requirements and cost of  
 21 service analysis. So we see here that Met in its own  
 22 Administrative Code requires cost of service analysis and  
 23 requires a determination of revenue requirements going  
 24 beyond the requirements in the MWD enabling act.  
 25 And then the general manager is also required

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1 to make recommendations of rates, and then listed here  
 2 are the various different water rates at issue that the  
 3 general manager must make recommendations concerning.  
 4 We can then turn to a later provision in  
 5 Section 4304 that provides that not later than its  
 6 regular April meeting, the finance and insurance  
 7 committee shall make its determination regarding the  
 8 revenue requirements from the water rates.  
 9 It also provides in Subsection F that proposals  
 10 for changes in water rates would ordinarily become  
 11 effective on January 1. If that would be otherwise, then  
 12 there has to be adequate notice to the public that rates  
 13 are taking effect at a different time.  
 14 And finally we come to Section 2109 dealing  
 15 with the board agenda, that the board shall make a  
 16 provision for public appearances of the board on matters  
 17 on which action is taken. This emphasizes the open and  
 18 deliberative nature of the board, that it is required to  
 19 conduct these proceedings in public.  
 20 THE COURT: Are all the meetings of the board  
 21 in public?  
 22 MR. HIXSON: Yes, all of the meetings of the  
 23 board are public unless there are things taken up in  
 24 closed session such as attorney-client privilege matters.  
 25 I would like to spend some time on the cost of

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1 service document, to explain what it is and the role it  
 2 has in Metropolitan's rate setting.  
 3 I said earlier that I would flag if there are  
 4 certain documents that are of particular importance  
 5 during Metropolitan's reviewing rates. This is one of  
 6 them. This is a key document for the Court to analyze in  
 7 evaluating the rate challenge.  
 8 Let me explain what this particular document  
 9 is.  
 10 When the general manager makes a recommendation  
 11 to the board, it takes the form of a board action letter  
 12 that would set forth the recommendation for the rates and  
 13 charges. The action letter is supported by a cost of  
 14 service document that is literally attached to it. And  
 15 so, there are these in every rate setting cycle.  
 16 The one that I've attached here is from the  
 17 2012 rate setting cycle, and you'll see -- let me explain  
 18 some of the words on the page there.  
 19 The 2012 is a biannual rate setting cycle,  
 20 meaning that it set rates that were in effect in 2013 and  
 21 2014 and so there was a separate cost of service report  
 22 for each of those different years.  
 23 In addition, the general manager made --  
 24 proposed three different options: Option I, option II  
 25 and option III.

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1 I've shown here Option II for the fiscal year  
 2 2012, 2013 cost of service. And the reason I chose  
 3 option II is because the board opted for option II so  
 4 this is the one that was adopted, but there were a total  
 5 of six cost of service studies that went before the  
 6 board.  
 7 And again, this is an example why I print out a  
 8 document from the 2012 rate setting cycle, and of course  
 9 there was one in 2010 and then for each of the years from  
 10 the unbundling in '04, '05, '06, '07 and so on, there's a  
 11 cost of service analysis.  
 12 THE COURT: Is this done every year?  
 13 MR. HIXSON: It's done every rate setting  
 14 cycle.  
 15 THE COURT: Which is one or two years?  
 16 MR. HIXSON: In 2010, it was for two years. In  
 17 2012, it was for two years.  
 18 THE COURT: Right.  
 19 MR. HIXSON: And before that, it was every  
 20 year.  
 21 At a high level there are four basic steps in  
 22 Metropolitan's cost of service process. Step number one  
 23 is that Met determines its revenue requirements for the  
 24 coming fiscal year. Let's talk about what that means.  
 25 The cost of service study identifies the money

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1 that Met's going to need to raise to fund its operations.  
 2 And here we see in this cost of service study that the --  
 3 it's looking at the estimated revenue requirements for  
 4 fiscal year 2012 and 2013.  
 5 Met does conduct its finances on a fiscal year  
 6 basis, so that's July 1 of each year as opposed to a  
 7 calendar year basis, which is January 1. And the total  
 8 revenue requirements this coming fiscal year were  
 9 approximately 1.49 billion.  
 10 The fact that Met starts its rate setting  
 11 process with the revenue requirement is significant for a  
 12 couple of reasons because it's different from how people  
 13 often think of government entities as doing their  
 14 budgeting process.  
 15 If you think about a city or about the state  
 16 legislature, what they often do is start with how much  
 17 money is coming in through taxes, and then they figure  
 18 well, how much can they afford to spend? They look at  
 19 what's available and then try to figure out how that will  
 20 be spent and then do they need to borrow more money or do  
 21 they need to raise taxes. In recent years, it seems like  
 22 they're always looking at with the revenue end, how much  
 23 do they have to cut from the budget.  
 24 Metropolitan proceeds in the opposite  
 25 direction. It looks at what are the services it's going

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1 to provide and then how much money is necessary to have  
 2 the revenue to provide those services.  
 3 Met does have an amount of revenue that comes  
 4 in from property taxes. Those are about five percent of  
 5 its total revenue requirement. But for the remainder,  
 6 Met is proceeding in this direction of what revenues does  
 7 it need to provide the services. This becomes  
 8 significant in the Prop. 13 and Prop. 26 context where  
 9 courts doing analysis of did the government entity just  
 10 have an arbitrary amount of money they were going to  
 11 charge or was that an amount that was estimated to cover  
 12 the cost of a service.  
 13 And so that's why it's important to see that  
 14 Metropolitan does its rate setting in this way, starting  
 15 with what are the costs it needs to be able to pay for  
 16 and then how should it raise the revenue that will  
 17 prospectively pay for those costs.  
 18 And as I just said, it's a prospective measure.  
 19 Met looks at the upcoming fiscal year and asks what is  
 20 the best estimate of what it will need to raise in water  
 21 rates that will pay prospectively for that.  
 22 And as part of step 1 of the revenue  
 23 requirement, Met doesn't stop with the total amount of  
 24 1.49 billion. It breaks that down into what is it for,  
 25 looking forward to the next fiscal year, what does Met

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1 need to raise revenue to pay for.  
 2 And these are the general district requirements  
 3 in Schedule 1. You can see that the State Water Project  
 4 is the largest item here that Met is going to need to pay  
 5 for at 593 million or 36.7 percent of Met's revenue  
 6 requirement in the upcoming fiscal year.  
 7 Second to the State Water Project is Met's  
 8 capital financing program, which in that year was  
 9 396 million or about 24.5 percent of the revenue  
 10 requirement. There's a total after that at the bottom  
 11 and then there are some revenue offsets for money that  
 12 comes in for other revenue offsets. And then you have  
 13 the net revenue requirement: What does Met need to raise  
 14 going forward, and it has broken that down into what are  
 15 the various items it needs to pay for.  
 16 Having determined its revenue requirements, Met  
 17 then looked at the next step in the cost of service  
 18 process, which is the functionalization of costs.  
 19 Functionalization sounds like a dry accounting  
 20 word. This is actually where the big fight is between  
 21 the parties concerning the State Water Project  
 22 transportation costs because in the functionalization  
 23 stage, Metropolitan has to decide do you take those State  
 24 Water Project costs, what functions do you say they're  
 25 performing?

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1 San Diego says they all perform the function of  
 2 water supply and so they should all be allocated to that  
 3 function. Metropolitan says no, some of those State  
 4 Water Project costs perform the function of supply, but  
 5 others perform the function of transportation.  
 6 And so it's at this step in the cost of service  
 7 process that the State Water Project costs are  
 8 disaggregated and some go down the path that will lead  
 9 them in steps three and four of the cost of service  
 10 process to be in the supply rates and others go down the  
 11 path that would lead them to be recovered in the  
 12 transportation rates.  
 13 But I wanted to highlight to the Court from a  
 14 technical perspective and a cost of service perspective  
 15 where is this happening, and it's happening in step two  
 16 when the costs are functionalized.  
 17 And let me show a chart from the cost of  
 18 service. This is Schedule 4 where Met breaks down its  
 19 revenue requirements by service function. The functions  
 20 that it identifies are source of supply, and you can see  
 21 Colorado River Aqueduct and State Water Project beneath  
 22 that.  
 23 You can see -- or I hope you can see, there's a  
 24 lot of information on the chart -- conveyance and  
 25 aqueduct and there's again, Colorado River and State

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1 Water Project and so -- okay, thank you.  
 2 And so there's this division here.  
 3 In addition, let me scroll back, there are  
 4 other functions. There's storage, there's treatment,  
 5 there's distribution and demand management. Those are  
 6 the different functions listed on the left. And here,  
 7 you can see where Met is allocating amounts of money to  
 8 those different functions.  
 9 This is something worth focusing on as well in  
 10 terms of what the board is looking at when it decides  
 11 what functions are being performed by the State Water  
 12 Project. For example, if you look at source of supply  
 13 for the State Water Project, as we've discussed that's  
 14 the Delta water charge or the charge from DWR for the  
 15 water resource. And you can see here that that's  
 16 \$98 million for this year. That's under source of  
 17 supply, SWP, and you look to the right under fiscal year  
 18 and you see the 98 million.  
 19 Beneath that you see the conveyance and  
 20 aqueduct function. That's the transportation of these  
 21 water resources to Met service area. And then under  
 22 State Water Project, you can see there's State Water  
 23 Project power and then State Water Project, all other.  
 24 Those are the things like the capital and the operations  
 25 and the maintenance expenses.

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1 This is where the board can look at these State  
 2 Water Project costs and the board can see that the power  
 3 costs of 270 million are almost three times as much as  
 4 the water -- as the Delta water charge, the water supply  
 5 charge.  
 6 And that the transportation costs, the  
 7 construction, the maintenance, the replacement of parts  
 8 and the aqueduct and the other transportation facilities  
 9 are \$201 million or slightly more than twice the cost of  
 10 the water resource. And so the board can look at these  
 11 costs from DWR and see their magnitude.  
 12 And so in looking at the functionalization  
 13 function or what it's doing in functionalization, the  
 14 board can disaggregate and see here, are huge amounts of  
 15 the State Water Project bill really not for the water  
 16 resource?  
 17 And this helps to illustrate that yeah,  
 18 actually, large amounts of that bill are dealing with the  
 19 transportation facilities and for the power that's  
 20 required to move to Southern California, the water to  
 21 Southern California rather than the cost of the water  
 22 resource itself. And that's information the board can  
 23 take into account in deciding realistically what is the  
 24 right function that this costs are associated with and  
 25 here it has broken them down between supply and

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1 transportation.  
 2 This is also a response to the plaintiff's  
 3 argument that what you should do is look at the narrow  
 4 chart of accounts and it says the purchase of water is  
 5 the cost to have it at the point of delivery and then the  
 6 inquiry supposedly over because you know it should all be  
 7 water supply.  
 8 The board can look at its costs and say it  
 9 really seems like a lot of them are actually for  
 10 transportation, in fact an enormous amount of them are  
 11 rather than for the water resource itself. So that's  
 12 information's available to the board.  
 13 THE COURT: Though, this document is prepared  
 14 by staff based on other documents and this reflects a  
 15 judgment call, does it not?  
 16 MR. HIXSON: Yes.  
 17 THE COURT: That is that we're going to have --  
 18 for example, when it comes to \$270 million, somebody's  
 19 made a judgment that this power is required for state  
 20 conveyance.  
 21 MR. HIXSON: Well, DWR has sent Metropolitan a  
 22 bill and said this is your bill for the conveyance of  
 23 water to Metropolitan. And so, yes, Met has received  
 24 that water bill. But Met has -- in terms of how Met  
 25 characterizes that, putting it into this function, that's

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1 correct, it is a judgment call.  
 2 THE COURT: Okay.  
 3 MR. HIXSON: Let's turn to step three. This is  
 4 the classification of costs.  
 5 What classification means is distinguishing  
 6 costs from costs associated with average use from those  
 7 associated with peak use and from those associated with  
 8 standby. And so this gets into the peaking issues that  
 9 the parties have been talking about.  
 10 Step three is a cost of service, is where Met  
 11 distinguishes between these different types of costs and  
 12 allocates some to average, some to peak and some to  
 13 standby.  
 14 I'm going to pull up Schedule 7 here, which  
 15 shows the service function revenue requirements by  
 16 classification category. Those categories are fixed  
 17 demand, commodity, standby and variable commodity. These  
 18 terms require explanation because otherwise they may look  
 19 just like words on a page, but I want to explain how they  
 20 are related to distinguishing between average, peak and  
 21 standby.  
 22 The cost of service study explains what demand  
 23 costs are, and it says that demand costs are incurred to  
 24 meet peak demands. And it goes on to explain that only  
 25 the direct capital financing costs were included in the

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1 demand classification category, and it goes on to explain  
 2 other costs there.  
 3 This is intended to help the Court see what the  
 4 word "demand" means in this context. It is referring to  
 5 costs that are associated with higher than average years  
 6 or to peak demands.  
 7 Next I would like to explain what the word  
 8 "commodity" means. Here it explains that commodity costs  
 9 are generally associated with average system demands. So  
 10 commodity is just a term of art that means average level  
 11 of uses. And then there's some more explanation here  
 12 about what is generally included in average use, variable  
 13 commodity costs, including costs of chemicals, most power  
 14 costs, because those vary with how much water is being  
 15 delivered and other cost components that increase or  
 16 decrease in relation to the volume of water supplied.  
 17 The third category here is standby. Standby is  
 18 something that is important for Metropolitan that is --  
 19 might be of different or lesser importance to other water  
 20 agencies because it relates to Met's role in ensuring  
 21 system reliability during something like an emergency,  
 22 like an earthquake or a severing of the aqueduct in  
 23 Southern California that Met, because of its huge  
 24 geographic size, has a certain standby role that would be  
 25 unusual for, say, a municipal water utility.

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1 And so these -- the principle components of  
 2 standby costs are the emergency storage capacity within  
 3 Met and then the standby capacity in the State Water  
 4 Project conveyance system. But that's what we mean when  
 5 we say standby, is that there's costs associated with Met  
 6 systems that are there in case a terrible, you know,  
 7 earthquake or other emergency happens and Met needs to be  
 8 able to provide that essential water.  
 9 And then to round out the picture, variable  
 10 commodity costs are defined similar to the other  
 11 commodity costs. Those are associated with average  
 12 system demands. So again, this is the stage where Met  
 13 has taken its total cost, the revenue requirement, it has  
 14 assigned what functions they're for and then within that,  
 15 it decides which are those are related to average, which  
 16 for the peak and then which are related to the more  
 17 emergency or standby costs.  
 18 Having done this, Metropolitan then moves to  
 19 the fourth step, which is allocating costs to the rate  
 20 design elements. This is where it decides what costs end  
 21 up in which of the rates.  
 22 This is Schedule 8. It is a chart with a lot  
 23 of detail and may be difficult to read. This is probably  
 24 the most important chart in the cost of service study.  
 25 What this chart does is it shows on the

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1 left-hand side the service functions of the  
 2 classification category. The service functions are the  
 3 various different functions that Met considers itself to  
 4 be performing in this cost of service.  
 5 You can see there's the supply function that is  
 6 broken out on top, there's the conveyance and aqueduct  
 7 function and again, that's the movement of water from the  
 8 sources of supply to Met service area.  
 9 Beneath that, Metropolitan has identified a  
 10 storage function that it performs. It has a treatment  
 11 function and that means taking the untreated water it  
 12 receives and treating that so it can be drunk.  
 13 There's a distribution function. This refers  
 14 to Metropolitan's in basin distribution system, namely  
 15 the network of pipes and other infrastructure to move the  
 16 water to the member agencies, the connections to this 26  
 17 different member agencies. That's called the  
 18 distribution function.  
 19 THE COURT: How is that different from  
 20 conveyance?  
 21 MR. HIXSON: Conveyance and aqueduct refers to  
 22 the State Water Project transportation facilities and the  
 23 Colorado River Aqueduct that move the water from the  
 24 source of supply to Metropolitan's service area. The  
 25 distribution function is then the moving of the water to

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1 the member agencies through Metropolitan's distribution  
 2 network.  
 3 And then if you may recall from the opening, we  
 4 had the blue lines for the State Water Project, the red  
 5 for the Colorado River. That's conveyance and aqueduct,  
 6 and the purple was distribution.  
 7 Beneath that is demand management. Those are  
 8 the costs of the local resource programs, the  
 9 conservation credits and the desalination programs are  
 10 all in the demand management function, and those, as the  
 11 Court knows, are recovered through the water storage  
 12 rates. And beneath that is the total of all these  
 13 different functions.  
 14 Then what you can see on the top right going  
 15 from left to right are the rates where everything is  
 16 recovered in. I think that's in particular what makes  
 17 this chart so useful. You can see the supply rates and  
 18 what goes into it. You have the commodity charges that  
 19 go into the supply rates and then -- and also there are  
 20 certain storage costs there that go into supply rates.  
 21 And then you can see to the right the three  
 22 transportation rates. There's the System Access Rate and  
 23 you can see that there are conveyance aqueduct where  
 24 they're called fixed commodity costs that go into there.  
 25 Those are facilities expenses for the State Water Project

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1 transportation facilities and the Colorado River  
 2 Aqueduct.  
 3 You can see there are certain storage costs  
 4 going into the System Access Rate and the distribution  
 5 costs, so the facilities costs here should go into the  
 6 System Access Rate. Next to it you can see the Water  
 7 Stewardship Rate and that carries all the way down and  
 8 recovers the cost of demand management function.  
 9 And then you can see the System Power Rate and  
 10 it recovers variable commodity and as we saw on a  
 11 previous slide, those are the energy -- the variable  
 12 commodity or power costs for moving water to Southern  
 13 California, and you can see how they flow right into the  
 14 System Power Rate on the Schedule 8.  
 15 There's then the Capacity Charge that recovers  
 16 certain fixed demand for storage, and we saw before fixed  
 17 demand is a term of art that means peaking costs and so  
 18 it refers to the certain peaking storage capacity.  
 19 And then going down in Capacity Charge, you can  
 20 see fixed commodity costs under -- or fixed demand for  
 21 distribution.  
 22 I hope I now have done a decent enough job of  
 23 explaining the Metropolitan lingo, that distribution is  
 24 how the system that pushes the water out to member  
 25 agencies, and then fixed demand are the peaking costs so

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1 you can see how the Capacity Charge covers those peaking  
 2 costs.  
 3 And then you've got the Readiness-to-Serve  
 4 Charge. That recovers all the standby costs. So the  
 5 cost of the Metropolitan system standing by in case of an  
 6 earthquake or some other terrible event of recovery and  
 7 the Readiness-to-Serve Charge there.  
 8 And then there's the treatment surcharge. All  
 9 of the costs you can see under the treatment function  
 10 flow to the right-hand column are in the treatment  
 11 surcharge.  
 12 So what makes Schedule 8 so useful is that you  
 13 see all the different functions and you have all the  
 14 rates laid out there and you can see exactly which one of  
 15 them flows into which rates. So for convenience, we've  
 16 been giving you PowerPoint slides that kind of summarize  
 17 where these different things end up. Schedule 8 is the  
 18 ultimate resource so the Court can look to see for  
 19 yourself what costs are flowing into which rates so it  
 20 doesn't have to be a source of mystery, as laid out here,  
 21 as in all of the cost of service rates that Metropolitan  
 22 does.  
 23 Where Schedule 8 then leads to, once you've got  
 24 the different rates and the dollars flowing into them, is  
 25 Schedule 9, the rates and charges summary.

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1 You know something happens between Schedule 8  
 2 and 9, or a couple things happen. One of them is a  
 3 projection of the amount of water that Metropolitan  
 4 expects to sell in the next fiscal year. Because certain  
 5 dollar amounts have been allocated to the supply rates  
 6 and to the transportation rates to turn those into  
 7 acre-feet of water, Met has to have an expected sales  
 8 level and so that's -- although that's not the only thing  
 9 that happens between Schedules 8 and 9, that's the  
 10 principal step that is being made there, the estimated  
 11 amount of sales.  
 12 I should explain a couple things on this chart.  
 13 There's the supply rates. There's the tier 1 supply  
 14 rate, tier two. There's a reference to the Delta supply  
 15 surcharge. This was something that's no longer in  
 16 effect. It was called out separately in 2012 and before,  
 17 and you can see the little asterisk marks for 2013 and  
 18 2014. It's no longer broken out as a separate supply  
 19 cost, it is folded within the other supply rates.  
 20 So these -- these are the rates and charges  
 21 that result from cost of service process.  
 22 What happens then after the cost of service  
 23 study goes to the board is that the board in a series of  
 24 meetings opens up the proposed rates for discussion in  
 25 its public board and committee meetings at workshops,

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1 meetings that are open to all member agency managers and  
 2 other member agency staff. As we saw from Met's  
 3 Administrative Code, there are noticed public hearings of  
 4 proposed rate and charges. You may not have known this  
 5 but Metropolitan board meetings are publicly Web cast  
 6 live and there's on demand video streaming of the  
 7 meetings for people who would like to watch the meetings  
 8 on their computer. And Metropolitan staff provides data  
 9 supporting each of the rate proposals and each of the  
 10 options throughout all of these discussions.  
 11 This then culminates in a board action item  
 12 letter before the rate vote that goes to each board  
 13 member and is a public document, a final letter setting  
 14 forth the details of the proposed rate option, a staff  
 15 recommendation and that's backed up by the cost of  
 16 service studies.  
 17 The board action letter for April 2012 is quite  
 18 a hefty document because it's got the three different  
 19 options and the two different fiscal years, so there's  
 20 this huge stack of six cost of service studies that  
 21 analyze each one of those for two years, so that would  
 22 be -- and so that's more options than may often be  
 23 submitted, but that's typical information that backs up  
 24 the board action letter.  
 25 So from here, we get to, then, Metropolitan's

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1 So we saw the cost of service process and how  
 2 the costs are functionalized, classified and allocated.  
 3 And what comes out of it is Met's rate structure, the  
 4 volumetric rates, the supply transportation treatment and  
 5 then the fixed charges, the Capacity Charge and  
 6 Readiness-to-Serve charge, and this chart will be  
 7 familiar to the Court.  
 8 We have what the supply rates recover. We saw  
 9 this flowing through in Schedule 8, the cost to supply  
 10 water from the State Water Project to the Colorado River  
 11 Aqueduct, and also the storage costs that are allocated  
 12 and show up in Schedule 8 being recovered in the supply  
 13 rates.  
 14 Then we saw the System Access Rate, which is  
 15 best understood as the facilities expense for those  
 16 facilities that transported water. That would be both  
 17 the conveyance and aqueduct function and the distribution  
 18 function. So you have the State Water Project  
 19 transportation facilities, Colorado River Aqueduct and  
 20 the distribution facilities that would then move the  
 21 water out to the member agencies.  
 22 And we saw that the System Power Rate in  
 23 Schedule 8 is literally a flow through of the energy  
 24 costs that move water to Southern California. That's --  
 25 they would get assigned under the System Power Rate.

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1 rates and charges that are at issue.  
 2 THE COURT: Would this be good time to take our  
 3 break?  
 4 MR. HIXSON: Absolutely.  
 5 THE COURT: I'll see everybody in ten minutes.  
 6 Thank you.  
 7 (Brief break.)  
 8 THE COURT: All right. Let's continue, please.  
 9 MR. WEST: Your Honor, one small thing. With  
 10 the Court's permission, we noticed that your clerk is  
 11 sitting behind the screen unable to see the presentation.  
 12 If -- if it would be okay with the Court, we would like  
 13 to provide him a copy of the presentation so he can look  
 14 at it and follow along.  
 15 THE COURT: It is okay.  
 16 MR. WEST: Thank you, your Honor.  
 17 MR. HIXSON: Your Honor, now I would like to  
 18 discuss Met's rates and charges at issue.  
 19 I have two goals in this section. One is to  
 20 explain the difference between Met's transportation rates  
 21 and its wheeling rate, and the other is to explain  
 22 exactly where the State Water Project costs are all;  
 23 ending up and to be technically precise about that  
 24 because I do think it's important to the Court's  
 25 understanding of the case.

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1 And then the Water Stewardship Rate we saw is  
 2 that it -- 100 percent of that is budgeted to recover the  
 3 costly demand management programs. There aren't other  
 4 pieces of things that end up in the Water Stewardship  
 5 Rate, that is what it recovers. And as for all of these  
 6 rates, the volumetric rates, these are uniform among the  
 7 member agencies and they are acre-foot charge.  
 8 For member agencies that buy what's called full  
 9 service water, meaning the water they buy is from Met and  
 10 they pay the transportation rates, they pay the supply  
 11 and the transportation rates that are listed up here.  
 12 And here is where I want to focus on wheeling  
 13 service and how it's different from transportation.  
 14 This is the rate for wheeling service. It was  
 15 redefined in March of 2002 under Metropolitan unbundled  
 16 rate structure, and it says what the elements of it are.  
 17 The rates for wheeling service shall include  
 18 the System Access Rate, the Water Stewardship Rate for  
 19 treated water, the treatment surcharge and wheeling  
 20 parties pay for their own costs of power.  
 21 So the System Access Rate we saw recovers those  
 22 facilities expenses that Metropolitan has that has the  
 23 State Water Project transportation facilities, Colorado  
 24 River Aqueduct and then Met's distribution system that  
 25 are all collectively used to move water. Water storage

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1 rate recovers the demand management cost.  
 2 But I wanted to highlight what's not in the  
 3 wheeling -- the rate program service and that's the  
 4 System Power Rate. Earlier when we saw the different  
 5 state water projects costs, we saw that about 98 million  
 6 were for the water supply costs, the Delta water charge.  
 7 We saw that a little over twice that, about 200 million  
 8 were for the capital and operations and maintenance  
 9 costs.  
 10 But we also saw that the largest share by far  
 11 were the variable power costs. That was the \$270 million  
 12 in energy costs to move water to Southern California.  
 13 Those energy costs are then allocated to the System Power  
 14 Rate. They're not in the rate for wheeling service. So,  
 15 the single largest item of expense, the single largest  
 16 chunk of the State Water Project Transportation Bill  
 17 doesn't go into the rate for wheeling service.  
 18 And recall that the way Met classifies the  
 19 energy costs is it assigns them as a 100 percent variable  
 20 commodity. Those are pure variable charges that go up or  
 21 down depending on the amount of power that is used to  
 22 transport water to Southern California, whereas the other  
 23 ones that are in the rate program service are not in the  
 24 cost and that's certain fixed expenses for the facilities  
 25 and how it operates.

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1 But I think in this case, we talk about as a  
 2 shorthand that the State Water Project transportation  
 3 costs recovered and that's transportation rates. And I  
 4 wanted to clarify that for the rate for wheeling service,  
 5 the single biggest ticket item isn't part of the rate for  
 6 wheeling service. This also gets through if the  
 7 distinction between what a transportation rate is and the  
 8 rate for wheeling service is.  
 9 When you've got a member agency buying full  
 10 service water from Metropolitan, they pay the supply  
 11 rates and they pay all three of the transportation rates,  
 12 including the System Power Rate. So they are going to  
 13 pay part of the pro rata expense of having that State  
 14 Water Project moved and the power costs associated with  
 15 that to Southern California. But the rate for wheeling  
 16 service carves out and doesn't include that huge variable  
 17 power cost. That isn't part of the published rate.  
 18 THE COURT: There's still power -- obviously  
 19 there's power involved in wheeling water.  
 20 MR. HIXSON: Yes.  
 21 THE COURT: So it's recovered some other way.  
 22 MR. HIXSON: It is recovered. Here it provides  
 23 that the wheeling parties must pay for their own cost of  
 24 power if such power can be scheduled by the district or  
 25 pay the district for the actual cost, not system average,

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1 of power service utilized for delivery of the wheeled  
 2 water.  
 3 So yes, the rate for wheeling service does  
 4 recover the actual power cost or the wheeler can provide  
 5 their own power. The point I wanted to make is that the  
 6 System Power Rate, as such, that's not just automatically  
 7 allocated to the rate for wheeling service. It could be  
 8 different depending on what the actual power costs are  
 9 associated with that.  
 10 THE COURT: Doesn't that suggest the System  
 11 Power Rate is not something which is the actual cost of  
 12 transporting that particular volume of water?  
 13 MR. HIXSON: The -- it doesn't. The system  
 14 Power Rate takes into account various offsets. For  
 15 example, the State Water Project, in addition to  
 16 delivering water, part of delivering water, it has  
 17 recovery power plants. When water flows downhill, it can  
 18 be -- goes through hydroelectric facilities and those  
 19 generate power. So the System Power Rate is a net offset  
 20 that takes into account the other things so it's a  
 21 specific type of power rate.  
 22 And so anyway, the point here though is that  
 23 the transportation rates that the member agencies pay are  
 24 going to reflect that system power rate and the various  
 25 different offsets and credits that are involved in State

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1 Water Project, whereas the rate for wheeling service is a  
 2 different type of thing. And power can be different  
 3 depending on the issue.  
 4 But your Honor is right that it does recover  
 5 power costs. For example, when on the occasions when Met  
 6 has wheeled water through the State Water Project for  
 7 San Diego, there are additional variable power costs  
 8 specific for that transaction that would then have to be  
 9 paid for and the wheeling rate does contemplate that. It  
 10 doesn't wholesale throw the System Power Rate into the  
 11 regular wheeling service because of its variable nature.  
 12 Let's turn then to the first aspect of  
 13 San Diego's rate challenge which is about the allocation  
 14 of certain State Water Project transportation charges to  
 15 Met's own transportation rates.  
 16 We've talked before about how the -- Met has a  
 17 contract that has separate supply and transportation  
 18 charges that -- the Delta water charge on the supply side  
 19 and the transportation charges on the transportation  
 20 side.  
 21 Focusing first on the supply charge, this is a  
 22 pass through. So from the Delta water charge we saw for  
 23 those costs are functionalized to the supply function.  
 24 They are then classified as commodity, meaning associated  
 25 with average demand and then allocated to Met's supply

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1 rates. So that's where they flow through, that's where  
 2 the costs end up in Metropolitan's rate structure.  
 3 The transportation charges as I've alluded to  
 4 are a little bit more complicated. The energy costs do  
 5 flow through to the System Power Rate but as I've just  
 6 explained and as part of the transportation rates and as  
 7 I've just explained that isn't automatically part of the  
 8 rate for wheeling service.  
 9 The facilities expenses, though, are a little  
 10 bit different. In the step three of the cost of service  
 11 process, basically Met has a distribution system that is  
 12 sized to meet peak demand, meaning busier times of year  
 13 it has to have more capital costs. That same thing is  
 14 true to a certain extent with the State Water Project.  
 15 Its facilities are also sized to meet busier times of the  
 16 year.  
 17 So when Met looks at its State Water Project  
 18 capital costs and State Water Project operations and  
 19 maintenance costs, it does classify them. It classifies  
 20 the large majority to commodity, but it also classifies  
 21 some to peak and some to standby. So, once those are  
 22 classified to peak and standby, they are allocated to the  
 23 Readiness-to-Serve charge.  
 24 This may be way more detailed than you were  
 25 ever hoping to hear, but I did want to get it out there

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1 that it's not true that all of the transportation capital  
 2 and operations and maintenance expenses end up in the  
 3 System Access Rate. Some of them end up in the  
 4 Readiness-to-Serve charge because they're classified as  
 5 being associated with peak or standby usage. It would  
 6 simply be the large majority end up in the System Access  
 7 Rate.  
 8 And here I've covered where those two rates are  
 9 here.  
 10 There are essentially five reasons supported by  
 11 the administrative record why it was reasonable and  
 12 continues to be reasonable for the board to allocate the  
 13 State Water Project transportation costs that it does to  
 14 Met's transportation rates.  
 15 The first is the nature of the cost. The  
 16 second is Met's ability to use the State Water Project as  
 17 an extension of its own system. The third is the  
 18 integrated nature of the system.  
 19 The fourth is the consistency with industry  
 20 guidance. And here, I'm going to expand on that a bit  
 21 more in this presentation and talk about the nature of  
 22 that guidance. And then the fifth is the blended water  
 23 that ends up being provided by Metropolitan to San Diego  
 24 and to the other member agencies as well.  
 25 Focusing on the contract, it is indeed titled a

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1 contract for water supply. San Diego likes to point to  
 2 the title of the contract. We ask the Court to look  
 3 beyond the face page and to see the content of it, but  
 4 those words are right there on the title of the page.  
 5 More important, though, is the separation of  
 6 the costs that's at the heart of the contract between Met  
 7 and the state. So the Delta water charge here, this is  
 8 the charge for project water. This was the  
 9 98 million-dollar figure that we looked at earlier in one  
 10 of the cost of service schedules in that particular year,  
 11 so the cost of developing that water resource.  
 12 And that relates to the -- I'm showing again a  
 13 picture of Lake Oroville with the dam and the other  
 14 facilities there. This is basically the \$98 million.  
 15 That's what we're looking at in terms of the State Water  
 16 Project's supply costs.  
 17 Transportation costs are allocated to Met but  
 18 they're allocated to other contractors under article 23  
 19 of the State Water Project contract. This is going to be  
 20 the \$470 million so that the 200 million that is the  
 21 capital and the operation maintenance and then the larger  
 22 chunk, the 270 for the power costs that ultimately are  
 23 not assigned to the wheeling rate.  
 24 And these expenses, again, are for the  
 25 facilities expenses, for the California Aqueduct

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1 operations and maintenance and power.  
 2 These are defined further in the contract. And  
 3 I wanted to walk through the contract language that  
 4 discusses each of trees transportation expenses and  
 5 define what they cover.  
 6 Article 24(a) defines the capital cost  
 7 component. And it says that that charge shall be  
 8 sufficient to return to the state the capital cost of the  
 9 project transportation facilities necessary to deliver  
 10 the water to the contractor and which are allocated to  
 11 the contractor pursuant to subdivision (b) of this  
 12 article.  
 13 And so as with all of these provisions with the  
 14 transportation charge, there's an explicit allocation of  
 15 the cost to Metropolitan for this cost. This is the  
 16 capital cost here that return these funds to the state.  
 17 There's then the article 25 defines the minimum  
 18 operation maintenance power and replacement cost. These  
 19 are ongoing operations and maintenance. And again,  
 20 Article 25 says that this charge shall be sufficient to  
 21 return to the state these costs, and it clarifies that  
 22 like with Article 24, the charge is irrespective of the  
 23 amount of project water that's delivered to the  
 24 contractor.  
 25 So Article 24 and 25 are take-or-pay. If you

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1 get a lot of water, Met, or if you get no water at all,  
 2 nonetheless you're on the hook for these facilities  
 3 expenses.  
 4 So here between Articles 24 and 25, that flows  
 5 through to become the -- about 200 million that we saw  
 6 earlier in the 2012 cost of service study.  
 7 Next we come to the variable charge. This is  
 8 principally the power charge. And your Honor I think  
 9 asked earlier is that -- you know, are we talking actual  
 10 cost of power here? This is where Article 26 defines how  
 11 it is calculated. There are certain costs of power, then  
 12 there are offsets of cost of power from the state's own  
 13 hydroelectric facilities and those end up being the bill.  
 14 But these are variable costs. They return to the state  
 15 the power costs necessary to move project water and these  
 16 are specifically allocated to Met and the other  
 17 contractors.  
 18 So here we've put up a graphic explaining with  
 19 Met these variable expenses are enormous and it is south  
 20 of Tehachapi Mountains and so the power to move the water  
 21 over the mountain is a significant chunk of money.  
 22 In addition to simply culling out the supply  
 23 and transportation costs, the State Water Project from  
 24 the beginning drew a pretty fundamental distinction  
 25 between them and I would like to go into that and a

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1 little bit of the history about what's forth in the  
 2 language of the contract itself.  
 3 The -- you can see here this is the original  
 4 November 1960 contract. It is in the administrative  
 5 record. You can see that Metropolitan here is defined as  
 6 the district. And it provides that the district shall  
 7 pay all of the costs of delivery structures for the  
 8 delivery of project water to it.  
 9 From the beginning, Met was on the hook for the  
 10 delivery costs. And it's delivery structure so it is not  
 11 just a monthly bill for variable costs. The project  
 12 transportation facilities, the California aqueduct, the  
 13 sizable structures that would be needed to move water to  
 14 Southern California, from the beginning Met had to pay  
 15 those and agreed to pay them in the contract, but they're  
 16 quite distinct from supply charges and distinct for  
 17 another reason as well and that has to do with timing.  
 18 Article 29 of the State Water Project contract  
 19 provided that payments by the district, we saw previously  
 20 that was defined by Met, under the capital costs  
 21 component of the transportation charge shall commence in  
 22 the year following the year in which the state commences  
 23 construction of the project transportation facilities,  
 24 and then payments -- these are now turning to Article  
 25 25 -- the O and M expenses shall commence for each

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1 aqueduct reached in the year following the year in which  
 2 construction of that reach is completed.  
 3 Now, large scale construction of the California  
 4 aqueduct as a matter of public record began in 1963. So  
 5 starting in 1964, these transportation expenses became  
 6 coming due for Met for constructing these facilities and  
 7 maintaining them.  
 8 By contrast, water supply started later.  
 9 Article 6 of the State Water Project contract  
 10 stated that the initial water delivery to the district  
 11 was presently estimated to be 1972. So from the  
 12 beginning, there was a distinction between supply and  
 13 transportation, a recognition that transportation  
 14 facilities would have to be constructed to go to  
 15 Metropolitan, that Met would have to pay for those, that  
 16 those would not be contingent on the delivery of water  
 17 and would in fact precede it by almost a decade.  
 18 And here, we've put a graphic showing the  
 19 different -- the California aqueduct as it goes down to  
 20 Met.  
 21 We think that this distinction in the State  
 22 Water Project contract between supply and transportation,  
 23 the clear characterization of certain facilities and  
 24 power costs as being associated with transportation is a  
 25 sufficient basis for the board to conclude that when it

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1 is buying water from the state on behalf of its 26 member  
 2 agencies as a collective, it is appropriate to view these  
 3 costs as serving a transportation function and they're  
 4 appropriately recovered in its transportation rates,  
 5 simply due to the nature of those expenses, that it can  
 6 functionalize them that way in its cost of service  
 7 studies.  
 8 But we won't stop there. There are other  
 9 reasons as well why it's appropriate to call them  
 10 transportation.  
 11 Here we're citing a staff letter from the  
 12 general manager and the general counsel to Metropolitan's  
 13 board of directors. This is in April 5th, 2010. Like  
 14 everything else in this presentation, it is in the  
 15 administrative record. And here, Met staff are  
 16 responding to comments from San Diego and others in the  
 17 public war process in which San Diego is arguing Met had  
 18 improperly treated State Water Project costs.  
 19 I'm going to pull out here and quote a part of  
 20 the response that went to Met's board explaining reasons  
 21 for the -- reasons for the cost allocations.  
 22 And some -- one of the explanation here is that  
 23 Metropolitan allocates State Water Project costs among  
 24 the various functions, including conveyance and aqueduct,  
 25 supply and standby because the SWP provides different

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1 functions.  
 2 You have heard San Diego state quite correctly  
 3 that Met does not own the State Water Project. It  
 4 doesn't. Met owns the Colorado River Aqueduct but it  
 5 doesn't own the State Water Project.  
 6 But you've also seen that Met's cost of service  
 7 studies and the second step that looks at  
 8 functionalization. It considers what do these things  
 9 actually do. And Met has functionalized the State Water  
 10 Project and the Colorado River Aqueduct in the same way,  
 11 assigning them both to conveyance and aqueduct because  
 12 despite the differences in ownership, as far as Met is  
 13 concerned, they're doing the same thing, they're  
 14 performing the same function.  
 15 And here Met goes further to say that Met can  
 16 use the State Water Project as a conveyance facility, it  
 17 can use it to move project water and non-project water  
 18 from Met and its member agencies. Project water of  
 19 course is water that is supplied by DWR and non-project  
 20 water is water that isn't. And they cite some examples  
 21 in here, including one of them a 2001 water transfer for  
 22 some 14,000 acre-feet of water from the Placer County  
 23 Water Agency to San Diego County Water Authority.  
 24 The point I'm making here is not that 14,000  
 25 acre-feet of water is a tremendous amount of water.

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1 Obviously San Diego takes issue with the amount of  
 2 non-project water that Met is transporting, says it is  
 3 not significant enough.  
 4 The point I'm making here is that Met's ability  
 5 to use the pipes owned by its supplier to move water  
 6 through them is an unusual feature. It's not something  
 7 that a business or a household or a consumer would have  
 8 with respect to their water supplier. Met's ability to  
 9 reach out and actually use those facilities and pipes  
 10 owned by DWR to move water from other people is a  
 11 different -- distinguishes Met from the more typical  
 12 situation when you think of a someone who's merely  
 13 passively purchasing water supply. Met has greater  
 14 contractual rights to use the State Water Project  
 15 facilities.  
 16 THE COURT: Does your argument depend at all on  
 17 the extent to which the water which is sent to San Diego  
 18 actually is using the SWP as a conveyance facility? Does  
 19 it depend on that?  
 20 MR. HIXSON: It doesn't depend on that, but  
 21 that provides additional support for the notion that this  
 22 water comes from State Water Project.  
 23 As we'll talk about later and as the Court will  
 24 hear evidence, the water that San Diego receives, a  
 25 substantial amount in fact comes from the State Water

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1 Project and the only way -- if you want to talk about  
 2 cost causation as part of cost of service, the only way  
 3 that's possible is if Met is buying this water from the  
 4 State Water Project. But I wouldn't say the argument  
 5 depends on that. That provides further support for it.  
 6 Let's turn to the provision of the State Water  
 7 Project contract that discusses Metropolitan's ability to  
 8 use the project transportation facilities.  
 9 The contract is enormous so I put up  
 10 portions of Article 55 here and recognize that even these  
 11 are quite lengthy.  
 12 And 55-A, states that contractors shall have  
 13 the right to receive services from any of the project  
 14 transportation facilities to transport water procured  
 15 from them -- by them from non-project sources for  
 16 delivery to their service areas.  
 17 And there are certain conditions on that, like  
 18 there has to be available capacity but that sets forth  
 19 the basic proposition that Met is able to use the project  
 20 transportation facilities to move water that's not from  
 21 DWR.  
 22 Subsection 55-B is interesting in that it  
 23 states that Metropolitan doesn't have to pay what's  
 24 called a facilities fee to do this. Met has to pay  
 25 incremental power costs, for example, for moving that

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1 water but subsection 55(b) provides that only those  
 2 contractors not participating in the repayment of a reach  
 3 shall be required to pay for a use of facilities charge  
 4 for delivery of non-project water from or through that  
 5 reach.  
 6 Reach is a term of art referring to a portion  
 7 of the aqueduct. So earlier, we saw the west reach and  
 8 the east reach where the State Water Project connects  
 9 into Metropolitan.  
 10 And what it's saying here is that the  
 11 contractors that don't repay the cost of those reach,  
 12 they have to pay a facilities charge if they're going to  
 13 be moving non-project water through. But for contractors  
 14 that had paid for those reaches and, in other words they  
 15 have paid the money for those capital expenses, they  
 16 don't have to pay that facilities fee. And this  
 17 emphasizes that Metropolitan's transportation charges,  
 18 where it is paying those capital expenses and those zone  
 19 M expenses, gives them this ability to use those same  
 20 facilities to move other water as well.  
 21 So again, they're not just purchasing a water  
 22 supply. What comes with that is a right and ability to  
 23 use those facilities to move other water without having  
 24 to pay an additional use of facilities fee and only  
 25 paying the variable power costs for that one.

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1 And so just to provide a visual for what that  
 2 means is again, Metropolitan can then use the aqueduct.  
 3 And in green, we show water being transported down to its  
 4 service area in one of these Article 55 transactions.  
 5 We talked a lot about the unbundling of  
 6 Metropolitan's rates, that before 2003 there was one full  
 7 service rate and then in 2003, Met separated supply from  
 8 transportation. However, it's important to note that  
 9 this practice of allocating State Water Project  
 10 transportation costs actually preceded the unbundling and  
 11 it did so in the 1997 wheeling rate that Metropolitan had  
 12 adopted.  
 13 The '97 wheeling rate was adopted in  
 14 January 1997, and here we've put the board resolution up  
 15 here. This was resolution 8520. And in Section 1, it  
 16 says that the board of directors hereby affixes and  
 17 adopts wheeling charges effective January 15, 1997.  
 18 The board had developed this wheeling rate, the  
 19 '97 wheeling rate in cooperation with its member  
 20 agencies. It was a postage stamp rate like  
 21 Metropolitan's other volumetric rates, meaning it was the  
 22 same regardless of the distance the water was  
 23 transported.  
 24 The minutes of the board meeting indicate what  
 25 the vote was in favor of this wheeling rate. The ayes

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1 were more than 72,000 of the votes. These are of course  
 2 the weighted votes, and the nos are 13,000 so it passed  
 3 overwhelmingly to adopt this 1997 wheeling rate.  
 4 This '97 wheeling rate included  
 5 Metropolitan's -- certain of Metropolitan's State Water  
 6 Project transportation costs. You can see it in Section  
 7 5 where it refers to the allocation of costs that are  
 8 shown in the attachment to include the costs incurred by  
 9 Metropolitan to convey water to its member agencies  
 10 through Metropolitan's conveyance system, including  
 11 Metropolitan's rights in the State Water Project system.  
 12 And so from the beginning of Metropolitan's  
 13 establishing a rate for wheeling service, it has had this  
 14 consistent practice that certain of the State Water  
 15 Project costs, using the facilities costs are included in  
 16 the rate for wheeling service.  
 17 In terms of timeframe, the 1997 wheeling rate  
 18 was in effect as of January 15th, 1997. And then we saw  
 19 earlier that the wheeling rate was redefined in 2003 in  
 20 terms of the unbundled rates. But the point of this  
 21 slide and the take away here is that Met has been  
 22 consistent with its allocation of State Water Project  
 23 costs to the rate for wheeling service for over 16 years.  
 24 And so we think that these elements  
 25 establish -- well, we've gone through the allocation of

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1 the State Water Project costs. I now want to turn to the  
 2 evidence in the administrative record about the --  
 3 concerning the Water Stewardship Rate and how that was  
 4 developed and allocated to transportation.  
 5 First just some background about the Water  
 6 Stewardship Rate.  
 7 Recovers as we saw from Schedule 8 and the cost  
 8 of service study, it recovers costs for the demand  
 9 management programs, and those are three types of  
 10 programs. There's the local resource programs and those  
 11 are the ones that incentivize each member agency to  
 12 develop local resources within the space of their own  
 13 member agency. And so that's what's meant by local here.  
 14 It's not Met service area as a whole but local within  
 15 that particular member agency.  
 16 Second are the conservation credits and those  
 17 are different. Those are not like the local resources.  
 18 They can be throughout Met service area, but those reduce  
 19 the amount of demand on Metropolitan that it would then  
 20 have to send through its distribution system. And third  
 21 are the desalination programs.  
 22 But collectively when I say the demand  
 23 management programs, I'm referring to these three items  
 24 together, those items, and then under cost of service,  
 25 those are all allocated to the Water Stewardship Rate.

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1 There are essentially three reasons why the  
 2 Water Stewardship Rate appropriately is allocated to  
 3 transportation.  
 4 The first is that these demand management  
 5 programs that it funds reduce transportation costs. The  
 6 Water Stewardship Rate also frees up capacity for  
 7 transportation and facilitates wheeling. And allocating  
 8 the Water Stewardship Rate in a different manner would  
 9 permit users to receive an unfair subsidy. And so I want  
 10 to go through some of the evidence in the administrative  
 11 record that bears on these issues.  
 12 First, about Water Stewardship Rate reducing  
 13 transportation costs. Here the dispute between San Diego  
 14 and Met largely concerns the level of generality. You're  
 15 going to hear this today when I talk about the  
 16 administrative record evidence and compare it to  
 17 Mr. Braunig's discussion at the close of San Diego's  
 18 case-in-chief.  
 19 They are very focused on particular demand  
 20 management programs. They point to specific local  
 21 resources programs and they say "look at this particular  
 22 project and you don't see an estimate of how that project  
 23 will cause Met to not incur additional capital expenses.  
 24 And they are -- implicitly they are implying that that's  
 25 the level of specificity that Metropolitan would need to

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1 have. Are you going to construct an entire facility or  
 2 not construct one just based on this -- these individual  
 3 local resource plans.  
 4 However, Metropolitan has also considered the  
 5 demand management programs as a higher level of  
 6 generality so one of the questions before the Court is  
 7 when an entity like Metropolitan engages in capital  
 8 planning, at what level of generality is it appropriate  
 9 to do so?  
 10 And I'm going to walk through some of the  
 11 capital planning that Metropolitan did and how it looked  
 12 at demand management programs, referring to evidence in  
 13 the administrative record. But we would underscore that  
 14 it's entirely reasonable when an entity of Met's size is  
 15 looking at hundreds of millions or billions of dollars of  
 16 expenses in capital facilities, that it does so on a  
 17 forward look over a span of decades or a decade or couple  
 18 of decades at a higher level of generality, asking what  
 19 are the general types of expenses that could result in  
 20 cost being deferred or avoided.  
 21 And then trying to link each specific local  
 22 resources program that might concern a few thousand  
 23 acre-feet of water to a cost of an enormous expansion of  
 24 the distribution facility is too fine a level of detail  
 25 and not an appropriate way that an agency like Met would

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1 engage in capital facilities planning.  
 2 So let's look at what Metropolitan actually did  
 3 in terms of capital planning.  
 4 If we turn to the integrated water resources  
 5 plan, both parties have cited this document to the Court.  
 6 This is dated March of 1996 and in this -- in the  
 7 integrated water resources plan, Metropolitan was looking  
 8 at a long-term look at the types of supply conveyance  
 9 facilities that would be needed in the years going  
 10 forward.  
 11 And Metropolitan determined that the needs be  
 12 based on two major factors: The availability of water  
 13 supplies and then supplemental water demands, the total  
 14 amount of water demands that Met would be facing on the  
 15 system. Those include consumptive demands as well as  
 16 deliveries to storage during wet periods, required dry  
 17 year demands. So looking at a high level of two big  
 18 factors: The availability of water supplies and then the  
 19 demands on Met's system.  
 20 Met then identified that future peak demands on  
 21 its treatment and distribution system are projected and  
 22 used to evaluate the adequacy of Met's existing treatment  
 23 and distribution system.  
 24 So again, the distribution system was that  
 25 system in purple. Those are the facilities that move the

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1 water out to the member agencies, and the cost for the  
 2 distribution system are largely recovered in one of the  
 3 transportation rates, the System Access Rate because we  
 4 saw it in the cost of service.  
 5 And that was looking at what are the peak  
 6 demands on the treatment and distribution system. And it  
 7 did an analysis by comparing projected flows to existing  
 8 capacities; in other words, looking forward, you know,  
 9 what kind of capacity do we have and what do we think we  
 10 might need in the years to come.  
 11 And then the remainder of the section refers to  
 12 Met's distribution system, peak demands and projected  
 13 system needs going forward.  
 14 Metropolitan then identified looking forward  
 15 that certain conveyance capacity would be needed going  
 16 forward, that current analyses indicate that additional  
 17 conveyance is required in the future to reliably deliver  
 18 available State Water Project to storage. And they flag  
 19 this idea that there would have been to be additional  
 20 conveyance capacity constructed.  
 21 And they identified specifically in this water  
 22 resources plan a number of different projects that would  
 23 have to be -- that would have to be considered. And so  
 24 when San Diego says that Metropolitan has never  
 25 quantified the capital expenses it's talking about, never

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1 identified particular ones, in fact it did do so. This  
 2 1996 integrated water resources plan identified a number  
 3 of specific facilities and costs associated with each.  
 4 We highlighted a couple here. You can see on  
 5 the left-hand side under "Description," Met was  
 6 identifying a number of different types of projects:  
 7 supply distribution, storage projects, and then further  
 8 down, a number of them were specifically called out as  
 9 distribution facilities. In other words, those are costs  
 10 associated with this system that moves the water out to  
 11 the member agencies and the cost of that system are  
 12 recovered under the transportation rates, the System  
 13 Access Rate principally.  
 14 And Met identified two particular projects:  
 15 San Diego Pipeline No. 6 and the central pool  
 16 augmentation conveyance projects, and those numbers there  
 17 escalated over the next 25 years if those expansions were  
 18 to take place, would total to more than 1.24 billion  
 19 dollars.  
 20 So there was a forward look. There was an  
 21 analysis of the additional capital expenses, specifically  
 22 on the distribution side and an estimate of what types of  
 23 funds might be necessary to pay for those expansions.  
 24 The next thing Metropolitan did was to identify  
 25 what are the types of changes that might defer or avoid

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1 specific types of expenses, and it specifically  
 2 identified greater than expected local supply development  
 3 which could decrease the demands on Met's system and it  
 4 identified that deferment of capital infrastructure is  
 5 one of those things that provide the result.  
 6 But more than that, Metropolitan tied the link  
 7 back, and this is clearly shown in the administrative  
 8 record. It specifically identified capital expenses  
 9 associated with the distribution system as ones that were  
 10 sensitive to the changes in demand. And I've highlighted  
 11 here the central pool augmentation project and the San  
 12 Diego Pipeline No. 6. Those are the ones that totaled to  
 13 1.2 or more than 1.2 billion dollars and Metropolitan  
 14 specifically called those out as being more sensitive to  
 15 demands than other capital project costs that it was  
 16 considering at the time.  
 17 Next, Met did a sensitivity analysis. A  
 18 sensitivity analysis was used to determine realistically  
 19 yes, things can be variable based on changes in demand in  
 20 the future. That's a high level of generality, but  
 21 realistically how much variation would need to happen  
 22 before Met could start to defer or avoid particular  
 23 expenses.  
 24 And Met looked at sensitivity at a very  
 25 granular level, identifying specific projects that were

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1 sensitive to a 5 percent decrease in retail demands. So  
 2 at this time in 1996, Met was doing an estimate what if  
 3 demand was reduced simply by five percent? Would that  
 4 have an -- an effect on the capital facilities necessary  
 5 for the distribution system.  
 6 And again, Met called out two particular -- or  
 7 a number of items that were sensitive to 5 percent. It  
 8 says a 5 percent decrease in retail demands would allow  
 9 several projects to be delayed and called out two of them  
 10 specifically relating to costs on the distribution  
 11 system: San Diego Pipeline No. 6 and the Central Pool  
 12 Augmentation Conveyance Extension project which could be  
 13 delayed to beyond 2025.  
 14 So again, there was analysis of what was  
 15 likely, of what was probable, particularly capital  
 16 expenses on the distribution side with relatively small  
 17 changes in projected demand.  
 18 In the year that follows and leading up to the  
 19 unbundling of the rates and development of the Water  
 20 Stewardship Rate, Metropolitan identified certain local  
 21 resources program principles.  
 22 There was a rate refinement committee that was  
 23 a committee of member agencies that were looking at rate  
 24 refinements in the years leading up to the unbundling.  
 25 The local resources program there, that's one of the

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1 three parts of the demand management programs.  
 2 And the rate refinement committee identified a  
 3 number of principles that should guide a local resources  
 4 program. It identified key goals of the LRP and I've  
 5 listed a number of them. We've called out a couple on  
 6 this chart.  
 7 One is to assist local projects that improved  
 8 regional water supply reliability and avoid or defer MWD  
 9 capital expenditures. There was also some consideration  
 10 about what preference should be given to different  
 11 projects and one of the factors, meriting factors was MWD  
 12 facility benefits, projects that would avoid or defer or  
 13 reduce the cost of MWD's treatment and distribution  
 14 system.  
 15 These goals of the --  
 16 THE COURT: Are you going to be discussing the  
 17 link between what is "E" here, that is projects that have  
 18 this aspect, to the specific projects that, for example,  
 19 San Diego has been putting up on the board?  
 20 In other words, is it your position that as a  
 21 matter of practice, that in fact the projects that were  
 22 funded this way did reduce the cost of the treatment and  
 23 distribution for MWD?  
 24 MR. HIXSON: We are going to show and argue  
 25 that the demand management programs as a whole have had a

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1 substantial effect on the amount of water that  
 2 Metropolitan has to deliver that has allowed it to avoid  
 3 these capital expenditures, but a lot of that is outside  
 4 the admin record.  
 5 THE COURT: Your view is that you shouldn't  
 6 have to be forced to justify each one?  
 7 MR. HIXSON: Right.  
 8 THE COURT: Your view is this 50,000 foot view  
 9 which is that you've got to look at these programs as a  
 10 group or as a whole.  
 11 MR. HIXSON: Yes, exactly.  
 12 THE COURT: Okay.  
 13 MR. HIXSON: And to highlight here the members  
 14 of the committee that endorsed these principles, the  
 15 local resources programs was to reduce or defer capital  
 16 expenditures, one of them was the San Diego County Water  
 17 Authority that endorsed those principles.  
 18 These principles then directly led into the  
 19 unbundled rates. Here we're showing the final report on  
 20 Met's rates or charges. This is a cost of service study  
 21 from June 28, 2002 of -- in the months before the  
 22 unbundled rates took effect the following year.  
 23 And the cost of the service study calls out the  
 24 Water Stewardship Rate and describes explicitly what  
 25 benefits Metropolitan receives in adopting it. There are

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1 obviously a number of benefits that Metropolitan saw in  
 2 the Water Stewardship Rate, but one of them that was  
 3 called out was reducing and deferring system capacity  
 4 expansion costs. And this does flow out of the 1996 IIP,  
 5 which was identified, and numbers were put on them and a  
 6 sensitivity analysis was done and it provided changes in  
 7 local supply could have an effect on the demand that  
 8 might be needed to incur those costs.  
 9 THE COURT: Is this a good break time?  
 10 MR. HIXSON: Sure.  
 11 THE COURT: Okay. See everybody at 1:30.  
 12 Thank you so much.  
 13 (Noon recess taken.)  
 14 ---o0o---  
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1 Another one is the engineer's report. These  
 2 engineer's reports come out associated with each rate  
 3 setting cycle as part of the cost of service process.  
 4 This one was issued in connection with the program to  
 5 levy a Readiness-to-Serve Charge.  
 6 And the engineer's report goes through a number  
 7 of discussions about the capital expenses and capital  
 8 facilities within Metropolitan's system, and this is from  
 9 April 2010 for that rate setting cycle. There are  
 10 obviously ones for different years.  
 11 And I wanted to highlight in the engineer's  
 12 report the discussion of the facilities, again the  
 13 observation that investments in the demand side  
 14 management programs, so that's a reference to the  
 15 programs that are funded by the Water Stewardship Rate.  
 16 And then it calls a couple of them out. Conservation,  
 17 water recycling and groundwater recovery reduce the need  
 18 to provide additional imported water supplies and help  
 19 defer the need for additional conveyance, distribution  
 20 and storage facilities.  
 21 And then the engineer's report goes on to note  
 22 the same thing below, that conservation is a critical  
 23 element of Met's demand management programs, effectively  
 24 increasing the reliability of existing water supplies by  
 25 lessening the need to import additional water while at

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1 DECEMBER 19, 2013 AFTERNOON SESSION  
 2 P R O C E E D I N G S  
 3 ---o0o---  
 4 THE COURT: Let's continue.  
 5 MR. HIXSON: Thank you, your Honor.  
 6 I was discussing the allocation of the Water  
 7 Stewardship Rate, the Transportation Rate again at the  
 8 programmatic level at which Met planned its capital  
 9 expenditures rather than the detailed project level that  
 10 San Diego believes is the required analysis.  
 11 And we had gone through the 1996 integrated  
 12 resources plan and moved to the unbundling of Met's rates  
 13 and the description and the cost of service of the  
 14 benefits that the Water Stewardship Rate would provide  
 15 and the final cost of the service in 2002. There were a  
 16 number of benefits and one that had been called out and  
 17 identified was the reduction and deferral of system  
 18 capacity expansion costs in this cost of service report.  
 19 There are many, many places within the  
 20 administrative record where this principle is reaffirmed  
 21 during the rate setting process as a basis of the  
 22 allocation of the Water Stewardship Rate to  
 23 transportation. Perhaps to the Court's relief, I won't  
 24 walk through them all, but I do want to highlight a  
 25 couple of other examples.

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1 the same time deferring the need to expand system  
 2 capacity. And so we see these engineer's reports. And  
 3 I've picked one here. There are engineer reports in  
 4 every rate setting cycle, again drawing a link between  
 5 the demand management programs and the capital expenses  
 6 for Met's distribution system.  
 7 I highlighted before three reasons why the  
 8 Water Stewardship Rate is reasonably allocated to  
 9 transportation rates. Now let's turn to the second one,  
 10 which is freeing up capacity for transportation and  
 11 facilitating wheeling.  
 12 And again, we can see this concept called out  
 13 in the cost of service, June 2002, the final report  
 14 before the unbundling of the rates. And again, when the  
 15 benefits of the Water Stewardship Rate are brought out,  
 16 there's discussions here about more capacity being  
 17 available in existing facilities for a longer period of  
 18 time, this capacity made available by conservation and  
 19 recycling is open to all system users and can be used to  
 20 complete water transfers.  
 21 This goes to the accusation made by San Diego  
 22 throughout this lawsuit that Met is trying to clamp down  
 23 and to stop water transfers and to stop its system being  
 24 used for wheeling. And we can see here the recognition  
 25 in the unbundling of the rates that these demand

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1 management programs were to produce benefits that would  
 2 facilitate water transfers and such as wheeling by having  
 3 more capacity available in Met's system.  
 4 As the Court knows, the wheeling statute  
 5 obligates wheeling only if there's unused capacity in the  
 6 system, and so the cost of service that is drawing this  
 7 connection between the demand management programs,  
 8 reducing the quantity of water going through Met's system  
 9 and freeing up additional capacity that would be  
 10 available for these water transfer transactions through  
 11 Met's system.  
 12 Let's turn then to the third one about the  
 13 subsidy issue, about what would happen if Metropolitan  
 14 put the Water Stewardship Rate only in supply rather than  
 15 in transportation because the transportation expenses are  
 16 paid by all system users, where supply would only be by  
 17 those who purchased the supply from Met itself.  
 18 There's an important consideration here and I  
 19 don't know that we've touched on it so far in this  
 20 lawsuit, which is SB60. That's Senate Bill 60. It is a  
 21 statute that the California Legislature enacted and what  
 22 it did is it amended Metropolitan's Government Act, the  
 23 MWD Act and it inserted Section 130.5 into the MWD Act  
 24 stating that the Legislature finds and declares the  
 25 following:

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1 One, that it's the intent that Met expand water  
 2 conservation, recycling and groundwater recovery efforts.  
 3 And then it states that Met shall place  
 4 increased emphasis on sustainable, environmentally sound  
 5 and cost-effective water conservation, recycling and  
 6 groundwater storage and replenishment measures.  
 7 Now this directive can be implemented in a  
 8 number of ways. It is a general directive by the  
 9 Legislature to Met that it shall place increased emphasis  
 10 on this.  
 11 But we submit that a reasonable way of  
 12 promoting these goals as mandated by the Legislature is  
 13 to have the Water Stewardship Rate be applied to all the  
 14 users of the system rather than just those purchasing  
 15 supply. This serves to maximize the benefit to this  
 16 legislative goal here of promoting conservation and  
 17 recycling and groundwater storage and the other objects  
 18 that are promoted by the demand management programs.  
 19 They all serve this laudable goal, and not just a goal  
 20 but requirement by Metropolitan in a statute that it  
 21 increases these conservation efforts. And by having a  
 22 broader reach for the Water Stewardship Rate, it helps to  
 23 promote that.  
 24 And Metropolitan noted -- cited this statute  
 25 specifically in the final rates and charges as one of the

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1 reasons why the Water Stewardship Rate was placed on all  
 2 users of the system. Metropolitan noted that it is  
 3 mandated under SB60 to fund water supply programs like  
 4 conservation and recycling and said it was appropriate to  
 5 recover the costs of supporting these programs on all  
 6 water moved through the system.  
 7 And again, I don't want to be misunderstood.  
 8 We're not saying that SB60 by its plain language  
 9 automatically requires Met to allocate Water Stewardship  
 10 Rate this way. We're saying that it is a reasonable  
 11 method of implementing this statutory directive to spread  
 12 the Water Stewardship Rate to all system users to  
 13 maximize the benefits of that statutory goal.  
 14 And Metropolitan's staff have reiterated that  
 15 not just in the 2002 cost of service before the  
 16 unbundling of the rates but more recently as well again  
 17 in an April 2012 letter to the board, responding again to  
 18 San Diego's complaints about cost allocations.  
 19 So this is an April 5th, 2002 memo in the  
 20 administrative record. And again, Metropolitan noted the  
 21 benefits of the Water Stewardship Rate and also  
 22 highlighted here the subsidy issue that would be raised  
 23 if people who wheel water didn't have to pay the demand  
 24 management programs.  
 25 They noted that otherwise, member agencies

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1 could avoid providing revenues to support regional demand  
 2 management activities through wheeling while still being  
 3 able to realize the benefits of the program to fund local  
 4 activities. And then below, they noted that Met's rates  
 5 are designed to ensure the agencies that receive the same  
 6 services pay the same amount. Exempting the wheeling  
 7 transactions from the transportation costs would mean  
 8 that we would get the same service but paying different  
 9 amounts.  
 10 And so this is the core of the subsidy issue,  
 11 that these demand management programs free up capacity in  
 12 the system which benefits all those who want to transport  
 13 water through the system. And this benefits wheeling  
 14 parties in particular because unlike the member agencies  
 15 buying ordinary full service water, wheeling parties rely  
 16 only on the unused capacity to support their right to  
 17 wheel water and so it would be an inequitable result if  
 18 they didn't also have to share in the expenses that make  
 19 that capacity available in Metropolitan's system.  
 20 I would like to turn now to another important  
 21 topic and one that is a significant one in particular for  
 22 the claims that are to be decided solely based on the  
 23 administrative record. We would say this is also quite  
 24 significant for all of the claims, including the wheeling  
 25 claim but it goes to how courts look at an administrative

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1 record and what they're reviewing it for.  
 2 The essential standard is reviewing the  
 3 administrative record to see if there is substantial  
 4 evidence that supports the board's -- the reasonableness  
 5 of the board's decision. I'm using that of course as a  
 6 shorthand because the case law is going to be different  
 7 with the different statutes. That's a general  
 8 description of what the Court is reviewing it for.  
 9 And when courts look for substantial evidence,  
 10 one thing they focus on is whether there has been a  
 11 review, an internal review and analysis of the agencies'  
 12 determinations, comparing it to applicable industry  
 13 guides and providing relevant opinion and whether that by  
 14 itself can be substantial evidence that supports the  
 15 reasonableness of the board's determinations.  
 16 And so here I would like to walk through, it is  
 17 the April 6th, 2010, review by Raftelis Financial  
 18 Consultants of Metropolitan's rates and charges. This  
 19 was a review by Raftelis.  
 20 Dear Mr. Thomas -- that's Brian Thomas, who was  
 21 then the chief financial officer transmitting the  
 22 Raftelis Financial Consultant's review of Met's rates and  
 23 charges. And what I want to do is I want to walk through  
 24 what Raftelis was engaged to do and what conclusions they  
 25 came back with to Metropolitan.

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1 Let's look at here. This is in the  
 2 introduction what MWD engaged RFC to do. They engaged  
 3 Raftelis to review whether the proposed 2010 rates were  
 4 still consistent with the rate structure framework, so  
 5 that was the -- after the unbundling.  
 6 And then Raftelis also evaluated the cost of  
 7 service and rate methodologies' consistency, and so that  
 8 was what I went through, the cost of service and rate  
 9 setting methodology. And they were reviewing it to see  
 10 consistency with water industry's best practices. And  
 11 then they call out one particular manual there such as  
 12 the American Waterworks Association's Manual M1. And  
 13 later on we'll be going through a few more pages from the  
 14 M1 manual.  
 15 And then they also looked at the 2010 model for  
 16 accuracy and consistency with the 2001 model, and then  
 17 they identify potential opportunities for improving Met's  
 18 cost of service and rate structure, something that  
 19 Metropolitan is always looking at in considering and  
 20 evaluating.  
 21 Raftelis came back with four conclusions. I'm  
 22 going to walk through each of those.  
 23 This is Section 5 of the Raftelis report is  
 24 their review process and results. And so in Section 5 of  
 25 the report, they state the four issues they came back

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1 with.  
 2 First, they concluded that Metropolitan's 2010  
 3 cost of service and rate methodology is consistent with  
 4 California law, and they cite a number of provisions in  
 5 there referring to the MWD Act under the Government Code,  
 6 under Metropolitan's Administrative Code.  
 7 And in particular, I would like to draw the  
 8 Court's attention to the last sentence there, noting that  
 9 Met's own admin code requires that its rates and charges  
 10 be reflective of Met's major service functions, which  
 11 includes supply, conveyance, power, storage, distribution  
 12 and treatment. Those are the functions we saw earlier  
 13 today in the cost of service studies and so that was the  
 14 allocation of the cost of those service functions was  
 15 what Raftelis was reviewing.  
 16 And then we can turn to the second conclusion  
 17 that Raftelis had, which was that Met's 2010 cost of  
 18 service and rate methodology follows the process as  
 19 prescribed in the AWWA Manual M1, principles of water  
 20 rates, fees and charges, and they identify how that was  
 21 set out. Specifically Met's methodology is consistent  
 22 with M1's four-step process.  
 23 And that was the process you walked through  
 24 this morning: The development of the revenue  
 25 requirement, the functionalization, the classification

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1 and the allocation of costs to rate design elements. And  
 2 there, Raftelis is confirming that that's a traditional  
 3 and consistent way of allocating a water agency's costs  
 4 to its functions.  
 5 And then you can turn to the third conclusion  
 6 in Section 5 of the report, that the current rate  
 7 structure continues to address the statement of common  
 8 interests and rate structure framework. This is a  
 9 statement that Metropolitan's 2010 cost of service is  
 10 consistent with what had been done before, consistent  
 11 with the purposes behind the rates as they were set  
 12 during the unbundling.  
 13 And then we can turn to Section 4 -- I'm sorry,  
 14 the fourth conclusion, which is that the 2010 model has  
 15 followed the same structure as the 2001 model but  
 16 includes some modifications to allocation factors. And  
 17 then Raftelis notes these modifications should be  
 18 expected given the changes in growth, member agency  
 19 peaking, hydrological conditions and other factors.  
 20 We submit that the Raftelis review is an  
 21 important piece of evidence for the Court to look at in  
 22 the administrative record and is highly relevant to the  
 23 question of whether there is substantial evidence that  
 24 the board's decision was reasonable.  
 25 What I would like to do now is to shift focus

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1 away from Metropolitan's view in the documents that we  
 2 have relied on and instead turn to what San Diego has  
 3 argued. I'm going to address a number of the documents  
 4 that San Diego has focused on in their pretrial briefs  
 5 and then others that they have focused on so far in trial  
 6 in the administrative record and explain why they don't  
 7 undermine the reasonableness of MWD's rates.  
 8 At a high level, the first point I want to  
 9 address is that if there are -- I'm going to explain why  
 10 these documents don't support San Diego at all, but I  
 11 want to address the antecedent question of what happens  
 12 if there are documents pointing both ways in the  
 13 administrative record.  
 14 If some documents would argue for a certain  
 15 cost allocation and others point into a different cost  
 16 allocation, under the principles of reasonableness and  
 17 reasonable cost allocations, Met's board can make  
 18 choices. And in an agency like Met with 26 member  
 19 agencies, the Court can and should expect differences in  
 20 points of view. The Court should expect perhaps as many  
 21 as 26 points of view on various different issues. The  
 22 Court should also expect that in open public board  
 23 meetings, there will be disagreement and people will  
 24 serve different positions.  
 25 San Diego has a tendency to point to any

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1 suggestion or recommendation that something could be done  
 2 a different way and treat that as an admission by  
 3 Metropolitan that it has to do something a different way.  
 4 But in fact, Metropolitan with its democratic  
 5 structure and more than two dozen member agencies, of  
 6 necessity, will have different points of view and has to  
 7 make choices between different items. And so I think  
 8 that's the appropriate perspective to take when looking  
 9 at argument that San Diego has presented based on the  
 10 administrative record.  
 11 Let's look first -- San Diego has cited a guide  
 12 that Raftelis wrote and San Diego argues this is  
 13 significant because as you just saw, Raftelis Financial  
 14 Consulting was brought in in 2010 to do a review of Met's  
 15 cost of service and rate methodology.  
 16 And San Diego says that this Raftelis guide  
 17 supports their position. They asserted in their pretrial  
 18 brief that Raftelis had already conceded in his textbook  
 19 on water rates that costs associated with the source of  
 20 supply, including water rate purchases should all be  
 21 attributable to supply rather than transportation. And  
 22 they pointed to a portion of a page in Raftelis's  
 23 guide -- sorry, that defines supply.  
 24 There is the definition of source of supply  
 25 that they point to, the operating capital costs

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1 associated with the source of water supply.  
 2 But we think that when the Court reads the  
 3 entire page, without giving you the entire manual, it  
 4 becomes clear that San Diego is not fairly characterizing  
 5 the Raftelis guide, that in fact that guide broke out the  
 6 different functions that a water agency can perform.  
 7 Obviously supply is one of them, but then Raftelis  
 8 separately identified pumping and conveyance,  
 9 transmission and distribution lights -- or distribution  
 10 as separate and distinct functions in the process of  
 11 functionalizing rates.  
 12 And so only looking at the supply one and not  
 13 looking at the other functions that Raftelis identified  
 14 presents a cramped and inaccurate view. In fact,  
 15 Raftelis' 2010 review is entirely consistent with his  
 16 guide and with the way that Met has chosen to  
 17 functionalize its costs.  
 18 San Diego does a similar thing, picking and  
 19 choosing parts of a document, when it comes to the  
 20 October 1995 RMI cost of service and rate study.  
 21 Met had retained RMI in -- a few years before  
 22 the unbundling to look at a variety of issues with  
 23 respect to its rate structure and RMI presented several  
 24 different types of analysis. I think RMI is Resource  
 25 Management International.

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1 San Diego points to the October 1995 RMI cost  
 2 of service and San Diego asserts that if we pick up this  
 3 RMI study, what we will see is it says that State Water  
 4 Project costs should be allocated to water supply and  
 5 purchases of water, not to transportation and the  
 6 wheeling rate. In reality, San Diego has grossly misread  
 7 what the RMI report in fact states.  
 8 Again, if we turn to the section of the RMI  
 9 report that deals with the functionalization of costs and  
 10 different rates, we see that RMI's functionalization is  
 11 entirely consistent with what Met does.  
 12 RMI defined the supply function as the cost of  
 13 operating and maintaining water supply facilities such as  
 14 dams and associated reservoirs, wells and desalination  
 15 plants and the cost of purchasing water from wholesale  
 16 water suppliers.  
 17 So -- and what RMI then did is they  
 18 distinguished that from the transmission function. And I  
 19 think it's important to look at how they defined the  
 20 transmission function there. RMI defined the  
 21 transmission function as the cost of operating and  
 22 maintaining the aqueducts to move water from sources of  
 23 supply to major centers of demand. The term "aqueducts"  
 24 is clear from Metropolitan, is the State Water Project  
 25 aqueduct and the Colorado River Aqueduct. That's where

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1 they broke off and called the transmission function and  
 2 distinguished it from supply.  
 3 And sources of supply and major centers of  
 4 demand, those are also keywords. Major center of demand  
 5 doesn't mean a household in the city of Los Angeles or a  
 6 person living in Santa Monica. Southern California is a  
 7 major center of demand. I would submit it is  
 8 disingenuous for San Diego to point to this RMI document  
 9 as saying that Met should classify all State Water  
 10 Project costs as supply.  
 11 In fact, they distinguish transmission costs  
 12 and define them in a way that's consistent with what Met  
 13 does, taking the costs associated with the aqueducts that  
 14 move water from sources of supply to major centers of  
 15 demand and say that's different from supply. So far from  
 16 supporting San Diego, this RMI report supports what  
 17 Metropolitan has done.  
 18 San Diego used to argue -- they did this in  
 19 their first pretrial brief -- that the 1996 RMI cost of  
 20 service study also supported them. San Diego  
 21 specifically cited this document and they stated that  
 22 classifying State Water Project costs as purchase of  
 23 water, and again in addition to all resources of supply.  
 24 San Diego must not have read this document very closely,  
 25 though, because they later reversed themselves at trial

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1 and here is why.  
 2 This RMI report also identifies what the source  
 3 of supply function is and defined it as we saw in the  
 4 prior document, the dams and reservoirs, the wells, desal  
 5 plants and cost of purchasing water from wholesale water  
 6 suppliers.  
 7 Then it went and defined transmission and  
 8 again, it was maintaining the aqueducts to move water  
 9 from sources of supply to major centers of demand. This  
 10 by itself was clear enough, aqueducts meaning the  
 11 California Aqueduct, the Colorado River Aqueduct. And  
 12 similarly, there was distribution, there was pumping.  
 13 These were all separated out and broken out from a source  
 14 of supply.  
 15 But here's the kicker, here's the part that  
 16 San Diego must not have read before their pretrial brief,  
 17 is that RMI then went on to discuss the State Water  
 18 Project in particular.  
 19 RMI noted that Met pays State Water Project  
 20 costs on the basis of billings from the Department of  
 21 Water Resources. These expenses were functionalized to  
 22 either source of supply or to transmission distribution.  
 23 They said that DWR breaks the State Water Project bills  
 24 into a number of different categories, and then here's  
 25 the key sentence: Two categories are clearly

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1 transmission-related, namely the capital charges for  
 2 transmission facilities and the operations and  
 3 maintenance charges for transmission facilities.  
 4 This was clearly distinguished, disaggregating  
 5 State Water Project costs, saying some of them were  
 6 supply but then stating that clearly others of them were  
 7 for transportation and that's exactly how Met  
 8 disaggregates its costs in the billings.  
 9 THE COURT: Of course I don't have the cost of  
 10 service. I'm sure I have it here somewhere.  
 11 But in this context, is the RMI author  
 12 suggesting that these two categories are clearly  
 13 transmission-related in the context of what the State  
 14 Water Project does or in the context of what Met does?  
 15 MR. HIXSON: In the context of what Met does.  
 16 They were analyzing -- and that's why we have the  
 17 citation here, so your Honor can pull up the whole RMI  
 18 study and read it for yourself. Of necessity, I'm  
 19 showing you excerpts of the document.  
 20 THE COURT: Of course.  
 21 MR. HIXSON: But they were looking at how  
 22 Metropolitan should functionalize costs for purposes of  
 23 its own rate making.  
 24 What San Diego then did at trial was to reverse  
 25 course and claim that Met basically bullied RMI into

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1 putting this conclusion into their 1996 study. There's  
 2 no evidence to suggest that that's the case. But it was  
 3 interesting, having seen this language later, they  
 4 reversed course and rather than relying on it and now  
 5 accuse Met of having negotiated that without any basis.  
 6 But clearly RMI was breaking apart State Water Project  
 7 costs and saying that some could clearly be allocated to  
 8 transportation. But again, your Honor can read the whole  
 9 item for yourself.  
 10 There is another -- there is a chart that I do  
 11 want to get to in this '96 study. Again, the print is  
 12 tiny but it's in that same RMI study where at the top,  
 13 they identify sources of supply, they talk about State  
 14 Water Project and then over on the right, we've circled  
 15 the box in red, they talk about transmission and  
 16 distribution, so you can see they're breaking out the  
 17 different functions.  
 18 And then if you go down toward the bottom of  
 19 the page, they have State Water Project. And I realize  
 20 the print is tiny here, but for Delta water charges,  
 21 they've taken 100 percent and they've put that in supply.  
 22 And if you go beneath that to transportation and go over  
 23 to the right, RMI took 100 percent and they put that into  
 24 transportation. And so this is just a chart that  
 25 provides a visual demonstration of what RMI had been

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1 doing, functionalizing some State Water Project costs to  
 2 transportation.  
 3 Another document that San Diego has relied on  
 4 and that they added to the administrative record in March  
 5 or April of 2012 is this uniform system of accounts by  
 6 the National Association of Regulatory Utility  
 7 Commissioners. I will refer to them as the NARUC  
 8 accounts.  
 9 And we've quoted here the argument that  
 10 San Diego makes. They say that the NARUC system on which  
 11 Raftelis relies provides that the cost at the point of  
 12 delivery of water purchased for resale must be accounted  
 13 for as a supply cost. And they say that that is  
 14 instructive for rate making purposes and implies -- even  
 15 though that language doesn't really say it, they say it  
 16 implies, that when you are functionalizing costs, you  
 17 should treat everything associated with the State Water  
 18 Project as if it were supply and none of it as  
 19 transportation.  
 20 And then San Diego points to the definition of  
 21 purchased water and the chart of accounts. And we've  
 22 highlighted here on the screen the language that  
 23 San Diego relies on. It's Section 610 of the NARUC chart  
 24 of accounts and it says purchased water. This account  
 25 shall include the cost at the point of delivery of water

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1 purchased for resale.  
 2 And then the argument that San Diego makes is  
 3 that this should dictate rate making and they say -- they  
 4 quoted the Raftelis textbook which says that if the NARUC  
 5 chart of accounts is effectively integrated into the  
 6 utility accounting system, identification of costs by  
 7 functional category is provided by the accounting system.  
 8 And they go on to say that this detailed chart  
 9 of accounts, quoting the M1 manual, provides a breakdown  
 10 of expenses for costs of service allocation and  
 11 appropriate distribution of functionally allocated  
 12 expenses.  
 13 So that's San Diego's argument. They focus on  
 14 the NARUC chart of accounts and how it defines the  
 15 purchase of water as being for delivery.  
 16 We have a couple of responses. And here, I do  
 17 want to turn to the American Waterworks Association  
 18 Manual M1. That was the industry guidance that the  
 19 Raftelis April 2010 review pointed to. It's not the be  
 20 all, end all, it is a relevant data point in industry  
 21 guidance. I don't want to oversell it while also not  
 22 disputing its relevance.  
 23 So this is the M1 manual. This is the fifth  
 24 edition. This was the edition that was published when  
 25 Met voted for its rates in April 2010 and April 2012 and

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1 this is in the administrative record.  
 2 The M1 manual describes its purpose stating  
 3 that the purpose of the manual is to describe and present  
 4 issues associated with developing water rates and charges  
 5 to enumerate the advantages and disadvantages of various  
 6 alternatives and to provide information to help users  
 7 determine water rates and charges that are most relevant  
 8 to a particular situation.  
 9 I'm calling this language out for a reason,  
 10 which is that the parties have different ways that we  
 11 talk about industry guidance. San Diego talks about  
 12 industry standards in very strong terms as if there are  
 13 clear rules that should be followed in every case and  
 14 they say that Met's rates are illegal for violating these  
 15 clear rules.  
 16 I wanted to put on the screen the actual  
 17 language that's in the Manual M1 that San Diego itself  
 18 relies on because you can see it's different from that.  
 19 We tend to use the term "industry guidance"  
 20 when we talk about how these different authorities speak  
 21 in terms of water rates because on their own terms, these  
 22 manuals recognize that rate making entities are very  
 23 different, that they have -- they can be -- have very  
 24 different circumstances and sizes or scale and so what  
 25 these manuals tend to do is to provide guidance and

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1 advice.  
 2 So there's a difference of philosophy that I  
 3 wanted to call your attention to that the plaintiff uses  
 4 very strong terms to imply that there are these binding  
 5 rules, whereas we use the term industry guidance because  
 6 we think that more accurately captures what these  
 7 different manuals are in fact describing.  
 8 But let's look and see what the Manual M1 has  
 9 to say about the NARUC chart of accounts. So this is  
 10 again the fifth edition of the Manual M1.  
 11 And they refer to the NARUC system saying that  
 12 NARUC has recommended a uniform system of accounts which  
 13 is widely used by regulated utilities and can be modified  
 14 for government owned utilities, and then the M1 manual  
 15 recommends another AWWA manual, water utility accounting  
 16 to talk about that further.  
 17 Met isn't a regulated utility. A regulated  
 18 utility in California means an entity regulated by the  
 19 California Public Utilities Commission, so PG&E, SoCal  
 20 Edison, companies like that.  
 21 The distinction in California is generally that  
 22 privately owned utilities are regulated utilities,  
 23 whereas government owned utilities aren't. But perhaps  
 24 another way of saying it is that Met is accountable to  
 25 its board of directors who are composed of

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1 representatives from its member agency customers.  
 2 And so -- and we can see that NARUC of course  
 3 is short for the National Association of Regulatory  
 4 Utility Commissioners. So San Diego is pointing at a  
 5 type of accounting guidance that's directed at a  
 6 different type of entity, at entities that are regulated,  
 7 that have their finances audited by public utility  
 8 commissions. And here, the M1 is pointing out that sure,  
 9 NARUC is used by regulated utilities. In fact M1 says it  
 10 is widely used by them but then notes that it can be  
 11 modified for government owned utilities, drawing that  
 12 distinction that NARUC isn't directly applicable.  
 13 But there's another part of the M1 manual  
 14 that's important to look at. We directed the Court here  
 15 to Chapter 14, Fixed Versus Variable Charges where the  
 16 manual points out that rate making and water rate setting  
 17 is different from how you account for things from an  
 18 accounting perspective, which is what the NARUC chart of  
 19 accounts is doing.  
 20 And the M1 manual points out that fixed and  
 21 variable charges for cost recovery and a cost of service  
 22 water rate analysis is not the same as doing that from an  
 23 accounting standpoint.  
 24 And so we think this is -- it may be that for  
 25 regulated utilities, the way you might want to describe

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1 purchase of water for purposes of being audited by public  
 2 utilities commissions so they can see whether the  
 3 shareholders are getting an appropriate rate of return or  
 4 to analyze expenses. That's a certain type of activity  
 5 and that's what the NARUC chart of account is directed  
 6 to. But rate setting is simply a different type of  
 7 activity and the accounting principles aren't meant to  
 8 control that.  
 9 And as further evidence of that, we would turn  
 10 to Chapter 9 of the AWWA M1 manual, and this chapter  
 11 speaks directly to questions before the Court, which is  
 12 selecting rate structures and that's really the issue  
 13 that we're talking about here, not accounting guidance.  
 14 And here, the AWWA M1 manual notes that the  
 15 process of selecting the most appropriate rate structure  
 16 for a particular utility is not simple. And the M1  
 17 manual goes on to state that the selection is complex  
 18 because there are so many types of rate structures.  
 19 No one rate structure meets all utility  
 20 objectives equally and not all objectives are valued the  
 21 same by the utility or its customers. In some ways this  
 22 is a statement of common sense that yes, of course rate  
 23 setting is complex and the case law has recognized it,  
 24 but it's important to go back to this industry guidance  
 25 and advice and see it written right here as well.

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1 There is no suggestion in here that there is a  
 2 formula or a code that should be followed that dictates  
 3 how rate setting should be done. Instead, it is a  
 4 complex issue. And this goes back to issues the Court is  
 5 familiar with about the complexity under the law,  
 6 evaluating rate analysis and that it is complicated. And  
 7 Metropolitan's unique size and its need to import water  
 8 from distant locations make it very different from other  
 9 type of water agencies and the M1 manual recognizes and  
 10 acknowledges that rate setting has to account for  
 11 complexities such as that.  
 12 Now, let me turn to another document that  
 13 San Diego added to the 2012 administrative record in the  
 14 spring of 2012, and this is a 1969 Brown and Caldwell  
 15 water pricing policy study. And you can see down at the  
 16 bottom where it came from. It says San Diego County  
 17 Water Authority Library. Looks like they dug that one  
 18 up. Hopefully they put it into the administrative  
 19 record.  
 20 And San Diego points to that and says that the  
 21 1969 study accounted for State Water Project costs as  
 22 water supply costs. And they go on in more detail to  
 23 cite the particular page in Brown and Caldwell. And  
 24 Brown and Caldwell did look at the functional cost  
 25 allocation and they defined the supply system. And for

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1 Met, they did define the supply system as inclusive of  
 2 the State Water Project facilities, including the  
 3 terminal reservoirs of that system. So in 1969, there  
 4 was that study published that did characterize Met supply  
 5 costs in that manner.  
 6 And then there's another chart that San Diego  
 7 has pointed to which has in the 1969 study as we've  
 8 highlighted the words water purchase. And beneath that  
 9 is State of California, Delta water charge and  
 10 transportation. And you can see that in the functional  
 11 categories, it is true that the 1969 study looked at that  
 12 and put them all into supply.  
 13 We think that San Diego is over relying on this  
 14 1969 study in basically two big ways. First, this study  
 15 was decades before Metropolitan drew a distinction  
 16 between its own supply and transportation rates. Recall  
 17 that before 2003, Met didn't have a supply rate and it  
 18 didn't have transportation rates, it simply had a full  
 19 service bundled rate for water.  
 20 Now, in the years leading up to the unbundling,  
 21 obviously there were a number of different consultants  
 22 that were putting in opinions and looking at how you  
 23 might functionalize those differently. So I get why  
 24 San Diego was pointing to the 1995 RMI studies even  
 25 though these are a few years before the unbundling or

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1 other documents from the late 1990s.  
 2 The issue with the 1969 study is that it's so  
 3 old, that it precedes the unbundling by so many decades.  
 4 There's no indication that Met was even thinking or  
 5 contemplating about drawing a distinction between supply  
 6 and transportation rates and even evaluating the question  
 7 of what would go into each rate.  
 8 And we put the citation to the 1969 study in  
 9 the footnote here so your Honor can read it for yourself.  
 10 There's no indication that Brown and Caldwell was  
 11 evaluating that question either. But that's the issue  
 12 before the Court today, is when Met draws a distinction  
 13 between supply and transportation costs for its own  
 14 rates, what should go into what bundle.  
 15 And a document this dated, that doesn't purport  
 16 to analyze that question simply has limited relevance. I  
 17 mean, in 1969 Met wasn't even receiving any water from  
 18 the State Water Project. That was still when the  
 19 aqueduct was being built out. And so the age of this  
 20 document and the fact that it wasn't considering or  
 21 looking into the issue before the Court casts doubt on  
 22 its relevance.  
 23 In fact, the principal subject that the Brown  
 24 and Caldwell study was looking at was whether there  
 25 should be peaking costs, meaning whether there should be

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1 such a category recognized at all. The study actually  
 2 divided cost of service into two different steps and the  
 3 essential analysis was in the second step, mainly how Met  
 4 should allocate costs, the costs component rate  
 5 formulation.  
 6 I'm not going to go into too much detail here,  
 7 because I think it quickly loses focus. They were just  
 8 looking at a completely different issue, whether there  
 9 should be -- what should be allocated to average demand  
 10 versus peak demand, but the issue before the Court,  
 11 namely what should be supply versus what should be  
 12 transportation, it was not on anybody's horizon back at  
 13 that time and isn't something that Brown and Caldwell was  
 14 attempting to discuss.  
 15 Let me then turn to another document. This one  
 16 deals with the wheeling rate and so it's different from  
 17 these things we just looked at, which were about the  
 18 State Water Project transportation costs.  
 19 And this is one that San Diego has made a big  
 20 deal of in this case, including at length in the opening  
 21 statement it was a December 1995 RMI assessment for  
 22 pricing water wheeling services. And we have the  
 23 administrative record down there at the bottom. And  
 24 San Diego says the RMI concurred that State Water Project  
 25 costs are supply costs, they can't be included in a

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1 wheeling rate, and that RMI concluded that Met's wheeling  
 2 rate could be perceived as excessive for including these  
 3 State Water Project costs.  
 4 San Diego then noted that RMI proposed --  
 5 discussed four different wheeling options that could be  
 6 considered, the first one having the highest wheeling  
 7 rate. And San Diego has argued that that was the one  
 8 that you may recall the reference to Los Angeles and  
 9 Orange County stating that a rate might likely be illegal  
 10 and stating that this was the one that Met had adopted.  
 11 One of the errors in San Diego's reasoning is  
 12 that Metropolitan didn't adopt any of the four options  
 13 for the wheeling proposal that were in the 1995 RMI  
 14 study, it adopted none of them. San Diego has pointed at  
 15 length to option I in their RMI proposal while ignoring  
 16 how option I actually defined the proposed wheeling  
 17 charge.  
 18 And here, we quote the language from the RMI  
 19 report that defines option I. And it says the under this  
 20 option, Met's wheeling rate would be based on the  
 21 differential between Met's firm sales rate and  
 22 Readiness-to-Serve Charge and estimating these charges  
 23 for incremental power and other power costs.  
 24 And then they summarize it by saying that a  
 25 wheeling member agency paying the firm sales rate plus

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1 the RTS, that's a reference to the Readiness-to-Serve  
 2 Charge minus avoided costs. That was option I. This was  
 3 the one that was the subject of an extended discussion by  
 4 San Diego. But that isn't Met's wheeling rate, it never  
 5 was Met's wheeling rate because Met never included the  
 6 Readiness-to-Serve Charge in the wheeling rate.  
 7 Here we quote Metropolitan's Administrative  
 8 Code Section 4405. You've seen this provision before  
 9 that defines what the rate for wheeling service is. It  
 10 includes a System Access Rate, the Water Stewardship Rate  
 11 and if the water is treated, the treatment surcharge.  
 12 And then there's the own cost of power, actual cost of  
 13 power. But Met never had the Readiness-to-Serve Charge  
 14 in its rate for wheeling service. And so this discussion  
 15 about option I and 1995 RMI report is discussing a  
 16 proposal that had never been adopted.  
 17 What RMI -- RMI also didn't characterize all  
 18 State Water Project costs as supply costs in the course  
 19 of evaluating the four different options that were before  
 20 it. It stated that a wheeling rate could be designed by  
 21 subtracting all State Water Project and Colorado River  
 22 supply costs.  
 23 San Diego is kind of spinning that by saying  
 24 that RMI was opining that all such State Water Project  
 25 are supply. What they were really saying is if you took

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1 the full service rate and took out the State Water  
 2 Project and Colorado River supply costs, you could come  
 3 up with a wheeling rate that consisted of what was left.  
 4 Ultimately what RMI was doing, goes back to a  
 5 point I made this afternoon, is they were evaluating the  
 6 pros and cons of four different options for a wheeling  
 7 rate. Met didn't end up adopting any of them. There  
 8 were criticisms of some of the options, in particular  
 9 option number one, by member agencies. There were  
 10 notations by RMI itself that some people might perceive  
 11 it as excessive.  
 12 RMI recommended that Met should adopt option I  
 13 because it was the only one that would satisfy the hold  
 14 harmless requirement, but Met didn't end up adopting that  
 15 anyway.  
 16 But this all goes back to the notion that in an  
 17 entity like Met with its public board proceedings and  
 18 various consultants it hires and its 26 member agencies,  
 19 there will be disagreement, there will be proposals,  
 20 there will be different proposals over time.  
 21 It's important to drill down and to notice  
 22 which proposals actually became Metropolitan's rates, and  
 23 it's important to look at criticisms to say whether there  
 24 is any weight or merit to them. But pointing to a  
 25 document that proposes something that never happened and

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1 saying the others might criticize it, that's not a  
 2 persuasive way of using the administrative record to say  
 3 that Met has done something inappropriate, let alone  
 4 unlawful.  
 5 So now I've discussed the documents that  
 6 San Diego has pointed to in the administrative record  
 7 concerning the wheeling rate. I want to go to a related  
 8 issue, which is that at certain times in this case,  
 9 San Diego has contended that Met never made the written  
 10 determinations of fair compensation that are required  
 11 under the wheeling statute. They haven't asserted that  
 12 claim at trial and have in fact asserted that Met's  
 13 wheeling rate is a continuation of the policies behind  
 14 the 1997 wheeling rate, which we don't fundamentally  
 15 disagree with. So they may have been abandoned, this  
 16 element, but I do want to cover it because when the Court  
 17 reviews the administrative record, I want you to see that  
 18 there were written determinations of fair compensation.  
 19 And here, we quote what the wheeling statute  
 20 says.  
 21 1810 says that a public agency can't deny a  
 22 bona fide transfer of water, the use of a conveyance  
 23 facility which has unused capacity and fair compensation  
 24 is paid. It defines fair compensation in expansive  
 25 terms. It's not just incremental costs, it's capital,

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1 operation, maintenance, replacement costs and other  
 2 costs. But then Water Code Section 1813 does go on to  
 3 say that the public agency shall support its  
 4 determinations by written findings.  
 5 Here, Metropolitan made those written findings.  
 6 And I turn to resolution 8520. This is the January 1997  
 7 resolution establishing the wheeling rate and it states  
 8 now therefore the board of directors find and determine  
 9 and order as follows.  
 10 And there's a Section 3 that states that in  
 11 order to recover fair compensation for the use of its  
 12 conveyance system for wheeling, it is necessary for Met  
 13 to adopt wheeling rates according to the methodology set  
 14 forth in attachment one.  
 15 There's Section 4, which states that a uniform  
 16 rate is appropriate because of the integrated nature of  
 17 Met's conveyance system. And the wheeling rate continues  
 18 to be uniform postage stamp rate like all Met's  
 19 volumetric rates. And they go on to note additional  
 20 reasons because Water Code Section 1811 defines fair  
 21 compensation to include reasonable charges for the use of  
 22 the entire conveyance system.  
 23 THE COURT: Again, just so I remember  
 24 correctly, the rate here means that regardless of the  
 25 distance that the water's going to get wheeled, it's

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1 going to be the same dollar per acre-foot.  
 2 MR. HIXSON: Yes, that's right.  
 3 And then we're still on the 1997 resolution,  
 4 8520, establishing the wheeling rate. And Section 5  
 5 notes that the allocation of costs as shown in attachment  
 6 1 includes the costs of -- by Metropolitan to convey  
 7 water to its member agencies through Met's conveyance  
 8 system, including Met's rights in the State Water Project  
 9 system.  
 10 And so from the beginning, the written findings  
 11 under the wheeling statute that Met made explicitly  
 12 called out and identified the appropriateness, including  
 13 State Water Project costs.  
 14 I assume San Diego will say well, that was  
 15 illegal then, it is illegal now. I'm speaking though to  
 16 the question of did Met not make written findings and  
 17 determinations that this is a legal thing to do and here,  
 18 they are in writing determined by the board.  
 19 And then Section 9 set the wheeling rate at a  
 20 certain per acre dollar foot (sic) effective in 1997.  
 21 But then it said that, you know, thereafter they shall be  
 22 set annually as part of Metropolitan's rate setting  
 23 process, a reference to the Administrative Code. And Met  
 24 continues to set the rates under its Administrative Code  
 25 under those provisions that are cited there and then in

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1 the wheeling resolution.  
 2 And then Section 15 delegated the unused  
 3 capacity determination to the general manager to decide  
 4 on a case-by-case basis.  
 5 THE COURT: I don't know if you're going to be  
 6 getting into this or whether it is part of the record or  
 7 not, but is it part of the case one way or the other as  
 8 to whether or not there ever was a situation in which  
 9 there was no capacity to wheel?  
 10 MR. HIXSON: I am -- there's no indication in  
 11 the administrative record and also, I'm not aware of a  
 12 situation in which Met refused to wheel for somebody who  
 13 asked.  
 14 THE COURT: Is this a new subject for slide  
 15 130?  
 16 MR. HIXSON: Yes, we are on a new subject now.  
 17 It's a brief one. Do you want me to good ahead  
 18 or --  
 19 THE COURT: I thought this might be a  
 20 convenient time for a short break.  
 21 MR. HIXSON: Sure.  
 22 THE COURT: Ten minutes.  
 23 (Brief break.)  
 24 THE COURT: Let's continue, please.  
 25 MR. HIXSON: Thank you, your Honor.

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1 I was about to begin a new topic, so let's jump  
 2 right in. This is the topic that is that the exchange  
 3 agreement does not undermine MWD's rates.  
 4 As the Court knows, there's an exchange  
 5 agreement between San Diego and Met. The exchange  
 6 agreement is not in the administrative record and so  
 7 there's no particular reason why it would be. Met sets  
 8 its rates and charges. The administrative record is a  
 9 record of proceedings before the board and that the board  
 10 considered in cost of service issues and so -- and this  
 11 issue just isn't part of that process.  
 12 Recall in terms of timeframe, that in '98 --  
 13 1998, Met began the process of analyzing the unbundling  
 14 rate structures, and October of 2001, the board voted to  
 15 adopt a new structure. March 2002, they adopted specific  
 16 rates to take effect in January of 2003 and the exchange  
 17 agreement postdates all of that.  
 18 Now, the parties have their various arguments  
 19 about whether and to what extent the exchange agreement  
 20 is relevant to other issues in this case but as a  
 21 presentation of evidence in the administrative record,  
 22 I'm just going to note that that's not one of the things  
 23 that's in the administrative record, "it" meaning the  
 24 exchange agreement.  
 25 There is evidence in the administrative record

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1 concerning the blend of water that --  
 2 THE COURT: Concerning the what?  
 3 MR. HIXSON: The blend of water that San Diego  
 4 receives from Metropolitan under the exchange agreement,  
 5 and I did want to call that out to the extent that the  
 6 Court is interested.  
 7 This is -- I'm pointing to an April 2012 letter  
 8 to the board of directors, and this is one of several  
 9 responding to board letters by San Diego in which they  
 10 are disputing Met's cost allocations.  
 11 This is from the general manager and the  
 12 general counsel providing response to San Diego  
 13 arguments. And in the context of this response, they are  
 14 providing some explanations for why it's appropriate that  
 15 the exchange water bear some of the cost associated with  
 16 the State Water Project transportation facilities.  
 17 And there's a notation here that Metropolitan's  
 18 ability to blend the water from various sources means  
 19 that the exchange water delivered to the Water  
 20 Authority -- and that's the reference to San Diego County  
 21 Water Authority -- is less saline than the conserved  
 22 water transferred to Metropolitan at Lake Havasu.  
 23 So we do see this reference in the  
 24 administrative record to the differences in water quality  
 25 between the two sources of water and that the blend

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1 enables San Diego to receive water that's less saline  
 2 than the conserved water delivered by --  
 3 THE COURT: But I take it you're in agreement  
 4 with San Diego's position that the exchange agreement,  
 5 which I think this is their position, that the exchange  
 6 agreement is not part of what I should be looking at in  
 7 this phase.  
 8 MR. HIXSON: I'm going to have to maybe be a  
 9 little more blunt than I wanted to.  
 10 Whenever San Diego talks about the exchange  
 11 agreement, they seem to think it's relevant. But  
 12 whenever we talk about it, they say that it's not.  
 13 They presented an argument that the exchange  
 14 agreement was irrelevant and objected to it when I talked  
 15 about it in opening. And then Mr. Cushman took the stand  
 16 and talked about how they buy water from IID through  
 17 Metropolitan. And I thought, you know, that's the  
 18 exchange agreement. And so they are definitely raising  
 19 it.  
 20 And they talk a lot about the transportation of  
 21 non-project water and every time they do that, they -- we  
 22 don't think this is really a transportation of  
 23 non-project water, they're referring to the exchange  
 24 agreement and so it comes in in everything they say.  
 25 And there is huge emphasis on wheeling in this

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1 case. They are constantly talking about the exchange  
 2 agreement, so I don't believe them when they say they  
 3 think it's irrelevant. It's the whole perspective  
 4 they're bringing to this case and that's what their  
 5 witnesses testified about.

6 And so we are in the position of having to  
 7 respond to it simply because that their contention, the  
 8 implication of the plaintiff's case is that San Diego is  
 9 moving a bunch of non-Met water through Met's systems to  
 10 San Diego. That could only be a reference to the  
 11 exchange agreement, it's not anything else. So that's  
 12 why we feel compelled as the defendant in this action to  
 13 dispute that that's the right characterization of the  
 14 exchange agreement, to say that that's not really what  
 15 it's about. But we're doing this because the plaintiffs  
 16 are talking about it and it's really part of the demands  
 17 in their case.

18 So now I wanted to turn to a different topic,  
 19 which is the dry year peaking claim that San Diego has  
 20 brought.

21 They call it by various different terms.  
 22 Sometimes they call it the cost of drought storage or dry  
 23 year storage. The essence of the allegation is in  
 24 paragraph 65 of the 2012 complaint, where they point the  
 25 finger at the City of Los Angeles and say that L.A. has

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1 much higher annual variations than other member agencies  
 2 and allegedly that this is a cost that L.A. imposed on  
 3 the system that other member agencies are forced to  
 4 subsidize.

5 I discussed this issue a bit earlier when I  
 6 walked through the cost of service study about how  
 7 Metropolitan deals with true peaking charges, that in  
 8 step three of the cost of service study Met analyzes its  
 9 costs and classifies them according to whether they're  
 10 for average use or for peak use or for standby use,  
 11 focusing on busy times within a year. And so Met does  
 12 classify costs associated with standby use to its  
 13 Readiness-to-Serve Charge and then their cost for the  
 14 peak use on the distribution system and those are under  
 15 the Capacity Charge.

16 When it comes to the other costs that's going  
 17 to be recovered by Met's volumetric supply and  
 18 transportation rates, we view that as the act of selling  
 19 more or less water and distinguish that from actual  
 20 peaking costs. But regardless of terminology,  
 21 Metropolitan accounts for the costs that are at issue  
 22 here.

23 The -- one of the purposes in walking the Court  
 24 through the cost of service study and its various  
 25 different steps, and Metropolitan functionalizing the

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1 costs, is to show that Met does look at the costs that it  
 2 incurs to obtain the water, to have that water  
 3 transported to a service area, the cost of storage for  
 4 treatment, distribution, it allocates them to the  
 5 functions and then it appropriately recovers them in its  
 6 volumetric rates. Those aren't just hollow numbers, they  
 7 reflect a thorough analysis of how those costs should be  
 8 recovered and then recommended as appropriate. And so  
 9 the volumetric rates and the pure supply rates recover a  
 10 lot of those costs.

11 The Readiness-to-Serve Charge is one that, as  
 12 we discussed, is allocated based on a ten-year rolling  
 13 average.

14 THE COURT: Just, I think it hasn't been made  
 15 explicit but the difference between tier 1 and tier 2 is  
 16 after a certain volume is ordered, the other price kicks  
 17 in?

18 MR. HIXSON: Yes, that's right.

19 And that depends. There is a fair amount of  
 20 detail in that because I mentioned earlier that there are  
 21 purchase orders that member agencies can place with  
 22 Metropolitan and if they hit above a certain percent of  
 23 the purchase order, then they go into tier 2. And so  
 24 that's -- you can think of it as a peak-related expense  
 25 for going over a certain level of water consumption, but

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1 yes, tier 2 is higher than tier 1.

2 And then the Readiness-to-Serve means that when  
 3 member agencies buy enough water in a particular year,  
 4 that has a decade long impact on their fixed charge  
 5 whenever necessary, so they can't just roll on and roll  
 6 off without having there be long-term consequences to  
 7 reflect the value of having that system there to provide  
 8 service.

9 THE COURT: Has something like that happened  
 10 with respect to Los Angeles?

11 MR. HIXSON: You mean has something like --

12 THE COURT: A tax or a ten-year revision of  
 13 their rates or rate revision based on a ten-year rolling  
 14 average?

15 MR. HIXSON: Oh, sure. For the  
 16 Readiness-to-Serve Charge, every single member agency has  
 17 that charge calculated based on their rolling ten-year  
 18 average. So every year, there's a look back for the  
 19 entire decade for every single one of the member  
 20 agencies. That is in the cost of service studies in  
 21 Schedule 11. And so what Metropolitan does is it looks  
 22 at its total cost associated with standby and allocates  
 23 them by percentage. So for every agency, it has that  
 24 ten-year look back.

25 And then with respect to the distribution side

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1 peaking costs, what we think are actual peaking costs,  
 2 those are collected as a Capacity Charge and that's  
 3 allocated based on the member agency's peak summer day  
 4 consumption over the prior three years.  
 5 So if there's a high peak during the summer,  
 6 that will set a new Capacity Charge Rate and then that  
 7 gets allocated and stays with that member agency for the  
 8 next three years.  
 9 At the bottom here, we have cited the 2010 cost  
 10 of service studies and the 2012 cost of service studies  
 11 that explain in more detail how the Readiness-to-Serve  
 12 Charges are allocated and how the other volumetric rates  
 13 are applied.  
 14 I want to turn to San Diego's factual  
 15 contention. They say that there are some member agencies  
 16 that roll on and roll off the Met system. So this is  
 17 their factual assertion that L.A. has different peaking  
 18 behavior than other member agencies.  
 19 In reality, San Diego has misrepresented the  
 20 differences between the member agencies' annual  
 21 variations. And San Diego tends to talk as if it were  
 22 self-evident that in the relevant time period, meaning  
 23 when the unbundled rate structure went into effect,  
 24 somehow everybody just knows that L.A. is rolling on and  
 25 rolling off more than other member agencies, and that's

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1 not an assertion that needs to be proven or demonstrated.  
 2 We think that that is not the case. In fact  
 3 San Diego's variations themselves is much larger than  
 4 L.A. and puts greater demands on Met's systems.  
 5 But in any event, in the administrative record  
 6 there is a report submitted by San Diego's expert that  
 7 tended to show that there isn't this large disparity  
 8 between the member agencies over a decade long period.  
 9 And I'm going to focus on this FCS report and  
 10 underscore here the difference between administrative  
 11 record review and going outside the administrative record  
 12 because I do think it's particularly important on the  
 13 peaking charge issue.  
 14 San Diego has submitted evidence outside the  
 15 administrative record, and you saw it from Mr. Denham in  
 16 which he had his analysis of peaking charges. And then  
 17 we took some of Mr. Denham's data, we made it into our  
 18 own chart and showed that back. And so both sides  
 19 outside of the record are putting factual information  
 20 before the Court.  
 21 But for the claims that are in the record,  
 22 that's not available to the Court. It would be just what  
 23 is in the record and the Court would need to see factual  
 24 information, some data concerning member agency usage and  
 25 if it looks like the member agency water -- the annual

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1 variations aren't that different, that would tend to  
 2 undermine San Diego's claim. And if it looks like  
 3 they're significantly different, that could tend to  
 4 strengthen San Diego's claim. But here's where I want to  
 5 underscore that what's in the admin record actually is  
 6 much narrower than the factual information you're getting  
 7 at this hearing that's outside of it.  
 8 And there are -- and to make a related point,  
 9 San Diego has pointed to two of their own letters. They  
 10 had a 2000 letter to Met, the board of directors, I'm not  
 11 going to show them now, and a 2012 letter in which  
 12 San Diego has argued and contended that Met doesn't  
 13 account for dry year peaking. That's not really evidence  
 14 of anything, that's just citing a letter to prove that  
 15 they argued or contended something.  
 16 What your Honor should be looking for on the  
 17 dry year peaking issue is data, factual evidence that  
 18 shows whether or not there is evidence to support a dry  
 19 year peaking plan. And here, we think there isn't. The  
 20 only real data that San Diego can point to, meaning  
 21 actual numbers and uses is their own FCS report which, if  
 22 anything, tends to support Metropolitan.  
 23 This is the FCS report that was submitted to  
 24 the administrative record in 2012 where the FCS Group,  
 25 San Diego's expert, looked at a decade-long period of

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1 water sales for each member agency. They calculated the  
 2 highest annual water purchase for each member agency and  
 3 they calculated the average annual water use for each  
 4 member agency and then they computed a peak to average  
 5 ratio and attempted to use that as a measure of the  
 6 peaking differences between the member agencies.  
 7 But their peak to average ratios in fact tended  
 8 to confirm that at least for the time period covered by  
 9 this report, that the differences were unimpressive.  
 10 MWD's largest customers, those purchasing more than  
 11 100,000 acre-feet of water per year all had the ratio  
 12 between 1.07 and 1.32, not a very large drop. There  
 13 wasn't a member agency that was peaking at two or three  
 14 times its average, they were all within a very narrow  
 15 band. San Diego's was higher than West Basin, a little  
 16 lower than Los Angeles. This is true that L.A. had one  
 17 that was a little bit higher.  
 18 If you expand the view from just the largest  
 19 ones to all of the member agencies, then there was one  
 20 that was an outlier, San Fernando. They account for  
 21 0.000176 percent of Met's projected water sales, a very  
 22 tiny and insignificant amount. They were the outlier at  
 23 3.0. The other 25 member agencies all had peak to  
 24 average ratios between 1.07 and 1.72, so none of them  
 25 seriously out of line.

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1           What we did then is we looked elsewhere in the  
 2 administrative record to see if we could find any  
 3 guidance and advice on whether this type of spread in  
 4 peak to average issue is meaningful or whether it's not a  
 5 meaningful distinction.  
 6           And one source that we turned to is the  
 7 American Waterworks Association's M1 manual in the  
 8 administrative record. And we looked at Chapter 31 on  
 9 wholesale rates. Although the M1 manual is principally  
 10 about retail service, there's a chapter that deals with  
 11 wholesale rates.  
 12           And we looked to peak to average ratios within  
 13 the class. And M1 puts forth illustrative ratios of  
 14 peak to averages within customer classes. There's the  
 15 residential customer class, commercial, industrial. We  
 16 have it here wholesale. And what they did here -- and we  
 17 put the citations at the bottom of the page so that your  
 18 Honor can go back and read it all to yourself and get the  
 19 context here. I wanted to put the highlight on the  
 20 screen, which is that within different -- each class,  
 21 there are spreads of -- within peak to average ratios.  
 22           As we've said, we think that the right way --  
 23           THE COURT: Are these spreads in context, what  
 24 I see, that these are spreads which are based on some  
 25 empirical study or are these just made up numbers?

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1           MR. HIXSON: These are presented as  
 2 illustrative spreads for those classes. They're not  
 3 intended to be a prescriptive or an empirical analysis.  
 4 For example, it is a statistically average spread.  
 5           MR. KEKER: Excuse me. I object. It also has  
 6 nothing to do with dry year peaking. These are weekly  
 7 spreads that he's talking about. This is just  
 8 irrelevant.  
 9           THE COURT: That's a matter of argument. Let's  
 10 reserve on that.  
 11           But in terms of this particular context, are  
 12 these numbers the result of -- at least purportedly the  
 13 result of some analysis of what's going on in the real  
 14 world or --  
 15           MR. HIXSON: No. The M1 manual works different  
 16 from that. They tend to present illustrative examples or  
 17 ways of doing things. So this isn't an analysis, this is  
 18 the most common spread of ratios.  
 19           THE COURT: So in the real world the ratios  
 20 could be completely different.  
 21           MR. HIXSON: That could be the case, that's  
 22 right.  
 23           And Mr. Keker is right that this is looking at  
 24 max day and max hour. As we said, we think the better  
 25 way of looking at peaking is smaller periods of time and

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1           we think that San Diego's focus on more variation is out  
 2 of place, but we were trying to put some kind of guidance  
 3 in the industry of what might be relevant.  
 4           And as you see here, that the spreads and peak  
 5 to average ratios are much larger than the spreads of  
 6 peak to average ratios than Met's member agencies have in  
 7 their annual water usage.  
 8           In any event, even if it were true that there  
 9 was some significant variation between the member  
 10 agencies in terms of how much water, meaning some vary  
 11 much more wildly than others, which we don't think  
 12 they've demonstrated in the unbundling effect, Met's and  
 13 charges still reasonably account for the annual  
 14 variations in water agency usage.  
 15           And in some ways the purpose is served by the  
 16 cost of service studies that are done in every single  
 17 rate setting cycle, is that they're an effort to analyze  
 18 Metropolitan's costs and decide how they should be  
 19 allocated to different rates. And obviously, the cost of  
 20 service is used to develop the various different rates.  
 21 They recover costs associated with water purchases.  
 22           You've seen these slides before so I'm going to  
 23 take you through them quickly. But tier 1 and tier 2  
 24 rates recover the cost of water supply, certain finance  
 25 and drought storage costs. The tier 2 rates as we notice

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1           are higher.  
 2           The System Access Rate recovers certain  
 3 facility costs for distribution, for conveyance and  
 4 aqueduct.  
 5           System Power Rate recovers the energy costs for  
 6 pumping, moving water to southern California, and we have  
 7 the Water Stewardship Rate recovering the cost of  
 8 management programs. And then the treatment surcharge  
 9 here recovering the treatment cost.  
 10           The entire exercise of having this cost of  
 11 service studies is an attempt to take Metropolitan's  
 12 costs, to look forward and to allocate them appropriately  
 13 to the volumetric rate, to make sure that they're  
 14 properly recovering those costs. And so jumping to  
 15 annual variations and not looking at the cost of service  
 16 process is a flawed way to proceed. Met has carefully  
 17 looked at those costs before coming up with these rates.  
 18           THE COURT: If I looked at the sources that are  
 19 cited for example on slide 146, would I find that drought  
 20 storage, however you want to describe this, dry year  
 21 storage costs, or if you want to call them dry year  
 22 peaking, or if you want to call them more episodic  
 23 peaking rates, would I find that that specifically is  
 24 being accounted for by these mechanisms, by the supply  
 25 rates?

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1 MR. HIXSON: Yes. We've cited the relevant  
 2 pages from the cost of service studies which state that  
 3 these are the costs that are recovered by the supply  
 4 rates here. And I presented them in more summary  
 5 fashion.  
 6 THE COURT: Sure. I understand that.  
 7 MR. HIXSON: Or my presentation would be even  
 8 longer.  
 9 And so -- but yes, that's the purpose for these  
 10 footnotes here, is to show that's where these costs are  
 11 recovered.  
 12 Okay. And in addition to the volumetric rates,  
 13 I wanted to click ahead to slide 152 and talk a bit more  
 14 about the Readiness-to-Serve Charge. Here, we've shown  
 15 -- this is Schedule 9. This is a page from the cost of  
 16 service study and the Readiness-to-Serve charge that  
 17 we've highlighted there.  
 18 This also accounts for annual variations in  
 19 water usage. As I said, they're allocated to member  
 20 agencies based on a ten-year rolling average. And what  
 21 this means, the Readiness-to-Serve Charge recovers  
 22 emergency and regulatory storage and that's reservoirs,  
 23 and certain capital costs for State Water Project and  
 24 Colorado River facilities to meet peak monthly  
 25 deliveries.

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1 And the key punch line here is that if the  
 2 member agency's water usage goes up or down annually,  
 3 that continues to affect its Readiness-to-Serve  
 4 allocation for the next decade. And that's true for all  
 5 of them. It's true for Los Angeles, for San Diego, for  
 6 all of them, because the standby costs represent the  
 7 value of that service of standing by. And looking at a  
 8 past ten-year roll-on average is a way of getting at  
 9 what's the value to them of having that system available  
 10 to them over that period of time.  
 11 And finally, there's the Capacity Charge.  
 12 Variations in water use also affect the Capacity Charge.  
 13 To be clear, that's not based on annual  
 14 variations. As I said, peak summer day is the mechanism  
 15 by way that the Capacity Charge is accounted for, but  
 16 that does have a two-year look back. And this recovers  
 17 the cost of MWD's distribution system associated with  
 18 peak usage.  
 19 The punch line here is that San Diego is  
 20 complaining that L.A. is rolling on and rolling off the  
 21 Met system but in fact it's not possible to roll on and  
 22 roll off the Met system without paying for its cost. The  
 23 Readiness-to-Serve Charge lingers with the agency for the  
 24 next decade and the Capacity Charge for peak summer usage  
 25 lingers for the next three years.

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1 And, in addition, the volumetric rates  
 2 themselves recover appropriately the cost of this supply,  
 3 the transportation, the treatment rates, the Water  
 4 Stewardship Rate and the other costs that Metropolitan  
 5 recovers allocating its cost of service process.  
 6 I would now like to circle back a little bit.  
 7 I began with the board process, the MWD Act and the  
 8 Administrative Code that define Met as having an open and  
 9 deliberative board process where the public is invited to  
 10 participate and all the member agencies get to vote.  
 11 It should be noted that San Diego has always  
 12 been an active participant in these board proceedings and  
 13 they've been vigorous and vocal of course in some cases  
 14 criticizing them, but at other times, they've been  
 15 supportive of Met and have cast a number of votes over  
 16 the years in favor of rates under this unbundled rate  
 17 structure.  
 18 THE COURT: Do you think that affects any of  
 19 the decisions that I need to make?  
 20 MR. HIXSON: I think that it provides context  
 21 that's useful for the Court. Ultimately you're reviewing  
 22 the legality of Met's rates or whether they complied with  
 23 substantial evidence in the administrative record and  
 24 thus the duty they were performing and not -- rather than  
 25 looking into motives or --

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1 THE COURT: And I take it that if San Diego had  
 2 voted for everything that Met has done 100 percent, I  
 3 would still have to do the work that I need to do on this  
 4 case; right? I would still be addressing the same  
 5 issues?  
 6 MR. HIXSON: Yes, that's correct.  
 7 We did want to put this slide up here as well.  
 8 This will show that there have been times, most of the  
 9 time when San Diego voted for rates under Met's  
 10 unbundling rate structure.  
 11 In January of 2002, they voted to approve a  
 12 resolution that initiated the adoption of the new rates.  
 13 In March, they were the key rate vote that set  
 14 the rate amounts that took effect in January of 2003.  
 15 In fact, the majority of the years since the  
 16 unbundling, they voted to approve rates under the same  
 17 rate structure, and we think this demonstrates the --  
 18 it's factual evidence that demonstrates the  
 19 reasonableness of the rates, although we don't dispute  
 20 that ultimately the Court has to review the  
 21 administrative record for substantial evidence.  
 22 I did want to point to something that concerned  
 23 Mr. Cushman's testimony, when he said that in April of  
 24 2012, San Diego voted against the rates.  
 25 As I mentioned earlier, in 2012, Met's staff

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1 proposed three options for the rates that had different  
 2 levels of cost increases. One of them, Option II, was a  
 3 5 percent increase and that was the one that was adopted.  
 4 And it's true that San Diego voted against that. Another  
 5 one, which was a three percent increase, San Diego  
 6 actually did vote for. Those weren't differences in the  
 7 rate structure, those were simply differences in dollar  
 8 amounts.

9 So technically that may be true, that they  
 10 voted against the rates, but I think the more important  
 11 point is that they still voted for one of the options  
 12 under the structure that's being challenged in this  
 13 litigation.

14 To wrap up on the administrative record, most  
 15 of the claims before the Court in the rate challenge are  
 16 limited to the administrative record and that will affect  
 17 the evidence that the Court can consider and the Court  
 18 should consider in ruling on these claims.

19 We think the administrative record establishes  
 20 that Met's rates were reasonable under the governing  
 21 legal standards, that under MWD Act, Section 134, Met's  
 22 rates are uniform for like classes of service. Indeed  
 23 there seems to be barely any dispute or argument about  
 24 uniformity. The rates are issued by postage stamp rates  
 25 or RTS and Capacity Charge calculated in a uniform way

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1 among the member agencies.

2 Under the common law and the Government Code,  
 3 Metropolitan's rates are reasonable and reflect a fair  
 4 charge for the services that are being provided.

5 Under Prop. 13 and Prop. 26, you've seen the  
 6 process that Met uses to develop its rates. It's this  
 7 forward look at the revenue requirement and the revenues  
 8 that it needs to recover for each of its functions and  
 9 Met performs its rate design in that direction, looking  
 10 at what are the funds that are necessary to recover the  
 11 costs of those particular services, and the case law  
 12 interpreting Prop. 13 and Prop. 26 endorses that method  
 13 of estimating the expected cost of the service and using  
 14 that as the basis for assessing the rate and that's the  
 15 process that Metropolitan follows here.

16 We also think that the administrative record  
 17 demonstrates that Met's rates aren't imposed in the legal  
 18 sense of that term, meaning that Met is a voluntary  
 19 cooperative of member agencies that have chosen to join,  
 20 a point that I began at the start of the presentation.

21 And that Metropolitan's rates and charges all  
 22 relate to a different exception to Prop. 26, which is  
 23 that purchase or use of government property, which would  
 24 be either the water itself or Metropolitan's facilities,  
 25 I've talked about the distribution facilities and Met's

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1 rights to use the State Water Project and showed the  
 2 Court the contract that provides the contractual rights  
 3 to use.

4 And then under the wheeling statute, I've  
 5 showed the Court the written determination that  
 6 Metropolitan made concerning fair compensation, the ones  
 7 that specifically address this question of State Water  
 8 Project costs.

9 And of course the wheeling statute claim is  
 10 before the Court as determined. It may also go outside  
 11 the administrative record.

12 And so with that, your Honor, I would like to  
 13 conclude the admin record presentation and perhaps after  
 14 a short break we would like to call our first witness.

15 MR. KEKER: Could I respond for ten minutes  
 16 about particularly item 7, which I didn't object to, but  
 17 the slides that they presented and the things he said  
 18 about a lot of that was extremely misleading and we would  
 19 like to respond right now.

20 MR. HIXSON: I object to that. This is our  
 21 case-in-chief.

22 MR. KEKER: Well it's their case-in-chief, but  
 23 he's been accusing us of misrepresentations, he's been  
 24 filibustering for several hours. I would like to have  
 25 ten minutes to respond.

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1 MR. HIXSON: We were quiet during their  
 2 case-in-chief.

3 THE COURT: Please, we don't have to discuss  
 4 this any further. Let's finish Metropolitan's case. I  
 5 have a pretty good memory. I think I will be able to  
 6 track what San Diego has to say in response when we get  
 7 back to San Diego's rebuttal case. So let's just keep  
 8 San Diego off the stand for a moment and put Metropolitan  
 9 in the driver's seat.

10 You would like a short break at this point?  
 11 MR. HIXSON: Yes, please.

12 THE COURT: Great. I will see everybody in  
 13 ten.

14 (Brief break.)  
 15 THE COURT: Sir?  
 16 MR. HIXSON: Your Honor, Metropolitan calls  
 17 Brent Yamasaki to the stand.

18 THE COURT: Thank you very much.

19 BRENT YAMASAKI,  
 20 having been called as a witness by the Defense, and  
 21 having been duly sworn under the standard oath, was  
 22 examined and testified as follows:  
 23 THE CLERK: If you would adjust the microphone  
 24 and then state and spell your first and last name.  
 25 THE WITNESS: My name is Brent Yamasaki,

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1 B-R-E-N-T, Y-A-M-A-S-A-K-I.  
 2 THE COURT: Thank you.  
 3 MR. HIXSON: Your Honor, I would like to  
 4 provide the Court and the witness a binder of exhibits.  
 5 I provided these to San Diego already.  
 6 DIRECT EXAMINATION  
 7 BY MR. HIXSON:  
 8 Q. Mr. Yamasaki, good afternoon.  
 9 A. **Good afternoon.**  
 10 Q. Who do you work for?  
 11 A. **Metropolitan Water District.**  
 12 Q. How long have you worked at Metropolitan?  
 13 A. **22 years.**  
 14 Q. Can you maybe raise the microphone. We will be  
 15 able to hear you a little better.  
 16 A. **How's that?**  
 17 Q. Great.  
 18 What position do you hold at Metropolitan?  
 19 A. **I'm the section manager of operations and**  
 20 **planning at Metropolitan.**  
 21 Q. Can you give us a general description of your  
 22 job responsibilities?  
 23 A. **I'm responsible for the 24-7 operations of**  
 24 **Metropolitan, the system operators in the distribution**  
 25 **system, also responsible for operational planning and**

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1 **storage management as well as system automation, shutdown**  
 2 **planning and emergency management.**  
 3 Q. Okay. Do your job responsibilities involve  
 4 Met's use of State Water Project facilities for  
 5 transportation and storage?  
 6 A. **Yes, they do.**  
 7 Q. Can you explain in general terms what those  
 8 State Water Project facilities are?  
 9 A. **Yeah. Starting up north, there's Lake**  
 10 **Oroville. That's north of the Delta.**  
 11 **And then there are -- there's a Banks Pumping**  
 12 **Plant that's at the south end of the Delta and that pumps**  
 13 **water into the California Aqueduct.**  
 14 **There's a San Louis reservoir in central**  
 15 **California that stores water, and then the California**  
 16 **Aqueduct continues its way down to Metropolitan service**  
 17 **area.**  
 18 Q. Do your responsibilities also involve Met's  
 19 internal distribution system?  
 20 A. **Yes, they do.**  
 21 Q. And can you explain in general terms what that  
 22 distribution system is?  
 23 A. **Yes. That's the distribution system that**  
 24 **conveys and distributes water from both of our imported**  
 25 **water supply on the Colorado River and the State Water**

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1 **Project. It includes reservoirs and pipelines to deliver**  
 2 **water to our member agencies.**  
 3 Q. Does Metropolitan ever use the State Water  
 4 Project facilities to transport non-project water?  
 5 A. **Yes, it does.**  
 6 Q. And can you explain what non-project water  
 7 means?  
 8 A. **That's water that's outside of that which is**  
 9 **allocated by the State Water Project, Department of Water**  
 10 **Resources every year.**  
 11 Q. What do State Water Project water transfers and  
 12 exchanges refer to?  
 13 A. **Those are typically short-term transactions**  
 14 **where Metropolitan and other contractors procure water to**  
 15 **mitigate dry year shortage conditions.**  
 16 Q. Okay. In general, who are the sellers in these  
 17 non-project transactions you just referred to?  
 18 A. **They're typically agricultural districts,**  
 19 **mainly north of the Delta.**  
 20 Q. And so are you referring to sellers different  
 21 than the state itself?  
 22 A. **Yes, that's correct.**  
 23 Q. What does Met have to pay the state to do these  
 24 non-project water exchanges?  
 25 A. **Metropolitan pays power and power related**

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1 **costs.**  
 2 Q. Does Met have to pay a facilities fee to the  
 3 state to do the non-project water transfers?  
 4 A. **Not specifically for transfers, no.**  
 5 Q. And can you explain why not?  
 6 A. **Those costs are covered as fixed charges by the**  
 7 **State Water Project for transportation.**  
 8 Q. Are you referring to charges that Met pays?  
 9 A. **Yes, that's correct.**  
 10 Q. During the time that you've worked at Met,  
 11 under what circumstances did Met engage in these  
 12 non-project water transfers and exchanges?  
 13 A. **The period between 2008 and 2010 is the most**  
 14 **recent.**  
 15 Q. And can you describe what about that time  
 16 period caused Met to engage in those non-water project  
 17 transfers and exchanges?  
 18 A. **That was a period where we experienced multiple**  
 19 **dry years on state water projects. It was also a period**  
 20 **where we drafted significant quantities of storage from**  
 21 **our storage accounts.**  
 22 Q. Please go to DTX 102 in your binder.  
 23 Can you describe what this document is?  
 24 A. **Yes. This is a report to our board of**  
 25 **directors that described the transactions that**

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1 **Metropolitan and other parties took during that timeframe**  
 2 **between 2008 and 2010.**  
 3 Q. And so does it contain a description of these  
 4 non-project water transfers you were just talking about?  
 5 **A. Yes, it does.**  
 6 Q. Will you explain generally how the water Met  
 7 purchases from the sellers gets to Met?  
 8 **A. Yes. It originates generally north of the**  
 9 **Delta and it travels through the Delta down to the Banks**  
 10 **Pumping Plant, where it's pumped into the California**  
 11 **Aqueduct and transmitted by the California Aqueduct down**  
 12 **to Metropolitan service area.**  
 13 Q. How much water did Met purchase through these  
 14 non-project water transfers and exchanges in 2008?  
 15 **A. It was approximately 41,000 acre-feet.**  
 16 Q. And were you looking at a particular place in  
 17 this document for that number?  
 18 **A. Yes. It would be table 1 on page 2 of the**  
 19 **report.**  
 20 Q. And how much water did Met purchase for these  
 21 non-project water transfers and exchanges in 2009?  
 22 **A. It was approximately 61,000 acre-feet.**  
 23 Q. How about in 2010?  
 24 **A. Approximately 228,000 acre-feet.**  
 25 Q. Now, focusing on the 228,000 acre-feet of

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1 non-project water that Met got in 2010, how does that  
 2 compare to the amount of State Water Project water Met  
 3 got in that same year?  
 4 **A. Metropolitan's final allocation or the final**  
 5 **allocation for all the contractors that year was**  
 6 **50 percent, so that represented roughly one million**  
 7 **acre-feet.**  
 8 Q. And so was this 228,000 acre-feet of  
 9 non-project water in addition to that one million  
 10 acre-feet?  
 11 **A. Yes, that's correct.**  
 12 Q. Okay. And approximately what percentage  
 13 addition was it?  
 14 **A. It was about 23 percent over what Metropolitan**  
 15 **was allocated.**  
 16 Q. You mean allocated from the state?  
 17 **A. That's correct.**  
 18 Q. Okay. I would like to talk about some of the  
 19 specific transfers and exchanges that are described in  
 20 this exhibit.  
 21 Can you turn to attachment one, page 1?  
 22 Can you describe in general terms what the  
 23 state water contractors buyers group transfers supply  
 24 refers to?  
 25 **A. Yes. The state water contractors that year**

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1 **facilitated bringing buyers and sellers together to --**  
 2 **for parties that were interested in buying supplemental**  
 3 **water supply in that year.**  
 4 Q. Okay. And how much water did Metropolitan  
 5 purchase in this 2010 transaction?  
 6 **A. It was approximately 88,000 acre-feet.**  
 7 Q. And who did Met purchase this water from?  
 8 **A. It was parties -- agricultural districts north**  
 9 **of the Delta.**  
 10 Q. And how did Metropolitan get that water to its  
 11 service area?  
 12 **A. The water originated north of the Delta, it**  
 13 **traveled through the Delta and was pumped into the**  
 14 **California Aqueduct where it traveled southward to**  
 15 **southern California, to Met service area.**  
 16 Q. Please turn to the next page.  
 17 There's a reference to a Shasta exchange  
 18 supply. Can you describe in general terms what that  
 19 transaction was?  
 20 **A. Yes. That was a dry year purchase that**  
 21 **Metropolitan did in 2003 and because of a change in**  
 22 **circumstances, Metropolitan did not move that water in**  
 23 **2003, but we entered into agreement with the Bureau of**  
 24 **Reclamation to transfer that water to them and take it at**  
 25 **a later date. And in 2010, that's when conditions were**

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1 **ripe actually to move the water from Bureau facilities**  
 2 **and into the State Water Project where it was conveyed to**  
 3 **Metropolitan.**  
 4 Q. Okay. And did that movement happen in 2010?  
 5 **A. That's correct.**  
 6 Q. Okay. Now, I don't want to walk through every  
 7 example in this report, but are there other examples of  
 8 these kinds of transfers and exchanges in this report  
 9 that Met has engaged in?  
 10 **A. Yes, there are.**  
 11 Q. And in all of these transfers and exchanges  
 12 described in this report, how did this non-project water  
 13 get to Met?  
 14 **A. It was transported over the State Water Project**  
 15 **in the California Aqueduct down to the Met service area.**  
 16 Q. Okay. Is the ability to do these transfers and  
 17 exchanges an important water management tool for Met?  
 18 **A. Yes, it is.**  
 19 Q. Can you describe how so?  
 20 **A. In times of shortage, particularly severe**  
 21 **shortage where we're having to use our storage reserves**  
 22 **to meet our member agency demands, purchasing water,**  
 23 **additional water supplies is very helpful to shore up**  
 24 **imported supplies in general to meet our deliveries to**  
 25 **member agencies.**

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1 MR. HIXSON: Okay. Your Honor, DTX 102 is  
 2 subject to the parties' stipulation and at this time  
 3 Metropolitan moves it into evidence.  
 4 MR. PURCELL: No objection.  
 5 THE COURT: 102 is admitted, DTX 102.  
 6 (Whereupon Exhibit 102 was  
 7 admitted into Evidence.)  
 8 BY MR. HIXSON:  
 9 Q. I would like to turn to a different subject and  
 10 talk about how Met stores the water it moves through  
 11 State Water Project facilities.  
 12 Can you turn to DTX 94 in your binder.  
 13 Can you explain what this document is?  
 14 **A. This was a presentation provided to the board**  
 15 **of directors at Metropolitan that described our storage**  
 16 **management strategy.**  
 17 Q. Please turn to page 3. What does this graphic  
 18 show?  
 19 **A. This is a graphic showing the storage programs**  
 20 **that Metropolitan has throughout the state.**  
 21 Q. What does the area shaded in yellow in this  
 22 graph show?  
 23 **A. That represents Metropolitan service area.**  
 24 Q. And what is the blue line going through  
 25 California to Met service area?  
**A. That's the California Aqueduct.**

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1 Q. Some of the storage facilities on this slide  
 2 are labeled as banking programs. Can you describe what  
 3 those are?  
 4 **A. Yes. Those are groundwater storage programs**  
 5 **where Metropolitan has partnered with agricultural water**  
 6 **storage districts in the Central Valley to store water in**  
 7 **surplus times and withdraw water in dry years.**  
 8 Q. Okay. And can you describe how Met uses the  
 9 Central Valley storage programs?  
 10 **A. Yes. In a dry year where we've taken a look at**  
 11 **various water supplies to shore up, say, a shortfall in**  
 12 **State Water Project supplies, we'll call on these**  
 13 **programs to extract water from the ground, provide it**  
 14 **back to the California Aqueduct and deliver it to**  
 15 **Metropolitan service area.**  
 16 Q. And who are the parties that provide the  
 17 storage to Met?  
 18 **A. Semi, Arvin-Edison and Kern Delta Water Storage**  
 19 **Districts in the Central Valley.**  
 20 Q. Physically, how does Met get the water to these  
 21 storage programs?  
 22 **A. In a wet year, we would deliver water through a**  
 23 **portion of the California Aqueduct and request that the**  
 24 **water be stored in these banking programs for later**  
 25 **withdrawal.**

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1 Q. And when Met takes water out of the storage  
 2 facilities, how does it get to Met?  
 3 **A. Typically through pumping. The agricultural**  
 4 **districts have pumps that convey water through their**  
 5 **service areas back to the California Aqueduct, where it**  
 6 **enters the State Water Project and is delivered to**  
 7 **Metropolitan.**  
 8 Q. Are the parties able to monitor the quality of  
 9 the water that comes out of these facilities for storage?  
 10 **A. Yes, they are.**  
 11 Q. Can you describe how they are able to do so?  
 12 **A. Yes. There's a water sampling taken of the**  
 13 **pump ins as well as upstream and downstream where the**  
 14 **pumping activity is taking place on the California**  
 15 **Aqueduct.**  
 16 Q. Does this monitoring allow the parties to know  
 17 the source of the water that comes out of the storage?  
 18 **A. Yes.**  
 19 Q. Okay. And can you describe how that is so?  
 20 **A. Okay. Each of the pumping programs kind of has**  
 21 **a water quality signature, if you will, a different**  
 22 **chemical composition and generally speaking, the pumping**  
 23 **programs have, say, lower total organic carbon than State**  
 24 **Water Project supply. So that's one indicator of the**  
 25 **differences in water quality in the pumped in water.**

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1 Q. And does this monitoring allow the parties to  
 2 know the source of the water that comes out of the  
 3 storage?  
 4 **A. Yes.**  
 5 Q. Is the water that comes out of these banking  
 6 programs often different from the project water that went  
 7 in?  
 8 **A. Yes.**  
 9 Q. And how do you know that?  
 10 **A. Just by again the chemical signature of the**  
 11 **water that's pumped in. There's a difference between**  
 12 **what's upstream in the pump-in programs and downstream in**  
 13 **the pump-in programs.**  
 14 Q. And in general what kind of water comes out of  
 15 the storage?  
 16 **A. It's generally groundwater that's extracted**  
 17 **from the ground in the Central Valley.**  
 18 THE COURT: When you are placing water, in  
 19 effect, into these areas, are you literally -- not you,  
 20 but are these local agencies literally pumping water into  
 21 groundwater?  
 22 THE WITNESS: They do it in a variety of ways.  
 23 They can store -- some of the agricultural districts have  
 24 spreading basins where they put the water on the ground  
 25 and it percolates in the groundwater basin.

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1 They can also exchange supplies. So they can  
 2 take Metropolitan water for storage and instead of  
 3 pumping water for their own agricultural irrigation,  
 4 these just utilize the Metropolitan water and leave their  
 5 water in the ground.  
 6 BY MR. HIXSON:  
 7 Q. Looking back at this slide on page 3 of PTX 94,  
 8 can you explain what SWP carryover is?  
 9 A. Yes. That's storage that's located in San Luis  
 10 Reservoir, which is in central California where  
 11 contractors can store carryover supplies from one year to  
 12 another.  
 13 Q. And who does Met contract with to store the  
 14 water?  
 15 A. Department of Water Resources.  
 16 Q. Okay. How does the water get to Metropolitan  
 17 service area from that storage?  
 18 A. It's delivered out of the reservoir where it  
 19 enters the California Aqueduct and it's conveyed  
 20 southerly to Metropolitan service area.  
 21 Q. Why does Met use SWP carryover storage?  
 22 A. We use that because oftentimes our State Water  
 23 Project allocation starts out very low, for example for  
 24 this year, going into 2014, and by storing carryover, we  
 25 can supplement those supplies in case the allocation

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1 stays low. And we have done that in the past.  
 2 Q. There's a reference on the slide to flexible  
 3 storage. Can you describe where that is?  
 4 A. Yes. That's contractual storage that we have  
 5 with DWR and it's located in two of the terminal  
 6 reservoirs at Castaic Lake and Lake Perris.  
 7 Q. Are those lakes, Castaic Lake and Lake Perris,  
 8 part of the State Water Project?  
 9 A. Yes, they are.  
 10 Q. And can you describe how flexible storage  
 11 works?  
 12 A. Metropolitan for a number of reasons, dry year,  
 13 operational flexibility and other reasons, can withdraw  
 14 water out of those two terminal reservoirs up to a  
 15 specific amount by contract but we have up to five years  
 16 to pay that water back.  
 17 Q. What kind of water does Met borrow from Castaic  
 18 Lake and Lake Perris?  
 19 A. It is State Water Project water.  
 20 Q. What kind of water can Met use to pay it back?  
 21 A. Any of our supplies.  
 22 Q. Now I would like to change topics and ask you  
 23 about storage generally.  
 24 Are you familiar with Met's use of its storage  
 25 facilities?

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1 A. Yes, I am.  
 2 Q. How does Met decide which ones to use?  
 3 A. We have a -- what's known as a water surplus  
 4 and drought management plan. It's a plan that was  
 5 developed jointly by Metropolitan and its member agencies  
 6 and it describes how storage should be used in both  
 7 surplus years and shortage years.  
 8 Q. And how did you become familiar with this water  
 9 surplus and drought management plan?  
 10 A. When I moved to operations, part of my  
 11 responsibility was to help with the planning of how the  
 12 storage is moved and what it's used for and so the WSDM  
 13 plan is a very important piece of that.  
 14 Q. Can you describe a little bit more about what  
 15 the water storage and water surplus and drought  
 16 management plan is?  
 17 A. Yes. The water surplus and drought management  
 18 plan provided a framework for which Metropolitan's  
 19 numerous storage programs would be exercised both in wet  
 20 years and in dry years.  
 21 There was analysis in the report that talked  
 22 about the frequency of surplus and shortage and how  
 23 storage would be used to blunt the effects of shortage,  
 24 for example.  
 25 Q. Let's go back DTX 94. Please turn to the fifth

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1 page of this exhibit.  
 2 Turning to the fifth page of this exhibit, can  
 3 you explain what this is describing?  
 4 A. Yes. This is a graphic from the WSDM plan that  
 5 shows how storage would be utilized or should be utilized  
 6 in the event of varying agrees of shortage. So for  
 7 instance, when we have a shortage on the State Water  
 8 Project, it would advise taking water from Diamond Valley  
 9 Lake, for example, under very shallow shortage. And  
 10 there's other actions that can take place, as you've seen  
 11 in recent depth of storage -- shortage.  
 12 THE COURT: You've used an acronym, W-S-D-M;  
 13 correct?  
 14 THE WITNESS: Correct.  
 15 BY MR. HIXSON:  
 16 Q. It's an acronym for what?  
 17 A. Water Surplus and Drought Management Plan,  
 18 WSDM.  
 19 Q. And so then these actions that are listed on  
 20 the fifth page of the exhibit, in general what are these  
 21 actions?  
 22 A. These are actions involving the operation of  
 23 Metropolitan storage portfolio. So for instance, it  
 24 gives guidance as far as what type of programs one should  
 25 exercise as you see differing levels or increasing levels

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1 **of shortage.**  
 2 Q. Okay. The first one is take from Diamond  
 3 Valley Lake. What is Diamond Valley Lake?  
 4 **A. Diamond Valley Lake is a reservoir that was**  
 5 **constructed and put online in 1999. It's located in**  
 6 **Riverside County. And it's 810,000 acre-feet. It**  
 7 **provides storage. One of the uses for Diamond Valley**  
 8 **Lake is dry year storage.**  
 9 Q. Does Diamond Valley Lake serve multiple  
 10 purposes?  
 11 **A. Yes, it does.**  
 12 Q. And can you describe what those are?  
 13 **A. Yes. Diamond Valley Lake provides operational**  
 14 **flexibility. It has a dry year storage component. It**  
 15 **also has emergency storage.**  
 16 Q. Are the Central Valley storage programs that  
 17 you testified about a few minutes ago part of this WSDM  
 18 plan?  
 19 **A. Yes, they are.**  
 20 Q. And can you describe what role they play?  
 21 **A. In a shortage that is a little more than just a**  
 22 **shallow shortage, for example, the WSDM plan would advice**  
 23 **to take water from Central Valley storage to supplement,**  
 24 **say, a deficit in imported supplies.**  
 25 Q. Okay. And do the flexible storage programs

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1 that you testified about a few minutes ago also play a  
 2 role in this WSDM plan?  
 3 **A. Yes, they do.**  
 4 Q. Is it similar to the Central Valley storage  
 5 role?  
 6 **A. It is similar but according to the plan, you**  
 7 **would take these actions or withdraw from these programs**  
 8 **to make up for an increasing level of shortage. So they**  
 9 **would come after the decision to take water from Diamond**  
 10 **Valley Lake or Central Valley storage.**  
 11 Q. What role do transfers of non-project water  
 12 through the State Water Project facilities play in this  
 13 water surplus and drought management plan?  
 14 **A. Well, when you get to an extreme level of**  
 15 **shortage or when your storage reserves are very depleted,**  
 16 **you would go out on the market and look and engage in**  
 17 **transfer activity to shore up a very low imported supply.**  
 18 Q. Okay. Now, at the bottom of this list, this  
 19 page 5 of this exhibit, there's a reference to  
 20 implementing an allocation plan. Can you please describe  
 21 what an allocation plan is?  
 22 **A. Yes. An allocation plan is under the most**  
 23 **extreme conditions it would be where a limit is placed on**  
 24 **the amount of water that a member agency can buy at our**  
 25 **regular full service rates.**

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1 Q. And does an allocation plan affect all the  
 2 member agencies?  
 3 **A. That's correct.**  
 4 Q. And how is that?  
 5 **A. The allocation plan was developed in**  
 6 **conjunction with the member agencies, but it looked at**  
 7 **historical demand levels by all the member agencies and**  
 8 **based on the severity of the shortage, a certain**  
 9 **percentage or a certain amount of water was limited for**  
 10 **all -- each member agency.**  
 11 Q. Is Met's ability to use the State Water Project  
 12 facilities to move water to and from the Central Valley  
 13 storage to flexible storage and to move non-project water  
 14 an important tool in trying to avoid an allocation plan?  
 15 **A. Yes, it is.**  
 16 Q. Now I would like to ask you about a related  
 17 issue.  
 18 Does Met have principles that guide storage  
 19 operations?  
 20 **A. Yes, they do.**  
 21 Q. Does Met store water to accommodate the  
 22 variations in demand just from a single member agency?  
 23 **A. No.**  
 24 Q. Please turn to the next page of this exhibit.  
 25 Does this exhibit list what Met storage

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1 operations principles are?  
 2 **A. Yes, it does.**  
 3 Q. Can you explain for us what the operational  
 4 flexibility principle means?  
 5 **A. Yes. That means that in following the WSDM**  
 6 **plan, that we would follow the principles of the WSDM**  
 7 **plan but operate the storage programs in a way that**  
 8 **looked at the total storage portfolio and the different**  
 9 **storages in the various pieces of the portfolio. So we**  
 10 **would manage it as a unit as opposed to taking a look at**  
 11 **one storage and having a pre-described level that had to**  
 12 **be taken out of Diamond Valley Lake, for instance, before**  
 13 **we took another action.**  
 14 **So, it would take a holistic view of the whole**  
 15 **portfolio and we would take actions that were**  
 16 **complimentary with the WSDM plan.**  
 17 Q. Can you explain what the system reliability  
 18 principle means?  
 19 **A. Yes. That means that we would use storage and**  
 20 **manage storage in such a way that was mindful of the**  
 21 **entire system in maintaining reliability throughout the**  
 22 **system.**  
 23 **For instance, there are areas in our**  
 24 **distribution system that can only be served by State**  
 25 **Water Project supplies, typically, and there are also**

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1 areas that can only be served by Colorado River Aqueduct  
2 supplies.

3 Q. Okay. Please turn to Page 9 of this exhibit.

4 Is this the continuation of the list of the  
5 storage operating principles?

6 A. Yes, it is.

7 Q. Can you explain for us what the invasive  
8 species management principle is?

9 A. Yes. Invasive species management means that in  
10 Colorado River water, for instance, there are invasive  
11 Quagga mussels that have infested the Colorado River  
12 supplies and so some of our reservoirs have those mussels  
13 in it. And in managing storage, we look to not further  
14 the spread of the invasive mussels. So for instance,  
15 Diamond Valley Lake does not have Quagga mussels so for  
16 right now, we don't put any Colorado River water into it.

17 Q. And can you explain how water quality factors  
18 into Met's storage operating principles?

19 A. Yes. When we look at drafting from storage, we  
20 are always mindful of water quality parameters such as  
21 salinity or trying to meet other water quality objectives  
22 when we're exercising water storage programs.

23 Q. Please turn to the next page.

24 Can you explain what emergency storage refers  
25 to?

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1 when to implement a water supply allocation.

2 One example from recent history was that as we  
3 saw storage depleted over several years, we didn't wait  
4 until the storage was empty then to allocate water. We,  
5 in conversation and collaboration with our member  
6 agencies, opted for a shallow, say, five or ten percent  
7 order magnitude shortage as the shortage was being  
8 drafted, not waiting until the storage was all gone and  
9 having a very draconian allocation, let's say, that cut  
10 very deeply.

11 Q. Okay. Now I would like to change topics.

12 Are you familiar with capacity issues regarding  
13 Met's distribution system?

14 A. Yes, I am.

15 Q. And how are capacity issues related to your job  
16 responsibilities?

17 A. Well, first and foremost, our delivery  
18 responsibilities are meeting the member agency demands  
19 for water.

20 We also have other operational priorities,  
21 which include managing, say, water quality objectives  
22 like blending. And also we're also in charge of making  
23 storage decisions and moving water around the system to  
24 facilitate storage and certain of our water storage  
25 programs.

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1 A. Yeah. Emergency storage is a piece of our  
2 storage that's intended for use only when you have, say,  
3 a catastrophic event like a large earthquake that severs  
4 an aqueduct or shuts down the State Water Project for a  
5 time.

6 So, unlike dry year storage that is exercised,  
7 you know, to offset droughts or move water in times of  
8 surplus, the emergency management is specifically for  
9 catastrophic events.

10 Q. So does Met use emergency storage in dry years?

11 A. No.

12 Q. What reservoirs are specifically used for  
13 emergency storage?

14 A. It would be Diamond Valley Lake, Lake Skinner,  
15 Lake Matthews, Lake Perris, Castaic Lake and Pyramid  
16 Lake.

17 Q. So some of those are State Water Project  
18 reservoirs, correct?

19 A. Yes.

20 Q. And can you explain what the sixth operating  
21 principle is?

22 A. Yes. Minimizing extreme and volatile supply  
23 allocations. The idea there is that we would take a look  
24 at the use of storage and the rate of storage withdrawals  
25 in making decisions on which storages to use and also

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1 Q. What sort of peaking does Met consider in  
2 sizing the distribution system?

3 A. It's typically a peak week.

4 Q. What are some of the reasons that Met moves  
5 water through its pipelines?

6 A. Again, first and foremost, it would be to meet  
7 member agency demands. But we also use the pipelines to  
8 implement other operational strategies, like blending,  
9 managing salinity, for instance, and facilitating storage  
10 throughout our system.

11 Q. Have there ever been times when the pipelines  
12 in Met's distribution system have been at or near  
13 capacity?

14 A. Yes.

15 Q. Can you give us an example of that?

16 A. One example is our Rialto feeder. It's a  
17 pipeline that is in the northeastern end of our system.  
18 It's connected to the Lake Silverwood system of the State  
19 Water Project and it delivers State Water Project to  
20 customers that are connected to that pipeline.

21 But in addition, we also use that pipeline to  
22 supply blend water to our Weymouth and Diemer treatment  
23 plants. And member agencies and Metropolitan also use  
24 that to facilitate groundwater storage in the region.

25 Q. Can you give us another example of when

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1 pipelines in your distribution system have been at or  
 2 near capacity?  
 3 **A. More recently the San Diego pipelines 3 and 5**  
 4 **that convey untreated water to the San Diego County Water**  
 5 **Authority area and to agencies in the Riverside area were**  
 6 **at maximum capacity.**  
 7 Q. When a pipeline is at or near capacity, does  
 8 that affect how Met addresses the other operational  
 9 reasons for moving water?  
 10 **A. Yes.**  
 11 Q. And can you describe in general terms how it  
 12 affects that?  
 13 **A. Okay. Generally, going back to the Rialto**  
 14 **feeder, if we are meeting member agency demands and**  
 15 **supplying water to the plants for blending, if the member**  
 16 **agency demands on that pipeline increase, then we would**  
 17 **reduce the amount of water supply available to those two**  
 18 **treatment plants for blends and the net result would be**  
 19 **everybody's demands would be met but the blends to the**  
 20 **treatment plants would be reduced.**  
 21 Q. Okay. And have capacity constraints in, for  
 22 example, the Rialto feeder caused Metropolitan to take  
 23 some of those actions?  
 24 **A. Yes.**  
 25 Q. In your role as system operations section

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1 manager, are you familiar with how water from Met gets to  
 2 San Diego?  
 3 **A. Yes.**  
 4 Q. Okay. Do you have DTX -- sorry. You have DTX  
 5 125 in your binder.  
 6 Your Honor, this is a large map. We have an  
 7 easel next to the witness and I would like to put up a  
 8 blowup of that and hand him a pointer so that it will be  
 9 easier to follow.  
 10 First, can you identify for us what DTX 125 is?  
 11 **A. This is a cope of our distribution system**  
 12 **schematic. It's known as the L-1212 map.**  
 13 Q. Can you tell us what pipes deliver water from  
 14 Metropolitan to San Diego?  
 15 **A. Yes. San Diego San pipelines 1 through 5.**  
 16 Q. And can you identify for us on this map where  
 17 those pipes are that go to San Diego?  
 18 **A. Yes.**  
 19 **This is Lake Skinner and the Skinner Treatment**  
 20 **Plant. And from this facility, there are five**  
 21 **treatment -- or five pipelines that deliver water to**  
 22 **San Diego.**  
 23 Q. Okay. We'll keep it blown up on the screen but  
 24 you can sit down now.  
 25 **A. Okay.**

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1 Q. How many of those pipes that go from Met to  
 2 San Diego go through a treatment plant?  
 3 **A. There are three pipelines that are delivering**  
 4 **treated water from the Skinner Treatment Plant in**  
 5 **San Diego.**  
 6 Q. And which pipelines are those?  
 7 **A. Those are pipelines 1, 2 and 4.**  
 8 Q. How many of the pipelines from Met to San Diego  
 9 are for untreated water?  
 10 **A. There are two pipelines, No. 3 and 5.**  
 11 Q. Does all of the water that Met sends to  
 12 San Diego go through the Skinner area?  
 13 **A. Yes.**  
 14 Q. Physically speaking, is there any difference  
 15 between the water that goes through the Skinner Treatment  
 16 Plant and the untreated water that Met sends to  
 17 San Diego?  
 18 **A. Not normally, no.**  
 19 Q. Are you aware that Met has an exchange  
 20 agreement with San Diego?  
 21 **A. Yes, I am.**  
 22 Q. Does Met provide exchange water to San Diego  
 23 under this agreement?  
 24 **A. Yes.**  
 25 Q. Physically speaking, is there any difference

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1 between the exchange water and the other water that Met  
 2 provides to San Diego?  
 3 **A. None that I know of.**  
 4 Q. Is the water that Met sends to San Diego a  
 5 blend from different sources?  
 6 **A. Yes, it is.**  
 7 Q. Okay. And what are those different sources?  
 8 **A. The water from the State Water Project and**  
 9 **water from the Colorado River Aqueduct.**  
 10 Q. At any given point in time, is the treated  
 11 water, untreated water and exchange water that Met sends  
 12 to San Diego usually all the same level of blend?  
 13 **A. Yes, it is.**  
 14 Q. Does Met monitor the blend of water in the  
 15 Skinner Treatment Plant that goes to San Diego?  
 16 **A. Yes, we do.**  
 17 Q. And can you describe in general terms how Met  
 18 monitors that blend?  
 19 **A. Yes. We take water samples on the influence of**  
 20 **the Skinner Treatment Plant and take routine measurements**  
 21 **of the water quality as well as measurements of the**  
 22 **blend.**  
 23 Q. What section of the Metropolitan does that  
 24 monitoring?  
 25 **A. It's our water quality section.**

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1 Q. Does the water quality section record those  
 2 blend records in a database?  
 3 A. **Yes, they do.**  
 4 Q. Are those records entered in the database at or  
 5 near the time the monitoring took place?  
 6 A. **Yes, they are.**  
 7 Q. Does Met have a regular practice to record  
 8 those readings in the database?  
 9 A. **Yes.**  
 10 Q. Does Met retain those records?  
 11 A. **Yes, we do.**  
 12 Q. Did you obtain the Skinner blend records from  
 13 2003 forward?  
 14 A. **Yes, I did.**  
 15 Q. Did you create a chart that reflects those  
 16 data?  
 17 A. **Yes.**  
 18 Q. Please turn to DTX 120 in your binder.  
 19 Did you create a graph reflected in DTX 120?  
 20 A. **Yes, I did.**  
 21 Q. And what data did you use to create it?  
 22 A. **This was daily data from our lab sheet program.**  
 23 **That's the database that tracks water quality, including**  
 24 **blend.**  
 25 Q. Is this the Skinner blend record you just

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1 described?  
 2 A. **Yes, it is.**  
 3 Q. And can you explain what this slide depicts?  
 4 A. **This shows daily blends at the Skinner**  
 5 **Treatment Plant in percentage of State Water Project**  
 6 **water on the Y axis.**  
 7 Q. Okay. And so if the blue line is near  
 8 50 percent, approximately what percentage of the water  
 9 that Met is sending to San Diego comes from the State  
 10 Water Project?  
 11 A. **It's about 50 percent.**  
 12 Q. Okay. Is this graph in DTX 120 an accurate  
 13 depiction of the Skinner blend records from the database?  
 14 A. **Yes, it is.**  
 15 MR. HIXSON: Your Honor, at this time  
 16 Metropolitan moves the admission of DTX 120.  
 17 MR. PURCELL: No objection.  
 18 THE COURT: DTX 120 is admitted.  
 19 (Whereupon Exhibit 120 was  
 20 admitted into Evidence.)  
 21 BY MR. HIXSON:  
 22 Q. Why does the percentage of the blend that comes  
 23 from the State Water Project vary?  
 24 A. **It varies for a number of reasons. The primary**  
 25 **reason would be to reflect the water supply conditions.**  
**So for instance, when we have a high amount of State**

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1 **Water Project water, you might see the blends at Skinner**  
 2 **increase significantly.**  
 3 **And when we have a shortage of State Water**  
 4 **Project water, you will see the blends drop. There are**  
 5 **other different operational reasons, such as pipeline**  
 6 **capacities and other things like that that influence the**  
 7 **blends but primarily supply driven.**  
 8 Q. Okay. Early this year, approximately how much  
 9 of the water that San Diego was receiving was State Water  
 10 Project water?  
 11 A. **It was approximately 90 percent.**  
 12 Q. And why was that?  
 13 A. **At the late last year and early into this year,**  
 14 **we had the highest storage, dry year storage in**  
 15 **Metropolitan's history, so our storage reserves were**  
 16 **fairly full.**  
 17 **We also had some very early rain, very high**  
 18 **amounts of rain that was an indication to us that the**  
 19 **water supply from the State Water Project would be very**  
 20 **high, so we took steps to move that water into our system**  
 21 **and as a result, the blends at the Skinner Plant were**  
 22 **very high.**  
 23 Q. But did 2013 prove to be a wet year?  
 24 A. **No, it did not.**  
 25 MR. HIXSON: Your Honor, at this time I'm also

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1 going to move in DTX 94 and DTX 125, which were the  
 2 subject of the parties' stipulation.  
 3 MR. PURCELL: No objection.  
 4 THE COURT: DTX 94 is admitted.  
 5 MR. HIXSON: Okay.  
 6 (Whereupon Exhibit 94 was  
 7 admitted into Evidence.)  
 8 THE COURT: DTX 125 is admitted.  
 9 MR. HIXSON: That's right.  
 10 (Whereupon Exhibit 125 was  
 11 admitted into Evidence.)  
 12 MR. HIXSON: Pass the witness.  
 13 THE COURT: Cross-examination? Do you need a  
 14 break?  
 15 MR. PURCELL: Five minutes?  
 16 THE COURT: Five minutes it is.  
 17 Thank you.  
 18 (Brief break.)  
 19 THE COURT: Let's continue.  
 20 CROSS-EXAMINATION  
 21 BY MR. PURCELL:  
 22 Q. Good afternoon, Mr. Yamasaki.  
 23 A. **Good afternoon.**  
 24 Q. Met's facilities are connected to the State  
 25 Water Project facilities; correct?  
 A. **That's correct.**  
 Q. And Met doesn't have any control over the State

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1 Water Project facilities, does it?  
 2 **A. Well, I mean depends on what you mean by**  
 3 **"control."**  
 4 Q. Well, Met doesn't operate State Water Project  
 5 facilities; correct?  
 6 **A. We do a fair amount of coordination with the**  
 7 **Department of Water Resources. We schedule water and we**  
 8 **have a number of activities to coordinate our operations.**  
 9 **And in rare circumstances, we do operate portions of the**  
 10 **State Water Project.**  
 11 Q. Met doesn't have a switch or anything that it  
 12 can turn to move water through the State Water Project  
 13 system?  
 14 **A. Occasionally we do.**  
 15 Q. In emergencies?  
 16 **A. No, not only in emergencies.**  
 17 Q. All right. Now, I would like to put up the map  
 18 that was shown in Met's opening, if we could, slide 5.  
 19 If we could focus on -- that's good.  
 20 Mr. Yamasaki, the California Aqueduct is coming  
 21 down there in blue and at the far left, upper corner of  
 22 the screen, there's one of the State Water Project  
 23 terminal reservoirs, Castaic Lake; is that right?  
 24 **A. Yes.**  
 25 Q. And then the east branch is coming down and

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1 over in the right-hand part of the screen, there's Lake  
 2 Perris, the other terminal reservoir; is that right?  
 3 **A. Yes.**  
 4 Q. Now, when the water comes down through the  
 5 State Water Project, Met doesn't physically take  
 6 possession of the water until the State Water Project  
 7 delivers it from the terminal reservoirs; correct?  
 8 **A. Yes, that's correct. There's also a Silverwood**  
 9 **Lake on the map where Met takes delivery of water.**  
 10 Q. All right. And then at that point Met takes  
 11 delivery of that water supply from the State Water  
 12 Project?  
 13 **A. Yes.**  
 14 Q. Now -- and at that point, Met has  
 15 responsibility for treating the water?  
 16 **A. Yes, for water that agencies want to take**  
 17 **that's treated.**  
 18 Q. And Met can run the water through its  
 19 distribution system?  
 20 **A. Yes.**  
 21 Q. And Met can combine or blend that water with  
 22 water from other sources?  
 23 **A. Yes.**  
 24 Q. But Met can't do any of those things until the  
 25 State Water Project delivers the water to Met's

536

1 distribution system at the terminal reservoirs; correct?  
 2 **A. Generally correct, yes.**  
 3 Q. Met doesn't blend water in the State Water  
 4 Project pipes?  
 5 **A. It doesn't blend Colorado River water in the**  
 6 **State Water Project pipes.**  
 7 Q. When Met moves non-project water through the  
 8 State Water Project, it has to enter into a contract with  
 9 the State Water Project to do that; correct?  
 10 **A. I believe there might be a contract.**  
 11 Q. I mean it can't just call up DWR and have them  
 12 send down 50,000 acre-feet without some paperwork; right?  
 13 **A. I believe there's paperwork involved, yes.**  
 14 Q. And before Met can move non-project water  
 15 through the State Water Project, the State Water Project  
 16 has to determine that it has capacity available in its  
 17 facilities, doesn't it?  
 18 **A. I suppose it does.**  
 19 Q. And the Department of Water Resources has to  
 20 determine that there wouldn't be any negative  
 21 environmental effects or anything like that involved with  
 22 the water transfer?  
 23 **A. Yeah. That's beyond my experience.**  
 24 Q. All right. But DWR has to make at least a  
 25 determination of the capacity available before it can

537

1 move water to Met?  
 2 **A. Yes.**  
 3 Q. And Met and DWR engage in a process of  
 4 negotiations to formalize that arrangement?  
 5 **A. I don't know if there's negotiations involved**  
 6 **with that, no.**  
 7 Q. All right. But there is paperwork?  
 8 **A. Paperwork, yes, most likely.**  
 9 Q. Now, Met's not the only party who can ask DWR  
 10 to move non-project water through the State Water  
 11 Project; right?  
 12 **A. That's correct.**  
 13 Q. That's just wheeling, right, wheeling on the  
 14 State Water Project system?  
 15 **A. I'm not sure if it is or not. I'm not an**  
 16 **expert in wheeling.**  
 17 Q. All right. It is moving water through the  
 18 pipes of the State Water Project; correct?  
 19 **A. Yes, it is.**  
 20 Q. All right. Other State Water Project  
 21 contractors can also have DWR move water through the DWR  
 22 facilities?  
 23 **A. Yes.**  
 24 Q. And San Diego could arrange separately with DWR  
 25 to move water through the DWR facilities, couldn't it?

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1       **A. I'm not sure that it can.**  
2       Q. All right. You don't know one way or the  
3 other?  
4       **A. That's correct.**  
5       Q. Now the wheeling -- are you familiar with  
6 Metropolitan's wheeling rate?  
7       **A. Vaguely familiar.**  
8       Q. You don't know the components of it or how it's  
9 charged?  
10       **A. No.**  
11       Q. All right. I would like to put up DTX 120,  
12 which there is a black binder that I put up there. It  
13 should be in there. It should also be in the white  
14 binder your counsel handed you.  
15       You testified about this on direct examination.  
16 You recall this chart; correct?  
17       **A. Yes.**  
18       Q. This is a measurement of the blend of State  
19 Water Project and Colorado River at Met's Skinner  
20 Treatment Plant?  
21       **A. That's correct.**  
22       Q. And Met controls the blend of water at the  
23 Skinner Treatment Plant; correct?  
24       **A. Yes.**  
25       Q. No Met member agencies control the blend of

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1 water at the Skinner Treatment Plant?  
2       **A. No.**  
3       Q. The member agencies don't dictate to Met what  
4 sort of blend Met needs to have at the Skinner plant?  
5       **A. Not directly, no.**  
6       Q. Or at any of Met's plants. Member agencies  
7 don't dictate the blend at any of Met's treatment plants?  
8       **A. No.**  
9       Q. Met has five treatment plants?  
10       **A. Yes.**  
11       Q. Different plants deliver water to different  
12 agencies?  
13       **A. Yes, that's correct.**  
14       Q. And there's a different blend of Colorado River  
15 versus State Water Project water at each of the five  
16 plants; correct?  
17       **A. Two of the plants deliver only State Water**  
18 **Project water.**  
19       Q. All right. But the other three plants, the  
20 blend is different at each of them?  
21       **A. Yes.**  
22       Q. And those differently blended sources of water  
23 are then delivered to different Met member agencies?  
24       **A. That's correct.**  
25       Q. And Met has complete control over what sort of

540

1 blend it delivers?  
2       **A. Yes.**  
3       Q. And the same is true with respect to the water  
4 Met delivers to San Diego under its exchange agreement  
5 with IID; correct? Met has complete control over that  
6 blend?  
7       **A. I suppose so, yes.**  
8       Q. San Diego doesn't have any ability to dictate  
9 to Met what sort of blend it needs to provide in terms of  
10 IID water?  
11       **A. Not that I know of.**  
12       Q. And again all that blending happens within  
13 Met's distribution system; correct?  
14       **A. Generally, yes.**  
15       Q. After the water supplies are delivered into the  
16 distribution system?  
17       **A. Yes.**  
18       Q. Now --  
19       THE COURT: Keep your voice up.  
20 BY MR. PURCELL:  
21       Q. Now, DTX 120 doesn't show the specific blend of  
22 water that Met delivers to San Diego, does it?  
23       **A. I'm sorry?**  
24       Q. DTX 120, the blend at the Skinner Treatment  
25 Plant doesn't show the specific blend that Met actually

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1 delivers to San Diego, does it?  
2       **A. I think it does, yes.**  
3       Q. It does. So the blend at the Skinner Treatment  
4 Plant, your testimony is in fact the blend that's  
5 delivered to San Diego?  
6       **A. Yes.**  
7       Q. All right. And so this -- strike that.  
8       Now, Met doesn't incur different costs  
9 depending on what sort of blend of water it delivers to  
10 San Diego, does it?  
11       **A. It could.**  
12       Q. Do you know?  
13       **A. One of the components we use for blending water**  
14 **is delivery of water from, say, Diamond Valley Lake as**  
15 **well. It's -- we use State Water Project water, Colorado**  
16 **River water and at times withdrawals from Diamond Valley**  
17 **Lake to create blends at the Skinner Treatment Plant.**  
18       Q. Has Met ever done any study as to how its costs  
19 fluctuate depending on what blend of water it's  
20 delivering to member agencies?  
21       MR. HIXSON: Objection. Calls for speculation,  
22 lack of personal knowledge.  
23       THE COURT: Overruled. We'll find out if he  
24 knows or not. He may not.  
25       Go ahead.

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1 THE WITNESS: I don't know of any.  
 2 BY MR. PURCELL:  
 3 Q. You are not aware of any hard data on that  
 4 issue?  
 5 A. **Not that I know of.**  
 6 Q. Now, Met provides dry year storage; right?  
 7 A. **Yes.**  
 8 Q. And Met incurs costs to provide dry year  
 9 storage?  
 10 A. **Yes.**  
 11 Q. Met incurs capital costs to provide dry year  
 12 storage?  
 13 A. **I believe it does.**  
 14 Q. And Met rents out space in other storage  
 15 facilities for dry year storage?  
 16 A. **I don't know if renting is a -- is the right**  
 17 **term.**  
 18 Q. Maybe I was too colloquial. Met obtains  
 19 storage space at storage facilities for dry year storage?  
 20 A. **That sounds right.**  
 21 Q. And that costs money?  
 22 A. **I think it does.**  
 23 Q. The storage space isn't free?  
 24 A. **Correct.**  
 25 Q. Currently Met has over three million acre-feet

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1 of water in storage; right?  
 2 A. **Yes.**  
 3 Q. And Met's never sold three million acre-feet of  
 4 water in a calendar year, has it?  
 5 A. **Not three million acre-feet.**  
 6 Q. No matter how dry the year has been, Met's  
 7 never sold three million acre-feet?  
 8 A. **That's correct.**  
 9 Q. Met's water sales have been steadily declining  
 10 over the past five or so years; isn't that right?  
 11 A. **This year we saw an increase.**  
 12 Q. An increase? What's Met's projected water  
 13 sales this year?  
 14 A. **Calendar year, roughly two million acre-feet.**  
 15 Q. Two million acre-feet.  
 16 And in 2008, you were up at about 2.3 million  
 17 acre-feet.  
 18 A. **I would have to check my records.**  
 19 Q. All right. I would like to just back to a  
 20 document your counsel put up, DTX 102.  
 21 And, Jeff, can you blow up the first paragraph?  
 22 So the first sentence of the summary says that  
 23 following the 1986 to 1991 drought, Metropolitan  
 24 intensified its strategic planning efforts towards  
 25 diversification of supplies as the methodology for

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1 providing California with dry year supply reliability;  
 2 correct?  
 3 A. **Yes.**  
 4 Q. And that's an important policy with  
 5 Metropolitan; isn't it?  
 6 A. **Yes.**  
 7 MR. PURCELL: No further questions.  
 8 MR. HIXSON: No redirect.  
 9 THE COURT: Okay. Thank you very much, sir.  
 10 Excused. Thank you so much.  
 11 Do you want to use up another 15 minutes today?  
 12 How would you like to proceed?  
 13 MR. HIXSON: We would like to call our next  
 14 witness tomorrow morning.  
 15 MR. KEKER: Your Honor, I'm concerned about  
 16 time. We've been -- why can't they start their next  
 17 witness?  
 18 THE COURT: It's 15 minutes. That's okay.  
 19 Well, we're not off the record, but off the  
 20 clock. Let me just have you think about two dates in  
 21 case we need to at least allocate a little bit more time  
 22 if we run out of time by Monday.  
 23 And you can -- you don't have to tell me your  
 24 reaction to this now but the 17th and 23rd of January are  
 25 probably available so if we need another two or three

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1 hours or something like that to get this done, just put  
 2 that in your pipe and smoke it and we can talk about it  
 3 tomorrow or on Monday.  
 4 Anything else we can do of a housekeeping  
 5 nature at this point?  
 6 MR. KEKER: Yeah.  
 7 THE COURT: Yes, sir.  
 8 MR. KEKER: Just the time. I mean I hate to  
 9 see this linger on from your point of view, from our  
 10 point of view. We can get briefs filed by the 17th of  
 11 January.  
 12 They have, as I understand it, one, two, three  
 13 more witnesses. They've got two days to -- and they  
 14 may -- they say they may be calling Mr. Woodcock, who we  
 15 object to because he was the expert but we'll see what  
 16 they say.  
 17 But, if they only have three witnesses, plus  
 18 some small part for Woodcock, the idea that we can't get  
 19 this done in the next two days is wrong. We ought to be  
 20 able to do it.  
 21 And if we just sort of push through, we would  
 22 really appreciate it rather than let it all go away for a  
 23 month and so on. I mean I know you've been relaxed about  
 24 it but it does seem to me your original idea let's get  
 25 this done in five days is exactly right.


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1 And there's really no excuse that we can't put  
 2 on the next three witnesses. We'll be quick in our  
 3 cross. We're not going to take -- you know, consume lots  
 4 of time parading around the courtroom, waving papers and  
 5 stuff like that. We'll get it done.  
 6 So, I guess I would just like the Court to push  
 7 us a little bit more and get this thing done Monday  
 8 night.  
 9 THE COURT: Yes, sir.  
 10 MR. HIXSON: The plaintiffs had a chance to put  
 11 on their case without being unduly pressured. We would  
 12 like the same chance. We plan to be efficient and we  
 13 would just like the opportunity to do that.  
 14 MR. KEKER: We did it in two days and we want  
 15 them to take the same opportunity and do it in two days.  
 16 They're taking three, that's fine but not four.  
 17 THE COURT: Mr. Keke, I'm completely  
 18 sympathetic with your sense of urgency. I have the same,  
 19 but I feel like I made a promise to both sides. And I  
 20 think Metropolitan may feel rightfully that they have to  
 21 walk me through the record, they have to show me what's  
 22 in the record, and I feel an obligation to adhere to the  
 23 promise I made to the attorneys.  
 24 MR. KEKER: Could we go a little bit longer at  
 25 any of these -- tomorrow or the next day?

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1 THE COURT: It's not going to make much  
 2 difference. There's always another ten minutes or so,  
 3 but we have agreements with unions that hamper us a  
 4 little bit.  
 5 When I first got to this court some years ago,  
 6 I remember thinking that we could go on Saturdays and  
 7 Sundays and I could have two trials a day and we could go  
 8 until 7:00 o'clock. But it turns out with that Article  
 9 III standing there's nothing I could do.  
 10 MR. KEKER: Even with Article III standing,  
 11 that's tough sometimes.  
 12 THE COURT: It is tough but there's certain  
 13 flexibility.  
 14 MR. KEKER: I'm glad you didn't prevail, your  
 15 Honor, for all of our sakes.  
 16 THE COURT: This is probably a little more  
 17 civilized.  
 18 I look forward to seeing you tomorrow.  
 19 (Proceedings concluded.)  
 20 ---o0o---  
 21  
 22  
 23  
 24  
 25

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1 State of California )  
 ) Ss.  
 2 County of Alameda )  
 3  
 4  
 5 I, Connie J. Parchman, CSR #6137, do hereby  
 6 certify that I am a certified shorthand reporter; that I  
 7 was personally present in the above-mentioned  
 8 proceedings; that I took down in shorthand the  
 9 proceedings and thereafter transcribed said notes into  
 10 longhand; that the forgoing pages constitute a full, true  
 11 and correct transcript of the said notes in said  
 12 proceedings; and that I have no interest in the outcome  
 13 of the case.  
 14  
 15 Dated: December 20, 2013  
 16  
 17  
 18  
 19   
 20 \_\_\_\_\_  
 21 Connie J. Parchman, CSR #6137  
 22  
 23  
 24  
 25

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SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SAN FRANCISCO  
 BEFORE THE HONORABLE CURTIS A. E. KARNOW, JUDGE PRESIDING  
 DEPARTMENT NUMBER 304  
 ---oOo---  
 SAN DIEGO COUNTY WATER AUTHORITY, )  
 ) Case No. CPF-10-510830  
 Plaintiff, ) Case No. CPF-12-512466  
 ) Trial  
 vs. )  
 ) Volume IV  
 METROPOLITAN WATER DISTRICT OF )  
 SOUTHERN CALIFORNIA, ) Pages 550 - 749  
 )  
 Defendant, )

Reporter's Transcript of Proceedings  
 Friday, December 20, 2013

Reported by:  
 CONNIE J. PARCHMAN, CSR 6137  
 CERTIFIED REALTIME REPORTER

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DECEMBER 20, 2013 MORNING SESSION  
 PROCEEDINGS  
 ---000---

THE COURT: Good morning. Nice to see everyone.  
 Ready to continue?

MR. HIXSON: We are, your Honor.  
 Metropolitan calls Devendra Upadhyay to the stand.

THE COURT: Thanks very much.  
 DEVENDRA UPADHYAY,  
 having been called as a witness by the Defense, and  
 having been duly sworn under the standard oath, was  
 examined and testified as follows:

THE CLERK: Thank you. Please be seated.  
 If you would adjust the microphone and state  
 and spell your first and last name.

THE WITNESS: My name is Devendra Upadhyay,  
 D-E-V-E-N-D-R-A, U-P-A-D-H-Y-A-Y.

THE COURT: If you would just make sure you do  
 speak into the microphone. Assume you're talking to the  
 people in the back of the room.

THE WITNESS: Sure.

MR. HIXSON: Your Honor, the witness has a  
 binder of documents in front of him. I would like to

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1 provide one to your Honor as well.  
 2 THE COURT: Thank you. I appreciate it.  
 3 DIRECT EXAMINATION  
 4 BY MR. HIXSON:  
 5 Q. Good morning.  
 6 A. Good morning.  
 7 Q. Who do you work for?  
 8 A. Metropolitan Water District of Southern  
 9 California.  
 10 Q. How long have you worked for Met?  
 11 A. I've worked for Metropolitan since 1995 with a  
 12 brief spell from 2005 to 2008 where I worked for another  
 13 agency.  
 14 Q. What position do you currently hold at Met?  
 15 A. I am the water resource management group  
 16 manager for Metropolitan.  
 17 Q. And can you give a description of your job  
 18 responsibilities?  
 19 A. Sure. My group manages contracts for water  
 20 supply on the Colorado River with the Bureau of  
 21 Reclamation and other parties we have water contracts  
 22 with. We also administer the state water contract with  
 23 the State of California and Department of Water  
 24 Resources.  
 25 We run demand management programs, conservation

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1 programs for businesses and residents throughout Southern  
 2 California. We run a local resources program as part of  
 3 our demand management programs that provide incentives  
 4 for recycled water development and groundwater recovery  
 5 development.  
 6 I also have a section that deals with  
 7 forecasting of needs for resources to meet demands in our  
 8 service area out into the future, so that's a planning  
 9 group.  
 10 Q. What was your position before your current one?  
 11 A. Before I came into this position, I was section  
 12 manager in the CFO's office overseeing budgets and  
 13 financial planning.  
 14 Q. And can you describe what your responsibilities  
 15 were in that position?  
 16 A. Yes. We prepared the budget for Metropolitan  
 17 and put together long-range finance plans and prepared  
 18 rate recommendations.  
 19 Q. And turning to the 1995 through 2005 timeframe,  
 20 can you describe what your job responsibilities were at  
 21 that time?  
 22 A. At that time I was in what was known as the  
 23 planning and resources division largely doing analysis  
 24 related to Metropolitan's long-range plans for resources  
 25 and facilities.

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1 Q. What are Metropolitan's demand management  
 2 programs?  
 3 A. Our demand management programs consist of a  
 4 conservation program and a local resources program and a  
 5 seawater desalination program where the intent of those  
 6 programs is to reduce the demands for imported water to  
 7 move through the Metropolitan system.  
 8 Q. Can you describe what types of projects are  
 9 funded by the local resources program?  
 10 A. The local resources program provides incentives  
 11 for recycled water facilities and groundwater recovery  
 12 facilities, or groundwater recovery is the cleanup of  
 13 groundwater supplies that have been contaminated or may  
 14 be too salty to simply pull out of the ground and use  
 15 immediately.  
 16 Q. And so are these member agency programs that  
 17 are being funded through the local resources program?  
 18 A. Yes, they are.  
 19 Q. Do the member agencies apply for them?  
 20 A. Yes. Member agencies would submit applications  
 21 under the local resources programs. Under our  
 22 conservation program, we are providing incentives to  
 23 entities throughout the service area.  
 24 Q. Has every member agency applied for program  
 25 incentives from the local resources program?

560

1 A. No, they have not.  
 2 Q. Are there any member agencies that have no  
 3 local resources programs being funded?  
 4 A. Yes. There's four or five. Fullerton as an  
 5 example, Pasadena, San Marino, San Fernando. There are  
 6 some agencies or cities that don't necessarily have the  
 7 contaminated groundwater or access to wastewater supplies  
 8 to provide recycled water or groundwater recovery  
 9 facilities.  
 10 Q. Okay. Was there an initial acre-foot target  
 11 for the local resources program?  
 12 A. Yes. There was a target that came out of our  
 13 integrated resources plan. The initial target was for  
 14 500,000 acre-feet to be developed -- that's an annual  
 15 number -- by 2020.  
 16 Q. Okay. And was that initial target met?  
 17 A. Yes. Based on projections, we signed contracts  
 18 with folks that should produce 500,000 acre-feet by 2021.  
 19 Q. Was the target increased at some point?  
 20 A. Yes. Metropolitan's board in 2007 considered a  
 21 change to the local resources program to increase the  
 22 target and they basically wiped the slate clean and set a  
 23 new target from 2007 forward for an additional 174,000  
 24 acre-feet.  
 25 Q. Is that again an annual amount?

561

1       **A. That is an annual amount.**  
2       Q. Can you describe the seawater desalination  
3 program?  
4       **A. Seawater desalination program is a program that**  
5 **really mirrors the local resources program and that was**  
6 **targeting seawater desalination project.**  
7       Q. And can you describe the conservation credits  
8 program?  
9       **A. Yes. The conservation credits program is a**  
10 **program through which Metropolitan is providing**  
11 **incentives throughout the region to buy down the costs of**  
12 **devices that might be used in businesses or in residences**  
13 **that are more efficient, so things like high efficiency**  
14 **toilets, high efficiency clothes washers.**  
15       **Recently we focused much more on outdoor water**  
16 **use, so we're focusing on things like weather-based**  
17 **irrigation controllers and efficient irrigation devices**  
18 **around the home or around the business. So we're**  
19 **providing incentives to buy down the cost of those**  
20 **devices.**  
21       Q. And when you refer to credits throughout the  
22 region, what do you mean by "regional"?  
23       **A. Well, the majority of that program is managed**  
24 **through a regional approach, a regional vendor that we**  
25 **actually have whereby consumers, a resident somewhere**

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1       **will be able to go -- they'll be able to purchase, say, a**  
2 **high efficiency toilet if they apply for incentive**  
3 **through Metropolitan and they would receive a rebate from**  
4 **us for that.**  
5       **So, what I mean by regional is it's available**  
6 **throughout our service area.**  
7       Q. Is that distinct from the local resources  
8 program?  
9       **A. That's correct. Local resources program is**  
10 **available to our member agencies. They have to apply for**  
11 **incentives for a given project.**  
12       Q. Turning again to the conservation credits, how  
13 do people obtain those incentives?  
14       **A. An example. Let's say somebody wanted to buy a**  
15 **high efficiency clothes washer. They could go to Lowe's,**  
16 **Home Depot, they would purchase that clothes washer.**  
17 **They would go online and they would submit for a rebate**  
18 **incentive. They would submit their receipt showing that**  
19 **they had purchased the clothes washer, that they would**  
20 **document online that they live in a particular service**  
21 **area that's within our boundaries, and then we would**  
22 **provide a rebate to them.**  
23       Q. Do people sometimes receive those incentives  
24 through a particular member agency?  
25       **A. Yes. There is a portion of the program whereby**

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1       **our member agencies are able to design their own programs**  
2 **and use the funds to be able to provide incentives to**  
3 **their own programs.**  
4       Q. Was there an original acre-foot target for the  
5 conservation credits program?  
6       **A. Yes. IRP, the original IRP, integrated**  
7 **resources plan, had a target in 2020 that was somewhere**  
8 **north of a million acre-feet.**  
9       Q. Okay. How is the target expressed now?  
10       **A. In 2009, there was a legislative package**  
11 **that -- in the State of California that focused on per**  
12 **capita water reduction use in the state.**  
13       **And so when we adopted our 2010 integrated**  
14 **resources plan, we sort of updated our previous ones. We**  
15 **then started to express the target for our conservation**  
16 **saves as a per capita of water use reduction to reflect**  
17 **where the state had moved in terms of talking about**  
18 **conservation. And so that target is now a 20 percent**  
19 **reduction that we need to achieve by 2020.**  
20       Q. And 20 percent less than what?  
21       **A. There's a baseline that we're able to**  
22 **calculate, agencies throughout the state can calculate**  
23 **and so for Metropolitan, that baseline is a ten-year**  
24 **period of water use from 1996 to 2005.**  
25       THE COURT: So are you saying 20 percent

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1       reduction in what the total distribution of Met water was  
2 during that period on an annual basis?  
3       THE WITNESS: It's actually a 20 percent  
4 reduction in the per capita water use over that time.  
5       THE COURT: I see.  
6 BY MR. HIXSON:  
7       Q. How does Metropolitan recover the budget and  
8 expenses of its demand management programs?  
9       **A. The demand management program budget is**  
10 **recovered through our Water Stewardship Rate.**  
11       Q. I would like to ask you some questions about  
12 the integrated resources plan and first, what is the  
13 integrated resources plan?  
14       **A. The integrated resources plan is really a**  
15 **reference to both a process and a document that**  
16 **Metropolitan has for planning out the demands, the**  
17 **resources that are necessary in order to meet those**  
18 **demands and provide for reliability within our service**  
19 **area.**  
20       **And also, a look at the facility needs that are**  
21 **required in order to be able to provide that reliability**  
22 **also. And it looks out 25 years.**  
23       Q. Uh-huh. When did Met first adopt the  
24 integrated resources plan?  
25       **A. The first integrated resources plan was adopted**

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1 **back in 1996.**  
 2 Q. Has Met revised the integrated resources plan  
 3 since then?  
 4 **A. Yes, a couple times. We reviewed it in 2004**  
 5 **and the board adopted an updated version in 2004. And**  
 6 **then more recently near the end of 2010, we adopted what**  
 7 **we referred to as our 2010 integrated resources plan**  
 8 **update.**  
 9 Q. As part of the integrated resources plan, in  
 10 the 1990s, did Met undertake an economic study of  
 11 benefits of local water management programs?  
 12 **A. Yes, we did.**  
 13 Q. Please turn to DTX-18 in your binder.  
 14 Can you identify what this is?  
 15 **A. This is that economic study that I just**  
 16 **mentioned.**  
 17 Q. As part of this study, did Met evaluate  
 18 anticipated capital expenses under different demand  
 19 scenarios?  
 20 **A. Yes, that's one of the things that was studied.**  
 21 Q. What was the base case?  
 22 **A. The base case in this analysis was a scenario**  
 23 **that looked at Metropolitan not having demand management**  
 24 **programs going forward and a scenario where increases in**  
 25 **conservation and local resources within the region would**

566

1 **not meet the targets that were identified in the**  
 2 **integrated resources plan.**  
 3 Q. Okay. What was the preferred case?  
 4 **A. The preferred case was an alternative scenario**  
 5 **where those targets were Met, so increases in local**  
 6 **resources in the region, increases in efficiency through**  
 7 **conservation in the region, and the assumption was that**  
 8 **the demand management programs would hit those IRP**  
 9 **targets.**  
 10 Q. And so what did the preferred case assume about  
 11 the future of the demand management programs?  
 12 **A. The demand management programs would be there**  
 13 **to be able to meet those targets.**  
 14 Q. Okay. So did the base case and the preferred  
 15 case meet different assumptions relating to project  
 16 demands on Met's system?  
 17 **A. Yes. The base case and the preferred case had**  
 18 **differences in the local resources that would be produced**  
 19 **and the conservation that would occur. And in the**  
 20 **preferred case, because we were assuming those demand**  
 21 **management programs were in place, conservation would**  
 22 **happen, so would local resource development, that would**  
 23 **mean that there's a lower need for water to move through**  
 24 **the Met system.**  
 25 Q. Please turn to page 9 of this document.

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1 Did Met identify any infrastructure  
 2 requirements or any anticipated infrastructure  
 3 requirements in the base case?  
 4 **A. Yes. In the base case, Metropolitan identified**  
 5 **a number of infrastructure requirements that would be**  
 6 **needed, including things like an additional reservoir and**  
 7 **reservoir capacity, even an ocean desal facility in the**  
 8 **region, distribution and treatment facilities including**  
 9 **what we referred to as our central pool augmentation**  
 10 **project which included a major tunnel that would have**  
 11 **gone through the Santa Ana mountains.**  
 12 **The West Valley and Inland Feeder projects were**  
 13 **also distribution projects. San Diego Pipeline No. 6 as**  
 14 **an example. So there were a number of infrastructure**  
 15 **projects identified.**  
 16 Q. And were any of those that you've identified  
 17 here capital costs for capacity to transport water?  
 18 **A. Yes. A few of the ones that I just mentioned.**  
 19 **CPA, which is Central Pool Augmentation, West Valley,**  
 20 **Inland Feeder, San Diego Pipeline No. 6, they're all part**  
 21 **of that analysis.**  
 22 Q. Okay. And did Met identify any infrastructure  
 23 cost savings that could be obtained in the preferred  
 24 case?  
 25 **A. Yes. There was a comparison of the base case**

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1 **and the preferred case and the capital improvement**  
 2 **programs that would have been necessary and the**  
 3 **expenditures under those programs and what we found was**  
 4 **that under the base case, you would have to spend more**  
 5 **money on infrastructure than in the preferred case and**  
 6 **the savings was on the order of two billion dollars --**  
 7 **actually north of two billion dollars.**  
 8 Q. Okay. Why did Met project different capital  
 9 needs for the base case as opposed to the preferred case?  
 10 **A. Fundamentally because we were showing that you**  
 11 **didn't need to move as much water through the system so**  
 12 **you didn't need as large a system.**  
 13 MR. HIXSON: Met moves DTX-18 into evidence.  
 14 MR. KEKER: No objection.  
 15 THE COURT: DTX-18 is admitted.  
 16 (Whereupon Exhibit DTX-18 was  
 17 admitted into Evidence.)  
 18 BY MR. HIXSON:  
 19 Q. Please turn to DTX-20 in your binder. Can you  
 20 identify what this is?  
 21 **A. Yes. This is one of the volumes of the**  
 22 **integrated resources plan that was adopted by our board**  
 23 **in 1996.**  
 24 **This is Volume 2 which dealt with our system.**  
 25 **And we refer to it as our system overview study, so it**  
**looked at the facilities.**

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1 Q. Did Met quantify its anticipated capital  
 2 expenses in this Volume 2 of the integrated resources  
 3 plan?  
 4 **A. Yes. That was part of what we were doing with  
 5 this volume.**  
 6 Q. Can you show us where in this document that  
 7 quantification exists?  
 8 **A. It's near the back, Section 6, Table 6-1.**  
 9 Q. Is it on page 250?  
 10 **A. That's correct, 250.**  
 11 Q. Earlier you referred to base case and preferred  
 12 case and Table 6-1. Was Met modeling one of those case?  
 13 **A. Yes. The expenditures that are identified in  
 14 Table 6-1 were associated with the preferred case. That  
 15 came out of the IRP.**  
 16 Q. And so what does this chart in Table 6-1 assume  
 17 about future demand management programs?  
 18 **A. It assumes that demand management programs  
 19 would be in place to achieve the integrated resources  
 20 plan targets for local resources in conservation.**  
 21 Q. Did any of the anticipated capital costs listed  
 22 in Table 6-1 relate to capacity in Met's distribution  
 23 system?  
 24 **A. Yes. It -- if you look in this center part of  
 25 that table, the section referring to distribution**

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1 **facilities, you can see the projected capital costs  
 2 associated with those facilities.**  
 3 THE COURT: So this table, though, is talking  
 4 about the preferred case; right?  
 5 THE WITNESS: That's correct.  
 6 THE COURT: This assumes that the water  
 7 conservation projects have kicked in and are producing  
 8 results?  
 9 THE WITNESS: Out into the future; right.  
 10 THE COURT: Right. But nevertheless, it shows,  
 11 for example, costs associated with San Diego Pipeline No.  
 12 6?  
 13 THE WITNESS: That's correct.  
 14 THE COURT: So that would not be avoided by the  
 15 preferred case, the building of that pipeline?  
 16 THE WITNESS: The preferred case showed that it  
 17 would happen later in time.  
 18 THE COURT: Got it. Thank you.  
 19 BY MR. HIXSON:  
 20 Q. And for these anticipated capital costs  
 21 relating to the distribution system, what did they total  
 22 up to over 25 years?  
 23 **A. The distribution facility component was over a  
 24 billion dollars.**  
 25 Q. Did Metropolitan identify in any of these

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1 capital costs listed in Table 6-1 were sensitive to  
 2 demand?  
 3 **A. Yes. And I think this gets a little bit to  
 4 your question. We did look at sensitivity to whether the  
 5 change in demands in the future would impact the need for  
 6 the facilities or the timing for the facilities.**  
 7 Q. And can you show us where the integrated  
 8 resources plan does that?  
 9 **A. Yes. It's -- the sensitivity analysis is  
 10 described on page 252.**  
 11 Q. And did Met determine if any of these  
 12 anticipated capital costs related to the distribution  
 13 system were in fact sensitive to the demand?  
 14 **A. Yes. We looked at demands that were higher or  
 15 lower and we looked at a range of 5 percent change in  
 16 demand.**  
 17 **And it may be easiest to look at Figure 6-4  
 18 where you can see a number of these projects. Center  
 19 line on this graphic for each of the projects is what was  
 20 projected as the potential online date and when the  
 21 capacity would be needed.**  
 22 **But then looking at a change in demands of  
 23 5 percent lower or higher, we saw that some of these  
 24 projects, if you had demands that were lower, would move  
 25 out in time, some pretty significantly and then others,**

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1 **if you saw an increase in demands, would move forward in  
 2 time. So we're recognizing that the need for the  
 3 project, online dates for the projects is related to  
 4 demand for water to move through Met's system.**  
 5 Q. Please turn to page 254.  
 6 Did Met identify any anticipated capital  
 7 expenses that could be deferred due to a 5 percent  
 8 decrease in retail demands?  
 9 **A. Yes. There are a number of facilities listed  
 10 here.**  
 11 Q. Can you identify if any of these listed  
 12 facilities relate to Met's distribution system?  
 13 **A. Yes. San Diego Pipeline 6, West Valley, the  
 14 Central Pool Augmentation Tunnel and Pipeline and  
 15 Conveyance Extension would all be part of Metropolitan's  
 16 distribution system.**  
 17 Q. Has Metropolitan been able to defer building  
 18 the San Diego Pipeline No. 6?  
 19 **A. Yes, we have.**  
 20 Q. Why is that?  
 21 **A. Projected demands have been lower and as a  
 22 result of those projected demands, we have not needed to  
 23 build that facility. We've had demand management  
 24 programs in place to meet the targets that were  
 25 identified in the IRP.**

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1 Q. Has Met been able to defer the Central Pool  
 2 Augmentation Conveyance Extension project?  
 3 **A. Yes, for the same reasons.**  
 4 Q. Okay. Since this 1996 integrated resources  
 5 plan, has Met continued to evaluate the need for  
 6 additional capital expenses for the distribution system?  
 7 **A. Yes. We periodically review projections of**  
 8 **demand and compare those projections of demand to the**  
 9 **capacity that we have in our system to see if there is a**  
 10 **projection in time as to when we would need to expand**  
 11 **facilities.**  
 12 Q. Okay. How does Met decide whether to incur  
 13 additional capital expenses for the distribution system?  
 14 **A. It's based on a prospective look forward at**  
 15 **what demand scenarios we see and whether those demands**  
 16 **look like they're going to peak up to the capacity of the**  
 17 **system. And if we see that, then that gives us a sense**  
 18 **of when in time we would need to expand parts of our**  
 19 **system.**  
 20 Q. Let's change topics from the integrated  
 21 resources plan.  
 22 Does the California aqueduct deliver water to  
 23 Metropolitan?  
 24 **A. Yes, it does. California Aqueduct is the State**  
 25 **Water Project.**

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1 Q. Okay. How many -- go ahead. How many branches  
 2 of the aqueduct connect with Met?  
 3 **A. There are two branches of the California**  
 4 **Aqueduct that connect to Metropolitan, one on the west**  
 5 **side of our system that connects to Castaic Lake, that's**  
 6 **the terminal reservoir, and then there's another aqueduct**  
 7 **we refer to as the east branch that connects to**  
 8 **Silverwood and then connects to our system.**  
 9 Q. Has Met evaluated whether it may need to incur  
 10 additional capital expenses related to one of those  
 11 branches?  
 12 **A. Yes. We've had an ongoing discussion with the**  
 13 **Department of Water Resources about the capacity needs on**  
 14 **the east branch of the State Water Project.**  
 15 Q. And can you describe in general terms the  
 16 nature of the expansion that was considered?  
 17 **A. Yes. Capacity on the east branch was initially**  
 18 **expanded in the early '80s. And there was recognition**  
 19 **that as demands change over time, there may need to be an**  
 20 **additional expansion of the east branch at some point in**  
 21 **the future.**  
 22 **So, the east branch runs from the tunnel that's**  
 23 **just after the Tehachapi Mountains down to Lake**  
 24 **Silverwood. And as we have projected demands over the**  
 25 **years, there are occasionally situations where it looks**

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1 **like demands will peak up and test the capacity of that**  
 2 **reach of the State Water Project so it's something that**  
 3 **we've been monitoring and having discussions with DWR and**  
 4 **other contractors about.**  
 5 Q. Would Met have been responsible for a portion  
 6 of the costs associated with an east branch expansion?  
 7 **A. Yes. We're by far the largest contractor in**  
 8 **that reach of the aqueduct and would likely need to pay**  
 9 **about 70 percent of the costs were it to be expanded.**  
 10 Q. During what time period did Met discuss this  
 11 potential expansion with DWR?  
 12 **A. We've been discussing the timing and need for**  
 13 **that expansion with DWR on an ongoing basis really since**  
 14 **the mid-'90s, even as recently as 2013.**  
 15 Q. Okay. And what position did Met take  
 16 concerning this potential expansion?  
 17 **A. Our position at this point is that our demand**  
 18 **projections are low enough that we think that the**  
 19 **Department of Water Resources can hold off on proceeding**  
 20 **with additional design and engineering work for the**  
 21 **expansion but we want to continue monitoring on an**  
 22 **ongoing basis and if conditions change, we may need to**  
 23 **move forward.**  
 24 THE COURT: Have there been situations in the  
 25 past where Met has actually paid part of the cost of

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1 building out some of the aqueducts or other  
 2 infrastructures that's actually owned by SWP?  
 3 THE WITNESS: Yes, your Honor. You know,  
 4 generally Metropolitan is the largest contractor and  
 5 we're at the end of the line in terms of the conveyance  
 6 system so we actually pay the largest portion of the  
 7 fixed costs for conveyance on the SWP.  
 8 THE COURT: That's part of your annual bill  
 9 that you pay; right?  
 10 THE WITNESS: That's correct.  
 11 THE COURT: Okay. Thank you.  
 12 MR. HIXSON: All right. I'm going to switch  
 13 topics.  
 14 Met moves DTX-20 into evidence.  
 15 MR. KEKER: No objection.  
 16 THE COURT: DTX-20 is admitted.  
 17 (Whereupon Exhibit DTX-20 was  
 18 admitted into Evidence.)  
 19 BY MR. HIXSON:  
 20 Q. Around the time of the 1996 integrated  
 21 resources plan, did Met develop any principles for the  
 22 local resources program?  
 23 **A. Yes, we did.**  
 24 Q. And is the local resources program part of  
 25 Met's demand management programs?  
**A. Yes, it is.**

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1 Q. Please turn to DTX-27 in your binder.  
 2 Can you explain what this is?  
 3 **A. This is a letter that went to our board of**  
 4 **directors that was recommending a set of principles that**  
 5 **would guide the local resources program.**  
 6 Q. And are there recommended principles attached  
 7 to this letter?  
 8 **A. Yes. I believe they're at the end of the**  
 9 **letter, Attachment A.**  
 10 Q. And focusing on Attachment A, what was the  
 11 first of the key goals of the local resources program?  
 12 **A. The first key goal was to assist local projects**  
 13 **that would improve regional water supply reliability and**  
 14 **avoid or defer Metropolitan capital expenditures.**  
 15 Q. Can you explain what it means to improve  
 16 regional water supply reliability?  
 17 **A. Generally it would mean that we're reducing the**  
 18 **likelihood and severity of shortage in Southern**  
 19 **California.**  
 20 Q. Is that a supply benefit?  
 21 **A. Yes, it is.**  
 22 Q. Can you explain what it means to avoid or defer  
 23 capital expenditures?  
 24 **A. That would refer to the notion that**  
 25 **Metropolitan would not have to spend as much money going**

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1 **forward on its capital infrastructure as a result of the**  
 2 **programs.**  
 3 Q. Is that a capital benefit?  
 4 **A. It is.**  
 5 Q. What was the rate refining committee?  
 6 **A. The rate refinement committee was a committee**  
 7 **of member agencies and representatives from the member**  
 8 **agencies that were looking at potential changes to**  
 9 **Metropolitan's rates and the way that they could look**  
 10 **going forward.**  
 11 Q. Okay. Did the rate refinement committee  
 12 develop the recommended principles we're looking at now?  
 13 **A. Yes. This was an outgrowth of the rate**  
 14 **refinement committee. In fact, you can see that**  
 15 **ultimately this was a set of principles that were**  
 16 **proposed by that rate refinement committee and they**  
 17 **signed on to these principles.**  
 18 Q. Okay. And can you identify who -- what member  
 19 agencies were on the rate refinement committee?  
 20 **A. Sure. Last page of this document shows that**  
 21 **there were a number of member agencies that were**  
 22 **represented here: Western Municipal Water District,**  
 23 **Central Basin Municipal Water District, Calleguas**  
 24 **Municipal Water District, the Municipal Water District of**  
 25 **Orange County, San Diego County Water Authority, Foothill**

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1 **Municipal Water District, City of Los Angeles and the**  
 2 **cities of Anaheim, Long Beach, Las Virgenes and the**  
 3 **Metropolitan District itself.**  
 4 Q. Did Met's board adopt these recommended local  
 5 resources program principles?  
 6 **A. Yes, these principles were adopted by the**  
 7 **board.**  
 8 Q. And do these remain being principles for the  
 9 local resources program today?  
 10 **A. Yes, the LRP today has its foundation in these**  
 11 **principles.**  
 12 MR. HIXSON: Met moves DTX-27 into evidence.  
 13 MR. KEKER: No objection.  
 14 THE COURT: DTX-27 is admitted.  
 15 (Whereupon Exhibit DTX-27 was  
 16 admitted into Evidence.)  
 17 BY MR. HIXSON:  
 18 Q. Please turn to DTX-518 in your binder.  
 19 Can you describe what this document is?  
 20 **A. This is a letter that went to Metropolitan's**  
 21 **board in May of 1998 that was recommending that the board**  
 22 **establish the local resources program as a follow on to**  
 23 **those principles that were adopted earlier.**  
 24 Q. Okay. And can you summarize what the staff  
 25 were recommending here?  
**A. Yes. Staff recommendation was generally to**

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1 **develop a local resources program that would provide**  
 2 **incentives to projects that were producing recycled water**  
 3 **or groundwater recovery, and those incentives would**  
 4 **provide financial assistance up to \$250 an acre-foot.**  
 5 Q. Please turn to page 2.  
 6 In making this recommendation, did staff  
 7 identify the benefits to Met from the local resources  
 8 program?  
 9 **A. Yes. Board letter identified regional benefits**  
 10 **to Metropolitan associated with the development of these**  
 11 **local resources.**  
 12 **Those included things like the reduction in**  
 13 **capital investments that Metropolitan would need to make**  
 14 **through the deferral or downsizing of our infrastructure**  
 15 **needs, reduction in operating costs for treatment and**  
 16 **distribution of imported supplies, reduction in cost for**  
 17 **developing alternative supplies also.**  
 18 Q. Did Met's board adopt the local resources  
 19 program as recommended in DTX-518?  
 20 **A. Yes, when -- following this recommendation, the**  
 21 **board did adopt the LRP.**  
 22 MR. HIXSON: Met moves DTX-518 into evidence.  
 23 MR. KEKER: No objection.  
 24 THE COURT: DTX-518 is admitted.  
 25 (Whereupon Exhibit DTX-518 was

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1 BY MR. HIXSON:  
 2 Q. Please turn to DTX-519 in your binder.  
 3 Can you describe what this is?  
 4 **A. This document is the minutes from a meeting of**  
 5 **Metropolitan's board of directors that was in June of**  
 6 **1998.**  
 7 Q. Can you please turn to page 14?  
 8 Can you describe what item 43021 related to?  
 9 **A. Yes. This minute is documenting that the board**  
 10 **ultimately did approve the local resources program**  
 11 **recommendation that was made in May of 1998, which was**  
 12 **the letter that we just reviewed.**  
 13 Q. I'm sorry, you just said that. Did the minutes  
 14 show the board did adopt it?  
 15 **A. The minutes showed the board did adopt it.**  
 16 Q. According to the minutes, did any agency vote  
 17 against adopting the local resources program?  
 18 **A. No, the minutes don't show any member agency**  
 19 **voting no on this program.**  
 20 Q. If you turn to the preceding item number 43020,  
 21 do you see whether a director requested to be recorded as  
 22 voting no?  
 23 **A. Yes. Well, that was a different item. There**  
 24 **is a record of the director that had requested to vote**  
 25 **no.**

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1 Q. Okay. But with respect to item 43021, is there  
 2 any such notation of a director requesting to be shown as  
 3 voting no?  
 4 **A. No, there is not.**  
 5 Q. Do the minutes indicate whether any San Diego  
 6 members were present during this vote?  
 7 **A. Yes.**  
 8 MR. KEKER: Objection, your Honor. This is  
 9 irrelevant, completely irrelevant.  
 10 THE COURT: Sustained.  
 11 MR. HIXSON: Met moves DTX-519 into evidence.  
 12 MR. KEKER: No objection.  
 13 THE COURT: DTX-519 is admitted.  
 14 (Whereupon Exhibit DTX-519 was  
 admitted into Evidence.)  
 15 BY MR. HIXSON:  
 16 Q. Please turn to DTX-527 in your binder.  
 17 Can you explain what this is?  
 18 **A. This is a board letter similar to the board**  
 19 **letter we saw on the local resources program but this one**  
 20 **was seeking approval of the board for the development of**  
 21 **a seawater desalination program.**  
 22 Q. And can you summarize what the staff  
 23 recommendation was?  
 24 **A. The staff recommendation was to support a**  
 25 **seawater desalination program that would provide**

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1 **incentives for projects submitted by our member agencies**  
 2 **up to \$250 an acre-foot and to start that by releasing a**  
 3 **request for proposals to our member agencies that they**  
 4 **would then submit proposals for seawater desalination**  
 5 **facilities that could be considered under the program.**  
 6 Q. Would the benefits from this seawater  
 7 desalination program be similar to the benefits from the  
 8 local resources program?  
 9 **A. Yes.**  
 10 Q. Does this recommendation describe any policy  
 11 principles for the seawater desalination plan?  
 12 **A. It does. I believe it also has principles**  
 13 **later in the document.**  
 14 Q. Please turn to Attachment 1.  
 15 Can you direct us to the policy principles for  
 16 the Seawater Desalination Program?  
 17 **A. The policy principles are identified in section**  
 18 **A of the administrative guidelines. It's on page 2 of**  
 19 **Attachment 1.**  
 20 **And you can see the first goal there is very**  
 21 **similar to the goals in the local resources program: To**  
 22 **assist local projects that improve regional supply**  
 23 **reliability and avoid or defer Metropolitan capital**  
 24 **expenditure.**  
 25 Q. Did the board approve this recommendation?

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1 **A. Yes, the board approved this program.**  
 2 Q. Did Met then request proposals from the member  
 3 agencies for seawater desalination projects?  
 4 **A. That's correct. But following this, the**  
 5 **approval of this program, we released an RFP, or request**  
 6 **for proposals, from member agencies.**  
 7 MR. HIXSON: Met moves DTX-557 into evidence.  
 8 MR. KEKER: No objection.  
 9 THE COURT: Admitted.  
 10 (Whereupon Exhibit DTX-557 was  
 admitted into Evidence.)  
 11 BY MR. HIXSON:  
 12 Q. Please turn to DTX-704 in your binder.  
 13 Did San Diego submit a seawater desalination  
 14 proposal?  
 15 **A. Yes. This is San Diego's proposal that was**  
 16 **submitted under that program.**  
 17 Q. And can you describe in general terms what this  
 18 proposal related to?  
 19 **A. This proposal related to a seawater**  
 20 **desalination facility that could be built in Carlsbad.**  
 21 Q. Was this submitted for Met's consideration in  
 22 its demand management programs?  
 23 **A. It was.**  
 24 Q. Please turn to page 17.  
 25 In this proposal, did San Diego identify any

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1 regional facility benefits from this specific demand  
 2 management project?  
 3 **A. Yes. Proposal calls out facility benefits for**  
 4 **Metropolitan and it refers to, in Paragraph 2B(i),**  
 5 **offsetting about 77 CFS in conveyance capacity need for**  
 6 **Metropolitan and additional treatment plant capacity.**  
 7 **Later, it refers to this project contributing**  
 8 **to the deferral of the authority's need for Pipeline 6,**  
 9 **which is a reference to San Diego Pipeline 6, thereby**  
 10 **reducing or deferring Metropolitan's capital**  
 11 **expenditures.**  
 12 Q. Referring to San Diego Pipeline 6, was this one  
 13 of the anticipated capital expenses in the distribution  
 14 system that had been identified in the 1996 integrated  
 15 resources plan?  
 16 **A. It was.**  
 17 MR. HIXSON: Met moves DTX-704 into evidence.  
 18 MR. KEKER: I object to the appendix as  
 19 containing a lot of hearsay. I haven't read them but  
 20 there's a lot of newspaper articles and so on, but up to  
 21 the appendix we don't have any objection.  
 22 THE COURT: That's fine. The media -- what's  
 23 it called, the media clips here?  
 24 MR. KEKER: Yes, sir, media clips and some  
 25 letters. And I haven't really had a chance to go through

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1 them but apparently they don't care about anything except  
 2 what's before the appendix and that's what we would not  
 3 object to.  
 4 MR. HIXSON: We withdraw the appendix and move  
 5 in the rest.  
 6 THE COURT: DTX-704 is admitted as modified.  
 7 (Whereupon Exhibit DTX-704 was  
 8 admitted into Evidence.)  
 9 BY MR. HIXSON:  
 10 Q. Please turn to DTX-383 in your binder.  
 11 Can you describe what this document is?  
 12 **A. This is a letter from the San Diego County**  
 13 **Water Authority to the California State Lands Commission**  
 14 **regarding the proposed Carlsbad Desalination Project.**  
 15 Q. To your understanding, did San Diego need the  
 16 approval of the California State Lands Commission for the  
 17 completion of that project?  
 18 **A. That's my understanding, yes.**  
 19 Q. Please turn to the second page.  
 20 In this letter, did San Diego refer to a  
 21 one-for-one benefit from this project?  
 22 **A. Yes. In the top paragraph, on the second page,**  
 23 **there is a sentence that refers to the availability of**  
 24 **water from the Carlsbad Desalination Project will result**  
 25 **in a one-for-one offset in the use of imported water for**  
**those agencies participating in the project.**

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1 Q. Okay. Would a one-for-one offset from this  
 2 project benefit member agencies other than San Diego?  
 3 **A. Yes. To the extent that this project resulted**  
 4 **in a reduction in the need for imported water from**  
 5 **Metropolitan's system, then other agencies would both**  
 6 **have the access to the capacity in the system if they**  
 7 **wanted to purchase supplies from other sources and move**  
 8 **that water through our system.**  
 9 **They would also have the access to the supply**  
 10 **that otherwise isn't necessary to provide to San Diego.**  
 11 Q. Was it part of the regional benefits that the  
 12 demand management programs provide?  
 13 **A. Yes, it is.**  
 14 Q. The last sentence of that paragraph states:  
 15 "This is supported by Metropolitan  
 16 Water District's seawater desalination  
 17 program that requires program funding  
 18 recipients to offset a demand for  
 19 imported water, which this project  
 20 does."  
 21 And my question is, do Met's demand management  
 22 programs require funding recipients to offset a demand  
 23 for imported water?  
 24 **A. That's correct. That's ultimately what we're**  
 25 **paying for is for a reduction in demand for imported**

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1 **water from Metropolitan's system.**  
 2 Q. And why does Metropolitan input that?  
 3 **A. That's ultimately the benefit Metropolitan is**  
 4 **getting, the reduced need for water to move through our**  
 5 **system. Whether it is the Metropolitan's supply or**  
 6 **supply someone else acquires and moves through our**  
 7 **system, the benefit that the system is receiving is**  
 8 **reduced capacity, the capital deferral, some own in**  
 9 **benefits, the notion that we don't need to necessarily go**  
 10 **out and acquire additional supplies. Those are all**  
 11 **regional benefits.**  
 12 MR. HIXSON: Metropolitan moves DTX-383.  
 13 MR. KEKER: No objection.  
 14 THE COURT: DTX-383 is admitted.  
 15 (Whereupon Exhibit DTX-383 was  
 16 admitted into Evidence.)  
 17 BY MR. HIXSON:  
 18 Q. Please turn to DTX-385 in your binder.  
 19 Can you describe what this document is?  
 20 **A. This document is a letter to the California**  
 21 **Coastal Commission and it's a letter that responds to**  
 22 **questions that the California Coastal Commission had**  
 23 **about the Carlsbad Seawater Desalination Project.**  
 24 **It's actually a joint letter, so it was a**  
 25 **letter that was drafted and signed by both the**  
**Metropolitan Water District and the San Diego County**

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1 **Water Authority.**  
 2 Q. To your understanding, did San Diego need the  
 3 approval of the California Coastal Commission for the  
 4 that project?  
 5 **A. Yes, that's my understanding.**  
 6 Q. Please turn to the first paragraph on page 1.  
 7 Did Metropolitan and San Diego in this letter  
 8 jointly refer to a regional benefit from this proposed  
 9 demand management program?  
 10 **A. Yes. In the first paragraph, the letter refers**  
 11 **to a regional benefit from this program that's similar to**  
 12 **that of other new recycling projects and groundwater**  
 13 **recovery projects and water use efficiency gains that are**  
 14 **developed under Metropolitan's and Water Authority's**  
 15 **local resources conservation programs.**  
 16 Q. And are the local resource and conservation  
 17 programs part of Met's other demand management programs?  
 18 **A. Yes, they are.**  
 19 Q. Please turn to page 2 of this document.  
 20 Does this letter have a list of Metropolitan  
 21 costs that would be avoided from this project?  
 22 **A. In the center part of page 2, the letter refers**  
 23 **to the incentive that would be provided avoiding**  
 24 **Metropolitan's cost in a number of areas, including**  
 25 **acquisition of newly reported supplies, State Water**

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1 **Project energy consumption for pumping, treated imported**  
 2 **supplies and Metropolitan's distribution system**  
 3 **expansions.**  
 4 Q. And referring to that last bullet point, what  
 5 is Met's distribution system?  
 6 **A. Metropolitan's distribution system is, you**  
 7 **know, generally a system of pipes, aqueducts that we use**  
 8 **to transport water to our member agencies.**  
 9 Q. Did Met's board initially approve the Carlsbad  
 10 project?  
 11 **A. Met's board did approve an agreement for the**  
 12 **Carlsbad project.**  
 13 Q. Does Met currently have a seawater desalination  
 14 program contract with San Diego for Carlsbad?  
 15 **A. Metropolitan has a seawater desalination**  
 16 **program. We do not have an agreement for the Carlsbad**  
 17 **project, no.**  
 18 Q. Why not?  
 19 **A. While Met's board ultimately approved an**  
 20 **agreement in a particular form for the Carlsbad facility,**  
 21 **the negotiations that the San Diego County Water**  
 22 **Authority had with Poseidon and its local agencies**  
 23 **ultimately changed the form of that agreement.**  
 24 **So, we submitted an agreement to the Water**  
 25 **Authority that we could sign. The nature of that**

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1 **agreement changed and by the time that things were**  
 2 **finalized in the San Diego area as to how that agreement**  
 3 **would play out, we were already in discussions with the**  
 4 **board about rate structure integrity language, that that**  
 5 **language had been triggered in other agreements because**  
 6 **of this litigation, which ultimately resulted in no**  
 7 **agreement coming back to our board for approval again.**  
 8 Q. I would like to switch now and ask you about  
 9 funds that are provided under the demand management  
 10 programs.  
 11 Does -- but first let me move in DTX-385.  
 12 MR. KEKER: No objection to the letter, your  
 13 Honor. Again a lot of things attached to it that we  
 14 would like to see stripped off. I don't even really know  
 15 what they are. They're press clips and so on.  
 16 THE COURT: There's an e-mail.  
 17 MR. KEKER: Yeah, there's an e-mail and then  
 18 there are some external affairs clip sheets and letters,  
 19 but we don't have any objection to what he talked about,  
 20 which is that letter.  
 21 MR. HIXSON: How about I read the Bates numbers  
 22 that we're moving in?  
 23 THE COURT: That would be fine.  
 24 MR. HIXSON: MWD2010-00236446 through 6448 and  
 25 strike the remainder.

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1 MR. KEKER: Fine.  
 2 THE COURT: DTX-85 as modified is admitted.  
 3 (Whereupon Exhibit DTX-85 was  
 4 admitted into Evidence.)  
 5 BY MR. HIXSON:  
 6 Q. Does Met pay back to each member agency the  
 7 same amount of money they paid in for the demand  
 8 management programs?  
 9 **A. No, we don't.**  
 10 Q. Why not?  
 11 **A. The demand management programs are not designed**  
 12 **to simply take money from the member agencies and provide**  
 13 **the exact amount of money back.**  
 14 **The philosophy we have in the demand management**  
 15 **programs is a regional one and we recognize and our**  
 16 **member agencies recognize that not everyone has the same**  
 17 **capability to develop contaminated groundwater and turn**  
 18 **it into drinkable groundwater. They don't all have that**  
 19 **situation.**  
 20 **Not all agencies have the same access to waste**  
 21 **water extremes to recycle the waste water and use it**  
 22 **within their service area. And similarly, not all**  
 23 **agencies have the same ability to have conservation in**  
 24 **their area.**  
 25 **Our program is designed on a regional basis,**  
**and the member agencies and the Metropolitan board have**

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1 **determined that agencies that may not have a project in**  
2 **their backyard are benefiting from projects that are**  
3 **occurring in the other agencies' service areas, because**  
4 **it frees up capacity in our system and reduces the need**  
5 **for additional supplies that might need to be developed**  
6 **in the future.**

7 Q. How much money has San Diego received in demand  
8 management program funding?

9 **A. Through June of this year, San Diego County**  
10 **Water Authority has received approximately \$114 million.**

11 Q. Does San Diego continue to receive demand  
12 management program funds today?

13 **A. Yes, they do.**

14 Q. Through what programs does San Diego continue  
15 to receive demand management funds today?

16 **A. The County Water Authority service area is**  
17 **receiving funds through our conservation programs.**  
18 **Residents and businesses throughout the service area are**  
19 **able to submit for rebates, incentives for the**  
20 **conservation programs and buy down the costs of those**  
21 **conserving devices.**

22 **There are also a series of local resources**  
23 **program agreements, about 14 agreements that we have with**  
24 **the San Diego County Water Authority that continue to**  
25 **exist. They existed before the board adopted any rate**

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1 **residents and businesses in the service area.**

2 Q. Any other demand management programs today for  
3 which the San Diego County Water Authority is itself the  
4 party in active contract?

5 **A. Yes. I had mentioned a series of local**  
6 **resources program agreements that continue. Those are**  
7 **local resource program agreements that did not have rate**  
8 **structure integrity language in them because they were**  
9 **adopted before rate structure integrity language was**  
10 **adopted.**

11 Q. Please turn to DTX-705 in your binder.

12 Can you describe what this is?

13 **A. This is a table that shows a listing of the**  
14 **various contracts that we have with the County Water**  
15 **Authority that continue in the local resources program**  
16 **contract.**

17 **You can see it's broken up into two sections,**  
18 **one titled Sliding Scale and one titled Fixed. That**  
19 **refers to the type of incentive that they receive. Older**  
20 **contracts at Metropolitan provided a fixed incentive per**  
21 **acre-foot and the newer contracts provide an incentive**  
22 **that's based on a sliding scale. It basically compares**  
23 **the cost of the produced water to Metropolitan's rate and**  
24 **we pay an incentive if the cost of that water is above**  
25 **our rate.**

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1 **structure integrity language, and we are providing**  
2 **funding under those agreements as those projects are**  
3 **producing supply.**

4 Q. Are you familiar with the rate structure  
5 integrity clause in Met's demand management program  
6 contracts?

7 **A. Yes, I am.**

8 Q. When Met invoked the rate structure integrity  
9 clause, did Met staff provide a recommendation regarding  
10 San Diego's demand management contracts?

11 **A. Yes. We provided a recommendation to terminate**  
12 **the contracts that had rate structure integrity language.**

13 Q. Did the board adopt the staff recommendation?

14 **A. No, the board did not.**

15 Q. Can you describe what the board did instead?

16 **A. The board chose a different option that ended**  
17 **up terminating two of the local resources program**  
18 **contracts but preserving the contracts that provided**  
19 **conservation incentives to residents and businesses**  
20 **throughout San Diego service area.**

21 Q. And with respect to those conservation credits,  
22 is San Diego County Water Authority the direct recipient  
23 of those funds?

24 **A. No, the County Water Authority is not the**  
25 **direct recipient. The recipient of those incentives are**

595

1 **A cap of \$250 per acre-foot is applied, so this**  
2 **shows those contracts that I was referring to that**  
3 **continue to exist today.**

4 Q. How much money are the projects that are listed  
5 in DTX-705 eligible to receive?

6 **A. No, not all of these contracts are producing at**  
7 **the contract yield. These projects are difficult to do**  
8 **and pursue. But if they were producing the contract**  
9 **yield, which is what they're eligible for, they would**  
10 **receive up to \$7 million a year.**

11 MR. HIXSON: Met moves DTX-705 into evidence.

12 MR. KEKER: No objection.

13 THE COURT: DTX-705 is admitted.

14 (Whereupon Exhibit DTX-705 was  
admitted into Evidence.)

15 BY MR. HIXSON:

16 Q. Now I would like to switch topics a little bit  
17 and ask about the overall funding for the demand  
18 management programs.

19 Does the Water Stewardship Rate always recover  
20 the full cost of the demand management programs in each  
21 year?

22 **A. No, it doesn't necessarily recover it in each**  
23 **year.**

24 Q. Please turn to PTX-142 in your binder.

25 Can you describe what this document is?

597

1 **A. This is an internal memo, a Metropolitan memo**  
2 **that compares the estimated revenue that was generated by**  
3 **the Water Stewardship Rate to the costs that occurred for**  
4 **demand management programs in a given year. In this case**  
5 **it's fiscal year 2008-2009.**

6 Q. Does Met have a regular practice of writing  
7 Water Stewardship Rate yearend transfer update memos?

8 **A. Yes, it does.**

9 Q. And is this an example of an instance where the  
10 Water Stewardship Rate did not collect the entire cost of  
11 the demand management programs?

12 **A. Yes. In this year it shows that the demand**  
13 **management costs exceeded the estimated receipts of the**  
14 **Water Stewardship Rate by more than \$40 million.**

15 Q. Okay. Is a discrepancy of this size an  
16 outlier?

17 **A. Yes. This is the largest discrepancy that I**  
18 **can recall.**

19 Q. Why was this year an outlier?

20 **A. In 2008-2009, in that time period, the State of**  
21 **California was experiencing a drought, Metropolitan was**  
22 **experiencing a significant drought.**

23 **And in 2009, we actually had to implement our**  
24 **water supply allocation plan which, you know, really is a**  
25 **signal to the region that the supply situation is pretty**

598

1 funds collected by the Water Stewardship Rate and the  
2 actual costs of the demand management programs?

3 **A. Yeah. That's natural to occur. I mean, you're**  
4 **looking at a project for a year and the rates are set**  
5 **based on projected water sales and delivery amounts so**  
6 **you never get the exact water sales that you would expect**  
7 **so some discrepancy is natural.**

8 Q. Is that because budgeting is prospective?

9 **A. That's correct.**

10 Q. Turning to the 1.6 million dollar discrepancy  
11 in DTX-702, is that closer to what is normal than the  
12 \$41 million in the prior exhibit?

13 **A. Yes. I think if you look at history, the**  
14 **\$41 million was an outlier.**

15 MR. HIXSON: Met moves DTX-702 into evidence.

16 MR. KEKER: No objection.

17 THE COURT: DTX-702 is admitted.

18 (Whereupon Exhibit DTX-702 was  
admitted into Evidence.)

19 THE COURT: Did you want 142 also in evidence?

20 MR. KEKER: No objection to that either.

21 MR. HIXSON: No, we don't.

22 THE COURT: It's not moved in.

23 MR. HIXSON: Your Honor, I'm about to switch  
24 topics. Do you mind if we take a short break?

25 THE COURT: Not at all. I'll see everybody in

600

1 **dire and that we need to batten down the hatches, we need**  
2 **people to conserve, that we need to pull through.**

3 **And so we were sending messages via media. We**  
4 **had done a pretty extensive outreach campaign to try to**  
5 **get people in the region, businesses in the region to**  
6 **invest in conservation devices. We were really promoting**  
7 **those incentives, and we saw a similar increase in the**  
8 **expenditures in those programs as people responded.**

9 Q. When the demand management expenses exceed the  
10 funding provided by the Water Stewardship Rate, how are  
11 they paid for?

12 **A. The same way that expenses associated with any**  
13 **of our rates that might be higher is dealt with. We pull**  
14 **it out of our general reserves to cover the cost.**

15 Q. Please turn to DTX-702 in your binder.

16 Can you identify what that document is?

17 **A. This is a similar yearend document to the one**  
18 **before but it's for a different year. It's for fiscal**  
19 **year 2010-2011.**

20 Q. Was there an over collection in this year?

21 **A. Yes. In contrast, this year the Water**  
22 **Stewardship Rate revenues that were estimated in that**  
23 **year actually exceeded the cost that we saw in that year**  
24 **by about a million and a half dollars.**

25 Q. Is there usually some discrepancy between the

599

1 ten minutes.

2 (Brief break.)

3 THE COURT: Let's continue. Thank you.

4 BY MR. HIXSON:

5 Q. Does Metropolitan prepare regular reports  
6 describing its demand management programs?

7 **A. Yes, we do.**

8 Q. What are those called?

9 **A. Those reports, we refer to them as our SB60**  
10 **reports but they are reports that we file on an annual**  
11 **basis in response to a Senate bill passed a number of**  
12 **years ago that asks us to describe our achievements in**  
13 **the areas of development of local resources and**  
14 **conservation.**

15 Q. Please turn to DTX-454 in your binder.

16 Can you describe what this is?

17 **A. This is an example of that report that I just**  
18 **mentioned. It's for fiscal year 2011-'12.**

19 Q. Please turn to page 6 of the SB60 report.

20 Does this achievement scorecard indicate how  
21 many acre-feet of water were saved in that service area  
22 from this year for Met's conservation credits program?

23 **A. Yes. Under this scorecard, in the conservation**  
24 **section near the top, this report shows that 156,000**  
25 **acre-feet of water are saved as a result of our**

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1 **conservation credits program up through this year, so**  
2 **it's an annual figure.**

3 Q. So is that figure referring to this fiscal  
4 year?

5 **A. Fiscal year 2011-2012, yes.**

6 Q. Does this achievement scorecard indicate how  
7 many acre-feet of water were produced in Met's service  
8 area from that year from Met's local resource program?

9 **A. Yes. It's actually broken up into two**  
10 **sections, one for recycled water. And you can see in the**  
11 **middle of the table, fiscal year 2011-'12 production for**  
12 **recycled water is 171,000 acre-feet and that's production**  
13 **through our local resources program.**

14 **And then the groundwater recovery is reported**  
15 **separately. That's 40,000 acre-feet for 2011-'12. So if**  
16 **you were to combine those two, it's about 211,000**  
17 **acre-feet of production for our local resource program in**  
18 **that fiscal year.**

19 Q. And this particular report is about fiscal year  
20 2011-'12; is that correct?

21 **A. That's correct.**

22 Q. Were the acre-feet of water conserved or  
23 produced by Met's demand management programs similar in  
24 quantity in the other years since 2011?

25 **A. You know, the amount actually changes in each**

602

1 people.

2 **And example here is, say, ultra low flow**  
3 **toilets back in the early '90s. Then we go through a**  
4 **cycle of providing those incentives, getting them into**  
5 **the marketplace and then starting to advocate for**  
6 **standard changes within the state so that new plumbing**  
7 **code regulations then require those devices.**

8 **And as those plumbing codes actually change,**  
9 **like they did for ultra low flow toilets, we remove the**  
10 **incentive for the devices and they no longer show up here**  
11 **as savings for the active program, because it is now a**  
12 **standard that's in place and its not reported in this**  
13 **number.**

14 **We've done that a number of times with ultra**  
15 **low flow toilets, with low flow showerheads. Now with**  
16 **high efficiency toilets, the next generation of more**  
17 **efficient toilets in 2014, they will be the only type of**  
18 **toilet you can buy in the State of California because we**  
19 **along with other folks, we've advocated for plumbing code**  
20 **changes.**

21 **Those things don't show up in this number but**  
22 **our philosophy is we use that conservation credits**  
23 **program to help achieve those things. So I do believe**  
24 **it's a conservative estimate.**

25 Q. If there were less recycling and conservation

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1 **year. Generally the trend is upward.**

2 Q. Turning back to this record about fiscal year  
3 2011-'12, what were the demands from Met's supply for  
4 that year?

5 **A. The demand was in 2011-'12, it was**  
6 **approximately 1.7 million acre-feet.**

7 Q. In the absence of Met's demand management  
8 programs how much more water would Met have had to  
9 deliver to the member agencies in that year?

10 **A. If you look at these figures, it's about 370 --**  
11 **just shy of 400,000 acre-feet of additional demands that**  
12 **would have been on the system.**

13 Q. What percentage increase would that be?

14 **A. Its a little bit more than a 20 percent**  
15 **increase in demands on that system.**

16 Q. In saying that, are you being conservative?

17 **A. Well, yes, it's a conservative figure and the**  
18 **reason is that the conservation number here, the 156,000**  
19 **acre-feet is only representative of the savings**  
20 **associated with the direct incentives that we provide.**

21 **And one of the things that underlies our**  
22 **conservation credits program going back to the beginning**  
23 **when we started the program is that we provide incentives**  
24 **for devices that save water. And as those devices become**  
25 **more commonplace in the market, they're more available to**

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1 of water in Met service area, would the member agencies  
2 necessarily have to buy the additional water supply from  
3 Met?

4 **A. No, they wouldn't.**

5 Q. Whose distribution system would they have to  
6 use to transfer the water to them?

7 **A. To the extent that they're acquiring additional**  
8 **imported supplies from someone else, they would have to**  
9 **move it through Met's system.**

10 Q. If Met had to deliver 20 percent more water  
11 than it does now, would that be different from the  
12 demands it was projecting when it decided to defer or  
13 avoid capital expenses to its distribution system?

14 **A. That would be on the high end. If you look at**  
15 **calendar year 2013, we're delivering about 2 million**  
16 **acre-feet of water. If you are looking at a 20 percent**  
17 **decrease, that would put us up in the range of 2.4**  
18 **million acre-feet, which is right up with the highest**  
19 **years that we've had.**

20 Q. But I want to focus back when Met made  
21 decisions concerning central pool augmentation, San Diego  
22 Pipeline No. 6 and the other items mentioned in the  
23 integrated resources plan. If Met's -- if Met today had  
24 to deliver 20 percent more water than it currently does,  
25 would that be different from the demands that had been

605

1 projected back at the time those capital decision were  
 2 made?  
 3 **A. Yes, it would. It would represent that we're**  
 4 **not meeting the goals in the integrated resources plan.**  
 5 Q. And in your view, would it be different to a  
 6 significant degree?  
 7 **A. Yes. We looked at sensitivity in the IRP of**  
 8 **5 percent. Twenty percent difference is significant.**  
 9 Q. Does Met quantify the specific deferred or  
 10 avoided capital costs related to each particular demand  
 11 management program?  
 12 **A. No, we don't.**  
 13 Q. Has Met done a backwards look to identify  
 14 specific capital facilities it would have had to build or  
 15 expand in the absence of its demand management programs?  
 16 **A. No, we haven't.**  
 17 Q. Are Met's decisions whether to build or expand  
 18 capital facilities forward looking?  
 19 **A. Yes. We discuss the -- we looked forward at**  
 20 **the projected demands and compared that with the capacity**  
 21 **we have in the system to estimate whether we need**  
 22 **expansion or not.**  
 23 Q. Is there a single biggest factor that  
 24 influences Met's decisions whether to build out more  
 25 capital facilities or expand them through to the

606

1 distribution system?  
 2 **A. There are many factors, but I would say the**  
 3 **biggest is projected demands for the water we have moving**  
 4 **through the system.**  
 5 Q. If Met had to incur additional capital costs to  
 6 build out its system, which water rate would recover most  
 7 of those costs?  
 8 **A. Can you repeat the question?**  
 9 Q. Sure. If Met had to incur additional capital  
 10 costs to build out its distribution system, which water  
 11 rate would recover most of those costs?  
 12 **A. It would be the System Access Rate.**  
 13 Q. Even if there were no deferred capital expenses  
 14 as a result of the demand management programs, is Met's  
 15 available capacity affected in other ways by the demand  
 16 management programs?  
 17 **A. Yes. Even if we don't have to expand the**  
 18 **system, the fact that there is a reduced need to move**  
 19 **water through the system means that there is net capacity**  
 20 **to the system that wouldn't have been there otherwise.**  
 21 **So, to the extent that an agency would want to move**  
 22 **supply through that system, that means there's additional**  
 23 **capacity in the system that wouldn't have been there**  
 24 **otherwise.**  
 25 Q. Is Met getting something different from its

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1 demand management programs from the things that are  
 2 covered by its supply rates?  
 3 **A. Yes. Supply rates that Metropolitan has are**  
 4 **there to recover the cost of supplies, facilities,**  
 5 **programs that develop supplies that we're then able to**  
 6 **move through our system and sell to our customers and**  
 7 **generate revenue.**  
 8 **And the demand management programs do not**  
 9 **produce supply that Met is able to move through its**  
 10 **system. In fact, what we're paying for is a reduction in**  
 11 **demand on our imported system.**  
 12 MR. HIXSON: Met moves DTX-454 in evidence.  
 13 MR. KEKER: No objection.  
 14 THE COURT: DTX-454 is admitted.  
 15 (Whereupon Exhibit DTX-454 was  
 16 admitted into Evidence.)  
 17 BY MR. HIXSON:  
 18 Q. I'm now going to switch to a different topic  
 19 and I would like to ask you questions concerning whether  
 20 San Diego moves non-Metropolitan water through  
 21 Metropolitan's system.  
 22 Are you familiar with how San Diego makes water  
 23 available to Met under the exchange agreement?  
 24 MR. KEKER: Excuse me, your Honor. I object.  
 25 Mr. Upadhyay was designated to testify concerning the  
 relationship between the Water Stewardship Rate and costs

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1 associated with transportation, such as MWD's ability to  
 2 defer or avoid increased costs for capacity due to the  
 3 avoided need for additional imported water to be  
 4 transported to member agencies.  
 5 I'm reading from the second pretrial brief.  
 6 Your order was tell us what the proposed witnesses are  
 7 going to talk about. That's what he was to talk about.  
 8 He shouldn't be able to go beyond that.  
 9 MR. HIXSON: We offer his testimony as rebuttal  
 10 to Mr. Cushman's testimony stating that San Diego moves  
 11 water through Metropolitan's system, and we would offer  
 12 this to counter that and provide rebuttal to that.  
 13 THE COURT: I'm going to let him testify.  
 14 I want to say I'm not sure there any factual  
 15 disputes. I understand there are different inferences  
 16 parties take from the facts, but are you going to be  
 17 talking about the identity or non-identity of the water  
 18 as it's delivered and then as it comes out the other end  
 19 down to San Diego?  
 20 MR. HIXSON: We would like to talk about the  
 21 mechanics of the exchange and to counter Mr. Cushman's  
 22 testimony, and your Honor can draw the appropriate  
 23 inferences that you can under the circumstances.  
 24 MR. KEKER: He has -- I don't think -- first of  
 25 all, I think it's a little disingenuous to say that

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1 they're countering Mr. Cushman's testimony. He's got  
 2 this many exhibits, I'm indicating several inches of  
 3 material which Mr. Cushman didn't say one word about if  
 4 he wants to be very, very specific about what the  
 5 rebuttal is, but it is improper rebuttal to come in and  
 6 just start chatting about the -- about the subject and  
 7 that's what he's trying to do.  
 8 I think rebuttal, if it's legitimate, if you're  
 9 going allow it should be very, very focused, Mr. Cushman  
 10 says what and what's he going to say about that.  
 11 THE COURT: Maybe you can let me know what it  
 12 is that Mr. Cushman said that you would like to rebut.  
 13 MR. HIXSON: Mr. Cushman testified that  
 14 San Diego moves the IID conserved water and the canal  
 15 lining water through Met's system to San Diego, and we  
 16 would like to show that that is not the actual nature of  
 17 the transaction.  
 18 Most of the exhibits I plan to move in bulk  
 19 after having the witness describe in category what they  
 20 relate to, but we believe this evidence is important to  
 21 showing that factually Mr. Cushman's testimony was  
 22 erroneous.  
 23 MR. KEKER: Could we get an offer of proof? We  
 24 may be able to stipulate. Could we get an offer of proof  
 25 of what he thinks is wrong about that testimony?

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1 THE COURT: Well, you know, it will be faster  
 2 for me to just let him put it on. If we were at lunch  
 3 time, I would suggest you talk about it over lunch.  
 4 MR. KEKER: I don't think it will, your Honor.  
 5 You can't -- look at this.  
 6 MR. HIXSON: I can be done by noon and then  
 7 your Honor will see what the evidence is.  
 8 THE COURT: It is your time to spend.  
 9 Why don't you go ahead. Objection is  
 10 overruled.  
 11 BY MR. HIXSON:  
 12 Q. Are you familiar with how San Diego makes water  
 13 available to Met under the exchange agreement?  
 14 **A. Yes, I am.**  
 15 Q. Please turn to DTX-51 in your binder.  
 16 MR. KEKER: This is in evidence.  
 17 MR. HIXSON: Your Honor, he's being disruptive.  
 18 MR. KEKER: I'm being disruptive because this  
 19 is not the trial procedure that we set up ahead of time.  
 20 We've seen this document. What's the point of this  
 21 testimony? Not just let's look at the exchange agreement  
 22 again.  
 23 THE COURT: Objection's overruled.  
 24 BY MR. HIXSON:  
 25 Q. Can you identify what DTX-51 is?

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1 MR. KEKER: It is the exchange agreement.  
 2 We'll stipulate to it.  
 3 MR. HIXSON: Your Honor, please.  
 4 THE COURT: Mr. Keke.  
 5 MR. KEKER: This is absurd.  
 6 THE COURT: Mr. Keke, it's not helpful. Thank  
 7 you.  
 8 Let's proceed.  
 9 BY MR. HIXSON:  
 10 Q. Mr. Upadhyay, can you identify what DTX-51 is?  
 11 **A. This is the exchange agreement between the San  
 12 Diego County Water Authority and Metropolitan Water  
 13 District.**  
 14 Q. Does this describe how San Diego makes water  
 15 available to Met?  
 16 MR. KEKER: Stipulated.  
 17 THE WITNESS: It does.  
 18 BY MR. HIXSON:  
 19 Q. Okay. And can you identify what article does  
 20 that?  
 21 **A. Article 3.1.**  
 22 Q. Can you describe the process in general?  
 23 **A. Under the exchange agreement, the County Water  
 24 Authority has the ability to receive supplies from the  
 25 Imperial Irrigation District via their transfer,**

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1 **All-America and Coachella canal lines. That water is  
 2 then provided to Metropolitan and exchanged to  
 3 Metropolitan on the Colorado River. At that point,  
 4 Metropolitan uses that water as is appropriate in our  
 5 system and we deliver a like amount of water to San Diego  
 6 at their service connections.**  
 7 Q. And can you please describe how Met in turn  
 8 makes like amount of water available to San Diego?  
 9 **A. We operate the system in order to meet demands  
 10 and provide the water supply at San Diego's connections  
 11 as it's demanded within the year. And we credit their  
 12 invoices in an amount that is equivalent to the estimated  
 13 San Diego exchange for a given year in 1/12th increments  
 14 each month through the year.**  
 15 Q. Does San Diego let Met know how much water it  
 16 expects to make available each year to Met?  
 17 **A. It is a provision of this agreement that before  
 18 the calendar year starts, typically in November,  
 19 San Diego provides us with notification of what the  
 20 expected exchange amount would be for that following  
 21 calendar year.**  
 22 Q. Please turn to DTX-226 in your binder.  
 23 Can you explain what this document is?  
 24 **A. This is an example of that notification that  
 25 the San Diego Water Authority provides to Metropolitan.**

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1 year. And that report, basically, tabulates the amount  
2 of water that was available and ultimately delivered by  
3 entities on the Colorado River.

4 Q. Please turn to DTX-309 in your binder.  
5 Can you describe what this is?

6 A. Yes. This is an example of the decree  
7 accounting report that I just described. In this case,  
8 it's the Bureau's report that describes 2003, calendar  
9 year 2003.

10 Q. Have you reviewed the U.S. Bureau of  
11 Reclamation decree accounting reports from 2003 to  
12 present?

13 A. Yes. This is one of the responsibilities of my  
14 group.

15 Q. Are DTX-309 through 318 in your binder the U.S  
16 Bureau of Reclamation accounting reports from the time  
17 span 2003 to the present?

18 MR. KEKER: Stipulate to that, your Honor.

19 THE WITNESS: Yes, they are.

20 MR. HIXSON: Metropolitan moves DTX No. 309  
21 through 318 into evidence.

22 MR. KEKER: Same objection we made before,  
23 outside the scope of his designation, irrelevant. That's  
24 it.

25 MR. HIXSON: Same responses. And I'm almost

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1 exchanged in a given calendar year before the calendar  
2 year starts. We use that estimate to credit San Diego on  
3 their invoice each month. What we charge them on the  
4 invoice is the exchange rate, which is a rate that's  
5 lower than our full service rate because it doesn't  
6 include our supply component of our rates.

7 So to the extent that that amount of water that  
8 was estimated for a calendar year was not actually  
9 exchanged, we delivered water to meet San Diego's needs,  
10 then that means that we did not bill them for an amount  
11 that was appropriate for our full service rate, because  
12 they didn't exchange all of the water. We delivered the  
13 water but what we billed them was at the exchange rate.

14 Q. Has that happened in recent years?

15 A. It did. It happened in 2011.

16 Q. Okay. Please go back to DTX-240 in your  
17 binder.

18 In this 2010 letter how much IID transfer water  
19 did San Diego notify Met that it would be exchanging for  
20 exchange water in 2011?

21 A. In this letter the Water Authority was  
22 notifying Metropolitan that they were scheduled to  
23 receive 80,000 acre-feet via the IID transfer and that  
24 that would be exchanged to us in calendar year 2011.

25 Q. Please turn to DTX-256 in your binder.

620

1 done.

2 THE COURT: Just remind me again why I'm going  
3 to be walking myself through these reports?

4 MR. HIXSON: These show that after the calendar  
5 year is over is when Metropolitan learns retroactively  
6 how much water was made available to it under the  
7 exchange agreement, which is counter to the notion that  
8 there's a movement of water through Metropolitan's  
9 system.

10 THE COURT: I think I understand. This is in  
11 support of your theory. I'll admit these records 309  
12 through 318. And we can have an argument later the  
13 extent to which they're essential to my review.

14 (Whereupon Exhibits 309  
15 through 318 were admitted  
16 into Evidence.)

17 BY MR. HIXSON:

18 Q. Mr. Upadhyay, does the Bureau's final  
19 accounting always match up with San Diego's estimates?

20 A. No, it does not.

21 Q. If the final amount of conserved water in canal  
22 lining water turns out to be less than what San Diego  
23 said it would be, what is the implication for Met?

24 A. The implication for Met is based on the  
25 exchange agreement. And the way that this works is  
San Diego provides us with an estimate of what will be

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1 THE COURT: I'm not sure it is in the binder.  
2 (Multiple speakers.)

3 THE COURT: We have three people talking at  
4 once.

5 MR. HIXSON: It's the very last document in the  
6 binder, you will be happy to know.

7 THE COURT: Thank you.

8 BY MR. HIXSON:

9 Q. Can you identify what this document is?

10 A. Yes. This is a letter from Metropolitan to the  
11 County Water Authority in mid-2012 and it is a notice to  
12 the Water Authority that they are in default of their  
13 obligations under the exchange agreement.

14 Q. And can you explain what the basis was for  
15 stating they were in default?

16 A. They were in default as they did not provide a  
17 report to Metropolitan that showed that the exchange  
18 amount had actually occurred until 2011.

19 Q. Did Met make available to San Diego 80,000  
20 acre-feet of exchange water in 2011?

21 A. Yes, we did.

22 Q. But did San Diego make available to Met 80,000  
23 acre-feet of IID transfer water in 2011?

24 A. No, they did not.

25 Q. Was that a determination that was made by the

621

1 U.S. Bureau of Reclamation?  
 2 **A. Yes. The final decree accounting for calendar**  
 3 **year 2011 that the Bureau produced showed that in fact**  
 4 **the amount of water that had been exchanged at**  
 5 **Metropolitan was less than 80,000 acre-feet.**  
 6 Q. What was the quantity of the shortfall?  
 7 **A. The shortfall was about 17,000 acre-feet.**  
 8 **16,722 acre-feet.**  
 9 Q. So if San Diego did not provide the full 80,000  
 10 acre-feet of IID transfer water, what water had Met been  
 11 providing to San Diego?  
 12 **A. Well, we made deliveries to San Diego's**  
 13 **connections to meet their needs and it turns out that**  
 14 **that shortfall was actually Metropolitan's supplies that**  
 15 **had been delivered to the Water Authority.**  
 16 Q. And so had -- what price Met had charged on  
 17 that shortfall water at the time?  
 18 **A. We had charged the Water Authority at the**  
 19 **exchange rate, which was assuming that the exchange**  
 20 **amount would be delivered under their obligations.**  
 21 Q. And was that lower than the full service rate?  
 22 **A. Yes, because the exchange rate does not include**  
 23 **Metropolitan's supply rate.**  
 24 Q. What position did Met take with respect to this  
 25 shortfall in 2011?

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1 **A. We took the position that since the water was**  
 2 **not exchanged to us, that meant that that shortfall**  
 3 **amount was actually delivery of Met's supply so in**  
 4 **mid-2012, we reinviced the Water Authority for the**  
 5 **difference to reflect that they needed to pay the full**  
 6 **service rate.**  
 7 Q. And how was this issue concerning the shortfall  
 8 eventually resolved?  
 9 **A. Eventually we came to an agreement with the**  
 10 **Water Authority that that shortfall amount, if they could**  
 11 **make it up in 2012 and conserve via the transfer with IID**  
 12 **more than what they had originally estimated for 2012 to**  
 13 **make up for the 2011 shortfall, then we would honor that**  
 14 **and exchange that amount in 2012 and charge them the**  
 15 **exchange rate on that higher amount in 2012. That would**  
 16 **allow them to make up for the shortfall.**  
 17 Q. And is that what happened?  
 18 **A. Ultimately that's what happened in calendar**  
 19 **year 2012.**  
 20 MR. HIXSON: Okay. Met moves DTX-256 in  
 21 evidence.  
 22 MR. KEKER: No objection.  
 23 THE COURT: 256 is admitted.  
 24 (Whereupon Exhibit DTX-256 was  
 25 admitted into Evidence.)  
 MR. HIXSON: I pass the witness.

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1 THE COURT: Thank you.  
 2 CROSS-EXAMINATION  
 3 BY MR. KEKER:  
 4 Q. Good morning, Mr. Upadhyay.  
 5 **A. Good morning.**  
 6 Q. Is it U or U?  
 7 **A. It's U.**  
 8 Q. The Water Stewardship Rate covers the cost of  
 9 these -- of this local resource program, the desalination  
 10 program, the conservation program, that you have been  
 11 talking about; right?  
 12 **A. That's correct.**  
 13 Q. And in the -- those programs, you measure  
 14 what's being conserved or replaced by acre-feet. The  
 15 sort of the metric is an acre-foot metric; isn't it?  
 16 **A. That's correct.**  
 17 Q. And -- and here, the member agencies can get up  
 18 to \$250 per acre-foot for conserving water or reducing  
 19 the need for imported water supplies; right?  
 20 **A. That's correct.**  
 21 Q. And every acre-foot that you conserve is a  
 22 reduction in the need for imported water supplies?  
 23 **A. That's correct.**  
 24 Q. And every acre-foot that's a reduction in  
 25 imported water supplies means Met needs to deliver less

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1 water from the Colorado River or less water that it gets  
 2 from the State Water Project; right?  
 3 **A. Or less water that member agency chooses to**  
 4 **acquire from another source and move through our system.**  
 5 Q. Now, does the Water Stewardship Rate therefore  
 6 provide a supply benefit to various people -- various  
 7 agencies?  
 8 **A. The Water Stewardship Rate, the demand**  
 9 **management programs that it funds provide a supply**  
 10 **reliability benefit as one component of the benefits the**  
 11 **region receives.**  
 12 Q. Okay. If you're the member agency that has one  
 13 of these conservation programs, you don't have to buy as  
 14 much water from Met or from anybody else; right?  
 15 **A. That's true.**  
 16 Q. That's a supply benefit locally; right?  
 17 **A. It may be a supply benefit. In the case of**  
 18 **conservation, it's simply a reduced demand.**  
 19 Q. Well, in the sense that rather than have to  
 20 spend money on supply, you have to spend less money on  
 21 supply if you conserve water or somehow replace it with  
 22 groundwater that's been treated or so on; right? Isn't  
 23 that a supply benefit?  
 24 **A. They're reducing their use of water, yes.**  
 25 Q. Which is a supply benefit, isn't it?

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1           **A. To the extent that they are purchasing supplies**  
 2 **from an entity like Metropolitan, they're paying less for**  
 3 **a supply. They're also paying less for moving water**  
 4 **through our system if they're acquiring it from somebody**  
 5 **else.**  
 6           Q. Fair enough. They don't have to pay as much  
 7 transportation, but they also don't have to pay you for  
 8 supply because they're just not buying as much water;  
 9 right?  
 10           **A. That's correct.**  
 11           Q. And then there's also a regional benefit.  
 12 Everybody that deals with Met is in some ways better off  
 13 because Met's not as burdened. I mean their supplies are  
 14 going to go further, right, because somebody's conserving  
 15 water?  
 16           **A. The supplies will go further and there's**  
 17 **capacity in the system to move additional water.**  
 18           Q. Okay. Now, Met makes absolutely no effort at  
 19 this -- and let's say -- let's start with the 5,000 foot  
 20 level.  
 21                     They made no effort to quantify the local  
 22 supply benefit that a member agency gets when it gets  
 23 money from the Water Stewardship Rate to reduce the  
 24 burden on its supplies; right?  
 25           **A. We're paying for acre-feet, either saved or**

1           **A. I do.**  
 2           Q. Yeah. And do you remember being asked at line  
 3 13 on 105, "And what -- does Metropolitan make an effort  
 4 to quantify what the local benefits are associated with  
 5 the LRP funding?"  
 6                     What's LRP funding?  
 7           **A. Local resources program funding provided by**  
 8 **Metropolitan, the incentives.**  
 9           Q. "Answer: No. LRP funding is  
 10 associated with the regional benefits.  
 11 The reason Metropolitan is providing  
 12 the incentives is because of the  
 13 regional benefits it accrued.  
 14 "Okay. but there's also a local  
 15 benefit that Metropolitan doesn't make  
 16 an effort to quantify?  
 17 "Answer: We're not -- we're not  
 18 quantifying a local benefit per se.  
 19 Obviously the acre-feet represent the  
 20 benefit that people in the area might  
 21 receive but it's also a benefit for  
 22 the region."  
 23                     Was that your testimony?  
 24           **A. It was.**  
 25           Q. Do you make -- does Met make any effort to

1           **produced at the local level so we are quantifying that.**  
 2           Q. So you quantify it by this \$250 or less payment  
 3 that you make per acre-foot?  
 4           **A. We quantify the acre-feet themselves.**  
 5           Q. But the acre-feet, that has nothing to do with  
 6 how much money the local agency saves by not having to  
 7 buy water from Met at \$600 an acre-foot, does it?  
 8           **A. The acre-foot amount, sure, sure. There's a**  
 9 **relation there.**  
 10           Q. Does Met -- simple question. Does Met make --  
 11 does Met make an effort to quantify local supply benefit  
 12 in these conservation programs?  
 13           **A. Yes. We quantify the amount of water that is**  
 14 **saved or produced.**  
 15           Q. Could we give Mr. Upadhyay a binder and the  
 16 judge a binder and everybody a binder?  
 17                     And in the binder at tab one, you should be  
 18 able to find your deposition.  
 19                     I'm sorry. Tab 28. Beg your pardon. Tab 28  
 20 is the place where your deposition is.  
 21                     And I want to direct your attention to page  
 22 105, line 13 through 25.  
 23                     Do you remember having your deposition taken in  
 24 this case not too long ago, September 13 of this year, by  
 25 Mr. Braunig here?

1           quantify the avoided supply cost when you do a -- one of  
 2 these local programs?  
 3           **A. On a go forward basis, we're not quantifying**  
 4 **that for each project, no.**  
 5           Q. And is that because -- you are not quantifying  
 6 it for each project on a going forward basis. Are you  
 7 quantifying it on a looking backwards basis?  
 8           **A. We are not.**  
 9           Q. You don't quantify it at all, do you?  
 10           **A. We quantified it at the beginning at the outset**  
 11 **of the program prospectively looking forward.**  
 12           Q. Okay. You don't have any -- I think you said  
 13 in your deposition you don't have any business need to do  
 14 that?  
 15           **A. That's correct.**  
 16           Q. Okay. Now, at the -- move to the 50,000 foot  
 17 level.  
 18                     Met didn't make any effort to calculate the  
 19 regional benefit for 2011 or 2012, did it?  
 20           **A. For 2011 or 2012, we reported the regional**  
 21 **benefit of the acre-feet that was either saved or**  
 22 **produced by these programs.**  
 23           Q. Okay. In some requests for admission that were  
 24 propounded to Met -- and, your Honor, if I could read  
 25 into the record number 40.

1 "Admit that MWD has not calculated the  
 2 regional benefit to MWD, including but  
 3 not limited to any additional  
 4 transportation or conveyance capacity  
 5 or additional water supply created by  
 6 the aggregate group of local water  
 7 supply projects, seawater desalination  
 8 projects or conservation programs  
 9 funded or subsidized with revenue  
 10 collected through the Water  
 11 Stewardship Rate in calendar year  
 12 2011."  
 13 There's an incorporation of objections, but the  
 14 answer is "Admit."  
 15 MR. HIXSON: Objection. No prior  
 16 inconsistency.  
 17 THE COURT: He's still allowed to read in an  
 18 RFA. Overruled.  
 19 BY MR. KEKER:  
 20 Q. Is it your testimony that Met did calculate the  
 21 regional benefit to Met of -- of all of that?  
 22 Are you contradicting this RFA, this request  
 23 for admission which Ms. Skillman, sitting back here,  
 24 signed?  
 25 **A. No. In fact, if you look at my deposition, I**

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1 **am reporting to you that we report the acre-feet that is**  
 2 **either saved or produced by these programs.**  
 3 Q. Okay. And -- but there is no -- all right.  
 4 Okay, fair enough.  
 5 Would you look at Tab 18?  
 6 You were shown this document earlier and it  
 7 is -- not Tab 18, DTX-18 which is in your binder at  
 8 page -- at Tab 9.  
 9 Do you see that?  
 10 **A. I don't have a Tab 9.**  
 11 Q. This is the economic benefits of local water  
 12 management programs that you testified about earlier.  
 13 It's Tab 9 in the binder I just gave you.  
 14 THE COURT: It may be a different tab number.  
 15 MR. KEKER: Tab 9 in the binder. I just handed  
 16 to him.  
 17 THE COURT: I think it's probably a different  
 18 number than that. We just don't have a 9.  
 19 MR. KEKER: Can I just -- could I approach the  
 20 witness and look and see -- I beg your pardon. I fouled  
 21 this up.  
 22 Q. Would you go back to the binder, Mr. Upadhyay,  
 23 go back to the binder that Mr. Hixson gave you and look  
 24 at the very first exhibit, which is the one I want you to  
 25 talk about. And that's the economic benefits of local

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1 water management programs, the final draft.  
 2 Okay. If you look at page 9, it talks about --  
 3 let's actually go over to page 10. And it talks about as  
 4 a result of local -- at the bottom, bottom paragraph.  
 5 Put that up.  
 6 As a result of local seasonal shift and  
 7 long-term contractual conjunctive use storage programs,  
 8 Metropolitan would be able to eliminate the need for an  
 9 additional 400,000 acre-foot reservoir.  
 10 Now, a 400 acre-foot reservoir is a supply  
 11 cost, isn't it?  
 12 **A. It probably would be.**  
 13 Q. Okay. So they would be -- so as a result of  
 14 the economic benefits of conservation would include being  
 15 able to eliminate a 400,000 acre-foot reservoir, which is  
 16 a supply cost.  
 17 Downsizing an ocean desalination plant, that's  
 18 a supply cost, isn't it?  
 19 **A. I don't know that it's wholly a supply cost.**  
 20 **I'm sure that there are components that would be**  
 21 **considered less too.**  
 22 Q. Let's look -- look at the next in your binder,  
 23 DTX-20, which is the volume 2 of the integrated resources  
 24 plan and the chart that you were talking about before at  
 25 page 250.

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1 If we could get that up.  
 2 This is -- you told us that 6.1 was the capital  
 3 expenditures that could be avoided or if not avoided,  
 4 delayed by all these conservation programs?  
 5 **A. These were actually the capital expenditures**  
 6 **that were projected with the preferred resource.**  
 7 Q. The biggest ones have to do with supply, not  
 8 conveyance, don't they?  
 9 **A. There are significant expenditures in each**  
 10 **category.**  
 11 Q. I mean let's -- east side reservoir project,  
 12 that's a apply project, two billion dollars, delayed;  
 13 right?  
 14 Right?  
 15 **A. East side reservoir project is the alternative**  
 16 **name for Diamond Valley Lake, which was ultimately built.**  
 17 Q. Okay. All right. Diamond Valley Lake was a  
 18 supply cost, wasn't it?  
 19 **A. It -- if you look at our cost of service,**  
 20 **Diamond Valley Lake and the cost of Diamond Valley Lake**  
 21 **are not wholly supply costs.**  
 22 Q. Look down in the text, the bottom of 250.  
 23 Regional water -- in the second sentence.  
 24 Could we blow up, regional water management  
 25 facilities under this first category. And the first

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1 category refers to supply, right, previous sentence?  
 2 Let me finish. Supply, distribution and  
 3 storage categories.  
 4 Regional water management facilities under this  
 5 first category include several groundwater conjunctive  
 6 use projects estimated to cost 176 million over the next  
 7 ten years, the east side reservoir project estimated to  
 8 cost 1.28 billion over the next ten years.  
 9 And that's the same you say as the Diamond Lake  
 10 that was built?  
 11 **A. It's just a different name.**  
 12 Q. Okay. Do you know how Diamond Lake was  
 13 accounted for in the functionalization --  
 14 functionalization process that goes on at Met?  
 15 **A. I -- sitting here now, I can't tell you exactly**  
 16 **how.**  
 17 Q. We're going to look at that.  
 18 THE COURT: Mr. Kecker, if you could let him  
 19 finish his answer. He had a few more words.  
 20 Go ahead, sir.  
 21 THE WITNESS: Yeah. Sitting here, I can't  
 22 recount for you how it was accounted for.  
 23 BY MR. KEKER:  
 24 Q. Do you remember in 2009 advocating for a change  
 25 in the cost of service methodology where you wanted some

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1 reservoirs to be moved from the Transportation Rate to  
 2 the supply rate?  
 3 **A. I do remember speaking with our member agencies**  
 4 **and the board about that. They were not Diamond Valley**  
 5 **Lake.**  
 6 Q. Do you remember one of the arguments that you  
 7 used and a set of slides that we'll look at after lunch  
 8 was the Diamond Valley Lake was accounted for under the  
 9 supply function, not conveyance?  
 10 **A. I don't recall that but that's not to say I**  
 11 **didn't say that.**  
 12 Q. And what you were arguing for there is that  
 13 these other lakes, which were allocated to  
 14 transportation, would be more appropriately allocated  
 15 under cost of service analysis to supply; right?  
 16 **A. Again, I don't recall.**  
 17 Q. We'll go over it after lunch. I'll give you a  
 18 chance to look at it.  
 19 MR. KEKER: Your Honor, what's your pleasure?  
 20 THE COURT: Whenever is a good time for you.  
 21 MR. KEKER: This is a good time.  
 22 THE COURT: All right. 1:30.  
 23 See everybody then.  
 24 Thank you.  
 25 (Noon recess taken.)

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1 DECEMBER 20, 2013 AFTERNOON SESSION  
 2 P R O C E E D I N G S  
 3 ---o0o---  
 4 THE COURT: Let's continue, please.  
 5 MR. KEKER: Thank you, your Honor.  
 6 BY MR. KEKER:  
 7 Q. Good afternoon, Mr. Upadhyay.  
 8 **A. Good afternoon.**  
 9 Q. The San Diego County Water Authority is charged  
 10 the Water Stewardship Rate when it moves water through  
 11 Met's system; isn't that right?  
 12 **A. That's correct.**  
 13 Q. And it doesn't matter -- it's -- that's part of  
 14 the Transportation Rate, the Water Stewardship Rate is?  
 15 **A. Water Stewardship Rate is charged on any water**  
 16 **that's moved through the system.**  
 17 Q. But it's part of the transportation -- it is  
 18 treated as transportation by Met?  
 19 **A. Sure. For any water that moves through the**  
 20 **system, yeah.**  
 21 Q. And any wheeling -- wheeled water that moves  
 22 through the system, they charge the Water Stewardship  
 23 Rate; correct?  
 24 **A. That's correct.**  
 25 Q. When San Diego moves this IID water through the

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1 system, they charge the Water Stewardship Rate?  
 2 **A. San Diego doesn't move IID water through our**  
 3 **system.**  
 4 Q. When IID water is brought to the -- from the  
 5 Colorado River to the terminal, the eastern terminal of  
 6 the Colorado River Aqueduct and put into the system where  
 7 it moves with other molecules of water that might not be  
 8 completely similar and at the other end when Met provides  
 9 to San Diego an equivalent amount of water, they charge  
 10 the Water Stewardship Rate, don't they, sir?  
 11 MR. HIXSON: Objection; compound.  
 12 THE COURT: Overruled.  
 13 THE WITNESS: The Water Stewardship Rate is  
 14 part of the exchange rate structure.  
 15 BY MR. KEKER:  
 16 Q. But desalination and these local resource  
 17 programs are not, as I think you've said, available to  
 18 the San Diego Water Authority, are they?  
 19 **A. I think I mentioned earlier that the county**  
 20 **Water Authority has a number of contracts that are LRP**  
 21 **contracts that have been available to them and continue**  
 22 **to be paid.**  
 23 Q. As of sometime in 2011, the board instructed  
 24 that no more -- no new projects, at least, for  
 25 desalination or local resource program conservation would

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1 be funded for San Diego; is that right or wrong?  
 2 **A. I believe the board recognized that the RSI**  
 3 **provision had been triggered in the contracts that**  
 4 **included it. Any new contracts would have an RSI**  
 5 **provision in them, but the board didn't say forever more**  
 6 **that Water Authority wouldn't be able to participate in**  
 7 **the programs.**  
 8 Q. Did the board instruct the staff not to approve  
 9 any new programs?  
 10 **A. Absent further board guidance.**  
 11 Q. Okay. Until the board told you otherwise, the  
 12 board instructed the staff: Do not let San Diego in on  
 13 these local conservation programs; right?  
 14 **A. The conservation programs, as I mentioned**  
 15 **earlier, continued to be --**  
 16 Q. Sorry, I misspoke.  
 17 **A. -- available within the San Diego service area.**  
 18 Q. The local conservation program that -- I was  
 19 speaking too generally.  
 20 The local resource program and desalination  
 21 program at the board's instruction was no longer  
 22 available to San Diego until further decision by the  
 23 board; right?  
 24 **A. The -- any contract under the LRP program would**  
 25 **require the RSI language, so we are in a proceeding right**

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1 **now that triggers the RSI language.**  
 2 Q. And that's a fairly complicated way of saying  
 3 something I think is fairly simple.  
 4 San Diego, according to the board of Met, is  
 5 ineligible until further notice for any of this money  
 6 that is doled out for local resource programs or  
 7 desalination; right?  
 8 **A. That is not correct.**  
 9 Q. Okay. What's it -- what new programs are they  
 10 allowed to participate in?  
 11 **A. For new programs, I believe that's correct,**  
 12 **they are continuing to receive money under the current**  
 13 **contracts.**  
 14 Q. Okay. Under old programs, they still get some  
 15 money. You've listed -- and they are all sort of  
 16 trivial, aren't they, the old programs?  
 17 **A. I'm sorry?**  
 18 Q. The old programs are fairly trivial compared to  
 19 what we were talking about, for example the desalination  
 20 program, small amounts of acre-feet of water?  
 21 **A. I believe some of them are in the thousands of**  
 22 **acre-feet.**  
 23 Q. Okay. Desalination program was a big ticket;  
 24 right?  
 25 **A. The -- are you referring to the Carlsbad**

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1 **desalination?**  
 2 Q. I am.  
 3 **A. That Carlsbad desalination would have been a**  
 4 **significant facility and investment.**  
 5 Q. And the board instructed that you're not going  
 6 to enter into a contract for that desalination facility  
 7 because of the RSI clause; right?  
 8 **A. Until we're done with this proceeding, an**  
 9 **agreement for that, another agreement for that would not**  
 10 **come back to the board.**  
 11 Q. Do you expect that if we rest on -- if the case  
 12 is over on Monday, Met is going to start funding  
 13 San Diego again? Is that your testimony?  
 14 **A. I can't speculate, sir.**  
 15 Q. The -- let's just get it clear. The board has  
 16 instructed that until further notice from the board, no  
 17 new programs for local resource programs or desalination  
 18 for San Diego; right?  
 19 **A. That's where we are right now.**  
 20 Q. Okay. And -- but San Diego, as we've  
 21 established, continues to pay into this fund which is  
 22 used to dole out money to other member agencies; right?  
 23 **A. And themselves.**  
 24 Q. And that fund -- as you've established on  
 25 direct examination, you were shown some exhibits.

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1 Sometimes that fund is negative, ends up negative after a  
 2 year. We saw one example of I think 40 or \$45 million  
 3 negative, and sometimes it ends up positive, a couple  
 4 million dollars positive; right?  
 5 **A. That's correct.**  
 6 Q. And when it's negative, the general reserves of  
 7 Met fill it up again; right?  
 8 **A. I wouldn't say they fill it up again. General**  
 9 **reserves are used to pay for the costs.**  
 10 Q. Okay. But it would be fair to call this fund,  
 11 the Water Stewardship Rate funds a general fund for the  
 12 use of the agency to dole out projects; right?  
 13 **A. Our rates go into our general reserves and**  
 14 **those reserves are used to pay our costs when our overall**  
 15 **revenues are below what's necessary to pay for those**  
 16 **costs.**  
 17 Q. But there's certainly no one-to-one -- you've  
 18 already testified it's not like you pay in a dollar and  
 19 you get back a dollar or the equivalent?  
 20 **A. That's not the design of the program.**  
 21 Q. All right. Now, I think we've agreed before  
 22 lunch that the conservation programs -- and by  
 23 "conservation programs," can I use that word to cover all  
 24 three? What you call conservation by giving people  
 25 rebates for low flow toilets and so on and the local

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1 resource programs and the desalination programs, can I  
2 call them conservation programs?

3 **A. My preference is to use the term demand  
4 management programs.**

5 Q. Demand -- okay, I will.

6 **A. Conservation can be confusing.**

7 Q. Demand management programs.

8 THE COURT: If we could not talk on top of each  
9 other, it would be easier for the court reporter.

10 Go ahead.

11 MR. KEKER: I'm going to use demand management  
12 programs to cover the conservation programs, the local  
13 resource programs and the desalinization, your Honor and  
14 Mr. Upadhyay.

15 Q. Have we agreed that those programs provide a  
16 supply benefit both to the local agencies that get them  
17 and to the region?

18 **A. Yes.**

19 Q. Okay. And they are measured -- the only  
20 measurement of those programs you were going through on  
21 direct is a measure of acre-feet. We're getting a number  
22 of acre feet of conservation, a number of acre-feet of  
23 new water, right?

24 **A. That's the measure we report annually, yes.**

25 Q. Okay. And acre-foot is a measure of supply,

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1 **The other aspect is even if the you didn't have  
2 to expand the facilities, that there is a net capacity  
3 available in the system because not as much water is  
4 moving through the system.**

5 Q. Okay.

6 **A. So someone that wanted to move water through  
7 our system would have additional capacity to do so.**

8 Q. But one suspect is that you're avoiding capital  
9 costs that are related not just to acquire supply but  
10 also to moving the water?

11 **A. That's correct.**

12 Q. Okay. And even though it's not measured --  
13 well, let me ask you, the Met does not calculate what  
14 percentage of the cost of conservation avoids supply  
15 costs versus what percentage avoids conveyance costs;  
16 does it?

17 **A. That's correct.**

18 Q. Now, you could do that, couldn't you?

19 **A. On a retrospective basis if we were to look  
20 back, I suppose we could.**

21 Q. Well, you used to do it, didn't you?

22 **A. What we originally did was we looked forward  
23 and projected what the capital needs would be under a  
24 demand set that didn't have the demand management  
25 programs and a preferred resource mix that did.**

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1 isn't it?

2 **A. In this case, it's a measure of demand  
3 reduction.**

4 Q. Okay. And demand reduction is another way of  
5 saying supply?

6 **A. It's reduction in the demand on Metropolitan's  
7 system.**

8 Q. But there's no measurement that anybody makes  
9 that an acre-foot of conserved water is going to equal  
10 for this year's rates, for 2011-'12 this much avoided  
11 cost of supply or this much avoided cost of conveyance.  
12 That's not measured, is it?

13 **A. That's correct.**

14 Q. Now, it's Met's position that in addition to  
15 the supply benefit that these DMD programs provide,  
16 there's also a benefit by increasing the system capacity;  
17 is that right?

18 **A. That's correct.**

19 Q. And by increasing the system capacity, what you  
20 mean is the same capacity will -- you will be using it  
21 less and so you don't -- and so maybe you don't have to  
22 expand it as much. That's an advantage; right?

23 **A. That's one aspect of it, which is that you  
24 don't have to expand the facilities to the same degree  
25 you would otherwise.**

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1 Q. Didn't you used to in the early '90s figure out  
2 what percentage of the conservation avoided supply costs  
3 versus what percentage avoided conveyance costs?

4 **A. I don't recall that.**

5 Q. Okay. Could we look at your deposition, page  
6 126?

7 Maybe, Jeff, will you play it?

8 MR. HIXSON: Hold on. What lines?

9 MR. KEKER: 126, 4 through 16.

10 Don't play it yet until counsel has had a  
11 chance to look at it.

12 THE COURT: This is in your materials, isn't  
13 it?

14 MR. KEKER: Yes, sir, it should be. The  
15 deposition should be the first tab.

16 Should be the last tab. I knew I was right,  
17 one end or the other.

18 THE COURT: The page cite is?

19 MR. KEKER: 126, 4 through 16.

20 THE COURT: Any objection?

21 MR. HIXSON: That's fine, go ahead.

22 (Video played.)

23 BY MR. KEKER:

24 Q. Mr. Upadhyay, every single penny that's  
25 collected in the -- by the Water Stewardship Rate is

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1 loaded on to the Transportation Rate or the wheeling rate  
 2 as the case may be and not a penny of it is put on to the  
 3 supply rate. Am I right about that?  
 4 **A. It's not included in the supply rate, it is**  
 5 **included in our full service rates and our wheeling**  
 6 **rates.**  
 7 Q. Now, since 1996 when this integrated resource  
 8 plan was being worked on, conservation was recognized as  
 9 a supply option like any other traditional supply  
 10 project, wasn't it?  
 11 MR. HIXSON: Object to "conservation." It's  
 12 vague.  
 13 MR. KEKER: Excuse me. DMD.  
 14 MR. HIXSON: Demand management.  
 15 MR. KEKER: Demand management.  
 16 THE COURT: Do you have the question in mind?  
 17 MR. KEKER: I'll ask it again if you want me  
 18 to.  
 19 THE COURT: He's got it.  
 20 THE WITNESS: Demand management programs were  
 21 included in the integrated resources plan as providing a  
 22 regional benefit. In fact, my response that was just  
 23 played was a reference to the economic study that we had  
 24 done that tabulated a supply and a conveyance benefit  
 25 associated with those programs.

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1 BY MR. KEKER:  
 2 Q. Okay. If you'd just bear with me for a second.  
 3 Look, if you would, at the integrated tab 8 of  
 4 your binder.  
 5 Do you have it?  
 6 You should have in tab 8 the Southern  
 7 California integrated resources plan, volume 1 and volume  
 8 2. And I'm going to ask you to look at page 298.  
 9 THE COURT: What exhibit number is this for the  
 10 record? Is this 256?  
 11 No.  
 12 MR. KEKER: This is DTX-256.  
 13 THE COURT: This may be the page number. That  
 14 might be my fault.  
 15 This is part of the administrative record?  
 16 MR. KEKER: Yes, sir, it is part of the  
 17 administrative record, for sure. And the page in the  
 18 administrative record is 1448 and it's a part of both  
 19 administrative -- I mean it was 2010 and carried over.  
 20 THE COURT: 1448?  
 21 MR. KEKER: 1448 are the last four numbers.  
 22 MR. HIXSON: And I'm going to object to  
 23 counsel's statement that this is DTX-256. It might be  
 24 but there's no DTX number on it.  
 25 THE COURT: I understand. That was my mistake.

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1 MR. KEKER: Then it was my mistake, too.  
 2 Q. This is part of the administrative record.  
 3 It's the integrated resources plan. It's MWD record  
 4 0014016 is the first page and I'm asking about 1448.  
 5 Are you there, sir?  
 6 **A. Yes.**  
 7 Q. And then under water conservation, do you see  
 8 the first two sentences there in the middle of the page?  
 9 It says "The relationship between urban water  
 10 conservation and the projection of water demands was  
 11 discussed in section 2. However, during the IRP" -- that  
 12 stands for integrated water -- or resources plan; right,  
 13 IRP.  
 14 **A. Correct.**  
 15 Q. -- "conservation was also considered as a  
 16 supply option much like any other traditional supply  
 17 project."  
 18 Right?  
 19 **A. That's what it reads.**  
 20 Q. Now, this idea that somehow part of the benefit  
 21 of DMD projects, part of the justification of why they  
 22 should be on the Transportation Rate is this idea that  
 23 they increase capacity within the system; right?  
 24 **A. That's correct.**  
 25 Q. Okay. But Met doesn't need increased capacity

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1 right now, does it?  
 2 **A. What do you mean by "right now"?**  
 3 Q. Well, I mean over the last few years.  
 4 **A. The last few years demands for water moved**  
 5 **through Metropolitan system have been relatively low.**  
 6 Q. And demand has been shrinking, it's been going  
 7 down since 2008; right?  
 8 **A. Demands are lower now than they were in 2008.**  
 9 Q. And you haven't operated at full capacity for  
 10 at least the last few years; right?  
 11 **A. I believe that there are portions of our**  
 12 **system, even in that period since 2008 that were operated**  
 13 **at capacity for times of the year.**  
 14 Q. Okay. Well, let's go through this slowly to  
 15 make sure that we got it straight.  
 16 At tab 17 in your binder, there is a recent  
 17 bond issue, and this is PTX-244 which is in evidence, has  
 18 been moved into evidence. And the page I'm going to ask  
 19 you about is A46, which at the bottom is a table of water  
 20 sold and water sales receipts for the years 2008 through  
 21 2012. Do you see that?  
 22 **A. I do.**  
 23 Q. And what that shows is that in 2008, 2.3  
 24 million acre-feet were sold; the next year, 2009, 2.16  
 25 acre-feet, million acre-feet.

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1 The next year, it went down to 1,857,000  
 2 acre-feet. 2011, it was down to 1,632,000 acre-feet and  
 3 last year, it went up a tiny bit to 1,676,000 acre-feet.  
 4 Is that right? Does that look right to you?  
 5 **A. Looks right to me.**  
 6 Q. And it's going to go even lower as this  
 7 requirement that the 2010 IRP revision of reducing per  
 8 capita consumption by 20 percent clicks in over the  
 9 years, isn't it?  
 10 **A. I don't agree with that.**  
 11 Q. You don't think that the requirement that you  
 12 reduce per capita consumption of water by 20 percent was  
 13 designed to and will reduce the demand for Met water in  
 14 the future?  
 15 **A. The water that Metropolitan has to deliver in  
 16 the future will be reduced compared to an alternative  
 17 where we don't achieve those objectives.**  
 18 **But if you look over time, you see a  
 19 fluctuation in the water that Metropolitan has to deliver  
 20 that's within this range. In fact, if you looked at the  
 21 '90's, we went from water sales that were in the 2.3 to  
 22 2.5 million acre-feet range all the way down to  
 23 deliveries that were in the 1.5 million acre-feet range.  
 24 And lo and behold, in the early 2000s they popped back up  
 25 again. And there are a lot of factors that play into**

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1 **what those deliveries are required to be in a given year.**  
 2 Q. Does Met have any responsibility in setting the  
 3 Water Stewardship Rate for these conservation projects,  
 4 to take into account when it's doing that whether or not  
 5 it actually needs extra capacity over the next couple of  
 6 years -- or the next few years?  
 7 **A. The goal of our program is to help reach the  
 8 integrated resources plan targets which are long-term in  
 9 nature.**  
 10 Q. You mentioned earlier this east branch State  
 11 Water Project expansion program that was -- turns out not  
 12 to have been needed. That was a supply program, wasn't  
 13 it?  
 14 **A. It was not a supply program.**  
 15 Q. Did it have anything to do with creating  
 16 supply, a reservoir to create supply?  
 17 **A. No. I was referring to the expansion of the  
 18 east branch of the conveyance system on the State Water  
 19 Project.**  
 20 Q. Okay. But the reservoir that was going to be  
 21 built there, it was going to cost a couple billion  
 22 dollars. That didn't need to be -- didn't need to be  
 23 built either, did it?  
 24 **A. Metropolitan built a completely separate  
 25 facility than what you're referring to that is known as**

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1 **Diamond Valley Lake. It is currently the largest surface  
 2 water reservoir in Southern California.**  
 3 Q. And that's a supply. At least part of that is  
 4 allocated to supply, drought supply, peak year supply;  
 5 right?  
 6 **A. The reservoir functionally is broken up into a  
 7 number of different elements and one of them is supply,  
 8 one of them is capacity, conveyance, system capacity, and  
 9 one of them is standby capacity.**  
 10 Q. But none of them is conveyance?  
 11 **A. I'm not sure that none of them are conveyance.**  
 12 Q. Well, you just mentioned that -- what you just  
 13 mentioned did not include conveyance, did it?  
 14 **A. Again, I think that the reservoir is split up  
 15 into three different components. One of them is supply,  
 16 one of them is the regulatory capacity of the system so  
 17 it's contributing to the capacity to deliver, and one of  
 18 them is standby capacity for emergency purposes.**  
 19 Q. Would you look at tab 27 please, sir? This is  
 20 Plaintiff's Exhibit 386.  
 21 And this is an e-mail from you to Mr. Thomas.  
 22 Will you tell us on August 6th, 2009 who is Mr. Thomas?  
 23 **A. This is referring to Brian Thomas. He was the  
 24 chief financial officer at Metropolitan at the time.**  
 25 Q. And the title is COS observations. Is this

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1 cost of service observations?  
 2 **A. I believe so, yes.**  
 3 Q. And then Sydney Bennion, who is she?  
 4 **A. Syd Bennion is in our legal counsel's office.**  
 5 Q. She's an assistant general counsel?  
 6 **A. I believe so.**  
 7 Q. If you look over on the next page, you write to  
 8 Mr. Thomas in the next to the last full paragraph,  
 9 "Currently the distribution function has no costs  
 10 classified as standby. This seems strange to me as it  
 11 would seem that we have not operated at full capacity in  
 12 the past few years."  
 13 Was that a true statement when you said it in  
 14 2009, we haven't operated at full capacity in the last  
 15 few years?  
 16 **A. I believe that at that time, that it was hard  
 17 to look at the system as a whole and say that all of the  
 18 system was used at full capacity.**  
 19 Q. Okay. So when they're setting the 2010 rates,  
 20 one of the things that you have to consider in trying to  
 21 figure out whether or not there was any benefit to  
 22 increasing system capacity is whether or not you needed  
 23 it, whether or not it was of value to the system; right?  
 24 **A. What this is speaking to is whether or not  
 25 costs of the system would be allocated to certain rate**

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1 **components or functions. And the function that's being**  
 2 **discussed there is standby capacity, so capacity in the**  
 3 **system is standing by to provide service in the future.**  
 4 Q. Okay. The last sentence says, "Moving the  
 5 Castaic and Perris costs to the supply function."  
 6 Castaic and Perris costs are what? These are  
 7 terminal reservoirs that take in the water from the State  
 8 Water Project?  
 9 **A. I'm not sure where you are in the letter.**  
 10 Q. I'm sorry. Last sentence of the e-mail, right  
 11 above "food for thought."  
 12 **A. So you're -- I'm sorry. Can you repeat your**  
 13 **question?**  
 14 Q. Would you tell us what Castaic and Perris are?  
 15 **A. Castaic Lake and Lake Perris are the terminal**  
 16 **reservoirs in DWR's State Water Project conveyance**  
 17 **system.**  
 18 Q. Okay. And that's where Met's own conveyance  
 19 system begins, bringing water out of those lakes?  
 20 **A. That's when our distribution system begins.**  
 21 Q. Okay. And you don't own anything north of  
 22 that?  
 23 **A. No. We're simply obligated to pay for the**  
 24 **fixed costs.**  
 25 Q. You're obligated to the State Water Project to

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1 pay -- the State Water Project brings you the and  
 2 provides you the supply in these two lakes, maybe among  
 3 other places, and what you're suggesting is that the cost  
 4 of those two lakes should move to the supply function?  
 5 MR. HIXSON: Your Honor, I'm going to object as  
 6 outside the scope of the direct. It has nothing to do  
 7 with demand management or the exchange agreement.  
 8 THE COURT: You may be right. I'm going to  
 9 take this as impeachment of some of his earlier  
 10 statements and I'll let it in for that purpose.  
 11 THE WITNESS: Can you repeat the question?  
 12 BY MR. KEKER:  
 13 Q. Yeah. What -- what do you mean by moving  
 14 the -- where were you moving from and why did -- why were  
 15 you talking about moving the Castaic and Perris cost to  
 16 the supply function?  
 17 **A. The -- at the time Metropolitan's board had**  
 18 **asked staff to look at options and review the cost of**  
 19 **service, to look at our rates overall and what this was**  
 20 **looking at was whether there were other ways to take a**  
 21 **look at our cost of service and assign costs and there**  
 22 **were.**  
 23 Q. And Castaic and Perris costs, it says "moving  
 24 to the supply function." Where would they be moving  
 25 from?

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1 **A. This was looking at a portion of Castaic and**  
 2 **Perris that could be allocated to the supply function**  
 3 **from a transportation function.**  
 4 Q. And so previous -- at the time you were writing  
 5 the memo, they were allocated to the transportation  
 6 function and now you were -- the -- there's a possibility  
 7 of thinking about moving them to supply?  
 8 **A. That's correct.**  
 9 Q. We'll look at that more in a minute.  
 10 But then at the end of that, it says "which may  
 11 help the politics of the package." What did you mean by  
 12 the politics of the package?  
 13 **A. The reference there is to changing fixed**  
 14 **revenues.**  
 15 **One of the things that the board was looking at**  
 16 **at the time and had asked us as staff to look at was**  
 17 **whether there were ways to change or consider a different**  
 18 **level of fixed revenues as part of Metropolitan's overall**  
 19 **rate structure.**  
 20 Q. More like a commitment program where people had  
 21 to commit to buy a certain amount of water?  
 22 **A. Some folks had mentioned that. Others had**  
 23 **mentioned other ways to change fixed revenues.**  
 24 Q. Now, going back to the 1996 IRP, by 2009 when  
 25 you were writing that memo, you knew and Met knew that

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1 the IRP projections about the increasing demand had  
 2 been -- had turned out to be very, very wrong, didn't  
 3 you?  
 4 **A. At the time in 2009, we were in an allocation**  
 5 **plan. So we were asking people to reduce demand on**  
 6 **Metropolitan's system in an extraordinary fashion. We**  
 7 **were seeing a response to that that was a delivery in our**  
 8 **system that was much lower.**  
 9 Q. Would you go back to Tab 8, which is the 1996  
 10 IRP. I want to direct your attention to Table 4.1, which  
 11 is at page 339 of the exhibit.  
 12 And this is in the record, your Honor, and the  
 13 page number in the record is 1489.  
 14 When I say "in the record" in the  
 15 administrative record.  
 16 THE COURT: Appreciate it.  
 17 BY MR. KEKER:  
 18 Q. Do you see that? Do you see Table 4.1?  
 19 **A. I do.**  
 20 Q. Do I read this correct?  
 21 What is -- what is the 1996 IRP projecting for  
 22 the period 2009 and 2010 to be the total demand on  
 23 Metropolitan? How much water it's going to be selling?  
 24 **A. It's projecting under normal conditions just**  
 25 **under 2.5 million acre-feet.**

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1 Q. In fact, what they sold that year was around  
 2 million six instead of the 2.5; right?  
 3 **A. That's correct.**  
 4 Q. So by 2009, 2010 did you understand -- did you  
 5 believe that the DMD projects, the effect on avoiding  
 6 costs for new conveyance systems, would be different than  
 7 it had been in 1996?  
 8 **A. In -- the time you're referring to is 2009?**  
 9 Q. '09, '10.  
 10 **A. During that time period, we were seeing a**  
 11 **reduction in demand in our system as a result of the**  
 12 **conditions that I had described before, which would be**  
 13 **consistent with projections lower than this. If you knew**  
 14 **those conditions were going to hit and you were calling**  
 15 **for people to reduce their demands in an extraordinary**  
 16 **fashion -- we expected demands to be lower.**  
 17 Q. And as a result of this problem with water  
 18 supply, the -- there was plenty of capacity in the  
 19 system. Capacity wasn't the issue; right?  
 20 **A. Depends where you're looking in the system.**  
 21 **Part of the issue we were facing was that, in fact, there**  
 22 **wasn't capacity to move water into the State Water**  
 23 **Project system as a result of restrictions that were**  
 24 **being placed in the Delta that wasn't allowing water to**  
 25 **move.**

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1 Q. Okay. But that's a different kind of capacity.  
 2 What you're saying is -- the aqueduct hasn't gotten  
 3 smaller all of a sudden, has it?  
 4 **A. No.**  
 5 Q. What you're saying is the supply wasn't there  
 6 to fill up this conveyance system, right, because of  
 7 environmental concerns and other concerns?  
 8 **A. No. To -- in order to be able to move water,**  
 9 **you have to be able to have the capacity in the pumps.**  
 10 **Part of the capacity of the pumps is regulated -- based**  
 11 **on regulations that allow you to either run the pumps or**  
 12 **not and there wasn't capacity to move water at the time.**  
 13 **That's part of the reason we had to call for conservation**  
 14 **and ultimately implement an allocation plan.**  
 15 Q. But the problem was -- is that the state wasn't  
 16 letting the amount of water go into the system that Met  
 17 wanted to get for its customers in Southern California,  
 18 right, that's why they were limiting the use of the pumps  
 19 and so on?  
 20 **A. They were facing restrictions related to**  
 21 **environmental constraints.**  
 22 Q. They were saying you're not taking -- the  
 23 problem was not capacity of the conveyance system, the  
 24 problem was the state wouldn't let you have the amount of  
 25 water that you needed; right?

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1 **A. The water was available. The capacity to move**  
 2 **the water was not available.**  
 3 THE COURT: In that last answer, what do you  
 4 mean by the word "capacity"? Do you mean the functioning  
 5 of pumps or do you mean the tube?  
 6 THE WITNESS: The ability to use the pumps to  
 7 move the water.  
 8 THE COURT: Okay.  
 9 BY MR. KEKER:  
 10 Q. And the reason you couldn't use the pumps is  
 11 that environmental folks were saying, don't let them pump  
 12 so much water out of the Delta; right?  
 13 **A. There were restrictions being placed on the**  
 14 **use.**  
 15 Q. So it is not that the pumps didn't work or the  
 16 pumps couldn't pump 24 hours a day or the pumps needed to  
 17 be replaced or the pumps needed to have better pumps  
 18 built in Germany, it's that you couldn't run them all  
 19 day; right?  
 20 **A. They couldn't run to move the water.**  
 21 Q. And you call that a capacity problem?  
 22 **A. It's an inability to move supply, so it's a**  
 23 **capacity constraint.**  
 24 Q. All right. I promised you I would show you  
 25 this later on.

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1 Would you look at Tab 5 of your binder please,  
 2 sir.  
 3 And this is a little bit after the e-mail you  
 4 wrote about you talked about we haven't been running at  
 5 full capacity for several years.  
 6 THE COURT: This is record 1753?  
 7 MR. KEKER: Yes, sir. And it's in the  
 8 administrative record. And it's action item 8-1, change  
 9 to cost of service methodology, November 9, 2009, from  
 10 the office of CFO.  
 11 Q. CFO at the time was Mr. Thomas?  
 12 **A. Yes.**  
 13 Q. Were you in the office as an assistant then?  
 14 **A. I was a section manager.**  
 15 Q. Was this your project? Was this pretty much  
 16 your baby, this proposal?  
 17 **A. This was in my area of responsibility.**  
 18 MR. HIXSON: Your Honor, I'm going to renew my  
 19 objection. This is far outside the scope of direct.  
 20 MR. KEKER: This goes right to -- he's talked  
 21 about Diamond Lake and so on.  
 22 THE COURT: I honestly don't know yet. Let's  
 23 reserve your objections to some questions as we see it  
 24 going forward. I can't tell if it is or not.  
 25 //

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1 BY MR. KEKER:  
 2 Q. Okay. On page 4, which has the record citation  
 3 10756, this is a reference to an adjustment that's being  
 4 recommended for State Water Project flex storage and it  
 5 says Metropolitan has the ability to borrow water out of  
 6 Castaic Lake and Lake Perris in dry years, and this  
 7 agreement provides a dry year supply benefit to  
 8 Metropolitan.  
 9 And it goes on to say DWR charges for these  
 10 facilities as transportation facilities, terminal  
 11 reservoirs.  
 12 And the next slide, 5, talks about Diamond  
 13 Valley Lake is treated differently and then mentions what  
 14 I think you've already said, drought storage provides  
 15 increased dry year supply, drought storage costs are a  
 16 supply to -- assigned to the supply function.  
 17 Now, why were you talking about this? What was  
 18 the issue and what was the circumstance? What were you  
 19 trying to achieve by talking about this?  
 20 A. Well, we had been asked by our board of  
 21 directors to take a look at our cost of service and  
 22 various options related to the cost of service.  
 23 Q. And had they asked anything specific about  
 24 these charges or is this something you all came up with?  
 25 A. This was part of an overall effort where they

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1 were looking at fixed revenues, cost of service.  
 2 I believe if you look earlier on in this  
 3 presentation, there were a number of different things  
 4 being considered at the time. The cost of service  
 5 categories was one element of it.  
 6 Q. Okay. Then the next page, page 6, it says SWP  
 7 current approach. Castaic and Perris are included in the  
 8 conveyance function and costs are recovered in the System  
 9 Access Rate and the Readiness-to-Serve Charge; is that  
 10 right?  
 11 A. That's true.  
 12 Q. Okay. Then item 7, you're suggesting an  
 13 alternative approach, that since they're used for drought  
 14 storage, that a portion of their costs should be treated  
 15 as supply costs and the drought storage component should  
 16 be included in the supply function and that would move  
 17 about ten million dollars to the supply function instead  
 18 of conveyance; right? That was a suggestion that you  
 19 were making?  
 20 A. That was this alternative approach.  
 21 Q. And then you -- you -- in page 10 and 11, you  
 22 gave three options for the board. One was to do what you  
 23 wanted them to do. That's Option I; right?  
 24 A. Option I was this alternative approach.  
 25 Q. And Option II was to do absolutely nothing

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1 except direct staff to keep thinking; right?  
 2 A. Option II was for us to not make a change in  
 3 the cost of service at that time, to continue with our  
 4 integrated resources plan process which was going through  
 5 an update at the time and to full discussion into our  
 6 long-range finance plan, which is a broader look at  
 7 overall long-range finances, rates and impact in the long  
 8 term.  
 9 Q. And Option III was to direct the staff to make  
 10 other changes to the cost of service methodology as well;  
 11 right?  
 12 A. Yes.  
 13 Q. And then the next page, page 12, staff  
 14 recommends Option I?  
 15 A. That's correct.  
 16 Q. What happened?  
 17 A. The board, as I mentioned, chose option II and  
 18 directed us to look in the integrated resources plan and  
 19 long-range finance plan as an overall, overarching effort  
 20 to review things going forward.  
 21 Q. They didn't want anybody to do anything to  
 22 destabilize the rates, did they?  
 23 A. I can't speculate as to that.  
 24 Q. They didn't tell you that?  
 25 A. I don't recall that.

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1 Q. Did you believe they were for political  
 2 reasons, as you mentioned in the e-mail, the political  
 3 aspect of this?  
 4 A. I don't believe there was any ignoring of cost  
 5 of service principles. We were presenting another  
 6 option.  
 7 MR. KEKER: That's all I have. Thank you,  
 8 Mr. Upadhyay.  
 9 THE COURT: Thank you, sir.  
 10 MR. HIXSON: Your Honor, may I have a few  
 11 minutes to review my notes?  
 12 THE COURT: Of course. What would you like?  
 13 MR. HIXSON: Five minutes.  
 14 THE COURT: See you in five.  
 15 (Brief break.)  
 16 MR. HIXSON: Your Honor, I have two exhibits I  
 17 would like to ask the witness about and I would like to  
 18 provide them to the Court.  
 19 THE COURT: Of course.  
 20 MR. HIXSON: Thank you.  
 21 REDIRECT EXAMINATION  
 22 BY MR. HIXSON:  
 23 Q. Mr. Upadhyay, do you still have the binder that  
 24 the other side gave you for cross-examination?  
 25 A. I do.

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1 Q. Can you turn to Tab 5?  
 2 A. Yes.  
 3 Q. And do you recall that on cross-examination,  
 4 you were asked questions about this PowerPoint  
 5 presentation concerning action item 8-1?  
 6 A. Yes, I do.  
 7 Q. And did that concern this issue that Mr. Kecker  
 8 asked you about concerning the reservoirs and the cost of  
 9 service?  
 10 A. Yes, it did.  
 11 Q. Can you please look at DTX No. 706?  
 12 And can you describe what DTX-706 is?  
 13 A. **DTX-706 is a board letter that went to our**  
 14 **board that the presentation that we discussed earlier was**  
 15 **in regards to. It was a board letter looking at the cost**  
 16 **of service allocation and the flexible storage components**  
 17 **of Castaic and Lake Perris. And it also described other**  
 18 **potential changes that may happen in the future, things**  
 19 **like fixed costs, ad valorem tax rates and other items**  
 20 **that could happen down the road.**  
 21 Q. Could you please turn to DTX-707 in front of  
 22 you?  
 23 And can you identify what DTX-707 is?  
 24 A. **These are the minutes of the board of directors**  
 25 **meeting from Metropolitan in November that considered**

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1 **that action item.**  
 2 Q. Please turn to page 8 and look at the first top  
 3 item.  
 4 Does item number 48082 relate to DTX-706 and  
 5 that board presentation?  
 6 A. Yes, it does.  
 7 Q. And do the minutes indicate what action the  
 8 board took on that item?  
 9 A. **Yes. The minutes show that the board adopted**  
 10 **Option II in that board letter and directed staff to not**  
 11 **make changes to the cost of service methodology at that**  
 12 **time but to continue work with the member agencies on the**  
 13 **cost of service methodology through our integrated**  
 14 **resources plan and the long-range financial planning**  
 15 **process at Metropolitan.**  
 16 MR. HIXSON: Metropolitan moves DTX-706 and 707  
 17 into evidence.  
 18 MR. KEKER: No objection.  
 19 THE COURT: 706 and 707 are admitted. They're  
 20 both DTX.  
 21 (Whereupon Exhibits DTX-706  
 22 and DTX-707 were admitted  
 23 into Evidence.)  
 24 MR. HIXSON: That's all I have.  
 25 MR. KEKER: Just a couple questions about  
 those, your Honor.

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1 THE COURT: Of course.  
 2 RE-CROSS-EXAMINATION  
 3 BY MR. KEKER:  
 4 Q. Looking at 706, board report from Mr. Thomas,  
 5 did you write this up? Is this yours?  
 6 A. **This came out of the CFO. I believe it was my**  
 7 **responsibility.**  
 8 Q. Okay. And one of the things in the bottom of  
 9 the second paragraph, you're saying as a result the  
 10 System Access Rate would be reduced and the supply rate  
 11 would increase.  
 12 Do you see that?  
 13 A. I do.  
 14 Q. And then on the next page, actually gone to  
 15 some trouble to list exactly what would happen if the  
 16 board made this change that you're recommending in the  
 17 cost of service methodology and moved some of this  
 18 flexible storage components over to supply and they --  
 19 that's what's depicted here; right?  
 20 A. **That is a characterization of what would happen**  
 21 **before and after the change.**  
 22 Q. Okay. And for example -- and it's got -- so  
 23 San Diego would get an advantage, would pay \$600,000  
 24 less; right?  
 25 A. **That's what's shown in this table.**

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1 Q. Los Angeles would have to pay \$100,000,  
 2 approximately more; right?  
 3 A. **That's what this table shows.**  
 4 Q. And nobody else -- and there's other  
 5 differences but they're not enough to even appear on this  
 6 chart because of the rounding. I mean basically  
 7 everybody else stays even; right?  
 8 A. **That's correct.**  
 9 Q. And so then -- so the board -- you get to the  
 10 board with this fairly modest change and it's voted down.  
 11 Instead, they decide not change anything; right?  
 12 A. **Not at that time.**  
 13 Q. How did L.A. vote?  
 14 A. **I don't recall.**  
 15 Q. Was there any discussion about the need to keep  
 16 rates stable?  
 17 A. **I do not recall.**  
 18 Q. Was there any discussion about the "hold  
 19 harmless" principle? That whatever happens, we can't let  
 20 other members' rates go up?  
 21 A. **I don't recall specifically anything along**  
 22 **those lines. Although I do know that historically, when**  
 23 **things are considered about Metropolitan's rates, we tend**  
 24 **to show the adjustments that might be occurring on an**  
 25 **agency basis so that our board is aware of what those**

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1 **changes might do.**  
 2 Q. Fair enough. And you heard historically since  
 3 you've been there. You started in 1995, I think you  
 4 said.  
 5 Have you heard about this San Pedro "hold  
 6 harmless" principle, that no -- that you can't have rates  
 7 that cause any member a financial injury because of some  
 8 change?  
 9 **A. I've heard of that general concept, yes.**  
 10 Q. And that's -- that's out of some San Pedro  
 11 declaration and the idea is that when we're setting --  
 12 when we're changing our rates, we've got to not -- we  
 13 have to protect the member agencies that aren't going to  
 14 have their rates affected by what they're doing.  
 15 That's a bad question.  
 16 For example, when the wheeling issue came up,  
 17 it was a very important principle back in the '90s that  
 18 no member who wasn't wheeling have any financial injury  
 19 as a result of wheeling within the Met system, right?  
 20 MR. HIXSON: Objection. Vague and now we're  
 21 way outside the scope.  
 22 THE COURT: You're outside the scope at this  
 23 point. I'll sustain that objection.  
 24 MR. KEKER: Thank you.  
 25 MR. HIXSON: Some redirect.

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1 THE COURT: All right.  
 2 FURTHER REDIRECT EXAMINATION  
 3 BY MR. HIXSON:  
 4 Q. Turning back to Exhibit 707, the board minutes  
 5 on the top of page 8, with respect to the flex storage  
 6 proposal that was being proposed to the board, would you  
 7 characterize that as a proposed incremental change to  
 8 Met's rate structure?  
 9 **A. Yes, I would.**  
 10 Q. And when the board directed staff to work on  
 11 cost of service in the long-range finance plan, was that  
 12 a more holistic look at Met's rate structure?  
 13 **A. The board was asking us to look at things in  
 14 the broader context.**  
 15 MR. HIXSON: Thank you.  
 16 THE COURT: Thank you very much, sir. You're  
 17 excused. Thank you so much.  
 18 Sir?  
 19 MR. HIXSON: We will call our next witness,  
 20 June Skillman.  
 21 THE COURT: Thank you.  
 22 JUNE SKILLMAN,  
 23 Having been called as a witness by the Defense, and  
 24 having been duly sworn under the standard oath, was  
 25 examined and testified as follows:

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1 THE CLERK: Thank you. Please be seated.  
 2 If you will adjust the microphone and then  
 3 state and spell your first and last name, please?  
 4 THE WITNESS: My name first name is June,  
 5 J-U-N-E, my last name is Skillman, S-K-I-L-L-M-A-N.  
 6 THE COURT: If you could actually talk into the  
 7 microphone. Adjust it so that it's convenient, about  
 8 four inches away from your mouth. IF talk into it,  
 9 people will be able to hear you.  
 10 Thank you.  
 11 MR. HIXSON: Your Honor, I would like to  
 12 provide your Honor and the witness with this binder.  
 13 THE COURT: Thank you.  
 14 DIRECT EXAMINATION  
 15 BY MR. HIXSON:  
 16 Q. Good afternoon, Ms. Skillman.  
 17 Who do you work for?  
 18 **A. I work for the Metropolitan Water District of  
 19 Southern California.**  
 20 Q. And how long have you worked for Met?  
 21 **A. I've been employed by Metropolitan since May of  
 22 2005. And prior to that, I worked for Metropolitan from  
 23 January 1995 through January of 1997.**  
 24 Q. Can you provide a general description of your  
 25 job responsibilities?

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1 **A. I'm the current manager of the budget and  
 2 financial planning section and I'm responsible for  
 3 Metropolitan's development, presentation and  
 4 implementation of the biennial budget and rates and  
 5 charges that support that budget.**  
 6 Q. Does your work at Met involve Met's cost of  
 7 service studies?  
 8 **A. Yes, it does.**  
 9 Q. And can you describe how so?  
 10 **A. My group is responsible for taking the  
 11 prospective budget and our costs and performing cost of  
 12 service study, which basically takes those costs and  
 13 allocates them into rates and charges to generate the  
 14 revenues we need.**  
 15 Q. Does Metropolitan undertake a cost of service  
 16 study in each rate setting cycle?  
 17 **A. It does.**  
 18 Q. I would like to ask you some questions about  
 19 how Met recovers peaking and standby expenses.  
 20 Can you please turn to DTX-110 in your binder?  
 21 Can you identify what DTX-110 is?  
 22 **A. This is a board action letter that was from  
 23 April of 2012 and it was proposing to the board our  
 24 biennial budget for fiscal year 2013 and 2014 and the  
 25 rates and charges that would support that budget. It**

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1 included the resolutions for the Readiness-to-Serve  
 2 Charge and the passive charge as well.  
 3 Q. Please turn to the page containing the Bates  
 4 number 16674.  
 5 Is this an attachment to the board letter?  
 6 A. This is. The board letter that we provided to  
 7 the board in April of 2012 had three different rate  
 8 options for the board to consider and because it was a  
 9 biennial budget and biennial rates proposal, each of  
 10 those three options had two cost of service studies  
 11 associated with them.  
 12 And the document that starts with Bates number  
 13 16674 is the first year of the biennial budget and rates  
 14 to support it. It's the cost of service study and it's  
 15 the first year for Option II, which was the option that  
 16 the board selected.  
 17 Q. Does this cost of service study show the steps  
 18 in Met's cost of service analysis?  
 19 A. It does. It is on page 6 of 29 and it's figure  
 20 1. It's Bates 16679.  
 21 Q. In which step does Met identify which costs are  
 22 associated with peaking or standby expenses?  
 23 A. That is done in step number 3, which is the  
 24 classification of costs.  
 25 Q. Okay. For cost of service purposes, how does

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1 Met decide if something is a peaking cost as opposed to a  
 2 cost associated with average use?  
 3 A. Well, we look at the system characteristics,  
 4 how the member agencies are using the system. The  
 5 portion of the system that's used to meet average demands  
 6 over the fiscal year is attributed to average demands.  
 7 The portion of the system that is being used to  
 8 meet peaking needs, which are basically driven in the  
 9 summer, are identified as being demand costs or peaking  
 10 costs, and the portion of the system that's left over,  
 11 standby.  
 12 Q. Okay. For characterizing a cost as peaking for  
 13 cost of service purposes, does it matter how Met's  
 14 distribution system is sized?  
 15 A. Met's distribution system is not sized to meet  
 16 average demands, it's actually sized to meet peak week  
 17 demands, and that's because that's how our member  
 18 agencies use the system.  
 19 Q. And so does that peak week sizing affect how  
 20 Met characterizes cost as peak versus average?  
 21 A. It does, and that's demonstrated in the  
 22 classification portion of the cost of service.  
 23 Q. Okay. When you refer to peak usage for cost of  
 24 service purposes, why don't you look at historical usages  
 25 over the span of an entire calendar year?

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1 A. When we talk about peaking on the system, what  
 2 we're talking about is the behavior, a member agency's  
 3 demands over average within that year.  
 4 So we're specifically looking at the summer  
 5 period, which is when we incur peak demands, and that's  
 6 when we expect that peak week period to occur.  
 7 So, while the usage over the year will help us  
 8 understand average usage of the system, when we want to  
 9 understand peaking, we look at what's going on at the  
 10 member agency during their highest day.  
 11 Q. For cost of service purposes, what does standby  
 12 mean?  
 13 A. Within Metropolitan's cost of service study,  
 14 standby refers to the portion of the system that meets  
 15 emergency requirements such as an earthquake. Or it may  
 16 also meet the demands if, say, we have an extended outage  
 17 on one of our main conveyance systems. And it also  
 18 refers to the portion of the system that's standing by to  
 19 meet variability in demand.  
 20 Q. For cost of service purposes, how does Met  
 21 decide if something is a standby cost as opposed to a  
 22 cost associated with average or peak use?  
 23 A. Well, we do the -- we do the analysis of  
 24 looking at how the system is used and first determine the  
 25 portion of the system that's used to meet average

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1 demands. We then next look at the portion of the system  
 2 that's been used to meet peaking and whatever is left  
 3 over is standby.  
 4 Q. Does this cost of service study have a chart  
 5 showing the classification percentages of cost to  
 6 average, peak and standby?  
 7 A. It does and it's page 18 of 29, Bates 16691,  
 8 schedule 6.  
 9 Q. I would like you to explain this chart.  
 10 In the middle column, the headings say  
 11 Commodity, Demand and Standby.  
 12 In this context, what does "commodity" mean?  
 13 A. Commodity refers to costs that are classified  
 14 as meeting average demands on the system.  
 15 Q. And in this context, what does "demand" mean?  
 16 A. It means the portion of the system that's  
 17 associated with meeting peaking.  
 18 Q. Okay. And does standby mean what you were  
 19 talking about before in terms of standby?  
 20 A. It is the portion of the system that's not  
 21 being used to meet average or peak demands.  
 22 Q. On the left column, the heading is Function and  
 23 at the bottom, there is a reference to distribution.  
 24 What is the distribution function?  
 25 A. The distribution function refers to

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1 **Metropolitan's in basin system that meets -- that**  
2 **actually has the customer connection on it, and that's**  
3 **been designed to meet peak week demand.**

4 Q. And in this cost of service study, how are the  
5 distribution function costs classified?

6 **A. It was determined from looking at the system**  
7 **usage that 43 percent of the costs reflected by**  
8 **distribution were associated with meeting average**  
9 **demands, 37 percent of the system is associated with**  
10 **meeting peaking and 20 percent of the distribution system**  
11 **was standing by.**

12 Q. Okay. Also, in the function column there's a  
13 source of supply function. For the State Water Project,  
14 under source of supply, what -- how is that classified?

15 **A. 100 percent of the State Water Project supply**  
16 **costs are classified as commodity because it provides a**  
17 **reliable annual yield throughout the whole year.**

18 Q. Under the conveyance and aqueduct function,  
19 there's also reference to State Water Project. How are  
20 those State Water Project costs classified?

21 **A. These are the State Water Project**  
22 **transportation costs. And again, we look at the**  
23 **conveyance and aqueduct system and determine how it's**  
24 **being used by the member agencies. And 52 percent of the**  
25 **State Water Project conveyance system was being used to**

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1 peak summer day?

2 **A. It is a proxy for the peak week.**

3 THE COURT: I'm sorry?

4 THE WITNESS: It's a proxy.

5 THE COURT: Proxy.

6 THE WITNESS: For the peak week, designed  
7 criteria.

8 BY MR. HIXSON:

9 Q. So if a member agency takes a lot of water on  
10 its maximum summer day, how long does that affect its  
11 Capacity Charge?

12 **A. Three years.**

13 Q. In this cost of service study, which member  
14 agency had the highest Capacity Charge?

15 **A. It was the San Diego County Water Authority.**

16 Q. Why was San Diego's Capacity Charge the  
17 highest?

18 **A. Because they had the highest peak day usage of**  
19 **the system.**

20 THE COURT: By "usage," do you mean the number  
21 of -- volumetric?

22 THE WITNESS: Yes. It is measured in cubic  
23 feet per second, which is a measure of volume -- or  
24 measure of flow in, specific time per second.

25 MR. KEKER: I can't hear, your Honor.

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1 **meet average demands, 22 percent was being used to meet**  
2 **summer peaking demands, seasonal demands, and**  
3 **22 percent -- or 26 percent is standing by.**

4 Q. Okay. Now, let's talk about the charges that  
5 recover these peaking and standby costs.

6 For capital expenses associated with Met's  
7 distribution system, what charge covers peaking costs?

8 **A. It's the Capacity Charge.**

9 Q. When did Met first adopt a charge to recover  
10 peaking costs associated with its distribution system?

11 **A. That charge was first implemented in January of**  
12 **2003 with the unbundling rate structure.**

13 Q. Is there a schedule in this cost of service  
14 study showing the Capacity Charge for each member agency?

15 **A. There is. It's on page 25 of 29, Bates number**  
16 **16698. It's schedule 10, Capacity Charge by a member**  
17 **agency.**

18 Q. How is the Capacity Charge allocated to the  
19 member agencies?

20 **A. Metropolitan calculates each member agency's**  
21 **peak day for a 15-month period, so it's the period**  
22 **May 1st through September 30th through -- for the three**  
23 **preceding years. And that peak day determines each**  
24 **member agency's assessment of the Capacity Charge.**

25 Q. Why is the Capacity Charge allocated based on

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1 THE WITNESS: It's a measure of capacity. It's  
2 a measure of cubic feet per second it says at the top,  
3 peak day demand measured in cubic feet per second.

4 BY MR. HIXSON:

5 Q. What charge recovers Met's standby costs?

6 **A. The standby costs are shown on page 26 of 29.**  
7 **It's Bates number 16699, Schedule 11.**

8 Q. Okay. And what charge is that?

9 **A. The Readiness-to-Serve Charge is a charge that**  
10 **recovers the standby costs and the emergency storage**  
11 **costs. They're again in classification.**

12 Q. When Metropolitan first adopt its  
13 Readiness-to-Serve Charge?

14 **A. In fiscal year 1996.**

15 Q. Does the Readiness-to-Serve Charge also recover  
16 any peaking costs?

17 **A. There is some peaking costs that are associated**  
18 **with the conveyance system and they're included in here**  
19 **as about.**

20 Q. As between standby and peaking costs, what does  
21 the Readiness-to-Serve Charge mostly recover?

22 **A. It mostly recovers standby costs.**

23 Q. And does Schedule 11 show the allocation of the  
24 Readiness-to-Serve Charge to the member agencies?

25 **A. It does.**

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1 Q. How is the Readiness-to-Serve Charge allocated  
 2 to the member agencies?  
 3 **A. Metropolitan calculates each member agency's**  
 4 **average for a ten-year period and that ten-year period**  
 5 **rolls. And their percentage of the total is calculated**  
 6 **and it's applied to the amount that needs to be recovered**  
 7 **through the Readiness-to-Serve Charge.**  
 8 Q. Why is the Readiness-to-Serve Charge allocated  
 9 that way?  
 10 **A. The member agencies felt that ten years was a**  
 11 **reasonable period to capture all of the demand variations**  
 12 **that were likely to occur.**  
 13 Q. If a member agency buys a lot of water in a  
 14 particular year, for how long does that affect its  
 15 Readiness-to-Serve Charge?  
 16 **A. Ten years.**  
 17 Q. In this cost of service study, which member  
 18 agency had the highest Readiness-to-Serve Charge?  
 19 **A. In this particular cost of service study, it**  
 20 **was the San Diego County Water Authority.**  
 21 Q. And why was San Diego's the highest?  
 22 **A. Because their ten-year average of firm demands**  
 23 **was the highest.**  
 24 Q. I would like to ask you some questions about  
 25 San Diego's dry year peaking claim.

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1 First, does Metropolitan have a separate cost  
 2 allocation or rate associated with dry year peaking?  
 3 **A. No, we don't.**  
 4 Q. Under Met's rate structure, does the reason why  
 5 a member agency buys more water in a given year affect  
 6 what it pays?  
 7 **A. No.**  
 8 Q. Based on your experience, what are some of the  
 9 reasons Met sells more or less water to a member agency  
 10 in a given year?  
 11 **A. There could be many reasons. The economy can**  
 12 **be one. If the economy's poor, we'll see people have**  
 13 **less disposable income. They don't tend to water their**  
 14 **lawns, our demands go down. If the economy is good,**  
 15 **we'll see water demands increase.**  
 16 **Frankly, the operations at the member agencies**  
 17 **have a great deal of impact on demands from year to year,**  
 18 **so if we have a member agency leave the well field,**  
 19 **they'll come back on to Metropolitan and their demands**  
 20 **will be higher.**  
 21 **They could also be doing local projects where**  
 22 **they're maybe doing some construction on a recycling**  
 23 **plant or -- and they have it off line, they'll come back**  
 24 **to Metropolitan.**  
 25 **Frankly, hydrology is also a big impact. In a**

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1 **year when it's wet, locally, we'll sell less water**  
 2 **because the groundwater's naturally recharge and the**  
 3 **reservoirs end up with a lot of runoff.**  
 4 **In a year when it's dry, locally, we'll have**  
 5 **more demand. So there's any number of reasons.**  
 6 Q. Can environmental contamination also affect a  
 7 member agencies' water purchases from Met?  
 8 **A. Yes. We had an instance where we had a member**  
 9 **agency who had MTBE contamination and they had to shut**  
 10 **down the wells.**  
 11 Q. Okay. In your experience, did the member  
 12 agencies each have different circumstances affecting how  
 13 much water they buy from Met?  
 14 **A. All of them are different. Different sizes.**  
 15 **They have different local resources. They've developed**  
 16 **conservation programs and local resources programs at**  
 17 **different levels and so they all have a different mix of**  
 18 **customers so they're all very different.**  
 19 Q. Is Metropolitan the exclusive provider of water  
 20 to any of its member agencies?  
 21 **A. Metropolitan is only a supplemental provider.**  
 22 **We do not have an exclusive right to serve.**  
 23 Q. When a member agency buys more water in a given  
 24 year from Met, does it have to pay more money?  
 25 **A. Metropolitan has volumetric rates and so to the**

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1 **degree that a member agency buys more water, they'll pay**  
 2 **more in volumetric charges.**  
 3 Q. And can you identify which of Metropolitan's  
 4 rates are volumetric in that way?  
 5 **A. The tier 1 and tier 2 supply rate are**  
 6 **volumetric, as is the System Access Rate, the Water**  
 7 **Stewardship Rate, the System Power Rate. And to the**  
 8 **degree that a member agency takes treated water, the**  
 9 **treating surcharge is also volumetric.**  
 10 Q. Can you explain the difference between the tier  
 11 1 and tier 2 supply rates?  
 12 **A. The tier 2 supply rate is set at the cost of a**  
 13 **water transfer from north of the Delta and it is**  
 14 **basically to incent member agencies to develop**  
 15 **conservation local resource programs.**  
 16 **The tier 1 supply rate recovers the bulk of**  
 17 **Metropolitan's supply costs.**  
 18 Q. Is the tier 2 supply rate higher than the tier  
 19 1 rate?  
 20 **A. Yes. For calendar year 2013, the tier 2 supply**  
 21 **rate was \$150 an acre-foot higher.**  
 22 Q. Okay. What causes a member agency to go into  
 23 the tier 2 supply rate?  
 24 **A. Each member agency is allocated a certain**  
 25 **amount of water that they can purchase at the tier 1**

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1 **supply rate and when they exceed that amount, they go**  
 2 **into tier 2.**  
 3 Q. Are there any member agencies paying the tier 2  
 4 supply rate in this year?  
 5 **A. In -- as of November, 2013 there are three**  
 6 **member agencies who are in the tier 2 supply rate or**  
 7 **paying tier 2 supply rate.**  
 8 Q. And can you identify which ones they are?  
 9 **A. Those are Eastern Municipal Water District, Las**  
 10 **Virgenes Municipal Water District and City of Los**  
 11 **Angeles, Department of Water and Power.**  
 12 Q. Do annual variations in member agency water  
 13 sales affect any of Metropolitan's fixed charges?  
 14 **A. To the degree that a member agency buys more**  
 15 **water and it occurs during the May through September**  
 16 **timeframe, it could increase their Capacity Charge for**  
 17 **the three future years.**  
 18 **And to the degree that they buy more water**  
 19 **throughout the year, it would increase their**  
 20 **Readiness-to-Serve Charge allocation.**  
 21 Q. As part of your job, do you have access to  
 22 information quantifying Met's water sales to each member  
 23 agency from year to year?  
 24 **A. I do.**  
 25 Q. Does this information include water exchanges

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1 with the member agencies?  
 2 **A. It does.**  
 3 Q. How are these records of water sales stored  
 4 within Met?  
 5 **A. Metropolitan has a proprietary system that**  
 6 **tracks water transactions. We call it Water Information**  
 7 **System or WIS.**  
 8 Q. Does Met record information about water sales  
 9 at or near the time of the sale?  
 10 **A. Metropolitan has an automated meter reading**  
 11 **system. We collect data from each of the member agency**  
 12 **connections daily and we store that. At the end of the**  
 13 **month that information is used to determine how much**  
 14 **water a member agency took through their connection.**  
 15 Q. Does Metropolitan record that information about  
 16 water sales in a database?  
 17 **A. Yes. It's maintained in the WIS system.**  
 18 Q. And does Metropolitan have a regular practice  
 19 to retain those records?  
 20 **A. Yes, we do.**  
 21 Q. Have you obtained the records showing the  
 22 amount of Met water sales to each member agency from 2003  
 23 to 2013?  
 24 **A. I did.**  
 25 Q. Please turn to exhibit DTX-697 in your binder.

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1 Did you create this document?  
 2 **A. I did.**  
 3 Q. Can you please turn to the third page.  
 4 Can you explain what the third page shows?  
 5 **A. This shows by member agency, by fiscal year,**  
 6 **fiscal 2003 through 2013 all sales that were billed to**  
 7 **that member agency, including the San Diego County Water**  
 8 **Authority Exchange.**  
 9 **It also includes a calculation of the 11-year**  
 10 **average. It identifies the peak sale from that 11-year**  
 11 **period. It calculates also the amount of the peak over**  
 12 **the average. And finally, it calculates a statistical**  
 13 **measure called standard deviation.**  
 14 Q. And is this data from the sales records you  
 15 were just testifying about?  
 16 **A. Yes.**  
 17 Q. Can you go back to the first page of this  
 18 document?  
 19 Is this page a graphical representation of the  
 20 data contained in the third page?  
 21 **A. It is.**  
 22 Q. And is it an accurate graphical representation?  
 23 **A. Yes.**  
 24 Q. Can you turn to the second page?  
 25 Is the second page also a graphical

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1 representation of the data from the third page?  
 2 **A. It is.**  
 3 Q. Is it likewise an accurate representation?  
 4 **A. Yes.**  
 5 MR. HIXSON: Your Honor, Metropolitan moves  
 6 DTX-697 in evidence.  
 7 MR. KEKER: Yeah, we object on the grounds of  
 8 undisclosed expert testimony, your Honor.  
 9 They didn't -- they didn't designate in her --  
 10 in the description of what she was going to say, they  
 11 didn't designate her as an expert, they didn't mention  
 12 this and we object on that ground.  
 13 MR. HIXSON: We're not offering her as an  
 14 expert witness.  
 15 THE COURT: I'm going to overrule the  
 16 objection. This doesn't necessarily call for expertise.  
 17 I understand it calls for some expertise in how to  
 18 manipulate a spreadsheet.  
 19 MR. KEKER: Standard deviation is in there,  
 20 your Honor. That's more expertise than I have.  
 21 MR. HIXSON: That's not the standard.  
 22 THE COURT: I also will say I think Mr. Kecker  
 23 knows what standard deviation is.  
 24 I'll accept it and we can argue about it later  
 25 as to what its impact is. DTX-697 is admitted.

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1 (Whereupon Exhibit DTX-697 was  
2 admitted into Evidence.)  
3 BY MR. HIXSON:  
4 Q. Ms. Skillman, please turn back to the first  
5 page of Exhibit 697.  
6 And can you describe what this first page  
7 illustrates?  
8 **A. This illustrates for each member agency, each**  
9 **of Metropolitan's 26 member agencies graphically and**  
10 **comparatively their sales by year for the 13-year period.**  
11 Q. Does this chart contain all of the years since  
12 the current unbundled rate structure has been in effect?  
13 **A. Yes.**  
14 Q. Which agency is depicted in the blue line on  
15 top?  
16 **A. That is the San Diego County Water Authority.**  
17 Q. What agency is the orange line below?  
18 **A. That is the City of Los Angeles, Department of**  
19 **Water and Power.**  
20 Q. What member agency bought the most water from  
21 Met during this time period?  
22 **A. That was the San Diego County Water Authority.**  
23 Q. Was that true in every year since the  
24 unbundling?  
25 **A. They -- that was true for every year since the**  
**unbundling.**

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1 Q. Please turn back to the second page.  
2 Can you describe what this second page  
3 illustrates?  
4 **A. The second page takes the data that was on the**  
5 **far right-hand side of the third page, so the red bar**  
6 **shows for each member agency their peak water sales with**  
7 **exchange in that 11-year period. The blue bar shows**  
8 **their average of that 11-year period, and the green bar**  
9 **represents the statistical measure of standard deviation.**  
10 THE COURT: This peak that you're showing here  
11 in the red bar, that's --  
12 THE WITNESS: The highest year.  
13 THE COURT: So that's a total volume for a  
14 year?  
15 THE WITNESS: Correct, so --  
16 THE COURT: Okay.  
17 THE WITNESS: It's basically on page 3, it's  
18 the third column over.  
19 BY MR. HIXSON:  
20 Q. Which member agency had the highest peak annual  
21 sales during this time period?  
22 **A. That was the San Diego County Water Authority.**  
23 Q. Which member agency had the highest average  
24 annual sales in this time period?  
25 **A. That was also the San Diego County Water**

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1 **Authority.**  
2 Q. Can you explain what the standard deviation  
3 reflects in this chart?  
4 **A. The standard deviation is a measure of the**  
5 **variability around the average so it doesn't matter**  
6 **whether the data -- the difference is positive or**  
7 **negative, it's an expression of variability.**  
8 Q. Which two member agencies had the higher  
9 standard deviation in their annual water sales in this  
10 time period?  
11 **A. The City of Los Angeles, Department of Water**  
12 **and Power, and the San Diego County Water Authority.**  
13 Q. And were L.A. and San Diego standard deviations  
14 roughly similar during this time period?  
15 **A. They're very similar.**  
16 Q. Please turn to the third page.  
17 What was the highest annual sales to San Diego  
18 during this time period, 2003 though 2013?  
19 **A. It's identified in the third column from the**  
20 **right. It's 667,900 acre-feet.**  
21 Q. What was the lowest annual sales to San Diego  
22 during this time period?  
23 **A. I believe it is 407,372 acre-feet.**  
24 Q. What was the gap between the highest and lowest  
25 sales to San Diego during this time period?

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1 **A. About 260,000 acre-feet.**  
2 Q. What was the highest annual sales to  
3 Los Angeles in this time period?  
4 **A. The highest was 435,129 acre-feet.**  
5 Q. What was the lowest annual sales to Los Angeles  
6 in this time period?  
7 **A. That looks like it was 166,912 acre-feet.**  
8 Q. What was the gap between the highest and the  
9 lowest sales to Los Angeles in this time period?  
10 **A. 268,000 acre-feet.**  
11 Q. Are the gaps between the highest and the lowest  
12 annual sales in this time period approximately the same  
13 for Los Angeles and San Diego?  
14 **A. Yes.**  
15 Q. I'm going to turn to a couple different topics  
16 now.  
17 THE COURT: Let me just pause for a moment.  
18 (Brief interruption.)  
19 BY MR. HIXSON:  
20 Q. Please turn to Exhibit PTX-2110 in your binder.  
21 Can you describe what this is?  
22 THE CLERK: Did you say PTX just now?  
23 MR. HIXSON: PTX, yes.  
24 THE WITNESS: This is an e-mail exchange  
25 between myself and Michael Hurley.

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1 BY MR. HIXSON:  
 2 Q. And who did Mr. Hurley work for?  
 3 A. **He worked for a subsidiary of Arcadis, which is**  
 4 **a consulting firm.**  
 5 Q. Did Met retain them as consultants?  
 6 A. **Yes, we did.**  
 7 Q. I would like to work backwards through this  
 8 e-mail. Turning to your bottom e-mail to Mr. Hurley, can  
 9 you describe what you were saying there?  
 10 A. **We were -- he was specifically addressing**  
 11 **treatment issues, treatment cost recovery issues and I**  
 12 **was telling him that I had found some interesting**  
 13 **examples of what -- how LADWP was addressing treatment**  
 14 **costs.**  
 15 Q. And what did you say in your next e-mail  
 16 exchange?  
 17 A. **My next e-mail, I was basically telling him**  
 18 **that what L.A. was doing was similar to what other**  
 19 **investor owned utilities in the state were doing, in**  
 20 **terms of ensuring that they had adequate revenues to**  
 21 **cover a particular cost item.**  
 22 Q. And what did he write back to you in the e-mail  
 23 that follows?  
 24 A. **He wrote at the top, "It is a wonder sometimes**  
 25 **how MWD has gotten by with this structure for so long.**

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1 **Growing demands cover up a lot, I guess."**  
 2 Q. Were you discussing anything other than the  
 3 treatment surcharge in these e-mails?  
 4 A. **No. We were strictly talking about the**  
 5 **treatment surcharge and how we could recover our costs.**  
 6 Q. And what was the issue you were discussing with  
 7 respect to the treatment surcharge?  
 8 A. **A significant portion of our treatment costs**  
 9 **are fixed but we recover 100 percent of it through**  
 10 **volumetric charge.**  
 11 Q. Is the treatment surcharge one of Met's  
 12 transportation rates?  
 13 A. **No, it's not.**  
 14 Q. Are there any fixed charges that recover any of  
 15 Met's transportation costs?  
 16 A. **The Capacity Charge and the Readiness-to-Serve**  
 17 **Charge.**  
 18 Q. Does this e-mail have anything to do with Met's  
 19 peaking costs?  
 20 A. **No.**  
 21 Q. Please turn to PTX 255 in your binder?  
 22 A. **Yes.**  
 23 Q. Can you identify what this is?  
 24 A. **This is an e-mail exchange between myself and**  
 25 **Tom DeBacker.**

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1 Q. Who was Tom DeBacker?  
 2 A. **Tom DeBacker was the controller and he still is**  
 3 **the controller.**  
 4 Q. And what did Mr. DeBacker's e-mail to you say?  
 5 A. **He wanted to know if I had a copy of the NARUC**  
 6 **chart of accounts.**  
 7 Q. How did you respond?  
 8 A. **I didn't have a copy of the NARUC chart of**  
 9 **accounts. I had a copy of the uniform system of accounts**  
 10 **for the California Public Utilities Commission, Class A**  
 11 **water utilities.**  
 12 Q. To your understanding, what is the NARUC chart  
 13 of accounts?  
 14 A. **NARUC stands for National Association of**  
 15 **Regulatory Utility Commissioners and they have developed**  
 16 **a uniform system of accounts to be used by regulated**  
 17 **utilities, primarily retail utilities who have an**  
 18 **exclusive right to serve.**  
 19 Q. To your understanding, what type of entity is  
 20 the NARUC chart of accounts generally directed to?  
 21 A. **It's directed at regulated utilities.**  
 22 Q. Is Metropolitan such a utility?  
 23 A. **Metropolitan is not a regulated utility. We do**  
 24 **not -- we are not under the direction of the California**  
 25 **Public Utilities Commission. Our board regulates**

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1 **Metropolitan.**  
 2 Q. In your e-mail, you refer to an argument by  
 3 SDCWA. What were you saying there?  
 4 A. **Generally my point was that as a supplemental**  
 5 **provider who didn't have exclusive right to serve and who**  
 6 **had made a decision to unbundle rates and charges for**  
 7 **transparency or to encourage water transfers or any**  
 8 **number of reasons, that we needed to be very thoughtful**  
 9 **and deliberate and accurate in how we functionalized**  
 10 **costs because that was going to carry through to our rate**  
 11 **structure.**  
 12 Q. And did that relate to any questions about the  
 13 source of supply?  
 14 A. **The -- in our functionalization of costs, we**  
 15 **functionalized State Water Project, Delta water charge to**  
 16 **supply.**  
 17 Q. Okay. Was there a problem with simply using  
 18 the NARUC chart of accounts in the rate setting in your  
 19 view?  
 20 A. **I did not believe that the NARUC chart of**  
 21 **accounts accurately covered or captured the way**  
 22 **Metropolitan realizes cost to meet our services.**  
 23 Q. During your time at Metropolitan, did Met hire  
 24 an outside consultant to evaluate its cost of service  
 25 process?

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1 **A. We did.**  
 2 Q. When did that happen?  
 3 **A. That happened in early 2010.**  
 4 Q. And who did Metropolitan retain?  
 5 **A. Metropolitan retained Raftelis Financial**  
 6 **Consulting. They were the consultants who had done the**  
 7 **original cost of service for us.**  
 8 Q. Did you personally work with Raftelis Financial  
 9 Consultants?  
 10 **A. I did.**  
 11 Q. Is Raftelis Financial Consulting an expert firm  
 12 in this field to your understanding?  
 13 **A. To my understanding, they are.**  
 14 **The firm was formed by George Raftelis and he**  
 15 **has over 45 years of experience in water and wastewater**  
 16 **rate making, and he's known nationally and**  
 17 **internationally and has served on the American Water**  
 18 **Works Association Rates and Charges Subcommittee for many**  
 19 **years.**  
 20 Q. When Raftelis Financial Consultants was hired  
 21 in 2010, what did Metropolitan ask them to do?  
 22 **A. We asked them to review the cost of service**  
 23 **model that we were using and to ensure that it was**  
 24 **consistent with the cost of service they had developed.**  
 25 **And we also asked them to review whether our cost of**

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1 **service methodology and our rate methodology was**  
 2 **consistent with the American Water Works Association M1**  
 3 **Manual guidelines.**  
 4 Q. What information did you provide to Raftelis  
 5 Financial Consultants?  
 6 **A. We provided them with background information on**  
 7 **the board's strategic planning process. We also provided**  
 8 **them with some information on the member agency manager's**  
 9 **rate proposal that was actually the one that was adopted**  
 10 **by the board.**  
 11 **We provided them with some financial**  
 12 **information that they needed in order to verify the**  
 13 **calculations that were being done in the cost of service**  
 14 **model, and we did provide them with the cost of service**  
 15 **model itself.**  
 16 Q. Did you contribute any language that ended up  
 17 in the Raftelis Financial Consultants financial report?  
 18 **A. I did.**  
 19 Q. Please turn to PTX-167.  
 20 Can you identify what this is?  
 21 **A. This is an e-mail exchange between myself,**  
 22 **Jamie Roberts and Syd Bennion.**  
 23 Q. In your March 29, 2010 e-mail, at the bottom,  
 24 you wrote to Jamie Roberts, I need to get something to  
 25 RFC pretty quickly.

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1 What information were you suggesting giving to  
 2 RFC in this e-mail?  
 3 **A. I needed to give them some background**  
 4 **information on the State Water Project. They needed a**  
 5 **little bit more information than what they had at hand.**  
 6 Q. Okay. In the response to that e-mail, there's  
 7 a statement by Ms. Bennion, quote, June, we should limit  
 8 this to conclusions that Raftelis is able to make based  
 9 on the research they've done. I understand that they  
 10 have not reviewed our methodology, but they should be  
 11 able to conclude whether the functionalized SWC charges  
 12 can be passed along to similar functional charges in our  
 13 rate structure, end quote.  
 14 Was there some part of Met's methodology that  
 15 Raftelis Financial Consultants did not review?  
 16 **A. The Department of Water Resources invoices for**  
 17 **the State Water Project are on a calendar year basis but**  
 18 **Metropolitan prepares its budgets and its rates on a**  
 19 **fiscal year basis and so we rely on our water resource**  
 20 **management staff to take the schedules from the**  
 21 **Department of Water Resource and convert them into fiscal**  
 22 **year information so we can use it in our budgeting and**  
 23 **forecasting. And that was not provided to him.**  
 24 Q. With respect to the functionalization of State  
 25 Water Project costs, what did Met ask Raftelis to review?

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1 **A. We asked them to make sure that what we were**  
 2 **doing was consistent with what they had done for us**  
 3 **originally.**  
 4 Q. And did you also ask them to consult with  
 5 industry guidelines?  
 6 **A. We did.**  
 7 Q. Okay. Did a version of your language in your  
 8 March 29 e-mail end up in the final April 6th, 2010  
 9 Raftelis report?  
 10 **A. Portions of that language ended up in the**  
 11 **Raftelis report.**  
 12 Q. Please turn to DTX-88.  
 13 Can you identify what DTX-88 is?  
 14 **A. This is the review of the 2011 cost of service**  
 15 **that was prepared by Raftelis for us.**  
 16 Q. Can you show us where the language you  
 17 provided, an adapted version was included in this report?  
 18 **A. It was included on page 7 and it's toward the**  
 19 **bottom of page 7, toward the bottom third. There's two**  
 20 **indented numbered items and that is where the language**  
 21 **that Raftelis chose to incorporate is.**  
 22 Q. What section of the Raftelis report did your  
 23 language end up in?  
 24 **A. It ended up in Section IV, Roman numeral IV,**  
 25 **which begins on page 6, which is the background**

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1 **information on the cost of service.**  
 2 Q. Can you direct us to language in the report  
 3 describing the background information?  
 4 **A. It says specifically at the beginning of**  
 5 **Section IV, "Before discussing the results of the review**  
 6 **process, it's necessary to understand Metropolitan's cost**  
 7 **of service and rate setting methodology."**  
 8 Q. What does Section V of the Raftelis report  
 9 contain?  
 10 **A. Section V begins on page 10 and actually**  
 11 **includes their findings and conclusions.**  
 12 Q. And can you direct us to language showing that  
 13 Section V contains Raftelis's findings and conclusions?  
 14 **A. So in Section V, there's the introductory**  
 15 **paragraph. And the first sentence immediately after the**  
 16 **introductory paragraph says "Our findings and conclusions**  
 17 **related to each of these tasks are discussed below."**  
 18 Q. Okay. Did you contribute any language to  
 19 Section V of the Raftelis report?  
 20 **A. I did not.**  
 21 Q. Are you aware of anybody at Metropolitan  
 22 contributing language to Section V of the Raftelis  
 23 report?  
 24 **A. I am not.**  
 25 MR. HIXSON: I pass the witness.

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1 THE COURT: Why don't we take a break?  
 2 MR. KEKER: Your choice, your Honor. I'm ready  
 3 to go.  
 4 THE COURT: Is everybody okay?  
 5 How are you doing, ma'am?  
 6 THE WITNESS: Maybe I could get some water.  
 7 MR. KEKER: Could we get Ms. Skillman some more  
 8 water?  
 9 THE COURT: Why don't we take a break in about  
 10 15 or 20 minutes, something like that.  
 11 MR. KEKER: Okay.  
 12 **CROSS-EXAMINATION**  
 13 **BY MR. KEKER:**  
 14 Q. Ms. Skillman, I'm John Kecker for San Diego.  
 15 You were at Met from January of 1995 to January  
 16 of 1997?  
 17 **A. Yes.**  
 18 Q. Were you there when they passed the 1997  
 19 resolution about wheeling?  
 20 **A. I believe that was after I left.**  
 21 Q. Okay. Were you there -- while you were there  
 22 back then, did you learn about the San Pedro resolution,  
 23 the "hold harmless" requirement that the board had  
 24 imposed?  
 25 MR. HIXSON: Objection. Way outside the scope.

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1 MR. KEKER: I don't think it is, your Honor.  
 2 THE COURT: Overrule the objection. Go ahead,  
 3 please.  
 4 THE WITNESS: I was a low level employee back  
 5 in 1995, 1996 and I wasn't involved in that.  
 6 BY MR. KEKER:  
 7 Q. Since you've become -- since you've risen in  
 8 the ranks -- since you returned in 2005, you've risen  
 9 through the ranks to your current position, have you  
 10 heard about the San Pedro resolution, the hold harmless  
 11 principle?  
 12 **A. No. No one in my group relies on that.**  
 13 Q. Okay. You have -- you believe, though, that  
 14 any challenge or change to any one component of the  
 15 existing rate structure affects and upsets the careful  
 16 balance of the rate structure and invites a  
 17 reconsideration of the entire rate structure resulting,  
 18 in your word, "destabilization"; right?  
 19 **A. Yes.**  
 20 Q. What do you mean by destabilization,  
 21 Ms. Skillman?  
 22 **A. The board has a very deliberate process to**  
 23 **develop Metropolitan's rate structure and they developed**  
 24 **the policies and principles that they felt were**  
 25 **important, and there were a number of things that were**

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1 **balanced in that -- in coming up with that rate schedule.**  
 2 Q. And do you think -- I'm sorry, excuse me.  
 3 **A. They considered how much of a rate structure**  
 4 **they thought should be fixed, how much they thought**  
 5 **should be variable and how those -- and how our costs**  
 6 **should be recovered.**  
 7 Q. And you thought that if any change -- any small  
 8 change was made anywhere in this structure, that would  
 9 cause destabilization; right?  
 10 **A. I think it would need to be considered.**  
 11 Q. And destabilization in your view is bad; right?  
 12 **A. I -- yeah, I think it would need to be**  
 13 **considered.**  
 14 Q. In 2010 when you started working with  
 15 Mr. Raftelis on his cost of study -- cost of service  
 16 study that we just looked at, at that time, your -- you  
 17 and the staff and the board had already come up with what  
 18 you planned to do about the rates; right?  
 19 **A. We had made a proposal in January of 2009.**  
 20 Q. Right. And that proposal was that just like  
 21 always, the State Water Project transportation portion of  
 22 the bill should be loaded onto the transportation --  
 23 should be treated as Met's own conveyance system; right?  
 24 **A. Yes.**  
 25 Q. And another decision you made is that the Water

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1 Stewardship Rate should be loaded on the transportation  
 2 portion of the bills; right?  
 3 **A. We made no change to the Water Stewardship Rate**  
 4 **as far as I recall.**  
 5 Q. And the answer is yes, it was going to be  
 6 loaded on the transportation section of the bill; right?  
 7 **A. Yes.**  
 8 Q. And the other thing you decided is that you  
 9 would not analyze the benefits that some member agencies  
 10 got by this -- by the fact that you all did not measure  
 11 or charge for or have any kind of accounting for dry year  
 12 peaking. That had already been decided too; right?  
 13 **A. We don't do that in cost of service studies.**  
 14 Q. All of that had been decided before you hired  
 15 Raftelis to do what you call an independent cost of  
 16 service study; right?  
 17 **A. Mr. Raftelis was hired to review our cost of**  
 18 **service to make sure it was consistent with the**  
 19 **methodology that he had developed and that was finalized**  
 20 **in 2002.**  
 21 Q. He was hired in the words that he used to  
 22 validate what you had already done; right? By "you," I  
 23 mean you and your staff.  
 24 **A. He was validating that the cost of service that**  
 25 **we were using was consistent with the model that he had**

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1 **developed.**  
 2 Q. Wait a minute. I'm sorry. Say that again?  
 3 **A. Mr. Raftelis was hired by Metropolitan to**  
 4 **develop the original cost of service and the original**  
 5 **unbundling. And in 2010, we hired him to validate that**  
 6 **the way we were doing the cost of service was consistent**  
 7 **with what he had originally developed.**  
 8 Q. So you're referring back to the work that he  
 9 did in 1999 when he did some work in connection with the  
 10 unbundling, the Raftelis report from '99?  
 11 **A. The final report was in 2002.**  
 12 Q. Okay. And that was -- back when he did that  
 13 work, the decision had already been made to put the State  
 14 Water Project's -- the component of the bill that the  
 15 Department of Water Resources gave that says  
 16 transportation, to call that Met's conveyance system,  
 17 right?  
 18 **A. We functionalized the conveyance.**  
 19 Q. And once you unbundled the rates and created  
 20 this Water Stewardship Rate, the decision way back when  
 21 was made to put that on the transportation rates; right?  
 22 **A. Yes.**  
 23 Q. And you have always recognized that there was  
 24 such a thing as dry year peaking and have always decided  
 25 neither to study it nor account for it; right?

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1 **A. That is not true.**  
 2 Q. When did you decide to study dry year peaking?  
 3 **A. I had not heard the concept dry year peaking**  
 4 **until it was raised by the Water Authority in March of**  
 5 **2012.**  
 6 Q. 2012. You hadn't seen the letters that they  
 7 sent in as part of the unbundling process back in 2001,  
 8 the court has seen them, talking about dry year peaking.  
 9 You've never seen those?  
 10 **A. I wasn't working at Metropolitan at that time.**  
 11 Q. Okay. You just didn't know that there was an  
 12 issue; is that what you're saying?  
 13 **A. Yeah, that's correct.**  
 14 Q. But by the time -- okay. You didn't even know  
 15 there was an issue about dry year peaking when  
 16 Mr. Raftelis worked on the cost of service study in 2010?  
 17 **A. No.**  
 18 Q. Okay. We're going to look at that in just a  
 19 second.  
 20 So anyway, the job that he was given was to  
 21 validate what you had already decided and he had already  
 22 done ten years before; right?  
 23 **A. We asked him to validate that the methodology**  
 24 **we were using was consistent with what he had developed**  
 25 **before.**

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1 Q. Okay. Would you look at -- can we give  
 2 Ms. Skillman a binder and the Court and my colleagues.  
 3 And would you look at Tab 11 in that binder,  
 4 which is Plaintiff's Exhibit 164 and it is, itself, in  
 5 the record, in the administrative record.  
 6 Do you have that in front of you, Ms. Skillman?  
 7 **A. Yes, I do.**  
 8 Q. And this is something dated March 2nd, 2010  
 9 that's called cost of service validation project and it's  
 10 on your -- it's on Met's paper. It's got Met's logo on  
 11 it; right?  
 12 **A. I believe this was prepared by Raftelis**  
 13 **Financial Consultants.**  
 14 Q. I see. It's got RFC at the bottom.  
 15 THE COURT: I'm sorry. Mr. Kecker, I'll just  
 16 ask you not to talk over the witness.  
 17 MR. KEKER: Beg your pardon, your Honor.  
 18 Q. It's got RFC down at the bottom?  
 19 **A. Correct.**  
 20 Q. On page 3, in the numerals, there's two slides  
 21 to a page so page 3 is the second page of the exhibit.  
 22 So it's objectives of study, and one of them is  
 23 validation of cost of service and rate process.  
 24 And on page -- and page 6, he notes that the  
 25 January 12, 2010 board letter establishing proposed

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1 rates -- that's what you were referring to. The board  
 2 had already said what they were planning to do; right?  
 3 **A. The board hadn't already said what they were**  
 4 **planning to do. The staff made a proposal.**  
 5 Q. Okay.  
 6 **A. The board hadn't adopted anything at this time.**  
 7 Q. And that -- they made the proposal in that  
 8 January letter?  
 9 **A. The staff made the proposal.**  
 10 Q. Okay. And then over at 10, Raftelis raises  
 11 potential opportunities for consideration and he says  
 12 reevaluate cost of service rate framework, do new factors  
 13 encourage MWD to update its framework?  
 14 And among the issues are SWP issues. Do you  
 15 know what those were?  
 16 **A. I don't recall what they were.**  
 17 Q. And then peaking considerations, do you know  
 18 what that refers to?  
 19 **A. That refers to system peaking as in member**  
 20 **agency demand peaking.**  
 21 Q. Not dry year peaking?  
 22 **A. It was not dry year peaking to my recollection.**  
 23 Q. Okay. On page 13, he raises the question under  
 24 potential opportunities for consideration should wheeling  
 25 charge internal and external to MWD service area be

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1 split. What does that mean?  
 2 **A. I would have to -- I would have to say I don't**  
 3 **know without asking.**  
 4 Q. Okay. And another potential opportunity for  
 5 consideration is there in slide 14, develop fixed  
 6 component to System Access Rate. What does that mean?  
 7 **A. I would have to speculate that --**  
 8 Q. Well, don't speculate if you don't know. Let  
 9 me ask you --  
 10 **A. I don't know.**  
 11 Q. Does that refer to an idea that's been floating  
 12 around for 15 years, which is go out to the member  
 13 agencies, make -- ask them to make a commitment to a  
 14 certain amount of water and make -- and set the rates  
 15 based on that fixed commitment?  
 16 **A. I wouldn't interpret that to be what you just**  
 17 **said.**  
 18 Q. You would not?  
 19 **A. I would not.**  
 20 Q. Okay. Is that an idea you've ever heard  
 21 before, fix rates to -- in order to take -- cover your  
 22 fixed costs by getting people to make commitments?  
 23 **A. Yes.**  
 24 Q. Had you talked to Raftelis about San Diego's --  
 25 were you aware at the time of this report that San Diego

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1 had any concerns about Met's rates and the way they were  
 2 set?  
 3 **A. That's a very general statement.**  
 4 Q. Did you -- had you known as long as you worked  
 5 at Met that San Diego thought that loading the state  
 6 water resources costs on to the transportation rates was  
 7 wrong and unfair?  
 8 **A. They may have brought it up from time to time,**  
 9 **but I don't recall any specific instances where they said**  
 10 **that.**  
 11 Q. Had you known as long as you worked there that  
 12 San Diego thought that the Water Stewardship Rate being  
 13 loaded on to the transportation rates was wrong and  
 14 improper?  
 15 **A. They may have included it in letters.**  
 16 Q. Did you talk to Raftelis about San Diego's  
 17 concerns?  
 18 **A. Again, we were asking him to validate the cost**  
 19 **of service and we weren't asking him to address any**  
 20 **particular member agency's issues.**  
 21 Q. Did you anticipate a lawsuit at that time, at  
 22 the time you were doing this work on this cost of service  
 23 study?  
 24 **A. Yes.**  
 25 Q. And who was the lawsuit going to be brought by?

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1 **A. The Water Authority.**  
 2 Q. And what was the basis of the lawsuit going to  
 3 be?  
 4 MR. HIXSON: I'm going to object on privilege  
 5 grounds to the extent she learned from inside counsel.  
 6 BY MR. KEKER:  
 7 Q. Don't tell me what counsel told you.  
 8 Did you -- well how about this? Did you talk  
 9 to Mr. Raftelis about the fact this cost of service study  
 10 was going to have to withstand a lawsuit because it was  
 11 pretty obvious San Diego was going to sue?  
 12 **A. I don't believe we said that to Mr. Raftelis.**  
 13 **We asked him to review the cost of service study.**  
 14 THE COURT: Did you say to somebody else in his  
 15 office or somebody that was working with him? I hear a  
 16 "but" in your voice somehow.  
 17 THE WITNESS: Okay. I think internally we  
 18 talked about it but I don't think we divulged that with  
 19 Raftelis.  
 20 THE COURT: Okay, fair enough.  
 21 BY MR. KEKER:  
 22 Q. Well, who was -- who's Sydney -- or Sanjay  
 23 Gaur, G-A-U-R.  
 24 **A. He's a consultant for Raftelis.**  
 25 Q. He works for -- he's the manager of

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1 Mr. Raftelis's office?  
 2 **A. Could be his title.**  
 3 Q. And who's Sydney Bennion?  
 4 **A. Sydney Bennion is the assistant general**  
 5 **counsel.**  
 6 Q. And would you look at Exhibit -- at Tab 12,  
 7 which is Exhibit 165 in your binder, please, ma'am?  
 8 **A. Sure.**  
 9 Q. See that e-mail?  
 10 **A. Uh-huh.**  
 11 Q. There is an e-mail from Gaur to Bennion,  
 12 Subject, draft report, March 23rd, 2010. "Hope all is  
 13 well with you and as might know, we are working for Brian  
 14 and June on evaluating MWD cost of service. Given the  
 15 concerns from SDCWA, I'm advised to e-mail you the draft  
 16 report, which you can send to June. I appreciate your  
 17 assistance. Thanks, Sanjay Gaur, manager, Raftelis  
 18 Financial Consultants."  
 19 Is the June there you?  
 20 **A. It is me.**  
 21 Q. And who's Brian?  
 22 **A. Brian Thomas, who was the CFO at the time.**  
 23 Q. And when he says that Raftelis is working with  
 24 the two of you on the cost of service, was this a  
 25 collaborative deal here?

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1 **A. I was working with Sanjay.**  
 2 Q. Okay. You wouldn't call Mr. Raftelis an  
 3 independent consultant in this endeavor, would you?  
 4 **A. Mr. Raftelis was -- had been hired by us, his**  
 5 **firm had been hired by us.**  
 6 Q. Given the concerns from SDCWA. What concerns  
 7 -- do you know what Mr. Gaur was referring to, concerns  
 8 from SDCWA?  
 9 **A. Well, this e-mail exchange is between**  
 10 **Ms. Bennion and Sanjay, so I think I would be speculating**  
 11 **to say that I knew the extent of their conversation.**  
 12 Q. Okay. Well, don't speculate. But do you  
 13 know -- it says I'm advised to e-mail you the draft  
 14 report. For some reason Raftelis thinks that he ought to  
 15 send the draft instead of directly to you, a non-lawyer,  
 16 he ought to send it through a lawyer. What's that about?  
 17 Did you talk to anybody about that?  
 18 THE COURT: Outside of an attorney that's  
 19 representing you, aside from that.  
 20 THE WITNESS: No.  
 21 BY MR. KEKER:  
 22 Q. Okay. Do you recall that you got from Mr. Gaur  
 23 a draft report -- or, excuse me, you got from Ms. Bennion  
 24 a draft report which you then changed?  
 25 Just keep looking at the e-mail. The next one

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1 up says Bennion sends back Sanjay, Sanjay, please provide  
 2 a clean copy of the report with all changes accepted.  
 3 Did you all mark up the report and send it  
 4 back?  
 5 **A. We may have.**  
 6 Q. What parts did you change?  
 7 **A. I would have to -- I can't recall at this**  
 8 **point.**  
 9 Q. And then Ms. Gaur sends -- Mr. Gaur sent it  
 10 back to Ms. Bennion, it's apparently clean, and then  
 11 attached to it -- attached to this very e-mail is the  
 12 draft report he sent back; right, all cleaned up with the  
 13 changes all cleaned up; right?  
 14 **A. Yes.**  
 15 Q. And on the first page, we see a lot of, you  
 16 know, all that computer mumbo jumbo about deletions and  
 17 changing things, but then we don't see that for the rest  
 18 of the report.  
 19 Was this document somehow changed in order to  
 20 avoid showing the changes that you all made?  
 21 **A. I'm unclear.**  
 22 Q. Okay. Well, would you look at -- okay. If you  
 23 look through this document -- tell me if I'm wrong but if  
 24 you look over at page 7, the total -- the only  
 25 explanation, the only mention of this concept of taking

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1 state water resource's fixed charges and loading some of  
 2 them on to the -- and calling them Met's conveyance  
 3 system and loading them on to the transportation rates is  
 4 here in this paragraph third from the bottom that begins  
 5 "The conveyance and aqueduct category includes SWP and  
 6 CRA."  
 7 Do you see that paragraph, Ms. Skillman?  
 8 **A. Yes.**  
 9 Q. Goes on to say "In this function are the  
 10 capital operations maintenance and overhead costs for SWP  
 11 and CRA facilities to convey water through MWD's system.  
 12 It should be noted that the Department of Water Resources  
 13 bills SWP by the following components: Supply, power and  
 14 transmission for commodity, demand and standby and  
 15 transmission for commodity. These components are  
 16 allocated to each of the functional categories."  
 17 That is the sum total of Mr. Raftelis's  
 18 analysis of whether or not this makes sense or meets cost  
 19 causation principles, isn't it, total?  
 20 **A. Yes.**  
 21 Q. Okay. And then let me show you another --  
 22 that's in Section IV.  
 23 But then in Section V, where there's no mention  
 24 of -- no effort to justify State Water Project charges or  
 25 the Water Stewardship Rate, under the validation process

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1 results, number one. Can you see down there on Page 9  
 2 down at the bottom?  
 3 **A. Yes.**  
 4 Q. Says, "Confirming that the 2010 COS and rate  
 5 methodology is consistent with California law,  
 6 specifically section XXX, paren, info will be written up  
 7 based on the CA law," close quote.  
 8 So when you got that, that draft, Raftelis  
 9 says -- he's confirming that the study meets California  
 10 law but nobody has sort of said why; right?  
 11 **A. Yes.**  
 12 Q. Okay. Who wrote what eventually became the  
 13 rationale for why it confirms with -- conforms with  
 14 California law?  
 15 **A. The specific section of the California law is**  
 16 **the one that requires agencies to do a cost of service**  
 17 **once every ten years. And my recollection is that**  
 18 **Mr. Gaur put that information in. He was the one who**  
 19 **raised that issue.**  
 20 Q. Okay. We'll look at it in just a second.  
 21 But in any event, when you got this, this  
 22 draft, you were expecting to be sued?  
 23 **A. My recollection is that the 5-year standstill**  
 24 **was up.**  
 25 Q. And therefore you expected to be sued because

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1 the only reason they hadn't sued you before was the --  
 2 5-year standstill; right?  
 3 **A. Approximately, yes.**  
 4 Q. All right.  
 5 THE COURT: Any time you want to find a  
 6 convenient break, let me know.  
 7 MR. KEKER: If I could just a couple more along  
 8 this line.  
 9 THE COURT: Absolutely.  
 10 BY MR. KEKER:  
 11 Q. You said in your earlier testimony on direct  
 12 that they needed -- in explaining what you did to this  
 13 paragraph, you said they needed a little more information  
 14 about the State Water Project than they had.  
 15 Do you remember that testimony?  
 16 **A. Yes, I do.**  
 17 MR. KEKER: Okay. That's a good place to  
 18 break, your Honor. We'll come back to that.  
 19 THE COURT: See everybody in ten minutes.  
 20 Thank you.  
 21 (Brief break.)  
 22 THE COURT: All right. Let's continue.  
 23 MR. KEKER: Thank you, your Honor.  
 24 BY MR. KEKER:  
 25 Q. Ms. Skillman, when we broke, we were talking

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1 about the draft Raftelis report that had been sent over  
 2 and you -- and you had said that they -- you concluded  
 3 they needed a little more information about the State  
 4 Water Project than they had.  
 5 That draft report was dated March 23rd, Tab 12.  
 6 So now I want to ask you about a March 29th e-mail  
 7 exchange you had with Ms. Bennion and that appears at Tab  
 8 13 and it's an e-mail that Mr. Hixson showed you before.  
 9 THE COURT: PTX-167.  
 10 MR. KEKER: PTX-167, yes, your Honor.  
 11 Q. And at the bottom of that e-mail, you say "I  
 12 need to get" -- this is to Jamie Roberts with copies to  
 13 Ms. Bennion, the lawyer and the subject is language for  
 14 RFC report, importance is high.  
 15 You say "I need to get something to RFC pretty  
 16 quickly. What about the following?"  
 17 And then you go on and say -- I don't need to  
 18 read the whole thing. You say a lot of the details that  
 19 are there about functionalizing SWP costs in this manner  
 20 is appropriate and then you go on to talk about the way  
 21 DWR bills; right?  
 22 **A. Correct.**  
 23 Q. Now, is that something that you thought that  
 24 Mr. -- you had to kind of spoon feed to Mr. Raftelis, he  
 25 didn't know about?

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1 **A. He had asked me for some information about the**  
 2 **Department of Water Resources and the invoicing**  
 3 **specifically and so I provided this information to him.**  
 4 Q. He asked you about it or did you decide that  
 5 you needed to get this report changed all on your own?  
 6 **A. No, he asked me for the information.**  
 7 Q. You're sure. Who asked you?  
 8 **A. I believe Sanjay Gaur asked me.**  
 9 Q. If Sanjay Gaur had written in his draft report  
 10 perfectly satisfactory paragraph and when he sent it  
 11 on -- when he sent it back to you, he didn't ask you for  
 12 any information about -- to fill in that paragraph, he  
 13 just said what he said; right?  
 14 You looked at it before.  
 15 **A. Uh-huh. He said what he said.**  
 16 Q. He didn't say anything about it being  
 17 appropriate or anything, he just said --  
 18 MR. HIXSON: I don't think she's finished with  
 19 her answer.  
 20 MR. KEKER: I'm sorry.  
 21 THE COURT: Are you finished with your answer?  
 22 THE WITNESS: I wasn't finished.  
 23 I believe he in this draft, he attempted to  
 24 summarize the State Water Project functionalization and  
 25 his understanding was not quite correct.

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1 BY MR. KEKER:  
 2 Q. He didn't say anything about it being  
 3 appropriate, did he, he just said this is what they do?  
 4 A. **So you're talking about the draft?**  
 5 Q. Yeah.  
 6 A. **Yes, his description of what they do wasn't**  
 7 **exactly correct.**  
 8 Q. Okay. But all he said was here's what they do,  
 9 he didn't say it's appropriate?  
 10 A. **Okay.**  
 11 Q. And then did he ask you if it was appropriate?  
 12 Where did this language about it being  
 13 appropriate come from?  
 14 A. **In summary information that I provided to him.**  
 15 Q. But where did the -- somebody -- somebody  
 16 decided to say this is very appropriate because. Who  
 17 decided that?  
 18 A. **Well, I'm the one who drafted the language, so**  
 19 **it's my language.**  
 20 Q. Did he ask you to write something that says how  
 21 appropriate it all was?  
 22 A. **That was my choice of words.**  
 23 Q. At a time you knew you were going to be sued?  
 24 A. **I thought it was a proper description.**  
 25 Q. At a time you knew you were going to be sued?

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1 A. **Yes.**  
 2 Q. Okay. And then you sent it on to Ms. Bennion  
 3 and Ms. Bennion writes back in the e-mail above, and  
 4 Ms. Bennion, the lawyer, says "June, we should limit this  
 5 to conclusions that Raftelis is able to make based on the  
 6 research they've done. I understand that they have not  
 7 reviewed our methodology, but they should be able to  
 8 conclude whether the functionalized SWC charges can be  
 9 passed along to similar functional charges in our rate  
 10 structure."  
 11 First, can you tell me what that meant to you  
 12 when you got it?  
 13 A. **As I explained previously, DWR invoices on a**  
 14 **calendar year basis, we budget on a fiscal year basis so**  
 15 **our water resource management staff converts those**  
 16 **calendar year charges to fiscal year charges. Mr. Gaur**  
 17 **wanted to look at that methodology, but we didn't think**  
 18 **that that was something that he needed to review.**  
 19 Q. And so that the problem was trying to change  
 20 from fiscal year to calendar year rather than to try to  
 21 figure out whether or not the functionalization of the  
 22 State Water Project as Met's own conveyance system was a  
 23 proper analysis?  
 24 A. **Raftelis had done the previous cost of service**  
 25 **study and what we had asked them to do was to validate**

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1 **that we were still using a consistent methodology.**  
 2 **So what he needed to look at was simply how we**  
 3 **were functionalizing the cost. He didn't need to take**  
 4 **the invoices themselves and do the calculation.**  
 5 Q. What does that have to do with this fiscal  
 6 year, calendar year business? Nothing, does it?  
 7 A. **Yeah. That was actually his question.**  
 8 Q. They have not reviewed our methodology. What  
 9 methodology are you referring to, your cost of service  
 10 analysis?  
 11 A. **The methodology that the Water Resource**  
 12 **Management uses to take the State Water Project invoice,**  
 13 **which is actually very detailed, and convert it to fiscal**  
 14 **year costs.**  
 15 Q. Okay. She goes on to describe in a long  
 16 paragraph all this business. You can read it there.  
 17 She's not -- they're not talking there about  
 18 fiscal year versus calendar year, are they?  
 19 A. **It looks like the language I had below without**  
 20 **numbers.**  
 21 Q. Ms. Bennion is trying to perk up this language  
 22 about why it's appropriate to charge state water  
 23 resources fixed costs to Met's conveyance costs, right,  
 24 that's what she's trying to do. It has nothing to do  
 25 with this calendar year, fiscal year business.

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1 A. **That was -- that was the issue of the**  
 2 **methodology, and it appears to me that what she did was**  
 3 **take what I had written below and rewrite it a little**  
 4 **bit.**  
 5 Q. Were you trying -- were you and Ms. Bennion  
 6 trying to justify the fact that the rate structure was  
 7 going to stay the way it always had been in order to  
 8 avoid destabilization of rates?  
 9 A. **No.**  
 10 Q. Were you trying -- was this an honest cost of  
 11 service study that you were trying to help Mr. Raftelis  
 12 write or was it just some kind of made for litigation  
 13 document?  
 14 A. **We -- this was a legitimate cost of service**  
 15 **study, and we wanted them to validate that it was**  
 16 **consistent with what they had done previously.**  
 17 Q. Which would keep the rates stable?  
 18 A. **Mr. Raftelis had done the original cost of**  
 19 **service study and we wanted to make sure that we was**  
 20 **being consistent with what we were doing in 2010.**  
 21 Q. Okay. Would you look at Tab 14, please, ma'am?  
 22 And so the final report comes out on April 6th.  
 23 This is the same as the one that you looked at before,  
 24 which was DTX-88.  
 25 And it has your -- first of all, on the second

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1 page, this -- the cover letter from Raftelis to Brian  
2 Thomas, the chief financial officer down there, second  
3 line from the -- second paragraph from the bottom,  
4 "Special thanks go to Ms. June Skillman and MWD staff who  
5 have worked so diligently to provide us with information  
6 and explanations as we completed our assignment."

7 And then your language works in on page 7. You  
8 get your language in at the bottom of the page and with  
9 the statement that it's appropriate because the DWR  
10 invoice is this way, therefore it's okay to load the  
11 costs on the Transportation Rate; right?

12 **A. My recollection is that Raftelis did not use my  
13 language exactly. They reviewed it and used what they  
14 wanted.**

15 Q. And then somebody -- on page 10, somebody's  
16 filled in the California law portion down at the bottom;  
17 right?

18 Do you think that was Mr. Gaur? It wasn't  
19 Ms. Bennion?

20 **A. I don't know who did that.**

21 Q. Okay. And did you consider that an independent  
22 review of work at the -- an independent review?

23 **A. I think -- that was consistent with what we  
24 asked them to do, which was to validate the cost of  
25 service and determine whether it was consistent with the**

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1 Q. But your accounting system doesn't even allow  
2 you to attribute -- when you bring revenues in, to  
3 attribute it to any particular component, does it?

4 **A. We do not have an accounting system that tracks  
5 revenues and costs by cost of service.**

6 Q. Other than the statement on page 7 about it  
7 being appropriate because of the DWR bill, does the  
8 Raftelis cost of study -- cost of service study in any  
9 place in it explain why State Water Project costs are  
10 causally related to wheeling on the Colorado River  
11 Aqueduct?

12 **A. No.**

13 Q. Anywhere in that report, does he explain why  
14 all demand management projects should be charged to  
15 transportation and not supply rates, transportation rates  
16 such as System Access or Water Stewardship?

17 **A. No.**

18 Q. At anywhere in this so-called cost of service  
19 study, does he acknowledge that Met does not account for  
20 the benefits of dry year peaking?

21 **A. That is not true.**

22 Q. That's not what?

23 **A. No.**

24 Q. Now, he does say that the classification is  
25 consistent with American Water Works Association

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1 **AWWA M1 manual guidelines.**

2 Q. Did you tell the board that you and Ms. Bennion  
3 had helped Mr. Raftelis write this cost of service study?

4 **A. We presented it to the board.**

5 Q. Did you tell the board --

6 **A. No.**

7 Q. -- that you and Ms. Bennion had helped him  
8 write it?

9 **A. We did not tell the board that.**

10 Q. Did Raftelis or anybody that worked for him  
11 review Met data to allocate actual expenditures that had  
12 occurred in the past to the -- to rate components?

13 **A. No.**

14 Q. No?

15 **A. No.**

16 Q. And that's because Met has no documents or  
17 existing information that allocates actual expenditures  
18 to rate components?

19 **A. Metropolitan sets its rates and charges  
20 prospectively based on forecasted costs.**

21 Q. And you don't look back to see how you've done,  
22 whether you've over collected or under collected?

23 **A. Each your our controller provides a yearend  
24 review and that is the basis for any variances that we  
25 have.**

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1 guidelines, doesn't he?

2 **A. He does.**

3 Q. And that's not true, is it?

4 **A. I believe it's true.**

5 Q. Well, look at, if you would, Tab 16, which are  
6 board minutes, April 13, 2010. This is the report to the  
7 board for the rates for 2011 and 2012, and if you go over  
8 to -- this is in the record, your Honor. If you go over  
9 to page --

10 THE COURT: Let me just for the record say that  
11 it's 11443.

12 Go ahead.

13 MR. KEKER: Say it again, sir.

14 THE COURT: I'm just trying to make a record on  
15 our record here so that somebody reading it five years  
16 from now knows what pages we're looking at.

17 MR. KEKER: The page -- what I'm referring to  
18 in Tab 16 is a April 13, 2010 board meeting business and  
19 finance committee minutes and the Bates stamp ends at  
20 11443.

21 And the page that I'm referring to is attached  
22 to a -- first we can go over 11467. It's the 2010, 2011  
23 cost of service. April 2010 is the date on it.

24 And what I want to call the witness's attention  
25 to is 11474 where the board is told that the functional

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1 category -- second paragraph below service function  
 2 costs, the functional categories developed for  
 3 Metropolitan's cost of service process are consistent  
 4 with the American Water Works Association rate setting  
 5 guidelines, a standard chart of accounts for utilities  
 6 developed by the National Association of Regulatory  
 7 Commissioners, NARUC, and the National Council of  
 8 Government Accounting.

9 Q. Does the standard chart of accounts for  
 10 utilities developed by NARUC get incorporated into the  
 11 AWWA rate setting guidelines?

12 A. **I believe it's referenced in the AWWA.**

13 Q. The guidelines are based on the NARUC  
 14 standards, right?

15 A. **Uh-huh.**

16 THE COURT: You have to say yes or no. We have  
 17 a court reporter taking the words down.

18 THE WITNESS: Yes.

19 BY MR. KEKER:

20 Q. And NARUC says pretty plainly put water supply  
 21 costs functionalizing as supply. Water purchases equal  
 22 supplies says NARUC; right?

23 A. **I believe that's the definition in the NARUC**  
 24 **chart of accounts.**

25 Q. Okay. And under NARUC, that means that the

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1 State Water Project costs, all the fixed costs because  
 2 it's water supply go into the supply account, right, if  
 3 you applied NARUC?

4 A. **NARUC system of accounts is a set of accounts**  
 5 **used to aggregate accounting data and it doesn't dictate**  
 6 **rate making.**

7 **In Metropolitan's case, Raftelis Financial**  
 8 **Consulting developed our cost of service study and they**  
 9 **determined which functional service categories were**  
 10 **appropriate, given Metropolitan's unique system. And --**

11 THE COURT: Excuse me, ma'am. I'm not sure  
 12 you're answering the question.

13 Would you like the question read back?

14 MR. KEKER: No, I'll just -- let me ask again.

15 Q. Under NARUC, if you applied NARUC, the State  
 16 Water Project costs 100 percent would go into the supply  
 17 function; right or wrong?

18 MR. HIXSON: Your Honor, I object. I believe  
 19 the witness was trying to answer the question but it's  
 20 not yes or no.

21 MR. KEKER: Well I asked her to answer it yes  
 22 or no, then explain.

23 THE COURT: And let me just say that even when  
 24 I rephrase a question, it is perfectly appropriate to  
 25 object to my questions too. I don't have a problem with

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1 that.

2 But let me just ask the question -- let me just  
 3 ask the witness to try to answer it yes or no if you can  
 4 and then to explain your answer if you like.

5 THE WITNESS: The -- I don't want to answer yes  
 6 or no.

7 THE COURT: All right. Go ahead.

8 THE WITNESS: The NARUC chart of accounts  
 9 captures accounting information. For purposes of  
 10 Metropolitan's cost of service, Raftelis Financial  
 11 Consulting determined service function categories that  
 12 were appropriate and recognized the unique circumstances  
 13 that Metropolitan has.

14 The NARUC chart of accounts are primarily  
 15 directed at retail utilities, not wholesale utilities and  
 16 so while that might be an appropriate classification for  
 17 a retail water agency, it's not appropriate for  
 18 Metropolitan.

19 BY MR. KEKER:

20 Q. Okay. But as -- as the dude says in the Big  
 21 Lebowski, that's just your opinion; right?

22 The -- just let's go back to what NARUC says.  
 23 If you classified the State Water Project under NARUC,  
 24 you would put it into supply, all of it; right?

25 A. **We would functionalize the State Water Project**

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1 **costs according to the service functions that they**  
 2 **provide for Metropolitan, and so we would divide it up**  
 3 **between supply and conveyance.**

4 Q. Got it. But if you followed NARUC explicitly,  
 5 you would put it in supply?

6 A. **Yes.**

7 Q. Okay. And here, you're telling -- this is the  
 8 staff's cost of service analysis. You're telling the  
 9 board that you're following -- the cost of service  
 10 process is consistent with NARUC even though it's not;  
 11 right?

12 A. **It's -- we have taken the NARUC service**  
 13 **functions and adjusted them to meet Metropolitan's unique**  
 14 **circumstances.**

15 **So, again, the NARUC chart of accounts is**  
 16 **really primarily directed at retail water agencies and**  
 17 **doesn't really fit precisely Metropolitan's own**  
 18 **circumstances.**

19 Q. At the time you provided this cost of service  
 20 study to the board, which was April 13th, we were just  
 21 looking at it, you didn't know what NARUC was, did you?

22 A. **I did know what NARUC was. We don't have the**  
 23 **chart of accounts in our office.**

24 Q. Let's look at Exhibit 15 -- I mean excuse me,  
 25 Tab 15, which is Exhibit 168, Plaintiff's Exhibit 168.

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1 It's an e-mail that Mr. Hixson showed you?  
 2 **A. Yes.**  
 3 Q. It's at Tab 15, your Honor.  
 4 And so somebody at Mr. DeBacker on the 29th of  
 5 April, 2010 asks you -- it says on page 8 of cost of  
 6 service report, it states that the functional categories  
 7 are consistent with the standard chart of accounts for  
 8 utilities developed by NARUC. And he asks the sensible  
 9 question, do either of you have a copy of that chart of  
 10 accounts that can be forwarded to me?  
 11 And you write back in the e-mail that's in the  
 12 middle there, and you say no.  
 13 You went on their Web site. They sell it. You  
 14 didn't want to buy it.  
 15 But then you go on to say this is central to  
 16 the argument used by SDCWA. What did you mean,  
 17 Ms. Skillman?  
 18 **A. I believe this is exactly what you're**  
 19 **suggesting. The Water Authority has suggested that State**  
 20 **Water Project costs -- at least might not have been the**  
 21 **Water Authority, might have been a consultant for the**  
 22 **Water Authority. State Water Project costs should be**  
 23 **functionalized as supply.**  
 24 Q. Should be functionalized as supply?  
 25 **A. Yes.**

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1 Q. And so -- and then you say our argument is  
 2 going to have to be that accounting should not dictate  
 3 how we charge for services and that generally we follow  
 4 NARUC; right?  
 5 **A. Correct.**  
 6 Q. Explain that a little bit more.  
 7 **A. Again --**  
 8 Q. Who are you going to be arguing with, start  
 9 with that.  
 10 **A. I would say we're going to be presenting a**  
 11 **position.**  
 12 **I actually explained it before and I actually**  
 13 **have it in here. When I say we generally follow the**  
 14 **NARUC chart of account, NARUC chart of accounts is really**  
 15 **designed for retail utilities. And when Metropolitan**  
 16 **developed its -- or when Raftelis developed**  
 17 **Metropolitan's cost of service study, there were service**  
 18 **functions that we provide that weren't recognized in the**  
 19 **NARUC chart of accounts.**  
 20 **So, we generally follow it in that we modified**  
 21 **it to meet our unique circumstances.**  
 22 Q. So in terms of at least this very big issue,  
 23 big dollar issue of the State Water Project fixed costs,  
 24 you don't follow the NARUC chart of accounts but you  
 25 still think it's fine to say to the Board that you're

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1 consistent with the NARUC chart of accounts; is that  
 2 right?  
 3 **A. We were generally consistent with the NARUC**  
 4 **chart of accounts, but we also say in there that we**  
 5 **recognize the unique circumstances of Metropolitan and**  
 6 **have developed service functions that recognize that.**  
 7 Q. Were you trying to create -- when you talk  
 8 about our argument is going to be to have, were you  
 9 trying to development arguments that would keep San Diego  
 10 from, in your term, destabilizing the rates?  
 11 **A. No.**  
 12 Q. I have some questions about peaking.  
 13 First of all, you spent a good deal of time in  
 14 your direct examination talking about something called  
 15 peak summer demand.  
 16 **A. Uh-huh.**  
 17 Q. Does peak demand -- is peak summer demand the  
 18 same as dry year peaking?  
 19 **A. No.**  
 20 Q. Why were you talking about it?  
 21 **A. What we were talking about is the peaking**  
 22 **behavior on our system that's relevant to Metropolitan,**  
 23 **is that particular behavior -- because our agencies don't**  
 24 **take water at an average rate throughout the year, most**  
 25 **of them take additional amounts in the summer periods, so**

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1 **we have to build extra capacity to meet those additional**  
 2 **summer demands. And so when we talk about peaking,**  
 3 **that's the -- that's the peaking that Metropolitan**  
 4 **experiences on its system.**  
 5 Q. And so dry year peaking is irrelevant to  
 6 Metropolitan?  
 7 **A. It's not a cost or a rate item that we recover**  
 8 **specifically. We recover the cost that you were talking**  
 9 **about for other rate components.**  
 10 Q. You recover all the costs of dry year peaking  
 11 through these other rates?  
 12 **A. Metropolitan recovers 100 percent of its costs,**  
 13 **a revenue requirement through rates and charges, so all**  
 14 **of our costs are in those rates and charges.**  
 15 Q. Fair enough. I misspoke.  
 16 If dry year peaking has some benefits to some  
 17 member agencies and not other member agencies, then if  
 18 you don't take dry year peaking into account, the burden  
 19 is going to fall -- the burden is going to fall on the  
 20 rate payers who don't get the benefits of this dry year  
 21 peaking; right?  
 22 **A. In periods where member agencies demand**  
 23 **increase, as I stated, they'll pay more in volumetric**  
 24 **rates. Additionally, they'll pay a higher**  
 25 **Readiness-to-Serve Charge for ten years. And to the**

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1 **degree that that behavior occurs in the summer, they'll**  
 2 **pay a higher Capacity Charge for three years.**  
 3 **So, through Metropolitan's rates and charges,**  
 4 **we'll recover the cost to the -- to Metropolitan of that**  
 5 **behavior.**  
 6 Q. Well, okay. But that's -- you'll recover  
 7 because you are going to recover rates. You will recover  
 8 all your charges one way or the other, but what I'm  
 9 asking, is there anything in your rates that takes into  
 10 account the benefits to some member agencies of dry year  
 11 peaking and the burdens that are put on other member  
 12 agencies by the fact that some people get benefits of dry  
 13 year peaking?  
 14 I understand the sum total is going to be you  
 15 will get all your costs.  
 16 **A. No.**  
 17 Q. Okay. And you haven't done it because you  
 18 think it's irrelevant?  
 19 **A. We haven't done it because we believe our**  
 20 **current structure of rates and charges adequately**  
 21 **captures the costs that are associated with that**  
 22 **behavior.**  
 23 Q. Have you attempted in your cost of service  
 24 analysis to identify the benefits to some member agencies  
 25 of their ability to roll on and off the system and peak

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1 in dry years and not take much water in wet years?  
 2 **A. No.**  
 3 Q. Do you know if that's a substantial benefit to  
 4 any member agency?  
 5 **A. In our cost of service study what we focus on**  
 6 **are the costs of the system and we do a cost of service**  
 7 **study to allocate those rates and charges. So, we don't**  
 8 **perform the cost of service study based on benefits.**  
 9 Q. Okay. And you have not, Met has not calculated  
 10 the costs associated with maintaining supplies, storage  
 11 and transportation capacity to accommodate Met's member  
 12 agencies' dry year peaking demands; right?  
 13 **A. Metropolitan has various rates and charges that**  
 14 **capture components of what is in what you described.**  
 15 Q. Okay. Did you sign an interrogatory that  
 16 answered the question I just gave you as saying no such  
 17 information exists, we don't calculate it?  
 18 **A. We don't calculate cost of benefits of dry year**  
 19 **peaking.**  
 20 Q. And did you sign an interrogatory that asks you  
 21 essentially has Met calculated the costs associated with  
 22 maintaining supplies, storage and transportation capacity  
 23 to accommodate Met member agencies' dry year peaking  
 24 demands and you, June Skillman, verified the answers to  
 25 interrogatory number 15, no such information exists, we

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1 don't calculate it?  
 2 **A. We don't calculate it.**  
 3 Q. That was a true answer when you gave it in the  
 4 interrogatory; right?  
 5 **A. Yes.**  
 6 Q. And then is it true that the costs of dry year  
 7 peaking are not allocated to each member agency in a  
 8 manner that is proportional to the benefit each member  
 9 agency receives?  
 10 **A. That's -- that would be true, we don't**  
 11 **calculate the benefits.**  
 12 Q. Okay. Are you aware of any one agency that  
 13 benefits a lot -- I won't even say the most but a lot  
 14 from Met's failure to charge for the benefit of dry year  
 15 peaking?  
 16 **A. No.**  
 17 Q. How about Los Angeles?  
 18 **A. I believe that's your position.**  
 19 Q. Well, it's certainly our position.  
 20 But what about Los Angeles? I'm asking you,  
 21 does Los Angeles benefit from its ability to rely in a  
 22 wet year on its Los Angeles aqueduct through the -- and  
 23 its own ground supplies and not buy much from Met and  
 24 then in a dry year, to buy up to 80 percent of its needs  
 25 from Met?

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1 **A. All of the member agencies benefit from being**  
 2 **able to do that.**  
 3 Q. Okay. Does Los Angeles benefit more than  
 4 others?  
 5 **A. Well, I actually just testified that we don't**  
 6 **do a calculation of the benefits so I don't know how I**  
 7 **would know that.**  
 8 Q. Okay. You were shown -- and you can look at  
 9 Tab 20, you were shown this e-mail before by Mr. Hixson.  
 10 And it's an e-mail exchange that you had in 2011 with the  
 11 consultant Michael Hurley.  
 12 THE COURT: PTX-211.  
 13 MR. KEKER: Excuse me. PTX-211.  
 14 Q. And I didn't quite understand what you said.  
 15 You said I found -- your first e-mail down at the bottom,  
 16 you sent it do Mr. Upadhyay and to others, including  
 17 Hurley.  
 18 You said, "I found these Los Angeles Department  
 19 of Water and Power board agenda -- found these on the  
 20 agenda October 4 and found them interesting. They are  
 21 volumetric examples of costs that we might be able to  
 22 break out in our cost of service study and develop  
 23 charges for. I like the revenue shortfall adjustment."  
 24 Now, what did you say that you were writing  
 25 about?

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1       **A. The Department of -- Los Angeles Department of**  
2 **Water and Power has a specific schedule in which they lay**  
3 **out regulatory and other costs that they've incurred on**  
4 **their forward treatment expenses.**  
5       Q. On their --  
6       **A. For treatment expenses.**  
7       Q. Okay, for treatment expense. So they -- and  
8 what is the revenue shortfall and adjustment?  
9       **A. In -- they have identified debt service and O &**  
10 **M costs that they incur that are associated with water**  
11 **quality mandates and having to provide security at**  
12 **various facilities, including treatment facilities. And**  
13 **those costs are primarily fixed. So, to the degree that**  
14 **they don't recover them in a year, they can make an**  
15 **adjustment in the rate the next year.**  
16       Q. So these are volumetric rates and they can have  
17 a revenue shortfall because the -- one of their member  
18 agencies hasn't bought as much water as they hoped?  
19       **A. The Los Angeles Department of Water and Power**  
20 **is a retail agency.**  
21       Q. Okay.  
22       **A. Or the customers.**  
23       Q. Oh, I see. So they can -- so then they can  
24 charge the customer some more money if the customer  
25 doesn't buy enough -- if the customers in toto don't buy

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1 enough money to recover all these fixed treatment  
2 charges?  
3       **A. Correct.**  
4       Q. And the reason they need to -- they're  
5 suggesting doing that is because they usually just bill  
6 the customer on volume?  
7       **A. They -- the Los Angeles Department of Water and**  
8 **Power has strictly a volumetric rate, they don't have a**  
9 **customer charge.**  
10       Q. Okay. And so then Mr. Hurley writes back and  
11 says I'm sure that you're willing to provide MWD with the  
12 same kind of water revenue adjustment factor.  
13       What's he referring to as you understood it?  
14       **A. We were talking about treatment so, in years**  
15 **where L.A. didn't buy as much treated water from us,**  
16 **perhaps we would be able to come up with some sort of**  
17 **adjustment.**  
18       Q. Well, but what he's talking about is there's --  
19 with a volumetric rate, if you don't buy as much water,  
20 then you don't get the revenues back. And treatment is  
21 not the only MWD volumetric rate, is it?  
22       **A. No, but at this particular time we were working**  
23 **on it because this is the one cost area where 100 percent**  
24 **of our revenues are volumetric. And we've long been**  
25 **looking at how we can structure -- restructure that**

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1 **particular rate item to provide more certainty.**  
2       Q. Okay. 80 percent of your revenues are  
3 volumetric, aren't they?  
4       **A. Approximately.**  
5       Q. Okay. So what he's saying there is --  
6       When he says, "I'm sure they", being L.A.,  
7 "would be willing to provide MWD a water revenue  
8 adjustment factor," he's referring to the fact that some  
9 years Los Angeles doesn't buy as much volume of water as  
10 it does other years; right?  
11       It's not just talking about treatment.  
12       **A. Well, we were specifically talking about**  
13 **treatment in this e-mail and that's specifically the**  
14 **project he was working on.**  
15       Q. Well, let's -- I mean let's check.  
16       Look at the next e-mail up.  
17       You say "I love that. This is basically what  
18 the electric IOU's in this state do to make up for lost  
19 revenues from conservation."  
20       What you're referring to is the electric  
21 companies, if you end up -- if a customer ends up  
22 conserving a lot of electricity, they have a way of  
23 making up their revenues by some kind of fixed charge, a  
24 service charge; right?  
25       **A. Actually, it's not quite that.**

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1       Q. Okay. Go ahead.  
2       **A. The electric IOU's, in order to incent them to**  
3 **encourage conservation, the California Public Utilities**  
4 **Commission has decoupled their rates and revenues from**  
5 **conservation.**  
6       Q. Let's go to the next sentence. We could charge  
7 L.A. based on what they aren't buying from us due to high  
8 flows off the L.A. aqueduct.  
9       Is that just talking about some treatment  
10 charge?  
11       **A. We were talking about treatment. They can vary**  
12 **the amount of treatment they take based on what**  
13 **they're -- what they're doing on their own system.**  
14       Q. But they can also base how much water -- how  
15 much volume of water they take based on high flows in the  
16 L.A. Aqueduct; right?  
17       **A. I'm not sure I understand your question.**  
18       Q. Well, Ms. Skillman, if the -- if they're high  
19 flows on the L.A. Aqueduct, meaning it's wet up in the  
20 Owens Valley, and then L.A. is not buying as much water  
21 from Met; right?  
22       **A. They may not be buying as much treated water**  
23 **from us because they'll be running it through their own**  
24 **treatment plant.**  
25       Q. They are also not buying as much water, are

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1 they?  
 2 **A. That could be the situation.**  
 3 Q. Okay. And what you're saying is if they're not  
 4 buying as much water, treated or untreated, we could  
 5 charge L.A. based on what they aren't buying; right?  
 6 **A. Yeah. We would still -- we were just talking**  
 7 **about a way to try to cover our fixed treatment costs.**  
 8 Q. This is something that is well known within Met  
 9 and has been for a long time that L.A.'s rolling on and  
 10 off the program is a benefit without a burden attached to  
 11 it, there is no charge for it. It's free to L.A. not to  
 12 buy you water from Met; right?  
 13 This isn't the first time you've talked about  
 14 that, is it?  
 15 **A. To a degree that Los Angeles buys Metropolitan**  
 16 **water from Metropolitan, it's going to be in the**  
 17 **Readiness-to-Serve Charge and it will stay with them for**  
 18 **ten years. So, it isn't free for them to just come on**  
 19 **and off.**  
 20 Q. Does the Readiness -- we've seen documents.  
 21 Readiness-to-Serve Charge captures less than half of  
 22 these dry year peaking costs, right, less than half?  
 23 **A. It covers a significant portion of the standby**  
 24 **charges, it covers 100 percent of the standby charges and**  
 25 **so to the degree that a member agency's demands vary,**


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1 MR. KEKER: Yes, your Honor.  
 2 THE COURT: See you at 9:00 o'clock sharp.  
 3 (Proceedings concluded.)  
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1 **they'll end up paying more of the RTS.**  
 2 Q. And then he writes back, it's a wonder  
 3 sometimes how MWD has gotten by with this structure for  
 4 so long.  
 5 What did you understand the structure was that  
 6 he's talking about?  
 7 **A. The volumetric structure of our treatment**  
 8 **surcharge.**  
 9 Q. And he wasn't talking about something more  
 10 general, the volumetric structure of what L.A. buys or  
 11 doesn't buy in any given year?  
 12 **A. No. We were specifically talking about**  
 13 **treatment in this example.**  
 14 MR. KEKER: That's it. Thank you,  
 15 Ms. Skillman.  
 16 THE COURT: Okay. Any redirect, or what's your  
 17 thought on the amount of time you would like to spend on  
 18 redirect?  
 19 MR. HIXSON: No redirect, your Honor.  
 20 THE COURT: Thank you very much, ma'am. You're  
 21 excused. Thank you so much.  
 22 We should leave things until Monday. I can  
 23 start at 9:00 o'clock on Monday. Will that work for  
 24 counsel?  
 25 MR. WEST: Fine by us.

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1 State of California )  
 2 ) Ss.  
 3 County of San Francisco )  
 4  
 5 I, Connie J. Parchman, CSR #6137, do hereby  
 6 certify that I am a certified shorthand reporter; that I  
 7 was personally present in the above-mentioned  
 8 proceedings; that I took down in shorthand the  
 9 proceedings and thereafter transcribed said notes into  
 10 longhand; that the forgoing pages constitute a full, true  
 11 and correct transcript of the said notes in said  
 12 proceedings; and that I have no interest in the outcome  
 13 of the case.  
 14  
 15  
 16  
 17  
 18  
 19   
 20 \_\_\_\_\_  
 21 Connie J. Parchman, CSR #6137  
 22  
 23  
 24  
 25

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SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SAN FRANCISCO  
 BEFORE THE HONORABLE CURTIS A. E. KARNOW, JUDGE PRESIDING  
 DEPARTMENT NUMBER 304  
 ---oOo---  
 SAN DIEGO COUNTY WATER AUTHORITY, )  
 ) Case No. CPF-10-510830  
 Plaintiff, ) Case No. CPF-12-512466  
 ) Trial  
 vs. )  
 ) Volume V  
 METROPOLITAN WATER DISTRICT OF )  
 SOUTHERN CALIFORNIA, ) Pages 750 - 847  
 )  
 Defendant, )

Reporter's Transcript of Proceedings  
 Monday, December 23, 2013

Reported by:  
 CONNIE J. PARCHMAN, CSR 6137  
 CERTIFIED REALTIME REPORTER

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1 DECEMBER 23, 2013 MORNING SESSION  
 2 P R O C E E D I N G S  
 3 ---000---  
 4 THE COURT: Good morning. Let's get started.  
 5 MR. HIXSON: Good morning, your Honor. We have  
 6 a housekeeping matter first.  
 7 THE COURT: Sure.  
 8 MR. HIXSON: The Court's December 17th  
 9 stipulation and order provided for the introduction of  
 10 evidence at this final hearing. It was referenced in the  
 11 party's pretrial briefs or in connection with the  
 12 hearing.  
 13 Over the weekend, the parties went through  
 14 their pretrial briefs and the evidence that was referred  
 15 to at the hearing and so we have a stipulation and  
 16 proposed order that itemizes specific documents that  
 17 would be in evidence.  
 18 THE COURT: Okay.  
 19 MR. HIXSON: And so this is in addition to  
 20 items that were admitted on the record or that  
 21 Metropolitan may produce later today, but we did want to  
 22 present this stipulation.  
 23 THE COURT: Bring it up and I'll take care of  
 24 it. Thank you.  
 25 MR. KEKER: Your Honor, just further

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1 housekeeping. We agreed over the weekend, and I wanted  
 2 to put it on the record and see if this meets with your  
 3 approval.  
 4 We agreed over the weekend that I would do some  
 5 -- I told them I would do some rebuttal to the  
 6 administrative record presentation, but that we would not  
 7 have clothing arguments, instead we would file briefs.  
 8 The briefs would be due January 17. We would file them  
 9 simultaneously and then we would come, if it's still  
 10 open, on the 23rd and do either argument or asking  
 11 questions or whatever but that the process of responding  
 12 to the other guys' brief and saying what's wrong with it  
 13 and listening to -- answering any questions you have or  
 14 concerns would happen on the 23rd and then the matter  
 15 would be taken under submission. I believe that's the  
 16 agreement that we made over the weekend.  
 17 MR. HIXSON: Yes, that's correct.  
 18 MR. KEKER: And I meant January, January 17th  
 19 and 23rd if I didn't say that.  
 20 THE COURT: All right. 9:00 A.M. on the 23rd,  
 21 will that work for you?  
 22 MR. KEKER: Yes.  
 23 MR. HIXSON: Sure.  
 24 THE COURT: I will reserve the time. Thank you  
 25 very much.

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1 MR. WEST: Your Honor, we next have a brief  
 2 presentation of evidence, a number of documents that are  
 3 covered under the parties' stipulation, provided they are  
 4 mentioned during presentation of evidence by counsel and  
 5 it should only take about 15 minutes.  
 6 And I have a binder of the documents that are  
 7 going to be referenced except for one, which is too large  
 8 to include in a binder.  
 9 May I approach, your Honor?  
 10 THE COURT: I appreciate it, yes. Yes.  
 11 MR. WEST: The first document I'm going to talk  
 12 about today is Defendant's Exhibit 218.  
 13 This document is the entirety, the full set of  
 14 invoices that MWD has provided to San Diego since the  
 15 unbundling of the rates in January, 2013 up through the  
 16 end of last year.  
 17 I would like to ask Barbara pull up the page  
 18 ending 4642.  
 19 THE COURT: Are these for any sales and/or  
 20 transfers of water?  
 21 MR. WEST: Yes, these include sales and  
 22 exchanges.  
 23 Counsel corrects me. I said since 2013. I  
 24 meant 2003, when the rate unbundling occurred.  
 25 And if you could blow up the entire top through

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1 exchanges, wheeling and other deliveries.  
 2 And the top part of this document -- actually,  
 3 if I might use the laser pointer.  
 4 This is the part of the invoice that reflects  
 5 the sales of full service water, meaning mainly the  
 6 non-exchange water.  
 7 And under exchanges, wheeling and other  
 8 deliveries, it refers to the deliveries under the  
 9 exchange agreement or the exchange water.  
 10 But a key take away here is counsel's argument  
 11 and Mr. Cushman's testimony suggests that San Diego  
 12 primarily used MWD for transportation services for  
 13 delivery of water under the exchange agreement, and the  
 14 take away from this, first off, we don't believe,  
 15 obviously that the exchange agreement involves  
 16 transportation services, it involves an exchange.  
 17 And this -- and the other invoices show that  
 18 the great majority of the water that San Diego has  
 19 purchased from MWD during the relevant period is full  
 20 service water as opposed to exchange water.  
 21 And we, accordingly, move Exhibit 218 --  
 22 Defendant's Exhibit 218 in evidence.  
 23 MR. PURCELL: No objection.  
 24 THE COURT: DTX-218 is admitted.  
 25 (Whereupon Exhibit DTX-218 was

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1 MR. WEST: The next document I want to talk  
 2 about is in Tab 2 of the binder. This is Defendant's  
 3 Exhibit 708.  
 4 Barbara, if you could please pull up. This is  
 5 at this point a demonstrative.  
 6 It's been suggested by -- through arguments  
 7 from counsel and by Mr. Cushman's testimony that  
 8 San Diego is the only party who obtains wheeling or  
 9 exchange services from MWD over the last ten years.  
 10 And, your Honor, the exhibits listed on this  
 11 demonstrative are documents that reflect wheeling and  
 12 exchange transactions that have -- that Metropolitan has  
 13 engaged in over the last several decades up until now.  
 14 If you will see on the left side of the  
 15 document, it lists all of the -- these documents  
 16 reflecting wheeling and exchange transactions by  
 17 defendant's exhibit number. And this demonstrative  
 18 merely lists the title of the document and the date the  
 19 document was executed.  
 20 The key take away from this series of documents  
 21 is that MWD does in fact facilitate wheeling and  
 22 exchanges.  
 23 And, your Honor, I move to submit the exhibits  
 24 listed on this demonstrative in evidence. They're  
 25 Defendant's Exhibits 28, 51, 72, 143, 147, 149 through

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1 201, and 203 through 217.  
 2 THE COURT: I'm sorry. Were you just  
 3 purporting to read off all the exhibits that are listed  
 4 on this DTX-708?  
 5 MR. WEST: I was.  
 6 THE COURT: It's a lot more than what you just  
 7 uttered, isn't it?  
 8 MR. WEST: 143 -- no. It is 28, 51, 72, 143  
 9 through 147, 149 through 201, and 203 through 217.  
 10 THE COURT: Did you include 169 and 170 in  
 11 that?  
 12 MR. WEST: Yes. That would be included in 149  
 13 through 201. These were all defendant's exhibits.  
 14 THE COURT: Do you think it's important to  
 15 introduce every one of those exhibits?  
 16 MR. WEST: We believe it does show the full  
 17 amount of exchanges and wheeling transaction-related  
 18 documents that Metropolitan has entered into over the  
 19 last several decades.  
 20 MR. PURCELL: We don't have any objection.  
 21 THE COURT: All right. Those exhibits are  
 22 admitted.  
 23 (Whereupon Exhibits 28, 51,  
 24 72, 143-147, 149-201, 203-217  
 25 was admitted into Evidence.)  
 MR. WEST: And we also move into evidence

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1 Exhibit 709, which is -- I'm sorry, 708, which is this  
 2 demonstrative itself which, as I indicated earlier,  
 3 merely lists the defendant's exhibits by their title and  
 4 by the defendant's exhibit number.  
 5 MR. PURCELL: That, we do object to. It is a  
 6 demonstrative, it is not evidence.  
 7 THE COURT: The objection is sustained. You  
 8 can certainly refer to it and I will keep it and use it  
 9 as a matter of reference but it doesn't have to be part  
 10 of the record.  
 11 MR. WEST: Okay.  
 12 One --  
 13 THE COURT: Let's put it this way. The words  
 14 that you've just uttered on the record are exactly  
 15 tantamount or equivalent to the contents of 708 so, I  
 16 think you've got the record you need.  
 17 MR. WEST: Thank you, your Honor.  
 18 The next document I want to discuss is in Tab 3  
 19 of the binder.  
 20 Barbara, if you could pull that up, please.  
 21 It's Defendant's 177. This is a wheeling  
 22 service agreement between the Metropolitan Water District  
 23 of Southern California, San Diego County Water Authority  
 24 and Fallbrook Public Utility District.  
 25 And, Barbara, if you could blow up the first

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1 paragraph under that.  
 2 As indicated on this document, this was an  
 3 agreement under which MWD agreed to wheel a certain  
 4 amount of water for the Fallbrook Public Utility  
 5 District, which is a member agency of San Diego County  
 6 Water Authority.  
 7 You can see by the date here, June 15th, 2003,  
 8 which is why people don't use laser pointers. This was  
 9 entered into after MWD adopted the unbundled rate  
 10 structure January 1, 2004. The reason why San Diego is a  
 11 party to this agreement -- if you would go to paragraph  
 12 4A, please, Barbara.  
 13 Next page, please, Barbara.  
 14 Explained in paragraph 4A, is that the  
 15 agreement provided that San Diego would take that amount  
 16 of wheeled water that Fallbrook itself wasn't able to  
 17 take and they would exchange it. But the wheeling in  
 18 this document is reflected -- is on behalf of Fallbrook.  
 19 And a couple of key take aways from this  
 20 document.  
 21 Barbara, if you could blow up paragraph 1B.  
 22 Actually, I'm sorry, paragraph 1E.  
 23 First off, it specifically provides that  
 24 Metropolitan will provide wheeling service through its  
 25 facilities.

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1 And, Barbara, if you could blow up paragraph  
 2 2(b). It provides that Metropolitan will provide this  
 3 wheeling service, actually using its facilities, to move  
 4 water so long as there is capacity in excess of that  
 5 needed by Metropolitan to meet the water supply needs of  
 6 its member agencies.  
 7 We believe that these are two factors that  
 8 indicate actual wheeling as opposed to the transaction  
 9 exchange that's -- that's contemplated under the exchange  
 10 agreement, those being the actual movement of water  
 11 through MWD's facilities is contemplated in part by the  
 12 agreement itself and that there was a capacity  
 13 limitation.  
 14 THE COURT: Let me just ask you something. You  
 15 don't have to answer it now but this is something which I  
 16 suppose the parties are going to talk about in their  
 17 briefs.  
 18 Is it your position that the dollars that are  
 19 paid to Met by San Diego for the exchange water is to be  
 20 measured -- is not to be measured by the law that applies  
 21 to wheeling, because it's not wheeled water and it's just  
 22 a contract made by two grown ups who are entitled to  
 23 enter into any contract they want to for whatever dollar  
 24 value they seek to place on it?  
 25 MR. WEST: I don't want to oversimplify it, but

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1 provided in the Administrative Code section 4119. It  
 2 applies to wheeling on behalf of member agencies up to  
 3 one year. Other agreements are separately negotiated.  
 4 And lastly, this is not in your binder, your  
 5 Honor, because of its size. It's Exhibit 2 --  
 6 Defendant's Exhibit 269, and that is a collection of  
 7 documents that constitute the series of documents known  
 8 as the quantification settlement agreement.  
 9 And the quantification settlement agreement  
 10 is -- I just want to make it clear on the record that  
 11 there's a -- there is -- it's possible to oversimplify  
 12 what it is. It's a very broad series of agreements, but  
 13 it's a series of agreements that, among other things,  
 14 define the amount of water that parties may take from the  
 15 Colorado River and which, among other things, allow the  
 16 transfer of water from IID to San Diego County Water  
 17 Authority.  
 18 And there is a very good definition of it, both  
 19 the quantification settlement agreement documents and the  
 20 Quantification Settlement Agreement cases which is at  
 21 201 Cal.App.4th 758.  
 22 We direct the Court's attention to this  
 23 exhibit, which is Defendant's 269, because it defines  
 24 terms that -- in agreements that have been mentioned in  
 25 this case, particularly terms in the exchange agreement.

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1 that is generally our position.  
 2 THE COURT: I understand I'm oversimplifying.  
 3 I want to make a distinction. Is that a distinction  
 4 you're going to be making?  
 5 MR. WEST: We believe so in our post-trial  
 6 briefs.  
 7 And, Barbara, if you could also blow up  
 8 paragraph 6A.  
 9 Just the point of this is this agreement is  
 10 subject to a term of ten years and thus, it continued in  
 11 operation until June 15th of this year.  
 12 We accordingly move Exhibit 177 into evidence.  
 13 Actually, it's actually covered under the other  
 14 stipulation -- the other series of wheeling exchange  
 15 agreements.  
 16 THE COURT: It's part of that?  
 17 MR. WEST: Yes.  
 18 THE COURT: All right.  
 19 MR. WEST: And one point of clarification, your  
 20 Honor, which is evidenced in certain of the wheeling and  
 21 exchange agreements that we've talked about on that  
 22 demonstrative is, as Mr. Hixson observed during his  
 23 presentation, Met's wheeling rate is specified in  
 24 Administrative Code section 4405, but there's a  
 25 limitation on that wheeling rate's application, which is

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1 For example, it defines conserved water, which  
 2 is the water that San Diego makes available to MWD under  
 3 the exchange agreement.  
 4 And this series of agreements that constitute  
 5 the quantification settlement agreements, the series of  
 6 documents that constitute the quantification settlement  
 7 agreement includes documents that the exchange agreement  
 8 references, which are conditions precedent for it. For  
 9 example, the allocation condition is a condition  
 10 precedent for San Diego's obligation under the exchange  
 11 agreement.  
 12 THE COURT: The quantification settlement  
 13 agreement, is that entered into with the federal  
 14 government pursuant to the lawsuit that set up the  
 15 possibility of diverting water from the Colorado?  
 16 MR. WEST: There are two QSAs, federal and  
 17 state one. We're referring to the state one.  
 18 THE COURT: Thank you.  
 19 MR. WEST: Accordingly, for completeness of the  
 20 record we move Exhibit 269 in evidence.  
 21 MR. PURCELL: Objection, your Honor, relevance.  
 22 The exchange agreement, which isn't really even at issue  
 23 in this case, is an integrated agreement. It's got its  
 24 own definitions in it. It's complete in and of itself  
 25 and it's already in the record.

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1 THE COURT: So I guess the -- I'm going to  
 2 assume just for today's purposes that the exchange  
 3 agreement is something that we need to discuss and that  
 4 the parties want to discuss.  
 5 But are you suggesting that I have to look at  
 6 the Quantification Settlement Agreement's use of terms to  
 7 figure out what the exchange agreement means?  
 8 MR. WEST: In order to define terms in the  
 9 exchange agreement, you can't just look at the -- you  
 10 can't just look at the exchange agreement itself.  
 11 For example, the definition section in  
 12 paragraph 1 defines conserved water as that term is  
 13 defined in the Quantification Settlement Agreements.  
 14 THE COURT: That's how it reads in the exchange  
 15 agreement?  
 16 MR. WEST: That's how it reads in the exchange  
 17 agreement.  
 18 And under -- there is a provision dealing with  
 19 San Diego's conditions precedent, which says one of its  
 20 conditions precedent is the execution and delivery of the  
 21 allocation agreement, which is part of the quantification  
 22 settlement agreements.  
 23 One point of clarification. There is --  
 24 counsel reminds me there is only one QSA itself. There  
 25 are two QSA cases. There's the federal QSA and the state

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1 QSA. But these -- there is one quantification settlement  
 2 agreement that the parties will include.  
 3 MR. PURCELL: And we still maintain our  
 4 objection. The definition of conserved water isn't  
 5 relevant for purposes of this phase of the case.  
 6 THE COURT: I'll admit 269 for the limited  
 7 purpose of looking at it if the exchange agreement has  
 8 terms which are defined as set forth in the  
 9 quantification settlement agreement, so for that limited  
 10 purpose.  
 11 (Whereupon Exhibit DTX-269 was  
 12 admitted into Evidence.)  
 13 MR. WEST: And with that, I'm done with this  
 14 part of the presentation. I'm going to hand it to my  
 15 colleague Mr. Hixson.  
 16 THE COURT: Thank you, sir.  
 17 MR. HIXSON: Your Honor, on the first day of  
 18 trial, the Court took judicial notice of several briefs  
 19 that had been filed in other matters. One of them is --  
 20 can we pull up DTX-53.  
 21 DTX-53 is a brief filed by San Diego in the  
 22 Rincon Del Diablo case and we sought judicial notice and  
 23 that wasn't opposed and the judicial notice was granted  
 24 concerning statements in that brief by San Diego that  
 25 Proposition 13 does not apply to water rates, because  
 they are commodity rates and outside the scope of that

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1 proposition.  
 2 Another document that we showed the Court was  
 3 DTX-78. This was a joint brief that was filed by the San  
 4 Diego County Water Authority and the Metropolitan Water  
 5 District in the QSA cases contending that the wheeling  
 6 statute has no application to the exchange agreement  
 7 between Metropolitan and San Diego.  
 8 And then a third document that the Court took  
 9 judicial notice of is DTX-655. This is an appellate  
 10 brief filed by San Diego also in the QSA cases stating  
 11 the similar position, that the wheeling statute has no  
 12 application to the exchange agreement.  
 13 The Court granted judicial notice of these  
 14 items among others. Judicial notice allows a court to  
 15 take notice of the fact that something was filed and what  
 16 it says. However, judicial notice by itself does not  
 17 solve the hearsay problem, that statements that are made  
 18 in a brief have to have an independent basis for the  
 19 Court to accept them for the truth.  
 20 We are now moving DTX-53, DTX-78, and DTX-655  
 21 into evidence based on California Evidence Code section  
 22 1220, which provides that admissions by a party opponent  
 23 fall within an exception to the hearsay rule and  
 24 therefore can be considered for the truth of the matters  
 25 asserted.

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1 Judicial notice has taken care of authenticity  
 2 functions and now we are simply asserting that these fall  
 3 within an exception to the hearsay rule and can be  
 4 considered as admissible evidence for the statements that  
 5 are made therein and so we move those exhibits into  
 6 evidence.  
 7 MR. PURCELL: I'm not sure what this is  
 8 relevant to, your Honor, but we don't have any objection  
 9 on hearsay grounds.  
 10 THE COURT: Okay. DTX-53, DTX-78, DTX-655 are  
 11 admitted.  
 12 (Whereupon Exhibits 53, 78  
 13 and 655 was admitted into  
 14 Evidence.)  
 15 MR. HIXSON: Thank you, your Honor.  
 16 At this point, Metropolitan reserves rights to  
 17 put on any rebuttal as may be necessary following  
 18 San Diego's rebuttal. But other than that, we rest.  
 19 THE COURT: Thank you, sir.  
 20 MR. KEKER: Your Honor, I'm going to make a  
 21 rebuttal presentation, but we have some -- first some  
 22 housekeeping and then a couple documents we would like to  
 23 move in.  
 24 Mr. Braunig is going first, the latter is going  
 25 to be done by Mr. Purcell and then I'm going to talk for  
 a while.

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1 THE COURT: Thank you.  
 2 MR. BRAUNIG: Good morning, your Honor. Warren  
 3 Braunig for San Diego.  
 4 Just a few housekeeping matters.  
 5 First, over the weekend we filed a request for  
 6 judicial notice that was electronically filed and served  
 7 on counsel.  
 8 We've also provided them with a courtesy copy  
 9 here today in Court.  
 10 We've asked the Court to take judicial notice  
 11 of two things.  
 12 First, the legislative history of the wheeling  
 13 statute, which is obviously one of the grounds on which  
 14 we've sought relief in this case.  
 15 The second is the Metropolitan Administrative  
 16 Code, which is -- while generally you don't have to take  
 17 -- ask the Court to take judicial notice of statutes,  
 18 that statute is not available on West Law or Lexus and so  
 19 to avoid your Honor having to search around for it, we've  
 20 provided a true and correct copy of it.  
 21 These are both items that the Court has taken  
 22 judicial notice of earlier in the case, but out of an  
 23 abundance of caution, we wanted to ask the Court to do so  
 24 in connection with this trial. And I've got a copy of a  
 25 binder containing those that I can hand up to the Court.

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1 THE COURT: I would appreciate it.  
 2 Any opposition from Met?  
 3 MR. HIXSON: Metropolitan doesn't oppose the  
 4 request for judicial notice.  
 5 THE COURT: The request is granted.  
 6 MR. BRAUNIG: The second item, your Honor, is a  
 7 carryover issue from last week, which was an exhibit  
 8 marked as Plaintiff's Trial Exhibit 385, which maybe we  
 9 can pull up again, slide 6204.  
 10 So your Honor, you will recall this one. This  
 11 was a slide that using documents which have been admitted  
 12 to -- into evidence pursuant to the parties' stipulation  
 13 but that appear in, you know, these massive, you know,  
 14 sort of 200 page documents each, we've taken the relevant  
 15 information from a table that appears in each one of  
 16 those that shows here's the amount of water that  
 17 Metropolitan gets from the State Water Project either as  
 18 table A deliveries or for storage purposes.  
 19 And those tables also track the amount of  
 20 transfers or exchanges with other State Water Project  
 21 contractors as well as the transportation or wheeling of  
 22 non-project water.  
 23 And what this slide does is it sums up that  
 24 information for the years 1995 to 2009, which are the  
 25 only years -- which are the last 15 years for which the

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1 Department of Water Resources has published this  
 2 information.  
 3 And we believe that certainly it's a fact that  
 4 these -- this document is accurate in terms of the  
 5 summing up, but we also believe it would be helpful to  
 6 the Court in -- you know, in its evaluation. So as a  
 7 summary of voluminous evidence, we would move in once  
 8 more PTX-0385, and I do have a copy now that has a stamp  
 9 on it.  
 10 THE COURT: This is what I suggested last week  
 11 we give Met a chance to have a look at, see if they  
 12 agreed as to the relationship between the cited materials  
 13 and this demonstrative.  
 14 What is your position on that?  
 15 MR. WEST: We continue to object to this  
 16 document. And if your Honor would like to hear argument  
 17 regarding it, I can provide you with it.  
 18 THE COURT: Probably I think this is a good  
 19 time to get this resolved.  
 20 MR. WEST: Absolutely.  
 21 May I approach, your Honor?  
 22 THE COURT: Please.  
 23 Do you have a copy of this for San Diego?  
 24 MR. WEST: That is their own document. It's a  
 25 plaintiff's exhibit.

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1 MR. BRAUNIG: Oh, is it?  
 2 THE COURT: 340-A?  
 3 MR. WEST: Yes. This is one of the documents  
 4 that San Diego's purported Exhibit 385 purports to  
 5 summarize. Our issue is that it excludes a category of  
 6 information which is included in that document.  
 7 I believe this is covered under Evidence --  
 8 Evidence Code 1521, which addresses the summary of  
 9 voluminous writings which provides that the Court should  
 10 not consider such a summary if a genuine dispute exists  
 11 concerning material terms of the writing.  
 12 And the issue we have is if you look at that  
 13 column, there is a column under non-SWP water and it --  
 14 that excludes -- if you see that, under that column, it  
 15 talks about two different kinds of non-SVP water: Water  
 16 bank recovery water and other non-SVP water. This  
 17 excludes the first category, water bank recovery water,  
 18 but only includes the other non-SVP water. You can see  
 19 that under the column.  
 20 And if you see, your Honor, it is done by State  
 21 Water Project contractors broken, out and there is a  
 22 reference there for MWD.  
 23 And if water bank recovery water is included in  
 24 this calculation, as indicated in the document itself  
 25 that it purports to summarize, then the percentage of

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1 non-SVP water that's delivered rises from 1.6 to 4.6 and  
 2 thus, we believe that this doesn't fairly summarize the  
 3 documents it purports to summarize, for that reason and  
 4 therefore, we object to its inclusion.  
 5 We don't -- we don't -- you know counsel can  
 6 argue in their briefs the content of this but we don't  
 7 believe any particular summary, particularly a summary  
 8 that excludes a large amount of the water that's included  
 9 in this table should be admitted.  
 10 THE COURT: Well if you look at the -- if you  
 11 look at this diagram, basically we've got a circle that  
 12 suggests that out of 100 percent of water, we have about  
 13 1.1 for exchanges or transfers with other contractors and  
 14 about 1.6 of the total volume is received from SWP.  
 15 Now, if we accommodated the numbers on  
 16 PTX-340-A, how much of a difference would it make to  
 17 these percentages?  
 18 MR. WEST: The 1.6 would go to 4.6.  
 19 MR. BRAUNIG: Your Honor.  
 20 THE COURT: Yes, sir.  
 21 MR. BRAUNIG: Your Honor, the issue of that is  
 22 that that's not transportation or wheeling of non-State  
 23 Water Project water. That's -- my understanding is that  
 24 the water bank recovery is water that Metropolitan has  
 25 purchased from the State Water Project and put into

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1 storage. So it's not -- I think it's accurate to say  
 2 that the amount of non-State Water Project water that is  
 3 transported for wheeling purposes is that 1.6 number, so  
 4 we think it's accurate.  
 5 And my understanding is that there -- I didn't  
 6 hear anything from Mr. West -- that this is actually --  
 7 falls into the category of transportation or wheeling of  
 8 non-project water.  
 9 THE COURT: The best way to handle this in the  
 10 interest of time is to deny the request that this be  
 11 admitted, which is what I'm going to do. And I suggest  
 12 you just put it in the brief.  
 13 MR. WEST: Thank you, your Honor.  
 14 MR. BRAUNIG: I have a couple of other things.  
 15 The next item is Plaintiff's Trial Exhibit 386  
 16 which Mr. Kecker used with the witness Mr. Upadhyay and we  
 17 believe was authenticated.  
 18 It is actually a copy of an exhibit that was  
 19 part of the parties' stipulation, but it was marked with  
 20 a different exhibit number and so for the sake of the  
 21 record, we would move PTX-386 into the record.  
 22 MR. HIXSON: No objection to PTX-386.  
 23 THE COURT: PTX-386 is admitted.  
 24 (Whereupon Exhibit PTX-386 was  
 admitted into Evidence.)  
 25 MR. BRAUNIG: The last item that I have, your

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1 Honor, is depo designations, designations of various  
 2 depositions which your Honor has under submission with  
 3 the parties' various exhibits to them.  
 4 And before evidence is closed, we want to make  
 5 sure that -- well, we would hope that we will be able to  
 6 put those designations into evidence subject to whatever  
 7 modifications -- subject to whatever modifications your  
 8 Honor might make.  
 9 THE COURT: Sure.  
 10 MR. BRAUNIG: And so, I guess what I would like  
 11 to do is sort of establish exhibit numbers for each of  
 12 the individual deposition designations that we would then  
 13 provide to the Court as admitted subject to Your Honor's  
 14 modification and conferring with counsel that we've  
 15 gotten it right based on your Honor's -- based on your  
 16 Honor's rulings on them.  
 17 So I think what we would like to do is -- and I  
 18 don't know if that -- we haven't had an opportunity to  
 19 confer about this but I don't know if that sounds  
 20 appropriate, your Honor.  
 21 THE COURT: How many depositions are there?  
 22 MR. BRAUNIG: There are six.  
 23 THE COURT: Okay.  
 24 MR. BRAUNIG: And so I think our next in order  
 25 would be 389 for the designations of the deposition of

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1 Steve Arakawa, A-R-A-K-A-W-A.  
 2 Plaintiff's Exhibit 390 for the excerpts of the  
 3 deposition of Stathis, S-T-A-T-H-I-S, Kostopoulos,  
 4 K-O-S-T-O-P-O-U-L-O-S.  
 5 Plaintiff's Exhibit 391 for the excerpts of the  
 6 deposition of June Skillman, S-K-I-L-L-M-A-N.  
 7 Plaintiff's Exhibit 392 for the designations of  
 8 the deposition of Brian Thomas, B-R-I-A-N.  
 9 Exhibit -- Plaintiff's Exhibit 393 would be  
 10 excerpts of the deposition of Devan -- or Devendra,  
 11 D-E-V-E-N-D-R-A, Upadhyay, U-P-A-D-H-Y-A-Y.  
 12 And Exhibit 394 would be the designations of  
 13 the deposition of Arnout, A-R-N-O-U-T, Van Den Berg,  
 14 V-A-N space D-E-N space B-R-G -- B-E-R-G.  
 15 And in connection with those depositions, there  
 16 were documents that are part of the -- they're  
 17 authenticated and sort of explained by the witness as  
 18 part of those depositions and those exhibits are part of  
 19 the plaintiff's trial exhibit list and part of the  
 20 parties' stipulation and so I wanted to -- I got a little  
 21 thrown off when Mr. West made me leave the podium. Let  
 22 me go back and grab my list of what those are.  
 23 THE COURT: Those are already in -- have  
 24 already been admitted?  
 25 MR. BRAUNIG: These are not documents that have

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1 been admitted, so in connection with the deposition  
 2 designations, if those sections are approved, then we  
 3 would move -- I guess right now I would conditionally  
 4 move them into evidence.  
 5 MR. HIXSON: Your Honor, I don't mean to be an  
 6 obstructionist but we didn't get a chance to meet and  
 7 confer and this is a lot to drop on us. And I don't have  
 8 all the exhibits they're moving in evidence in front of  
 9 me at this time. I would like the parties to meet and  
 10 confer on both sides about designations and entry of  
 11 exhibits rather than forcing me to respond.  
 12 THE COURT: Have you met and conferred on the  
 13 objections to the depositions?  
 14 MR. HIXSON: Before trial, the parties did meet  
 15 and confer and that's what was filed with the Court, but  
 16 this larger procedure that is going on right now, this is  
 17 something that's being sprung on us.  
 18 MR. BRAUNIG: Your Honor, if I may respond  
 19 briefly. We mentioned this last week, that we were going  
 20 to do this and the documents were part of the deposition  
 21 and they're also part of the parties' stipulation so  
 22 there's already a stipulation in place that these  
 23 documents, if they're mentioned during the hearing, come  
 24 into evidence. So I'm not sure what further meet and  
 25 confer is necessary but --

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1 THE COURT: Well, let me ask Mr. Hixson, if a  
 2 witness said a particular location refers to a document  
 3 and if I decide that the testimony itself is admissible,  
 4 might you still have an objection to the document coming  
 5 in?  
 6 MR. HIXSON: If the document is on the parties'  
 7 prior stipulation, then no, that would be fine.  
 8 What we would like to do -- I guess we're used  
 9 to writing a mutual stip and proposed order that the  
 10 Court rather than just sort of doing it orally right now.  
 11 THE COURT: Why don't you go ahead and do that.  
 12 If there's a dispute as to a document, just briefly, as  
 13 with the depo designations, state in a short sentence  
 14 what your positions are and I'll rule on it based on  
 15 that.  
 16 MR. BRAUNIG: Okay. Thank you, your Honor.  
 17 Just so that the record -- just so the record  
 18 is clear as to which exhibits we're talking about here --  
 19 THE COURT: Sure.  
 20 MR. BRAUNIG: -- these would be PTX-57, 58, 63,  
 21 77, 80, 105, 128, 140, 180, 202, 228 and 231.  
 22 And actually 281, which is just the -- and 281  
 23 as well.  
 24 THE COURT: So with respect to the depo  
 25 designations, does Met have any objection to admitting

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1 these subject to rulings on the admissibility in specific  
 2 locations of the designations for 389, 390, 391, 392,  
 3 393, and 394?  
 4 MR. HIXSON: We reassert all the objections we  
 5 previously filed with respect to those depo designations,  
 6 so we just restate those.  
 7 THE COURT: Okay. Subject to my ruling on  
 8 those, then.  
 9 MR. HIXSON: Yeah.  
 10 THE COURT: All right. Those are admitted  
 11 subject to further rulings. That is 389 through 394  
 12 inclusive.  
 13 (Whereupon Exhibit PTX-389 to  
 14 PTX-394 was admitted into  
 15 Evidence.)  
 16 MR. BRAUNIG: Thank you, your Honor. I have  
 17 nothing further. I'm going to hand the podium over now  
 18 to Mr. Purcell.  
 19 THE COURT: Thank you.  
 20 MR. HIXSON: Your Honor, we would like to, as  
 21 well, move in some depo desalination designations. I  
 22 didn't realize the plaintiff was going to do this today.  
 23 I can wait until they're done with their case or go ahead  
 24 right now.  
 25 THE COURT: Why don't we wait until they're  
 done and then I'll turn the floor over to you.

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1 MR. PURCELL: Thank you, your Honor.  
 2 I'll be relatively brief. I know that's a  
 3 relief.  
 4 I wanted to respond to a couple things Mr. West  
 5 just mentioned in his presentation this morning and then  
 6 there's one other document I want to direct your Honor's  
 7 attention to briefly.  
 8 So the binder Mr. West handed up to you, the  
 9 first document, the very big thick document, DTX-218, the  
 10 invoices, I just wanted to correct something Mr. West  
 11 said.  
 12 He made the point that most of the water that's  
 13 delivered by Met to San Diego is delivered from Met, it's  
 14 not exchange water from IID. We've never contested that.  
 15 And Mr. Cushman's testimony actually quantified it and  
 16 made it clear that that's the case. He testified that  
 17 there were about 5 million acre-feet of water that  
 18 San Diego's bought from Met as opposed to one million  
 19 acre-feet of exchange water. So that's not in dispute  
 20 and there's nothing in those invoices that's at all  
 21 inconsistent with anything Mr. Cushman said.  
 22 The second document, this list of agreements,  
 23 it's a lot to dump on the Court and I just wanted to cut  
 24 through a little bit of the clutter by making a few  
 25 points about it.

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1 One thing you'll notice, this is the  
 2 demonstrative DTX-708, this is 50 years of agreements.  
 3 First agreement in there dates from 1964 so, if you're  
 4 talking about wheeling on Met's system, you're talking  
 5 about 50 years of wheeling.  
 6 The second thing which goes to something  
 7 Mr. West said again is that Mr. Cushman did not say that  
 8 San Diego was the only party that wheeled on Met's  
 9 system. What he said was San Diego's the only member  
 10 agency that's done a substantial amount of wheeling on  
 11 Met's system in the past ten years or so since the  
 12 unbundling rate happened. That's true.  
 13 And most of these agreements, the vast majority  
 14 of them do not involve Met member agencies, they involve  
 15 other State Water Project contractors or other third  
 16 parties. There's really only about a half dozen of the  
 17 agreements that have to do with other Met member  
 18 agencies. There's a couple with upper San Gabriel,  
 19 there's a couple with MWDOC, there's I think one with  
 20 Calleguas which was back in the '70s but really, it's  
 21 San Diego or third parties.  
 22 And the last thing I would like to mention on  
 23 this is that none of these other agreements with Met  
 24 member agencies, the few of them that there are, are  
 25 long-term agreements like the Met IID exchange. They're

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1 not agreements that span decades, they're not agreements  
 2 for deliveries of really substantial multimillion dollar  
 3 acre-foot capacity. They tend to be one offs, temporary,  
 4 one-time water transfers for pretty small quantities of  
 5 water. So again, we don't think anything in here calls  
 6 into question anything Mr. Cushman said.  
 7 And then there's one additional document I  
 8 would like to direct your Honor's attention to and move  
 9 into evidence before I sit down, and that is PTX-101,  
 10 which is Met's long-range finance plan, October 11, 2004.  
 11 This was shortly after the unbundling of the rate and  
 12 it's an interesting document that has to do with pretty  
 13 much every issue we've been talking about. And I would  
 14 like to direct the Court's attention just to the few  
 15 snippets from it.  
 16 The first is on page 14.  
 17 Jeff, you can blow up the second -- the bottom  
 18 half of the page there.  
 19 This relates to the Water Stewardship Rate  
 20 issue. As you see the heading is number eight, local  
 21 resources.  
 22 And right there in the first paragraph, again,  
 23 it's quantified and quantified in terms of acre-feet,  
 24 second sentence starting with financial incentives by  
 25 Metropolitan will support local projects that are

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1 expected to develop 408,000 acre-feet of supplied by  
 2 2013, 2014.  
 3 So to the extent Met did quantify, it wasn't  
 4 about saved capacity, it wasn't about easing strain on  
 5 facilities, it was about delivery of a specific amount of  
 6 acre-feet of new supply.  
 7 The bottom of the page, there's more, the  
 8 sentence starting "as a result."  
 9 Fourth line from the bottom, Jeff.  
 10 As a result the yield from the LRP is expected  
 11 to increase from 169,000 acre-feet in '04, '05 to  
 12 408, thousand acre-feet in 2013-14. That's the same  
 13 figure from up at the top of the page.  
 14 The IRP and rate forecast includes 166,000  
 15 acre-feet of supply from new water recycling and seawater  
 16 desalination programs.  
 17 As part of the -- go to the next page -- part  
 18 of the rate forecast and the ten-year financial forecast,  
 19 126,000 acre-feet of this new supply is assumed to come  
 20 from proposed desalination programs -- sorry, projects.  
 21 Figure 5 shows the expected supply from  
 22 projects. And then if we go back to the page, we can  
 23 blow up figure 5 there, again, a quantification and nice  
 24 upward sloping graph in terms of acre-feet of supply  
 25 created.

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1 The bottom of this page, the next section is  
 2 also interesting but on a different issue on a State  
 3 Water Project issue.  
 4 Number nine, imported supplies, you see the  
 5 section, first section 9.1 is on the Colorado River.  
 6 If we go to the next page, page 16 of the  
 7 document.  
 8 If you can blow up the text on the top of the  
 9 page.  
 10 There is a discussion of figure 6 five lines  
 11 down. Figure 6 shows the different projects that will be  
 12 delivered through to the Colorado River Aqueduct. Of  
 13 note is the fact that the transfer between the Imperial  
 14 Irrigation District and the San Diego County Water  
 15 Authority will move water through the Colorado River  
 16 Aqueduct and water will be delivered through  
 17 Metropolitan's system to the San Diego County Water  
 18 Authority, SDCWA.  
 19 SDCWA will be responsible for all costs  
 20 associated with the transfer, including the full cost of  
 21 transporting the water through Metropolitan system  
 22 capacity. And then this sentence is pretty interesting.  
 23 While these supplies are not Metropolitan  
 24 supplies, they are delivered by Metropolitan and will  
 25 serve demands in Metropolitan's service area.

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1 And then figure 6, if you scroll down, this is  
 2 a graph of all of the different Colorado River supply  
 3 sources that Metropolitan has. The big one there at the  
 4 bottom is the state purchase, and then you see the IID  
 5 SDCWA transfer and canal lining are both items ramping up  
 6 there at the bottom.  
 7 I know it may be hard to see with the shading  
 8 of the gray, but those are significant items in that  
 9 chart.  
 10 And then finally, on the peaking issue, this is  
 11 pretty brief, but on page 24 of the document, in section  
 12 11.1.3, Northern California supply programs. This goes  
 13 to the issue of storage and dry year storage and the cost  
 14 that Met incurs to have that additional dry year supply  
 15 available for agency that need it.  
 16 The IRP, you remember the integrated resources  
 17 plan from 1996, this section starts out the IRP sets  
 18 forth a goal of requiring 300,000 acre-feet of dry year  
 19 supply through water transfer and storage programs by  
 20 2010. Several programs have already been established to  
 21 achieve this goal.  
 22 And then the next couple of pages list a number  
 23 of storage programs that Met is engaged in at different  
 24 storage facilities that actually do maintain the dry year  
 25 supply.

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1 And again, the point here is that, you know,  
 2 this is not made up, this is a real thing. Met's own  
 3 documents show it. We had pointed to documents and I  
 4 believe Mr. Yamasaki testified that Met has over three  
 5 million acre-feet of water in storage right now. This  
 6 document, the 2004 projection, quantifies the dry year  
 7 portion of that as 300,000 acre-feet and tells you  
 8 exactly how Met was planning to do it, which in fact they  
 9 have done.  
 10 And I'll turn it over to Mr. Kecker.  
 11 THE COURT: Thank you very much.  
 12 MR. KEKER: Good morning, your Honor.  
 13 THE COURT: Good morning.  
 14 MR. PURCELL: Oh, sorry.  
 15 And your Honor, I apologize. Before I sit  
 16 down, we would like to move PTX 101 into evidence subject  
 17 to the parties' stipulation.  
 18 THE COURT: It's PTX?  
 19 MR. PURCELL: Correct.  
 20 THE COURT: Any objection?  
 21 MR. HIXSON: No, your Honor.  
 22 THE COURT: PTX-101 is admitted.  
 23 (Whereupon Exhibit PTX-101 was  
 24 admitted into Evidence.)  
 25 MR. KEKER: Your Honor, there's going to be  
 post-trial briefing so I'm going to save a lot of what I

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1 have to say in rebuttal for that brief.  
 2 But as I mentioned a few days ago when I tried  
 3 to stand up after Mr. Hixson's administrative record  
 4 presentation, there are things that were said there about  
 5 Met's case that demand a response. And again, we're far  
 6 enough along in the trial. If you want to interrupt me  
 7 or have questions or say something as I go along, please  
 8 feel free. It doesn't bother me.  
 9 So here's what I plan to address in this  
 10 rebuttal presentation to Mr. Hixson's AR presentation.  
 11 First of all, the assertion that the series of  
 12 reports prepared by RMI in the mid-1990s support Met's  
 13 position, we will show that they do not.  
 14 Second, Met's made for litigation position that  
 15 it's -- it is appropriate, I put that in quotes, to place  
 16 State Water Project costs on Met's transportation rates  
 17 because that's how Met is invoiced by DWR.  
 18 Third, Met's unlawful decision to put all of  
 19 the cost of its local resources, programs, conservation,  
 20 and desalination programs, which are primarily about  
 21 creating local supply and regional benefits of supply on  
 22 100 -- 100 percent on Met's transportation rates.  
 23 And fourth and finally, Met's refusal to  
 24 evaluate dry year peaking costs for which member agencies  
 25 benefit when Met develops and stores hundreds of

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1 thousands of acre-feet of water per dry year drought  
 2 insurance.  
 3 Those are the four things. So I'm going to  
 4 start with what Mr. Hixson said about these RMI reports,  
 5 because that record has to be corrected.  
 6 Met's slide 124 said that the December 1995  
 7 report, which remember I emphasized in my opening and  
 8 read a lot from. Slide 124 says RMI does not address  
 9 transportation related SWP costs. That is flat wrong.  
 10 RMI addressed all of the SWP costs, State Water  
 11 Project costs, including transportation, including power.  
 12 Everything that they spent on the State Water Project was  
 13 included in the supply costs in this RMI report. And it  
 14 couldn't be more clear this -- I want you to focus, if  
 15 you would. This is the December 1995 report and at page  
 16 1233 and 1234, 1233 it says the major expenditure  
 17 categories are State Water Project supply costs of  
 18 287 million. And then they have a table. There's a  
 19 table 1 in there that shows supply costs, State Water  
 20 Project fixed costs and they -- and then they add to that  
 21 the variable power costs, subtotal, 287 million and  
 22 change.  
 23 That number is the entire amount of what the  
 24 State Water Project costs are and they're being  
 25 classified in this report as supply.

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1 That includes -- as you can tell, it includes  
 2 what they charged for power. And I'm going to show you  
 3 in a second that there's just no question it includes the  
 4 Delta water charge, it includes what the DWR bill says is  
 5 for transportation and so on. It's the whole thing.  
 6 Looking at AR 1244 of that report, which I just  
 7 mentioned, you will see that Option I -- this is Option  
 8 II. Let me for back to Option I.  
 9 Option I reads -- this is the equivalent margin  
 10 rate of that report and it leaves all that 287 million in  
 11 the wheeling rate. That's what it says, that's what it  
 12 does.  
 13 Option II, which we have up here, takes out all  
 14 of that \$287 million. Option II computes the wheeling  
 15 rate by subtracting all SWP and CRA supply costs from the  
 16 firm sales rate. And as indicated in table 1, that's the  
 17 table we just looked at. Those annual SWP costs are  
 18 287.5 million.  
 19 That's everything.  
 20 The assertion that the December '95 report does  
 21 not address transportation related SWP costs is simply  
 22 false. This -- the 287 is the whole bill.  
 23 The same is true for the earlier report, the  
 24 October 1995 report, which you've looked at, which is in  
 25 the record. It classifies all the charges, whether it's

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1 Delta water charge, power charge, whatever as all the  
 2 costs of the State Water Project are categorized under  
 3 supply.  
 4 Now, Mr. Hixson then made a big deal about the  
 5 RMI's '96 report in May and I want to show you that that  
 6 report still lists the State Water Project at  
 7 287 million. But as you'll remember now, after the  
 8 prodding by the Met staff, RMI has now separated it out  
 9 between supply and transmission but that 287 is still in  
 10 there and we'll look at it in a minute.  
 11 Before I show you that, I want to clear the  
 12 record about this big deal about we must not have read  
 13 the '96 report because we specifically cited it in the  
 14 pretrial brief. Completely wrong. We didn't mention the  
 15 '96 report in the pretrial brief. We never cited it. We  
 16 cited the October and December 1995 RMI reports because  
 17 they do allocate the State Water Project costs to supply,  
 18 just as I just showed.  
 19 We didn't cite the '96 -- the May '96 report  
 20 because the -- because they changed their story in the  
 21 1996 report. After the parties filed their first  
 22 pretrial briefs, Met added this '96 RMI report to the  
 23 administrative record. We weren't using it as -- they  
 24 hadn't designated it as part of the administrative  
 25 record. And in their second pretrial brief, they cited

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1 it.  
 2 That's why when we talked about -- when I  
 3 talked in opening about that May '96 report, I explained  
 4 that it had the same fatal defect that the Raftelis 2010  
 5 report has. It is simply Met's litigation position  
 6 parroted back by a supposedly independent expert. It's  
 7 the opposite of substantial evidence.  
 8 So, let's look at one of the tables, though,  
 9 first in the '96 report that makes it clear that this  
 10 287 million --  
 11 Jeff, if you would blow up -- I'm referring to  
 12 page 1893, referring to the AR2012, 6288, page 1893.  
 13 And it shows the -- under non-departmental O  
 14 and M, it shows State Water Project.  
 15 And you can see by the -- everything below that  
 16 until you get down to the Colorado River Aqueduct  
 17 involves the State Water Project and they carved it up  
 18 various ways, but the total is \$287 million. But now,  
 19 you can see that they've broken it out. Let's go back to  
 20 the -- they put it in two different columns, one under  
 21 supply, part of it under supply and part of it under  
 22 transmission, which is what they hadn't done before.  
 23 Why the change in RMI's position?  
 24 Because Met told RMI to categorize the supply  
 25 costs as transportation just like it told Raftelis

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1 report, just like Ms. Skillman told Raftelis report in  
 2 2010 to say that the allocation was appropriate.  
 3 RMI changed its position about the nature of  
 4 that transportation charge, which was supply in December  
 5 and then became divided up in May, only after  
 6 incorporating -- as they said, incorporating changes  
 7 suggested by Metropolitan staff.  
 8 And I showed you this on opening. The May 1996  
 9 RMI report says after they had taken their December  
 10 report, their preliminary functionalization, which  
 11 remember was all supply. They're presenting that to  
 12 Metropolitan's planning division staff for review. After  
 13 incorporating changes suggested by Metropolitan's  
 14 planning division staff, RMI presented the preliminary  
 15 functionalization to Metropolitan's water quality,  
 16 operations, finance, and engineering divisions for  
 17 additional review.  
 18 The resulting functionalized revenue  
 19 requirements were used herein for the cost classification  
 20 and cost allocation procedures.  
 21 That's exactly what happened with Ms. Skillman  
 22 and Mr. Raftelis report many years later.  
 23 And they don't really dispute that they did the  
 24 same thing with Raftelis. We have direct proof, we've  
 25 seen those e-mails.

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1 Mr. Hixson said that it was perfectly  
 2 appropriate for staff to provide information to these  
 3 so-called independent consultants, but that's not what  
 4 they were providing. They weren't providing information,  
 5 they were dictating results, they were telling them what  
 6 the conclusion was that they were looking for and it's  
 7 the conclusion that they want this court to adopt, that  
 8 it is appropriate, I put in quotes, to call State Water  
 9 Project expenses, at least some of them, the ones that  
 10 DWR bills as transportation to be Met's own expenses for  
 11 transportation.  
 12 And looking at -- just to remind you of what we  
 13 looked at with Ms. Skillman and in opening, Ms. Skillman  
 14 basically told Mr. Raftelis report in 2010 what to say  
 15 and indeed he said it. He didn't say it was appropriate,  
 16 he didn't say anything in his draft report. She tells  
 17 him what to write, just like they did with RMI before.  
 18 So, our position is that what happened here is  
 19 undisputed and it is obvious. Historically, Met followed  
 20 industry standards and they followed simple logic and  
 21 they classified the State Water Project costs as a supply  
 22 cost, just like Colorado River water, wherever they get  
 23 their supply.  
 24 DWR from the beginning of the relationship in  
 25 their bills separated out Delta water charges from

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1 conveyance, but that didn't -- Met treated it as supply.  
 2 It was a supply cost.  
 3 Like any purchaser of commodity, the buyer  
 4 doesn't care about the producer's cost breakdown, it was  
 5 buying a supply of water. They did it for years. That's  
 6 the way they did it in the 1969 study, which sure it's  
 7 old but that's the way they were doing it then.  
 8 They did it in October RMI study, they did it  
 9 in December 1995. That's the way NARUC says to do it,  
 10 the National Association of Regulatory Utility  
 11 Commissioners, and that's how a proper cost causation  
 12 study would account for it.  
 13 THE COURT: You don't think it was the 2003  
 14 unbundling that led to this division or split?  
 15 MR. KEKER: No, absolutely not. I'm going to  
 16 get to that.  
 17 The continuity in this is that from the very  
 18 beginning, they said let's take transportation costs off  
 19 of that DWR bill. From 1997 on, unbundling had -- let's  
 20 take those costs and we're going to say they're our  
 21 conveyance costs and we're going to load them in.  
 22 So from 1997 on, when they were thinking about  
 23 wheeling, they took out the transportation that you just  
 24 saw. They take out the transportation costs, saying that  
 25 those becomes Met's transportation costs, we're going to

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1 load those onto the cost of wheeling non-project water  
 2 through the Met's internal system.  
 3 All they did when they unbundled is made it  
 4 even more obvious. They took -- they took the  
 5 transportation costs and began to call them different  
 6 things because before they had one water rate, and now  
 7 that they were going to have -- they were going to have  
 8 wheeling, they were going to charge people these -- they  
 9 call it transparency but they were going to call it these  
 10 other waters rates.  
 11 And I'm going to get to this in a second, but  
 12 there's no dispute that from -- unbundling has nothing to  
 13 do with it. This transportation, putting the State Water  
 14 Project DWR claimed conveyance costs on to the wheeling  
 15 rate began in 1997 and has never changed.  
 16 And that's what caused them to change -- when  
 17 you ask why did they change their historic position and  
 18 industry standard position and so on, why did they stop  
 19 calling it supply, the answer is they were faced with a  
 20 member agency that wanted to buy water from somebody else  
 21 and they wanted to convey it through Met's system, the  
 22 only game in town. And that's when they made up this  
 23 construct that somehow Met's State Water Project  
 24 transportation system was their own transportation system  
 25 and they could charge for it when they were charging for

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1 transportation.  
 2 And that's what they say. I mean, again, I --  
 3 in their brief, the -- down near the DTX-23 cite is the  
 4 1997 resolution. But inclusion of the State Water  
 5 Project costs in MWD's general rate for wheeling is  
 6 something that was contemplated and endorsed by RMI in  
 7 1995 because it's the only rate method examined that  
 8 could satisfy the requirement that member agencies be  
 9 held harmless from any cost shifting due to wheeling.  
 10 That is the entire analytic support for what they did.  
 11 The San Pedro resolution became the primary  
 12 factor in allocating costs to set rates, the constraint  
 13 that a member agency who doesn't wheel water can't have  
 14 its rates go up, this whole hold harmless principle we've  
 15 talked about, the no, quote, no financial injury, close  
 16 quote standard of the 1997 board resolution.  
 17 Now, during this trial, Met has doubled down on  
 18 its approach to this -- during the trial presentation.  
 19 Although Mr. Hixson, when he first tried to distinguish  
 20 Option I in that 'RMI, December '95's RMI report, he  
 21 distinguished it on irrelevant grounds, including the  
 22 fact that the rates were unbundled. But then he -- he  
 23 reiterated that RMI's option I, the 1997 wheeling rate  
 24 and the current wheeling rate, all have in common the  
 25 feature that you just asked about. They include the

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1 State Water Project transpor -- the part that the DWR  
 2 bills as transportation.  
 3 Could we see slide 65 that Met put up?  
 4 This is his big point. It goes back to 1997.  
 5 They -- they -- in 1997, they decided to put MWD's -- the  
 6 transportation costs were going to include what DWR said  
 7 in its bills were conveyance costs and that was the way  
 8 it was up til when they unbundling. And when they  
 9 unbundled, they just made it more explicit by -- and then  
 10 they made it worse by adding the Water Stewardship Rate.  
 11 At least before, it was just what DWR was charging. Now  
 12 they're charging the Water Stewardship Rate when they  
 13 unbundled.  
 14 So, this isn't something that was affected by  
 15 unbundling except it was made worse by the Water  
 16 Stewardship Rate.  
 17 Mr. Thomas, who they never called, Brian  
 18 Thomas, the CFO, recognized that Option I, this including  
 19 the State Water Project costs, Option I discouraged  
 20 wheeling.  
 21 Could we see that matrix again, that -- no, the  
 22 matrix in his memo. Yeah, there.  
 23 The equivalent margin method was Option I. The  
 24 commitments method was a fixed cost where people would  
 25 make a long-term commitment to buy water so that you

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1 would be sure that you get the revenues for it.  
 2 And the only one that would encourage wheeling,  
 3 and we believe encourage and facilitate wheeling are the  
 4 same, is the commitments method, the equivalent margin  
 5 method didn't do it.  
 6 And they go back -- again, it's not unbundling  
 7 that they're pointing to when they come to the findings  
 8 of fact. The findings of fact that support -- according  
 9 to Met that support loading State Water Project  
 10 transportation -- the DWR claimed conveyance costs and  
 11 treating them as Met's own transportation costs, they say  
 12 -- we say where does that come from? They say the 1997  
 13 resolution.  
 14 We see there -- this is -- this is the  
 15 beginning of the -- first let's look at Met's slide 128,  
 16 Jeff, and then we'll look at this.  
 17 Yeah, Met's slide 128 and then 129 are what  
 18 Mr. Hixson showed you as the written findings under the  
 19 wheeling statutes that support what's going on today.  
 20 And now if we could go to the actual finding,  
 21 this is document 82 in the administrative record, that's  
 22 cited a lot. And you haven't -- I've shown you the  
 23 actual 1997 resolution, but this is the board memo that  
 24 goes with it. And in it, it -- I mean it can't be more  
 25 clear.

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1 The San Pedro integrated resource plan assembly  
 2 statement, July 1994, stated that Metropolitan should  
 3 develop an explicit policy on wheeling.  
 4 And let's go on. And the policy to avoid  
 5 financial injury to other member agencies, wheeling  
 6 member agencies must contribute to Metropolitan's fixed  
 7 costs on the same basis as member agencies purchasing  
 8 Metropolitan supplies; therefore, member agencies  
 9 requesting only wheeling service would pay for all  
 10 transmission costs and unavoidable storage and supply  
 11 costs. That's State Water Project fixed costs for  
 12 transportation.  
 13 That's what -- I mean that's what they said  
 14 they were doing, that's what they did.  
 15 They haven't disputed that the reason and the  
 16 only reason in the record for the wheeling rate from 1997  
 17 to the present is rate stability.  
 18 Remarkably, they also haven't disputed, at  
 19 least in this trial presentation that the choice of rate  
 20 stability over a proper cost of service analysis that  
 21 facilitates wheeling is illegal under -- Morro Bay and  
 22 Palmdale as we said in our opening.  
 23 Mr. Hixson showed you slide 127 and he  
 24 emphasized in the second paragraph fair compensation is  
 25 defined as the reasonable charges. I want to emphasize

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1 what's after that, incurred by the owner of the  
 2 conveyance system.  
 3 Met has its own conveyance system. It knows  
 4 perfectly well what its conveyance system costs. Its  
 5 conveyance system includes -- well, and it knows that it  
 6 doesn't own the State Water Project conveyance system.  
 7 Could we see 206-1, Jeff, please.  
 8 You've seen this slide before. These are the  
 9 response to admissions. It doesn't operate the State  
 10 Water Project, it doesn't own the State Water Project, it  
 11 doesn't transport State Water Project within the State  
 12 Water Project, it's not its.  
 13 So the owner of the conveyance system is -- is  
 14 a reference to Met's own conveyance system, which  
 15 includes the Colorado River Aqueduct and its internal --  
 16 the system that it has to pick up water from its  
 17 suppliers, either from the Colorado River or from these  
 18 reservoirs that the State Water Project brings down, and  
 19 then deliver it to people. That's its conveyance system.  
 20 And the only reason it incurs any costs due to the State  
 21 Water Project is because it buys a supply of water from  
 22 the State Water Project and delivers it to these  
 23 reservoirs.  
 24 Could we quickly look at the map again and look  
 25 at the bottom?

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1 And your Honor is very familiar with it.  
 2 That's -- I mean the State Water Project brings the water  
 3 down, they put it in reservoirs, the Colorado River  
 4 Aqueduct picks up water at the Colorado River. That's  
 5 Met's internal owned conveyance system. All the  
 6 functionalization in the world doesn't justify what is a  
 7 purely arbitrary decision to call water supply costs  
 8 transportation costs.  
 9 THE COURT: In the regulations adopted by Met,  
 10 and again this may be something that's best left for the  
 11 briefs, and if so, just tell me.  
 12 But, the regulations themselves passed by Met  
 13 suggest that this is how you map out the constituents of  
 14 the wheeling rate that has all those pieces in it.  
 15 Is it going to be your position that I should  
 16 basically ignore that because it's in conflict with  
 17 California law?  
 18 MR. KEKER: No, you don't have to ignore that.  
 19 We're not saying it's not reasonable for them to in a  
 20 cost causation study, to try to -- first you have to  
 21 figure out how much money do you have to collect, what  
 22 are we have going to collect? Then you have to  
 23 functionalize costs. They're making a big deal about  
 24 functionalizing costs.  
 25 What we're saying is that if the

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1 functionalization of the costs is a completely arbitrary  
 2 decision in order to reach a predetermined communication,  
 3 then you're not doing an honest reasonable cost of  
 4 service analysis, and that's what we say happened here.  
 5 THE COURT: I was under the impression -- and I  
 6 may have misremembered but that in the regulations that  
 7 Met has adopted, that it defines wheeling rate as having  
 8 a series of components, for example Water Stewardship  
 9 Rate, power rate and so on, that it's sort of written  
 10 into their regulations that these things are to be  
 11 considered and are in fact part of the M1 manual in fact  
 12 part of how you're going to be calculating wheeling.  
 13 MR. KEKER: There's no question. Let's put up  
 14 4405B, the administrative record.  
 15 You're absolutely right. And what they have  
 16 said in their Administrative Code 405-B, think I've got  
 17 the number right, is that the System Access Rate, the  
 18 Water Stewardship Rate and the -- and then something  
 19 about treatment charges.  
 20 THE COURT: Right.  
 21 MR. KEKER: -- applies. And the incremental  
 22 cost of power will be the wheeling rate.  
 23 And our position is that a lawful wheeling rate  
 24 has to comply with the requirements of the wheeling  
 25 statute. It also has to comply with all these other --

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1 Prop. 26 and the various laws. And if the System Access  
 2 Rate, or the Water Stewardship Rate are -- are improperly  
 3 calculated so that they don't facilitate wheeling and are  
 4 -- aren't supported by substantial evidence in terms of  
 5 the cost of transporting water through Met's own  
 6 conveyance system, then the adopted wheeling rate by Met  
 7 is illegal. We're not challenging their administrative  
 8 code in that regard --  
 9 THE COURT: Okay.  
 10 MR. KEKER: -- as saying that's what our  
 11 wheeling rate's going to be. What we're saying, the --  
 12 that's fine but you have to have a lawful System Access  
 13 Rate and a lawful -- it doesn't even have to be lawful,  
 14 lawfully computed.  
 15 THE COURT: Okay.  
 16 MR. KEKER: Now, the one thing I just as a  
 17 caveat, I don't know if it's going to matter, but the one  
 18 thing that we don't agree with is that by -- that they  
 19 can put in their Administrative Code this limitation of  
 20 up to one year.  
 21 The wheeling rate under the Water Code is the  
 22 rate for conveying water, somebody else's water through  
 23 your system, and there's no limitation that those  
 24 agreements have to be one year agreements.  
 25 The fact that Met calls them the only wheeling

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1 rate can be a one-year agreement, nothing else is a  
 2 wheeling rate, and therefore nothing else has to comply  
 3 with the water -- the state Water Code, we disagree with  
 4 that but we're not there yet. We'll explain -- I don't  
 5 know how important that's going to turn out to be.  
 6 But it's probably going to be important for the  
 7 next trial, contract trial, the interpretation of what  
 8 does it mean to be in compliance with California law when  
 9 you have a price. Today I don't think we need to go  
 10 there.  
 11 Have I answered your question, your Honor,  
 12 because I think it's important?  
 13 THE COURT: I think so. I think your answer is  
 14 that it doesn't matter for the purposes of this trial  
 15 what's in Met's administrative code or not, it really  
 16 doesn't matter.  
 17 MR. KEKER: Correct. Correct. We're -- we're  
 18 saying -- what we want at the end is for you to say that  
 19 the calculation of the water -- the System Access Rate,  
 20 the loading on of the Water Stewardship Rate are --  
 21 they're both improperly calculated and Met has to go back  
 22 and either do it right by taking the Water Stewardship  
 23 Rate out of the transportation cost and adjusting the  
 24 System Access Rate properly by taking State Water Project  
 25 costs out and fixing the dry year peaking problem, or

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1 because you're just the judge and not the administrative  
 2 agency, or do something else that complies with the law.  
 3 You can change your rate structure completely, but what  
 4 you've done is illegal and that's what we're going to ask  
 5 for is our -- as relief.  
 6 So, our position is the only justification  
 7 anywhere in the record for loading these State Water  
 8 Project costs on Met's own and owned conveyance system is  
 9 that -- that given in the 1997 RMI report and in the 1997  
 10 resolution and that is simply if it did other twice, the  
 11 rates of non-wheeling member agencies might go up or a  
 12 whole new rate structure might have to be adopted, or in  
 13 Ms. Skillman's plaintive expression, the things would be  
 14 destabilized. They might have to go back and think about  
 15 this.  
 16 This is neither reasonable nor cost of service.  
 17 It's illegal for all the reasons I gave in openings and  
 18 we'll go over again in our closing brief.  
 19 So, unless the Court has questions about our  
 20 rebuttal to the State Water Project piece of this, I'm  
 21 going to go on to the Water Stewardship Rate.  
 22 THE COURT: Maybe this would be a good time for  
 23 a short recess.  
 24 MR. KEKER: Yes, sir.  
 25 THE COURT: See everybody in ten. Thank you.

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1 (Brief break.)  
 2 THE COURT: Yes.  
 3 MR. KEKER: Thank you, your Honor.  
 4 I'm going to move on to the Water Stewardship  
 5 Rate briefly.  
 6 And since I just mentioned the Palmdale case, I  
 7 begin by pointing out that Palmdale itself refutes  
 8 another argument that Mr. Hixson presented and that is  
 9 that it's somehow appropriate to charge 100 percent of  
 10 the Water Stewardship Rate to transportation because Met  
 11 is required by law to expand water conservation under  
 12 Senate Bill 60. And he put up a couple of slides  
 13 claiming that.  
 14 Can we see the next one referring to the --  
 15 because Metropolitan's mandated under Senate Bill 60 to  
 16 fund water supply programs like conservation and  
 17 recycling, it's appropriate to recover the cost of  
 18 supporting these programs on all water moved through the  
 19 system.  
 20 Palmdale explicitly condemned that argument as  
 21 an excuse for violating cost of service principles in  
 22 favor of rate stability because that's what happened  
 23 there.  
 24 The Palmdale Water District, like Met, appealed  
 25 to legal mandates that it had to support conservation.

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1 They used that to justify disproportionate rates. Court  
 2 found no reason why conservation, and I quote, cannot be  
 3 harmonized with Prop -- Proposition 218 and its mandate  
 4 for proportionality.  
 5 And of course, it can. Conservation and the  
 6 requirements of the law can be fit together. No evidence  
 7 in this record indicates otherwise. The only thing in  
 8 the record that Met points to is saying rate stability  
 9 excuses that Palmdale rejected.  
 10 It should by now be very apparent that the  
 11 water Stewardship Rate is a general tax. It is collected  
 12 from Met's member agencies according to their water use  
 13 and then it is distributed to other member agencies as  
 14 Met sees fit for whatever political purposes, I suppose  
 15 it needs to get votes without considering who benefits  
 16 from the distribution of this tax money, who benefits  
 17 from the projects they fund.  
 18 It should also be quite apparent, especially  
 19 since the testimony of Mr. Upadhyay, that the legal  
 20 resource programs, the conservation programs, the  
 21 desalination programs have a supply benefit to Met and  
 22 that probably because Met has plenty of capacity today,  
 23 the only benefit that demand management programs have is  
 24 supply benefit. But we're not arguing that. We're just  
 25 saying the idea of 100 percent transportation for the

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1 Water Stewardship Rate rate is ridiculous, and that Met  
 2 ought to go back and figure it out.  
 3 It follows that Met's decision to allocate  
 4 100 percent of those costs to its Transportation Rate  
 5 violates Proposition 26t, Proposition 13, the wheeling  
 6 statute, the statutory provisions we've cited and the  
 7 common law.  
 8 Mr. Hixson, himself, in the presentation he  
 9 made proved this through documents that he cited in the  
 10 administrative record. He would point to one part of  
 11 them but right there in the same document would be  
 12 something that would show that there was a tremendous  
 13 supply benefit to each of these programs.  
 14 Virtually all the documents he cited concerning  
 15 the demand management program confirmed that these  
 16 programs have a strong supply benefit. Let's begin with  
 17 this slide about the local resources program principles.  
 18 You will recall this. And he pointed to and underlined  
 19 the part that says assist local projects that improve  
 20 regional water supply and reliability and avoid or defer  
 21 MWD capital expenditures.  
 22 He emphasized that "avoid and defer" and we're  
 23 emphasizing "water supply reliability."  
 24 This is the one you'll remember they made a big  
 25 deal of the fact that San Diego's Bob Campbell signed on

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1 to these principles. He went through that. But let's  
 2 look at the principles.  
 3 This is in 2010 administrative record, page  
 4 2868. We'll start with -- this is the front page.  
 5 This is the local resources program principles  
 6 developed by the rate refinement participants, and at  
 7 page 2870, there you have it. Key goals of the proposed  
 8 local resources program are to assist local projects that  
 9 improve regional water supply reliability and avoid or  
 10 defer MWD capital expenditures. They emphasize cost  
 11 efficient participation in developing local water  
 12 resources.  
 13 Let's look over at 2871, the next page. This  
 14 is the projects that are going to get a preference.  
 15 Ones that set up diversity of supply, projects  
 16 that increase the diversity of supply at the local level.  
 17 They show -- and then C, regional water supply  
 18 benefits, projects that offset a demand for imported  
 19 supplies or increase regional reliability during periods  
 20 of shortage and/or emergencies.  
 21 And this so called functionalization, the idea  
 22 that these projects end up 100 percent as part of the  
 23 conveyance system is -- we believe is ridiculous.  
 24 Could we see slide 81?  
 25 Another one that he pointed and underlined. He

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1 underlined the part about reduce and defer, but just look  
 2 at what's right above that. Right above it, it says  
 3 "investments in conservation and recycling decrease the  
 4 region's overall dependence on imported water supplies  
 5 from environmentally endangered areas.  
 6 You don't -- I mean just look at the document  
 7 he showed and you see -- you see that there's supply  
 8 benefit cited.  
 9 And then one more that they used, slide 83.  
 10 In that one, down at the bottom says  
 11 conservation is a critical element of Metropolitan's  
 12 demand management program's collectively increasing the  
 13 reliability of existing water supplies by lessening the  
 14 need to import additional water while at the same time  
 15 deferring the need to expand system capacity.  
 16 And a little bit higher up it talks about  
 17 investments and demand side programs like conservation,  
 18 water recycling and groundwater recovery reduce the need  
 19 to provide additional imported water supplies.  
 20 And Met, in putting in its case completely  
 21 ignored the earlier guidance of the -- this expert George  
 22 Raftelis that we've heard about.  
 23 Keep in mind that the 2010 cost of service  
 24 study that Mr. Raftelis validated, which Ms. Skillman,  
 25 you will remember, helped to write, didn't include any

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1 mention or explanation or justification for treating the  
 2 Water Stewardship Rate as transportation.  
 3 But back in 1999, when Mr. Raftelis did his  
 4 work, he said then in the cost of service model, half of  
 5 the DSM costs demands supply management costs, which is  
 6 what we're charging under the Water Stewardship Rate.  
 7 Half of the DSM costs are included in the source of  
 8 supply function and the other half are included in the  
 9 transmission function. So he arbitrarily split it 50/50.  
 10 But then he goes on. There are alternatives to  
 11 this simple allocation approach. One such alternative  
 12 would be to conduct a detailed cost benefit analysis.  
 13 So, they've completely ignored that. The 50/50  
 14 division is arbitrary and would; be unlawful.  
 15 But Met here has one upped Mr. Raftelis by  
 16 putting everything on transportation, which makes no  
 17 sense. Water Stewardship Rate is an unlawful tax that  
 18 bears no reasonable relationship to cost of service and  
 19 it's illegal and it shouldn't be in the wheeling rate.  
 20 Now, I'm going to shift again to this time to  
 21 dry year peaking.  
 22 Met's response is a combination of it doesn't  
 23 matter and we've got it covered. The record shows that  
 24 they're wrong on both counts with respect to dry year  
 25 peaking.

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1 It should be clear by now that dry year peaking  
 2 refers to variations in annual demand, wet years, dry  
 3 years, not summer demand, not peak day demand, not peak  
 4 week.  
 5 THE COURT: Is there anybody -- I guess one of  
 6 the points that they're making is that this notion that  
 7 there is such a concept as dry year peaking in the first  
 8 place is just your invention, it doesn't come from  
 9 anywhere and that you're in effect just sort of making  
 10 this up as a category of issues that have to be addressed  
 11 by the rates.  
 12 MR. KEKER: Well, we're not making it up  
 13 because San Diego's been complaining about it going back  
 14 as you know --  
 15 THE COURT: Sure.  
 16 MR. KEKER: -- to 2000. We showed you that.  
 17 But that's what I want -- yes, they're saying it doesn't  
 18 matter because it doesn't exist is what they're saying.  
 19 THE COURT: Right.  
 20 MR. KEKER: They're saying we didn't study it,  
 21 we haven't studied it, we don't know -- we can't quantify  
 22 it, we haven't figured out any benefits of it and by the  
 23 way, it's trivial or somehow San Diego and Los Angeles  
 24 are the same. So I want to deal exactly with that.  
 25 First of all, dry year peaking and the process

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1 of, the practice of rolling on and off the system is  
 2 inherent to Met's structure as a supplemental water  
 3 supplier, albeit one that has a monopoly on conveyance  
 4 but it's inherent to their supplemental structure.  
 5 One of the very first slides they showed -- put  
 6 up slide six -- emphasized that to the degree a member  
 7 agency has local resources, develops local resources,  
 8 implements conservation or otherwise reduces demand, that  
 9 member agency does not require Metropolitan's services.  
 10 So, the parties roll on and off, that they do  
 11 that in significant measure shouldn't be in dispute at  
 12 this point. They try to air brush over this by saying it  
 13 doesn't matter.  
 14 But let's look at -- I mean it does matter.  
 15 Look at what one of the key planning documents they cite  
 16 over and over is this integrated resources plan, which is  
 17 back in 1996. Back in 1996, they recognize that -- and  
 18 this is dry year peaking. Los Angeles Aqueduct  
 19 deliveries, for example, have varied from 200,000  
 20 acre-feet per year to about 500,000 acre-feet per year  
 21 due to runoff conditions in the Owens Valley.  
 22 Now, what that means is if the Owens Valley is  
 23 dry, they get 200,000 acre-feet from the Owens Valley.  
 24 Where did they get the rest of their water? They get it  
 25 from Met.

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1 In a good year, 500,000 feet. So we're talking  
 2 about a recognized -- for Los Angeles, and again it  
 3 sounds like we're making on them but we're saying this is  
 4 a real phenomenon, it is not just -- people ought to pay  
 5 for this drought insurance. But they're recognizing in  
 6 1996 300,000 acre-feet. That's in the record.  
 7 More recently, the documents that -- the bond  
 8 document that we've shown, which are PTX-244 and 352,  
 9 these 2013 bond documents recognize that this swing  
 10 for -- and now we're not talking about what L.A. is  
 11 getting from the Owens Valley, we're talking about what  
 12 Los Angeles is projected to buy from Metropolitan. And  
 13 that swing is between 167,000 acre-feet per year and  
 14 approximately 433,000 acre-feet per year.  
 15 When we look at the next one, same document, of  
 16 course they're talking about in the future, they may  
 17 purchase up to 511,000 acre-feet or 82 percent of its dry  
 18 year supplies from Metropolitan over the next 25 years.  
 19 This corresponds to an increase from normal to dry years  
 20 of approximately 255,000 acre-feet of -- in potential  
 21 demand for supplies from Metropolitan. Water rates are  
 22 around 600 -- \$600 an acre-foot. I mean we're talking  
 23 about more than \$30 million of -- in -- that is available  
 24 for a dry year that you're not going to buy in a wet  
 25 year.

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1 Now, they argue -- and your question goes to  
 2 the testimony from Ms. Skillman that peaking, because it  
 3 can be ignored because everybody peaks within a narrow  
 4 band and they put up this slide.  
 5 And the first thing I want -- and pointed out  
 6 that San Diego, for example, is at 1.11, the ratio  
 7 average to peak. And L.A. is at 1.31. There's another  
 8 outlier that's at 1.72.  
 9 Start with this. The difference between ten  
 10 percent and 30 percent, or 11 percent and 31 percent  
 11 increase for an agency that sells 2 million acre-feet of  
 12 water a year is 400 -- is 20 percent, and 20 percent of  
 13 that two million is 400,000 acre-feet of water. That's a  
 14 lot of water. It's more than 35 -- I can't do the math.  
 15 35 or 40,000 dollars' worth of water that has to be held  
 16 in reserve every year so that this dry year peaking  
 17 phenomenon can be satisfied when the demand arises.  
 18 But if you want to understand the difference  
 19 between Los Angeles and other member agencies in terms of  
 20 peaking, you've got to look not just at these absolute  
 21 numbers, but at some baseline comparison. And that was  
 22 the point of Mr. Denham's testimony, and we put up the  
 23 slide. And you asked a question about it. This is the  
 24 slide we put up to show Los Angeles was significant  
 25 compared to the other members and to San Diego.

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1 You asked the question about well, what -- and  
 2 they criticized. They criticized the slide because oh,  
 3 we used as the baseline '94 to -- 1994 to 2000.  
 4 You asked some questions about it. They said  
 5 it was unfair because we used the wrong baseline average.  
 6 So, over the weekend, we went back to the same  
 7 data and using that same data file that's in evidence,  
 8 which is PTX-383, we ran the numbers again and the  
 9 results are the same.  
 10 And they show the conclusion of this, is that  
 11 L.A.'s peaking is an order of magnitude different from  
 12 other agencies, including San Diego.  
 13 So here, this one, we took Met's criticism,  
 14 because of the type of hydrology that happened up to  
 15 2003, and created the baseline as the average of 1994 to  
 16 2003 and compared that. It looks different from the  
 17 other chart, but it still shows, without any doubt, that  
 18 some member agencies peak in dry years or peak more than  
 19 other member agencies, significantly different by an  
 20 order of magnitude.  
 21 The most on this chart San Diego gets to is  
 22 about 1.3 or 4 and Los Angeles gets up to two times  
 23 average. It's a significant difference.  
 24 Now, somebody could argue well, this is  
 25 misleading because it's the wrong baseline. So we did it

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1 again. We took all of the -- we made an average. The  
 2 baseline became '94 to the present.  
 3 This chart shows an entire 20-year average.  
 4 One represents the average sales between 1994 and 2013.  
 5 And what you see is that while San Diego and the member  
 6 agencies wobble around plus or minus, at the maximum  
 7 20 percent above the line, maybe 1.2, Los Angeles in the  
 8 late '90s was buying 70 percent less than their 20-year  
 9 average while in the late 2000, it was buying 60 percent  
 10 more than their average.  
 11 We've marked that, your Honor, as 302-03 and  
 12 the one before we marked as 301-03 and later I'm going to  
 13 move them -- well, I'll move them now, both into  
 14 evidence.  
 15 MR. HIXSON: And we will object. These are  
 16 demonstrative.  
 17 MR. BRAUNIG: 387 and 388.  
 18 MR. KEKER: 387 is 301-03 and 388 is 302-03.  
 19 And what these are are summaries.  
 20 THE CLERK: I got confused there.  
 21 THE COURT: So the exhibits that are being  
 22 moved in are in short --  
 23 MR. KEKER: PTX-387 and PTX-388.  
 24 Go back. Can we -- PTX-387, it says on there  
 25 is -- which one -- is that one. That's the one using the

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1 average 1994 to 2003 as the baseline.  
 2 And 388 is the one using as the baseline  
 3 average water deliveries over a 20-year period, '94 to  
 4 2000. And that's the one that shows rather significant  
 5 differences between the way Los Angeles uses the  
 6 supplemental system of Metropolitan and the other  
 7 members, including San Diego use it.  
 8 But --  
 9 THE COURT: Let's just handle the evidentiary  
 10 issue.  
 11 MR. KEKER: Yes, sir.  
 12 MR. HIXSON: We object. There's no testimony  
 13 connecting these demonstratives to the data they purport  
 14 to represent. They appear to be attorney-created  
 15 documents. The underlying document's in evidence, but we  
 16 object to the demonstrative.  
 17 THE COURT: The objection is sustained.  
 18 But I encourage San Diego if it wants, to  
 19 include these as part of its argument in the argument  
 20 submission, for example post-trial brief if you wish.  
 21 MR. KEKER: While much of the -- I mean I got  
 22 to straighten this out too.  
 23 It seems like we're talking about Los Angeles a  
 24 lot because they -- they exhibit this behavior in the  
 25 most extreme way. But the dry year peaking claim is not

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1 just -- is not about Los Angeles specifically. If  
 2 San Diego gets some benefits that other agencies don't  
 3 get out of dry year peaking, San Diego -- the rates  
 4 should reflect that and San Diego pays.  
 5 It's -- our objection to this is it is real, it  
 6 is substantial. We've been telling them to look at it,  
 7 asking them to look at it and deal with it under cost of  
 8 service analysis for at least 13 years and they won't do  
 9 it.  
 10 I mean this -- this argument that they're  
 11 making now that San Diego peaks too is simply a non  
 12 sequitur.  
 13 So, that's the argument on dry year peaking.  
 14 They say it doesn't exist. We say nonsense. That  
 15 argument's nonsense. We proved it exists. It's a  
 16 material matter that has benefits and it has burdens and  
 17 it should be taken into account when a rate maker is  
 18 considering a fair rate. It's a great benefit to some  
 19 agencies to be able to count on a storage system that has  
 20 three million acre-feet sitting there waiting for the dry  
 21 year when they need water and then being able not to pay  
 22 for that benefit all the years when they don't need  
 23 water.  
 24 Meanwhile, somebody's paying for that storage  
 25 and the people that are paying for the storage are the

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1 people that use the system more uniformly for their water  
 2 needs. That's our -- so that's where the benefit and the  
 3 burden is. They ought to measure it and they ought to  
 4 put the costs where they properly belong.  
 5 Now, what about Met's claim -- so that's the  
 6 part -- I've answered the part where they say it doesn't  
 7 matter. Now I want to move to the part where they say  
 8 oh, we've taken care of it, that they still reasonably  
 9 account for annual variations in Met -- in member agency  
 10 water use.  
 11 And this is their slide 145. That's their  
 12 claim. Met's rates and charges still reasonably account  
 13 for annual variations in member agency water usage.  
 14 It's hard to imagine how they can assert that,  
 15 since their cost of service report doesn't break out or  
 16 even identify dry year peaking as an issue. And  
 17 Ms. Skillman has admitted and their interrogatories have  
 18 admitted that they haven't identified the benefits or how  
 19 much from having this drought insurance available. That  
 20 should be the end of the argument.  
 21 But let me deal with the arguments that they're  
 22 making about, oh, well, we're taking care of at least  
 23 some of it.  
 24 First, they say they recover dry year peaking  
 25 costs through their volumetric rates, including the

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1 System Access Rate, the Water Stewardship Rate so when  
 2 member agencies buy more water in dry years, they pay  
 3 more.  
 4 For starters, let's just be clear that that  
 5 puts the end to any argument that this dry year peaking  
 6 issue is unrelated to the wheeling rate because it's  
 7 directly related to these volumetric rates. System  
 8 Access Rate and Water Stewardship, they're in the  
 9 wheeling rate. They've admitted that in response to  
 10 their interrogatories. Interrogatory number 15, which  
 11 you've seen before, says System Access Rate among others  
 12 is where all these costs go.  
 13 They acknowledge that in the -- that flexible  
 14 storage presentation that I went through with  
 15 Mr. Upadhyay, the one where they're talking about moving  
 16 -- moving some costs from transportation to conveyance  
 17 for storage, that it recovers dry year peaking costs  
 18 through the System Access Rate, a component of the  
 19 wheeling rate.  
 20 But they also ignore this point raised by  
 21 Mr. Denham. The problem is not what you pay in dry  
 22 years, which is where the volumetric rate makes it up,  
 23 when you roll on to the system. The problem is what you  
 24 don't pay when you're not buying Met water. Remember the  
 25 e-mail Ms. Skillman was -- with Mr. Hurley was talking

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1 about it's amazing Met's gotten away with this so long,  
 2 why don't they pay for -- why didn't L.A. pay when  
 3 they're off the says stem for water that they don't buy?  
 4 Member agencies that peak a lot, including Los  
 5 Angeles, get drought insurance and aren't required to pay  
 6 the premiums, so volumetric rates don't solve the  
 7 problem.  
 8 Second, they argue that their tier 2  
 9 accounting, their tier 2 supply rate which kicks in when  
 10 certain member agencies buy more than the base amount of  
 11 water down there at the bottom, if a member agency's  
 12 water purchases in a calendar year exceed a base amount,  
 13 then it must pay a higher tier 2 supply rate.  
 14 Well, it's conceivable -- we're not denying,  
 15 it's conceivable that a tier 2 supply rate could recover  
 16 some of Mets's costs associated with maintaining all this  
 17 huge storage capacity in a dry year, because they would  
 18 be paying -- into of one, they would be paying into two.  
 19 But this argument has to be backed up by some  
 20 analysis. I mean there's got to be -- they haven't taken  
 21 steps to identify what the dry year peaking costs are,  
 22 they haven't taken any steps to try to identify how the  
 23 tier 2 rate applies to those dry year peaking costs, and  
 24 so the cost of service analysis has not been done in  
 25 violation of the law.

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1 THE COURT: Do you think that if tier 2 rates  
 2 might sufficient -- if sufficiently backed up, might be  
 3 adequate? For the same reason, why wouldn't the  
 4 volumetric rates themselves be enough? Is that because  
 5 everybody's paying the same dollar?  
 6 MR. KEKER: Yes. It's because in year 1, when  
 7 some of the agencies are off the system, then I'm paying  
 8 for -- then people that are on the system are paying  
 9 volumetrically. We're buying water and we're paying for  
 10 all that storage and it's only -- and we pay the next  
 11 year, the next year and then all of a sudden when  
 12 somebody needs that storage and wants to come back on the  
 13 system, all they pay for is the same thing that we're  
 14 paying for that year. So nobody has picked up the cost  
 15 of the fact that the insurance is there.  
 16 THE COURT: Well, again I don't know if the  
 17 record supports this, but it might be postponement of the  
 18 cost. In other words, it might be that if L.A., for  
 19 example, picks up enormous costs three years down the  
 20 road, that they've in effect paid for the, what you call  
 21 drought insurance for the time leading up to that. So it  
 22 could be a postponement of the premium if you want to  
 23 think of it that way.  
 24 MR. KEKER: But you're -- I'm sorry. Excuse  
 25 me.

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1 THE COURT: The second thing is to the extent  
 2 people that are paying a tremendous amount or paying  
 3 money for a tremendous amount of water, let's say in a  
 4 year where you have these peaks, if the incremental cost  
 5 of supplying the water, you know, if you get more and  
 6 more profit, in effect, goes to Met, for really  
 7 substantial or very high amounts of water that are being  
 8 delivered, so their incremental profits are going up as  
 9 the amount of water is being delivered, might that -- if  
 10 those -- if the record supported that, might that be a  
 11 way in which somebody like L.A. is in fact, at least  
 12 retrospectively paying for the cost of drought insurance?  
 13 MR. KEKER: No. In --  
 14 THE COURT: I don't know if any of this is  
 15 supported by the record.  
 16 MR. KEKER: In the dry -- well, I think it's  
 17 the opposite is supported by the record.  
 18 The way the volumetric rate works is that when  
 19 you need the full capacity of the system, the three  
 20 million acre-feet that is in storage, it's very expensive  
 21 to hold and to keep, everybody pays for it equally that  
 22 year.  
 23 And, but the costs of having it sitting there  
 24 for that year is only paid by the people who are buying  
 25 water in the years when that's not needed.

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1 So, what you pay in the dry year is not picked  
 2 up by all those -- you know, I'm paying for those  
 3 reservoirs. The three million acre-feet just sit there  
 4 for that drought storage in all the years that the  
 5 peakers are getting water somewhere else, from their own  
 6 groundwater, from the L.A. aqueduct and so on. And then  
 7 in the year that we all need water and we're using the  
 8 entire system capacity, we're all paying the same thing.  
 9 So somebody's getting a raw deal here.

10 And the -- I don't know about the incremental  
 11 profits. In the dry year, you're just running the  
 12 system. I mean to take an extreme, you're running the  
 13 system down to 0, you're using up all your storage and  
 14 that watt -- I mean that's all being paid for and that --  
 15 you're either using it or you're not using it. The  
 16 incremental cost of moving it is already taken into  
 17 account in the power rate.

18 So I don't -- I mean there's no -- I think the  
 19 record supports that this -- this benefit of knowing that  
 20 you have enough water for the dry years is not picked up  
 21 ever by the person who gets the benefit and it's paid for  
 22 by the people who are less likely to get the benefit.

23 And unless everybody experiences peaking the  
 24 same way, if everybody were average and everybody peaked  
 25 and not peaked at the same time, if the lines of those

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1 graph were all kind of on top of each other, then it  
 2 wouldn't make any difference.

3 What we've shown, at least for Los Angeles, and  
 4 maybe there's -- if you did it by an agency-by-agency  
 5 basis, we'd find out that there were other people. A  
 6 cost of service analysis would show that some member  
 7 agencies get more benefit from this drought insurance in  
 8 this supplemental system than others. That's all we're  
 9 saying. And they've got to study it. And, you know,  
 10 it's significant and it's not picked up.

11 And I'm about to go on -- now the other part of  
 12 that is you said what about the tiered rate? Maybe?  
 13 That would be what a cost of service analysis might do.  
 14 Is there a way for a tiered rate to take into account  
 15 something -- some part of this dry-year peaking? But --  
 16 and the answer is we don't know. I mean we don't know,  
 17 for example, for Los Angeles, to get into tier 2, how  
 18 much is it going to take for them to get into tier 2 and  
 19 what difference is it going to make? The fact that they  
 20 have a lot of water where they'll still be in tier one,  
 21 but they don't even have to buy it in year one, two,  
 22 three or four. They don't have to buy their tier 1  
 23 allocation.

24 How are these things set? That's what you  
 25 would want to do if you were analyzing this on a cost of

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1 service analysis. I mean, what does tier 2 mean when you  
 2 don't even have to buy up your tier 1 quota in all those  
 3 years? Where's the benefit and burden fall, and does the  
 4 tiering help that at all?

5 Nobody's thought about it. Nobody's studied  
 6 it. There's nothing in the record to support it. That's  
 7 what Prop. 26th requires, says they have to do and so on.

8 And then finally, they point to this Capacity  
 9 Charge and the readiness-to-serve charge that are things  
 10 that could capture dry year peaking costs. This slide  
 11 talks about the Capacity Charge. It is allocated based  
 12 on member agencies' maximum summer day demand over the  
 13 course of a 3-year period.

14 And our answer is so what? That isn't doing  
 15 it. That doesn't recover any of the costs of acquiring  
 16 water for use in dry years or building or maintaining  
 17 these storage reservoirs.

18 They're talking about distribution capacity for  
 19 the highest summer peak day and sizing the pipes  
 20 according to that. That's not what we're talking about  
 21 here. What we're talking about here is the cost of  
 22 storing more than three billion acre-feet of water in  
 23 anticipation of dry year demands.

24 So that's the Capacity Charge. Doesn't do it  
 25 for them.

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1 What about the Readiness-to-Serve Charge? Met  
 2 says that annual variations in water uses are reflected  
 3 in the Readiness-to-Serve Charge. And let's think about  
 4 that.

5 And there's the slide in which they said it.  
 6 RTS recovers -- down at the bottom, it says if a member  
 7 agency's water use goes up and down annually, that  
 8 affects its RTS, Readiness-to-Serve Charge allocation for  
 9 the next decade, so ten-year look back.

10 With respect to it, again, it's possible that  
 11 some of Met's dry year peaking costs could be recovered  
 12 there. But again, how would they know? They've never  
 13 identified the specific costs associated with dry year  
 14 peaking.

15 But, regardless, we know that from the record,  
 16 that they are not recovering the full costs of standby  
 17 storage through the Readiness-to-Serve Charge. We  
 18 pointed this out in our case-in-chief.

19 Met simply ignored it. This is the engineer's  
 20 report about a program to levy a Readiness-to-Serve  
 21 Charge from March of 2012.

22 It's in the record or not in the record?  
 23 It's in the record, it's in the 2012 record.

24 And if you look at page 16807, Mr. Purcell  
 25 showed you this before. Could we blow up just the

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1 highlighted part so it's easier to read, Jeff?  
 2 As noted above, Metropolitan levies the RTS  
 3 charge on its member agencies to recover a portion of the  
 4 debt service on bonds issued to finance capital  
 5 facilities needed to meet existing demands on  
 6 Metropolitan's system. The estimated potential benefits  
 7 that could be paid by an RTS charge in fiscal year so and  
 8 so were, I can't read it, 322 million as shown in table  
 9 1.  
 10 Although the RTS charge could be set to recover  
 11 the entire potential benefit amount, the general manager  
 12 is recommending that the RTS charge only recover a  
 13 portion of the total potential benefit.  
 14 Now, remember the total beneficial amount is  
 15 322 million. The general manager for fiscal year 2012 is  
 16 recommending that the amount of total potential benefit  
 17 to be recovered by the RTS charge fall in the range of  
 18 142 to 146 million. So the general manager is suggesting  
 19 that the RTS charge cover less than half of the cost of  
 20 this standby storage.  
 21 So, to the extent that any part of this is  
 22 recovering dry year peaking costs, less than -- it's less  
 23 than half of the RTS.  
 24 But the other failure, the more important  
 25 failure of the Readiness-to-Serve Charge --

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1 THE COURT: Excuse me. Do you think the  
 2 standby storage, in your view, is that equivalent to the  
 3 dry year peaking costs? No, it couldn't. It's not the  
 4 same thing in your view?  
 5 MR. KEKER: It's not the same thing, but it  
 6 includes it. And less than half of it is --  
 7 THE COURT: Right. Which includes which?  
 8 MR. KEKER: I think the -- they classify some  
 9 of it as emergency storage. They -- and then some of it  
 10 is dry year storage. And we don't know, based on the  
 11 record that's before us and the analysis that they  
 12 haven't done, how that breaks out. The answer is we  
 13 don't know.  
 14 And that's really -- the big answer here is dry  
 15 year peaking is a real thing, it exists, and they've got  
 16 to study it. That's -- that's our bottom line.  
 17 And then our sub bottom line, subpart is what  
 18 I'm talking about now, which is these -- these answers  
 19 that they have about oh, we must be picking up some of it  
 20 someplace aren't good enough answers to get them out,  
 21 having to study it and apply it correctly under costs of  
 22 service analysis as required by the law.  
 23 So, but a bigger failure is that the  
 24 Readiness-to-Serve Charge is based on -- they make a  
 25 point that this is positive. We want to point out that

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1 it's negative. It's based on a ten-year rolling average.  
 2 That's all it's recovering.  
 3 The average doesn't account for peaks, it  
 4 smooths them out. And I have a demonstrative to show  
 5 that. This is just a made up chart but the made up chart  
 6 shows that two member agencies with peaking profiles that  
 7 you see up there would have -- if you do the math and  
 8 figure it out, they have exactly the same ten-year  
 9 average. And that's -- this is the problem of the  
 10 statistician who drowned walking through a river, the  
 11 average depth of which is three feet.  
 12 They -- the Readiness-to-Serve Charge based on  
 13 a ten-year average smooths out and ignores, or it doesn't  
 14 take into account the differences between those two  
 15 profiles, which we say are significant in terms of cost  
 16 and burden. And that's why we put up this demonstrative  
 17 exhibit, something your Honor can I'm sure figure out for  
 18 himself.  
 19 So you can vary -- I mean in this example,  
 20 you've got one that's going up, one year they're down,  
 21 they're buying 200 million acre-feet, the other they're  
 22 going up to 700 million acre-feet. The other guy is sort  
 23 of bouncing along sort of close to 400 million acre-feet  
 24 but somehow they end up with the same ten-year average  
 25 and the same Readiness-to-Serve Charge. That's not

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1 taking into account dry year peaking.  
 2 Met hasn't pointed to any substantial evidence,  
 3 much less met its burden under Prop. 26 that establishes  
 4 its rates allocate dry year peaking costs to the payors  
 5 who cause Met to incur those costs and benefit from the  
 6 availability of dry year supplies and storage.  
 7 So to sum up, your Honor, Met argues that  
 8 because its staff and consultants bless its rates, each  
 9 round of rate setting, that therefore its rate setting  
 10 should get some respect. But the record shows that Met's  
 11 decision in the records that we've been talking about  
 12 doesn't involve judgment. Instead, it's a process that's  
 13 basically a shell game that implements an illegal  
 14 decision.  
 15 They were obligated to answer a question that  
 16 was -- to ask the question required by the law, what are  
 17 the costs actually caused by wheeling, by moving  
 18 non-project water through Met's system and how can we  
 19 recover those costs and still facilitate wheeling as  
 20 required by the Water Code, and they were required to  
 21 implement the answer to that.  
 22 It never even tried to do that. Instead, they  
 23 came up with an arbitrary answer which was loading all  
 24 the transportation costs and the DWR bill and 100 percent  
 25 of the conservation programs on to its transportation

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1 rates in order to satisfy the San Pedro, the hold  
 2 harmless principle, the no injury principle and keep its  
 3 rates stable.  
 4 That's the original sin in this case. All of  
 5 the tables and schedules showing functionalization and  
 6 classification are just Met's implementation of that  
 7 arbitrary decision. They don't add any legitimacy  
 8 because Met preordained the answer.  
 9 The record shows that Met's System Access Rate,  
 10 its Water Stewardship Rate, its System Power Rate and its  
 11 wheeling rate are all illegal as a result.  
 12 You asked a question at the end of a  
 13 presentation this morning about wheeled water -- is  
 14 wheeled water related to the exchange agreement or are  
 15 you saying that that's not wheeled water?  
 16 Our position in this case is that that's for  
 17 the next case. I mean our position is going to be yes,  
 18 because the way we worked that out. I mean, and what the  
 19 contract was meant to mean, that is wheeled water and  
 20 that's how you should interpret that provision of the  
 21 contract.  
 22 But you don't need to decide that in this case.  
 23 What you need to decide, we believe, and what we're  
 24 asking you to decide is that the System Access Rate, the  
 25 Water Stewardship Rate, the System Power Rate as Met has

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1 formulated them for the years in question, from 2011 to  
 2 2014, are all illegal and need to be redone in --  
 3 according to costs of service principles in accord with  
 4 Prop. 26, Prop. 13, the wheeling statutes and the various  
 5 statutory provisions.  
 6 And that's what we'll be asking for in our  
 7 brief.  
 8 THE COURT: Thank you.  
 9 MR. KEKER: Thank you.  
 10 MR. HIXSON: If plaintiffs are done with the  
 11 rebuttal, we have auto few brief comments.  
 12 THE COURT: I appreciate it.  
 13 MR. HIXSON: The parties agreed not to present  
 14 closing arguments today and so, I'm not going to do a  
 15 full rebuttal to Mr. Kecker presentation.  
 16 Just now, Met has presented a substantial  
 17 amount of evidence and a lot of argument to the Court  
 18 during the course of this proceeding and we will address  
 19 these points further in our post-trial briefing. And  
 20 then in argument before the Court on January 23rd,  
 21 including the various legal and factual points that have  
 22 been raised today. So I'm not going to do a counter  
 23 presentation based on the administrative record at this  
 24 time.  
 25 I did want to address that the deposition

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1 designation issue, that plaintiffs have identified a  
 2 number of additional PTX's.  
 3 We are designating as DTX-709 the deposition  
 4 designations for Scott Slater. These are the ones that  
 5 were previously filed with the Court so that your Honor  
 6 has both our designations and San Diego's objections.  
 7 Once the Court rules, then we would include those in  
 8 DTX-709.  
 9 And likewise, DTX-710 are the deposition  
 10 designations for Dennis Cushman that have been previously  
 11 filed. And the Court has before it both our deposition  
 12 designations and plaintiff's objections. And then to the  
 13 extent that the Court allows in testimony for either of  
 14 them, then also our DTX that they were referring to in  
 15 that deposition testimony, which are also in the parties'  
 16 stipulation, we would move in as well. So I wanted to  
 17 add those additional DTX numbers.  
 18 THE COURT: Any objection to 709 and 710 under  
 19 the same conditions as the others were admitted?  
 20 MR. BRAUNIG: Subject to preserving all of our  
 21 objections and following the same approach your Honor  
 22 took with respect to our designations, no, we have no  
 23 objection.  
 24 THE COURT: All right. So 709 and 710 are  
 25 admitted subject to further rulings on specific

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1 objections.  
 2 (Whereupon Exhibit PTX-709 and  
 3 PTX-710 were admitted into  
 4 Evidence.)  
 5 THE CLERK: Could you tell me the name of 709  
 6 again?  
 7 THE COURT: Sure. Scott Slater, S-L-A-T-E-R.  
 8 MR. HIXSON: Yes, that's fine.  
 9 I don't have anything to add in terms of  
 10 evidence beyond that. I did want, and I think both  
 11 parties want to discuss with the Court how we have  
 12 brought trial exhibits that have been admitted into  
 13 evidence to provide to your Honor and to the clerk so  
 14 they can be made formally a part of the record and then  
 15 you physically have them.  
 16 THE COURT: They're here in the courtroom, I  
 17 take it.  
 18 MR. BRAUNIG: Yes, your Honor. I think ours  
 19 are here.  
 20 MR. HIXSON: Ours are here except we will also  
 21 add 709 and 710.  
 22 THE COURT: I don't know what to say, except to  
 23 put them in a box and leave them here.  
 24 MR. HIXSON: But we have more than one box,  
 25 your Honor.  
 THE COURT: Oh, dear. Say it's not so.

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1 To the extent that you've got electronic  
 2 versions of documents, that would be welcome.  
 3 So I think the record has already been -- the  
 4 AR, what I've been thinking of as the administrative  
 5 record, I think that's already been done.  
 6 The deposition extracts that we've talked about  
 7 today, the designations, those should be in a separate  
 8 box, clearly labeled because I want to get to those as  
 9 soon as I can.  
 10 You should not assume that I will finish  
 11 reviewing the objections. I don't know how many there  
 12 are but you should not assume that I will finish  
 13 reviewing them before you start drafting your briefs that  
 14 are due on the 23rd. I may or may not.  
 15 And I think -- just to be practical about it, I  
 16 think you're just going to have to use what you think you  
 17 need from those depositions and throw it in there and  
 18 hope that I don't exclude it.  
 19 That's a frustrating way to proceed, but I  
 20 think we're going to have to do this on parallel as when  
 21 I go through it as time permits and you get working on  
 22 the briefs so that we can get this done as expeditiously  
 23 as possible.  
 24 MR. HIXSON: That's fine. Just to clarify, I  
 25 think the briefs are due on the 17th of January.

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1 THE COURT: I see. January 17th, that's right,  
 2 and the 23rd is for the argument.  
 3 MR. HIXSON: Do you want us to file and serve  
 4 through Lexus Nexus the trial exhibits? We weren't  
 5 planning to but we want to ask the Court's preference.  
 6 THE COURT: I'm not sure it's going to --  
 7 except for the fact that it transmutes them into  
 8 electronic files, I'm not sure that's going to help. But  
 9 I know that people run into problems with voluminous  
 10 documents when you try and file and serve those things.  
 11 So, if you're satisfied that it's in the record  
 12 and the Court of Appeal will have access to it, I don't  
 13 think you need to have any further filings of it. But  
 14 again, if you have CD-ROMs that are searchable, that can  
 15 be helpful.  
 16 Also, it will probably be helpful to forward to  
 17 me, after you have consulted with the court reporters, a  
 18 transcript of the trial. It's especially useful for me  
 19 as I go through it. I have my notes, but I can really  
 20 clearly see the positions that the people are taking on  
 21 individual issues and it provides a good roadmap for me.  
 22 Are there -- if there are copies of exhibits as  
 23 opposed to original exhibits, I don't need -- I don't  
 24 need more than one copy of anything.  
 25 So, if you leave a working copy here and you

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1 take home originals, if that's what you've got in the  
 2 courtroom, the working copy is something I can use, mark  
 3 up and throw away when I'm done. And you will have the  
 4 originals. I mean that's what we normally do in a normal  
 5 trial. I'm not sure the difference between originals and  
 6 copies is highly meaningful.  
 7 But, do you have multiple versions of the same  
 8 thing here in the courtroom?  
 9 MR. HIXSON: We do, your Honor. We are going  
 10 to provide your Honor with a complete set of the DTXs  
 11 that were admitted and provide San Diego with them.  
 12 MR. BRAUNIG: Maybe what your Honor is looking  
 13 for is a version that's the official court version and  
 14 the version that's a working version for yourself?  
 15 THE COURT: I personally only need the working  
 16 version. So I don't need the originals of anything. And  
 17 in fact, the parties might want to stipulate on the  
 18 record that the proponents of the exhibits, the  
 19 originals, will be holding on to them for example for  
 20 purposes of appeal.  
 21 Is that all right?  
 22 MR. HIXSON: Yes.  
 23 MR. BRAUNIG: That is all right, yes.  
 24 THE COURT: And so what you should do then is  
 25 remove the originals, don't let me touch them, and just

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1 provide me with working copies that I can destroy when  
 2 I'm done.  
 3 I phrase it that way to make it clear whatever  
 4 you give to me, you will never see again.  
 5 But again, the deposition transcripts should be  
 6 in paper format, I'm sure they already are, so that I can  
 7 physically move through the pages. And if you could  
 8 leave those there in a way that the clerk knows exactly  
 9 where they are, I can get it working on that.  
 10 MR. KEKER: I believe those are them on the  
 11 table.  
 12 MR. HIXSON: Yeah.  
 13 THE COURT: Make sure you both stare at that  
 14 pile and it is the pile that I need, including the ones  
 15 that Metropolitan has just referred to. Are they in  
 16 here?  
 17 MR. HIXSON: They are as well. We will also  
 18 submit to you DTX numbers but they are already there and  
 19 you will have them.  
 20 THE COURT: Perfect, perfect.  
 21 Anything else you would like to do at this  
 22 particular juncture?  
 23 MR. KEKER: We both have extra time, your  
 24 Honor. If you would like us to just talk some more, we  
 25 can.

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1 THE COURT: I have to tell you that I enjoyed  
2 working with these two firms just enormously. This is  
3 one of the great pleasures of this department, is working  
4 with people of nationwide caliber.

5 So if you have more to say, you can or you can  
6 reserve your time for the 23rd.

7 MR. KEKER: We'll reserve, your Honor.

8 MR. HIXSON: Thank you, your Honor.

9 THE COURT: Thank you so much.

10 MR. KEKER: Thank you.

11 MR. PURCELL: Thank you.

12 (Proceedings concluded.)

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1 State of California )  
2 ) Ss.  
3 County of San Francisco )  
4

5 I, Connie J. Parchman, CSR #6137, do hereby  
6 certify that I am a certified shorthand reporter; that I  
7 was personally present in the above-mentioned  
8 proceedings; that I took down in shorthand the  
9 proceedings and thereafter transcribed said notes into  
10 longhand; that the forgoing pages constitute a full, true  
11 and correct transcript of the said notes in said  
12 proceedings; and that I have no interest in the outcome  
13 of the case.  
14

15 Dated: December 24, 2013  
16

17 

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19  
20 Connie J. Parchman, CSR 6137  
21  
22  
23  
24  
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 IN AND FOR THE COUNTY OF SAN FRANCISCO  
 BEFORE THE HONORABLE CURTIS KARNOW, JUDGE  
 DEPARTMENT NO. 304  
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 SAN DIEGO COUNTY WATER AUTHORITY, )  
 )  
 Plaintiff, )  
 ) Case No. CPF-10-510830  
 ) Case No. CPF-12-512466  
 vs. Trial )  
 )  
 METROPOLITAN WATER DISTRICT OF ) Volume VI  
 SOUTHERN CALIFORNIA, )  
 ) Pages 848 - 965  
 Defendant. )  
 \_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
 GEORGE E. MCDONALD HALL OF JUSTICE  
 SAN FRANCISCO, CALIFORNIA  
 Thursday, January 23, 2014

Reported By: RHONDA R. HARRIS, CSR No. 7414  
 Registered Professional Reporter No. 36409

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1 PROCEEDINGS  
 2 Thursday, January 22, 2014, 9:12 A.M.  
 3 ---oOo---

4 THE COURT: Good morning. Everybody got my  
 5 questions? Great.  
 6 MR. KEKER: What questions?  
 7 THE COURT: Probably the same things that you  
 8 had already thought about, but again I wanted to  
 9 emphasize that some of those questions may have been  
 10 really misguided. Feel free to sort of point out that  
 11 I've missed something, that's really the other way  
 12 around.

13 I suggest we just start with San Diego, which  
 14 is challenging, and then turn to Met and then allow  
 15 San Diego to maybe have some rebuttal, and we can go  
 16 back and forth about maybe roughly an hour for each side  
 17 total.

18 MR. KEKER: Thank you, Your Honor.  
 19 Yes, we did get questions. We appreciate  
 20 them. I have a presentation to make that is -- is  
 21 designed to answer all of those questions. If you get  
 22 impatient that I'm not getting to the one that you want  
 23 me to talk about, just tell and I'm happy to be  
 24 interrupted.  
 25 But I'm going to begin --

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1 THE CLERK: Start by stating your name,  
 2 please.  
 3 MR. KEKER: John Keke for San Diego.  
 4 CLOSING ARGUMENT  
 5 MR. KEKER: I'm going to begin with the  
 6 Question No. 3, that you posed to the parties; whether  
 7 the parties agree that the rates are -- needed to be  
 8 based on cost causation. The answer from San Diego is a  
 9 resounding yes. We believe that Met agrees with that as  
 10 its trial presentation made clear. This is one of their  
 11 opening slides, Slide 39, and they -- they told you that  
 12 rates should reflect cost causation and not be  
 13 determined by and so on. So we think we agree.

14 The record also makes clear what cost  
 15 causation means. The American Water Works Association,  
 16 which both parties take as authoritative --  
 17 Jeff, we can take that down --  
 18 -- defines it to mean that quote, "Water rates  
 19 are established so that users generally pay an amount  
 20 equal or proportional to the cost the system incurs to  
 21 provide them service."  
 22 I'm citing the administrative record, 2010 at  
 23 Pages 4185 and '86, which is the AWWA annual. Although  
 24 Prop 26, of course, has specific statutory language and  
 25 procedural requirements, that I'm going to discuss as

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1 they come up, the Court is right to zero in on cost  
 2 causation because it is the standard that's common to  
 3 all of the claims in this case, and it's why Met's rates  
 4 violate all of the laws that San Diego has alleged.  
 5 Just a list of Prop 26, Prop 13, the Wheeling statutes,  
 6 the Government Code, the Met Act and the Common Law.

7 Cost causation also provides the answer to the  
 8 first question that the Court asks, and I realize --  
 9 about SWP costs, State Work Project costs, and I realize  
 10 that the Court asked that to Met, but San Diego's answer  
 11 is that Met is -- that cost causation precludes --  
 12 forbids Met -- Met from simply passing along Department  
 13 of Water Resources charges and calling them  
 14 transportation in Met systems. All of the documents in  
 15 the record that have analyzed the question, those are  
 16 the NARUC standards that Ms. Gilman talked about, the  
 17 1969 Brown and Caldwell study, the October 1995 and  
 18 October -- and December 1995 RMI reports, the 2010  
 19 Bartles and Wells report, the 2012 FCS report, all of  
 20 which are in the record, say that because Met doesn't  
 21 own the State Water Project, as it is traditionally and  
 22 incontrovertibly true, the SWP cost, State Water Project  
 23 cost, must be categorized as supply cost. The only  
 24 document contrary to that on Met's side of the ledger,  
 25 other than things that are written by their general

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1 counsel, is the 2010 Raftelis report, which we now know  
 2 was written in critical part, this part, by Met staff.  
 3 Told them what to say and told them to say it was  
 4 appropriate, and the 1996 RMI report where the same  
 5 thing happened, where they switched from '95 to --  
 6 December 95 to a different report because they consulted  
 7 quote, "with staff."  
 8 And parenthetically, Met continues to assert  
 9 that RMI never changed its position regarding how State  
 10 Water Project cost should be allocated. They said that  
 11 in their brief at page 57. That's completely false. I  
 12 showed that it's false at the end of the trial. RMI  
 13 allocated all SWP supply costs in October and December  
 14 as supply, and it wasn't until they quote, "consulted  
 15 with Met staff" that they changed things and said that  
 16 they could be done a different way in 1996.  
 17 I don't think I need to go through that. If  
 18 you want me to, I will, but the idea that they say that  
 19 they didn't -- that RMI didn't change position has  
 20 proven is wrong.  
 21 Furthermore, the cost causation --  
 22 THE COURT: So is it your thought that it is  
 23 not until 2010 that there is anything in the record that  
 24 suggests that rates set by Met before 2010 had a basis?  
 25 In other words, the only basis is one that shows up in

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1 2010.  
 2 MR. KEKER: No. Our position is that all of  
 3 the rates set by Met since their findings of fact in  
 4 1997 had a basis, and the basis is exactly what they  
 5 said the basis is. We're setting the rates, not because  
 6 of cost causation, not because it is reasonable, but  
 7 because we need to follow the hold harmless principle,  
 8 we need to make sure that people that don't wheel, don't  
 9 have their rates go up. That's the entire basis. And  
 10 it's the entire basis -- they still -- they doubled down  
 11 on that. They go back. That's the basis of the rates  
 12 from 1997 on, before unbundling, after unbundling, and  
 13 all of the way to the present.  
 14 THE COURT: You don't think that there is  
 15 anything in the record before 2010 that suggests that  
 16 they had a different basis than the one that you just  
 17 articulated; that is, that they have got a cost  
 18 causation basis that's actually based on something that  
 19 they are going to -- or that they are suggesting is  
 20 actually based on the cost of transporting water?  
 21 MR. KEKER: No, Your Honor. In the sense that  
 22 the only -- that the basis that they had -- the  
 23 all-important rabbit goes into the hat is the finding or  
 24 the "whereas" clause of the 1997 resolution where they  
 25 just say, if C. Dixon, if we feel like saying it, state

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1 water costs are our costs. Transportation of water by  
 2 the Department of Water Resources is our  
 3 transportation --  
 4 THE COURT: Right. And I'm willing to agree  
 5 with you in the next couple of minutes, at least, that  
 6 the "whereas" clauses alone aren't worth anything; just  
 7 looking at a "whereas" clause is not helpful and that I  
 8 need to see something that that "whereas" clause is  
 9 based upon.  
 10 And your position is that there is nothing in  
 11 the record that shows that those "whereas" clauses have  
 12 a basis; is that right?  
 13 MR. KEKER: Yes, that's correct. And what  
 14 they would claim is in the record is they got -- they  
 15 got RMI to change, they consulted with RMI, and they  
 16 said, hey, look, guys, here's our position, and RMI said  
 17 that's their position. That's the 1995/1996 thing after  
 18 RMI -- and they had been real clear that this should be  
 19 a supply cost. And then the same thing happened in  
 20 2000 later on with Mr. Raftelis, the same thing. They  
 21 said Mr. Raftals says whatever he said, and they came  
 22 back and stayed, no, no, no, the general counsel and the  
 23 Ms. Gilman wrote, No, you got to say that is appropriate  
 24 to use those.  
 25 Those -- I mean, that's their basis, and we

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1 say that's just as conclusory and just as worthless and  
 2 just as non-substantial evidence as the "whereas"  
 3 clauses. So -- and that's all that's in the record.  
 4 So it's the upshot -- Ms. Gilman admitted that  
 5 if Met followed NARUC, the regulatory accounting rules,  
 6 they'd put all of these State Water Project costs into  
 7 supply. That's in the transcript at 732 and 733 and 735  
 8 and 736. The whole reason that the American Water Works  
 9 Association recommends following NARUC is precisely  
 10 because it is designed with cost causation in mind and  
 11 Ms. Gilman says, we don't follow it.  
 12 This is one of their slides, their slide in  
 13 the presentation of the administrative record 112, and  
 14 they talk about the NARUC guide -- AWWA says NARUC  
 15 guidelines provide for adequate breakdown of expenses  
 16 for cost of service allocation and appropriated --  
 17 appropriate distribution of functionally allocated  
 18 expenses. So --  
 19 THE COURT: But it's also true that they don't  
 20 have to follow this -- there is no particular reason why  
 21 they have to follow this way of accounting.  
 22 MR. KEKER: No. That's true. I guess they  
 23 don't. But, now, they are outside of -- and this is  
 24 industry standard. They are not following industry  
 25 standards. What they have to do under the law is follow

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1 cost causation. They claim that they are following cost  
 2 causation. In order to follow cost causation, you  
 3 look -- I mean, there is one thing is to look at what  
 4 does that mean in the industry, and another place to  
 5 look is just your commonsense. What does it mean? A  
 6 cost is caused by something else. They got to somehow  
 7 put these things together and they haven't, and I guess  
 8 that's our point.  
 9 Our point is until they decided to discourage  
 10 wheeling, until they decided to go for rate stability  
 11 over wheeling, they had no problem with the industry  
 12 standard and their consultant's advice that State Water  
 13 Project was a source of supply. That's what it is. If  
 14 you are going to do a cost causation analysis, that's  
 15 how you would functionalize it and so on.  
 16 It was only when they decided that they needed  
 17 rate stability at all costs to avoid, quote, "financial  
 18 injury to the members," they came up with what we  
 19 believe is not appropriately identified as cost  
 20 causation. It is just -- it is untethered.  
 21 And, in fact, in their brief, they spent 130  
 22 pages, what they really are talking about, Oh, whatever  
 23 we do is reasonable. I mean, look how hard we work. It  
 24 is reasonable. They are not really talking about cost  
 25 causation. They don't even try. It is just, this is --

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1 we're doing it because we want to do it this way.  
 2 THE COURT: One of the issues here -- and I  
 3 don't know if there is an answer to this -- and one of  
 4 sort of the themes of my questions is to what extent and  
 5 how detailed does the cost causation analysis have to be  
 6 to be upheld for Met to do it? How closely tethered  
 7 does it have to be?  
 8 So, for example -- and I use the phrase "to  
 9 some extent" quote, unquote in some of my questions. If  
 10 it's true that, at least, to some extent both supply and  
 11 transportation costs reflected in a certain rate, how  
 12 much more work do you think Met has to do to make it a  
 13 valid tether, as it were? How -- do they have to get it  
 14 down to the penny? I mean, probably not.  
 15 MR. KEKER: No, no. And that's why they cite  
 16 the second "Griffith" case that says, You don't have to  
 17 get it down to the penny. You have to get it down to  
 18 something reasonable. What we say -- and this is about  
 19 as far as this case goes -- you can't just ignore it.  
 20 You can't -- it is not a question of getting something  
 21 down to the penny. You can't just make up that State  
 22 Water Resources fixed costs, get dumped on  
 23 transportation rates without making any connection  
 24 between cost causation. You can't take Water  
 25 Stewardship Rate and these \$100 million desalination

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1 projects, these water recycling projects that cost huge  
 2 amounts of money, local -- you know,  
 3 don't-flush-your-toilet-so-much programs and just say,  
 4 that gets loaded on to the wheeling costs. There has  
 5 gone to be some effort at making a connection.  
 6 And then you can't simply ignore what you say  
 7 over and over -- I'll get to this in a second -- is a  
 8 real phenomena, namely dry year peaking that affects  
 9 members differently. And they admit, they just blow it  
 10 off. I mean, they just ignore it.  
 11 So your question -- and I'm going to talk  
 12 about that more -- is exactly the right question, but it  
 13 is not necessarily for this trial.  
 14 To what extent do they have to do it? How  
 15 granular do they have to get? What we're saying, since  
 16 they haven't done it at all, you should issue a writ of  
 17 mandate that says, go back, do a real cost of service  
 18 study. You don't have to say it, but I recognize as a  
 19 judge that there may be arguments in the administrative  
 20 record about how to do it correctly and how granular to  
 21 get and all that, but that's not the case that we have  
 22 before us. Here, they haven't done it at all, and  
 23 that's what we're asking you to fix in this case. And  
 24 we're asking you to keep continuing jurisdiction,  
 25 because if they don't fix it right or in some way that

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1 isn't within the realm of the reasonableness, reasonable  
 2 cost of service, cost causation, then you should look at  
 3 it again and tell them they didn't do it right. That's  
 4 where we think we're going. That's where we want to go,  
 5 but we're not asking you now -- because you don't have  
 6 anything before you to do this -- to tell them how to do  
 7 it. We're asking you to tell them they have to do it,  
 8 because they haven't.  
 9 And, I mean, they -- you know the excuses. I  
 10 mean, they talk about they can deviate from industry  
 11 standard because the Met specifically paid for reaches  
 12 of aqueducts or other state water -- State Water  
 13 Projects conveyance infrastructure, that's at their  
 14 brief at 48; but we pointed out that the DWR contract  
 15 specifically says that State of California shall be and  
 16 remain the owner of such project transportation  
 17 facilities and so on.  
 18 And the California Supreme Court, 40 years ago  
 19 in "Marchant", took this argument about, sort of, oh, we  
 20 equitably should be treated as an owner of the system,  
 21 and said no, no, no, that's not right. They made  
 22 arguments about moving non-state water -- project water  
 23 through the system, doing some minimal wheeling or  
 24 blending State Water Project water with Colorado River  
 25 water, but that is irrelevant to the cost on this

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1 record. It is irrelevant to the cost of moving water  
 2 through Met's conveyance system. It is not connected in  
 3 any way. Neither causes those costs, and nothing in the  
 4 record suggests otherwise, but to show how open-minded  
 5 we are. I mean, we can imagine a situation where  
 6 that -- where there is a bunch of -- maybe somebody can  
 7 show a benefit from blending that is it goes over to  
 8 somebody else. I mean, if they could show that and show  
 9 the benefit and quantify it and put that into a cost --  
 10 THE COURT: They haven't quantified it, but  
 11 they have shown that. I mean, right? They have talked  
 12 about some of the benefits of blending. When you got a  
 13 lower desalination in the water, that's a benefit.  
 14 MR. KEKER: Well, they say it is a benefit.  
 15 What we say is that we're asking to wheel Colorado River  
 16 water -- or somebody is asking to wheel water. You are  
 17 not telling us that you're going to blend it -- if they  
 18 choose to do some blending, it is completely up to them.  
 19 They are completely in charge of what happens when they  
 20 wheel water -- when they move water through their  
 21 conveyance system. The idea that somehow a benefit --  
 22 an unquantified benefit of blending to reduce salinity  
 23 is an advantage to somebody who doesn't have any  
 24 guarantee that he's going to get it -- I mean, it's  
 25 just --

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1 THE COURT: Is part of your problem that they  
 2 haven't quantified it? In other words, that they just  
 3 sort of put it out there as a benefit, but we have to  
 4 idea what that's worth; and, therefore, it is not  
 5 possible to use that as a factor in setting a rate?  
 6 MR. KEKER: They haven't even shown that it  
 7 has a monetary benefit to anybody. They haven't shown  
 8 that the cost -- I mean, they haven't shown that the  
 9 water that San Diego gets or anybody else gets, when  
 10 they wheel, is any different from --  
 11 It is a little bit like saying a gold-plated  
 12 ring contains some gold molecules, and so it is fair to  
 13 charge the same price for the gold-plated ring as it  
 14 would be for a 24 carat ring, we're going to charge you  
 15 for all of that. I mean, it's worse because at least  
 16 the ring buyer wants and gets something that looks like  
 17 gold, and all San Diego wants here is the Colorado River  
 18 water conveyed through the system. They are not asking  
 19 for, bargaining for, or getting, in many cases -- in  
 20 most cases. We have no idea. They say there is some  
 21 benefit, but it is not -- it is not connected to the  
 22 transportation of water through their system. It is  
 23 what they want to do. If they want to blend these blend  
 24 water and reservoirs, that's fine.  
 25 And I guess the other thing I wanted to say in

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1 response to one of your questions is that inclusion of  
 2 these State Water Project costs is common to all the  
 3 transportation rates in this case.  
 4 And you asked about Administrative Code  
 5 Section 4405, whether or not that's relevant or  
 6 irrelevant. We believe it is very relevant because as  
 7 defined it is a system access rate, the Water  
 8 Stewardship Rate, and then incremental cost of power,  
 9 but it is what defines Met's wheeling rate and  
 10 established that -- establishes what it includes. We  
 11 believe it is illegal, but also -- certainly relevant  
 12 to -- it's -- that's how we know what the wheeling rate  
 13 is.  
 14 THE COURT: Right.  
 15 MR. KEKER: Our position at the end is going  
 16 to be system access rate is illegal, Water Stewardship  
 17 Rate is improperly set and, therefore, illegal, System  
 18 Power Rate is illegal, and the wheeling rate of 4405 is  
 19 illegal; all of them are illegal on this record.  
 20 THE COURT: I was just trying to figure out  
 21 whether Met thought that the fact that the  
 22 Administrative Code exists and that it has those  
 23 formulations in it is somehow a defense, in that sense  
 24 that it goes to the merits, that it's useful in trying  
 25 to figure out whether what Met has done is reasonable or

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1 not. And I think the answer is, it doesn't have  
 2 anything to do with that. I mean, either what Met does  
 3 in terms of its rates is reasonable or it is not. It  
 4 doesn't matter whether the Administrative Code --  
 5 In other words, the Administrative Code, as I  
 6 understand it, isn't an independent source of  
 7 justification for how the rates are structured. It just  
 8 describes what they are.  
 9 MR. KEKER: We agree with that.  
 10 THE COURT: Is that right?  
 11 MR. KEKER: Yes, sir. That's what we think.  
 12 That's exactly right from our point of view.  
 13 I'm going to talk about your questions about  
 14 the exchange agreement a little bit later when it's  
 15 appropriate.  
 16 So the question arises why -- and we sort of  
 17 answered this. Why did Met allocate the State Water  
 18 Project cost to transportation when all of the industry  
 19 standards, all of the early studies say they are supply  
 20 costs? And you raise the issue of what documents do  
 21 they rely on.  
 22 What about these documents cited at page 19,  
 23 lines 3 through 12 of Met's brief. Those are the  
 24 documents they rely on, and they are all related to  
 25 Met's purported findings back in 1997. That's all they

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1 are. But they are not substantial evidence; they are  
 2 erroneous legal conclusions.  
 3 They simply assert that the State Water  
 4 Project conveyance system is Met's conveyance system and  
 5 that Met can charge unavoidable costs, like a supply  
 6 cost, to the wheeling rate because doing so quote, "is  
 7 necessary in order to protect the hold harmless  
 8 principle." You got to protect the people who aren't  
 9 wheeling. All of them are written findings on page 19,  
 10 they are written findings and board meeting minutes at  
 11 which they were adopted. That's what Met is listing in  
 12 their brief.  
 13 And under the law -- and I'm quoting from the  
 14 "Livermore" case -- "a conclusory resolution which does  
 15 not contain any evidence or factual information, does  
 16 not constitute substantial evidence." "Livermore" case  
 17 is "184 Cal App. 3rd, 531 at 552." It's a 1986 case.  
 18 When you look back to see what the documents  
 19 that Met put in its own record to support the wheeling  
 20 rate, they are the very documents we pointed out in  
 21 pages 4 through 10 of our Post-Trial Brief. They  
 22 consist of things like the December 1995 RMI report,  
 23 which I spent so much time on, which says, you know,  
 24 blatantly "in order to satisfy the requirement that  
 25 member agencies be held harmless from any cost-shifting

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1 due to wheeling -- that's a quote -- "wheelers should be  
 2 charged," quote, "fixed SWP costs, quote, "water  
 3 management conservation cost," close quote, quote, "the  
 4 cost of acquiring new dry year water supplies."  
 5 That's language straight out of RMI. We  
 6 detailed for this -- this in the Posttrial Brief. As I  
 7 said, they raised the hold harmless principle at page 76  
 8 of their Brief.  
 9 And their argument is simply that if we don't  
 10 do it this way, then non-wheeling, full-service water  
 11 users will have to pay more. That's not cost of  
 12 service. It is arbitrarily deciding not to use cost of  
 13 service because it believes -- because of the hold  
 14 harmless principle.  
 15 Now, unless the Court wants me to go somewhere  
 16 else, I was going to turn to the second question the  
 17 Court posed about the fundamental documents that show  
 18 how to reasonably calculate wheeling charges. And, of  
 19 course, the first thing -- and I know I'm preaching to  
 20 somebody who understands this fully, but the first thing  
 21 is to look at the wheeling statute. The statutory  
 22 definition of fair compensation, which is defined as the  
 23 reasonable charges incurred by the owner of the  
 24 conveyance system and it goes on.  
 25 And it also says, "including reasonable credit

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1 for any offsetting benefits for the use of the  
 2 conveyance system," Water Code 1811C. In determining  
 3 fair compensation Met, quote, "shall act in a reasonable  
 4 manner consistent with the requirement of law to  
 5 facilitate the wheeling," and that's 1813. And 1813  
 6 also says, the Court should give due consideration to  
 7 the purposes and policies of this article.  
 8 So the first thing to notice is that fair  
 9 compensation is limited to charges incurred by the owner  
 10 of the system that somebody is asking to use. This is  
 11 an independent statutory basis why Met cannot lawfully  
 12 charge DWR costs because they don't own it.  
 13 The second thing to note is that Met's  
 14 wheeling rate doesn't give the credit for offsetting  
 15 benefits that the definition of fair compensation  
 16 requires, and you asked the question about that, too.  
 17 That's your last question.  
 18 What are the -- what's the evidence of  
 19 offsetting benefits? The answer is that San Diego has  
 20 cited -- and here we're in the -- since we're in the  
 21 wheeling statute, we're talking about all relevant  
 22 evidence under your ruling.  
 23 San Diego cited four documents in evidence  
 24 showing that Met gets such benefits, and these are  
 25 detailed at page 47 and 48 of our Brief, san Diego

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1 Post-Trial Brief. First, at AR2010, page 1165 and 1166,  
 2 it talks about Met paying member agencies up to \$250 per  
 3 acre-foot to develop water, so that Met doesn't have to  
 4 buy it. They are spending \$250 to avoid a supply  
 5 charge. The record is replete with references to the  
 6 fact that the local resource programs called LRP and  
 7 other projects funded by the Water Stewardship Rate  
 8 prevent Met from having to buy more imported water  
 9 supplies.  
 10 When a member agency buys its own imported  
 11 water from wheeling, it also saves Met imported water  
 12 costs, but Met does not factor that into the wheeling  
 13 rate. That's one.  
 14 Second, consistent with that idea, you have  
 15 got PTX-25 --  
 16 Could we put that up, Jeff.  
 17 This is that Shane Chapman memo from Met and  
 18 talks about the 65-dollar per acre-foot benefit to  
 19 everybody else, to Met when San Diego bought IID water.  
 20 So he's quantified it. You remember this is they're --  
 21 talking about how much -- how much this is going to help  
 22 the cost of water in the system. \$65 per acre-foot.  
 23 Third, PTX-26, Met staff in a memo decided  
 24 that -- they concluded that MWD should seek to promote  
 25 regional benefits of the IID conservation and storage.

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1 They realize they're were regional benefits. And on  
 2 that basis they recommended that MWD offer San Diego a  
 3 discount of more than 50 percent from MWD's average cost  
 4 wheeling rate. In other words, to offset that regional  
 5 benefit that we were going to get, let's give them a  
 6 50 percent reduction.  
 7 And then, fourth, finally, Met's CFO,  
 8 Brian Thomas, stated in PTX-30 that Met's member  
 9 agencies benefit from a full Colorado River aqueduct,  
 10 and obviously the full Colorado River aqueduct is what  
 11 the IID deal helped promote to keep the Colorado River  
 12 aqueduct full.  
 13 All of this establishes, we believe, that  
 14 wheeling can be beneficial to Met, to all of the members  
 15 of Met. Yet, Met did not bother to calculate the  
 16 benefits of wheeling when it set its rates in 2011, '12,  
 17 '13, and '14.  
 18 You also ask whether or not the prior Met  
 19 versus IID decision held that Met need not implement an  
 20 incremental wheeling rate. And we believe that --  
 21 that's not what that case -- that case doesn't go that  
 22 far. The holding in that case was simply that Met is  
 23 not required to have an incremental wheeling rate,  
 24 point-to-point rate as a matter of law; that the fair  
 25 compensation statute doesn't establish that as a matter

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1 of law. But there what the Court said -- and as you  
 2 remember sent back for determination -- was, you know,  
 3 give me a set of facts, and then we'll decide whether or  
 4 not that's fair compensation. Just don't try to do it  
 5 on a matter of law basis. That's this case. That's why  
 6 we're here. We have got a set of facts, and we're  
 7 talking whether or not fair compensation statutes apply  
 8 to that.

9 Now, we're not taking the position -- and you  
 10 asked this question, too. We're not taking the position  
 11 that as a matter of law Met has to adopt an incremental  
 12 cost, an incremental wheeling rate. We recognize that  
 13 it is possible -- don't know what it is, but it is  
 14 possible that some other kind of wheeling rate could  
 15 satisfy the statutory definition of the three -- three  
 16 things. It would have to -- it couldn't unlawfully  
 17 prioritize rate stability, as Morrow Bay says. It would  
 18 have to satisfy the definition of fair compensation, and  
 19 it would have to facilitate wheeling. Maybe there is  
 20 some non-incremental wheeling rate that could do that.  
 21 We don't -- we don't know and aren't taking a position  
 22 of that. But it is significant, we think, that the only  
 23 wheeling rates in evidence in the administrative record  
 24 that satisfy these requirements are incremental rates.  
 25 So we think that question is sort of pointing

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1 locked into that.

2 And then there is the DWR wheeling rate,  
 3 that's important too. That's Met AR slide 58. We  
 4 talked to you about this. This is the way the  
 5 Department of Water Resources charges for wheeling  
 6 within the State Water Project, and it's clearly an  
 7 incremental rate. You pay for incremental power; you  
 8 pay for the power that it takes; you pay incremental  
 9 costs that would not be incurred if non-project water  
 10 were not scheduled for or delivered to Met.

11 And in this instance, Met doesn't have to pay  
 12 for the facility's charges for parts of the aqueduct  
 13 that it helped finance. I mean, they go that far in the  
 14 DWR rate. It is a true incremental rate.

15 Translated to our case, this would mean that  
 16 San Diego would pay only the incremental costs for  
 17 wheeling, which would not include facility's fees  
 18 because San Diego has been, quote, "participating in the  
 19 repayment of Met's facility since 1946."

20 But, again, we're not saying that you  
 21 should -- or we're urging you to adopt some wheeling  
 22 rate. We're saying exactly the way to do it. The point  
 23 is that -- is that the wheeling rate that Met has  
 24 adopted, unlike DWR's wheeling rate, other incremental  
 25 rates and, perhaps, other kind of rates that somebody

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1 on the right track. That's what Brian Thomas' memo  
 2 about what the evolution -- the evaluation matrix  
 3 showed. That's San Diego opening slide 64.

4 The commitments, you remember the equivalent  
 5 margin method was just loading everything on it so that  
 6 nobody got hurt. The commitment's method was making  
 7 everybody promise to buy a certain amount of water and  
 8 promise to pay for it whether they need it or not and  
 9 would that kind of rate structure encouraged wheeling,  
 10 yes, said Mr. Thomas, if you could figure out the  
 11 incremental costs.

12 It's also what RMI's December '95 report  
 13 shows. I talked about this at length in the opening and  
 14 in the trial. Option 3 in the 95 RMI study was wheeling  
 15 rate based on incremental costs, and they made the  
 16 observation that this could lead to substantial  
 17 displacement of Met sales. I need to reallocate  
 18 revenues among member agencies.

19 And it was the reasonableness, it could be  
 20 perceived as a very reasonable rate for wheeling  
 21 service. And the supply impact is that it could give  
 22 member agencies a powerful tool for displacing Met sales  
 23 to support the formation of a market for water. So all  
 24 of those studies said the only way to facilitate  
 25 wheeling is to use an incremental rate. We're not

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1 could think up, fails the statutory test of fair  
 2 compensation. It fails by design -- it fails by design  
 3 to facilitate wheeling. That's why they did it. They  
 4 didn't want people to wheel; they wanted to make it more  
 5 expensive so that people wouldn't do it.

6 So in the face of overwhelming evidence that  
 7 Met's rates have the purpose and effect of discouraging  
 8 wheeling, Met's primary answer is to assert that  
 9 San Diego never alleged a violation of that requirement  
 10 and instead raised it, quote, "for the first time,  
 11 closed quote at trial. That's what they said in their  
 12 brief. Met has been on -- that's just nonsense.

13 Met has been on continuing notice of the  
 14 allegation since MWD versus IID left that issue  
 15 expressly unresolved. San Diego alleged in both of the  
 16 present cases that Met's wheeling rates unlawfully force  
 17 wheelers to subsidize non-wheelers. That was the Third  
 18 Amended Complaint paragraphs 23 through 29, 41 through  
 19 43. We've emphasized throughout the case that the  
 20 effect and express purpose of this is to discourage  
 21 wheeling in violation of Section 1813. And one example  
 22 of that is our July 13 -- excuse me -- July 23rd, 2012,  
 23 Discovery Brief at pages 2 and 9 where we were talking  
 24 about exactly that. So this is not the first time.  
 25 Similarly, Met asserts that San Diego's

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1 arguments about rate stability, the hold harmless  
 2 principle, quote, "is a theory that SDCWA never  
 3 articulated before, not in any of its petitions,  
 4 complaints, and not even in its pretrial briefs."  
 5 That's a quote from their brief. It's obviously false.  
 6 Just go back and read the first page of San Diego's  
 7 Reply Pretrial Brief, and you will see that it's false.  
 8 We have been -- that is the point we are making there.  
 9 Aside from that, and while acknowledging  
 10 repeatedly that the '97 findings are the bases for its  
 11 wheeling rates, they tried to distinguish Morrow Bay on  
 12 the grounds that Met only intends to prevent a  
 13 full-service customer from subsidizing costs that  
 14 wheelers should properly be paying. That's in their  
 15 Brief at page 78. That's revisionist history, we say.  
 16 Met's concern is to protect Metropolitan  
 17 member agencies from financial injury by including all  
 18 unavoidable -- well, you can read it, it is in the  
 19 findings. Their attempt to distinguish Palmdale is  
 20 equally unavailing. They simply assert that they have  
 21 fully justified the rate, they say, but its  
 22 justification for the rate is, as I have said five times  
 23 now, rate stability; and under Palmdale, that is no  
 24 justification at all.  
 25 So unless -- I'm going to turn now to the

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1 acre feet of water in reserve when we only need  
 2 3 million-acre feet in any given year.  
 3 So, conceptually could it evolve -- if they  
 4 could prove that there were a line of wheelers saying,  
 5 we want to wheel and they said, well, in order to let  
 6 people wheel, we're going to have expand our capacity.  
 7 If there were evidence in the record like that, that's  
 8 possible; and you can analyze it and say that the  
 9 capacity component -- but on this record, there is  
 10 myriad examples of this being a supply benefit, a  
 11 significant supply benefit, always recognizes supply  
 12 benefit. And we believe no evidence that it actually  
 13 has provided a capacity benefit. We certainly recognize  
 14 the possibility of that, but we don't see it in this  
 15 record. And I guess that's my point. They have no  
 16 evidence that these programs have any capacity benefits  
 17 that can be attributed to wheelers under principles of  
 18 cost causation.  
 19 And let me just quote from their IRP, which is  
 20 one of the most important documents that they've cited a  
 21 lot of times. The IRP states that, quote, "additional  
 22 conveyance is required, close quote, in order to, quote,  
 23 deliver water to storage in wet and normal periods so  
 24 dry year demands could be met as well as capacity  
 25 required in a dry year to deliver available supplies."

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1 Water Stewardship Rate and try to answer the questions  
 2 that you asked about the Water Stewardship Rate. The  
 3 Court is absolutely right that the water stewardship  
 4 programs has supplied benefits, yet Met charges  
 5 100 percent of the Water Stewardship Rate to  
 6 transportation. This is the -- in answer to the Court's  
 7 question, the record does not tell us how much, to what  
 8 extent such projects, quote, "free up capacity" as Met  
 9 is asserting in their brief. But there is absolutely no  
 10 evidence in the record that it has freed up capacity or  
 11 even that it's necessary. They haven't provided  
 12 evidence showing to what extent these programs have  
 13 transportation or capacity freeing up benefits.  
 14 THE COURT: Well, they've shown that it frees  
 15 up -- to some extent, it frees up capacity; right?  
 16 MR. KEKER: No, we believe not. We have not  
 17 seen any capacity -- any evidence that capacity has been  
 18 affected because of wheeling in any way. The  
 19 capacity -- the evidence -- and this is what I am about  
 20 to talk about -- all the evidence about capacity is that  
 21 it's caused by dry year peaking. It is not caused by  
 22 wheeling. It is not caused by the need to move water,  
 23 when we have system available. All of the capacity  
 24 evidence in this case is about dry year peaking, the  
 25 need for dry year supplies, the need to hold 6-million

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1 That's in the record at page 1591. So that's what the  
 2 IRP says it is about.  
 3 They are not saying that we need extra  
 4 capacity so that we could wheel other people's water;  
 5 they are saying, we need -- the capacity benefit is dry  
 6 year benefit.  
 7 And it doesn't make a lot of sense really to  
 8 claim that additional conveyance capacity is  
 9 attributable to wheeling because under Met's  
 10 Administrative Code, wheelers can't even count on the  
 11 conveyance capacity because they come last. In a dry  
 12 year, everybody else who gets -- who has a right to the  
 13 water, gets the water. It's only if there's capacity  
 14 left over after that, which we don't have any examples  
 15 of, that the wheelers would use it. So --  
 16 THE COURT: Is it your understanding that  
 17 San Diego is in that position with respect to the water  
 18 that's being wheeled from the IID water, that you are  
 19 last in line?  
 20 MR. KEKER: I'm not sure I understand the  
 21 question.  
 22 THE COURT: Well --  
 23 MR. KEKER: Yeah. Excuse me. No. No we're  
 24 not last in line --  
 25 THE COURT: Right.

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1 MR. KEKER: -- because of the exchange  
 2 agreement. I'm going to talk about the exchange  
 3 agreement -- the exchange agreement is really a  
 4 different contractual thing than what I'm talking about  
 5 right now. What I'm talking about now is a wheeling  
 6 rate, which I will show in a minute, san Diego uses  
 7 without regard -- you can forget about the exchange  
 8 agreement, we would still have standing. We use the  
 9 wheeling rate. We're going to use the wheeling rate in  
 10 future. So without the exchange agreement, we would  
 11 still be here making this claim.

12 But -- and we have a pending deal with -- it  
 13 is in the record, and Mr. Cushman testified about it.  
 14 There is a pending deal where the next time we wheel  
 15 water on their system, we will use their wheeling rate.  
 16 And since these dry years are getting extreme, that may  
 17 be coming up very, very fast. We have had another deal  
 18 where we have used their wheeling rate, quite  
 19 independent of the exchange agreement of the Colorado  
 20 River water.

21 So who knows what's going to happen in the  
 22 future except it is extremely likely, I would say  
 23 100 percent, that San Diego and others will want to use  
 24 Met's conveyance system to buy water from somebody else  
 25 because of limitations on their water supply, and

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1 they'll have to use the wheeling rate.

2 And as I said, we're not saying that you can  
 3 never imagine a situation where wheeling might cause  
 4 conveyance costs; but we are saying there is nothing in  
 5 the record, there is no evidence of it here, and  
 6 certainly it is not what happened so far.

7 So -- and we think that the Court is right to  
 8 wonder whether there is -- whether there is evidence in  
 9 the record and to what extent that evidence shows that  
 10 projects under the Water Stewardship Rate provide  
 11 benefits to wheelers. And we have said, there is no --  
 12 we don't think there is any evidence inside the record  
 13 or out of it.

14 Yet, Prop 26 requires Met to prove that it  
 15 doesn't collect any more than wheeling, quote, directly,  
 16 close quote, cost, as a, quote, specific government  
 17 service, closed quote. And that those costs be  
 18 allocated fairly according to the benefits and burdens  
 19 of that service. Since they can't make a record on  
 20 that, they lose is our view.

21 I've talked about the two "Griffith" cases.  
 22 We've talked about them in the brief. They have come  
 23 up with a "Griffith" case. The first "Griffith" case,  
 24 has nothing to do with anything. It is about regulatory  
 25 fees, and we made that point. It is E3, not E2 or E4,

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1 which is relevant here. Regulatory fees don't follow  
 2 the same rules as California Farm Bureau and Sinclair  
 3 Paint made clear.

4 The second "Griffith" case is -- goes to your  
 5 question about how granular do you have to get. And  
 6 there the landlord, or whoever it was, was saying you  
 7 have got to get almost a point of service and you can't  
 8 group people together. And the California Court of  
 9 Appeal said, No, no, no. These grouping are reasonable.  
 10 You don't have to go -- there may be another way to do  
 11 it, but the groupings that you've made and related to  
 12 what people are getting and what they are not getting,  
 13 then I think that case talks about some people were  
 14 getting water from wells, some people were getting water  
 15 from meters, lots of different -- those groupings were  
 16 reasonable is what they said. And our point here is  
 17 that Met doesn't do any groupings about anything. They  
 18 are treating wheelers as though they are full-service --  
 19 almost full-service water users because they are loading  
 20 all of these costs on the wheelers. And they refuse to  
 21 group similar users together, which is what Griffith 2  
 22 said was, okay, if it was done reasonably. Well, they  
 23 are not. They are lumping everybody in and throwing all  
 24 of these costs in.

25 So as for the Court's question about whether

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1 or not our position is that Met must allocate its Water  
 2 Stewardship Rate on a project-by-project basis,  
 3 San Diego's answer is not necessarily. We're not taking  
 4 the position that Met could not possibly develop  
 5 substantial evidence for allocating some Water  
 6 Stewardship Costs to supply and some to transportation  
 7 on a more general level than a project-by-project  
 8 analysis. But I would point out that -- I mean, maybe  
 9 that could work, we don't know what could work. But  
 10 maybe that could work for general conservation projects  
 11 with regional benefit. But when you comes to this huge,  
 12 hundred-million-dollar, tens of million-dollars  
 13 desalination plants or waste water recycling plants, you  
 14 have to wonder whether or not you could really come up  
 15 with a principle that would lump it together and apply  
 16 as Mr. Raftelis did. Mr. Raftelis said you should study  
 17 on a project-by-project basis; but then in his '99  
 18 report, he went ahead and said, well, since you haven't  
 19 done that, let's just split it 50/50. We think that was  
 20 completely arbitrary. But we're not saying that an  
 21 appropriate analysis couldn't have some of these  
 22 conservation projects split between supply and  
 23 conveyance, based on appropriate analysis. But that  
 24 isn't what has happened here, and it's not for this  
 25 case.

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1 It is what -- if they're going to do it, is  
 2 what they should do when the case -- when it goes back  
 3 to them and they are told that rates are invalid and  
 4 they have to set rates according to a valid cost of  
 5 service, cost causation study.  
 6 And -- but it is also worth noting, because  
 7 they tried to fuss this up, we think, that Met doesn't  
 8 have to recover these conservation costs by volumetric  
 9 rates if it doesn't want to; that's their choice. And  
 10 if they don't, they don't necessarily have to quantify  
 11 benefits in terms of transportation versus supply. The  
 12 Met Act gives them explicit statutory authority to  
 13 impose a standby charge, in other words, an assessment,  
 14 which it can recover from its member agencies or from  
 15 individual parcels or based on, quote, zones or areas of  
 16 benefit within the Met region or particular member  
 17 agencies.  
 18 This is laid out in Sections 134.5 to 134.9 of  
 19 the Met Act. It's a procedure expressly subject to the  
 20 requirements of Prop 218. And if they followed those  
 21 procedures, they would -- they would satisfy Prop 26 by  
 22 definition.  
 23 In fact, it's what their own engineer's report  
 24 recognized, that the more equitable way to recover,  
 25 quote, what they called investments in demand side

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1 management programs like conservation, water recycling,  
 2 and groundwater recovery, because these programs run  
 3 with the land based on the availability of water, not on  
 4 whether or how much one actually buys water. So the Met  
 5 engineers say that the use of water rates as a primary  
 6 source of revenue has placed an increasing burden on  
 7 rate payers, which might more equitably be paid in part  
 8 by assessments on land that in part derive its value  
 9 from the availability of water. We're not saying that's  
 10 what they have to do, but they have options in how to  
 11 can charge for these programs.  
 12 And the last point I'll make about this Water  
 13 Stewardship Rate is to address the argument that it's  
 14 appropriate to charge 100 percent of these costs to its  
 15 transportation rate because they are required by  
 16 California law to expand and incentivize conservation.  
 17 That is just run slam into the Palmdale case, which  
 18 recognize that you can do both, you can incentivize  
 19 conservation without violating cost of the service  
 20 principles.  
 21 So I'm going to turn to the third big subject,  
 22 dry year peaking, unless the Court -- and eventually I'm  
 23 going to get to the exchange agreement and talk about  
 24 why it doesn't matter in this case.  
 25 But dry year peaking, before I address the

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1 specific questions you answered, I want to make sure --  
 2 I want to step back and say what San Diego's  
 3 dry-year-peaking claim, because Met keeps trying to  
 4 confuse it. Here's our position. Most Met member  
 5 agencies increase their purchases from Met in dry years  
 6 and reduce them in average or wet years. In order to  
 7 accommodate dry year peaking, Met has to incur cost to  
 8 be ready for dry year increases. And those -- in water  
 9 demand. Those are water purchase costs; they are  
 10 storage costs; they are costs in investing and  
 11 conservation and groundwater storage.  
 12 THE COURT: These are costs that are incurred  
 13 looking forward; right? People are predicting, well, in  
 14 the future, we're going to have this problem, we need  
 15 now to spend money and, therefore, to collect money  
 16 today for these costs that we're going to estimate --  
 17 Well, for these needs that we're estimating  
 18 we're going to have in the future.  
 19 MR. KEKER: We don't think -- we don't think  
 20 that they are all future-looking costs. They are water  
 21 contracts to buy water from other people. They are the  
 22 cost of maintaining -- I mean, it could be -- it could  
 23 be present costs, it could be future costs, but it is  
 24 the cost of getting ready -- of having a system that can  
 25 be a supplemental system, a system that in a dry year

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1 can provide its member agencies with what they need and  
 2 in a wet year will sit sort of fallow, idle, won't be  
 3 able to sell as much water and not have as much revenue.  
 4 That's what we -- and let me cite again the integrated  
 5 resource plan, which they say is a foundation document,  
 6 that 1996 IRP. That particularly culls it out. I mean,  
 7 that's how they describe what they are trying to do in  
 8 that document.  
 9 Now, the next point is that they are -- the  
 10 record has shown that there are substantial differences  
 11 in the peaking behavior of Met member agencies. Some  
 12 peak a little, some peak a lot. San Diego and Met  
 13 disagree about what the data shows. I'm going to  
 14 address that in a second. But there is no evidence in  
 15 the record at all that suggests that all of the members  
 16 are the same or anywhere near the same.  
 17 And then finally, the final point of our  
 18 claim, is that Met does not recover its dry year peaking  
 19 costs based on which member agencies cause it to incur  
 20 those costs or which agencies benefit from Met having  
 21 this drought insurance available. In Met's brief  
 22 they've quoted me over and over saying that San Diego  
 23 doesn't know what dry year peaking costs are. They are  
 24 intentionally misstating what -- the point I was trying  
 25 to make, and I would ask you to go back to the record if

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1 there is any question about it.  
 2 But more importantly take a look at the  
 3 San Diego Post-Trial Brief, pages 30 through 36 and 53  
 4 through 58. We identify multiple categories of costs  
 5 that Met itself acknowledges are caused by dry year  
 6 peaking across both record evidence and the extra record  
 7 evidence.  
 8 Start with the IRP, the 1996 IRP. They state  
 9 in that quote, "storing surplus water during normal and  
 10 wet weather years for later use during dry years can  
 11 require large capital investments." They identify the  
 12 2 billion-dollar East Side reservoir project, half of  
 13 which was identified as providing drought storage, dry  
 14 year storage. The IRP also identifies groundwater  
 15 recovery and conservation as investments that need to be  
 16 made in planning for dry years. The cost of those  
 17 programs, of course, are under the Water Stewardship  
 18 Rate.  
 19 Both sides talked about this 2009 Board  
 20 presentation. Do you remember the flex storage issue  
 21 where they -- Met identified 10 million in costs  
 22 associated with flex storage at the Castiak Lake and  
 23 Lake Paris reservoirs which provided Met a dry year  
 24 supply benefit. The staff said, We really should  
 25 categorize this as supply, not as transportation. The

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1 Board, as you will remember, said, no.  
 2 And then another citation is the -- in the  
 3 2012 record is the FCS report. They did an analysis and  
 4 concluded that Met spent billions -- this is a quote  
 5 from AR2012, it's page 16178. FCS did an analysis that  
 6 concluded that, quote, Met spent billions of dollars on  
 7 drought insurance that -- close quote, that are  
 8 recovered through Met volumetric water rates. They  
 9 haven't refuted any of this in the record.  
 10 THE COURT: I don't think they disagree that  
 11 all of this cost a lot of money and that these are real  
 12 charges and real costs. The issue is whether they  
 13 reasonably allocated it, for example, through Tier 2 or  
 14 some other way of handling this, that's a reasonable way  
 15 to spread those costs out, I think.  
 16 MR. KEKER: Okay. Then we're in a much better  
 17 place than I thought we were. I thought they were  
 18 still -- so all right. Fine. If that's what -- if  
 19 that's their position, that's certainly is our position  
 20 that these are real, and they are large costs and that  
 21 they've admitted that they've never studied them, they  
 22 have never tried to figure out who they benefit among  
 23 the member -- where the benefits flow among the member  
 24 agencies.  
 25 And one of their arguments they make there is

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1 that there is no meaningful variation between the member  
 2 agencies, sort of these -- they are already naturally  
 3 spread equally. But that's not true. They told their  
 4 bond holders in 2012 -- and this is in the record at  
 5 16521 -- just what we have been saying. Some agencies  
 6 depend on Metropolitan to supply 100 percent of their  
 7 water needs regardless of whether other agencies with  
 8 local service reservoir aqueducts to capture rain or  
 9 snow fall rely on Met more in dry years than years with  
 10 heavy rainfall. And they go on in that same report to  
 11 talk about Los Angeles' annual variations have differed  
 12 and will continue to differ by 250,000-acre feet a year.  
 13 And the FCS report talks about the difference  
 14 in peaking between the member agencies. Some of them  
 15 peaking 7 percent, in other words, from their average,  
 16 how high do they go 7 percent, some of them 72 percent.  
 17 So -- I guess I'll come back to that because I want  
 18 to --  
 19 THE COURT: I do want to make sure that Met  
 20 gets some time this morning also. So maybe another ten  
 21 minutes or something.  
 22 MR. KEKER: Okay. Let me jump over some of  
 23 that just to get to the point that you have raised, and  
 24 you'll remember -- I'm not going to show you again the  
 25 slides that show this peaking behavior. They are all in

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1 the record.  
 2 But the point that you were just asking about,  
 3 about whether or not they account -- should be required  
 4 to account for peaking on a dry year basis as opposed to  
 5 some kind of other rates as a dry year proxy. And this  
 6 comes back to the foundation principle of cost  
 7 causation.  
 8 Met needs to account for dry year peaking in a  
 9 way that identifies the costs and assigns those costs  
 10 proportionately. So the first question is what are the  
 11 costs, and we've talked about that to some extent. And  
 12 the -- you know, we talked -- the matrix or the court  
 13 question about this summer day usage or ten-year rolling  
 14 average water purchases, neither of those were designed  
 15 to identify yearly peaks and measure yearly peaks. The  
 16 amount of water we buy on the hottest summer day has  
 17 nothing to do with the amount of water that you need  
 18 over the year.  
 19 THE COURT: How do I know that? I mean, maybe  
 20 it is a reasonable proxy.  
 21 MR. KEKER: Well, I guess that's something  
 22 that actually doing a cost-of-service study, using cost  
 23 causation principles would give you the answer to; and  
 24 that's precisely what we don't know. We know that there  
 25 is a large elephant in the room. We know that nobody

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1 has studied what the elephant is or how it affects  
 2 different member agencies. We know that it affects  
 3 different member agencies differently. And that is  
 4 telling you don't ignore the elephant in the room.  
 5 We're saying you can't ignore the elephant in the room.  
 6 The elephant in the room actually is what drives an  
 7 awful lot of these problems.  
 8 They are various ways that they could charge  
 9 for it -- let me get to -- what I'm trying to get to  
 10 is -- is some of their excuses for it. I mean, they say  
 11 they have got a Tier 2 rate. There is nothing in the  
 12 record whatsoever to say that this Tier 2 rate picks up  
 13 anything having to do with dry year peaking. There is  
 14 no evidence that shows when it's used, there is  
 15 no evidence -- just there is no evidence that a Tier 2  
 16 rate accounts in any way for dry year peaking.  
 17 You'll remember then there is the readiness to  
 18 serve charge, which in their brief concedes, recovers  
 19 only a portion of the standby costs. We put that up.  
 20 It talks about less than 50 percent, I think. Even if a  
 21 readiness to serve charge covered some dry year cost,  
 22 Met has not rebutted the argument that the ten-year  
 23 rolling average fails to account for peaks.  
 24 Can we put up 3031 just for a second, Jeff.  
 25 You'll remember this slide. This is a made-up

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1 slide. I mean, those two -- ten-year average for both  
 2 of those member agencies is exactly the same, and you  
 3 can see the different -- one has drought insurance and  
 4 one doesn't. They are not buying water in a lot of  
 5 those years, and the other member agency is buying water  
 6 in every year. The ten-year average does not do the  
 7 trick.  
 8 They spent the entire page talking about the  
 9 capacity charge, but what that does is recover for  
 10 variations within a year. We were not challenging the  
 11 capacity charge. It doesn't recover any of the costs of  
 12 acquiring water for use in dry years. It has to do with  
 13 sizing pipes for the peak summer day.  
 14 And so the question is whether or not it's  
 15 enough that the rates might recover some -- to some  
 16 extent these dry year peaking costs. The answer is no,  
 17 it is not enough. The answer is cost causation. They  
 18 have got to look at it, they have got to tell us that  
 19 either it doesn't matter or it matters, and here's how  
 20 we're going to fix it.  
 21 They've admitted that they capture these dry  
 22 year peaking costs through the transportation rates when  
 23 they say this all built into the system access rate, so  
 24 on. There is no evidence in the administrative record  
 25 that they've accounted for it. And June Skillman has

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1 admitted this, basically. I mean, look at 738, 739.  
 2 Rush through this.  
 3 So I'm just -- what we're asking you to do is  
 4 to -- on dry year peaking is to order Met to do a  
 5 cost-of-service study that includes and identifies the  
 6 cost of dry year peaking, allocates the cost based on  
 7 principles of cost causation and proportionality as the  
 8 law requires.  
 9 What they ultimately do is a fight for another  
 10 day. That's all we're asking for now. What we are  
 11 saying is they can't keep ignoring it, which they have  
 12 been doing.  
 13 Finally, the exchange agreement -- or next to  
 14 finally, and ultimately, the exchange agreement. The  
 15 Court asks Met to explain whether the Met Administrative  
 16 Code wheeling rate matters in this case, and I said it  
 17 does.  
 18 And I said -- I mean, even if we never entered  
 19 into the exchange agreement, we've brought a claim or  
 20 breach of it. As an entity that pays that rate, we have  
 21 been saying that we're entitled to challenge it. We've  
 22 complaining about it since the third -- look at  
 23 paragraph 72 in the Third Amended Complaint.  
 24 Mr. Cushman, as I said, testified. You can  
 25 find his trial testimony at 190 through 194. One of the

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1 agreements that Met -- that San Diego paid the wheeling  
 2 rate on is in evidence. That's PTX-698. We talked  
 3 about a pending wheeling arrangement where we'll have to  
 4 pay the wheeling rate.  
 5 The issue of whether or not the price term in  
 6 the exchange agreement is the Met wheeling rate is for  
 7 another time. That's the contract case. That's an  
 8 issue of contract interpretation. They asked that that  
 9 be put off to a separate. It will improper, I think, to  
 10 get to it in this case.  
 11 And if you want this laid out in more detail,  
 12 we would ask you to look at the October 28, 2013,  
 13 Opposition to Met's Motion in Limine No. 5, which does  
 14 lay it out.  
 15 You asked about judicial estoppel from prior  
 16 statements by San Diego. Again, the Opposition to  
 17 Motion in Limine 2000 -- No. 5, we said the wheeling --  
 18 the 2003 Exchange Agreement is not a wheeling agreement,  
 19 but that doesn't mean what the price term means. The  
 20 price term says that the price will be equal to the  
 21 charge or charges set by Metropolitan's Board of  
 22 Directors. First it went to applicable law and  
 23 regulations, and generally applicable to the conveyance  
 24 of water by Metropolitan on behalf of its member  
 25 agencies. What that means is the subject of the next

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1 trial, not this trial.  
 2 THE COURT: Your point now is that you are  
 3 paying wheeling charges completely separate and apart  
 4 from whatever price is in the Exchange Agreement?  
 5 MR. KEKER: Yes. And we have -- and because  
 6 we will have to pay wheeling charges in the future, we  
 7 and any other rate payer has standing to challenge them,  
 8 just like IID did.  
 9 We've already debunked the notion that we  
 10 should be judicially estopped. They've cited the State  
 11 Water Resources Control Board statements by Met's  
 12 general manager, Ms. Stapleton, in 2002. That was  
 13 before the 2003 Exchange Agreement that had this term in  
 14 it. So that has nothing to do with anything. It did  
 15 include this price language that I just quoted.  
 16 Then they've also cited the 2009 QSA case from  
 17 which they quote language concerning an entirely  
 18 different issue, whether Imperial County had the  
 19 procedural right to approve the QSA by making  
 20 environmental impact findings under the wheeling  
 21 statutes. That did not implicate or address San Diego's  
 22 rights under the Exchange Agreement or the  
 23 interpretation of the price term. It had nothing to do  
 24 with the interpretation of the price term. So there is  
 25 no judicial estoppel. There's no inconsistency. The

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1 Exchange Agreement is not a wheeling agreement. It  
 2 doesn't trigger the procedural requirements of the  
 3 Wheeling Statute, but the Exchange Agreement's price  
 4 term effectively references the Wheeling Statute, but  
 5 that's for you to do in another day and not this case.  
 6 The final thing, Your Honor, is that the -- I  
 7 have not talked about and had time to talk about, and I  
 8 won't much -- the Prop 26, legal issues, because in our  
 9 briefs, I think we've covered, basically, all of their  
 10 arguments thoroughly, all of their arguments about why  
 11 it doesn't apply. We have talked about the  
 12 imposition -- and you've dealt with some of these in  
 13 your prior ruling on the judgment of the pleadings.  
 14 One argument I want to expand on a little bit,  
 15 though, is why the Met Board isn't the electorate.  
 16 You've already tentatively rejected that notion in your  
 17 September 19 order at page 4, but I want to clarify our  
 18 position on it since the Met Brief misstates it at  
 19 page 105 of their Brief. We aren't saying that the  
 20 voters always have to vote on Met rates or anyone  
 21 else's, only that the voters have to approve rates that  
 22 are actually disguised as taxes. Met can avoid popular  
 23 votes on its rates by following cost-of-service  
 24 principles and imposing proper rates. I mean, that's  
 25 fairly obvious. They can also avoid popular votes by

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1 following a procedure set up in 218, notice and protest  
 2 process related for -- to property related assessments.  
 3 I won't go into it now, but that's all sort of laid out.  
 4 But the point I wanted to add was that the Met  
 5 Act itself makes a real distinction between the Met  
 6 Board and its members and the electorate. The  
 7 electorate means the people who have the vote. This  
 8 notice and protest process applies to retail water  
 9 suppliers. They admit that. And the Met Act allows for  
 10 various voting by the electorate to approve things under  
 11 Proposition 218.  
 12 They also -- under Met Act Section 200 and  
 13 352, both dealing with bond proposals or -- and one is  
 14 bond proposals. That's 200. 352 deals with annexation  
 15 of another water agency. The procedure in both is the  
 16 Board approves something, and then the electorate,  
 17 different from the board, votes on it.  
 18 And then finally they've done it before. In  
 19 1966 they went to the voters for bond issues. They went  
 20 back again later. This is all in the administrative  
 21 record. PTX-352 talks about some of this at 00206075.  
 22 So there is a lot of evidence within the Met Act, as  
 23 well as commonsense, that says electorate is not of a  
 24 vote of two-thirds of the Board.  
 25 And with that, Your Honor, I appreciate your

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1 attention. We've submitted a statement of -- proposed  
 2 Statement of Decision, which we laid out fairly clearly  
 3 what we believe the appropriate relief should be. And  
 4 with that, I will sit down. And hopefully you will give  
 5 me a little bit of time for rebuttal.  
 6 THE COURT: I appreciate this very much.  
 7 Why don't we take a ten-minute recess, and let  
 8 people's fingers have a little bit of a break.  
 9 (Recess taken 10:20 a.m. until 10:32 a.m.)  
 10 CLOSING ARGUMENT  
 11 MR. HIXSON: Tom Hixson for Metropolitan.  
 12 San Diego spoke for about an hour and ten  
 13 minutes this morning, so I will try to use a similar  
 14 amount of time for my remarks. I'm going to use as the  
 15 organizing principle the Court's questions from  
 16 yesterday. And I'll go through them.  
 17 What I wanted to do, because I think there is  
 18 an issue where some clarification is needed, to start  
 19 with the Court's questions about contracts. Your Honor  
 20 asked about the role of Admin Code Sections 4119 and  
 21 4405. And then you stated that there was some confusion  
 22 based on the apparent facts that the transactions  
 23 between Met and San Diego seemed to be governed by a  
 24 contract. And Your Honor posed a question, aren't all  
 25 water rates pursuant to some sort of a contract. And I

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1 wanted to jump to that first because the answer is no.  
 2 In general, Metropolitan does not have contracts with  
 3 its member agencies for the sale of water. The majority  
 4 of transactions between Met and San Diego are also not  
 5 governed about any sort of contract.  
 6 And so Metropolitan provides the member  
 7 agencies with water. The Met board sets the rates --  
 8 And can we pull up slides.  
 9 THE COURT: I think I finally got this  
 10 clarified in my mind. I think that you agree with  
 11 Mr. Kecker, which is that there is this agreement out  
 12 there, we're not talking about it today, and we aren't  
 13 talking about wheeling under -- let's say, agreements  
 14 that are not contracts or understandings or arrangements  
 15 that are not actually the subject of a written contract.  
 16 MR. HIXSON: I don't agree with what Mr. Kecker  
 17 said, and I think that San Diego is being -- they are  
 18 playing both sides of the field on the Exchange  
 19 Agreement, and I do want to come back to that in a few  
 20 minutes.  
 21 THE COURT: Okay.  
 22 MR. HIXSON: But I wanted to start with the  
 23 rate structure here. Met's Board adopts these rates  
 24 pursuant to Section 134 of the MWD Act. On the  
 25 left-hand side, we have the water rates there. So those

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1 are the full-service water rates, which account for the  
 2 overwhelming majority of Met's water sales, where each  
 3 member agency pays the supply rates and this is then the  
 4 transportation rates, this is an access rate, System  
 5 Power Rate and Water Stewardship Rate.  
 6 San Diego sometimes -- and it's happening  
 7 again this morning -- talks as though you have all of  
 8 these State Water Project costs and Water Stewardship  
 9 Rate costs that are thrown onto the wheeling rate. And  
 10 the point I want to make here is that State Water  
 11 Project transportation costs and Water Stewardship Rates  
 12 are part of the transportation rates, which are also  
 13 part of the full-service water rate. So when San Diego  
 14 itself buys whole service water and the City of  
 15 Los Angeles buys whole service water, when any of Met's  
 16 26-member agencies buy whole service water that accounts  
 17 for the vast majority of sales, that is going to recoup  
 18 the vast bulk of their state water transportation costs  
 19 and the Water Stewardship Rate costs go as well.  
 20 Because two of the costs components are also part of the  
 21 wheeling rate, a fraction of those costs are part of the  
 22 wheeling rate, but it is not -- when he keeps continuing  
 23 talking about -- they make it sounds like this huge  
 24 level of costs are only paid by wheelers, and that's  
 25 just not the case at all.

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1 And so, again, there aren't particular  
 2 contracts. Member agencies place orders during the  
 3 course of a year. They can change the order that they  
 4 want, and then they simply pay the volumetric rates on  
 5 the quantity of water that's delivered to them.  
 6 Separate from this is the wheeling rate, and  
 7 let's turn to Slide 15, if we can.  
 8 So wheeling is a different service. If a  
 9 member agency has purchased a source of water supply  
 10 from somebody other than Metropolitan and they want to  
 11 move it through Metropolitan's facilities to the member  
 12 agency, then they can purchase wheeling service. This  
 13 is Met's prepublished wheeling rate, meaning it was  
 14 created in the abstract.  
 15 One of the issues in dispute in the prior  
 16 wheeling case, MWD v. IID is whether Met can have a  
 17 prepublished wheeling rate. San Diego's position was,  
 18 no. Each time there's a specific wheeling transaction,  
 19 you should look at that particular transaction and see  
 20 what the incremental costs are. And the Court of Appeal  
 21 said it was fine for Met to have a prepublished wheeling  
 22 rate, and they don't have to limit themselves to  
 23 incremental costs. So that's -- the significance of  
 24 Section 4405 is that it is the prepublished abstract  
 25 wheeling rate that recover certain costs and so --

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1 THE COURT: And, in fact, the postage -- we  
 2 referred to this rate, is what, a postage rate?  
 3 MR. HIXSON: Right.  
 4 THE COURT: Which I guess in the sense by  
 5 definition can't possibly be one, which is exactly  
 6 commensurate with the precise costs of wheeling in any  
 7 given situation, because the distances to be traveled  
 8 are going to be different in each situation.  
 9 MR. HIXSON: That's right. And that's one of  
 10 the issues the Court of Appeal confronted and then  
 11 upheld, I guess, to cover system wide costs.  
 12 What San Diego is doing in this case is making  
 13 such a facial challenge to wheeling rate in  
 14 Section 4405. So, yes, this provision of the  
 15 Administrative Code is relevant, because otherwise they  
 16 would say their wheeling rate is illegal, and we would  
 17 say, Well, how do you know? Because there isn't one.  
 18 So this defines the wheeling rate that they are  
 19 challenging.  
 20 I do want to talk about the scale issue, all  
 21 of it, and about what the administrative records shows  
 22 about the scale of the transactions. I said that the  
 23 huge majority of Met sales are full-service water sales.  
 24 Can we pull up Volume 58 of the administrative  
 25 record. And if we could go to page 141.

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1 This is a document in the administrative  
 2 record where Met quantified the amount of wheeling and  
 3 exchange charges in certain calendar years, and you can  
 4 see that in the middle of this paragraph, in fiscal year  
 5 2008 and '09, there was about 26.8 million, 53.7 in the  
 6 next fiscal, and 21.8 million during fiscal year 2010 to  
 7 2011. So that's the total amount of charges that comes  
 8 into Met for the wheeling and exchange charges. Now,  
 9 let's compare this to water sales generally.  
 10 And we can go the page 135 of this document.  
 11 And, again, focusing on fiscal year 2011, you  
 12 will see that it is nearly a billion dollars in receipts  
 13 from water sales generally. And if you can compare the  
 14 two fiscal years in question for both wheeling and  
 15 exchanges and full-service water sales, the wheeling and  
 16 exchanges are approximately 5 percent of the annual  
 17 water sale revenue. The total ends up averaging around  
 18 a billion.  
 19 And so when Your Honor is considering the  
 20 question, where do the vast bulk of State Water Project  
 21 and transportation costs and water Stewardship Rate  
 22 Costs are recouped to, it is for the whole service water  
 23 rate.  
 24 So I wanted to talk now about something that  
 25 Mr. Kecker said a moment ago about the claimed difference

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1 between the MWD/IID case in this one. He said that case  
 2 dealt with the abstract question of Metropolitan's going  
 3 rate, but supposedly this case is different. Actually,  
 4 the two cases aren't different in that respect at all,  
 5 because in both, San Diego is making a facial challenge  
 6 to Metropolitan's wheeling rate. They aren't putting  
 7 before Your Honor a particular wheeling transaction and  
 8 contending that the costs in that are unrelated to  
 9 Metropolitan's wheeling rate.  
 10 And here is where I do need to cull out what  
 11 San Diego is doing, and I said I think they are playing  
 12 both sides of the field. Sometimes they say that they  
 13 agree that the Exchange Agreement is not a wheeling  
 14 transaction; they say the Wheeling Statute isn't  
 15 applicable; but then when they talk about the supposed  
 16 facts in this case about a wheeling transaction, they  
 17 are always talking about the Exchange Agreement. They  
 18 talk all of the time about how San Diego supposedly  
 19 wheels water for the Colorado River aqueduct. They talk  
 20 about the purchase of the IID water, and they put up  
 21 some slides today and talked about supposedly offsetting  
 22 benefits that Met supposedly receives from the IID  
 23 water. Those are all references to the Exchange  
 24 Agreement, and so that's -- they are trying to make it  
 25 central to their rate challenge.

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1 That's why it's significant that the Exchange  
 2 Agreement isn't a wheeling transaction, that that is not  
 3 subject to the Wheeling Statute, because then the facts  
 4 that they are trying to point to don't relate to an  
 5 actual wheeling transaction at all. What they are  
 6 really doing is making a facial change to the wheeling  
 7 rate.  
 8 Now, it is true that aside, leaving aside the  
 9 Exchange Agreement, which we believe is not a wheeling  
 10 transaction, they could simply make a facial challenge  
 11 to the Wheeling Statute or the wheeling provision, which  
 12 they have done here; but that again is a claim in the  
 13 abstract. There aren't particular facts or a  
 14 transaction with associated cost before Your Honor.  
 15 It's simply looking in general can Met incur these types  
 16 of costs in a wheeling transaction with a member agency  
 17 for one year or less. Outside of their scenario, Met  
 18 doesn't have a prepublished wheeling rate.  
 19 Let me turn to a question you asked, which is  
 20 that does Met claim that you shouldn't apply the  
 21 Wheeling Statute because of the way the Administrative  
 22 Code is written, or are we saying that you shouldn't  
 23 apply the Wheeling Statute when there is a contract?  
 24 We're not saying either of those things.  
 25 We're saying if you look at the Exchange

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1 Agreement, you can tell it's not a wheeling transaction.  
 2 We've submitted evidence on that, and San Diego is not  
 3 really disagreeing with that. And so that's why the  
 4 Wheeling Statute is inapplicable to the Exchange  
 5 Agreement.  
 6 Outside of that, the Wheeling Statute applies  
 7 whenever there is a wheeling transaction. If there is a  
 8 contract for moving of water when there is available  
 9 capacity and if it falls within the other provisions of  
 10 the Wheeling Statute, sure, you can evaluate the  
 11 contract under the Wheeling Statute. And we're not  
 12 saying that Met's Administrative Code defines the  
 13 wheeling rate in such a way that it removes it from the  
 14 Wheeling Statute. We're saying that's how you would  
 15 know what the prepublished wheeling rate is to determine  
 16 if it complies with the Wheeling Statute.  
 17 So I hope that provides some clarity.  
 18 THE COURT: It is helpful. I appreciate that.  
 19 MR. HIXSON: Okay. You also asked us to  
 20 explain our statement at page 118 of our Brief about the  
 21 exchange price not being part of this proceeding.  
 22 And --  
 23 THE COURT: I think you've done that.  
 24 MR. HIXSON: Okay.  
 25 THE COURT: I think I get it now. All of

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1 those questions were really based on one simple type of  
 2 confusion, which I think I understand now.  
 3 MR. HIXSON: Okay. Thanks.  
 4 I want to pull up Slide 45 of the opening  
 5 again, just reiterate the issue here.  
 6 So when San Diego buys full-service water and  
 7 most of the water it buys is full-service, it's paying  
 8 the full suite of the transportation and supply rates  
 9 just like the other member agencies. Under the Exchange  
 10 Agreement, which is for a portion of the water that they  
 11 buy, they are just paying the transportation rates  
 12 there.  
 13 Counsel for San Diego said this morning that  
 14 whether San Diego is paying the wheeling rate or whether  
 15 it is paying something different from the wheeling rate,  
 16 under the Exchange Agreement, it is supposedly for a  
 17 later time in the case. But we think that's not true.  
 18 We submitted the deposition testimony of San Diego's  
 19 person most knowledgeable on the subject, and the Court  
 20 has overruled their objections to that where they  
 21 admitted that they don't pay the wheeling rate. They  
 22 pay the transportation rates, this system access rate,  
 23 the System Power Rate, and the Water Stewardship Rate,  
 24 which are not equal to wheeling rate as defined in  
 25 Section 4405.

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1 Having addressed that, I wanted to then turn  
 2 to the Court's first question of Metropolitan, which is  
 3 a series of questions about allocating state water  
 4 project costs to transportation. And Your Honor's first  
 5 question was, if the State Water Project didn't break  
 6 down the cost in invoices, would Met still allocate the  
 7 costs in the same way? And the answer is yes, Met would  
 8 do that.  
 9 Met allocates these costs because of the  
 10 functions that they are related to. That the supply  
 11 costs are related to the function of providing  
 12 Metropolitan with water; whereas, the transportation  
 13 costs are allocated -- are related to the function of  
 14 moving the water from the source of supply to  
 15 Metropolitan's service area.  
 16 THE COURT: I appreciate that. I understand  
 17 that there is transportation in both of those  
 18 situations, but I don't understand why somebody else's  
 19 transportation costs is your transportation cost.  
 20 MR. HIXSON: Sure. Oftentimes transactions  
 21 will have a purchaser buying a bundled product, meaning  
 22 they buy something at the supermarket or a consumer  
 23 would buy water at their home, and what they are getting  
 24 is simply that product, and they can't purchase elements  
 25 of it separately. And so in that case, the various cost

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1 components, they don't appear separately itemized,  
 2 they are just --  
 3 THE COURT: They could. I mean, Apple selling  
 4 an iPod could break it out so that there is the cost of  
 5 transportation from the factory in China, there's a cost  
 6 of a product that's been mined in Africa. You could  
 7 break all of these things out, and I would pay them, I  
 8 suppose, if I wanted an iPod. But that doesn't tell me  
 9 that Apple -- it is not -- it is not connected to what  
 10 I'm buying. I'm just buying a product, even though it's  
 11 been made up of all of sorts of overhead and all sorts  
 12 of other costs that have gone into it from the  
 13 perspective of the manufacturer.  
 14 But why are those my overhead costs? They're  
 15 not.  
 16 MR. HIXSON: Metropolitan is different from an  
 17 ordinary purchaser of water in a couple of respects.  
 18 One of them is that Met has the ability to use the pipes  
 19 owned by its supplier to move water through them. Water  
 20 not provided by DWR, that's an extremely unusual  
 21 ability, because a purchaser doesn't usually have the  
 22 ability to go out and use the transportation facilities  
 23 owned by the seller. That's just a highly unusual  
 24 situation.  
 25 To pick up on the iPod analogy, you have no

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1 ability to use Apple's transportation facilities or  
 2 whatever mechanism you have. All you can do is buy the  
 3 end product. That's different. Metropolitan explicitly  
 4 has an ability to go out and use DWR's transportation  
 5 facilities to move non-project water.  
 6 THE COURT: But I take it, there is nothing in  
 7 the record that tells us what that's worth, in a sense.  
 8 There is no study that says what that -- what that  
 9 benefit is. It is just every now and then you get to do  
 10 that.  
 11 MR. HIXSON: The record -- a lot of evidence  
 12 on this point in the record. One key document is  
 13 Article 55 of the contract between Met and the State,  
 14 which explains what Met pays to have this right to move  
 15 the water through its supplier's pipes. And the  
 16 reference there is to the fixed transportation costs  
 17 generally.  
 18 And, of course, these are then what are put  
 19 into the transportation rates. The payment of these  
 20 fixed transportation costs that covers the expenses  
 21 associated with the regions, not only covers the  
 22 transportation bill, but gives Met this right to use the  
 23 facility without paying an additional facilities' fee.  
 24 So what Met gets in return -- and we showed this in the  
 25 cost of services for these transportation fees that it's

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1 paying every year -- is this combination of rates. The  
 2 paying for the transportation bill, but then also the  
 3 right of access, the right to use the supplier's pipes  
 4 to move its own water.  
 5 And then if you turn around and think about  
 6 the wheeling transactions, the only examples of true  
 7 wheeling transactions by member agencies before you in  
 8 this case, other ones that were done for San Diego,  
 9 using the State Water Project where San Diego asked Met,  
 10 pursuant to Admin Code 4405, to use its rights under the  
 11 State Water Project contract to wheel water from a  
 12 non-project source to San Diego.  
 13 And Met -- the reason San Diego asked Met to  
 14 do that is because San Diego is not a State Water  
 15 Project contractor. So if they went to DWR and said, we  
 16 want to move water through your facilities, they would  
 17 have to pay a large facilities' fee to go use that as  
 18 any non-contractor would.  
 19 THE COURT: It's still true, isn't it, that we  
 20 just have no -- there is nothing in the record that  
 21 tells us what those rights are worth. And maybe that's  
 22 25 cents per gallon sometimes, and maybe it doesn't cost  
 23 you anything in other situations, where you're wheeling,  
 24 doesn't cost you anything at all, and you are not using  
 25 those transportation facilities. And yet in every

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1 single case in which there is wheeling going on, these  
 2 dollars are being imposed on the other party.  
 3 MR. HIXSON: Well, a couple of responses. We  
 4 did quantify the ability to move non-project water. For  
 5 example, PTX-102 shows guarantees in 2008, 2009, 2010.  
 6 In 2010, for example, it was 228,000, which was  
 7 23 percent -- it was a large chunk, 23 percent over the  
 8 entire allocation from the State. And PTX-102 also  
 9 shows the amounts of money that were involved in those  
 10 transactions, the tens of millions of dollars, but I  
 11 guess -- so there is that type of quantification.  
 12 More than that, it's the way Met's wheeling  
 13 rate is established, that if there is a wheeling  
 14 transaction, the State Water Project transportation  
 15 costs go into the system access rate and then go -- on a  
 16 per acre-foot basis is how they are charged to the  
 17 member agency. So the quantification is how many acre  
 18 feet of water was San Diego using Met access rates to  
 19 move through the system, and that would be the  
 20 percentage of allocation that they would have to then  
 21 pay.  
 22 That's -- I guess, the answer to the  
 23 quantification is that when Met allocates these State  
 24 Water Project transportation costs to which  
 25 transportation rates and then charges them on a per

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1 acre-foot basis, that kind of necessarily allocates the  
 2 cost based on the quantity of water.  
 3 THE COURT: I think -- again, I don't want to  
 4 belabor this, because there just may not be much more to  
 5 say, but I think what you've done is you've described  
 6 what actually happens in real life. And unquestionably,  
 7 it is correct that the issue, I think, is why; and  
 8 what's the basis in the record for thinking that that's  
 9 a reasonable thing to do.  
 10 MR. HIXSON: Well, let me address that in two  
 11 ways. There are two scenarios in which the member  
 12 agency will end up paying part of these State Water  
 13 Project transportation costs through the transportation  
 14 rate. The first scenario, and the most common one by  
 15 far, is for the full-service water rate. And so in that  
 16 scenario, which we've seen is 95 percent of the sales,  
 17 it actually doesn't matter how the costs are allocated  
 18 between the supply and transportation because they pay  
 19 it on both. Now, it's accurate to call it a  
 20 transportation cost if you are trying to value what's  
 21 the total cost of moving the water to the member agency.  
 22 So that's going to recover both the costs of moving from  
 23 the distribution facility and the cost of getting it to  
 24 Met; but it is just from Met's perspective, when they  
 25 send somebody a bill, what percentage of that is

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1 actually attributable to the movement of water versus  
 2 supply. And so that would accurately reflect that.  
 3 The other scenario in which somebody would end  
 4 up paying the State Water Project transportation costs,  
 5 as part of transportation rates, are these 5 percent,  
 6 the wheeling transactions. But in that situation -- and  
 7 again the only the examples before you are ones that  
 8 have actual wheeling, but once they have gone on the  
 9 State Water Project, that's also a situation in which  
 10 they are getting the benefit of the State Water Project  
 11 system and receiving the benefit of the transportation  
 12 fees that Metropolitan pays under Article 55 that have  
 13 these kind of access rates. So in both scenarios it is  
 14 logical and reasonable to characterize those as  
 15 transportation costs for purposes of what's being billed  
 16 to the member agencies.  
 17 And I also wanted to go to the MWD, the IID  
 18 case, because I think that that hits on a critical issue  
 19 here which -- and relates to the issue of cost causation  
 20 that we are talking about. The issue in the past case,  
 21 and the reason why the Court of Appeals rejected  
 22 San Diego's incremental argument, is that Metropolitan  
 23 has certain unavoidable fixed costs due to the way it's  
 24 governed by the member agencies. It enters into, for  
 25 example, the State Water Project, long-term contract,

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1 and a lot of those costs are then fixed, whether Met  
 2 received any water from the State Water Project, whether  
 3 it receives a lot of water, it's just irrelevant to the  
 4 fixed transportation costs.  
 5 And San Diego will argue that's all in the  
 6 past, that happened before, and you, Met, have to show  
 7 going forward a causal link between those transportation  
 8 costs and on what's being charged to wheelers. And the  
 9 Court of Appeals said, No, that's wrong. The causal  
 10 link is that the member agencies are the reason why  
 11 Metropolitan entered into that State Water Project  
 12 contract and why it now has those fixed transportation  
 13 costs, and that was a key reason in rejecting the  
 14 incremental approach that San Diego advocated here.  
 15 They are saying it is cost causation and,  
 16 again, it is worth remembering that the wheeling rate  
 17 applies -- the prepublished wheeling rate applies to  
 18 transactions for the member agencies, and that was a key  
 19 fact for the Court of Appeals when they said, hold on,  
 20 we can tell that you are a member agency. And even in  
 21 this transaction, you are buying your water from  
 22 somewhere else, you are using that system, and more  
 23 importantly, the member agencies were the reason why Met  
 24 was incurring these costs. And the Court says that's  
 25 why it is fair and consistent with cost causation to

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1 pass on those system-wide, unavoidable costs. And that  
 2 is how Metropolitan calculated its wheeling rate. It's  
 3 in the 1997 resolution. The full text is at TDX680,  
 4 which is in evidence and also in the administrative  
 5 record.  
 6 That what Met did in calculating the wheeling  
 7 rate was to say what of its costs are avoidable, meaning  
 8 if it sold less water, it would not have to incur that  
 9 cost. And what are the fixed and unavoidable costs.  
 10 And then they said, well, this wheeling rate is going to  
 11 apply to transactions of one year or less by a number of  
 12 agencies, what is the fair and equitable way of  
 13 allocating fixed, unavoidable costs that were incurred  
 14 on behalf of the member agencies. And so the -- and  
 15 that's what led Met to include the unavoidable, fixed  
 16 costs in its wheeling rate, the system access rate, the  
 17 Water Stewardship Rate, because those don't vary  
 18 depending on the quality of water that Met sales. And  
 19 that's also why Met took out the System Power Rate and  
 20 Met pointed out in that resolution that if Met doesn't  
 21 sell any water or have water transported to or from DWR,  
 22 then it doesn't pay a power rate. Well, that's  
 23 unavoidable, so we're going to put it in wheeling rate.  
 24 But, again, this is a key point that the Court  
 25 of Appeals looked at in saying, there is cost causation

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1 because Met's fixed costs, its system-wide costs were,  
 2 in fact, incurred on behalf of member agencies and  
 3 that's who the prepublished wheeling rate applies to.  
 4 THE COURT: Is that an argument that suggests  
 5 that -- I'm just trying to see how far that argument  
 6 goes.  
 7 Does it suggest that, for example, if Met  
 8 forecasts it's going to buy "X" amount of water from the  
 9 state, let's say, just fixed, it's unavoidable, it's  
 10 take it or leave it sort of deal, it's got to do that,  
 11 does that then translate into -- is that a justification  
 12 for charging a portion of those fixed costs to all the  
 13 wheelers as well as the people who are buying them or  
 14 just buying water at the full rate? In other words, the  
 15 fact that you have got these unavoidable, fixed costs,  
 16 whether it is the cost of infrastructure or the fact  
 17 that you have to buy "X" amount of water from the State,  
 18 does that, therefore -- is that alone enough for Met  
 19 to impose some portion of all of those costs also on  
 20 wheelers?  
 21 MR. HIXSON: It is a justification if wheelers  
 22 are member agencies.  
 23 THE COURT: Okay. So wheelers who are member  
 24 agencies are going to be treated differently than  
 25 wheelers who are not member agencies? Is that what you

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1 mean?  
 2 MR. HIXSON: Yes, that's right. The member  
 3 agencies are the permanent part of Metropolitan, and  
 4 long-term fixed costs are -- it incurs those on behalf  
 5 of the member agencies. That's why I keep going back to  
 6 the idea that the prepublished wheeling rate in  
 7 Section 4405 only applies to transactions by member  
 8 agencies. Nonmember agencies -- I don't want to reach  
 9 out and say how Met would deal with -- we put in a bunch  
 10 of evidence about transactions with nonmember agencies  
 11 in wheeling, and you can see that the price terms are  
 12 all very different. But I do think when the wheeler is  
 13 a member agency, then Met has a strong basis for saying  
 14 that this -- the fixed costs, the long-term costs it  
 15 incurred to be met, to have this long-term service for  
 16 the member agencies, those can be apportioned to member  
 17 agencies, and the Court of Appeal agreed with that idea  
 18 of cost causation; but I also would say that if you have  
 19 some other party that isn't a long-term part of Met, if  
 20 they are nonmembers, that would be different. And Met  
 21 recognizes that to be different, because Section 4405  
 22 doesn't say what the billing rate would be.  
 23 So, again, the distinction between member  
 24 agencies is not -- is a significant one, as the Court of  
 25 Appeal indicated, and it also goes to the '97 wheeling

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1 resolution, which is not just a series of "whereas"  
 2 clauses. It is also the Exhibit 1 to it, and that's in  
 3 DPN 680 where Met went through this distinction between  
 4 the avoidable and unavoidable costs and said the  
 5 unavoidable ones that were incurred on behalf of the  
 6 member agencies, those are properly part of the wheeling  
 7 rate charged to those member agencies. And so that's  
 8 logic, that's analysis, it is not just a pronouncement.  
 9 And more importantly, the Court of Appeal agreed with  
 10 that principle of cost causation, and we ask Your Honor  
 11 to do that as well here, too.

12 I also want to identify another distinction  
 13 between bundled and unbundled products. You mentioned  
 14 the issue of buying an iPod and Apple rolls up into the  
 15 price all of its various costs. Normally when you  
 16 are -- you buy a product, you either get the whole  
 17 bundle of product or you don't get it at all. You can't  
 18 say, I want to buy just the transportation aspect of it  
 19 or I want to buy an iPod, but I want to have somebody  
 20 else ship it to me, but Met does have two different  
 21 services. There is the full-water service and then  
 22 there is transportation service. And so it is  
 23 aggregated the a sense, and Met can get transportation  
 24 service separate from -- from the actual water. And, in  
 25 fact, Met had to pay transportation costs for a decade

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1 before it got any water, literally before it got any  
 2 water supply from the State at all. So its obligation  
 3 to pay for transportation costs doesn't depend on water  
 4 supply, and its ability to use its transportation  
 5 facilities doesn't depend on water supply. It is also  
 6 buying a disaggregated product. And then when it turns  
 7 around to its member agencies, they consolidate a  
 8 full-service water or just the transportation service.  
 9 But that's why it is reasonable to -- on both ends, the  
 10 services are disaggregated from each other.

11 San Diego has taken issue with this idea of  
 12 blending. They say that -- they acknowledge sometimes  
 13 through clenched teeth that the water that Metropolitan  
 14 provides to San Diego is a blend and it comes from the  
 15 State Water Project and Colorado River. And that's true  
 16 for the full service water. It is true for the exchange  
 17 water, as well. And they dismiss that saying, well,  
 18 that's Metropolitan's choice, but Metropolitan has two  
 19 principal sources of water, the State Water Project and  
 20 the Colorado River. And San Diego, year after year, as  
 21 we've shown at the hearing, is consistently the largest  
 22 purchaser. Of course, Met delivers a combination of the  
 23 two water sources to San Diego. And, in fact, in the  
 24 Exchange Agreement, Mr. Kecker said this morning that  
 25 San Diego just wants to wheel all of the water through

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1 Colorado River aqueduct. That's not at all what the  
 2 Exchange Agreement says. What it says is that Met can  
 3 provide that water from any of its sources. And as you  
 4 heard at the trial, Met is under a legal obligation  
 5 under Met Act, Section 136, to blend State Water Project  
 6 with other water to the extent actionable.

7 So when you were taking a real practical look  
 8 at what are the actual expenses that Metropolitan incurs  
 9 to provide water to it member agencies, including the  
 10 San Diego, including under the Exchange Agreement with  
 11 San Diego, the State Water Project transportation costs  
 12 are there. They are a result of the way the  
 13 Metropolitan system is designed. And the Court should  
 14 be looking at Met's actual costs, the costs that are  
 15 actually incurred to provide these services, not  
 16 imagining, Well, maybe Met wouldn't need to run the  
 17 system this way and we could just only move Colorado  
 18 River water to San Diego. That's not what's actually  
 19 being provided there.

20 Your Honor asked the question, is there  
 21 something in the record that tells you why this is a  
 22 reasonable accounting method for Metropolitan or  
 23 generally for water rates. I want to take issue with  
 24 the word "accounting" there; that accounting is  
 25 different from rate setting in a couple of respects.

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1 Accounting is a historical exercise that's important for  
 2 auditing purposes, where companies will make sure they  
 3 record things in proper categories.

4 We put on evidence at the hearing that rate  
 5 setting is for a different purpose. And actually  
 6 counsel for San Diego put up a slide today showing one  
 7 of the positions we've taken, which is that rate setting  
 8 should be based on cost causation, not simply accounting  
 9 standards. And that's one of the issues we have the  
 10 charted of account. It is not purporting to say how  
 11 rates should be set. What it is saying how regulated  
 12 utilities should have costs on their balance sheet so  
 13 that regulators can go and audit them to see are they  
 14 getting the fair rate of return on their expenses,  
 15 what's being passed onto the shareholders, what's being  
 16 charged to rate payers.

17 Rate setting serves a different function. It  
 18 is who should pay for these costs, and how much should  
 19 they pay? We cited the AWWA M-1 manual, which is  
 20 PTX-30, the WEF manual on this point, and we addressed  
 21 it in page 60 of our Post-Trial brief.

22 To give an example of the differences between  
 23 accounting and rate setting, say for employees'  
 24 salaries, for accounting purposes, you would generally  
 25 lump them all together. You would say, here are the

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1 funds we're paying to employees generally, but you  
 2 really wouldn't do that for rate setting. You would  
 3 want to see who is working on what and how it's related  
 4 to the costs. And you wouldn't expect that the way  
 5 employees' salaries are calculated for accounting  
 6 purposes wouldn't be based on rate setting. And the  
 7 same thing is true for Met's costs. If you want to  
 8 account for what are the total expenses from the State  
 9 Water Project, sure, you would list them all up, you  
 10 know, supply the transportation rate; but then for rate  
 11 setting, you would want to look at what functions were  
 12 actually performed. And Metropolitan -- that's why  
 13 Metropolitan covers them differently from supply and  
 14 transportation rates.  
 15 And you asked for what are key documents in  
 16 the record. We do address these in our Brief on  
 17 pages 17 through 20 and then 45 through 61 and 74  
 18 through 87. But I want to highlight a few of them  
 19 because there are a number that substantiate the way Met  
 20 has allocated the State Water Project costs. There are  
 21 the RMI reports in 1995 and '96. Both of those reports  
 22 separated supply and transportation and identified  
 23 aqueduct costs, which reference the State Water Project,  
 24 the Colorado River as transportation-related costs.  
 25 There, of course, is the 2010 report. And despite the

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1 endless accusations from San Diego, the key analysis in  
 2 the report in Section 5, the Raftelis independent  
 3 review, was not... There is also the Raftelis treatise  
 4 in 1993, that, consistent with the 2010 report, divides  
 5 between supply and transportation as far as what Met has  
 6 done here. And there is the 1999 Raftelis report, which  
 7 plaintiffs themselves submitted, PTX-36 and -37, which  
 8 allocated State Water Project transportation costs to  
 9 Metropolitan's transportation rates.  
 10 So it is not true that in 2010, on the eve of  
 11 being sued, Met ran out and commissioned some report  
 12 that said this is all fine. Since the 1990s Met's  
 13 consultants and experts in rate-making design had  
 14 recommended what the State Water Project transportation  
 15 cost be covered in Met's transportation rates. And this  
 16 is, again, consistent also with the 1997 wheeling  
 17 resolution, as well as the cost of service reports that  
 18 Met has in every rate-setting cycle.  
 19 I now want to turn -- you asked a question  
 20 about the Federal Government and what if the Federal  
 21 government did aggregate the invoices for Colorado River  
 22 water, could Met have charged those differently. I  
 23 think there might be a misunderstanding that I wanted to  
 24 get to. Met doesn't pay the Federal Government any  
 25 money to transport Colorado River water to Metropolitan.

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1 Met's Colorado River Act, which Met owns and operates,  
 2 has an intake right on the river. It's a free-flowing  
 3 river and that diverts the water there. So Met has to  
 4 pay a supply cost that it pays to the Bureau of  
 5 Reclamation for the water, but it doesn't pay any kind  
 6 of transportation cost to the Federal Government.  
 7 THE COURT: It pays money to the Federal  
 8 Government?  
 9 MR. HIXSON: Only for the supply costs.  
 10 THE COURT: Right, but it pays money. I was  
 11 just using this as an offhand example. You pay a bill,  
 12 but I suppose the Federal government could say that  
 13 they're transporting water to your intake location. I  
 14 suppose they could say it, and they could have a  
 15 transportation piece in there. They could say, well,  
 16 you know, it is \$100 a gallon per acre feet, and we've  
 17 decided that it's going to be now \$90 plus a \$10 to get  
 18 it from the northern part of the United States down to  
 19 you. Would that make -- I'm just throwing this out.  
 20 Obviously, it is a ludicrous example. But would that  
 21 then entitle you to take some of that 10-dollar  
 22 transportation fee and consider it to be your  
 23 transportation costs?  
 24 MR. HIXSON: I think it would be crazy for the  
 25 Federal government to bill us for the function of

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1 gravity and moving water through a free-flowing stream.  
 2 There is no -- the transportation costs would be zero  
 3 because nature is moving the water upstream and  
 4 downstream. It is not at all analogous to the State  
 5 Water Project, which is spending, you know, large  
 6 amounts of money to artificially move and expensively  
 7 move water from the source of supply.  
 8 So I can't imagine the Federal government  
 9 saying, when you go there and you can take the water  
 10 yourselves, somehow they're transporting it. That's  
 11 taking the water out of the river. There is nothing  
 12 there.  
 13 THE COURT: Well, again, I don't want to get  
 14 bogged down in just an example. My guess is the Federal  
 15 Government does, in fact, spend some money on that  
 16 watershed in some way. There may be dams, maybe various  
 17 things that the government does to help that water move.  
 18 But in any event, the only point I was trying to make  
 19 was just to see whether your theory sort of carries  
 20 across these other sorts of situations in which somebody  
 21 else's transportation costs becomes your transportation  
 22 costs. That's all.  
 23 MR. HIXSON: Okay. Let me actually -- I want  
 24 to go to a different point, which is that Met  
 25 functionalizes State Water Project and Colorado River

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1 costs the same way.  
 2 So let me turn to your example of does the  
 3 Federal government spend money associated with the water  
 4 supply and the Colorado River building dams and stuff  
 5 like that. Yeah, they do. DWR does the same thing at  
 6 the state level, and DWR puts those into supply charges.  
 7 So in both sources Met is treating those as supply  
 8 costs. And, yes, there's money that the State spends on  
 9 those dams.  
 10 And in both situations, the transportation  
 11 costs of moving that water to Met's surface area are  
 12 functionalized the same way through Met's transportation  
 13 rates.  
 14 Now, Met owns the Colorado River aqueduct, so  
 15 it is out there buying power and repairing the aqueduct  
 16 and has that service costs. And where the State owns  
 17 the California aqueduct that is allocated a fraction of  
 18 that cost to -- for essentially the same types of  
 19 things. And what Met is doing consistent with the AWWA  
 20 manual is looking past ownership and it's saying, how do  
 21 you functionalize? What do these things do? And Met  
 22 determined -- there is cost of service analysis -- that  
 23 they do the same thing. The Colorado River aqueduct and  
 24 California River aqueduct are both moving water to Met's  
 25 service area. And so it functionalizes them the same

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1 way.  
 2 So I guess as to your question, is there is a  
 3 disconnect between how Met is looking at the State Water  
 4 Project and looking the Colorado River. No, it is  
 5 treating them both the same way, treating both functions  
 6 the same way, appropriately.  
 7 (Discussion off the record.)  
 8 MR. HIXSON: Okay. I'm reminded by my  
 9 colleague that one of the issues under the State Water  
 10 Project contract -- and we should show this to Your  
 11 Honor, as well -- is how the costs are allocated under  
 12 Articles 23, 24, 25 and 26 to Met.  
 13 And Your Honor posed a question, why does it  
 14 matter what the contract says. And it partly it matters  
 15 because it's taking those costs and saying, here, Met,  
 16 there's yours, we're explicitly allocating this to you  
 17 as a transportation cost. And, of course, Met has to  
 18 pay that regardless of any of the water that it  
 19 receives.  
 20 Let me turn to cost causation. Your Honor  
 21 asked the question, do the parties agree rates should  
 22 reflect cost causation? We would have to, "yes, but,"  
 23 there is a serious dispute between the parties about  
 24 what costs causation means, and the parties disagree on  
 25 a number of things. The relevant statutes and

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1 Constitutional provisions before the Court speaks in  
 2 terms of the service. Prop 26, for example, asked about  
 3 the cost reasonably related to the service. The  
 4 Government Code talks about service, Met's governing act  
 5 talks about a service.  
 6 We think the most important thing for you to  
 7 do first is to identify the service that's being  
 8 provided. Met provides two services. It provides water  
 9 service, and it provides transportation of water  
 10 service. Water service is the billion dollars a year  
 11 numbers that I just showed you. That's the full-service  
 12 water rate. It is the water that Metropolitan  
 13 transports to the member agencies. Then you have  
 14 transportation-only service. Those are two distinct  
 15 services.  
 16 San Diego likes to drill down and say that  
 17 every item in the bill is a separate service. For  
 18 example, demand management, and they talk about the cost  
 19 associated with these conservation and staffing programs  
 20 and local research programs, and they quibble about  
 21 whether it is allocated in the right way.  
 22 Demand management isn't a separate service  
 23 that Metropolitan provides. You can't go in and say, I  
 24 would like to purchase some demand management, just like  
 25 you can't purchase the System Access Rate Service or

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1 System Power Rate Service. These are simply parts of  
 2 the bill. They are components of the cost that  
 3 Metropolitan charges for water service. So we think  
 4 that San Diego is looking at the wrong thing when they  
 5 focus on each individual item.  
 6 And the second important principle is what  
 7 costs the service has to be related to. Here the case  
 8 law makes clear that it's aggregate cost across all rate  
 9 payers. This was always true in the Prop 13 context.  
 10 And then in the "Griffith I" case, the Court of Appeals  
 11 came along and says that the language in Prop 26 mirrors  
 12 the language in the case law talking about Prop 13. And  
 13 so once again you look in the aggregate that all of the  
 14 rate payers.  
 15 So you don't look at how much is San Diego  
 16 paying in under the Water Stewardship Rate and how much  
 17 money does San Diego get back. In fact, it focuses on  
 18 Met's water rates as a whole for full-service Water  
 19 Transportation Rates as a whole and looking at all of  
 20 those rates collectively. It is a higher level inquiry,  
 21 and that's cost of service that we showed that this is  
 22 satisfied because Met determines what its rates and  
 23 charges will be by looking the revenue requirements it  
 24 needs to provide these services and then developing  
 25 rates that, in effect, provide for that. And that's

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1 exactly what the "Griffith" Court said is the  
 2 appropriate way of doing something, by backing into  
 3 those rates by what they need to recover costs. So it  
 4 is a higher level inquiry.  
 5 And I think both the Griffith I and Griffith  
 6 II cases illustrate our view about cost causation,  
 7 that's correct. Griffith I dealt with a fee that is  
 8 charged to landlords to do inspections of apartments, to  
 9 make sure that they are up to code and stuff like that,  
 10 and the Court looked at the total amount of money  
 11 that the City would raise for that fee, and that was a  
 12 reasonable estimate of the total cost of administering  
 13 the program.  
 14 Obviously, the benefits to individual payers  
 15 could be dramatically different. For a lot of those  
 16 members, it might just be a hassle if they're ever going  
 17 to have to come up to Code. And for others it could be  
 18 a significant benefit to the tenants if the apartments  
 19 were up to code, but the Court didn't conduct the  
 20 inquiry at a broad level. It looked at everyone all  
 21 together. It also looked at prospective estimate and  
 22 what is the estimated cost going forward of  
 23 administering the program. And so this is a large part  
 24 of the answer to San Diego's attempt to focus on just  
 25 what they pay in Water Stewardship Rates without looking

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1 at the whole regional benefit. You have to look more  
 2 broadly. Likewise --  
 3 THE COURT: I guess the question is how do  
 4 we -- how do we do this classification? Is that one  
 5 group of folks who need water at that sort of very high  
 6 level, or do we basically have two groups of folks, some  
 7 of whom are buying water, some of whom are wheeling  
 8 water? The question, I guess, is simply, well, why is  
 9 it that the wheelers have to pick up part of the cost of  
 10 those benefits?  
 11 In Griffith I, I suppose you could have had  
 12 people who were apartment dwellers and people who were  
 13 condo dwellers or something like that, and you might  
 14 have had a debate as to whether both of those classes  
 15 should be subject to the same fees and so on.  
 16 MR. HIXSON: Because the volumetric rates are  
 17 charged on a per acre-foot basis. Meaning that you take  
 18 the transportation costs, recover them through the  
 19 transportation rate, and then somebody buying  
 20 full-service water, both pay those transportation rates  
 21 in exact proportion to the quantity of water that's  
 22 moving through the system for them, and the same thing  
 23 is true of the wheeling parties; that they -- it's per  
 24 acre-foot basis in Exhibit A for the wheeling charge,  
 25 based on the amount of acre feet. And so it is being --

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1 I mean, it is being allocated exactly in accordance to  
 2 how much use they are putting on the system and taking a  
 3 cost -- a collective cost of Met's transportation  
 4 facilities, and then allocating the per acre-foot basis.  
 5 And actually the Griffith II case helps  
 6 support that as well. That was a case where there was a  
 7 fee in question for supplemental water. And the reason  
 8 why the agency wanted to have that fee for supplemental  
 9 water was because coastal areas and coastal owners were  
 10 depleting the groundwater supply, and so seawater was  
 11 leaching in. And so the idea was that they would use  
 12 the supplemental water primarily at land near the coast  
 13 and they wouldn't use it more inland because it wasn't  
 14 necessary there. And so the plaintiff sued challenging  
 15 that supplemental water bill, saying that he was one of  
 16 the inland people and all of those costs to acquire all  
 17 of that supplemental water that was putting into the  
 18 groundwater, none of it went to him. He wasn't one of  
 19 the payers, and the Court of Appeal says, no, you got it  
 20 all wrong. What you do is you look at the systemwide  
 21 costs. You say, what is the total cost the agency is  
 22 incurring to provide this water and then allocating it  
 23 straight up to every purchaser by parcel was an  
 24 appropriate and fair way to do so, regardless of whether  
 25 they in particular received the benefit of that water.

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1 The theory was that they all ultimately received the  
 2 benefit.  
 3 Likewise, Met has certain transportation  
 4 costs, and the cost of service model allocates them to  
 5 the various transportation rates. So each of them  
 6 assessed on a per acre-foot basis, so it is entirely  
 7 proportional and fair for those who get full-service  
 8 water.  
 9 I would like to turn now to one of the  
 10 arguments or one of the questions you posed to  
 11 San Diego, which is that they had previously taken the  
 12 position that the exchange agreement was not the  
 13 wheeling transaction, and here are they bound by that.  
 14 And their position wasn't just that it's not a wheeling  
 15 transaction; their position was that the wheeling  
 16 statute simply has no application to the Exchange  
 17 Agreement between San Diego and IID. And the reason why  
 18 they made that argument was because in entering into  
 19 that agreement, IID didn't conduct the type of  
 20 environmental review that would be required under the  
 21 statute. And so they didn't argue any kind of nuance or  
 22 middle ground. They were essentially forced into the  
 23 position that the Statute had simply no applicability at  
 24 all to the Exchange Agreement. And they said that in  
 25 the written briefing, DTX78 and 126, and we also

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1 provided the Court with Maureen Stapleton's testimony  
 2 from the State Water Resource Control. Said that it  
 3 wasn't a wheeling transaction subject to the wheeling  
 4 statute. San Diego made efforts to distinguish that,  
 5 but they missed a key point.  
 6 They say, well, under the '98 agreement, there  
 7 was one price term; and then the 2000 agreement, the  
 8 price term changed. And it is true that the price term  
 9 changed. That has nothing to do with San Diego's  
 10 arguments for why the exchange agreement wasn't a  
 11 wheeling transaction. Ms. Stapleton's testimony and the  
 12 argument San Diego advanced, successfully enough to  
 13 prevail on that position, is that wheeling relates to  
 14 unused capacity, so wheeling is interruptible. If there  
 15 is no space in the pipes, then the wheelers aren't  
 16 allowed to wheel. And San Diego said, they are not in  
 17 that position with respect to Metropolitan, and that's  
 18 actually correct.  
 19 You posed the question to Mr. Kecker this  
 20 morning. You said, "Well, are you guys last in line?"  
 21 He said, "No, because this is firm delivery." And that  
 22 was a fact that San Diego seized on accurately, we  
 23 believe, to exhibit case in point, because wheeling by  
 24 definition, under the statute, is uninterruptible and  
 25 this isn't.

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1 And the other issue that San Diego highlighted  
 2 is that wheeling is the movement of water through a  
 3 water facility; whereas, here what San Diego was doing  
 4 was swapping water supply; that they trade quantity of  
 5 Colorado River water to Metropolitan. And in exchange  
 6 they received a different source of water from different  
 7 sources of supply.  
 8 THE COURT: Under the Exchange Agreement.  
 9 MR. HIXSON: Yes, that's exactly right.  
 10 THE COURT: But I think your position is that  
 11 you want me to forget the about the Exchange Agreement  
 12 at this point; right? We're not talking about  
 13 whether -- it doesn't matter what happens under the  
 14 Exchange Agreement, that I should decide the issues as  
 15 posed by this particular trial, this phase.  
 16 MR. HIXSON: We think that's right, but we  
 17 want you to really forget it and not just forget it when  
 18 we're talking about it.  
 19 So when San Diego talked about offsetting  
 20 benefits, they say, look at all of this great value from  
 21 the IID water. We want you to not hear them when they  
 22 say that either because that's part of the whole  
 23 exchange issue. And when they say the people wheeling  
 24 through the Colorado River water, nobody is doing that,  
 25 Your Honor. Nobody is wheeling through the Colorado

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1 River aqueduct. There's constant references to the  
 2 Exchange Agreement.  
 3 If you put that completely out of mind, what  
 4 you are left with is a facial challenge to  
 5 Metropolitan's wheeling rate and the only wheeling  
 6 transactions by a member agency in front of you, all  
 7 used the State Water Project; they all went through the  
 8 State Water Project facilities. And so we think that in  
 9 this facial challenge with the only examples of true  
 10 wheeling up to the State Water Project, we have got an  
 11 awesome case that we can include the State Water  
 12 Project, transportation costs in the facial challenge.  
 13 So, yeah, if you forget it, forget it all of  
 14 the way. But we do think the Exchange Agreement is  
 15 irrelevant to Met's rate.  
 16 Also for a more logical reason, the rates went  
 17 into effect in January 2003; whereas, the Exchange  
 18 Agreement came afterwards. And there is a whole package  
 19 of consideration in there. It is not just that they pay  
 20 the transportation rates for a certain quantity of  
 21 water; they also got 77,000, you know, acre-feed of  
 22 water for 110 years. They got \$235 million. It was a  
 23 State funding that Met allocated to them. It was a  
 24 contract deal where they sat down, and there were a  
 25 bunch of different terms for that. That is a different

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1 creature. It is not a wheeling transaction. It is a  
 2 bunch of different things put together.  
 3 Another thing you asked is whether Met agrees  
 4 that the reasonableness of its rates is not properly a  
 5 function of the extent to which member agencies may have  
 6 their rates or charges affected. In other words, the  
 7 hold harmless issue. We don't see holding harmless as a  
 8 problem, and we also reject the notion that Met's  
 9 wheeling rate is based on, quote, rate stability. That  
 10 phrase was literally invented by San Diego. It has no  
 11 appearance in the '97 wheeling resolution, or as far as  
 12 I'm aware, in any of the Metropolitan documents.  
 13 Here's the extent of our disagreement, and it  
 14 lines up with the Court of Appeals holding in MWD/IID.  
 15 The member agencies, their governance of Met, caused Met  
 16 to incur certain fixed, unavoidable long-term costs that  
 17 Met now has to recoup. We think there is cost causation  
 18 to the member agencies that have to go back and repay  
 19 those. If one member agency later decides it wants to  
 20 wheel water and doesn't want to pay its fair share of  
 21 those fixed, unavoidable long-term costs, those could  
 22 get shifted to a different member agency. That's where  
 23 we think that's unfair. That's subsidizing a wheeling  
 24 transaction by a member agency.  
 25 THE COURT: Off the record.

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1 (Discussion off the record.)  
 2 THE COURT: Back on the record.  
 3 So let's say that Met had a third thing it  
 4 did. Met sells, No. 1, full-service water, No. 2, does  
 5 some wheeling, and then, No. 3 -- let's make it up --  
 6 you know, Met also helps distribute low-flow toilets, or  
 7 something like that, just one of those things that you  
 8 think you can get from Met. And let's say a member  
 9 agency decides to participate in that third program,  
 10 would they, too, under this reasoning have to pay some  
 11 portion of these fixed costs, and why is it that the  
 12 existence of these fixed costs, which have to be paid by  
 13 the member agencies, which is generally done through the  
 14 rates that are imposed for full-service water, why does  
 15 it also require the wheeling member agency, or the  
 16 member agency as wheeler, to have to pick up some  
 17 portion of these system-wide fixed costs? Why does that  
 18 follow?  
 19 MR. HIXSON: Because they were incurred for  
 20 the benefit of the member agencies. Met is -- Met is,  
 21 well, first of all, using the State Water Project in the  
 22 example to actually perform the wheeling for these  
 23 member agencies, but also they are fixed and  
 24 unavoidable. Met is stuck with them year after year  
 25 based on the fact that it entered into those

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1 transactions. This goes to the heart of the issue in  
 2 the MWD/IID case, which is whether Met can include a  
 3 system-wide cost in its wheeling rate. And the answer  
 4 there was emphatically, yes, because Met has to recoup  
 5 its costs from its member agencies. So again this goes  
 6 to the --  
 7 Okay. And just to clarify, we weren't  
 8 intending to say that a member agency's decision to  
 9 wheel as opposed to buying that water would itself be  
 10 unfair to the other member agencies; that's not it at  
 11 all. Our point is that they shouldn't be allowed to get  
 12 out of their fair share of the fixed, unavoidable costs  
 13 that were incurred for their benefit to the detriment of  
 14 the other member agencies. So that's -- that would be  
 15 subsidizing the member agency insofar as it's doing  
 16 wheeling. There is no problem with them.  
 17 The more base situation one is where the town  
 18 simply refused to allow the wheeling transactions. Met  
 19 isn't doing anything like that. Met, of course, is  
 20 facilitating wheeling. There is zero evidence of any  
 21 wheeling transaction that Met turned down, which was the  
 22 situation in Morrow Bay. And the wheeling rate doesn't  
 23 include the supply rate, and it doesn't include the  
 24 avoidable cost such a system power rate. So it is, of  
 25 course, lower than the full-service water in recognition

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1 of those facts. That's a completely different  
 2 situation. The question here is the one faced by the  
 3 Court of Appeal before, which is can that include any of  
 4 these fixed, unavoidable system-wide costs, and the  
 5 answer is yes.  
 6 I want to talk now about allocation, which is  
 7 the question about -- or in quantification, whether Met  
 8 has quantified the benefits from -- due to the Water  
 9 Stewardship Rate and poses the question, do we all agree  
 10 to some extent Met has properly quantified those  
 11 included in the Water Transportation Rates. We think  
 12 Met has quantified this to a large extent and in two  
 13 basic ways. First Met quantified the avoided capacity  
 14 cost that would be needed to build out more of its  
 15 distribution facility in the absence of the demand  
 16 management programs. Metropolitan quantified that  
 17 in DTX18. That was the March 1996 economics that  
 18 literally did the comparison of the preferred case with  
 19 the management programs and the base case without them  
 20 and identified billions of dollars of difference in  
 21 anticipated cost and was, in fact, due to the  
 22 distribution facilities. This was later incorporated  
 23 into the 1996 Integrated Resources Plan, which likewise,  
 24 did the same comparison and then went further to do a  
 25 sensitivity analysis, a much more granular type of

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1 analysis of whether a 5 percent reduction in demand  
 2 could cost, and they determined that even that small  
 3 change in demand could postpone hundreds of millions of  
 4 dollars in the capacity costs.  
 5 And you've heard the testimony of Mr.  
 6 Upadhyay, indicating that Met was, in fact, able to  
 7 defer a lot of its capacity costs. That's one type of  
 8 quantification where Met really did put numbers down and  
 9 come up with that.  
 10 Another type of quantification was the SB60  
 11 reports, and one of those is at PTX-454, and you also  
 12 heard Mr. Upadhyay's testimony about that. That's  
 13 where Met quantifies on an annual basis the number of  
 14 acre-feet of water that were conserved or that were  
 15 developed before the Demand Management Program. So it  
 16 does put specific numbers on that, and that's water that  
 17 would otherwise have to go through the system.  
 18 Can we pull up --  
 19 THE COURT: In either of these situations,  
 20 this quantification, did it sort of locally then  
 21 translate into an estimate of what a fair rate would be  
 22 for wheeling? In other words, is there a link between  
 23 these estimates, these calculations to avoid the costs  
 24 and so on to what the actual rate ought to be?  
 25 MR. HIXSON: Yes. Here's the link. We're

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1 putting up a San Diego document. This dealt with one of  
 2 the proposed Demand Management Programs of the Carlsbad  
 3 program, and you can see here that they say that the  
 4 availability of water from the Carlsbad desalinization  
 5 project will result in a one-for-one offset in the use  
 6 imported water for those agencies participating in the  
 7 project.

8 This is true as a part of commonsense, but it  
 9 is also documented here in evidence that the less of  
 10 water that Met has to transport is a one-for-one  
 11 benefit. The cost of those demand management programs  
 12 are then allocated in the cost of service study to the  
 13 Water Stewardship Rate and then divided out by the  
 14 number of acre-feet. So that's how the rate is  
 15 calculated or computed, is that it is the estimated  
 16 expenses of the entire Demand Management Program. You  
 17 can see that in PTX-110, the cost of service study, and  
 18 then that's divided on a per acre-foot basis into the  
 19 Water Stewardship Rate. That's the nature of the  
 20 calculation to arrive at what the rate is.

21 Now, San Diego has said that there is a supply  
 22 benefit here, as well. And Your Honor has raised the  
 23 question, well, why is 100 percent of this in  
 24 transportation and rather than some of it in supply.  
 25 There are a couple of reasons for that. One is that as

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1 we have seen, the transportation benefit is documented.  
 2 There is documented capacity costs that were avoided.  
 3 There are documented quantities of water that Met  
 4 doesn't have to move and there is this one-to-one  
 5 benefit that the parties agree on of not having to move  
 6 that water.

7 A supply benefit by contrast is speculative,  
 8 and one reason is the existence of wheeling. Say a  
 9 member agency doesn't have their management program and  
 10 they still need to buy water, they then need to have a  
 11 greater quantity of imported water, and that's what we  
 12 saw San Diego acknowledging in DTX383. They don't have  
 13 to buy that water from Met; they can buy it through any  
 14 seller. But they move the water through Metropolitan's  
 15 facilities.

16 So in every case we know that there is a  
 17 transportation benefit to Metropolitan, but whether  
 18 there would be a supply benefit is unknown. There is --  
 19 that would just be speculation. And, furthermore, under  
 20 the Demand Management Program, as Met explained at  
 21 trial, Met isn't acquiring the type of thing that its  
 22 supply rates recover. It is not acquiring a source of  
 23 supply that it can then go give to its member agencies.  
 24 What it's definitely avoiding are the increased  
 25 transportation costs. And whether there would be any

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1 supply benefit at all is speculative.

2 The next question you pose is actually to  
 3 San Diego, which is does Met have to quantify the  
 4 benefit for each project under Demand Management  
 5 Program. And we would answer that no. They have  
 6 half-heartedly said, no; but the benefit to Metropolitan  
 7 is in the aggregate from all of the projects  
 8 collectively. That's how Met is able to avoid or defer  
 9 capacity costs, is by the aggregate benefit. It is not  
 10 because it's -- you know, one member agency says,  
 11 50-acre feet of water is one year and another 70 in a  
 12 different year. What Met did -- and this is the  
 13 analysis it performed, was to look at all of the Demand  
 14 Management Programs collectively to see what types of  
 15 capacity costs they would defer, and that aggregate use  
 16 is the appropriate one. And that's been the one  
 17 sanctioned and endorsed by the case law, including the  
 18 case law in 1996.

19 If you look at the costs that the agency  
 20 incurs overall and not just on the individual  
 21 project-by-project or payer-by-payer basis, it is the  
 22 aggregate basis under California Farm Bureau and the  
 23 Griffith case as well.

24 THE COURT: So let's say you had one project,  
 25 just a single project that costs a tremendous amount of

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1 money and it generated water for only Los Angeles, for  
 2 example, and it was supported by millions of dollars of  
 3 Met money, and then that -- under your reasoning, you --  
 4 Met would be able to allocate all of those dollars and  
 5 recoup them as rates imposed on every member agency who  
 6 buys water and/or wheels through Met.

7 MR. HIXSON: It's your hypothetical that Met  
 8 has only one Demand Management Program?

9 THE COURT: Yeah, let's say there is just one,  
 10 you know, and it benefits one member, but everybody --  
 11 that's just the way Met decides that's going to be done.  
 12 Under that reasoning, you would still have the sort of  
 13 aggregate and you could still look at the general  
 14 benefit and you would just say, well, the fact that one  
 15 member agency is now using this water is, at least,  
 16 indirectly something that benefits everybody. So  
 17 therefore, every member agency is going to be picking up  
 18 this tab.

19 MR. HIXSON: You don't have to say that if  
 20 there is only one Demand Management Program that the  
 21 benefit can be -- that's a very different scenario from  
 22 what Metropolitan has.

23 THE COURT: Sure. I'm just trying to get a  
 24 sense of how the reasoning goes. And your reasoning is  
 25 that if you have a group of these programs that benefit,

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1 at least, directly or generate water for a handful of  
 2 the members, it's fair for all of the members to pay for  
 3 it.  
 4 MR. HIXSON: That's right. But I'm not  
 5 willing to walk the plank and say if only one member  
 6 agency had some huge amount and nobody else did. That  
 7 would be materially different from what Metropolitan  
 8 has, and that's not the situation here at all. What it  
 9 has is a generally available Demand Management Program  
 10 that many member agencies participate in, in various  
 11 different locations; and system-wide this reduces and  
 12 defers the development of the Metropolitan system, but  
 13 you are giving an extreme hypothetical. --  
 14 THE COURT: I am. I guess from San Diego's  
 15 point of view, I guess they sort of feel that they are  
 16 somewhat in that position since they were putting money  
 17 in, which is helping other people, other members build  
 18 out some of these projects; but at least they are not  
 19 getting any direct benefit. But your position is that  
 20 they are getting some kind of system-wide, indirect  
 21 benefit; and, therefore, that's why it is fair?  
 22 MR. HIXSON: Well, both. First of all, it is  
 23 not true that they don't get any benefit. They are  
 24 still eligible for millions of dollars a year --  
 25 THE COURT: Yeah.

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1 MR. HIXSON: -- from Demand Management Funds.  
 2 So they keep saying the benefit is cut out, that's  
 3 factually untrue. But even if that were true, yes, we  
 4 would say the regional benefit is sufficient. There are  
 5 a number of Metropolitan member agencies that don't have  
 6 any Demand Management Programs that are funded. And in  
 7 that hypothetical, San Diego would be similar to that.  
 8 And for the case on point, I would point to  
 9 "Griffith v. Paupereaux" (phonetic), that San Diego is  
 10 claiming they are like the position of the landowner  
 11 there, who said, you are going out, and you are buying  
 12 all of the supplemental water, well, you don't give any  
 13 benefit of that to me, and the Court of Appeal said,  
 14 yeah, but the benefit is reachable. It benefits  
 15 everyone. Yeah, we would say the regional benefit is an  
 16 entirely adequate basis; whereas, here it is a general  
 17 applicable Demand Management Program.  
 18 I do want to briefly turn to dry year peaking  
 19 and whether the dry year peaking costs exist. I think  
 20 that depends on what you think they are. And San Diego  
 21 goes back and forth, and they are not very clear on  
 22 this. But Met has a uniform rate structure. So the  
 23 same volumetric rates are charged to each of its member  
 24 agencies, and then readiness surcharge, the capacity  
 25 charge are recovered under a similar formula from each

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1 of the member agencies.  
 2 Simply the fact that Met sells more water in  
 3 some years than in other years, so that member agencies  
 4 buy more or less water in dry years, those don't give  
 5 rise to any kind of cognizable dry year peaking cost.  
 6 What San Diego has relied on, and what Mr. Kecker pretty  
 7 much acknowledge here today, is they're trying to make  
 8 the argument, it proceeds in two stages, that the member  
 9 agencies differ from each other with respect to dry year  
 10 peaking patterns and that these differences result in  
 11 costs being incurred by Metropolitan. We disagree with  
 12 both of those propositions, but we really disagree with  
 13 the second one, which is that their assertion that the  
 14 different claimed differences between the member  
 15 agencies result in costs to Metropolitan. There is  
 16 simply no evidence about it at all. And, in fact, we're  
 17 affirmatively disproved that.  
 18 We showed that the way Metropolitan billed out  
 19 the capacity and distribution system is to meet peak  
 20 week demands. We had two witnesses testify to that and  
 21 demonstrated that in the administrative record as well.  
 22 So there is no cost causation between variances and  
 23 annual purchases.  
 24 We also showed that there are any number of  
 25 reasons why member agencies change their purchases on a

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1 year-by-year basis. The economy is a big one. We  
 2 pointed this out in our Post-trial Brief. One of the  
 3 biggest years of drought in the recent memory was the  
 4 year 2010. And both Mr. Denham and Ms. Gilman, at  
 5 trial, pointed out that in calendar year 2010, member  
 6 agency purchases of water plunged. They dropped  
 7 dramatically.  
 8 This was a chart that we put together based on  
 9 the plaintiff's expert data. And look here at 2010, the  
 10 dry year. And what you see is that Los Angeles and  
 11 San Diego's purchases dropped significantly. So this  
 12 factual predicate of dry year peaking claim, which is  
 13 that in the dry years the member agencies all buy more  
 14 water, we proved that's not true; that there are other  
 15 factors. In a dry year, I don't think there is less  
 16 water; there simply might be less water to sell. And we  
 17 also said there were other years where, you know, the  
 18 economy and other factors, environmental considerations,  
 19 that would enter into the amount of water purchased.  
 20 This is again related to cause causation. They haven't  
 21 demonstrated that there is any differences between the  
 22 amount of water, in fact, associated with the dry years.  
 23 Of course, Metropolitan incurs storage costs  
 24 for dry years and for other reasons as well for  
 25 emergency storage, but San Diego hasn't shown, and the

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1 evidence shows the contrary, that any of these storage  
 2 costs are incurred due to the particular peaking need of  
 3 any one member agency.  
 4 And you heard Mr. Yamasaki's testimony about  
 5 how the reservoirs Met fails, which are long-term  
 6 projects, aren't intended to meet any one member  
 7 agency's need. So, again, this goes to the absence of  
 8 cost causation, that the claimed differences in behavior  
 9 between member agencies simply don't have any causation  
 10 to the storage cost that Met incurs.  
 11 Your Honor did raise the question about how  
 12 Met incurs storage costs, and you wondered if we can  
 13 show where that's done. And I do want to bring that up  
 14 now.  
 15 Can we pull...  
 16 Because I think one question Your Honor asked  
 17 is, quote, did anything link these actual charges and  
 18 rates to the actual cost of maintaining storage for the  
 19 customers who need it. Here we go. This is an extra  
 20 for the cost of service study. This is storage here,  
 21 and it shows how it's allocated. There's emergency  
 22 storage and drought storage --  
 23 THE COURT: Which exhibit is this?  
 24 MR. HIXSON: This is DTX110. And we're  
 25 looking at page 98 for that document.

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1 And here you see emergency storage allocated  
 2 100 percent to standby. And on the right, you can see  
 3 it is recovered by the readiness to serve charge.  
 4 Drought storage, which is what San Diego is  
 5 focused on, for dry years, is 100 percent commodity to  
 6 be recovered by supply, and then there is regulatory  
 7 storage.  
 8 Let's go two pages earlier in this document to  
 9 page 86 just to see the description of what those are.  
 10 There's a reference here to "Drought carryover  
 11 storage serves to provide reliable supplies by carrying  
 12 over surplus supplies for periods of above-normal  
 13 precipitation in snow pack to drought areas when supply  
 14 decrease, drought storage create supply and is one  
 15 component of a portfolio of resources that results in a  
 16 reliable and annual system supplies." And then it shows  
 17 you that that 's recovered supply rate.  
 18 Your Honor should not have any question in  
 19 your mind about where these drought storage costs are  
 20 recovered. It is through Metropolitan's supply rates.  
 21 And Metropolitan's cost of service study, which we are  
 22 looking at here, that itemizes everything else and where  
 23 those are incurred in those rates.  
 24 So the issue that San Diego ended on here was  
 25 that they claimed that Met should have done a cost of

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1 service study and should have looked at how these costs  
 2 are allocated. Met has done a cost of service study.  
 3 And in every rate cycle, there's a tremendous amount of  
 4 information in the administrative record about the  
 5 development of the annual rates for '98 to 2001.  
 6 And in doing those cost of service studies,  
 7 Met looked at all of the reasons why it incurs these  
 8 various different costs, not just dry year, but it  
 9 certainly did include the cost of storage, of drought  
 10 storage, and how the cost would be recovered. This  
 11 issue has been analyzed. It is not mysterious where the  
 12 costs are recovered from, and it's all mentioned in  
 13 Met's rate structure. So we don't think that should be  
 14 an outstanding issue.  
 15 And so this issue at the end of the day where  
 16 they say that they want you to order Met to do a cost of  
 17 service study, we've done that, and Met has done that on  
 18 every rate-setting circle.  
 19 I would also add that that's not much of a  
 20 legal claim. To have a legal claim, San Diego would  
 21 have to show that there is, in fact, a cost being  
 22 misallocated. There is no law that says, go out and  
 23 study something and look at it further because we think  
 24 you didn't look at it quite closely enough.  
 25 So we think we've disproven this idea that

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1 there is any cost causation in the sense that San Diego  
 2 is looking to. But the various statutes in the  
 3 constitutional provisions they have sued under only  
 4 addresses the reasonable recovery of costs. There isn't  
 5 some kind of, you know, go out and study things more.  
 6 And we think we have studied it and have in every  
 7 rate-setting cycle.  
 8 But for San Diego just to say, they don't know  
 9 if they can prove this part of their case, that means  
 10 they lose. And we think we have affirmed that the case  
 11 doesn't have any merit because of how various different  
 12 costs.  
 13 Finally, a few clean up questions, Your Honor  
 14 asked about the reasonableness of the wheeling rates and  
 15 whether the documents or the written findings or those  
 16 of substantial evidence, that was towards the end of  
 17 your list of questions, the written findings are  
 18 in PTX 680 and Attachment 1 to PTX 680. That's the 1997  
 19 wheeling resolution and the explanation for it, but the  
 20 substantial evidence is not limited to that by any  
 21 means. The substantial evidence always supports  
 22 Metropolitan's wheeling. Those are contained, as I said  
 23 earlier, on page 18 through 20 and 74 through 87 with  
 24 respect to wheeling charges that are in our Trial Brief  
 25 and the transportation charges generally, pages 17 and

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1 18 and 45 to 61.  
 2 So this substantial evidence is a broad  
 3 inquiry and would also, as Your Honor determined,  
 4 testimony that was presented at trial. But there is no  
 5 requirement that the substantial evidence be in the  
 6 written findings. We have written findings there in  
 7 PTX 680 and are broader than that.  
 8 And so, I believe I addressed the principal  
 9 points in Your Honor's questions. And as to the other  
 10 issues that San Diego has raised today, we filed a very  
 11 long Post-Trial Brief, so I don't want to burden --  
 12 THE COURT: I've read it twice, and I will be  
 13 reading it again.  
 14 MR. HIXSON: It is good reading. I encourage  
 15 everyone to read that. All right. Thank you.  
 16 THE COURT: I think it does qualify as the  
 17 longest brief I have had since I have been on this job.  
 18 MR. KEKER: Your Honor, could I respond, ten  
 19 minutes?  
 20 THE COURT: All right. Let's do that.  
 21 REBUTTAL ARGUMENT  
 22 MR. KEKER: On the last point about dry year  
 23 peaking, the only evidence in the record is that there  
 24 are differences between the agencies. There is no  
 25 evidence in the record that there are no differences.

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1 And they have admitted in their interrogatory  
 2 answers that these drought storage facilities are in the  
 3 System Access Rate and they have admitted in their  
 4 Slide 147 -- I won't bother to put it up -- they say it,  
 5 just go look at their administrative record Slide 147,  
 6 they say, regulatory storage, dry year storage -- there  
 7 it is at the bottom.  
 8 A portion of regulatory storage costs goes  
 9 into the System Access Rate. So the points that were  
 10 just made are flat out wrong. And our point again is  
 11 they go do a cost of service study and tell us what the  
 12 answer is.  
 13 Now, I think we really joined the argument.  
 14 The question is can Met set a wheeling rate without  
 15 reference to cost of service causation principles. What  
 16 we know that the System Access Rate is greater than it  
 17 should be, if they use cost of service principles. The  
 18 Water Storage Rate shouldn't be there if they use cost  
 19 of service principles. That's the big question. And  
 20 now we have the answer. It was just given.  
 21 Could I see Met Slide 1339. And this was  
 22 joined with --  
 23 It is the opening slide, Jeff, first one.  
 24 And this was joined when you -- you were  
 25 asking questions about this. How can all of the fixed

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1 costs go into a wheeling rate. And the answer was that  
 2 because your member agency -- maybe you couldn't if you  
 3 are not a member agency, but because the member agencies  
 4 are there when things started, it's okay for us to make  
 5 sure to apply the hold harmless principle and make sure  
 6 that no member agencies ever gets out of buying full  
 7 price Met water. But that's okay. That's a decent way  
 8 to have things work.  
 9 They cite the American Water Works  
 10 Association, which talks about rates should reflect cost  
 11 causation and not be determined by replication of the  
 12 fixed and variable nature of costs from any accounting  
 13 or budgeting perspective. It also comes up in the AWW  
 14 manual. The point -- this is exactly what you can't do  
 15 under cost causation analysis. You can't go back and  
 16 sort of generalize and say, because we have gotten fixed  
 17 costs and because you were there at some point in the  
 18 past, it is okay for us to charge them and apply the  
 19 hold harmless principle.  
 20 Remember that these fixed costs, they thought  
 21 about taking care of these fixed cost in another way.  
 22 It's called the "commitments way." It is in the  
 23 evaluation metrics -- matrix. And there instead of  
 24 letting people slide on and off the system willy-nilly,  
 25 you could say, you have got to commit to pay our portion

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1 of fixed costs and whether or not you buy our water,  
 2 just like they do in the State Water Project. And what  
 3 Mr. Thomas, the CFO, decided in his matrix was that that  
 4 was the only way to do it that would encourage wheeling,  
 5 would facilitate wheeling.  
 6 This argument completely ignores the Water  
 7 Code and the command to facilitate wheeling, to charge  
 8 fair compensation, which is limited to the costs of the  
 9 owner, it just -- they are just making it up, and it  
 10 completely ignores Prop 26, Prop 13, which says there's  
 11 got to be a cost causation connection between them, but  
 12 so -- and I think this argument has been joined in a  
 13 very meaningful way. You can see exactly what they are  
 14 saying. You can say, it's okay for us to take costs  
 15 that cannot be causally related to anything except the  
 16 fact that we need to pay them and if we don't do  
 17 something about it, some of our member agencies who  
 18 don't wheel are going to have to pay more.  
 19 And he spent a long time in the beginning  
 20 talking about how much wheeling is small compared to  
 21 what they buy from the State Water Project. And we --  
 22 that's -- that is almost exactly the point.  
 23 Most of the water -- most of their revenues  
 24 come from sales of water from the State Water Project to  
 25 their member agencies. And they get a billion dollars

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1 for that. Wheelers are a small piece, but remember what  
 2 the member agencies complained about when they began  
 3 the -- when they saw what San Diego's position was.  
 4 This is PTX 171, you remember the Los Angeles -- 19 of  
 5 the member agencies say, hey, wait a minute, if you do  
 6 cost causation, the way San Diego wants you to, it is  
 7 going to shift to supply costs and cost us \$30 million a  
 8 year. It's going to be 30 million-dollar a year benefit  
 9 to San Diego. Over 20 years it's going to be an  
 10 800 million cost-shifting onto supply from  
 11 transportation. And over the life of the exchange  
 12 agreement, it's going to be \$3 billion. And all of that  
 13 is because, yes, most of the time everybody pays full  
 14 service, and it doesn't matter how it's allocated.

15 We're talking about that shift. And what they  
 16 are saying is, we don't have to shift at all. And what  
 17 we're saying is, yes, you do. You have to have a fair  
 18 and meaningful and reasonable cost of service analysis  
 19 from wheeling. So it is what the Water Code tells you  
 20 to do; it is what Prop 26 tells you to do; it is what  
 21 common law said and so on. And I think by now we all  
 22 get it.

23 And if this right to wheel in the State Water  
 24 Project is meaningful at all -- we said it's de minimus;  
 25 we have said it is not meaningful; but go evaluate it,

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1 go figure it out, go tell us what it's worth; whether it  
 2 is worth a quarter or dollar or whatever. They haven't  
 3 begun to try to do that.

4 The "Griffith" -- they've misrepresented  
 5 "Griffith," as far as we're concerned. The first  
 6 "Griffith" I said dealt with regulatory fees and the  
 7 second "Griffith," regulatory fees, which are completely  
 8 different. We've done that in the brief. But the  
 9 second "Griffith," I have got a quote from page 601 of  
 10 "220 Cal App. 4th." The plaintiff acknowledges  
 11 defendant apportioned the augmentation charge among  
 12 different categories of users; metered wells, unmetered  
 13 wells, wells within the delivered water zone. But he  
 14 argues that Palmdale holds at Prop 218 proportionality  
 15 compares a parcel-by-parcel proportionality analysis,  
 16 and that they disagreed with that.

17 They said that that's not -- some disparate  
 18 treatment is okay, but that's all they said. And the  
 19 description of "Griffith" that was just given was  
 20 unrecognizable.

21 And the reason -- by the way, just so it is  
 22 obvious, the reason wheeling is so de minimus and people  
 23 don't go out and buy water is because the rate has been  
 24 set unfairly high. San Diego made a deal to deal with  
 25 that over that five-year, no-suit provision. But now

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1 here we are. We're saying the wheeling rate is  
 2 unreasonably high.

3 This idea that they have quantified something  
 4 about capacity, about the relationship of the water  
 5 stewardship rate to capacity, and what he listed were  
 6 the capacity charge, which is irrelevant because it  
 7 deals with the size of the pipes in summer capacity,  
 8 not -- the dry year peaking is not a question of the  
 9 size of the pipes; the dry year peaking is a question of  
 10 how much water do you have to keep around and save year  
 11 to year so that when people hit you.

12 They cited a couple of exhibits, 18 and 154  
 13 that are not the administrative record, I might add; but  
 14 what they talked about is a one-to-one saving, if you  
 15 could save; but when you can save one-to-one on imported  
 16 water, that's a supply saving. That doesn't prove  
 17 anything about a capacity saving. I forgot to mention  
 18 before the FCS report, which is in the 2012 record,  
 19 which says specifically that Tier 2 pricing doesn't  
 20 solve the problem of no quantification.

21 So there is nothing in this record that shows  
 22 that they have saved a nickel in building out the  
 23 program, building out the conveyance system because  
 24 of -- because of the Water Stewardship Rate and  
 25 Conservation Program. Certainly there is a lot in the

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1 record that shows they've saved tremendously on having  
 2 to buy imported water, the supply charge.

3 And with that, I want to thank you for your  
 4 patience and sit down.

5 THE COURT: Very critical. Thanks for the  
 6 help.

7 I would appreciate counsel arranging for the  
 8 transcript of today's argument to be delivered to me. I  
 9 will find that very helpful as I have the other items.  
 10 And I'll get something out to you when I can.  
 11 Obviously, it is not going to be within the standard 15  
 12 days. I think it will probably take a little bit longer  
 13 than that. But what I do send out will be a tentative  
 14 ruling and combined with a proposed Statement of  
 15 Decision, essentially the same document as far as I'm  
 16 concerned, and it frees up the time period for the  
 17 parties to file objections.

18 If the parties believe that they need more  
 19 than the time period allocated for objections, which I  
 20 think is 15 days, feel free to ask me for more time. We  
 21 have the flexibility under the rule to do that. But  
 22 have a look at it first and see what you think you need,  
 23 and we'll take it from there.

24 Thank you so much of for your help.  
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(Whereupon, the proceedings concluded at 12:05 p.m.)

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REPORTER CERTIFICATE

I, RHONDA R. HARRIS, Certified Shorthand Reporter, do hereby certify that I am an Official Pro Tem Reporter for the Superior Court of the State of California, and that as such I reported the proceedings had in the above-entitled matter at the time and place set forth herein.

That my stenographic notes were thereafter reduced to typewriting under my direction; that the foregoing pages is a true record of the proceedings and constitute a full, true and correct transcription of my said notes.

That I am neither counsel for, related to, nor employed by any of the parties to this action in which the foregoing proceedings were taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunder subscribed my hand this 24th day of January 2014.



RHONDA R. HARRIS, CSR No. 7414

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