



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

February 1, 2018

Ms. Maureen Stapleton
General Manager
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123

Dear Ms. Stapleton:

I would like to bring your attention to Metropolitan's staff recommendation in our budget proposal for fiscal years 2018/19 and 2019/20 and how those recommendations impact the San Diego County Water Authority (SDCWA) and its member agencies with regard to the exchange agreement.

As you are aware, the exchange agreement between Metropolitan and SDCWA sets the price Metropolitan charges SDCWA for exchanging conserved water made available to SDCWA from the Imperial Irrigation District and canal lining, with water Metropolitan delivers to SDCWA, at Metropolitan's transportation rates. In the rate litigation brought by SDCWA challenging Metropolitan's transportation rates, the appellate court ruled Metropolitan may collect State Water Project transportation costs as part of Metropolitan's transportation rates. The proposed rates for 2019 and 2020 accordingly comply with that ruling and continue to collect State Water Project transportation costs in Metropolitan's transportation rates.

The appellate court also found the administrative record before it for the rates in 2011 through 2014 did not support Metropolitan's Water Stewardship Rate allocation to transportation rates, but the court did not address the allocation in subsequent years based on a different record. Metropolitan's policies have supported the belief that conservation and local resource development reduce the demand for imported supplies, which reduces the costs to build, expand, operate, and maintain transportation facilities. In our view, this has a regional benefit for all of Southern California. As you are aware, the issue of avoided costs and their application to transportation rates was not actively briefed or litigated in the cases.

Based on the appellate court decision, we believe this matter merits further study. Later this year, staff intends to begin an internal process with input from the member agencies to further study and determine the most appropriate cost allocation of the Demand Management cost function. This would be an open and transparent process with scheduled workshops and allow for review and comment by all member agencies and Metropolitan's Board. While this review is being conducted, staff is proposing that Metropolitan not bill any amount of the Water

Ms. Maureen Stapleton

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Stewardship Rate on exchange agreement deliveries for calendar years 2019 and 2020. The Water Stewardship Rate would continue to be a part of Metropolitan's full service water rate and the rate for wheeling service. This issue would be revisited in the next biennial budget and rate setting cycle for years 2021 and 2022 when the decision by Metropolitan's Board would be informed by the completed study of the Demand Management cost function.

As for 2018, Metropolitan's previously approved rates include the Water Stewardship Rate as a transportation cost. Staff is further recommending that Metropolitan suspend billing and collecting the current Water Stewardship Rate on exchange agreement deliveries for calendar year 2018. This recommendation cannot become effective without Board authorization, so staff will continue to bill and collect Metropolitan's adopted transportation rates at least through April 2018 when the Board considers this proposal. If the Board adopts staff's recommendation to suspend billing and collecting the Water Stewardship Rate on the exchange agreement deliveries, such monies collected through April 2018 would be refunded to SDCWA.

At this time, this is only a staff recommendation that will be included as part of the proposed biennial budget for fiscal years 2018/19 and 2019/20 to be voted on by the Board in April 2018. We do not believe this approach is mandated by the appellate court decision; rather, we believe this is the most equitable approach given our state of information at this time and the guidance we have received from the appellate court. Metropolitan's Board may very well adopt an approach to these issues other than staff's recommendation.

If you have any questions, please feel free to call me.

Sincerely,



Jeffrey Kightlinger
General Manager

cc: Metropolitan Board of Directors
San Diego County Water Authority Board of Directors



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

March 21, 2018

VIA EMAIL AND FEDERAL EXPRESS

Mark J. Hattam
General Counsel
San Diego County Water Authority
4677 Overland Avenue
San Diego, California 92123-1233

Re: Response to Public Records Act Request Dated March 11, 2018
Response to Request for Data and Proposed Methodology Dated March 11, 2018

Dear Mr. Hattam:

We received your letter dated Sunday, March 11, 2018, which was sent to Metropolitan Board of Directors Chairman Randy Record and the Metropolitan Board of Directors via email at 10:31 p.m. on that date, which among other things contains a Public Records Act (“PRA”) request in section III (“2018 request”) and a request for data and proposed methodology in section IV. A copy of your request is attached.

Public Records Act Request

This response is made in compliance with California Government Code Section 6253(c), which requires an agency to notify a person making a request within 10 days whether a request seeks disclosable records. We have determined that your request seeks disclosable records, with the exception of Metropolitan’s financial planning model, which is exempt from disclosure under Government Code Section 6254.9(a) as a proprietary computer software program developed by Metropolitan that contains nondisclosable formulas and programming code. The model is also not subject to disclosure under Government Code Section 6254(k), Evidence Code Section 1060, and Civil Code Section 3426.1 as confidential, proprietary material that derives independent economic value from not being generally known. The model is further not subject to disclosure under Government Code Section 6255(a) because the public interest in preserving its confidentiality clearly outweighs any asserted public interest in disclosure.¹

¹ SDCWA already received the financial planning model through the *SDCWA v. Metropolitan* rate litigation, subject to the parameters and restrictions of the Court’s protective order, so SDCWA has had full opportunity to view it and understand its operations.

Mr. Mark J. Hattam

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Metropolitan will provide disclosable records as explained below, to the extent they: (1) are not already posted on Metropolitan's website at www.mwdh20.com, (2) have not already been provided to the Metropolitan Board of Directors, and/or (3) have not already been provided to SDCWA in response to its prior PRA requests or in connection with the *SDCWA v. Metropolitan* litigation.

Your 2018 request incorporates paragraphs 1-8 of an attached letter dated February 18, 2016 ("2016 request") in which the San Diego County Water Authority ("SDCWA") made previous requests under the PRA. Paragraphs 7 and 8 of the 2016 request concerned records pertaining to Metropolitan's 2015 IRP Technical Update Issue Paper Addendum and IRP 2015 Update. Metropolitan previously responded to those requests in 2016.

Paragraphs 1-6 of the 2016 request concerned records pertaining to the budget, rates, and charges proposed in 2016, and Metropolitan also previously responded to those requests in 2016. We have assumed you intended Metropolitan to interpret the 2018 request's reference to paragraphs 1-6 to include modifications to concern records pertaining to the fiscal years 2018/19 and 2019/20 proposed budget and calendar years 2019 and 2020 proposed rates and charges, and so we have done so. The 2018 request further asks for "any other 'input' MWD relied on to establish the 2018 proposed rates and charges for calendar years 2019 and 2020." We interpret this additional language as referring to "any other input into the financial planning model that MWD relied on to establish the 2018 proposed rates and charges for calendar years 2019 and 2020." The requested records have already been posted on Metropolitan's website for public review between February 1 and March 14, 2018 at the following locations:

- <http://www.mwdh20.com/WhoWeAre/Pages/proposed-budget-rates.aspx>
- <http://www.mwdh20.com/WhoWeAre/proposed-property-tax-rates>

Of these records, some of the file names at the following location, posted since March 8, 2018, were modified to accommodate the naming conventions required by Metropolitan's website:

- <http://www.mwdh20.com/WhoWeAre/Management/Financial-Information/Pages/2018-Underlying-Materials.aspx>

The identical records, but with the original file names, will be provided to you on a disc. For example, the files from the "Biennial Budget Reports\Labor Distribution by Org Report\Proposed plus 1" folder on the disc were renamed on the website by adding the prefix 'PP1' to each of the files posted on the website. In the posting and on the disc, proprietary formulas and programming code have been removed from spreadsheets, and employee-specific information has been redacted.

Additionally, your 2018 request asks for "a functional copy of the 2018 Budget Document." Metropolitan interprets this request as referring to the proposed Biennial Budget for Fiscal Years 2018/19 and 2019/20, which was provided to Metropolitan's Board of Directors, including the

Mr. Mark J. Hattam
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SDCWA delegates, on February 1, 2018, and has been posted for public review on Metropolitan's website since that date at the following location:

- <http://www.mwdh2o.com/WhoWeAre/Pages/proposed-budget-rates.aspx>

There is no such record as a "functional copy" of that document.

Finally, your 2018 request asks for the "Financial Planning Model Manual Mr. Van den Berg identified and described during his deposition on May 11, 2017." This will be provided with redaction of the confidential log-in information to the model pursuant to Government Code Section 6255(a), because the public interest in preserving its confidentiality clearly outweighs any asserted public interest in disclosure.

Enclosed is a disc containing the above-described disclosable Metropolitan records provided in response to your PRA request, except as previously posted or provided. Because Metropolitan's budget-setting and rate-setting process is still in progress, the disc contains materials through the Public Hearings held on March 13, 2018.

Response to Request for Data and Proposed Methodology

Your request for data and proposed methodology was made under California Government Code Section 54999.7(e). As Metropolitan has explained in detail in the *SDCWA v. Metropolitan* litigation, and as SDCWA previously agreed, Section 54999.7(e) does not apply to Metropolitan. As you are aware, the California Court of Appeal did not decide the issue of Section 54999.7(e)'s application, finding instead that whether or not the statute is applicable, Metropolitan has complied with it. (*SDCWA v. Metropolitan* (2017) 12 Cal. App. 5th 1124, 1154 ["Whether or not the statute applies, it has not been violated."].) Metropolitan maintains that Section 54999.7(e) does not apply.²

Nonetheless, as part of its regular budget-setting and rate-setting process, Metropolitan provides to the Board, member agencies and the public the detailed data and proposed methodology for the proposed rates and charges, through the budget and rate Board letters, proposed budget, cost of service report, presentations and discussions at the multiple committee and Board meetings and workshops. Again, this material is posted on Metropolitan's website at the following locations:

- <http://www.mwdh2o.com/WhoWeAre/Pages/proposed-budget-rates.aspx>
- <http://www.mwdh2o.com/WhoWeAre/proposed-property-tax-rates>

² Your letter also included a written request for notice under California Government Code Section 54999.7(d). Aside from the inapplicability of Section 54999.7(d), SDCWA made this request for notice of a public meeting concerning rates or charges after Metropolitan had already provided such notice to the Board and public, so the request is moot.

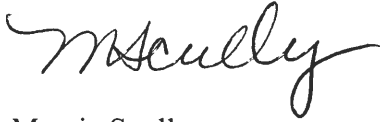
Mr. Mark J. Hattam

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As the staff continues to work on budget and rate matters in response to requests from the Board and direction from management until final adoption of the budget and rates, the webpages stated in this letter will continue to be updated.

Very truly yours,

A handwritten signature in black ink, appearing to read "mscully", written in a cursive style.

Marcia Scully
General Counsel

Enclosure: Disc (via Federal Express only)



San Diego County Water Authority

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

March 11, 2018

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

MEMBER AGENCIES

- Carlsbad Municipal Water District
- City of Del Mar
- City of Escondido
- City of Imperial Valley
- City of Lancaster
- City of San Diego
- Escondido Municipal Water District
- Imperial Water District
- Imperial Valley Water District
- Orange Water District
- Palmdale Municipal Water District
- Palmdale Water District
- San Jacinto Municipal Water District
- San Marcos Municipal Water District
- San Diego County Water District
- San Diego Metropolitan Water District
- San Diego Water District
- San Felipe Irrigation District
- South Bay Irrigation District
- Valle Vista Water District
- Valley Center Municipal Water District
- Water Irrigation District
- Yuma Municipal Water District

RE: March 12 Finance and Insurance Committee/Budget and Rates Workshop #3
Agenda Item 8: Budget and Rates Workshop #3

March 13, 2018 Board Meeting Agenda Item 4 Public Hearings

Public hearing to consider whether to continue suspending the tax rate limitations in Section 124.5 of the Metropolitan Water District Act to maintain the ad valorem tax rate for fiscal years 2018/19 and 2019/20

Public hearing on proposed water rates and charges for calendar years 2019 and 2020 to meet revenue requirements

Dear Chairman Record and Board Members:

On behalf of the San Diego County Water Authority, the purpose of this letter is to make a formal request for records as stated below, and, provide high level comments and questions on Board Memo 8-1 dated February 13, 2018 setting this combined public hearing and Information Board Memo 9-2 of the same date on the subject: Proposed biennial budget and revenue requirements for fiscal years 2018/19 and 2019/20; proposed water rates and charges for calendar years 2019 and 2020 to meet revenue requirements for fiscal years 2018/19 and 2019/20; ten-year forecast; and Cost of Service Report (collectively, the "Budget Document").

I. The Budget Document lacks sufficient detail to track past or proposed expenditures, or determine how MWD has allocated its costs to arrive at the proposed rates and charges

The Water Authority's board representatives have repeatedly requested that staff provide projected actual expenditures by line item and category as part of the budget and rate setting process. This information is essential to meaningful deliberation of MWDs proposed revenue requirements and is standard industry practice in budgeting and rate setting for public utilities. While we are aware that the PowerPoint slides for March 12 include "budget vs actual" charts, they do not provide the level of detail needed for meaningful review. We request again that the data by line item and category be provided, in addition, and that the projected actuals be included where budget data is presented in

the final Budget Document.

II. MWD's Cost of Service methodology is flawed because it fails to analyze cost causation or account for or assign costs by customer class

Separate and apart from the fact that it is not possible to replicate how MWD has assigned its costs to rates without access to its rate model, the underlying methodology is obviously flawed due to MWD's failure to analyze or account for the varying demands and service characteristics of its 26 member agencies, which MWD admits exist. One of the basic principles of cost of service and ratemaking is to group customers with similar demand and usage patterns in common categories (classes), so that costs may be assigned to the customer classes that cause these costs to be incurred. In spite of the different service patterns and use characteristics of MWD's member agencies, MWD has simply declared by legislative fiat that it has only one customer class.

Historically, MWD has claimed that Proposition 26 and cost of service requirements do not apply to its rates, and that the only test is one of "reasonableness." Although the Court of Appeal in the 2010/2012 Rate Case clearly applied Proposition 26, MWD persists in insisting that Proposition 26 and cost of service requirements do not apply to MWD's rates.¹

III. Request for public records under California Public Records Act (Gov. Code § 6250 *et seq.*)

As you know, the Water Authority is seeking public disclosure of the rate model MWD uses to allocate costs and set its rates and charges. We filed a Public Records Act (PRA) request on February 18, 2016 (Attachment 1), requesting disclosure of the 2016 rate model and various data, analyses and studies as described in paragraphs 1-8 of that letter. We hereby make formal demand for the 2018 rate model and all supporting data as described in paragraphs 1-8 and any other "input" MWD relied on to establish the 2018 proposed rates and charges for calendar years 2019 and 2020. We also request:

1. A copy of the "Financial Planning Model Manual" Mr. Van den Berg identified and described during his deposition on May 11, 2017 (at pages 69-72).
2. A functional copy of the 2018 Budget Document as it is maintained in the ordinary course of business, in which the links are not disabled.

IV. Written Request for Notice (Gov. Code §54999.7(d); Request for Data and Proposed Methodology for Establishing Rates and Charges (Gov. Code § 54999.7(e))

The Water Authority hereby makes formal request to be provided with all of the data and proposed methodology MWD will rely upon for establishing rates, charges and surcharges or fees for 2019 and 2020 in accordance with the above-listed Government Code provisions. The Water Authority and its MWD board delegates have previously requested this information but thus far none has been provided except as contained in the Budget Document.

With only one month remaining before the MWD board votes on the proposed rates and charges, not all of the underlying data "input" has been provided to MWD's member agencies or the public except in the summary form contained in the Budget Document. Obviously, not all information has been made available prior to the public hearing on March 13, 2018. Given MWD's assertions about the complexity of its ratemaking process, with a rate model that purportedly consists of more than 350,000 mathematical formulas, links and calculations, MWD's failure to provide the requested information is wholly unacceptable and contrary to law.

V. There is no demonstrated justification for suspension of the ad valorem tax rate limitation

As expressed by the Water Authority on many prior occasions, Section 124.5 of the MWD Act allows the board to suspend the tax limitation, but only after it finds that the suspension is "essential to the fiscal integrity of the district." The purported reason for the proposed suspension in 2019 and 2020 is to "pay for growing State Water Contract costs" and to "help maintain a balance between fixed and variable revenues, and reduce the impact of future water rate increases." However, this justification is not supported by data and is flawed.

First, the proposed tax rate suspension—in order to "reduce the impact of future water rate increases—is contrary to the legislative history of Section 124.5, which expressed the intent that taxes be reduced and that user rates and charges constitute the great preponderance of MWD's revenues. A greater reliance on rates over taxes also better allows costs to be assigned to the customer groups that cause specific costs to be incurred.

While MWD's objective of maintaining a balance between fixed and variable revenues is certainly proper, reducing the very charges the Legislature provided to MWD to be used in lieu of property taxes is inconsistent with that objective. The proposed suspension of the tax rate will increase MWD's tax revenues by 16 percent between 2018 and 2019, but the readiness-to-serve (RTS) charge is proposed to decrease by 5 percent during the same period. In fact, the pattern of *decreasing* RTS and *increasing* tax revenues carries forward in the proposed financial forecast.

When comparing the financial forecast proposed in this budget and the one adopted in 2016, MWD is projecting a higher tax revenue trend (staff is apparently planning to continue the tax rate limitation suspension indefinitely), and a lower RTS collection during the same period. As an example, in 2026, the projected RTS collection would be 15 percent lower than that projected for the same year in the 2016 biennial budget, while the projected tax revenues for the same year (2026) is 5.5 percent higher than previously forecasted.

Finally, MWD staff reported that State Water Contract (SWC) costs are projected to be reduced from what was previously forecast due to delayed implementation of WaterFix and MWD's staff's successful negotiation with Department of Water Resources to reduce future expenditures. Since

these costs are less than the fiscal year 2018 budgeted SWC costs (and the SWC costs forecasted in the adopted financial forecast for fiscal year 2019), staff's justification for the tax rate limitation suspension -- because it purportedly is needed to cover "growing" SWC costs -- is baseless.

VI. The purported PAYGo Funding policy and "Resolution for Reimbursement" would allow revenues to be collected for one purpose but used for another without any consideration of or adjustment for cost of service requirements

The Water Authority strongly opposes the so-called "Resolution for Reimbursement." MWD apparently plans to use PAYGo revenues as a discretionary fund, by adopting a "Resolution for Reimbursement" to allow the use of revenues from PAYGo to pay for operations expenses, before a need is even identified. This resolution would authorize staff to prospectively collect \$120 million annually for one purpose (CIP) but then potentially use it for another purpose (O&M or California WaterFix). This is not only an unsound fiscal strategy lacking in transparency, but it also deliberately avoids any accountability ("true up") or tie to cost of service. The board should make a decision now on whether to raise rates, plan to borrow money or, notably, reduce costs rather than engage in the gimmick of the proposed Resolution.

VII. Demand that MWD set aside principal and prejudgment interest at 10% for the WSR Exchange Agreement overcharges consistent with Court of Appeal decision

In February Board Memo 9-1, the following is stated on page 5:

"Metropolitan holds \$52.8 million in its financial reserves in accordance with the set-aside provision of the 2003 Amended and Restated Exchange Agreement between Metropolitan and SDCWA (exchange agreement). This amount includes \$51 million associated with exchange agreement water deliveries from January 2011 through October 2017 and \$1.8 million in accumulated interest earned thereon, based on Metropolitan's investment portfolio."

We believe this set-aside is too low, and not in compliance with the Court of Appeal's decision, where the Court stated, on pages 1155-56 of its decision:

"Metropolitan contends the statutory rate of interest was wrongly used in the original proceedings because the exchange agreement stipulates a contractual rate. This contention is unsupported by the terms of the exchange agreement, as the trial court rightly held."

MWD is well aware that the prejudgment interest rate found by the trial court is 10 percent, not the rate "based on Metropolitan's investment portfolio." Our calculations show that the actual amount that should be reserved by MWD through 2018 is approximately \$87 million, which includes both principal and prejudgment interest – leaving about a \$34 million deficit in what MWD is now actually

withholding and reporting to the Board. If MWD's Board approves not charging the Water Stewardship Rate (WSR) to the Exchange Agreement water through the rest of 2018, that total will of course drop slightly. Demand is hereby made by the Water Authority that MWD properly set aside all principal and prejudgment interest at 10% for the WSR Exchange Agreement overcharges through 2018, or any earlier date the MWD board may end the overcharges in 2018.

VIII. Demand that MWD not impose its Water Stewardship Rate on any wheeled water

In February Board memo 9-1, MWD seeks approval by its Board to suspend imposition of WSR charges on Exchange Agreement water, while still imposing them on other wheeling transactions. For example, see page 5 of February Board memo 9-1, which states that the reduction applies only to Exchange Agreement water, with no mention of other wheeled water:

"[I]t is proposed that the Water Stewardship Rate will not be billed on the exchange agreement deliveries for CYs 2019 and 2020, with Metropolitan foregoing any collection of these amounts during this study period. Further, it is recommended that Metropolitan suspend billing and collecting the current Water Stewardship Rate on exchange agreement deliveries in CY 2018."

See also page 102 of Attachment 3 to the above document, which makes clear wheeled water would be assessed WSR charges (emphasis added): "All system users (member agency or third parties) will pay the same proportional costs for existing and future conservation and recycling investments."

However, the Court of Appeal's ruling was based on the Wheeling Law (Water Code sections 1810 *et seq.*), and the Court found that under that law MWD cannot charge the WSR on wheeled water: "A water agency's payments to its members to encourage water conservation is outside the scope of recoverable costs contemplated by the wheeling statutes." *Id.* at 1150.

MWD's decision to impose WSR charges on wheeled water is in clear violation of the Court of Appeal's decision, and thus unlawful. Though we appreciate the fact that MWD staff recommends not making unlawful charges against the Exchange Agreement, it is clear that MWD may not impose the same unlawful charges to all other wheeling transactions. Demand is hereby made by the Water Authority that MWD not adopt rates that allow for WSR charges to be assessed against wheeled water.

IX. Request for calculation of offsetting benefits under the Wheeling Statute

As you are aware, the Court of Appeal determined that the Wheeling Statutes apply to the Exchange Agreement between MWD and the Water Authority. Accordingly, under Water Code § 1811(c), and consistent with MWD Board Resolution 8520, MWD must calculate the offsetting benefits of the Water Authority's Exchange Agreement water. Because MWD's wheeling rate, and the Water Authority's price under the Exchange Agreement, is calculated in part based on the setting of MWD's

annual rates, MWD should perform this calculation now as part of this budget and rate-setting cycle, so that these costs may properly be reflected in MWD's budget, and long term planning and disclosure documents. The Water Authority identified this issue to MWD last November as a litigation issue remaining to be resolved between MWD and the Water Authority, but as you are aware, the MWD and Water Authority negotiating teams have not yet met.

X. Conclusion

Our MWD board representatives have additional policy questions and comments that will be presented separately.

Sincerely,



Mark J. Hattam
General Counsel

Attachment: Water Authority's Public Records Act request for MWD rate model, dated February 18, 2016

cc: MWD Board of Directors
Water Authority Board of Directors
Maureen Stapleton, General Manager

ⁱ Contrary to a recent public statement by one of Metropolitan's attorneys, the Court of Appeal did in fact apply Proposition 26 to Metropolitan's rates.

Ms. Dawn Chin
February 18, 2016
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- Printed matter (including published articles, speeches, newspaper clippings, press releases, and photographs); and
- Microfilm and microfiche, disks, computer files, electronically stored data (including the metadata associated with any such written and/or spoken content), electronically stored information, electronic devices, film, tapes, and other sources from which information can be obtained, including materials used in electronic data processing. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. "Electronically stored information" means information that is stored in an electronic medium, including data, metadata, and all electronically stored data or information.

The term "related to," as used in each category of public record listed below, means directly or indirectly, in whole or in part, comprising, referring to, concerning, evidencing, connected with, commenting on, affecting, responding to, showing, describing, discussing, analyzing, reflecting or constituting.

The term "rate model," as used in each category of public record listed below, means all documents, data, analyses, calculations, studies or other information that constitute, comprise, support or describe the manner in which MWD assigns costs to rates, including but not limited to its "financial planning model," including the spreadsheet, formulas and programming code.

If a record responsive to a request was, but no longer is, in your possession, custody, or control, state precisely what disposition was made of it (including its present location and who possesses or controls it) and identify the person(s) who authorized or ordered such disposition.

Records produced in response to this request should be produced as they are kept in the usual course of business or should be organized and labeled to correspond with the categories in the request. All electronically stored information shall be produced in its native format with all metadata intact.

The requested records are:

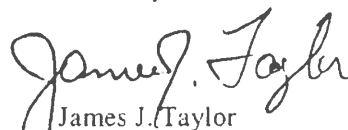
1. Any rate model or models used in formulating proposed rates for the 2017 and 2018 calendar years.
2. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting the rates and charges proposed for the 2017 and 2018 calendar years, as described in MWD Board Memo 9-2 dated 2/9/2016 (Finance and Insurance Committee).
3. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting a proposed reduction of the Readiness-to-Serve and Capacity Charges for 2017.
4. All data, analyses and studies, if any, demonstrating the proportionate benefit each of MWD's 26 customer member agencies will receive from the expenditure of revenues collected from the rates and charges proposed for the 2017 and 2018 calendar years.
5. All data, analyses and studies, if any, that support the conclusion that demand management programs provide distribution and conveyance system benefits, including identification of those parts of the distribution and conveyance system where additional capacity is needed and the customer member agencies that benefit from that capacity being made available.

Ms. Dawn Chin
February 18, 2016
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6. All data, analyses, opinions and studies, if any, that support the conclusion that suspension of the property tax restriction in Section 124.5 of the MWD Act is essential to MWD's fiscal integrity, as described in MWD Board Memo 9-2 at page 3.
7. All data, analyses and studies, if any, supporting the findings, conclusions, recommendations and water supply development targets identified in MWD's 2015 IRP Technical Update Issue Paper Addendum.
8. All data, analyses and studies, if any, supporting the findings, conclusions, recommendations and water supply development targets identified in MWD's Integrated Water Resources Plan 2015 Update.

Within ten (10) days of receipt of this PRA request, please contact me at (858) 522-6791 to discuss whether MWD has records responsive to this request, the page count and cost of copying the records, and whether the documents are also available in electronic format.

Sincerely,


James J. Taylor
Acting General Counsel

cc: MWD Public Records Administrator (by email at pradministrator@mwdofmsa.com)



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

March 23, 2018

VIA EMAIL AND U.S. MAIL

Mark J. Hattam, General Counsel
San Diego County Water Authority
4677 Overland Avenue
San Diego, California 92123

Re: Your letter dated March 11, 2018 regarding March 12 F&I Committee/Budget and Rates Workshop #3, and March 13, 2018 Board Meeting Agenda Item 4 Public Hearings

Dear Mr. Hattam:

This letter addresses your comments, received via email on Sunday, March 11, 2018, at 10:31 p.m. (attached), making a formal request for records and providing “high level comments and questions” on Board Letters 8-1 and 9-2, both dated February 13, 2018. These Board Letters set a combined public hearing and provided information regarding proposals regarding Metropolitan’s Ad Valorem property tax rate, biennial budget, rates, and charges. On March 21, 2018, Metropolitan General Counsel Marcia L. Scully responded to your request for records. In this letter, the General Manager and General Counsel’s offices respond to your comments and questions, as they raise a number of financial and legal issues. We provide responses to the comments and questions in the same order listed in your March 11, 2018 letter.

I. “The Budget Document lacks sufficient detail to track past or proposed expenditures, or determine how MWD has allocated its costs to arrive at the proposed rates and charges”

Your request that staff provide “projected actual expenditures by line item and category as part of the budget and rate setting process,” is unclear. (See, 3/11/18 Ltr, p. 1.) We do not know what you mean by “projected actual expenditures,” as a budget is a forward-looking document that reasonably estimates expenditures in upcoming years. The purpose of a budget is to project the expenditures the agency reasonably expects to incur in the future budget period and Metropolitan distributed its proposed Biennial Budget for FY 2018/19 and FY 2019/20 on February 1, 2018. Thus, Metropolitan has already provided its projected expenditures for the next biennium period.

Mr. Mark J. Hattam

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March 23, 2018

You further request such “projected actual expenditures by line item and category” and state that it is “standard industry practice in budgeting and rate setting for public utilities” to provide this information. (See, 3/1//18 Ltr, p.1.) Metropolitan has provided its projected expenditures by line item and category in its proposed Biennial Budget, which contains:

- a) a budget summary, broken down by appropriations, funds, source of funds, operating revenue, capital funding, uses of funds, operations and maintenance (by organization and by expenditure type), capital investment fund, and fund balance and reserves, with each category further broken down for reference;
- b) a departmental/group budget, breaking down each department’s operations and maintenance (“O&M”) by expenditure section, and providing personnel summaries;
- c) an operating equipment budget;
- d) a nondepartmental budget for each of Metropolitan’s major cost categories: the State Water Project, CRA Power, Supply Programs, Demand Management, and Capital Financing; and
- e) a breakdown by category of costs for each nondepartmental budget.¹

Concurrently, Metropolitan also provided its 2018 Cost of Service Report, which explains Metropolitan’s allocation of the specific costs in the proposed Biennial Budget. The 2018 Cost of Service Report also contains an appendix with 159 pages of Cost of Service Tables. Such tables show costs by line item for departmental and nondepartmental costs and assign each line item to a cost function by percentage.²

On March 7, 2018, Metropolitan also provided its 185-page Capital Investment Plan (“CIP”) Appendix to the Biennial Budget. The CIP Appendix lists over 300 projects and a total project estimate for each project.³

¹ Metropolitan’s proposed Biennial Budget is available at:
<http://www.mwdh2o.com/WhoWeAre/Pages/proposed-budget-rates.aspx>.

² Metropolitan’s 2018 Cost of Service Report is available at:
<http://www.mwdh2o.com/WhoWeAre/Pages/proposed-budget-rates.aspx>.

³ Metropolitan’s CIP Appendix is available at:
<http://www.mwdh2o.com/WhoWeAre/Pages/proposed-budget-rates.aspx>.

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In addition, based on requests for data and other materials used to generate or supporting Metropolitan's proposed rates and charges, Metropolitan also provided further line item detail that form the bases of Metropolitan's Biennial Budget, which are available at:

<http://www.mwdh2o.com/WhoWeAre/Management/Financial-Information/Pages/2018-Underlying-Materials.aspx>.

Therefore, we do not know which "line item and category" you believe is missing from the information Metropolitan publishes in connection with its budget and rates process. Metropolitan meets industry standards and your letter does not identify the "standard industry practice" you claim Metropolitan fails to meet.

To the extent the detailed line-item information Metropolitan has provided is not the line-item detail you seek, please provide us with an example of the specific line-item budget that you find acceptable. We have reviewed SDCWA's proposed budget, for example, and do not find it provides more detailed budget information than does Metropolitan's Budget and the additional materials Metropolitan publishes.

II. "MWD's Cost of Service methodology is flawed because it fails to analyze cost causation or account for or assign costs by customer class"

You claim that Metropolitan's cost of service methodology is "obviously flawed" because Metropolitan only has one customer class and therefore purportedly fails "to analyze or account for the varying demands and service characteristics of its 26 member agencies." (3/1//18 Ltr., p. 2.) However, Metropolitan's rate structure does analyze and account for the varying demands by, and characteristics of the service to, its member agencies.

Metropolitan's unbundled rates and charges are designed to provide transparency regarding the cost of specific functions to member agencies (functional costs are recovered through appropriate rate elements), thereby ensuring that the member agencies pay only for the services they elect to receive. We have explained this in the Metropolitan Cost of Service Report, at pages 88-89, and also in the prior Cost of Service Report and letters. For example, please see the April 12, 2016 letter from Raftelis Financial Consultants, Inc. to Gary M. Breaux, which we provided to SDCWA. There, Mr. Rick Giardina⁴ explains that the AWWA M-1 Manual, which focuses on retail utilities, references classes of customers. However, he further explains that the manual

⁴ Mr. Giardina has over 39 years of utility finance and cost of service experience. More recently he served as the Vice Chair of the AWWA Rates and Charges Committee and in that capacity he was the Chair of the working group that produced the Sixth Edition of the M1 (published in 2012). He was also Chair of the Rates and Charges Committee and oversaw the preparation of the Seventh Edition of the M1 which was published in 2017. His resume was included as Attachment A to the April 12, 2016 letter.

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itself is clear that the classification of customers is not a requirement for any utility and may not apply to a wholesale utility such as Metropolitan. (RFC 4/12/16 Ltr, pp. 2-3.)

Indeed, we note that in SDCWA's Cost of Service Study, dated May 2017, Carollo Engineers, SDCWA's rate consultant, explains that classes of customers are not required for SDCWA, a wholesale water service provider with an unbundled rate structure. Carollo explains at pages 2-3 of its Study that SDCWA has an unbundled rate structure based on functional cost allocation, and not classes of customers. Carollo further explains that SDCWA's customer service and storage charges are "designed to account for annual fluctuations in water demands and demand patterns." And, those charges are set based on multi-year rolling averages of each of SDCWA's member agencies. (2017 SDCWA Cost of Service Study, pp. 26-27.) Additionally, Carollo explains at page 7 that although SDCWA's Act allows the Board to "establish reasonable classifications among different classes of customers," its General Counsel has advised that such language requires only "that rates be non-discriminatory and that differences in rates or rate apportionment be based on service differences." (Id. at 7.) As you know, Metropolitan also recovers costs based on functional cost allocation and also bases certain charges on multi-year rolling averages to account for annual fluctuations in water demands among its agencies. Thus, we do not understand your position that doing so is flawed, in light of your own practice.

III. "Request for public records under California Public Records Act (Gov. Code § 6250 et seq.)"

On March 21, 2018, Metropolitan General Counsel Marcia L. Scully responded to your request for records pursuant to the California Public Records Act (attached).

IV. "Written Request for Notice (Gov. Code §54999.7(d); Request for Data and Proposed Methodology for Establishing Rates and Charges (Gov. Code § 54999.7(e))"

On March 21, 2018, Metropolitan General Counsel Marcia L. Scully responded to your request for records pursuant to Government Code Section 54999.7 (attached). Although Ms. Scully explains therein Metropolitan's position that Government Code Section 54999.7 does not apply to Metropolitan's rates and charges, Ms. Scully directed SDCWA to records previously provided by Metropolitan to the Board of Directors and to the public and available on its website.⁵

In connection with this request, you also claim that Metropolitan has only produced a summary of information in the materials it provided in advance of its first Budget, Rates, and Charges

⁵ Your letter also included a written request for notice under California Government Code Section 54999.7(d). Aside from the inapplicability of Section 54999.7(d), SDCWA made this request for notice of a public meeting concerning rates or charges after Metropolitan had already provided such notice to the Board and public, so the request is moot.

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Workshop. (3/11/18 Ltr, pp. 2-3.) However, as explained in this letter, Metropolitan has provided detailed information regarding its budget and cost allocation methodology. In addition, Metropolitan has held three workshops in which staff made presentations further explaining the extensive material provided and answered questions directly from Metropolitan directors. Metropolitan's staff also holds monthly Member Agency Managers meetings with staff from each of its member agencies. SDCWA staff, like staff from any other agency, has the opportunity to discuss with Metropolitan staff matters pending before the Metropolitan Board.

V. "There is no demonstrated justification for suspension of the ad valorem tax rate limitation"

You claim that the proposal to suspend the limitation in Section 124.5 to permit Metropolitan to continue to maintain the current ad valorem ("AV") property tax rate is not supported by data and is flawed. (3/1//18 Ltr., pp. 3-4.) We direct you to the data supporting the recommendation to continue the suspension, which is available at <http://www.mwdh2o.com/WhoWeAre/Pages/FYs-2018-19-2019-20-proposed-property-tax-rates.aspx>. Additionally, we address herein your claim that the recommendation is flawed, which appears to be based on two points.

First, you state that a greater portion of Metropolitan's State Water Contract ("SWC") costs should be recovered from rates and charges than from AV property taxes. They are. Metropolitan's proposed Biennial Budget for FY 2018/19 and FY 2019/20 includes \$566.7 million and \$602.5 million, respectively, for SWC costs. (See, proposed Biennial Budget, p. 8.) The proposal to suspend the property tax limitation of Section 124.5 to continue the AV tax at .0035 percent of assessed valuations would permit Metropolitan to collect \$89.2 million in FY 2018/19 and \$93.4 million in FY 2019/20 from AV property taxes over the 124.5 limitation to offset SWC costs. (See, id. at p. 6; see also, 3/13/18 Presentation, Slide 8.) Thus, the proposal to continue to suspend the Section 124.5 limitation would allow for the collection of about 17 to 18 percent of Metropolitan's SWC costs in each fiscal year. The remaining approximately 82 to 83 percent of SWC costs would continue to be recovered directly from Metropolitan's member agencies through rates and charges.

Your suggestion that the AV property taxes and the Readiness-to-Serve ("RTS") charge are interchangeable ignores that under Metropolitan's cost allocation methodology, costs must be recovered pursuant to their functionalization. A reduction in AV tax revenue does not result in an equivalent increase in the RTS charge. However, if SDCWA believes these costs should be borne directly by the member agency and not by property owners within its service area, SDCWA may elect to pay that obligation. Metropolitan's Act, at Section 336, provides that any member agency "may elect to pay out of the agency funds of such agency, other than funds derived from ad valorem property taxes, all or the stated percentage, as the case may be, of the amount of tax which would otherwise be levied upon property within such agency." (Metropolitan Water District Act, § 336.)

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Second, you rely on erroneous information regarding the SWC costs in Metropolitan's Biennial Budget. SWC costs are lower in FY 2018/19 due to global cost reductions achieved by Water Resource Management staff and other State Water Contractors working with the Department of Water Resources. These reductions affect both the Delta Water Charge and the Transportation Charge capital and Operations, Maintenance, Power and Recovery (OMP&R). SWC costs then increase from this lower base beginning in FY 2019/20 and continuing throughout the ten-year forecast.

VI. "The purported PAYGo Funding policy and 'Resolution for Reimbursement' would allow revenues to be collected for one purpose but used for another without any consideration of or adjustment for cost of service requirements"

Your objection to the PAYGo policy and resolutions of reimbursement is misplaced. The objection is based on the premise that the determination of whether to use cash or debt is a cost allocation issue. It is not.

Moreover, Metropolitan uses debt proceeds for its capital expenses, whether it is to pay concurrent expenses or through reimbursement of expenses previously funded by cash.

Finally, it appears you are suggesting that it is not the Board that makes the decision as to a resolution of reimbursement. As stated in Metropolitan's February 13, 2018 Information Board Letter, at page 5, the resolution "will be provided to the Board for consideration and approval."

VII. "Demand that MWD set aside principal and prejudgment interest at 10% for the WSR Exchange Agreement overcharges consistent with Court of Appeal decision"

As you know, Metropolitan sets aside the exchange agreement payments that SDCWA disputes, and interest thereon, pursuant to Section 12.4(c) of the exchange agreement. Section 12.4(c) requires that Metropolitan set aside disputed amounts in an interest bearing account and that the prevailing party pay "all interest earned thereon" upon resolution of the dispute. That is what Metropolitan has done. Metropolitan has no separate statutory obligation to set aside statutory prejudgment interest in advance of a judgment. And as you know, the Court of Appeal's decision as to prejudgment interest addresses the interest rate that applies to any award of damages in that case, not to the amount Metropolitan must set aside pursuant to the contractual provision. (*See, SDCWA v. Metropolitan* (2017) 12 Cal.App.5th 1124, 1154-55.)

VIII. "Demand that MWD not impose its Water Stewardship Rate on any wheeled water"

Metropolitan does not "impose" its rates on its voluntary cooperative of member agencies. Pursuant to state statute, the Board, made up of each of those agencies' representatives, sets the rates applicable to the services Metropolitan provides to those same agencies. The Board will

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decide on April 10, 2018 whether to adopt the proposed rates and charges, which continue to properly include the Water Stewardship Rate.

As you know, the Court of Appeal held that the “record [before it] fail[ed] to support Metropolitan’s inclusion of the water stewardship rate as a transportation cost” for the years at issue, which were 2011-2014. (*SDCWA v. Metropolitan*, 12 Cal.App.5th at 1150.) And it confirmed that “the narrow question [in that appeal] is whether substantial evidence supports Metropolitan’s determination.” (*Id.* at 1151.) Thus, Metropolitan’s adoption of rates, including its Water Stewardship Rate, does not violate the Court of Appeal’s decision. Metropolitan’s proposed rates and charges are based on the administrative record before the Board at the time it adopts the rates and charges for the new biennium period.

IX. “Request for calculation of offsetting benefits under the Wheeling Statute”

The parties obviously disagree as to the interpretation of the Court of Appeal’s decision regarding the applicability of Water Code Section 1810, *et seq.* But what is clear is that the Court of Appeal decision does not address whether Metropolitan “must calculate the offsetting benefits of the Water Authority’s Exchange Agreement” fifteen years after the effectiveness of that agreement, as you demand (*SDCWA v. Metropolitan*, 12 Cal.App.5th 1124) and this has not been part of the parties’ litigation. Neither the Court of Appeal decision, nor any other law, requires that Metropolitan calculate any alleged “offsetting benefits.”

Based on the foregoing, Metropolitan has responded to the “high level comments and questions” in your March 11, 2018 letter. Should you have any further questions, please feel free to contact either of the undersigned.

Sincerely,



Gary Breaux
Assistant General Manager
Chief Financial Officer



Marcia Scully
General Counsel

cc: Metropolitan Board of Directors
SDCWA Board of Directors
Jeffrey Kightlinger, Metropolitan General Manager
Maureen Stapleton, SDCWA General Manager

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Attachments:

Letter dated March 11, 2018 regarding March 12 F&I Committee/Budget and Rates Workshop #3, and March 13, 2018 Board Meeting Agenda Item 4 Public Hearings

Letter dated March 21, 2018 re Response to Public Records Act Request dated March 11, 2018 and Response to Request for Data and Proposed Methodology dated March 11, 2018

the final Budget Document.

II. MWD's Cost of Service methodology is flawed because it fails to analyze cost causation or account for or assign costs by customer class

Separate and apart from the fact that it is not possible to replicate how MWD has assigned its costs to rates without access to its rate model, the underlying methodology is obviously flawed due to MWD's failure to analyze or account for the varying demands and service characteristics of its 26 member agencies, which MWD admits exist. One of the basic principles of cost of service and ratemaking is to group customers with similar demand and usage patterns in common categories (classes), so that costs may be assigned to the customer classes that cause these costs to be incurred. In spite of the different service patterns and use characteristics of MWD's member agencies, MWD has simply declared by legislative fiat that it has only one customer class.

Historically, MWD has claimed that Proposition 26 and cost of service requirements do not apply to its rates, and that the only test is one of "reasonableness." Although the Court of Appeal in the 2010/2012 Rate Case clearly applied Proposition 26, MWD persists in insisting that Proposition 26 and cost of service requirements do not apply to MWD's rates.¹

III. Request for public records under California Public Records Act (Gov. Code § 6250 *et seq.*)

As you know, the Water Authority is seeking public disclosure of the rate model MWD uses to allocate costs and set its rates and charges. We filed a Public Records Act (PRA) request on February 18, 2016 (Attachment 1), requesting disclosure of the 2016 rate model and various data, analyses and studies as described in paragraphs 1-8 of that letter. We hereby make formal demand for the 2018 rate model and all supporting data as described in paragraphs 1-8 and any other "input" MWD relied on to establish the 2018 proposed rates and charges for calendar years 2019 and 2020. We also request:

1. A copy of the "Financial Planning Model Manual" Mr. Van den Berg identified and described during his deposition on May 11, 2017 (at pages 69-72).
2. A functional copy of the 2018 Budget Document as it is maintained in the ordinary course of business, in which the links are not disabled.

IV. Written Request for Notice (Gov. Code §54999.7(d); Request for Data and Proposed Methodology for Establishing Rates and Charges (Gov. Code § 54999.7(e))

The Water Authority hereby makes formal request to be provided with all of the data and proposed methodology MWD will rely upon for establishing rates, charges and surcharges or fees for 2019 and 2020 in accordance with the above-listed Government Code provisions. The Water Authority and its MWD board delegates have previously requested this information but thus far none has been provided except as contained in the Budget Document.

With only one month remaining before the MWD board votes on the proposed rates and charges, not all of the underlying data "input" has been provided to MWD's member agencies or the public except in the summary form contained in the Budget Document. Obviously, not all information has been made available prior to the public hearing on March 13, 2018. Given MWD's assertions about the complexity of its ratemaking process, with a rate model that purportedly consists of more than 350,000 mathematical formulas, links and calculations, MWD's failure to provide the requested information is wholly unacceptable and contrary to law.

V. There is no demonstrated justification for suspension of the ad valorem tax rate limitation

As expressed by the Water Authority on many prior occasions, Section 124.5 of the MWD Act allows the board to suspend the tax limitation, but only after it finds that the suspension is "essential to the fiscal integrity of the district." The purported reason for the proposed suspension in 2019 and 2020 is to "pay for growing State Water Contract costs" and to "help maintain a balance between fixed and variable revenues, and reduce the impact of future water rate increases." However, this justification is not supported by data and is flawed.

First, the proposed tax rate suspension—in order to "reduce the impact of future water rate increases—is contrary to the legislative history of Section 124.5, which expressed the intent that taxes be reduced and that user rates and charges constitute the great preponderance of MWD's revenues. A greater reliance on rates over taxes also better allows costs to be assigned to the customer groups that cause specific costs to be incurred.

While MWD's objective of maintaining a balance between fixed and variable revenues is certainly proper, reducing the very charges the Legislature provided to MWD to be used in lieu of property taxes is inconsistent with that objective. The proposed suspension of the tax rate will increase MWD's tax revenues by 16 percent between 2018 and 2019, but the readiness-to-serve (RTS) charge is proposed to decrease by 5 percent during the same period. In fact, the pattern of *decreasing* RTS and *increasing* tax revenues carries forward in the proposed financial forecast.

When comparing the financial forecast proposed in this budget and the one adopted in 2016, MWD is projecting a higher tax revenue trend (staff is apparently planning to continue the tax rate limitation suspension indefinitely), and a lower RTS collection during the same period. As an example, in 2026, the projected RTS collection would be 15 percent lower than that projected for the same year in the 2016 biennial budget, while the projected tax revenues for the same year (2026) is 5.5 percent higher than previously forecasted.

Finally, MWD staff reported that State Water Contract (SWC) costs are projected to be reduced from what was previously forecast due to delayed implementation of WaterFix and MWD's staff's successful negotiation with Department of Water Resources to reduce future expenditures. Since

these costs are less than the fiscal year 2018 budgeted SWC costs (and the SWC costs forecasted in the adopted financial forecast for fiscal year 2019), staff's justification for the tax rate limitation suspension -- because it purportedly is needed to cover "growing" SWC costs -- is baseless.

VI. The purported PAYGo Funding policy and "Resolution for Reimbursement" would allow revenues to be collected for one purpose but used for another without any consideration of or adjustment for cost of service requirements

The Water Authority strongly opposes the so-called "Resolution for Reimbursement." MWD apparently plans to use PAYGo revenues as a discretionary fund, by adopting a "Resolution for Reimbursement" to allow the use of revenues from PAYGo to pay for operations expenses, before a need is even identified. This resolution would authorize staff to prospectively collect \$120 million annually for one purpose (CIP) but then potentially use it for another purpose (O&M or California WaterFix). This is not only an unsound fiscal strategy lacking in transparency, but it also deliberately avoids any accountability ("true up") or tie to cost of service. The board should make a decision now on whether to raise rates, plan to borrow money or, notably, reduce costs rather than engage in the gimmick of the proposed Resolution.

VII. Demand that MWD set aside principal and prejudgment interest at 10% for the WSR Exchange Agreement overcharges consistent with Court of Appeal decision

In February Board Memo 9-1, the following is stated on page 5:

"Metropolitan holds \$52.8 million in its financial reserves in accordance with the set-aside provision of the 2003 Amended and Restated Exchange Agreement between Metropolitan and SDCWA (exchange agreement). This amount includes \$51 million associated with exchange agreement water deliveries from January 2011 through October 2017 and \$1.8 million in accumulated interest earned thereon, based on Metropolitan's investment portfolio."

We believe this set-aside is too low, and not in compliance with the Court of Appeal's decision, where the Court stated, on pages 1155-56 of its decision:

"Metropolitan contends the statutory rate of interest was wrongly used in the original proceedings because the exchange agreement stipulates a contractual rate. This contention is unsupported by the terms of the exchange agreement, as the trial court rightly held."

MWD is well aware that the prejudgment interest rate found by the trial court is 10 percent, not the rate "based on Metropolitan's investment portfolio." Our calculations show that the actual amount that should be reserved by MWD through 2018 is approximately \$87 million, which includes both principal and prejudgment interest – leaving about a \$34 million deficit in what MWD is now actually

withholding and reporting to the Board. If MWD's Board approves not charging the Water Stewardship Rate (WSR) to the Exchange Agreement water through the rest of 2018, that total will of course drop slightly. Demand is hereby made by the Water Authority that MWD properly set aside all principal and prejudgment interest at 10% for the WSR Exchange Agreement overcharges through 2018, or any earlier date the MWD board may end the overcharges in 2018.

VIII. Demand that MWD not impose its Water Stewardship Rate on any wheeled water

In February Board memo 9-1, MWD seeks approval by its Board to suspend imposition of WSR charges on Exchange Agreement water, while still imposing them on other wheeling transactions. For example, see page 5 of February Board memo 9-1, which states that the reduction applies only to Exchange Agreement water, with no mention of other wheeled water:

"[I]t is proposed that the Water Stewardship Rate will not be billed on the exchange agreement deliveries for CYs 2019 and 2020, with Metropolitan foregoing any collection of these amounts during this study period. Further, it is recommended that Metropolitan suspend billing and collecting the current Water Stewardship Rate on exchange agreement deliveries in CY 2018."

See also page 102 of Attachment 3 to the above document, which makes clear wheeled water would be assessed WSR charges (emphasis added): "All system users (member agency or third parties) will pay the same proportional costs for existing and future conservation and recycling investments."

However, the Court of Appeal's ruling was based on the Wheeling Law (Water Code sections 1810 *et seq.*), and the Court found that under that law MWD cannot charge the WSR on wheeled water: "A water agency's payments to its members to encourage water conservation is outside the scope of recoverable costs contemplated by the wheeling statutes." *Id.* at 1150.

MWD's decision to impose WSR charges on wheeled water is in clear violation of the Court of Appeal's decision, and thus unlawful. Though we appreciate the fact that MWD staff recommends not making unlawful charges against the Exchange Agreement, it is clear that MWD may not impose the same unlawful charges to all other wheeling transactions. Demand is hereby made by the Water Authority that MWD not adopt rates that allow for WSR charges to be assessed against wheeled water.

IX. Request for calculation of offsetting benefits under the Wheeling Statute

As you are aware, the Court of Appeal determined that the Wheeling Statutes apply to the Exchange Agreement between MWD and the Water Authority. Accordingly, under Water Code § 1811(c), and consistent with MWD Board Resolution 8520, MWD must calculate the offsetting benefits of the Water Authority's Exchange Agreement water. Because MWD's wheeling rate, and the Water Authority's price under the Exchange Agreement, is calculated in part based on the setting of MWD's

annual rates, MWD should perform this calculation now as part of this budget and rate-setting cycle, so that these costs may properly be reflected in MWD's budget, and long term planning and disclosure documents. The Water Authority identified this issue to MWD last November as a litigation issue remaining to be resolved between MWD and the Water Authority, but as you are aware, the MWD and Water Authority negotiating teams have not yet met.

X. Conclusion

Our MWD board representatives have additional policy questions and comments that will be presented separately.

Sincerely,



Mark J. Hattam
General Counsel

Attachment: Water Authority's Public Records Act request for MWD rate model, dated February 18, 2016

cc: MWD Board of Directors
Water Authority Board of Directors
Maureen Stapleton, General Manager

ⁱ Contrary to a recent public statement by one of Metropolitan's attorneys, the Court of Appeal did in fact apply Proposition 26 to Metropolitan's rates.

Ms. Dawn Chin
February 18, 2016
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- Printed matter (including published articles, speeches, newspaper clippings, press releases, and photographs); and
- Microfilm and microfiche, disks, computer files, electronically stored data (including the metadata associated with any such written and/or spoken content), electronically stored information, electronic devices, film, tapes, and other sources from which information can be obtained, including materials used in electronic data processing. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. "Electronically stored information" means information that is stored in an electronic medium, including data, metadata, and all electronically stored data or information.

The term "related to," as used in each category of public record listed below, means directly or indirectly, in whole or in part, comprising, referring to, concerning, evidencing, connected with, commenting on, affecting, responding to, showing, describing, discussing, analyzing, reflecting or constituting.

The term "rate model," as used in each category of public record listed below, means all documents, data, analyses, calculations, studies or other information that constitute, comprise, support or describe the manner in which MWD assigns costs to rates, including but not limited to its "financial planning model," including the spreadsheet, formulas and programming code.

If a record responsive to a request was, but no longer is, in your possession, custody, or control, state precisely what disposition was made of it (including its present location and who possesses or controls it) and identify the person(s) who authorized or ordered such disposition.

Records produced in response to this request should be produced as they are kept in the usual course of business or should be organized and labeled to correspond with the categories in the request. All electronically stored information shall be produced in its native format with all metadata intact.

The requested records are:

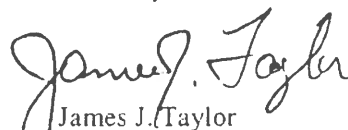
1. Any rate model or models used in formulating proposed rates for the 2017 and 2018 calendar years.
2. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting the rates and charges proposed for the 2017 and 2018 calendar years, as described in MWD Board Memo 9-2 dated 2/9/2016 (Finance and Insurance Committee).
3. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting a proposed reduction of the Readiness-to-Serve and Capacity Charges for 2017.
4. All data, analyses and studies, if any, demonstrating the proportionate benefit each of MWD's 26 customer member agencies will receive from the expenditure of revenues collected from the rates and charges proposed for the 2017 and 2018 calendar years.
5. All data, analyses and studies, if any, that support the conclusion that demand management programs provide distribution and conveyance system benefits, including identification of those parts of the distribution and conveyance system where additional capacity is needed and the customer member agencies that benefit from that capacity being made available.

Ms. Dawn Chin
February 18, 2016
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6. All data, analyses, opinions and studies, if any, that support the conclusion that suspension of the property tax restriction in Section 124.5 of the MWD Act is essential to MWD's fiscal integrity, as described in MWD Board Memo 9-2 at page 3.
7. All data, analyses and studies, if any, supporting the findings, conclusions, recommendations and water supply development targets identified in MWD's 2015 IRP Technical Update Issue Paper Addendum.
8. All data, analyses and studies, if any, supporting the findings, conclusions, recommendations and water supply development targets identified in MWD's Integrated Water Resources Plan 2015 Update.

Within ten (10) days of receipt of this PRA request, please contact me at (858) 522-6791 to discuss whether MWD has records responsive to this request, the page count and cost of copying the records, and whether the documents are also available in electronic format.

Sincerely,


James J. Taylor
Acting General Counsel

cc: MWD Public Records Administrator (by email at pradministrator@mwdofmsa.com)



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

March 21, 2018

VIA EMAIL AND FEDERAL EXPRESS

Mark J. Hattam
General Counsel
San Diego County Water Authority
4677 Overland Avenue
San Diego, California 92123-1233

Re: Response to Public Records Act Request Dated March 11, 2018
Response to Request for Data and Proposed Methodology Dated March 11, 2018

Dear Mr. Hattam:

We received your letter dated Sunday, March 11, 2018, which was sent to Metropolitan Board of Directors Chairman Randy Record and the Metropolitan Board of Directors via email at 10:31 p.m. on that date, which among other things contains a Public Records Act (“PRA”) request in section III (“2018 request”) and a request for data and proposed methodology in section IV. A copy of your request is attached.

Public Records Act Request

This response is made in compliance with California Government Code Section 6253(c), which requires an agency to notify a person making a request within 10 days whether a request seeks disclosable records. We have determined that your request seeks disclosable records, with the exception of Metropolitan’s financial planning model, which is exempt from disclosure under Government Code Section 6254.9(a) as a proprietary computer software program developed by Metropolitan that contains nondisclosable formulas and programming code. The model is also not subject to disclosure under Government Code Section 6254(k), Evidence Code Section 1060, and Civil Code Section 3426.1 as confidential, proprietary material that derives independent economic value from not being generally known. The model is further not subject to disclosure under Government Code Section 6255(a) because the public interest in preserving its confidentiality clearly outweighs any asserted public interest in disclosure.¹

¹ SDCWA already received the financial planning model through the *SDCWA v. Metropolitan* rate litigation, subject to the parameters and restrictions of the Court’s protective order, so SDCWA has had full opportunity to view it and understand its operations.

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March 21, 2018

Metropolitan will provide disclosable records as explained below, to the extent they: (1) are not already posted on Metropolitan's website at www.mwdh20.com, (2) have not already been provided to the Metropolitan Board of Directors, and/or (3) have not already been provided to SDCWA in response to its prior PRA requests or in connection with the *SDCWA v. Metropolitan* litigation.

Your 2018 request incorporates paragraphs 1-8 of an attached letter dated February 18, 2016 ("2016 request") in which the San Diego County Water Authority ("SDCWA") made previous requests under the PRA. Paragraphs 7 and 8 of the 2016 request concerned records pertaining to Metropolitan's 2015 IRP Technical Update Issue Paper Addendum and IRP 2015 Update. Metropolitan previously responded to those requests in 2016.

Paragraphs 1-6 of the 2016 request concerned records pertaining to the budget, rates, and charges proposed in 2016, and Metropolitan also previously responded to those requests in 2016. We have assumed you intended Metropolitan to interpret the 2018 request's reference to paragraphs 1-6 to include modifications to concern records pertaining to the fiscal years 2018/19 and 2019/20 proposed budget and calendar years 2019 and 2020 proposed rates and charges, and so we have done so. The 2018 request further asks for "any other 'input' MWD relied on to establish the 2018 proposed rates and charges for calendar years 2019 and 2020." We interpret this additional language as referring to "any other input into the financial planning model that MWD relied on to establish the 2018 proposed rates and charges for calendar years 2019 and 2020." The requested records have already been posted on Metropolitan's website for public review between February 1 and March 14, 2018 at the following locations:

- <http://www.mwdh20.com/WhoWeAre/Pages/proposed-budget-rates.aspx>
- <http://www.mwdh20.com/WhoWeAre/proposed-property-tax-rates>

Of these records, some of the file names at the following location, posted since March 8, 2018, were modified to accommodate the naming conventions required by Metropolitan's website:

- <http://www.mwdh20.com/WhoWeAre/Management/Financial-Information/Pages/2018-Underlying-Materials.aspx>

The identical records, but with the original file names, will be provided to you on a disc. For example, the files from the "Biennial Budget Reports\Labor Distribution by Org Report\Proposed plus 1" folder on the disc were renamed on the website by adding the prefix 'PP1' to each of the files posted on the website. In the posting and on the disc, proprietary formulas and programming code have been removed from spreadsheets, and employee-specific information has been redacted.

Additionally, your 2018 request asks for "a functional copy of the 2018 Budget Document." Metropolitan interprets this request as referring to the proposed Biennial Budget for Fiscal Years 2018/19 and 2019/20, which was provided to Metropolitan's Board of Directors, including the

Mr. Mark J. Hattam

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March 21, 2018

SDCWA delegates, on February 1, 2018, and has been posted for public review on Metropolitan's website since that date at the following location:

- <http://www.mwdh2o.com/WhoWeAre/Pages/proposed-budget-rates.aspx>

There is no such record as a "functional copy" of that document.

Finally, your 2018 request asks for the "Financial Planning Model Manual Mr. Van den Berg identified and described during his deposition on May 11, 2017." This will be provided with redaction of the confidential log-in information to the model pursuant to Government Code Section 6255(a), because the public interest in preserving its confidentiality clearly outweighs any asserted public interest in disclosure.

Enclosed is a disc containing the above-described disclosable Metropolitan records provided in response to your PRA request, except as previously posted or provided. Because Metropolitan's budget-setting and rate-setting process is still in progress, the disc contains materials through the Public Hearings held on March 13, 2018.

Response to Request for Data and Proposed Methodology

Your request for data and proposed methodology was made under California Government Code Section 54999.7(e). As Metropolitan has explained in detail in the *SDCWA v. Metropolitan* litigation, and as SDCWA previously agreed, Section 54999.7(e) does not apply to Metropolitan. As you are aware, the California Court of Appeal did not decide the issue of Section 54999.7(e)'s application, finding instead that whether or not the statute is applicable, Metropolitan has complied with it. (*SDCWA v. Metropolitan* (2017) 12 Cal. App. 5th 1124, 1154 ["Whether or not the statute applies, it has not been violated."].) Metropolitan maintains that Section 54999.7(e) does not apply.²

Nonetheless, as part of its regular budget-setting and rate-setting process, Metropolitan provides to the Board, member agencies and the public the detailed data and proposed methodology for the proposed rates and charges, through the budget and rate Board letters, proposed budget, cost of service report, presentations and discussions at the multiple committee and Board meetings and workshops. Again, this material is posted on Metropolitan's website at the following locations:

- <http://www.mwdh2o.com/WhoWeAre/Pages/proposed-budget-rates.aspx>
- <http://www.mwdh2o.com/WhoWeAre/proposed-property-tax-rates>

² Your letter also included a written request for notice under California Government Code Section 54999.7(d). Aside from the inapplicability of Section 54999.7(d), SDCWA made this request for notice of a public meeting concerning rates or charges after Metropolitan had already provided such notice to the Board and public, so the request is moot.

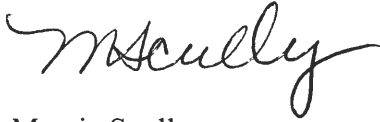
Mr. Mark J. Hattam

Page 4

March 21, 2018

As the staff continues to work on budget and rate matters in response to requests from the Board and direction from management until final adoption of the budget and rates, the webpages stated in this letter will continue to be updated.

Very truly yours,

A handwritten signature in black ink, appearing to read "MScully", written in a cursive style.

Marcia Scully
General Counsel

Enclosure: Disc (via Federal Express only)



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

Office of the General Counsel

April 4, 2018

VIA EMAIL AND U.S. MAIL

Keith Lewinger, Director
San Diego County Water Authority
4677 Overland Avenue
San Diego, California 92123

Re: Your letter dated March 21, 2018, regarding Budget and Rate Questions

Dear Director Lewinger:

This letter responds to your questions, received via email on Wednesday, March 21, 2018, at 12:25 p.m. (attached), requesting that they be addressed “in writing, in a time frame that gives us [the San Diego County Water Authority] a chance to review [Metropolitan’s] responses and supporting documentation before the next workshop.”

Workshop #4 was scheduled for Tuesday, March 27, 2018, primarily at your request, to respond to questions you indicated you would provide shortly after Workshop #3 held on March 12, 2018. Your request arrived nine calendar days later. This did not provide sufficient time for staff to respond to your request prior to the workshop. However, we provide responses to your questions now in advance of the next meetings to consider the proposed budget, rates, charges, and ad valorem tax limitation suspension.

Outset (unnumbered comment)

You state that “staff has presented budget and proposed rates, with general descriptions of methodology and voluminous data,” and that you need Metropolitan’s Financial Planning Model to follow Metropolitan’s cost allocation methodology. On Friday, March 23, 2018, before Workshop #4, we responded to SDCWA’s General Counsel’s similar statement regarding the level of detail in the documents proposing Metropolitan’s budgets, rates, and charges. Please see the attached March 23, 2018 letter. Additionally, we reiterate here that Metropolitan has provided significant data to support the proposed biennial budget for Fiscal Years (“FY”)s 2018/19 and 2019/20 (the “Proposed Biennial Budget”), including the ten-year financial forecast and resulting revenue requirements for FY 2018/19 and FY 2019/20, the FYs 2018/19 and

Keith Lewinger, Director

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2019/20 Cost of Service Report for Proposed Water Rates and Charges (the “2018 Cost of Service Report”), and resulting proposed Calendar Year (“CY”) water rates and charges effective January 1, 2019 and January 1, 2020 (“CY Rates and Charges”) to support the Proposed Biennial Budget and revenue requirements.

On its “Underlying Materials” page supporting the Proposed Biennial Budget and CY Rates and Charges, located at <http://www.mwdh2o.com/WhoWeAre/Pages/proposed-budget-rates.aspx>, Metropolitan has also provided a significant amount of information—over 2,550 pages—on the line item detail by labor and Operations and Maintenance expense items that makes up its Departmental budget. Metropolitan has provided a 185-page Capital Investment Plan (“CIP”), which includes three years of planned spending and a description of nearly 400 projects. In addition, Metropolitan has provided 75 files, consisting of a multitude of worksheets and pages that provide the detail SDCWA is requesting. In particular, Metropolitan has provided in its 2018 Cost of Service Report 150 pages of COS Tables that provide the functionalization, allocation and distribution of costs in its Proposed Biennial Budget, further showing Metropolitan’s cost allocation methodology.

The line-item budget information forms the bases of the departmental and non-departmental budgets in the Proposed Biennial Budget. Those costs are then assigned to cost functions, as explained in the 2018 Cost of Service Report. Those functionalized costs are recovered through appropriate rate elements, as further explained in the Cost of Service Report. Additionally, the COS Tables explain that process for line-item budgets. For example, the Departmental O&M for the Office of the General Manager of \$4,782,324 is shown in the first COS Table. (Page 110 of 259, Attachment 3, Board Letter 9-2.) You see in the data excerpt below that \$4,344,448 is for Labor and Labor Additive and \$345,000 is for Outside Services.

Revenue Requirements		1	2	3	4	5	6	
Fiscal Year Ending 2019		Labor And Labor Additive	Outside Services	Utilities	Chemicals	Other O&M	O&M Capitalization (pro-rated)	Projected Total To Be functionalized
Departmental O&M								
Group	Item							
	Office of General Manager	4,344,448	345,000	-	-	312,220	(219,344)	4,782,324
	Office of General Manager	1,079,067	55,000	-	-	514,900	(72,314)	1,576,653
	Office of General Manager	4,869,969	4,943,638	-	-	1,618,882	(501,363)	10,931,125
	External Affairs	3,515,616	1,733,300	6,500	-	863,173	(268,326)	5,850,263
	External Affairs	4,197,435	1,373,266	-	-	1,000,380	(288,170)	6,282,911
	External Affairs	5,923,489	715,200	-	-	2,256,014	(390,071)	8,504,632
	External Affairs	3,119,587	1,524,000	-	-	1,376,627	(264,012)	5,756,202
	Human Resources	9,445,147	1,335,620	-	-	1,561,651	(541,268)	11,801,151

You will see in the next data excerpts from the next COS Tables that the same line-item budget is further broken down by categories of service function, including a breakdown by sub-categories of costs within those functions. (Pages 111 and 112 of 259, Attachment 3, Board Letter 9-2.) For example, the General Manager’s O&M Budget assigned to the treatment function is broken down by treatment plant.

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Page 111:

Functional Assignment Percentages		Fiscal Year Ending 2019																			
		Fn1	Fn2	Fn3	Fn4	Fn5	Fn6	Fn7	Fn8	Fn9	Fn10	Fn11	Fn12	Fn16	Fn17	Fn18	Fn19	Fn20	Fn21		
		Source of Supply			Conveyance & Aqueduct					Storage				Treatment					Distribution		
		CRA	SWP	Other	CRA Power	CRA All Other	SWP Power	SWP All Other	Other Conv. & Aqueduct	Emergency	Drought	Regulatory	Power	Jensen	Weymouth	Diemer	Mills	Skinner	Distribution		
Letter Codes for Primary Functional Assignment Basis																					
a Direct Assignment																					
b Work in Process/Net Book Value																					
c Pro-Rating																					
d Branch Manager Analysis																					
e Prior-Year Results																					
f Other																					
Departmental O&M																					
Group	Item																				
Office of General Manager	Office of General Manager																				
Office of General Manager	Board of Directors																				
Office of General Manager	Bay Delta Initiatives																				
External Affairs	Legislative Services																				
External Affairs	Media Communications Services																				
External Affairs	Manager, External Affairs/Special Projects																				
External Affairs	Conservation & Community Services																				
Human Resources																					
Functional Allocation Basis (4)																					
c Pro-rata by all other departmental costs		2.1%	2.4%	2.6%	1.0%	8.8%	0.0%	4.0%	1.8%	1.6%	1.4%	0.6%	0.0%	5.0%	5.5%	5.9%	3.8%	5.0%	20.4%		
a 100% AG																					
a 100% C&A																					
a 100% AG																					
a 100% AG																					
a 100% AG																					
a 100% AG																					
d Branch Manager Analysis																					
c Pro-rata by all other departmental costs		2.1%	2.4%	2.6%	1.0%	8.8%	0.0%	4.0%	1.8%	1.6%	1.4%	0.6%	0.0%	5.0%	5.5%	5.9%	3.8%	5.0%	20.4%		

Page 112:

Functional Assignment Results		Fiscal Year Ending 2019																			
		Fn1	Fn2	Fn3	Fn4	Fn5	Fn6	Fn7	Fn8	Fn9	Fn10	Fn11	Fn12	Fn16	Fn17	Fn18	Fn19	Fn20	Fn21		
		Source of Supply			Conveyance & Aqueduct					Storage				Treatment					Distribution		
		CRA	SWP	Other Supply	CRA Power	CRA All Other	SWP Power	SWP All Other	Other Conv. & Aqueduct	Emergency	Drought	Regulatory	Power	Jensen	Weymouth	Diemer	Mills	Skinner	Distribution		
Departmental O&M																					
Group	Item																				
Office of General Manager	Office of General Manager	99,707	113,662	122,785	47,926	422,012	-	193,339	84,503	77,085	65,998	27,836	-	239,538	264,350	280,920	183,499	236,600	976,380		
Office of General Manager	Board of Directors	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
Office of General Manager	Bay Delta Initiatives	-	-	-	-	-	-	10,931,125	-	-	-	-	-	-	-	-	-	-	-		
External Affairs	Legislative Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
External Affairs	Media Communications Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
External Affairs	Manager, External Affairs/Special Projects	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
External Affairs	Conservation & Community Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		

These tables show that 5.5% of the General Manager’s O&M budget is assigned to the Weymouth Treatment plant, or \$264,350.

Following these tables there is further breakdown showing how the functionalized costs are allocated into categories according to their causes and behavioral characteristics. This allocation ensures that costs are recovered in a manner consistent with the causes and behaviors of those costs by using the Commodity/Demand approach. For example, costs are allocated into demand, commodity, or standby categories, depending on their causes and behavioral characteristics. Continuing with the same General Manager’s O&M example, you will see in the data excerpt from the corresponding COS Table that the \$264,350 of that budget assigned to the Weymouth Plant is allocated as 100% fixed commodity based on its causes and behaviors. (Page 154, Attachment 3, Board Letter 9-2.)

Allocation Percentages: Treatment - Weymouth		Fiscal Year Ending 2019							
		Allocation Percentages							% Total
		Fixed			Variable		Other	Hydroelectric	% Total
		Demand	Commodity	Standby	Commodity	Standby			
Departmental O&M									
Group	Item								
Office of General Manager	Office of General Manager	264,350							100.0%
Office of General Manager	Board of Directors	-							0.0%
Office of General Manager	Bay Delta Initiatives	-							0.0%
External Affairs	Legislative Services	-							0.0%
External Affairs	Media Communications Services	-							0.0%
External Affairs	Manager, External Affairs/Special Projects	-							0.0%
External Affairs	Conservation & Community Services	-							0.0%
Human Resources		652,325							100.0%

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The resulting functionalized and allocated cost is recovered pursuant to the corresponding rate element, as those rate elements are described and explained in the 2018 Cost of Service Report. In the example above, the General Manager's O&M costs assigned to the Weymouth Plant are \$264,350 and are recovered through the Treatment Surcharge.

Thus, as explained and shown herein, Metropolitan has provided detailed and voluminous supporting data as well as written and graphic information walking through the steps of the allocation of costs and the recovery of costs through Metropolitan's rate structure.

California WaterFix Cost Allocation (unnumbered comment)

You suggest in your letter that there is an inconsistency as to the functionalization of the WaterFix costs at pages 83, 133, 81, and 85-86 of Board Letter 9-2. There is no inconsistency. Your letter points to schedules and sections of the 2018 Cost of Service Report that summarize different types of State Water Project ("SWP") Costs and therefore, are not the proper bases for a comparison.

California WaterFix expenditures in the Proposed Biennial Budget are limited to capital expenditures; there are no operating or maintenance expenses until the proposed project comes online. Therefore, the California WaterFix expenditures are treated consistent with State Water Project capital expenditures for conveyance and aqueduct referenced in pages 81, 83, and 133 of the 2018 Cost of Service Report, which you point out. But those SWP capital costs are not the same as the "SWP other" costs at pages 85 and 86, which reflect more than capital expenditures for SWP conveyance and aqueduct. Thus, as you point out, the percentages from one set of references do not match the percentages in the other; that is because they are not intended to match.

Page 79 of Attachment 3 to the February 13, 2018 Board Letter 9-2, which is the 2018 Cost of Service Report dated February 2018, explains the allocation of capital financing service function costs. These allocation percentages are shown for the SWP on Schedule 10 (page 81) for FY 2018/19 and Schedule 11 (page 82) for FY 2019/20:

"Schedules 10 and 11 provide the allocation percentages used to distribute the capital financing service function costs into Fixed Demand, Fixed Commodity and Fixed Standby service allocation categories for FY 2018/19 and FY 2019/20, respectively."¹

¹ February 13, 2018 Board Letter 9-2, Attachment 3, Page 79 of 259.

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The allocation of SWP capital costs is further explained of page 79:

“Costs for the Conveyance and Aqueduct (C&A) service function are allocated into Fixed Commodity, Fixed Demand and Fixed Standby categories. Because the capital costs for C&A were incurred to meet all three allocation categories, an analysis of C&A capacity usage was used. For FY 2018/19, 51 percent of the available conveyance capacity varies with the quantity of water produced, and is allocated to Fixed Commodity. A system peak factor of 1.4 was applied to the annual usage to determine that 21 percent of available capacity is used to meet peak monthly deliveries to the member agencies, and is allocated to Fixed Demand. The remaining portion of C&A, about 28 percent, is allocated to Fixed Standby. The same allocation percentages are applied to the CRA, SWP, and Other (Inland Feeder) Conveyance and Aqueduct sub-functions. The allocation shares reflect the system average use of conveyance capacity and not the usage of individual facilities.”

“For FY 2019/20, 54 percent of the available conveyance capacity varies with the quantity of water produced, and is allocated to Fixed Commodity. A system peak factor of 1.4 was applied to the annual usage to determine that 22 percent of available capacity is used to meet peak monthly deliveries to the member agencies, and is allocated to Fixed Demand. The remaining portion of C&A, about 24 percent, is allocated to Fixed Standby.”²

The impact of the SWP capital cost allocations on the revenue requirements is shown on Schedules 12 and 14 for FY 2018/19 and FY 2019/20, respectively, and summarized on Schedules 13 and 14 for FY 2018/19 and 2019/20, respectively.

In your letter, you compare these capital costs for the SWP conveyance and aqueduct to the broader costs for conveyance and aqueduct shown at pages 85-86. However, those schedules show *all* SWP conveyance and aqueduct costs, which extend beyond capital costs. Thus, the percentages are different, because they are not representing the same information and are therefore, not inconsistent.

To avoid any potential confusion, we have updated the 2018 Cost of Service Report at pages 78 and 79 to add “capital” when referencing the allocation of WaterFix costs, as follows: “SWP Conveyance and Aqueduct capital costs.”

² Ibid.

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Changes to Proposed Budget, Rates, and Charges (unnumbered comment)

You have stated that “it is not possible to consider changes” that could result from lowering proposed spending, borrowing, lowering rate increases, and other aspects of the budget, rates, and charges proposal. However, the detailed budget information we have provided, allows Board members and the public to scrutinize the level of spending by line-item. Moreover, borrowing for capital expenditures is explained in the Budget Summary and in the CIP portion of the document. As for consideration of lowering rate increases, that can be done by following the cost allocation process summarized in the 2018 Cost of Service Report and detailed in the COS Tables. Please also note that the Proposed Biennial Budget, page 180, explains the coverage ratios. You asked this question and staff provided a response regarding Metropolitan’s financial policies and the relationship between coverage ratios, reserve levels, and the necessary rate increases at Workshop #3.

Numbered questions

1. Please explain why the water supply costs in the 2016 and 2018 financial forecasts vary so significantly.

Water supply costs are lower due to a reduction in the Supply Programs budget, which do not necessarily vary by the amount of water delivered in each fiscal year. As explained in presentations, Supply Programs costs are lower, reflecting the current projection of the budget needed to maintain these programs. The Proposed Biennial Budget and ten-year financial forecast assume lower volumes from the Palo Verde Irrigation District land fallowing program, hence lower costs, and not funding the Yuma Desalter program. Additionally, Metropolitan renegotiated the terms of the Imperial Irrigation District Conservation program after adoption of the FYs 2016/17 and 2017/18 Biennial Budget.

At the end of CY 2015, Metropolitan was in the midst of a historic drought and had significantly drawn down water reserves from 2.7 million acre-feet (“MAF”) at the end of 2012 to 0.9 MAF (excluding emergency storage). Absent water reserves, staff ensured that sufficient funds were budgeted to execute needed Supply Programs to meet demands. In 2018, Metropolitan is coming off the wettest year recorded in California, and water reserves are 2.5 MAF. Over the near term, Metropolitan does not need to exercise its storage programs as it did in 2014, 2015 and 2016. These uncertain hydrologic conditions demonstrate the dynamic planning environment in which Metropolitan operates.

2. Please provide the board action from which staff has derived its interpretation that the “maximum” reserve level is a “target” rather than a cap.

You have provided an interpretation of Administrative Code Section 5202. However, staff follows the plain language of the Administrative Code as adopted by the Board. The language of

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Metropolitan's current reserves policy was adopted by the Board in 1999 and is codified at Sections 5202 (a) and (e) of Metropolitan's Administrative Code, which states:

§ 5202. Fund Parameters.

The minimum cash and securities to be held in the various ledger funds as of June 30 of each year shall be as follows:

(a) For the Revenue Remainder Fund cash and securities on hand of June 30 of each year shall be equal to the portion of fixed costs of the District estimated to be recovered by water sales revenues for the eighteen months beginning with the immediately succeeding July. Such funds are to be used in the event that revenues are insufficient to pay the costs of the District.

(e) Amounts in the Water Rate Stabilization Fund shall be held for the principal purpose of maintaining stable and predictable water rates and charges. The amount to be held in the Water Rate Stabilization fund shall be *targeted* to be equal to the portion of the fixed costs of the District estimated to be recovered by water sales revenues during the two years immediately following the eighteen-month period referenced in Section 5202(a). Funds in excess of such *targeted* amount shall be utilized for capital expenditures of the District in lieu of the issuance of additional debt, or for the redemption, defeasance or purchase of outstanding bonds or commercial paper of the District as determined by the Board. Provided that the District's fixed charge coverage ratio is at or above 1.2 amounts in the Water Rate Stabilization Fund may be expended for any lawful purpose of the District, as determined by the Board of Directors, provided that any funds distributed to member agencies shall be allocated on the basis of all water sales during the previous fiscal year, such sales to include sales under the Interim Agricultural Water Program, Replenishment Service Program and all Full Service water sales.

The Board clearly set a minimum and *targeted* reserve balance amounts. There is no reference to a "cap" in the Administrative Code language.

- 3. Please provide any analysis staff has performed demonstrating or supporting the staff's conclusion that use of a standby charge or other source of fixed revenue in lieu of ad valorem taxes is too "difficult or impractical" for MWD to implement.*

We responded to a similar comment by SDCWA's General Counsel in the attached March 23, 2018 letter. As we explained there, because Metropolitan bases its rate structure on cost of service principles, rate elements are not interchangeable as suggested. In your letter, you add the request for an explanation for the conclusion regarding the difficulty or impracticality of

Keith Lewinger, Director

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adopting any new charge, assessment, or tax on all property owners within Metropolitan's service area.

The ad valorem tax is uniquely appropriate as a fixed charge given Metropolitan's role as a regional wholesale supplier. Metropolitan provides a reliable supplemental water supply to all or portions of six counties in southern California. The ad valorem tax ensures that *all* property owning businesses and residents in Metropolitan's service area share in the cost of the availability of Metropolitan's services. All properties located within each of Metropolitan's 26 member agencies benefit from the availability of Metropolitan's supplemental wholesale water service to those agencies. Absent the ad valorem tax, many would contribute nothing to cover Metropolitan's costs.

As the resolutions suspending the ad valorem tax restriction of Section 124.5 have explained, Metropolitan's ad valorem property taxes are previously approved by the voters for State Water Contract indebtedness. Any new tax, charge, fee, or assessment on property owners within Metropolitan's entire service area would require approval by the entire service area. Thus, the adoption of a new fixed revenue source collected by property owners would be impractical. If SDCWA has any proposal for a fixed charge to be collected from Metropolitan's 26 member agencies, it may propose it to the Board for its consideration. Indeed, staff has proposed a fixed charge option for Treatment costs recently. However, that fixed charge was not approved by the Board, including the SDCWA representatives.

4. Please explain decreased Colorado River diversions planned for fiscal years 2020-2026.

Colorado River diversions are projected to decrease slightly during this period as demands of water users with high priority rights increase. These water users include Native American tribes and other users with present perfected rights for Colorado River water. As these uses increase, Metropolitan's water supplies decrease to keep California within its basic apportionment of 4.4 MAF.

5. Please explain why the 2018 forecast also reduces supply program expenditures from the 2016 forecast.

The answer to this question was explained in the answer to question #1.

6. Please provide rate modeling with alternatives assuming a high and low, or range of investment, in the California WaterFix.

The cost impacts of the California WaterFix options were discussed in the Board Workshop: California WaterFix held on March 27, 2018. The cost of any options, other than the option previously approved by the Board, are not anticipated to impact the costs in the period of the Proposed Biennial Budget. As explained above in our clarification of the SWP conveyance and

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aqueduct capital costs, the Proposed Biennial Budget includes only the costs pursuant to the option approved by the Board in October, 2017. If the Board were to approve any different option for participation in California WaterFix, the impact of any such option would not result until after the upcoming biennium. Therefore, any cost impacts from other WaterFix options, will be addressed in connection with WaterFix discussions.

7. Please provide rate modeling taking into account budget and rate impacts of the offsetting benefits to MWD of the Water Authority's Colorado River water.

As stated in the attached March 23, 2018 letter, no legal basis exists for SDCWA's request for "offsetting benefits." The Court of Appeal decision in *SDCWA v. Metropolitan*, 12 Cal.App.5th 1124, does not address whether Metropolitan "must calculate the offsetting benefits of the Water Authority's Exchange Agreement" fifteen years after the effectiveness of that agreement and this has not been part of the parties' litigation. Neither the Court of Appeal decision, nor any other law, requires that Metropolitan calculate any alleged "offsetting benefits."

Although SDCWA was not entitled to "offsetting benefits" under the 2003 exchange agreement, SDCWA received substantial benefits pursuant to that agreement. In accordance with the terms proposed and selected by SDCWA and agreed to by Metropolitan, as part of the transaction for the exchange of water, Metropolitan also assigned to SDCWA its \$235 million legislative appropriation for canal lining and other projects, as well as Metropolitan's rights to 77,000+ acre-feet of the resulting conserved canal lining water per year for 110 years.

8. Please explain why staff is recommending a bond coverage ratio of 2.0, and provide analysis of what MWD's rate increases would be, if any, if the coverage ratio is lowered.

Staff is recommending a bond coverage target of 2.0 because that is the Board's policy. The Board adopted the Revenue Bond Coverage Target of 2.0 times, which is codified at Administrative Code Section 5202(e). The Board's policy is financially prudent, because it allows Metropolitan to maintain strong bond ratings, reduce debt service costs to rate payers, retain access to capital markets at low costs and on better terms on a broad range of debt products, and provide assurance to bondholders that Metropolitan can fund operating expenditures and debt service costs with ample coverage. In addition, a financially sound utility consistently demonstrates an ability to fund all recurring costs, which includes the State Water Contract capital costs, which is reflected in the Board's Fixed Charge Coverage Target policy of 1.2 times.

The Board's financial management policies are prudent and have resulted in Metropolitan consistently having very high credit ratings and commensurately lower borrowing costs. The rating agencies look to these policies when reviewing Metropolitan's proposed borrowings. Metropolitan's CIP forecasts the use of bonds to finance a portion of the CIP. Maintaining the Board adopted coverage targets will ensure that Metropolitan will continue to have access to

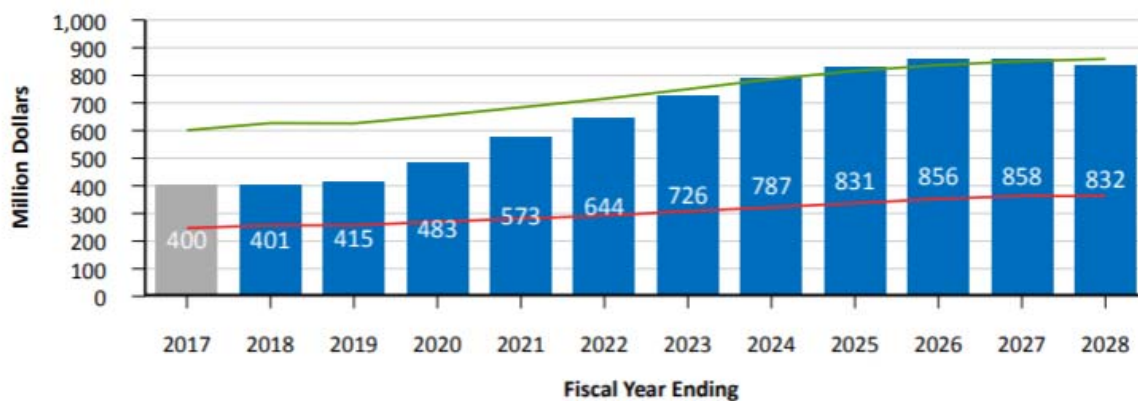
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capital markets on favorable terms. Should SDCWA wish to propose different coverage policies, it may do so through a proposal to the Board.

You have requested an analysis of what rate increases would be necessary if the coverage ratio is lowered, and we assume you are referring to the revenue bond coverage ratio. As you will note from page 1 of the Ten-Year Financial Forecast, Metropolitan’s Proposed Biennial Budget and rates and charges proposal do not meet the coverage ratio. The 2.0 coverage ratio is not expected to be met until FY 2021.



Overall Rate Increase	4.0%	4.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Water Transactions *(MAF)	1.54	1.55	1.65	1.75	1.80	1.80	1.80	1.80	1.80	1.80	1.80	1.80
Rev. Bond Cvg	1.6	1.5	1.6	1.9	2.1	2.1	2.1	2.1	2.2	2.1	2.2	2.2
Fixed Chg Cvg	1.4	1.4	1.5	1.7	1.9	1.8	1.7	1.6	1.6	1.5	1.4	1.3
PAYGO, \$M	132	108	120	120	150	150	150	154	158	162	167	171

* includes water sales, exchanges and wheeling

As explained at Workshop #3, by the outer years of the ten-year financial forecast, the Fixed Charge Coverage will drive financial policy with regard to coverages; Revenue Bond Coverage will be whatever is necessary to ensure that the Fixed Charge Coverage target of 1.2 times is met.

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9. Staff should work to reconcile the budget and 10-year forecast with the IRP and MWD and member agency Urban Water Management Plans.

In July 2017, Metropolitan staff provided a presentation on Metropolitan's 2015 IRP Update and 2015 Urban Water Management Plan and their consistency with member agency Urban Water Management Plans. Metropolitan has comprehensive and collaborative planning processes, and maintains a comprehensive list of local projects from coordinated discussions with member agencies. These efforts are reflected in the Proposed Biennial Budget. Metropolitan's ten-year financial forecast of demands is based on the 2015 IRP Update, adjusted for additional permanent conservation achieved as a result of the regional initiative to meet the Governor's 2015 Executive Order mandating a 25 percent reduction in residential water use and offset by slower conversion of land for development.

10. The 3 percent rate increase in 2019 is not supported by the revenue requirement, which is lower than that required in 2018, unless the rates are set for the purpose of increasing reserves.

The revenue requirement in FY 2018/19 is lower than that required in FY 2017/18 due only to Revenue Offsets; the costs and required reserves are actually higher. More importantly, the water transactions over which the costs are recovered are lower in FY 2018/19. The budgeted water transactions for FY 2017/18 were 1.7 MAF; the budgeted water transactions for FY 2018/19 are 1.65 MAF. This results in fewer water transactions over which to recover costs, resulting in a necessary rate increase.³ Thus, the increase is set to recover Metropolitan's costs and to meet its financial policies.

As presented in Workshop #3, Metropolitan's financial policies, adopted by the Board, can also dictate the amount of revenues that needs to be generated. Metropolitan revenues must be sufficient on a fiscal year basis to meet both its cash revenue requirements and its two Board-adopted coverage targets. These sufficiency tests are commonly used to determine the amount of annual revenue that must be generated from an agency's rates. With regard to cash flow, this is the amount of annual revenues that must be generated in order to meet annual direct cash expenditures of the utility, including additions to required reserves. Metropolitan's revenue requirements reflect these cash flow obligations.

³ Metropolitan's proposed charges actually decrease slightly primarily due to less capital costs recovered through these charges. The Readiness-to-Serve (RTS) Charge only recovers system *capital* costs for emergency storage capacity and ensures there is adequate capacity in the conveyance and distribution systems to reliably deliver supplies during emergencies, major facility outages, hydrologic variability, and variances in local resources. The Capacity Charge only recovers distribution system *capital* costs necessary to meet peak day member agency needs on Metropolitan's distribution system during the summer.

Keith Lewinger, Director

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April 4, 2018

In addition, revenues must be sufficient to ensure that revenues meet all operating expenses and debt service obligations plus an additional multiple of that debt service. Metropolitan's Board established policy targets to retain or attain high bond ratings with correspondingly lower interest costs, as explained in Question #8 above. Metropolitan sets water rates and charges revenues at a level sufficient to ensure that both cash revenue requirements and coverage targets are met. In FYs 2018/19 and 2019/20, Metropolitan's proposed water rates and charges must generate revenues in excess of its cash revenue requirements in order to meet its policy for debt and fixed charge cover requirements. These additional revenues then become available to fund future capital projects, non-cash items, and unrestricted reserves.

Sincerely,



Gary M. Breaux
Assistant General Manager
Chief Financial Officer



Marcia L. Scully
General Counsel

cc: Metropolitan Board of Directors
SDCWA Board of Directors
Jeffrey Kightlinger, Metropolitan General Manager
Maureen Stapleton, SDCWA General Manager

Attachments:

Email from Director Lewinger, dated March 21, 2018, 12:25 p.m., attaching a letter regarding questions on Metropolitan's proposed budget and rates

Letter dated March 23, 2018 regarding Mr. Hattam's March 11, 2018 letter regarding the March 12 F&I Committee/Budget and Rates Workshop #3, and March 13, 2018 Board Meeting Agenda Item 4 Public Hearings

ATTACHMENT 1

Subject: FW: Lewinger Budget & Rate Questions
Attachments: 2018-03-21 WA ltr re MWD FYs 2019 & 2020 Budget.pdf

----- Original message -----

From: MWDProgram <MWDProgram@sdewa.org>
Date: 3/21/18 12:24 PM (GMT-08:00)
To: "Breux, Gary M" <GBreux@mwdh2o.com>
Cc: "Kightlinger, Jeffrey" <jkightlinger@mwdh2o.com>, "Castro, Rosa" <RCastro@mwdh2o.com>, "Barry Pressman (Barry.Pressman@cshs.org)" <Barry.Pressman@cshs.org>, Brett Barbre <brbarbre@msn.com>, "Charles Trevino (dirtrevino@gmail.com)" <dirtrevino@gmail.com>, Cynthia Kurtz <dirkurtz@gmail.com>, "De Jesus, David D" <DDeJesus@mwdh2o.com>, Donald Galleano <donald@galleanowinery.com>, Glen Dake <dirdake@gmail.com>, Glen Peterson <glenpsop@icloud.com>, "Gloria Cordero (dirgcordero@gmail.com)" <dirgcordero@gmail.com>, "Gloria Gray (ggrayi@aol.com)" <ggrayi@aol.com>, "Gloria Gray (mwdggray@gmail.com)" <mwdggray@gmail.com>, "Harold Williams (harldwms@gmail.com)" <harldwms@gmail.com>, "Hogan, Michael" <solbch1@roadrunner.com>, Janna Zurita <dirjzurita@gmail.com>, Jesus Quinonez <jquinonez@bushgottlieb.com>, John Morris <MorrisWater@Earthlink.net>, John Murray <jmurray@jwmjr.org>, Judy Abdo <jabdo@msn.com>, Larry Dick <larrydick@att.net>, Larry McKenney <director.mckenney@gmail.com>, Leticia Vasquez <dirlvasquez@gmail.com>, "Lewinger, Keith" <Keith.Lewinger@gmail.com>, Linda Ackerman <lindaackerman@cox.net>, Lorraine Paskett <dirpaskett@gmail.com>, Mark Gold <mgold@conet.ucla.edu>, "Marsha Ramos (Dir.mramos@gmail.com)" <Dir.mramos@gmail.com>, "Marsha Ramos (marsharamos@aol.com)" <marsharamos@aol.com>, "Michael Camacho (dircamacho@gmail.com)" <dircamacho@gmail.com>, "Michael Camacho (mcamacho@pacificaservices.com)" <mcamacho@pacificaservices.com>, "Michele Martinez (councilwomanmartinez@gmail.com)" <councilwomanmartinez@gmail.com>, "Michele Martinez (rflores@santa-ana.org)" <rflores@santa-ana.org>, Peter Beard <dirbeard@gmail.com>, "Randy A. Record" <dirrecord@gmail.com>, Richard Atwater <atwater.richard@gmail.com>, Russell Lefevre <r.lefevre@ieee.org>, "Saxod, Elsa" <saxod@cox.net>, "Steiner, Fern" <fsteiner@ssvwlaw.com>, Stephen Faessel <Dirfaessel@gmail.com>, Stevev Blois <sblois@verizon.net>, "Sylvia Ballin (dirballin@gmail.com)" <dirballin@gmail.com>, "Sylvia Ballin (sylviaballin@outlook.com)" <sylviaballin@outlook.com>, "William C. Gedney (wcedney@gswater.com)" <wcedney@gswater.com>, "Zareh Sinanyan (zsinanyan@glendaleca.gov)" <zsinanyan@glendaleca.gov>
Subject: Lewinger Budget & Rate Questions

Dear Mr. Breux,

Please find attached a letter from Director Lewinger regarding questions on MWD's proposed budget and rates.

Thank you.

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



San Diego County Water Authority

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March 21, 2018

Gary Breaux
Chief Financial Officer/Assistant General Manager
Metropolitan Water District of Southern California
700 N. Alameda Street
Los Angeles, CA 90012-2944

MEMBER AGENCIES

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

RE: Budget and Rate Questions

Dear Mr. Breaux:

As discussed at the March 12, 2018 Finance and Insurance Committee meeting and workshop, here are the questions we request staff address in writing, in a time frame that gives us a chance to review your responses and supporting documentation before the next workshop. The Water Authority's General Counsel has previously submitted a letter regarding the proposed budget and rates (Attachment 1) and we request that you also respond to the issues and questions in that letter in writing in advance of the next board workshop so that everyone has time for review.

At the outset, I must express my continued frustration at the manner in which staff has presented the budget and proposed rates, with general descriptions of methodology and voluminous data, but without any means to replicate or track how the data has actually been used in setting rates and charges or confirm whether the methodology described by MWD has actually been followed. Since MWD refuses to allow access to the rate model, we ask that staff identify for each schedule of budgeted expenses the "destination," in terms of how and where the expenses on each schedule are funded and by which fee or by ad valorem taxes; in other words, how each schedule of expense has been identified and allocated and on what basis to a cost of service category. Given the shortness of time, we request this information be made available as soon as possible.

One example of the kind of difficulty we have experienced in attempting to review the budget and cost of service report without access to the rate model is as follows, regarding California WaterFix costs:

Statement from Page 83, Attachment 3, Board Letter 9-2:

*"With regard to California WaterFix costs, **consistent with the treatment of SWP Conveyance and Aqueduct costs**, 51 percent of costs are allocated to Fixed Commodity, which is recovered through the System Access Rate, and 49 percent of costs are allocated to Fixed Demand and Fixed Standby, which is recovered through the Readiness -to-Serve Charge in FY 2018/2019" (emphasis added).*

Attachment 3, Page 133 of 259, shows that California WaterFix costs (\$3.574M in 2019) in fact have been allocated as follows:

50.9% to Fixed Commodity (SAR)

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OTHER REPRESENTATIVE

County of San Diego

March 21, 2018

Mr. Breaux

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20.9% to Fixed Demand (RTS)

28.3% to Fixed Standby (RTS)

And, **Schedule 10 of Board Letter 9-2, Attachment 3, Page 81 of 259**, also states that SWP Conveyance and Aqueduct is allocated:

51% to Fixed Commodity

21% to Fixed Demand

28% to Fixed Standby

But **Schedules 12 and Schedule 13 from Attachment 3, pages 85 and 86 of 259** for SWP other (SWP Conveyance and Aqueduct, non-power) shows a cost allocation as follows:

\$243.7 M to Fixed Commodity, or **95.7% not 51%**

\$4.7 M to Fixed Demand, or **1.8% not 21%**

\$6.4 M to Fixed Standby, or **2.5% not 28%**

Please provide an explanation and correction as necessary.

While appreciated, the information staff has provided in PowerPoint presentations during MWD committee and workshop meetings in and of itself has been at such a high level of detail, that it is not possible to consider changes that could result, for example, in lowering proposed spending or borrowing, lowering rate increases, modifying board policies such as funding of capital projects on a PAYGo basis rather than debt financing, maximum coverage ratios or reserve levels, or how surplus revenues are applied to offset future rates, fees or taxes, among many other policy choices. While we feel frustrated as directors at not being able to secure access to information in a form that is useful for budget deliberations, at the very least we must have information sufficient to meet our responsibility to ratepayers in reviewing the accuracy of the proposed budget and rates.

Here are our additional questions.

1. ***Please explain why the water supply costs in the 2016 and 2018 financial forecasts vary so significantly.*** Although the sales assumptions in the 2016 and 2018 financial forecasts are largely the same (indeed, the 2018 forecast assumes 50,000 AF of additional water sales in 2021 and 2022), supply related expenses in 2026 are \$300 million less (by more than 22 percent) in the 2018 forecast. Please provide a detailed explanation for this reduction in the supply related expenses and changed forecast.
2. ***Please provide the board action from which staff has derived its interpretation that the "maximum" reserve level is a "target" rather than a cap.*** MWD Administrative Code Section 5202 governs MWD fund parameters, with subpart (a) requiring that ***minimum reserves*** be maintained at a level sufficient to pay eighteen months of fixed costs, as prescribed. Subpart (e) establishes ***maximum reserves*** at a level sufficient to pay an additional two years of fixed costs, as prescribed, following the 18-month period referenced in Section 5202(a). The purpose of the minimum and maximum reserve levels is to ensure adequate funds are available to pay district costs in the event of reduced sales, while discouraging the accumulation of funds in excess of the maximum reserve level. The formulas used to establish the minimum and maximum reserve levels were developed as part of the 1999 Long Range Finance Plan, after significant input from member agencies who were reasonably concerned that MWD not collect

March 21, 2018

Mr. Breaux

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more revenue than reasonably necessary to pay its costs. See 2004 Long Range Finance Plan at page 52 (Attachment 2). We can find no board action that changed this board policy or explanation why rates should now be set to "target" or exceed maximum reserves, rather than recognizing the maximum reserve level is intended as a *cap* on the amount of funds held in the Water Rate Stabilization Fund. Please advise how and when staff believes the board changed this policy.

3. Please provide any analysis staff has performed demonstrating or supporting the staff's conclusion that use of a standby charge or other source of fixed revenue in lieu of ad valorem taxes is too "difficult or impractical" for MWD to implement. In continuing to recommend suspension of the tax rate limitation under Section 124.5 of the MWD Act, staff has repeatedly made the statement to the board that alternative sources of fixed revenue in lieu of ad valorem taxes are too "difficult" or "impractical" to implement. What is the basis of staff's contention that other sources of fixed revenue are not available to the board of directors such that they should be taken off the table for consideration to increase fixed revenues? Please provide any written legal opinion or staff analysis supporting this conclusion. Imposition of taxes as contrasted with other fixed charges could have materially different impacts on different customers, and the chosen methodology should be supported by cost of service.

4. Please explain decreased Colorado River diversions planned for fiscal years 2020-2026. Given that staff is projecting the same or higher water sales during these years, please explain why MWD plans to reduce its Colorado River diversions.

5. Please explain why the 2018 forecast also reduces supply program expenditures from the 2016 forecast. On top of reduced Colorado River supplies, the budget forecast also reduces supply program expenditures in spite of projections of increased sales (for example, a 27 percent expenditure reduction in 2026). Please explain.

6. Please provide rate modeling with alternatives assuming a high and low, or range of investment, in the California WaterFix. The 2018 budget and rate forecast assumes only one cost scenario for the California WaterFix, namely, the current board-authorized investment, capped at a 25.9 percent share and \$4.3 billion. Since implementation within this limitation is no longer viable, and with the staff having announced its plan to ask the board to consider other options that would cost more, a full range of potential budget and rate impacts should be modeled in the proposed budget. Given that the State Water Project is MWD's largest single cost component (forecasted to be at 42 percent of the operations budget in 2028, assuming only a 25.9 percent WaterFix participation) every effort should be made to refine projections by modeling real potential alternatives.

7. Please provide rate modeling taking into account budget and rate impacts of the offsetting benefits to MWD of the Water Authority's Colorado River water. The Water Authority's Chair Muir has raised this issue with Chair Record over the past several months, and the Water Authority's General Counsel reiterated the request in his letter of March 11, 2018 that MWD calculate the offsetting benefits of the Water Authority's Colorado River supplies. It would be prudent for the board to factor this offset into its budget and rates for 2019 and 2020 and future years given the Court of Appeal decision.

8. Please explain why staff is recommending a bond coverage ratio of 2.0, and provide analysis of what MWD's rate increases would be, if any, if the coverage ratio is lowered. Given that MWD has significant reserves (and has budgeted to collect additional revenues to equal or exceed the maximum reserves) and taxing authority (and has actually suspended the tax limitation), a coverage ratio of 2.0 is

March 21, 2018

Mr. Breaux

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unnecessarily high (without even taking into account the PAYGo tactic addressed in the March 11 letter). Please provide an analysis of what rate increases would be necessary if the coverage ratio is lowered to 1.5. Every dollar that MWD unnecessarily over-collects is one less dollar available to its member agencies for the development of local water supplies.

9. Staff should work to reconcile the budget and 10-year forecast with the IRP and MWD and member agency Urban Water Management Plans. There is a dangerous "disconnect" between MWD's budget, Integrated Resources Plan and the Urban Water Management Plans of MWD and its member agencies, which threatens to result in wasted money and stranded costs. The unrealistic WaterFix assumption that has been budgeted is noted above. While staff has identified "maximizing local resources" as one of its funding strategic priorities, only the cost of the demonstration stage for the Regional Recycled Program with the Los Angeles Sanitation Districts is included in the budget and ten-year forecast (although the capital cost is between \$2.5 and \$3 billion) and LRP funding is projected to remain constant. MWD's budget should be measured against the real projected demand for MWD water as established by the member agencies' Urban Water Management Plans.

10. The 3 percent rate increase in 2019 is not supported by the revenue requirement, which is lower than that required in 2018, unless the rates are set for the purpose of increasing reserves. For all of the reasons stated in this letter, it is clear that MWD has set its revenue requirement for the 2018 rate setting at a level that is far higher than necessary to meet its reasonable and necessary costs.

As noted at the outset, we would appreciate your response to these questions and comments, and if you would provide the additional analyses and modeling as requested in advance of the next finance committee meeting and board workshop. We would also appreciate your response to our General Counsel's March 11 letter.

Sincerely,



Keith Lewinger
Director

Attachment 1: March 11, 2018 letter from Mark Hattam to Randy Record and Board Members

Attachment 2: MWD Administrative Code §5202, and excerpts from 2014 Long Range Finance Plan

cc: MWD Board of Directors

Jeff Kightlinger, MWD General Manager

Water Authority Board of Directors

Maureen A. Stapleton, Water Authority General Manager



San Diego County Water Authority

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March 11, 2018

Randy Record, Chairman
and Board of Directors

Metropolitan Water District of Southern California

P.O. Box 54153

Los Angeles, CA 90054

MEMBER AGENCIES

Carlsbad
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook
Public Utility District

Helix Water District

Lakeside Water District

Olivenhain
Municipal Water District

Otay Water District

Padre Dam
Municipal Water District

Camp Pendleton
Marine Corps Base

Rainbow
Municipal Water District

Ramona
Municipal Water District

Rincon del Diablo
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Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center
Municipal Water District

Vista Irrigation District

Yuima
Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

RE: March 12 Finance and Insurance Committee/Budget and Rates Workshop #3
Agenda Item 8: Budget and Rates Workshop #3

March 13, 2018 Board Meeting Agenda Item 4 Public Hearings

Public hearing to consider whether to continue suspending the tax rate limitations in Section 124.5 of the Metropolitan Water District Act to maintain the ad valorem tax rate for fiscal years 2018/19 and 2019/20

Public hearing on proposed water rates and charges for calendar years 2019 and 2020 to meet revenue requirements

Dear Chairman Record and Board Members:

On behalf of the San Diego County Water Authority, the purpose of this letter is to make a formal request for records as stated below, and, provide high level comments and questions on Board Memo 8-1 dated February 13, 2018 setting this combined public hearing and Information Board Memo 9-2 of the same date on the subject: Proposed biennial budget and revenue requirements for fiscal years 2018/19 and 2019/20; proposed water rates and charges for calendar years 2019 and 2020 to meet revenue requirements for fiscal years 2018/19 and 2019/20; ten-year forecast; and Cost of Service Report (collectively, the "Budget Document").

I. The Budget Document lacks sufficient detail to track past or proposed expenditures, or determine how MWD has allocated its costs to arrive at the proposed rates and charges

The Water Authority's board representatives have repeatedly requested that staff provide projected actual expenditures by line item and category as part of the budget and rate setting process. This information is essential to meaningful deliberation of MWDs proposed revenue requirements and is standard industry practice in budgeting and rate setting for public utilities. While we are aware that the PowerPoint slides for March 12 include "budget vs actual" charts, they do not provide the level of detail needed for meaningful review. We request again that the data by line item and category be provided, in addition, and that the projected actuals be included where budget data is presented in

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the final Budget Document.

II. MWD's Cost of Service methodology is flawed because it fails to analyze cost causation or account for or assign costs by customer class

Separate and apart from the fact that it is not possible to replicate how MWD has assigned its costs to rates without access to its rate model, the underlying methodology is obviously flawed due to MWD's failure to analyze or account for the varying demands and service characteristics of its 26 member agencies, which MWD admits exist. One of the basic principles of cost of service and ratemaking is to group customers with similar demand and usage patterns in common categories (classes), so that costs may be assigned to the customer classes that cause these costs to be incurred. In spite of the different service patterns and use characteristics of MWD's member agencies, MWD has simply declared by legislative fiat that it has only one customer class.

Historically, MWD has claimed that Proposition 26 and cost of service requirements do not apply to its rates, and that the only test is one of "reasonableness." Although the Court of Appeal in the 2010/2012 Rate Case clearly applied Proposition 26, MWD persists in insisting that Proposition 26 and cost of service requirements do not apply to MWD's rates.ⁱ

III. Request for public records under California Public Records Act (Gov. Code § 6250 *et seq.*)

As you know, the Water Authority is seeking public disclosure of the rate model MWD uses to allocate costs and set its rates and charges. We filed a Public Records Act (PRA) request on February 18, 2016 (Attachment 1), requesting disclosure of the 2016 rate model and various data, analyses and studies as described in paragraphs 1-8 of that letter. We hereby make formal demand for the 2018 rate model and all supporting data as described in paragraphs 1-8 and any other "input" MWD relied on to establish the 2018 proposed rates and charges for calendar years 2019 and 2020. We also request:

1. A copy of the "Financial Planning Model Manual" Mr. Van den Berg identified and described during his deposition on May 11, 2017 (at pages 69-72).
2. A functional copy of the 2018 Budget Document as it is maintained in the ordinary course of business, in which the links are not disabled.

IV. Written Request for Notice (Gov. Code §54999.7(d); Request for Data and Proposed Methodology for Establishing Rates and Charges (Gov. Code § 54999.7(e))

The Water Authority hereby makes formal request to be provided with all of the data and proposed methodology MWD will rely upon for establishing rates, charges and surcharges or fees for 2019 and 2020 in accordance with the above-listed Government Code provisions. The Water Authority and its MWD board delegates have previously requested this information but thus far none has been provided except as contained in the Budget Document.

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With only one month remaining before the MWD board votes on the proposed rates and charges, not all of the underlying data "input" has been provided to MWD's member agencies or the public except in the summary form contained in the Budget Document. Obviously, not all information has been made available prior to the public hearing on March 13, 2018. Given MWD's assertions about the complexity of its ratemaking process, with a rate model that purportedly consists of more than 350,000 mathematical formulas, links and calculations, MWD's failure to provide the requested information is wholly unacceptable and contrary to law.

V. There is no demonstrated justification for suspension of the ad valorem tax rate limitation

As expressed by the Water Authority on many prior occasions, Section 124.5 of the MWD Act allows the board to suspend the tax limitation, but only after it finds that the suspension is "essential to the fiscal integrity of the district." The purported reason for the proposed suspension in 2019 and 2020 is to "pay for growing State Water Contract costs" and to "help maintain a balance between fixed and variable revenues, and reduce the impact of future water rate increases." However, this justification is not supported by data and is flawed.

First, the proposed tax rate suspension—in order to "reduce the impact of future water rate increases—is contrary to the legislative history of Section 124.5, which expressed the intent that taxes be reduced and that user rates and charges constitute the great preponderance of MWD's revenues. A greater reliance on rates over taxes also better allows costs to be assigned to the customer groups that cause specific costs to be incurred.

While MWD's objective of maintaining a balance between fixed and variable revenues is certainly proper, reducing the very charges the Legislature provided to MWD to be used in lieu of property taxes is inconsistent with that objective. The proposed suspension of the tax rate will increase MWD's tax revenues by 16 percent between 2018 and 2019, but the readiness-to-serve (RTS) charge is proposed to decrease by 5 percent during the same period. In fact, the pattern of *decreasing* RTS and *increasing* tax revenues carries forward in the proposed financial forecast.

When comparing the financial forecast proposed in this budget and the one adopted in 2016, MWD is projecting a higher tax revenue trend (staff is apparently planning to continue the tax rate limitation suspension indefinitely), and a lower RTS collection during the same period. As an example, in 2026, the projected RTS collection would be 15 percent lower than that projected for the same year in the 2016 biennial budget, while the projected tax revenues for the same year (2026) is 5.5 percent higher than previously forecasted.

Finally, MWD staff reported that State Water Contract (SWC) costs are projected to be reduced from what was previously forecast due to delayed implementation of WaterFix and MWD's staff's successful negotiation with Department of Water Resources to reduce future expenditures. Since

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 Chairman Record and Board Members
 Page 4

these costs are less than the fiscal year 2018 budgeted SWC costs (and the SWC costs forecasted in the adopted financial forecast for fiscal year 2019), staff's justification for the tax rate limitation suspension -- because it purportedly is needed to cover "growing" SWC costs -- is baseless.

VI. The purported PAYGo Funding policy and "Resolution for Reimbursement" would allow revenues to be collected for one purpose but used for another without any consideration of or adjustment for cost of service requirements

The Water Authority strongly opposes the so-called "Resolution for Reimbursement." MWD apparently plans to use PAYGo revenues as a discretionary fund, by adopting a "Resolution for Reimbursement" to allow the use of revenues from PAYGo to pay for operations expenses, before a need is even identified. This resolution would authorize staff to prospectively collect \$120 million annually for one purpose (CIP) but then potentially use it for another purpose (O&M or California WaterFix). This is not only an unsound fiscal strategy lacking in transparency, but it also deliberately avoids any accountability ("true up") or tie to cost of service. The board should make a decision now on whether to raise rates, plan to borrow money or, notably, reduce costs rather than engage in the gimmick of the proposed Resolution.

VII. Demand that MWD set aside principal and prejudgment interest at 10% for the WSR Exchange Agreement overcharges consistent with Court of Appeal decision

In February Board Memo 9-1, the following is stated on page 5:

"Metropolitan holds \$52.8 million in its financial reserves in accordance with the set-aside provision of the 2003 Amended and Restated Exchange Agreement between Metropolitan and SDCWA (exchange agreement). This amount includes \$51 million associated with exchange agreement water deliveries from January 2011 through October 2017 and \$1.8 million in accumulated interest earned thereon, based on Metropolitan's investment portfolio."

We believe this set-aside is too low, and not in compliance with the Court of Appeal's decision, where the Court stated, on pages 1155-56 of its decision:

"Metropolitan contends the statutory rate of interest was wrongly used in the original proceedings because the exchange agreement stipulates a contractual rate. This contention is unsupported by the terms of the exchange agreement, as the trial court rightly held."

MWD is well aware that the prejudgment interest rate found by the trial court is 10 percent, not the rate "based on Metropolitan's investment portfolio." Our calculations show that the actual amount that should be reserved by MWD through 2018 is approximately \$87 million, which includes both principal and prejudgment interest – leaving about a \$34 million deficit in what MWD is now actually

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 Chairman Record and Board Members
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withholding and reporting to the Board. If MWD's Board approves not charging the Water Stewardship Rate (WSR) to the Exchange Agreement water through the rest of 2018, that total will of course drop slightly. Demand is hereby made by the Water Authority that MWD properly set aside all principal and prejudgment interest at 10% for the WSR Exchange Agreement overcharges through 2018, or any earlier date the MWD board may end the overcharges in 2018.

VIII. Demand that MWD not impose its Water Stewardship Rate on any wheeled water

In February Board memo 9-1, MWD seeks approval by its Board to suspend imposition of WSR charges on Exchange Agreement water, while still imposing them on other wheeling transactions. For example, see page 5 of February Board memo 9-1, which states that the reduction applies only to Exchange Agreement water, with no mention of other wheeled water:

“[I]t is proposed that the Water Stewardship Rate will not be billed on the exchange agreement deliveries for CYs 2019 and 2020, with Metropolitan foregoing any collection of these amounts during this study period. Further, it is recommended that Metropolitan suspend billing and collecting the current Water Stewardship Rate on exchange agreement deliveries in CY 2018.”

See also page 102 of Attachment 3 to the above document, which makes clear wheeled water would be assessed WSR charges (emphasis added): “All system users (member agency *or third parties*) will pay the same proportional costs for existing and future conservation and recycling investments.”

However, the Court of Appeal's ruling was based on the Wheeling Law (Water Code sections 1810 *et seq.*), and the Court found that under that law MWD cannot charge the WSR on wheeled water: “A water agency's payments to its members to encourage water conservation is outside the scope of recoverable costs contemplated by the wheeling statutes.” *Id.* at 1150.

MWD's decision to impose WSR charges on wheeled water is in clear violation of the Court of Appeal's decision, and thus unlawful. Though we appreciate the fact that MWD staff recommends not making unlawful charges against the Exchange Agreement, it is clear that MWD may not impose the same unlawful charges to all other wheeling transactions. Demand is hereby made by the Water Authority that MWD not adopt rates that allow for WSR charges to be assessed against wheeled water.

IX. Request for calculation of offsetting benefits under the Wheeling Statute

As you are aware, the Court of Appeal determined that the Wheeling Statutes apply to the Exchange Agreement between MWD and the Water Authority. Accordingly, under Water Code § 1811(c), and consistent with MWD Board Resolution 8520, MWD must calculate the offsetting benefits of the Water Authority's Exchange Agreement water. Because MWD's wheeling rate, and the Water Authority's price under the Exchange Agreement, is calculated in part based on the setting of MWD's

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Page 6

annual rates, MWD should perform this calculation now as part of this budget and rate-setting cycle, so that these costs may properly be reflected in MWD's budget, and long term planning and disclosure documents. The Water Authority identified this issue to MWD last November as a litigation issue remaining to be resolved between MWD and the Water Authority, but as you are aware, the MWD and Water Authority negotiating teams have not yet met.

X. Conclusion

Our MWD board representatives have additional policy questions and comments that will be presented separately.

Sincerely,



Mark J. Hattam
General Counsel

Attachment: Water Authority's Public Records Act request for MWD rate model, dated February 18, 2016

cc: MWD Board of Directors
Water Authority Board of Directors
Maureen Stapleton, General Manager

ⁱ Contrary to a recent public statement by one of Metropolitan's attorneys, the Court of Appeal did in fact apply Proposition 26 to Metropolitan's rates.



San Diego County Water Authority

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

February 18, 2016

MEMBER AGENCIES

Carlsbad
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook
Public Utility District

Helix Water District

Lakeside Water District

Olivenhain
Municipal Water District

Otay Water District

Padre Dam
Municipal Water District

Camp Pendleton
Marine Corps Base

Rainbow
Municipal Water District

Ramona
Municipal Water District

Rincon del Diablo
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center
Municipal Water District

Vista Irrigation District

Yuima
Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

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

Re: Request for Records Under California Public Records Act
(California Gov. Code § 6250 *et seq.*)

Dear Ms. Chin:

On behalf of my client, the San Diego County Water Authority ("SDCWA"), and pursuant to the California Public Records Act ("PRA"), California Government Code section 6250 *et seq.*, we request the following public records which are in the possession or control of the Metropolitan Water District of Southern California (hereinafter "MWD"). "MWD," as used herein, includes MWD itself, MWD's officers, representatives, agents, employees, affiliates, accountants, consultants, attorneys, MWD's Board of Directors, its individual directors, and any and all persons acting on MWD's behalf. "MWD's Board" and "MWD's Board of Directors," as used herein, includes the Board of Directors as a whole, its directors and all relevant Standing, Ad Hoc, Special Purpose, Temporary Committees, and all other appointments.

This request applies to every such record that is known to MWD and which MWD can locate or discover by reasonably diligent efforts. More specifically, the records that may contain information called for by this request include:

- Documents, communications, letters, memoranda, notes, reports, papers, files, books, records, contracts, agreements, telegrams, electronic mail (saved or deleted), and other communications sent or received;
- Printouts, diary entries and calendars, drafts, tables, compilations, tabulations, charts, spreadsheets, graphs, recommendations, accounts, worksheets, logs, work papers, minutes, notes, summaries, speeches, presentations, and other written records or recordings of or relating to any conference, meeting, visit, interview, or telephone conversations;
- Bills, statements, invoices, and other records of any obligation or expenditure, cancelled checks, vouchers, receipts, and other records of payment;
- Financial and statistical data, analyses, surveys and schedules;
- Audiotapes and videotapes and cassettes and transcripts thereof, affidavits, transcripts of testimony, statements, interviews, and conversations;

Ms. Dawn Chin
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- Printed matter (including published articles, speeches, newspaper clippings, press releases, and photographs); and
- Microfilm and microfiche, disks, computer files, electronically stored data (including the metadata associated with any such written and/or spoken content), electronically stored information, electronic devices, film, tapes, and other sources from which information can be obtained, including materials used in electronic data processing. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. "Electronically stored information" means information that is stored in an electronic medium, including data, metadata, and all electronically stored data or information.

The term "related to," as used in each category of public record listed below, means directly or indirectly, in whole or in part, comprising, referring to, concerning, evidencing, connected with, commenting on, affecting, responding to, showing, describing, discussing, analyzing, reflecting or constituting.

The term "rate model," as used in each category of public record listed below, means all documents, data, analyses, calculations, studies or other information that constitute, comprise, support or describe the manner in which MWD assigns costs to rates, including but not limited to its "financial planning model," including the spreadsheet, formulas and programming code.

If a record responsive to a request was, but no longer is, in your possession, custody, or control, state precisely what disposition was made of it (including its present location and who possesses or controls it) and identify the person(s) who authorized or ordered such disposition.

Records produced in response to this request should be produced as they are kept in the usual course of business or should be organized and labeled to correspond with the categories in the request. All electronically stored information shall be produced in its native format with all metadata intact.

The requested records are:

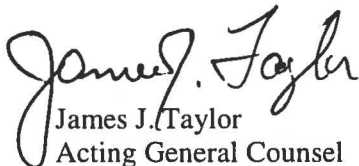
1. Any rate model or models used in formulating proposed rates for the 2017 and 2018 calendar years.
2. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting the rates and charges proposed for the 2017 and 2018 calendar years, as described in MWD Board Memo 9-2 dated 2/9/2016 (Finance and Insurance Committee).
3. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting a proposed reduction of the Readiness-to-Serve and Capacity Charges for 2017.
4. All data, analyses and studies, if any, demonstrating the proportionate benefit each of MWD's 26 customer member agencies will receive from the expenditure of revenues collected from the rates and charges proposed for the 2017 and 2018 calendar years.
5. All data, analyses and studies, if any, that support the conclusion that demand management programs provide distribution and conveyance system benefits, including identification of those parts of the distribution and conveyance system where additional capacity is needed and the customer member agencies that benefit from that capacity being made available.

Ms. Dawn Chin
February 18, 2016
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6. All data, analyses, opinions and studies, if any, that support the conclusion that suspension of the property tax restriction in Section 124.5 of the MWD Act is essential to MWD's fiscal integrity, as described in MWD Board Memo 9-2 at page 3.
7. All data, analyses and studies, if any, supporting the findings, conclusions, recommendations and water supply development targets identified in MWD's 2015 IRP Technical Update Issue Paper Addendum.
8. All data, analyses and studies, if any, supporting the findings, conclusions, recommendations and water supply development targets identified in MWD's Integrated Water Resources Plan 2015 Update.

Within ten (10) days of receipt of this PRA request, please contact me at (858) 522-6791 to discuss whether MWD has records responsive to this request, the page count and cost of copying the records, and whether the documents are also available in electronic format.

Sincerely,


James J. Taylor
Acting General Counsel

cc: MWD Public Records Administrator (by email at praadministration@mwdh2o.com)

paragraph (j)(k) added by M.I. 40272 - June 15, 1993; paragraph (h) amended and paragraph (l) added by M.I. 40273 - June 15, 1993; paragraphs (a), (b), and (j) amended by M.I. 40388 - August 24, 1993; paragraph (j) amended and paragraph (m) added by M.I. 40443 - September 21, 1993; paragraph (n) added by M.I. 41581 - September 12, 1995; paragraphs (b)(c)(h)(j)(k)(l)(n) amended by M.I. 42817-- February 10, 1998; paragraphs (b), (c), and (j) amended April 1998 by authority granted the General Counsel by M.I. 42817 - February 10, 1998; paragraph (o) added by M.I. 43434 - March 9, 1999; paragraphs (a)-(c), and (j) amended by M. I. 45249 - March 11, 2003; paragraph (n) amended by M. I. 45775 - June 8, 2004; paragraph (p) added by M. I. 46266 - June 14, 2005; amended paragraph (b), added paragraph (c), and renumbered paragraphs (d) through (q) by M.I. 50498 - June 14, 2016.

§ 5202. Fund Parameters.

The minimum cash and securities to be held in the various ledger funds as of June 30 of each year shall be as follows:

(a) For the Revenue Remainder Fund cash and securities on hand of June 30 of each year shall be equal to the portion of fixed costs of the District estimated to be recovered by water sales revenues for the eighteen months beginning with the immediately succeeding July. Such funds are to be used in the event that revenues are insufficient to pay the costs of the District.

(b) For the Replacement and Refurbishment Fund, any unexpended monies shall remain in the Fund for purposes defined in Section 5109, or as otherwise determined by the Board. The end-of-year fund balance may not exceed \$160 million. Available monies in excess of \$160 million at June 30 shall be transferred to the Water Rate Stabilization Fund, unless otherwise determined by the Board.

(c) Amounts remaining in the Revenue Remainder on June 30 of each year after meeting the requirements set forth in Section 5202(a) shall be transferred to the Water Rate Stabilization Fund and to the extent required under Section 5202(d), to the Water Treatment Surcharge Stabilization Fund.

(d) After making the transfer of funds as set forth in Section 5202(c), a determination shall be made to substantially identify the portion, if any, of such transferred funds attributable to collections of treatment surcharge revenue in excess of water treatment cost and to collections of water stewardship rate revenue in excess of costs of the Conservation Credits Program, Local Resources Program seawater desalination and similar demand management programs, including the departmental operations and maintenance costs of administering these programs. Such funds shall be transferred to the Water Treatment Surcharge Stabilization Fund and the Water Stewardship Fund, respectively, to be available for the principal purpose of mitigating required increases in the treatment surcharge and water stewardship rates. If such determination indicates a deficiency in treatment surcharge or water stewardship rate revenue occurred during the fiscal year, a transfer of funds shall be made from the Water Treatment Surcharge Stabilization Fund or the Water Stewardship Fund, as needed and appropriate, to reimburse funds used for the deficiency. Notwithstanding the principal purpose of the Water Treatment Surcharge Stabilization Fund and the Water Stewardship Fund, amounts assigned to these fund shall be available for any other lawful purpose of the District.

(e) Amounts in the Water Rate Stabilization Fund shall be held for the principal purpose of maintaining stable and predictable water rates and charges. The amount to be held in the

Water Rate Stabilization fund shall be targeted to be equal to the portion of the fixed costs of the District estimated to be recovered by water sales revenues during the two years immediately following the eighteen-month period referenced in Section 5202(a). Funds in excess of such targeted amount shall be utilized for capital expenditures of the District in lieu of the issuance of additional debt, or for the redemption, defeasance or purchase of outstanding bonds or commercial paper of the District as determined by the Board. Provided that the District's fixed charge coverage ratio is at or above 1.2 amounts in the Water Rate Stabilization Fund may be expended for any lawful purpose of the District, as determined by the Board of Directors, provided that any funds distributed to member agencies shall be allocated on the basis of all water sales during the previous fiscal year, such sales to include sales under the Interim Agricultural Water Program, Replenishment Service Program and all Full Service water sales.

Notwithstanding the fund parameters set forth in this Section 5202, including, but not limited to, any minimum fund balances or specified uses and purposes, all amounts held in the foregoing funds shall be available to pay interest on and Bond Obligation (including Mandatory Sinking Account Payments) of Water Revenue Bonds issued pursuant to Resolution 8329 adopted by the Board on July 9, 1991, as amended and supplemented (the Master Resolution), and Parity Obligations, and Subordinate Water Revenue Bonds, issued pursuant to Resolution 9199 adopted by the Board on March 8, 2016, as amended and supplemented (the Master Subordinate Resolution). Capitalized terms not defined in this paragraph shall have the meanings assigned to such terms in the Master Resolution and the Master Subordinate Resolution.

Section 331.2 - M.I. 32735 - May 8, 1979, effective July 1, 1979 [Supersedes M.I. 30984 - August 19, 1975; M.I. 31826 - June 14, 1977 and M.I. 32292 - June 13, 1978]; amended by M.I. 35309 - September 11, 1984; amended by M.I. 35730 - July 9, 1985. Section 331.2 repealed and Section 5201 adopted by M.I. 36464 - January 13, 1987, effective April 1, 1987; paragraph (a) amended and paragraph (b) added by M.I. 36676 - June 9, 1987; paragraph (a) amended by M.I. 36731 - July 14, 1987; paragraph (b) amended and paragraph (c) added by M.I. 37007 - February 9, 1988; amended by M.I. 37449 - December 13, 1988; paragraph (a) amended by M.I. 37679 - May 9, 1989; renumbered to Section 5202 by M.I. 38241 - May 8, 1990; paragraphs (c) and (d) amended by M. I. 38304 - June 12, 1990; paragraph (a) amended by M.I. 39794 - August 20, 1992; paragraph (e) added by M.I. 41581 - September 12, 1995; Section renamed and paragraphs (a)-(c) and (e) amended by M.I.43434 - March 9, 1999; paragraph (e) amended by M.I. 43587 - June 8, 1999; paragraph (b), (c) and (e) amended by M. I. 44907 - June 11, 2002; paragraph (b) amended by M. I. 45904 - September 14, 2004; paragraph (d) amended by M. I. 46266 - June 14, 2005; Paragraph (e) amended by M. I. 46838 - October 10, 2006; final paragraph added by M.I. 47286 - November 20, 2007; amended paragraph (e) by M.I. 50498 - June 14, 2016.

§ 5203. Indirect Credit of District.

The General Manager may negotiate with the Department of Water Resources on the basis of using the indirect credit of the District to finance State Revenue Bonds so long as the obligation of the District thereunder does not exceed the obligation required under the State Contract.

Section 331.2 renumbered 331.3. Section 331.3 repealed and Section 5202 adopted by M.I. 36464 - January 13, 1987, effective April 1, 1987; renumbered to Section 5203 by M.I. 38241 - May 8, 1990.

§ 5204. Compliance with Fund Requirements and Bond Indenture Provisions.

As of June 30 of each year, the General Manager shall make a review to determine whether the minimum fund requirements outlined in this Chapter have been met and whether the

14. Financial Indicators

Metropolitan monitors various indicators of its financial strength and flexibility. The following discussion summarizes forecasted trends in these indicators, resulting from the forecasted expenditures and receipts, including assumed changes in rates and charges.

14.1. Financial Ratios

Financial ratios are key indicators commonly used by rating agencies and the investment community to measure a municipal utility's financial strength. Metropolitan's existing financial policies include goals of maintaining revenue bond debt service coverage of at least 2.00 times and fixed charge coverage of 1.2 times.

14.1.1. Revenue Bond Debt Service Coverage

Revenue bond debt service coverage is one of the primary indicators of credit quality, and is calculated by dividing net operating revenues by debt service. This measures the amount that net operating revenues exceed or "cover" debt service payments over a period of time. Higher coverage levels are preferred since they indicate a greater margin of protection for bondholders. For example, a municipality with 2.00 times debt service coverage has twice the net operating revenues required to meet debt service payments. The LRFPP forecasts that Metropolitan's debt service coverage ratio averages 2.1 times through 2014 ranging from a low of 2.0 times to a high of 2.5 times. The median coverage ratio for AA rated water systems by Standard & Poor's was 2.77 times in 2001. Metropolitan's minimum coverage policy is key to continued strong credit ratings and low cost bond funding.

14.1.2. Fixed Charge Coverage

In addition to revenue bond debt service coverage, Metropolitan also measures total coverage of all fixed obligations after payment of operating expenditures. This additional measure is used primarily because of Metropolitan's recurring capital costs for the State Water Contract. Rating agencies expect that a financially sound utility consistently demonstrate an ability to fund all recurring costs, whether they are operating expenditures, debt service payments or other contractual payments. The LRFPP forecasts that Metropolitan's fixed charge coverage ratio ranges from a low of 1.3 times to a high of 1.4 times over the ten-year period. These levels help maintain strong credit ratings and access to the capital markets at low cost.

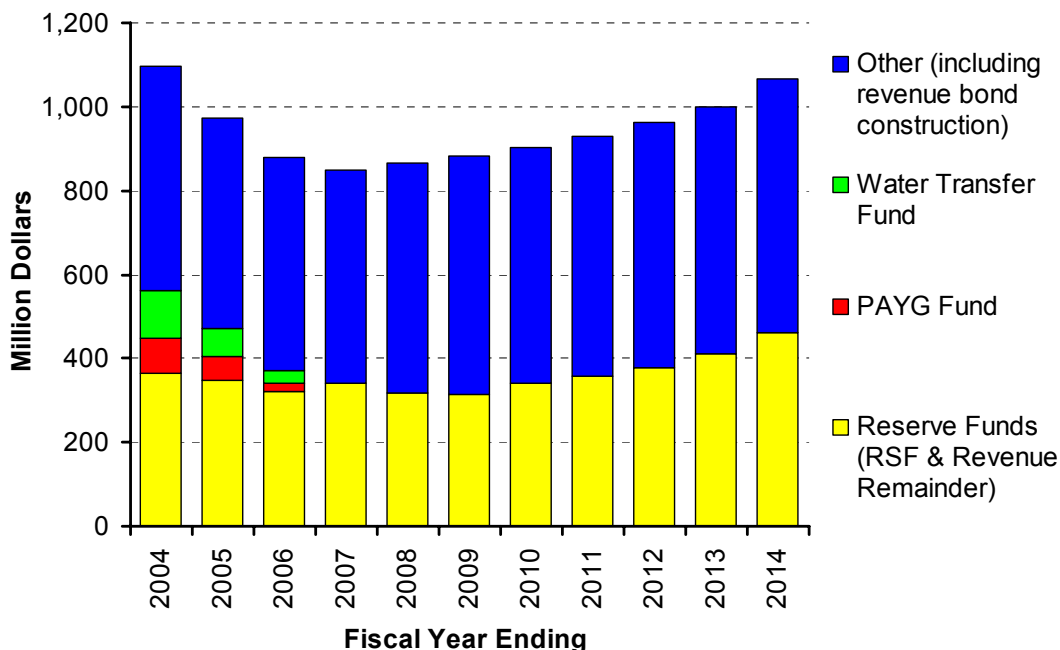
14.2. Fund Levels

Metropolitan's fund policies are formulated to meet requirements as set forth in bond covenants and by the Board. Most importantly, the reserve fund policies provide Metropolitan with the ability to meet anticipated cash flow

requirements and mitigate unanticipated cost increases or revenue decreases, helping to ensure that rates and charges are predictable. Minimum and maximum reserve targets govern the water rate stabilization fund balance. The minimum and maximum reserve targets are determined by a formula developed in the 1999 Plan, after significant input from member agencies. The formula takes into account the variability in water sales, the amount of fixed costs recovered by volumetric rates and the duration of a period of low sales. As reserves decrease below the maximum reserve target Metropolitan's ability to mitigate for unforeseen cost increases or decreases in water sales caused by wet weather is reduced.

The LRFP anticipates using \$50 million of rate stabilization reserves by 2007/08 to mitigate rate increases. Figure 17 illustrates the expected trend in fund balances, including the initial use of rate stabilization funds to mitigate rate increases, the use of remaining water transfer fund balances and necessary changes in required fund balances (e.g. debt service reserve funds) as fixed costs continue to increase. If water sales and revenues are lower than expected and/or costs are higher draws on reserves could be greater. Conversely, higher sales and lower costs will result in higher than expected reserve balances.

Figure 17. Fund Balances



ATTACHMENT 2



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

March 23, 2018

VIA EMAIL AND U.S. MAIL

Mark J. Hattam, General Counsel
San Diego County Water Authority
4677 Overland Avenue
San Diego, California 92123

Re: Your letter dated March 11, 2018 regarding March 12 F&I Committee/Budget and Rates Workshop #3, and March 13, 2018 Board Meeting Agenda Item 4 Public Hearings

Dear Mr. Hattam:

This letter addresses your comments, received via email on Sunday, March 11, 2018, at 10:31 p.m. (attached), making a formal request for records and providing “high level comments and questions” on Board Letters 8-1 and 9-2, both dated February 13, 2018. These Board Letters set a combined public hearing and provided information regarding proposals regarding Metropolitan’s Ad Valorem property tax rate, biennial budget, rates, and charges. On March 21, 2018, Metropolitan General Counsel Marcia L. Scully responded to your request for records. In this letter, the General Manager and General Counsel’s offices respond to your comments and questions, as they raise a number of financial and legal issues. We provide responses to the comments and questions in the same order listed in your March 11, 2018 letter.

I. “The Budget Document lacks sufficient detail to track past or proposed expenditures, or determine how MWD has allocated its costs to arrive at the proposed rates and charges”

Your request that staff provide “projected actual expenditures by line item and category as part of the budget and rate setting process,” is unclear. (See, 3/11/18 Ltr, p. 1.) We do not know what you mean by “projected actual expenditures,” as a budget is a forward-looking document that reasonably estimates expenditures in upcoming years. The purpose of a budget is to project the expenditures the agency reasonably expects to incur in the future budget period and Metropolitan distributed its proposed Biennial Budget for FY 2018/19 and FY 2019/20 on February 1, 2018. Thus, Metropolitan has already provided its projected expenditures for the next biennium period.

Mr. Mark J. Hattam

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March 23, 2018

You further request such “projected actual expenditures by line item and category” and state that it is “standard industry practice in budgeting and rate setting for public utilities” to provide this information. (See, 3/1//18 Ltr, p.1.) Metropolitan has provided its projected expenditures by line item and category in its proposed Biennial Budget, which contains:

- a) a budget summary, broken down by appropriations, funds, source of funds, operating revenue, capital funding, uses of funds, operations and maintenance (by organization and by expenditure type), capital investment fund, and fund balance and reserves, with each category further broken down for reference;
- b) a departmental/group budget, breaking down each department’s operations and maintenance (“O&M”) by expenditure section, and providing personnel summaries;
- c) an operating equipment budget;
- d) a nondepartmental budget for each of Metropolitan’s major cost categories: the State Water Project, CRA Power, Supply Programs, Demand Management, and Capital Financing; and
- e) a breakdown by category of costs for each nondepartmental budget.¹

Concurrently, Metropolitan also provided its 2018 Cost of Service Report, which explains Metropolitan’s allocation of the specific costs in the proposed Biennial Budget. The 2018 Cost of Service Report also contains an appendix with 159 pages of Cost of Service Tables. Such tables show costs by line item for departmental and nondepartmental costs and assign each line item to a cost function by percentage.²

On March 7, 2018, Metropolitan also provided its 185-page Capital Investment Plan (“CIP”) Appendix to the Biennial Budget. The CIP Appendix lists over 300 projects and a total project estimate for each project.³

¹ Metropolitan’s proposed Biennial Budget is available at:
<http://www.mwdh2o.com/WhoWeAre/Pages/proposed-budget-rates.aspx>.

² Metropolitan’s 2018 Cost of Service Report is available at:
<http://www.mwdh2o.com/WhoWeAre/Pages/proposed-budget-rates.aspx>.

³ Metropolitan’s CIP Appendix is available at:
<http://www.mwdh2o.com/WhoWeAre/Pages/proposed-budget-rates.aspx>.

Mr. Mark J. Hattam

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March 23, 2018

In addition, based on requests for data and other materials used to generate or supporting Metropolitan's proposed rates and charges, Metropolitan also provided further line item detail that form the bases of Metropolitan's Biennial Budget, which are available at:

<http://www.mwdh2o.com/WhoWeAre/Management/Financial-Information/Pages/2018-Underlying-Materials.aspx>.

Therefore, we do not know which "line item and category" you believe is missing from the information Metropolitan publishes in connection with its budget and rates process. Metropolitan meets industry standards and your letter does not identify the "standard industry practice" you claim Metropolitan fails to meet.

To the extent the detailed line-item information Metropolitan has provided is not the line-item detail you seek, please provide us with an example of the specific line-item budget that you find acceptable. We have reviewed SDCWA's proposed budget, for example, and do not find it provides more detailed budget information than does Metropolitan's Budget and the additional materials Metropolitan publishes.

II. "MWD's Cost of Service methodology is flawed because it fails to analyze cost causation or account for or assign costs by customer class"

You claim that Metropolitan's cost of service methodology is "obviously flawed" because Metropolitan only has one customer class and therefore purportedly fails "to analyze or account for the varying demands and service characteristics of its 26 member agencies." (3/1//18 Ltr., p. 2.) However, Metropolitan's rate structure does analyze and account for the varying demands by, and characteristics of the service to, its member agencies.

Metropolitan's unbundled rates and charges are designed to provide transparency regarding the cost of specific functions to member agencies (functional costs are recovered through appropriate rate elements), thereby ensuring that the member agencies pay only for the services they elect to receive. We have explained this in the Metropolitan Cost of Service Report, at pages 88-89, and also in the prior Cost of Service Report and letters. For example, please see the April 12, 2016 letter from Raftelis Financial Consultants, Inc. to Gary M. Breaux, which we provided to SDCWA. There, Mr. Rick Giardina⁴ explains that the AWWA M-1 Manual, which focuses on retail utilities, references classes of customers. However, he further explains that the manual

⁴ Mr. Giardina has over 39 years of utility finance and cost of service experience. More recently he served as the Vice Chair of the AWWA Rates and Charges Committee and in that capacity he was the Chair of the working group that produced the Sixth Edition of the M1 (published in 2012). He was also Chair of the Rates and Charges Committee and oversaw the preparation of the Seventh Edition of the M1 which was published in 2017. His resume was included as Attachment A to the April 12, 2016 letter.

Mr. Mark J. Hattam

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itself is clear that the classification of customers is not a requirement for any utility and may not apply to a wholesale utility such as Metropolitan. (RFC 4/12/16 Ltr, pp. 2-3.)

Indeed, we note that in SDCWA's Cost of Service Study, dated May 2017, Carollo Engineers, SDCWA's rate consultant, explains that classes of customers are not required for SDCWA, a wholesale water service provider with an unbundled rate structure. Carollo explains at pages 2-3 of its Study that SDCWA has an unbundled rate structure based on functional cost allocation, and not classes of customers. Carollo further explains that SDCWA's customer service and storage charges are "designed to account for annual fluctuations in water demands and demand patterns." And, those charges are set based on multi-year rolling averages of each of SDCWA's member agencies. (2017 SDCWA Cost of Service Study, pp. 26-27.) Additionally, Carollo explains at page 7 that although SDCWA's Act allows the Board to "establish reasonable classifications among different classes of customers," its General Counsel has advised that such language requires only "that rates be non-discriminatory and that differences in rates or rate apportionment be based on service differences." (Id. at 7.) As you know, Metropolitan also recovers costs based on functional cost allocation and also bases certain charges on multi-year rolling averages to account for annual fluctuations in water demands among its agencies. Thus, we do not understand your position that doing so is flawed, in light of your own practice.

III. "Request for public records under California Public Records Act (Gov. Code § 6250 et seq.)"

On March 21, 2018, Metropolitan General Counsel Marcia L. Scully responded to your request for records pursuant to the California Public Records Act (attached).

IV. "Written Request for Notice (Gov. Code §54999.7(d); Request for Data and Proposed Methodology for Establishing Rates and Charges (Gov. Code § 54999.7(e))"

On March 21, 2018, Metropolitan General Counsel Marcia L. Scully responded to your request for records pursuant to Government Code Section 54999.7 (attached). Although Ms. Scully explains therein Metropolitan's position that Government Code Section 54999.7 does not apply to Metropolitan's rates and charges, Ms. Scully directed SDCWA to records previously provided by Metropolitan to the Board of Directors and to the public and available on its website.⁵

In connection with this request, you also claim that Metropolitan has only produced a summary of information in the materials it provided in advance of its first Budget, Rates, and Charges

⁵ Your letter also included a written request for notice under California Government Code Section 54999.7(d). Aside from the inapplicability of Section 54999.7(d), SDCWA made this request for notice of a public meeting concerning rates or charges after Metropolitan had already provided such notice to the Board and public, so the request is moot.

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Workshop. (3/11/18 Ltr, pp. 2-3.) However, as explained in this letter, Metropolitan has provided detailed information regarding its budget and cost allocation methodology. In addition, Metropolitan has held three workshops in which staff made presentations further explaining the extensive material provided and answered questions directly from Metropolitan directors. Metropolitan's staff also holds monthly Member Agency Managers meetings with staff from each of its member agencies. SDCWA staff, like staff from any other agency, has the opportunity to discuss with Metropolitan staff matters pending before the Metropolitan Board.

V. "There is no demonstrated justification for suspension of the ad valorem tax rate limitation"

You claim that the proposal to suspend the limitation in Section 124.5 to permit Metropolitan to continue to maintain the current ad valorem ("AV") property tax rate is not supported by data and is flawed. (3/1//18 Ltr., pp. 3-4.) We direct you to the data supporting the recommendation to continue the suspension, which is available at <http://www.mwdh2o.com/WhoWeAre/Pages/FYs-2018-19-2019-20-proposed-property-tax-rates.aspx>. Additionally, we address herein your claim that the recommendation is flawed, which appears to be based on two points.

First, you state that a greater portion of Metropolitan's State Water Contract ("SWC") costs should be recovered from rates and charges than from AV property taxes. They are. Metropolitan's proposed Biennial Budget for FY 2018/19 and FY 2019/20 includes \$566.7 million and \$602.5 million, respectively, for SWC costs. (See, proposed Biennial Budget, p. 8.) The proposal to suspend the property tax limitation of Section 124.5 to continue the AV tax at .0035 percent of assessed valuations would permit Metropolitan to collect \$89.2 million in FY 2018/19 and \$93.4 million in FY 2019/20 from AV property taxes over the 124.5 limitation to offset SWC costs. (See, id. at p. 6; see also, 3/13/18 Presentation, Slide 8.) Thus, the proposal to continue to suspend the Section 124.5 limitation would allow for the collection of about 17 to 18 percent of Metropolitan's SWC costs in each fiscal year. The remaining approximately 82 to 83 percent of SWC costs would continue to be recovered directly from Metropolitan's member agencies through rates and charges.

Your suggestion that the AV property taxes and the Readiness-to-Serve ("RTS") charge are interchangeable ignores that under Metropolitan's cost allocation methodology, costs must be recovered pursuant to their functionalization. A reduction in AV tax revenue does not result in an equivalent increase in the RTS charge. However, if SDCWA believes these costs should be borne directly by the member agency and not by property owners within its service area, SDCWA may elect to pay that obligation. Metropolitan's Act, at Section 336, provides that any member agency "may elect to pay out of the agency funds of such agency, other than funds derived from ad valorem property taxes, all or the stated percentage, as the case may be, of the amount of tax which would otherwise be levied upon property within such agency." (Metropolitan Water District Act, § 336.)

Mr. Mark J. Hattam

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Second, you rely on erroneous information regarding the SWC costs in Metropolitan's Biennial Budget. SWC costs are lower in FY 2018/19 due to global cost reductions achieved by Water Resource Management staff and other State Water Contractors working with the Department of Water Resources. These reductions affect both the Delta Water Charge and the Transportation Charge capital and Operations, Maintenance, Power and Recovery (OMP&R). SWC costs then increase from this lower base beginning in FY 2019/20 and continuing throughout the ten-year forecast.

VI. "The purported PAYGo Funding policy and 'Resolution for Reimbursement' would allow revenues to be collected for one purpose but used for another without any consideration of or adjustment for cost of service requirements"

Your objection to the PAYGo policy and resolutions of reimbursement is misplaced. The objection is based on the premise that the determination of whether to use cash or debt is a cost allocation issue. It is not.

Moreover, Metropolitan uses debt proceeds for its capital expenses, whether it is to pay concurrent expenses or through reimbursement of expenses previously funded by cash.

Finally, it appears you are suggesting that it is not the Board that makes the decision as to a resolution of reimbursement. As stated in Metropolitan's February 13, 2018 Information Board Letter, at page 5, the resolution "will be provided to the Board for consideration and approval."

VII. "Demand that MWD set aside principal and prejudgment interest at 10% for the WSR Exchange Agreement overcharges consistent with Court of Appeal decision"

As you know, Metropolitan sets aside the exchange agreement payments that SDCWA disputes, and interest thereon, pursuant to Section 12.4(c) of the exchange agreement. Section 12.4(c) requires that Metropolitan set aside disputed amounts in an interest bearing account and that the prevailing party pay "all interest earned thereon" upon resolution of the dispute. That is what Metropolitan has done. Metropolitan has no separate statutory obligation to set aside statutory prejudgment interest in advance of a judgment. And as you know, the Court of Appeal's decision as to prejudgment interest addresses the interest rate that applies to any award of damages in that case, not to the amount Metropolitan must set aside pursuant to the contractual provision. (*See, SDCWA v. Metropolitan* (2017) 12 Cal.App.5th 1124, 1154-55.)

VIII. "Demand that MWD not impose its Water Stewardship Rate on any wheeled water"

Metropolitan does not "impose" its rates on its voluntary cooperative of member agencies. Pursuant to state statute, the Board, made up of each of those agencies' representatives, sets the rates applicable to the services Metropolitan provides to those same agencies. The Board will

Mr. Mark J. Hattam

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March 23, 2018

decide on April 10, 2018 whether to adopt the proposed rates and charges, which continue to properly include the Water Stewardship Rate.

As you know, the Court of Appeal held that the “record [before it] fail[ed] to support Metropolitan’s inclusion of the water stewardship rate as a transportation cost” for the years at issue, which were 2011-2014. (*SDCWA v. Metropolitan*, 12 Cal.App.5th at 1150.) And it confirmed that “the narrow question [in that appeal] is whether substantial evidence supports Metropolitan’s determination.” (*Id.* at 1151.) Thus, Metropolitan’s adoption of rates, including its Water Stewardship Rate, does not violate the Court of Appeal’s decision. Metropolitan’s proposed rates and charges are based on the administrative record before the Board at the time it adopts the rates and charges for the new biennium period.

IX. “Request for calculation of offsetting benefits under the Wheeling Statute”

The parties obviously disagree as to the interpretation of the Court of Appeal’s decision regarding the applicability of Water Code Section 1810, *et seq.* But what is clear is that the Court of Appeal decision does not address whether Metropolitan “must calculate the offsetting benefits of the Water Authority’s Exchange Agreement” fifteen years after the effectiveness of that agreement, as you demand (*SDCWA v. Metropolitan*, 12 Cal.App.5th 1124) and this has not been part of the parties’ litigation. Neither the Court of Appeal decision, nor any other law, requires that Metropolitan calculate any alleged “offsetting benefits.”

Based on the foregoing, Metropolitan has responded to the “high level comments and questions” in your March 11, 2018 letter. Should you have any further questions, please feel free to contact either of the undersigned.

Sincerely,



Gary Breaux
Assistant General Manager
Chief Financial Officer



Marcia Scully
General Counsel

cc: Metropolitan Board of Directors
SDCWA Board of Directors
Jeffrey Kightlinger, Metropolitan General Manager
Maureen Stapleton, SDCWA General Manager

Mr. Mark J. Hattam

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March 23, 2018

Attachments:

Letter dated March 11, 2018 regarding March 12 F&I Committee/Budget and Rates Workshop #3, and March 13, 2018 Board Meeting Agenda Item 4 Public Hearings

Letter dated March 21, 2018 re Response to Public Records Act Request dated March 11, 2018 and Response to Request for Data and Proposed Methodology dated March 11, 2018

the final Budget Document.

II. MWD's Cost of Service methodology is flawed because it fails to analyze cost causation or account for or assign costs by customer class

Separate and apart from the fact that it is not possible to replicate how MWD has assigned its costs to rates without access to its rate model, the underlying methodology is obviously flawed due to MWD's failure to analyze or account for the varying demands and service characteristics of its 26 member agencies, which MWD admits exist. One of the basic principles of cost of service and ratemaking is to group customers with similar demand and usage patterns in common categories (classes), so that costs may be assigned to the customer classes that cause these costs to be incurred. In spite of the different service patterns and use characteristics of MWD's member agencies, MWD has simply declared by legislative fiat that it has only one customer class.

Historically, MWD has claimed that Proposition 26 and cost of service requirements do not apply to its rates, and that the only test is one of "reasonableness." Although the Court of Appeal in the 2010/2012 Rate Case clearly applied Proposition 26, MWD persists in insisting that Proposition 26 and cost of service requirements do not apply to MWD's rates.¹

III. Request for public records under California Public Records Act (Gov. Code § 6250 *et seq.*)

As you know, the Water Authority is seeking public disclosure of the rate model MWD uses to allocate costs and set its rates and charges. We filed a Public Records Act (PRA) request on February 18, 2016 (Attachment 1), requesting disclosure of the 2016 rate model and various data, analyses and studies as described in paragraphs 1-8 of that letter. We hereby make formal demand for the 2018 rate model and all supporting data as described in paragraphs 1-8 and any other "input" MWD relied on to establish the 2018 proposed rates and charges for calendar years 2019 and 2020. We also request:

1. A copy of the "Financial Planning Model Manual" Mr. Van den Berg identified and described during his deposition on May 11, 2017 (at pages 69-72).
2. A functional copy of the 2018 Budget Document as it is maintained in the ordinary course of business, in which the links are not disabled.

IV. Written Request for Notice (Gov. Code §54999.7(d); Request for Data and Proposed Methodology for Establishing Rates and Charges (Gov. Code § 54999.7(e))

The Water Authority hereby makes formal request to be provided with all of the data and proposed methodology MWD will rely upon for establishing rates, charges and surcharges or fees for 2019 and 2020 in accordance with the above-listed Government Code provisions. The Water Authority and its MWD board delegates have previously requested this information but thus far none has been provided except as contained in the Budget Document.

With only one month remaining before the MWD board votes on the proposed rates and charges, not all of the underlying data "input" has been provided to MWD's member agencies or the public except in the summary form contained in the Budget Document. Obviously, not all information has been made available prior to the public hearing on March 13, 2018. Given MWD's assertions about the complexity of its ratemaking process, with a rate model that purportedly consists of more than 350,000 mathematical formulas, links and calculations, MWD's failure to provide the requested information is wholly unacceptable and contrary to law.

V. There is no demonstrated justification for suspension of the ad valorem tax rate limitation

As expressed by the Water Authority on many prior occasions, Section 124.5 of the MWD Act allows the board to suspend the tax limitation, but only after it finds that the suspension is "essential to the fiscal integrity of the district." The purported reason for the proposed suspension in 2019 and 2020 is to "pay for growing State Water Contract costs" and to "help maintain a balance between fixed and variable revenues, and reduce the impact of future water rate increases." However, this justification is not supported by data and is flawed.

First, the proposed tax rate suspension—in order to "reduce the impact of future water rate increases—is contrary to the legislative history of Section 124.5, which expressed the intent that taxes be reduced and that user rates and charges constitute the great preponderance of MWD's revenues. A greater reliance on rates over taxes also better allows costs to be assigned to the customer groups that cause specific costs to be incurred.

While MWD's objective of maintaining a balance between fixed and variable revenues is certainly proper, reducing the very charges the Legislature provided to MWD to be used in lieu of property taxes is inconsistent with that objective. The proposed suspension of the tax rate will increase MWD's tax revenues by 16 percent between 2018 and 2019, but the readiness-to-serve (RTS) charge is proposed to decrease by 5 percent during the same period. In fact, the pattern of *decreasing* RTS and *increasing* tax revenues carries forward in the proposed financial forecast.

When comparing the financial forecast proposed in this budget and the one adopted in 2016, MWD is projecting a higher tax revenue trend (staff is apparently planning to continue the tax rate limitation suspension indefinitely), and a lower RTS collection during the same period. As an example, in 2026, the projected RTS collection would be 15 percent lower than that projected for the same year in the 2016 biennial budget, while the projected tax revenues for the same year (2026) is 5.5 percent higher than previously forecasted.

Finally, MWD staff reported that State Water Contract (SWC) costs are projected to be reduced from what was previously forecast due to delayed implementation of WaterFix and MWD's staff's successful negotiation with Department of Water Resources to reduce future expenditures. Since

these costs are less than the fiscal year 2018 budgeted SWC costs (and the SWC costs forecasted in the adopted financial forecast for fiscal year 2019), staff's justification for the tax rate limitation suspension -- because it purportedly is needed to cover "growing" SWC costs -- is baseless.

VI. The purported PAYGo Funding policy and "Resolution for Reimbursement" would allow revenues to be collected for one purpose but used for another without any consideration of or adjustment for cost of service requirements

The Water Authority strongly opposes the so-called "Resolution for Reimbursement." MWD apparently plans to use PAYGo revenues as a discretionary fund, by adopting a "Resolution for Reimbursement" to allow the use of revenues from PAYGo to pay for operations expenses, before a need is even identified. This resolution would authorize staff to prospectively collect \$120 million annually for one purpose (CIP) but then potentially use it for another purpose (O&M or California WaterFix). This is not only an unsound fiscal strategy lacking in transparency, but it also deliberately avoids any accountability ("true up") or tie to cost of service. The board should make a decision now on whether to raise rates, plan to borrow money or, notably, reduce costs rather than engage in the gimmick of the proposed Resolution.

VII. Demand that MWD set aside principal and prejudgment interest at 10% for the WSR Exchange Agreement overcharges consistent with Court of Appeal decision

In February Board Memo 9-1, the following is stated on page 5:

"Metropolitan holds \$52.8 million in its financial reserves in accordance with the set-aside provision of the 2003 Amended and Restated Exchange Agreement between Metropolitan and SDCWA (exchange agreement). This amount includes \$51 million associated with exchange agreement water deliveries from January 2011 through October 2017 and \$1.8 million in accumulated interest earned thereon, based on Metropolitan's investment portfolio."

We believe this set-aside is too low, and not in compliance with the Court of Appeal's decision, where the Court stated, on pages 1155-56 of its decision:

"Metropolitan contends the statutory rate of interest was wrongly used in the original proceedings because the exchange agreement stipulates a contractual rate. This contention is unsupported by the terms of the exchange agreement, as the trial court rightly held."

MWD is well aware that the prejudgment interest rate found by the trial court is 10 percent, not the rate "based on Metropolitan's investment portfolio." Our calculations show that the actual amount that should be reserved by MWD through 2018 is approximately \$87 million, which includes both principal and prejudgment interest – leaving about a \$34 million deficit in what MWD is now actually

withholding and reporting to the Board. If MWD's Board approves not charging the Water Stewardship Rate (WSR) to the Exchange Agreement water through the rest of 2018, that total will of course drop slightly. Demand is hereby made by the Water Authority that MWD properly set aside all principal and prejudgment interest at 10% for the WSR Exchange Agreement overcharges through 2018, or any earlier date the MWD board may end the overcharges in 2018.

VIII. Demand that MWD not impose its Water Stewardship Rate on any wheeled water

In February Board memo 9-1, MWD seeks approval by its Board to suspend imposition of WSR charges on Exchange Agreement water, while still imposing them on other wheeling transactions. For example, see page 5 of February Board memo 9-1, which states that the reduction applies only to Exchange Agreement water, with no mention of other wheeled water:

"[I]t is proposed that the Water Stewardship Rate will not be billed on the exchange agreement deliveries for CYs 2019 and 2020, with Metropolitan foregoing any collection of these amounts during this study period. Further, it is recommended that Metropolitan suspend billing and collecting the current Water Stewardship Rate on exchange agreement deliveries in CY 2018."

See also page 102 of Attachment 3 to the above document, which makes clear wheeled water would be assessed WSR charges (emphasis added): "All system users (member agency or third parties) will pay the same proportional costs for existing and future conservation and recycling investments."

However, the Court of Appeal's ruling was based on the Wheeling Law (Water Code sections 1810 *et seq.*), and the Court found that under that law MWD cannot charge the WSR on wheeled water: "A water agency's payments to its members to encourage water conservation is outside the scope of recoverable costs contemplated by the wheeling statutes." *Id.* at 1150.

MWD's decision to impose WSR charges on wheeled water is in clear violation of the Court of Appeal's decision, and thus unlawful. Though we appreciate the fact that MWD staff recommends not making unlawful charges against the Exchange Agreement, it is clear that MWD may not impose the same unlawful charges to all other wheeling transactions. Demand is hereby made by the Water Authority that MWD not adopt rates that allow for WSR charges to be assessed against wheeled water.

IX. Request for calculation of offsetting benefits under the Wheeling Statute

As you are aware, the Court of Appeal determined that the Wheeling Statutes apply to the Exchange Agreement between MWD and the Water Authority. Accordingly, under Water Code § 1811(c), and consistent with MWD Board Resolution 8520, MWD must calculate the offsetting benefits of the Water Authority's Exchange Agreement water. Because MWD's wheeling rate, and the Water Authority's price under the Exchange Agreement, is calculated in part based on the setting of MWD's

annual rates, MWD should perform this calculation now as part of this budget and rate-setting cycle, so that these costs may properly be reflected in MWD's budget, and long term planning and disclosure documents. The Water Authority identified this issue to MWD last November as a litigation issue remaining to be resolved between MWD and the Water Authority, but as you are aware, the MWD and Water Authority negotiating teams have not yet met.

X. Conclusion

Our MWD board representatives have additional policy questions and comments that will be presented separately.

Sincerely,



Mark J. Hattam
General Counsel

Attachment: Water Authority's Public Records Act request for MWD rate model, dated February 18, 2016

cc: MWD Board of Directors
Water Authority Board of Directors
Maureen Stapleton, General Manager

ⁱ Contrary to a recent public statement by one of Metropolitan's attorneys, the Court of Appeal did in fact apply Proposition 26 to Metropolitan's rates.



San Diego County Water Authority

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

February 18, 2016

MEMBER AGENCIES

- Carlsbad Municipal Water District
- Camarillo Public Works Department
- City of Escondido
- City of Imperial
- City of Murietta
- City of Oceanside
- City of Poway
- City of San Marcos
- City of San Ramon
- City of Vista
- City of Warner
- City of Yuma
- City of Escondido
- City of Imperial
- City of Murietta
- City of Oceanside
- City of Poway
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- City of Oceanside
- City of Poway
- City of San Marcos
- City of San Ramon
- City of Vista
- City of Warner
- City of Yuma

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

Re: Request for Records Under California Public Records Act
(California Gov. Code § 6250 *et seq.*)

Dear Ms. Chin:

On behalf of my client, the San Diego County Water Authority ("SDCWA"), and pursuant to the California Public Records Act ("PRA"), California Government Code section 6250 *et seq.*, we request the following public records which are in the possession or control of the Metropolitan Water District of Southern California (hereinafter "MWD"). "MWD," as used herein, includes MWD itself, MWD's officers, representatives, agents, employees, affiliates, accountants, consultants, attorneys, MWD's Board of Directors, its individual directors, and any and all persons acting on MWD's behalf. "MWD's Board" and "MWD's Board of Directors," as used herein, includes the Board of Directors as a whole, its directors and all relevant Standing, Ad Hoc, Special Purpose, Temporary Committees, and all other appointments.

This request applies to every such record that is known to MWD and which MWD can locate or discover by reasonably diligent efforts. More specifically, the records that may contain information called for by this request include:

- Documents, communications, letters, memoranda, notes, reports, papers, files, books, records, contracts, agreements, telegrams, electronic mail (saved or deleted), and other communications sent or received;
- Printouts, diary entries and calendars, drafts, tables, compilations, tabulations, charts, spreadsheets, graphs, recommendations, accounts, worksheets, logs, work papers, minutes, notes, summaries, speeches, presentations, and other written records or recordings of or relating to any conference, meeting, visit, interview, or telephone conversations;
- Bills, statements, invoices, and other records of any obligation or expenditure, cancelled checks, vouchers, receipts, and other records of payment;
- Financial and statistical data, analyses, surveys and schedules;
- Audiotapes and videotapes and cassettes and transcripts thereof, affidavits, transcripts of testimony, statements, interviews, and conversations;

Ms. Dawn Chin
February 18, 2016
Page 2

- Printed matter (including published articles, speeches, newspaper clippings, press releases, and photographs); and
- Microfilm and microfiche, disks, computer files, electronically stored data (including the metadata associated with any such written and/or spoken content), electronically stored information, electronic devices, film, tapes, and other sources from which information can be obtained, including materials used in electronic data processing. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. "Electronically stored information" means information that is stored in an electronic medium, including data, metadata, and all electronically stored data or information.

The term "related to," as used in each category of public record listed below, means directly or indirectly, in whole or in part, comprising, referring to, concerning, evidencing, connected with, commenting on, affecting, responding to, showing, describing, discussing, analyzing, reflecting or constituting.

The term "rate model," as used in each category of public record listed below, means all documents, data, analyses, calculations, studies or other information that constitute, comprise, support or describe the manner in which MWD assigns costs to rates, including but not limited to its "financial planning model," including the spreadsheet, formulas and programming code.

If a record responsive to a request was, but no longer is, in your possession, custody, or control, state precisely what disposition was made of it (including its present location and who possesses or controls it) and identify the person(s) who authorized or ordered such disposition.

Records produced in response to this request should be produced as they are kept in the usual course of business or should be organized and labeled to correspond with the categories in the request. All electronically stored information shall be produced in its native format with all metadata intact.

The requested records are:

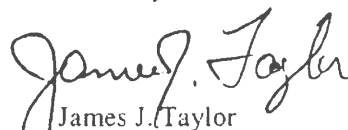
1. Any rate model or models used in formulating proposed rates for the 2017 and 2018 calendar years.
2. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting the rates and charges proposed for the 2017 and 2018 calendar years, as described in MWD Board Memo 9-2 dated 2/9/2016 (Finance and Insurance Committee).
3. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting a proposed reduction of the Readiness-to-Serve and Capacity Charges for 2017.
4. All data, analyses and studies, if any, demonstrating the proportionate benefit each of MWD's 26 customer member agencies will receive from the expenditure of revenues collected from the rates and charges proposed for the 2017 and 2018 calendar years.
5. All data, analyses and studies, if any, that support the conclusion that demand management programs provide distribution and conveyance system benefits, including identification of those parts of the distribution and conveyance system where additional capacity is needed and the customer member agencies that benefit from that capacity being made available.

Ms. Dawn Chin
February 18, 2016
Page 3

6. All data, analyses, opinions and studies, if any, that support the conclusion that suspension of the property tax restriction in Section 124.5 of the MWD Act is essential to MWD's fiscal integrity, as described in MWD Board Memo 9-2 at page 3.
7. All data, analyses and studies, if any, supporting the findings, conclusions, recommendations and water supply development targets identified in MWD's 2015 IRP Technical Update Issue Paper Addendum.
8. All data, analyses and studies, if any, supporting the findings, conclusions, recommendations and water supply development targets identified in MWD's Integrated Water Resources Plan 2015 Update.

Within ten (10) days of receipt of this PRA request, please contact me at (858) 522-6791 to discuss whether MWD has records responsive to this request, the page count and cost of copying the records, and whether the documents are also available in electronic format.

Sincerely,


James J. Taylor
Acting General Counsel

cc: MWD Public Records Administrator (by email at pradministrator@mwdofmsa.com)



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

March 21, 2018

VIA EMAIL AND FEDERAL EXPRESS

Mark J. Hattam
General Counsel
San Diego County Water Authority
4677 Overland Avenue
San Diego, California 92123-1233

Re: Response to Public Records Act Request Dated March 11, 2018
Response to Request for Data and Proposed Methodology Dated March 11, 2018

Dear Mr. Hattam:

We received your letter dated Sunday, March 11, 2018, which was sent to Metropolitan Board of Directors Chairman Randy Record and the Metropolitan Board of Directors via email at 10:31 p.m. on that date, which among other things contains a Public Records Act (“PRA”) request in section III (“2018 request”) and a request for data and proposed methodology in section IV. A copy of your request is attached.

Public Records Act Request

This response is made in compliance with California Government Code Section 6253(c), which requires an agency to notify a person making a request within 10 days whether a request seeks disclosable records. We have determined that your request seeks disclosable records, with the exception of Metropolitan’s financial planning model, which is exempt from disclosure under Government Code Section 6254.9(a) as a proprietary computer software program developed by Metropolitan that contains nondisclosable formulas and programming code. The model is also not subject to disclosure under Government Code Section 6254(k), Evidence Code Section 1060, and Civil Code Section 3426.1 as confidential, proprietary material that derives independent economic value from not being generally known. The model is further not subject to disclosure under Government Code Section 6255(a) because the public interest in preserving its confidentiality clearly outweighs any asserted public interest in disclosure.¹

¹ SDCWA already received the financial planning model through the *SDCWA v. Metropolitan* rate litigation, subject to the parameters and restrictions of the Court’s protective order, so SDCWA has had full opportunity to view it and understand its operations.

Mr. Mark J. Hattam

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Metropolitan will provide disclosable records as explained below, to the extent they: (1) are not already posted on Metropolitan's website at www.mwdh20.com, (2) have not already been provided to the Metropolitan Board of Directors, and/or (3) have not already been provided to SDCWA in response to its prior PRA requests or in connection with the *SDCWA v. Metropolitan* litigation.

Your 2018 request incorporates paragraphs 1-8 of an attached letter dated February 18, 2016 ("2016 request") in which the San Diego County Water Authority ("SDCWA") made previous requests under the PRA. Paragraphs 7 and 8 of the 2016 request concerned records pertaining to Metropolitan's 2015 IRP Technical Update Issue Paper Addendum and IRP 2015 Update. Metropolitan previously responded to those requests in 2016.

Paragraphs 1-6 of the 2016 request concerned records pertaining to the budget, rates, and charges proposed in 2016, and Metropolitan also previously responded to those requests in 2016. We have assumed you intended Metropolitan to interpret the 2018 request's reference to paragraphs 1-6 to include modifications to concern records pertaining to the fiscal years 2018/19 and 2019/20 proposed budget and calendar years 2019 and 2020 proposed rates and charges, and so we have done so. The 2018 request further asks for "any other 'input' MWD relied on to establish the 2018 proposed rates and charges for calendar years 2019 and 2020." We interpret this additional language as referring to "any other input into the financial planning model that MWD relied on to establish the 2018 proposed rates and charges for calendar years 2019 and 2020." The requested records have already been posted on Metropolitan's website for public review between February 1 and March 14, 2018 at the following locations:

- <http://www.mwdh20.com/WhoWeAre/Pages/proposed-budget-rates.aspx>
- <http://www.mwdh20.com/WhoWeAre/proposed-property-tax-rates>

Of these records, some of the file names at the following location, posted since March 8, 2018, were modified to accommodate the naming conventions required by Metropolitan's website:

- <http://www.mwdh20.com/WhoWeAre/Management/Financial-Information/Pages/2018-Underlying-Materials.aspx>

The identical records, but with the original file names, will be provided to you on a disc. For example, the files from the "Biennial Budget Reports\Labor Distribution by Org Report\Proposed plus 1" folder on the disc were renamed on the website by adding the prefix 'PP1' to each of the files posted on the website. In the posting and on the disc, proprietary formulas and programming code have been removed from spreadsheets, and employee-specific information has been redacted.

Additionally, your 2018 request asks for "a functional copy of the 2018 Budget Document." Metropolitan interprets this request as referring to the proposed Biennial Budget for Fiscal Years 2018/19 and 2019/20, which was provided to Metropolitan's Board of Directors, including the

Mr. Mark J. Hattam

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March 21, 2018

SDCWA delegates, on February 1, 2018, and has been posted for public review on Metropolitan's website since that date at the following location:

- <http://www.mwdh2o.com/WhoWeAre/Pages/proposed-budget-rates.aspx>

There is no such record as a "functional copy" of that document.

Finally, your 2018 request asks for the "Financial Planning Model Manual Mr. Van den Berg identified and described during his deposition on May 11, 2017." This will be provided with redaction of the confidential log-in information to the model pursuant to Government Code Section 6255(a), because the public interest in preserving its confidentiality clearly outweighs any asserted public interest in disclosure.

Enclosed is a disc containing the above-described disclosable Metropolitan records provided in response to your PRA request, except as previously posted or provided. Because Metropolitan's budget-setting and rate-setting process is still in progress, the disc contains materials through the Public Hearings held on March 13, 2018.

Response to Request for Data and Proposed Methodology

Your request for data and proposed methodology was made under California Government Code Section 54999.7(e). As Metropolitan has explained in detail in the *SDCWA v. Metropolitan* litigation, and as SDCWA previously agreed, Section 54999.7(e) does not apply to Metropolitan. As you are aware, the California Court of Appeal did not decide the issue of Section 54999.7(e)'s application, finding instead that whether or not the statute is applicable, Metropolitan has complied with it. (*SDCWA v. Metropolitan* (2017) 12 Cal. App. 5th 1124, 1154 ["Whether or not the statute applies, it has not been violated."].) Metropolitan maintains that Section 54999.7(e) does not apply.²

Nonetheless, as part of its regular budget-setting and rate-setting process, Metropolitan provides to the Board, member agencies and the public the detailed data and proposed methodology for the proposed rates and charges, through the budget and rate Board letters, proposed budget, cost of service report, presentations and discussions at the multiple committee and Board meetings and workshops. Again, this material is posted on Metropolitan's website at the following locations:

- <http://www.mwdh2o.com/WhoWeAre/Pages/proposed-budget-rates.aspx>
- <http://www.mwdh2o.com/WhoWeAre/proposed-property-tax-rates>

² Your letter also included a written request for notice under California Government Code Section 54999.7(d). Aside from the inapplicability of Section 54999.7(d), SDCWA made this request for notice of a public meeting concerning rates or charges after Metropolitan had already provided such notice to the Board and public, so the request is moot.

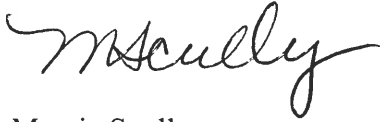
Mr. Mark J. Hattam

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March 21, 2018

As the staff continues to work on budget and rate matters in response to requests from the Board and direction from management until final adoption of the budget and rates, the webpages stated in this letter will continue to be updated.

Very truly yours,

A handwritten signature in black ink, appearing to read "MScully". The signature is written in a cursive, flowing style with a large initial "M".

Marcia Scully
General Counsel

Enclosure: Disc (via Federal Express only)