



# San Diego County Water Authority

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

March 8, 2016

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

#### MEMBER AGENCIES

- Carlsbad Municipal Water District
  - City of Del Mar
  - City of Escondido
  - City of National City
  - City of Oceanside
  - City of Poway
  - City of San Diego
  - Fallbrook Public Utility District
  - Helix Water District
  - Lakeside Water District
  - Olivenhain Municipal Water District
  - Olney Water District
  - Peñon de San Antonio Municipal Water District
  - Camp Pendleton Marine Corps Base
  - Rainbow Municipal Water District
  - Rancho Santa Fe Municipal Water District
  - Rincon del Diabolo Municipal Water District
  - San Dieguito Water District
  - Santa Fe Irrigation District
  - South Bay Irrigation District
  - Vallecitos Water District
  - Valley Center Municipal Water District
  - Vista Irrigation District
  - Yuma Municipal Water District
- OTHER REPRESENTATIVE**
- County of San Diego

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

### Letter Submitting Documents into the Administrative Record

Dear Ms. Chin,

Accompanying this letter are 6 CD's containing a copy of all the documents listed in the attached Master Index of Documents San Diego County Water Authority Requests be Included in the Administrative Record for Setting of MWD Rates and Charges for Calendar Years 2017 and 2018 (Attachment 8 to this letter). The Water Authority requests that this letter and these documents be included in the Administrative Record.

**CD#1** Contains the Administrative Record Submitted by MWD for Setting of MWD's 2013 and 2014 rates (*SDCWA v. MWD*, Case No. CPF-12-512466 (S.F. Superior Court)), which is inclusive of the Administrative Record in the case challenging MWD's 2011 and 2012 rates (*SDCWA v. MWD*, Case No. CPF-10-510830 (S.F. Superior Court)), and totals 966 documents.

**CD#2** Contains documents SDCWA requested be included in the Administrative Record for the adoption of MWD's 2015 and 2016 rates in the CD#2 that was presented with its March 11, 2014 letter to Dawn Chin.

**CD#3** Contains the post-trial briefs, transcripts and Statements of Decision from the 2010/2012 Rate Cases (*SDCWA v. MWD*, Case Nos. CPF-10-510830 and CPF-12-512466 (S.F. Superior Court)), testimony presented by Dennis Cushman to MWD's Finance and Insurance Committee and Board of Directors, and additional testimony and related documents. An index for this CD is attached to this letter as Attachment 9.

**CD#4** *Intentionally left blank*

**CD#5** Contains documents and testimony from Phase II of the SDCWA v. MWD Trial (*SDCWA v. MWD*, Case Nos. CPF-10-510830 and CPF-12-512466 (S.F. Superior Court)). An index of these documents is attached to this letter as Attachment 10.

**CD#6** Contains SDCWA's April 8, 2014 letter to MWD's Clerk of the Board and all attachments thereto, including documents contained in the CD that was delivered with that letter (all audio files were provided in the form of a link to MWD board proceedings).

**CD#7** Contains additional documents SDCWA requests be included in the Administrative Record for the setting of water rates and charges for calendar years 2017 and 2018 (itemized on the Master Index of Documents as SDCWA 99-204).

Also attached are copies of the following letters:

1. Letter from SDCWA Board Members to Laura Friedman and the MWD Audit and Ethics Committee Members dated October 26, 2015, Re: Audit and Ethics Committee Agenda Item 3-b, Discussions of independent Auditor's Report from MGO LLP for fiscal year 2014/15 (a copy is marked as Attachment 1 to this letter).
2. Letter from SDCWA Directors to Randy Record and the Members of the MWD Board of Directors dated February 6, 2016 Re: Board Memo 9-2: Proposed biennial budget and revenue requirements for fiscal years 2016/2017 and 2017/2018; estimated water rates and charges for calendar years 2017 and 2018 to meet revenue requirements; and ten-year forecast (a copy is marked as Attachment 2 to this letter).
3. Letter from James Taylor to Dawn Chin dated February 18, 2016 Re: Request for Records Under California Public Records Act (California Gov. Code §6250 *et seq.*)(a copy is marked as Attachment 3 to this letter).
4. Letter from Gary Breaux to MWD Board Members dated February 22, 2016 Re: SDCWA's letter dated October 26, 2015 regarding Audit and Ethics Committee Agenda Item 3-b (a copy is marked as Attachment 4 to this letter).
5. MWD Response letter from Gary Breaux to the SDCWA Directors dated February 23, 2016 Re: SDCWA's letters dated February 4, 6, and 9, 2016 (a copy is marked as Attachment 5 to this letter).
6. Letter from Marcia Scully to James Taylor dated February 26, 2016 Re: Response to Public Records Act Request Dated February 18, 2016 (a copy is marked as Attachment 6 to this letter).
7. Letter from James Taylor to Marcia Scully, dated March 4, 2016 Re: San Diego Public Records Act Request of February 18, 2016 (a copy is marked as Attachment 7 to this letter).

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

Sincerely



Dennis A. Cushman  
Assistant General Manager

Attachments

- Attachment 1: Letter from SDCWA Directors to MWD Ethics Committee RE Independent Auditor's Report from MGO for 2014/15
- Attachment 2: Letter from SDCWA Directors to MWD Board of Directors Re: Board Memo 9-2: Proposed biennial budget and revenue requirements for fiscal years 2016/2017 and 2017/2018
- Attachment 3: Letter from James Taylor to Dawn Chin Re: Public Records Act Request
- Attachment 4: Letter from Gary Breaux to MWD Board Members Re: SDCWA's Audit and Ethics Committee Agenda Item 3-b letter
- Attachment 5: MWD Response letter from Gary Breaux to the SDCWA Directors dated Re: SDCWA's letters dated February 4, 6, and 9, 2016
- Attachment 6: Letter from Marcia Scully to James Taylor dated Re: Public Records Act Request
- Attachment 7: Letter from James Taylor to Marcia Scully, Re: San Diego Public Records Act Request
- Attachment 8: Master Index of Documents SDCWA Requests be Included in the Administrative Record for Setting of 2017-2018 MWD Rates and Charges
- Attachment 9: CD#3 Index
- Attachment 10: CD#5 Index





## San Diego County Water Authority

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

October 26, 2015

Laura Friedman and  
 Audit and Ethics Committee Members  
 Metropolitan Water District of Southern California  
 P.O. Box 54153  
 Los Angeles, CA 90054-0153

#### MEMBER AGENCIES

Carlsbad  
Municipal Water District

City of Dal Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook  
Public Utility District

Holix Water District

Lakeside Water District

Olivenhain  
Municipal Water District

Ray Water District

Padre Dam  
Municipal Water District

Camp Pendleton  
Marine Corps Base

Rainbow  
Municipal Water District

Ramona  
Municipal Water District

Rincon del Diablo  
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center  
Municipal Water District

Vista Irrigation District

Yuma  
Municipal Water District

#### OTHER REPRESENTATIVE

County of San Diego

RE: Audit and Ethics Committee Agenda Item 3-b  
 Discussion of independent Auditor's Report from MGO LLP for fiscal year 2014/15

Dear Chair Friedman and Committee Members,

We have reviewed the Independent Auditor's Report dated October 19, 2015 ("Report") on MWD's basic financial statements for the fiscal years ended June 30, 2015 and 2014. We have a number of concerns that certain characterizations contained in the Report are misleading, for example, that MWD had "water sales" of \$1,382.9 (dollars in millions) (page 8) for the fiscal year ended June 30, 2015. That is not accurate; that number is only achieved by characterizing as "water sales" the revenue MWD is actually paid for wheeling the Water Authority's independent Colorado River water under the Exchange Agreement. Note 1(c) purports to itemize MWD's sources of revenue but again, does not acknowledge its receipt of substantial revenues for the transportation of third-party water (which reduces the volume of MWD's own "water sales").

It appears that the independent Auditor may not have been provided with a copy of the Water Authority's communications regarding MWD's draft Official Statements. A copy of our last letter dated October 12, 2015 is attached. MWD management has an obligation to inform the auditor both about questions that have been raised and about material events occurring prior to issuance of the Report in a timely fashion, in order to prevent the Report from being misleading.


Note 9(d), *Sale of Water by the Imperial Irrigation District to San Diego County Water Authority*, is not only inconsistent with key findings by the Court in the Water Authority rate litigation, it is inconsistent with some of MWD's own arguments in the case. Contrary to the characterization in the Report, Judge Karnow specifically found that the Water Authority is not buying water from MWD under the Exchange Agreement. The Court has also determined that the amount due to the Water Authority as damages is substantially more than "the amount paid by SDCWA under the Exchange Agreement and interest thereon," as

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Committee Chair Friedman and Members of the Committee  
October 26, 2015  
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described in Note 9(d) to the financial statement (pages 67-68). In fact, the Court has awarded \$188,295,602 in damages (August 28, 2015 Statement of Decision) and \$43,415,802 in prejudgment interest (October 9, 2015 Order Granting San Diego's Motion for Prejudgment Interest) to the Water Authority. At a minimum, these rulings by the Court should have been included at Note 15, *Subsequent Events*, prior to the Report being issued on October 19, 2015. MWD's management including its Chief Financial Officer has an obligation to inform the independent Auditor of material events in a timely fashion. That apparently did not occur in this case. We request that a copy of this letter and the attachment be provided to the auditor and that the auditor correct the misleading statements and reissue the report.

Sincerely,



Michael T. Hogan  
Director



Keith Lewinger  
Director



Fern Steiner  
Director



Yen C. Tu  
Director

Attachment:

1. Water Authority's October 12, 2015 Letter to MWD Board re 8-2

cc: MWD Board of Directors  
Jeff Kightlinger, MWD General Manager  
Macias Gini & O'Connell LLP, MWD Independent Auditor





## San Diego County Water Authority

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February 6, 2016

Randy Record and

Members of the Board of Directors

Metropolitan Water District of Southern California

P.O. Box 54153

Los Angeles, CA 90054-0153

MEMBER AGENCIES

Carlsbad  
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook  
Public Utility District

Helix Water District

Lakeside Water District

Olivenhain  
Municipal Water District

Olay Water District

Padre Dam  
Municipal Water District

Camp Pendleton  
Marine Corps Base

Rainbow  
Municipal Water District

Ramona  
Municipal Water District

Rincon del Diablo  
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center  
Municipal Water District

Visita Irrigation District

Yulma  
Municipal Water District

OTHER  
REPRESENTATIVE

County of San Diego

RE: Board Memo 9-2: Proposed biennial budget and revenue requirements for fiscal years 2016/17 and 2017/18; estimated water rates and charges for calendar years 2017 and 2018 to meet revenue requirements; and ten-year forecast

Dear Chairman Record and Board Members:

The purpose of this letter is to provide preliminary comments and questions on Board Memo 9-2, proposed biennial budget and revenue requirements (collectively, the "Budget Document") in advance of the budget and rate workshops that begin with Monday's Finance and Insurance Committee meeting.

**1. The Budget Document lacks sufficient detail to understand how MWD has spent money or deliberate how MWD is proposing to spend money.** As one example, among many, MWD's proposed Demand Management cost summary does not identify any of the projects included in either Local Resources Program (\$43.7 and \$41.9 million, respectively for the respective fiscal years) or Future Supply Actions (\$4.4 and \$2 million, respectively). The budget also lacks projected actual expenditures for fiscal year (FY) 2016; instead, all comparisons are budget to budget. It is important for Board members to consider actual expenditures as well as proposed budgets, particularly in light of the very substantial additions and modifications to spending that occurred outside of the 2014 budget after it was adopted -- in the hundreds of millions of dollars. We request to be provided with greater detail explaining the proposed expenditures at a detail level sufficient to allow the Board to deliberate where savings might be achieved, as well as to understand the status or outcomes of past programs and expenditures.

**2. The Budget Document does not provide any cost of service analysis and lacks sufficient detail to understand how MWD's costs should be assigned to rates.** Different than past years, the current Budget Document **does not include any cost of service analysis**. Why has that not been provided? In addition, the Budget Document does not provide a sufficient level of detail or information in order for MWD to defend its rates and establish "**cost**

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MWD Chairman Record and Members of the Board  
 February 6, 2016  
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**causation**" in accordance with legal requirements. Using the Demand Management cost summary again as an example, it is impossible to identify the proportionate benefits to MWD's customer member agencies resulting from the proposed expenditures. Broad, unsupported statements, such as "demand management programs reduce reliance on imported water," and "demand management programs reduce demands and burdens on MWD's system," are legally insufficient to comply with the common law or California statutory or Constitutional requirements that require MWD to conform to cost of service.

While we understand that MWD has appealed Judge Karnow's decision in the rate cases filed by the Water Authority, there is an increasing body of case law reaffirming these requirements, and clearly establish that they are applicable to water suppliers such as MWD. As one example, we attach a copy of the recent decision of the court in *Newhall County Water District v. Castaic Lake Water Agency*, where a number of arguments by Castaic that are very similar to those made by MWD were again rejected by the Court of Appeal. Chief among them was the argument that the water wholesaler need only identify benefits to its customers "collectively," rather than in a manner that reflects a reasonable relationship to the customers' respective burdens on, or benefits received from the wholesale agency's activities and expenditures. Contrary to these clear legal requirements, MWD's current Budget Document does not provide sufficient information to allow Board members or MWD's 26 customer member agencies to determine proportionate benefit from MWD's proposed expenditures. We repeat here for these purposes, our request to be provided with a greater level of detail regarding MWD's proposed spending, as well as the basis upon which MWD has assessed or may assess proportionate benefit to its customers. We also believe the Board would benefit from a public presentation on current and developing case law regarding the applicability of Proposition 26 to wholesale water agencies such as MWD, so that it is informed of its legal obligations as Board members in setting rates.

**3. *The Budget Document does not provide any analysis or data to explain or support the wide range of variation in proposed increases and decreases in various rate categories.*** The budget describes an "overall rate increase of 4%;" however, that is a meaningless number outside of the context of specific rates and charges as applied to MWD's 26 customer member agencies, which depends on the type of service or water they buy and what they pay in fixed charges. ***The following rate increases and decreases are proposed for each of the respective fiscal years, without any data or analysis to explain them:***

- Tier 1 supply rate increases of 28.8% and 4%;
- Wheeling rate increases of 6.2% and 4.5%;
- Treatment surcharge decrease of 10.1%, followed by an increase of 2.2%;
- Full service untreated rate increases of 12.1% and 4.4%;
- Full service treated rate increases of 3.9% and 3.7%;
- Readiness-to-Serve (RTS) charge decreases of 11.8% and 3.7%; and
- Capacity Charge (CC) decrease of 26.6%, followed by an increase of 8.8%.

There is no demonstration in the Budget Document that MWD's expenses recovered by the RTS

MWD Chairman Record and Members of the Board  
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and CC will vary to such a degree in FYs 2017 and 2018 to support the very substantial proposed decreases in those fixed charges. Moreover, these sources of fixed cost recovery are being reduced at the very same time MWD is proposing to add fixed treatment cost recovery and suspend the property tax limitation under Section 124.5. In addition to the inconsistent logic, MWD is reducing the very charges authorized by the Legislature in 1984 so MWD could have more fixed revenue in lieu of its reliance on property taxes. MWD's proposed rates are precisely contrary to the intent of Sections 124.5 and 134 of its Act (copies attached). We ask that the General Counsel provide a legal opinion why MWD's actions are not the opposite of what was intended by passage of these provisions of the MWD Act.

Absent a justification that is not apparent from the Budget Document, these proposed rate increases and decreases appear to be arbitrary and unreasonable. We ask for the Board's support to require staff to provide both *data and analysis* to support these proposed rates and charges so that they may be understood and demonstrated to be based on cost causation principles.

**4. *The Budget Document mischaracterizes the Board's PAYGo funding policy and past actions; and is now proposing a "Resolution of Reimbursement" to formally authorize use of PAYGo revenues to pay for O&M, if necessary.*** The Board's PAYGo funding policy was historically set at 20 percent. See attached excerpt from the Board's July 8, 2013 Finance and Insurance Committee meeting. However, MWD staff has for the last several years been using PAYGo funds on an "as- and how-needed" basis. The Board has never deliberated or set a PAYGo "target" or "policy" at 60 percent. Moreover, contrary to what is stated in the Budget Document, the 2014 budget included CIP PAYGo funding at 100 percent, with the 2014 ten-year forecast stating that it "anticipates funding 100% of the CIP from PAYG and Replacement and Refurbishment (R&R) funds for the first three fiscal years, then transitioning to funding 60% of the CIP from water sales revenues." The absence of a Board policy being applied consistently not only fails to accomplish the purpose of PAYGo funding -- to equitably distribute costs of the CIP over time -- but exposes MWD to further litigation risk as funds that are collected for one purpose (CIP) are used for a different purpose (O&M).

The Board should not adopt the recommended "Resolution of Reimbursement" authorizing staff in advance to collect \$120 million annually for one purpose (CIP) and potentially use it for another (O&M). This is not only an unsound fiscal strategy, it serves to mask the true condition of MWD's budget and finances, and breaks any possible connection to cost of service. The Board should make a decision now on whether to raise rates, plan to borrow money or, notably at this point in the budget process, **reduce costs** (see also discussion of sales projections, below). The General Manager has told the Board (during its discussion of unbudgeted turf removal spending last year) that a 7 percent rate increase is necessary to support \$100 million in spending. Advance approval and use of PAYGo funds for O&M is nothing more than a hidden, de facto 8.4 percent additional rate increase each year.

**5. The 1.7 MAF MWD sales estimate for the next two fiscal years is likely too high and if so, will leave the Board with an even larger revenue gap to fill; and the Budget Document lacks a fiscally sound contingency plan.** The sales estimate may be too high given MWD's current trend at 1.63 MAF (a "sales" number that (at best) misleadingly includes the Water Authority's wheeled water) and El Nino conditions that make it unlikely that agencies will increase demand for MWD water. Further, while the board memo states the sales forecast accounts for 56,000 AF/year of new local supply from the Claude "Bud" Lewis Carlsbad Seawater Desalination Plant and Orange County Water District's expanded groundwater recycling project, no provision has been made for increased local supplies that may reasonably be projected to be available to the Los Angeles Department of Water and Power (LADWP). With a good year on the Eastern Sierra -- which is presently tracking the best snow pack on record -- MWD sales could be reduced by 250,000 AF or more, which translates to a negative revenue impact on MWD of between \$175 million and \$350 million.

It is MWD's obligation to forecast revenues responsibly, based on known and reasonably anticipated conditions, and plan for the contingency of reduced sales using responsible financial management techniques, which do not include budget gimmicks such as adoption of a "Resolution of Reimbursement" to shift CIP/PAYGo money to other uses.

We call to the Directors' attention that the proposed budget for FY 2017 already includes a revenue deficit of \$94.2 million, with MWD intending to withdraw from its reserves to bridge the gap. Similarly, the budget for fiscal year 2018 relies on \$23 million from reserves to fill the gap. Since sales may also be less than projected -- as they very well may be, for the reasons noted above -- the Board must plan now how the revenue gap will be filled. In this regard, we attach another copy of our November 17, 2014 letter suggesting the establishment of balancing accounts, allowing the Board to properly manage between good years and bad, rather than spending all of the money in good years (as it did this past year on turf removal) and needing to raise rates, borrow money or engage in the kind of gimmick represented by the Resolution of Reimbursement. We also ask that discussion of this issue be added to the next budget meeting agenda.

**6. There is no demonstrated justification for suspension of the ad valorem tax limitation.** As noted above, MWD is proposing in this budget to *reduce* the very charges the Legislature provided to MWD to be used in lieu of property taxes. Under these and other circumstances, there is no proper basis for MWD to suspend the tax rate limitation; instead, it should use the tools provided by the Legislature and included in the MWD Act.

**7. No information is provided regarding the proposed changes in treatment cost recovery.** Leaving aside the complete inconsistency with increasing fixed treatment cost recovery while reducing fixed cost recovery overall, when will the detail on the new charge be available?

MWD Chairman Record and Members of the Board  
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**8. The Budget Document does not explain why MWD's debt service coverage ratios for 2017 and 2018 are dropping from 2x to 1.6x.** A comparison of the financial indices between this 2016 budget and the 2014 forecast shows a difference of only 50,000 AF of water sales reduction each year, yet the debt service ratios are plummeting from 2x to 1.6x. This drop is potentially very disturbing based on the aggressive water supply development plans MWD staff included in the IRP (and upon which it stated that spending decisions would be proposed and made). This is an important issue and policy discussion the Board must address.

**9. The CIP numbers contained in the Budget Document don't match the Appendix.** The Budget Document includes annual CIP expenditures of \$200 million for each of the proposed fiscal years; however the CIP Appendix includes expenditures of \$246 million and \$240 million, respectively, for fiscal years 2017 and 2018. Please explain and correct the discrepancy by increasing the budget number or reducing projects contained in the Appendices. We will have more extensive comments going forward, and in particular, once additional detail is provided as requested in this letter.

We look forward to beginning the budget review process next week and engaging in a productive dialog with our fellow directors.

Sincerely,



Michael T. Hogan  
 Director



Keith Lewinger  
 Director



Fern Steiner  
 Director



Yen C. Tu  
 Director

Attachment 1: Appellate Court Decision – *Newhall County Water District v. Castaic Lake Water Agency*

Attachment 2: Excerpt from the Board's July 8, 2013 Finance and Insurance Committee Meeting

Attachment 3: MWD Act Sections 124.5 and 134

Attachment 4: Water Authority's November 17, 2014 Letter RE Balancing Accounts

Filed 1/19/16

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

NEWHALL COUNTY WATER  
DISTRICT,

Plaintiff and Respondent,

v.

CASTAIC LAKE WATER AGENCY et  
al.,

Defendants and Appellants.

B257964

(Los Angeles County  
Super. Ct. No. BS142690)

APPEAL from a judgment of the Superior Court for the County of Los Angeles.  
James C. Chalfant, Judge. Affirmed.

Best Best & Krieger, Jeffrey V. Dunn, and Kimberly E. Hood for Defendants and  
Appellants.

Colantuono, Highsmith & Whatley, Michael G. Colantuono, David J. Ruderman,  
Jon R. di Cristina; Lagerlof, Senecal, Gosney & Kruse and Thomas S. Bunn III for  
Plaintiff and Respondent.

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## SUMMARY

Plaintiff Newhall County Water District (Newhall), a retail water purveyor, challenged a wholesale water rate increase adopted in February 2013 by the board of directors of defendant Castaic Lake Water Agency (the Agency), a government entity responsible for providing imported water to the four retail water purveyors in the Santa Clarita Valley. The trial court found the Agency's rates violated article XIII C of the California Constitution (Proposition 26). Proposition 26 defines any local government levy, charge or exaction as a tax requiring voter approval, unless (as relevant here) it is imposed "for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product." (Cal. Const., art. XIII C, § 1, subd. (e)(2).)<sup>1</sup>

The challenged rates did not comply with this exception, the trial court concluded, because the Agency based its wholesale rate for imported water in substantial part on Newhall's use of groundwater, which was not supplied by the Agency. Consequently, the wholesale water cost allocated to Newhall did not, as required, "bear a fair or reasonable relationship to [Newhall's] burdens on, or benefits received from, the [Agency's] activity." (Art. XIII C, § 1, subd. (e), final par.)

We affirm the trial court's judgment.

## FACTS

We base our recitation of the facts in substantial part on the trial court's lucid descriptions of the background facts and circumstances giving rise to this litigation.

### 1. The Parties

The Agency is a special district and public agency of the state established in 1962 as a wholesale water agency to provide imported water to the water purveyors in the Santa Clarita Valley. It is authorized to acquire water and water rights, and to provide, sell and deliver that water "at wholesale only" for municipal, industrial, domestic and

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<sup>1</sup> All further references to any "article" are to the California Constitution.

other purposes. (Wat. Code Appen., § 103-15.) The Agency supplies imported water, purchased primarily from the State Water Project, to four retail water purveyors, including Newhall.

Newhall is also a special district and public agency of the state. Newhall has served its customers for over 60 years, providing treated potable water to communities near Santa Clarita, primarily to single family residences. Newhall owns and operates distribution and transmission mains, reservoirs, booster pump stations, and 11 active groundwater wells.

Two of the other three retail water purveyors are owned or controlled by the Agency: Santa Clarita Water Division (owned and operated by the Agency) and Valencia Water Company (an investor-owned water utility controlled by the Agency since December 21, 2012). Through these two retailers, the Agency supplies about 83 percent of the water demand in the Santa Clarita Valley. The Agency's stated vision is to manage all water sales in the Santa Clarita Valley, both wholesale and retail.

The fourth retailer is Los Angeles County Waterworks District No. 36 (District 36), also a special district and public agency, operated by the County Department of Public Works. It is the smallest retailer, accounting for less than 2 percent of the total water demand.

## **2. Water Sources**

The four retailers obtain the water they supply to consumers from two primary sources, local groundwater and the Agency's imported water.

The only groundwater source is the Santa Clara River Valley Groundwater Basin, East Subbasin (the Basin). The Basin is comprised of two aquifer systems, the Alluvium and the Saugus Formation. This groundwater supply alone cannot sustain the collective demand of the four retailers. (The Basin's operational yield is estimated at 37,500 to 55,000 acre-feet per year (AFY) in normal years, while total demand was projected at 72,343 AFY for 2015, and 121,877 AFY in 2050.)

The groundwater basin, so far as the record shows, is in good operating condition, with no long-term adverse effects from groundwater pumping. Such adverse effects

(known as overdraft) could occur if the amount of water extracted from an aquifer were to exceed the amount of water that recharges the aquifer over an extended period. The retailers have identified cooperative measures to be taken, if needed, to ensure sustained use of the aquifer. These include the continued “conjunctive use” of imported supplemental water and local groundwater supplies, to maximize water supply from the two sources. Diversity of supply is considered a key element of reliable water service during dry years as well as normal and wet years.

In 1997, four wells in the Saugus Formation were found to be contaminated with perchlorate, and in 2002 and 2005, perchlorate was detected in two wells in the Alluvium. All the wells were owned by the retailers, one of them by Newhall. During this period, Newhall and the two largest retailers (now owned or controlled by the Agency) increased their purchases of imported water significantly.

### **3. Use of Imported Water**

Until 1987, Newhall served its customers relying only on its groundwater rights.<sup>2</sup> Since 1987, it has supplemented its groundwater supplies with imported water from the Agency.

The amount of imported water Newhall purchases fluctuates from year to year. In the years before 1998, Newhall’s water purchases from the Agency averaged 11 percent of its water demand. During the period of perchlorate contamination (1998-2009), its imported water purchases increased to an average of 52 percent of its total demand. Since then, Newhall’s use of imported water dropped to 23 percent, and as of 2012,

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<sup>2</sup> Newhall has appropriative water rights that arise from California’s first-in-time-first-in-right allocation of limited groundwater supplies. (See *El Dorado Irrigation Dist. v. State Water Resources Control Board* (2006) 142 Cal.App.4th 937, 961 [“ ‘[T]he appropriation doctrine confers upon one who actually diverts and uses water the right to do so provided that the water is used for reasonable and beneficial uses and is surplus to that used by riparians or earlier appropriators.’ ”]; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241 [“ ‘As between appropriators, . . . the one first in time is the first in right, and a prior appropriator is entitled to all the water he needs, up to the amount he has taken in the past, before a subsequent appropriator may take any [citation].’ ”].)



Newhall received about 25 percent of its total water supply from the Agency. The overall average since it began to purchase imported water in 1987, Newhall tells us, is 30 percent.

The other retailers, by contrast, rely more heavily on the Agency's imported water. Agency-owned Santa Clarita Water Division is required by statute to meet at least half of its water demand using imported water. (See Wat. Code Appen., § 103-15.1, subd. (d).) Agency-controlled Valencia Water Company also meets almost half its demand with imported water.

#### **4. The Agency's Related Powers and Duties**

As noted above, the Agency's primary source of imported water is the State Water Project. The Agency purchases that water under a contract with the Department of Water Resources. The Agency also acquires water under an acquisition agreement with the Buena Vista Water Storage District and the Rosedale-Rio Bravo Water Storage District, and other water sources include recycled water and water stored through groundwater banking agreements. Among the Agency's powers are the power to "[s]tore and recover water from groundwater basins" (Wat. Code Appen., § 103-15.2, subd. (b)), and "[t]o restrict the use of agency water during any emergency caused by drought, or other threatened or existing water shortage, and to prohibit the wastage of agency water" (§ 103-15, subd. (k)).

In addition, and as pertinent here, the Agency may "[d]evelop groundwater management plans within the agency which may include, without limitation, conservation, overdraft protection plans, and groundwater extraction charge plans . . . ." (Wat. Code Appen., § 103-15.2, subd. (c).) The Agency has the power to implement such plans "subject to the rights of property owners and with the approval of the retail water purveyors and other major extractors of over 100 acre-feet of water per year." (*Ibid.*)

In 2001, the Legislature required the Agency to begin preparation of a groundwater management plan, and provided for the formation of an advisory council consisting of representatives from the retail water purveyors and other major extractors.

(Wat. Code Appen., § 103-15.1, subd. (e)(1)&(2)(A).) The Legislature required the Agency to “regularly consult with the council regarding all aspects of the proposed groundwater management plan.” (*Id.*, subd. (e)(2)(A).)

Under this legislative authority, the Agency spearheaded preparation of the 2003 Groundwater Management Plan for the Basin, and more recently the 2010 Santa Clarita Valley Urban Water Management Plan. These plans were approved by the retailers, including Newhall.

The 2003 Groundwater Management Plan states the overall management objectives for the Basin as: (1) development of an integrated surface water, groundwater, and recycled water supply to meet existing and projected demands for municipal, agricultural and other water uses; (2) assessment of groundwater basin conditions “to determine a range of operational yield values that will make use of local groundwater conjunctively with [State Water Project] and recycled water to avoid groundwater overdraft”; (3) preservation of groundwater quality; and (4) preservation of interrelated surface water resources. The 2010 Santa Clarita Valley Urban Water Management Plan, as the trial court described it, is “an area-wide management planning tool that promotes active management of urban water demands and efficient water usage by looking to long-range planning to ensure adequate water supplies to serve existing customers and future demands . . . .”

#### **5. The Agency’s Wholesale Water Rates**

The board of directors of the Agency fixes its water rates, “so far as practicable, [to] result in revenues that will pay the operating expenses of the agency, . . . provide for the payment of the cost of water received by the agency under the State Water Plan, provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of that bonded debt . . . .” (Wat. Code Appen., § 103-24, subd. (a).) The Agency’s operating costs include costs for management, administration, engineering, maintenance, water quality compliance, water resources, water treatment operations, storage and recovery programs, and studies.

Before the rate changes at issue here, the Agency had a “100 percent variable” rate structure. That means it charged on a per acre-foot basis for the imported water sold, known as a “volumetric” rate. Thus, as of January 1, 2012, retailers were charged \$487 per acre-foot of imported water, plus a \$20 per acre-foot charge for reserve funding.

Because of fluctuations in the demand for imported water (such as during the perchlorate contamination period), the Agency’s volumetric rates result in fluctuating, unstable revenues. The Agency engaged consultants to perform a comprehensive wholesale water rate study, and provide recommendations on rate structure options. The objective was a rate structure that would provide revenue sufficiency and stability to the Agency, provide cost equity and certainty to the retailers, and enhance conjunctive use of the sources of water supply and encourage conservation. As the Agency’s consultants put it, “[t]wo of the primary objectives of cost of service water rates are to ensure the utility has sufficient revenue to cover the costs of operating and maintaining the utility in a manner that will ensure long term sustainability and to ensure that costs are recovered from customers in a way that reflects the demands they place on the system.”

The general idea was a rate structure with both volumetric and fixed components. Wholesale rate structures that include both a fixed charge component (usually calculated to recover all or a portion of the agency’s fixed costs of operating, maintaining and delivering water) and a volumetric component (generally calculated based on the cost of purchased water, and sometimes including some of the fixed costs) are common in the industry.

## **6. The Challenged Rates**

The Agency’s consultants presented several rate structure options. In the end, the option the Agency chose (the challenged rates) consisted of two components. The first component is a fixed charge based on each retailer’s three-year rolling average of total water demand (that is, its demand for the Agency’s imported water *and* for groundwater not supplied by the Agency). This fixed charge is calculated by “divid[ing] the Agency’s total fixed revenue for the applicable fiscal year . . . by the previous three-year average of total water demand of the applicable Retail Purveyor to arrive at a unit cost per acre

foot.” The Agency would recover 80 percent of its costs through the fixed component of the challenged rates. The second component of the Agency’s rate is a variable charge, based on a per acre foot charge for imported water.<sup>3</sup>

The rationale for recovering the Agency’s fixed costs in proportion to the retailers’ total water demand, rather than their demand for imported water, is this (as described in the consultants’ study):

“This rate structure meets the Agency’s objective of promoting resource optimization, conjunctive use, and water conservation. Since the fixed cost is allocated on the basis of each retail purveyor’s total demand, if a retail purveyor conserves water, then its fixed charge will be reduced. Additionally, allocating the fixed costs based on total water demand recognizes that imported water is an important standby supply that is available to all retail purveyors, and is also a necessary supply to meet future water demand in the region, and that there is a direct nexus between groundwater availability and imported water use – i.e., it allocates the costs in a manner that bears a fair and reasonable relationship to the retail purveyors’ burdens on and benefits from the Agency’s activities in ensuring that there is sufficient water to meet the demands of all of the retail purveyors and that the supply sources are responsibly managed for the benefits of all of the retail purveyors.”

The rationale continues: “Moreover, the Agency has taken a leadership role in maintaining the health of the local groundwater basin by diversifying the Santa Clarita Valley’s water supply portfolio, as demonstrated in the 2003 Groundwater Management Plan and in resolving perchlorate contamination of the Saugus Formation aquifer. Thus, since all retail purveyors benefit from imported water and the Agency’s activities, they should pay for the reasonable fixed costs of the system in proportion to the demand (i.e.

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<sup>3</sup> There was also a \$20 per acre foot reserve charge to fund the Agency’s operating reserves, but the Agency reports in its opening brief that it suspended implementation of that charge as of July 1, 2013, when reserve fund goals were met earlier than anticipated.

burdens) they put on the total water supply regardless of how they utilize individual sources of supply.”

The Agency’s rate study showed that, during the first year of the challenged rates (starting July 1, 2013), Newhall would experience a 67 percent increase in Agency charges, while Agency controlled retailers Valencia Water Company and Santa Clarita Water Division would see reductions of 1.9 percent and 10 percent, respectively. District 36 would have a 0.8 percent increase. The rate study also indicated that, by 2050, the impact of the challenged rates on Newhall was expected to be less than under the then-current rate structure, while Valencia Water Company was expected to pay more.

Newhall opposed the challenged rates during the ratemaking process. Its consultant concluded the proposed structure was not consistent with industry standards; would provide a nonproportional, cross-subsidization of other retailers; and did not fairly or reasonably reflect the Agency’s costs to serve Newhall. Newhall contended the rates violated the California Constitution and other California law. It proposed a rate structure that would base the Agency’s fixed charge calculation on the annual demand for imported water placed on the Agency by each of its four customers, using a three-year rolling average of past water deliveries to each retailer.

In February 2013, the Agency’s board of directors adopted the challenged rates, effective July 1, 2013.

## **7. This Litigation**

Newhall sought a writ of mandate directing the Agency to rescind the rates, to refund payments made under protest, to refrain from charging Newhall for its imported water service “with respect to the volume of groundwater Newhall uses or other services [the Agency] does not provide Newhall,” and to adopt a new, lawful rate structure. Newhall contended the rates were not proportionate to Newhall’s benefits from, and burdens on, the Agency’s service, and were therefore invalid under Proposition 26, Proposition 13, Government Code section 54999.7, and the common law of utility ratemaking.

The trial court granted Newhall's petition, finding the rates violated Proposition 26. The court concluded the Agency had no authority to impose rates based on the use of groundwater that the Agency does not provide, and that conversely, Newhall's use of its groundwater rights does not burden the Agency's system for delivery of imported water. Thus the rates bore no reasonable relationship to Newhall's burden on, or benefit received from, the Agency's service. The trial court also found the rates violated Government Code section 54999.7 (providing that a fee for public utility service "shall not exceed the reasonable cost of providing the public utility service" (Gov. Code, § 54999.7, subd. (a)), and violated common law requiring utility charges to be fair, reasonable and proportionate to benefits received by ratepayers. The court ordered the Agency to revert to the rates previously in effect until the adoption of new lawful rates, and ordered it to refund to Newhall the difference between the monies paid under the challenged rates and the monies that would have been paid under the previous rates.

Judgment was entered on July 28, 2014, and the Agency filed a timely notice of appeal.

## **DISCUSSION**

The controlling issue in this case is whether the challenged rates are a tax or a fee under Proposition 26.

### **1. The Standard of Review**

We review de novo the question whether the challenged rates comply with constitutional requirements. (*Griffith v. City of Santa Cruz* (2012) 207 Cal.App.4th 982, 989-990 (*Griffith I*)). We review the trial court's resolution of factual conflicts for substantial evidence. (*Morgan v. Imperial Irrigation District* (2014) 223 Cal.App.4th 892, 916.)

### **2. The Governing Principles**

All taxes imposed by any local government are subject to voter approval. (Art. XIII C, § 2.) Proposition 26, adopted in 2010, expanded the definition of a tax. A "tax" now includes "any levy, charge, or exaction of any kind imposed by a local government,"

with seven exceptions. (*Id.*, § 1, subd. (e).) This case concerns one of those seven exceptions.

Under Proposition 26, the challenged rates are not a tax, and are not subject to voter approval, if they are “[a] charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.” (Art. XIII C, § 1, subd. (e)(2).) The Agency “bears the burden of proving by a preponderance of the evidence” that its charge “is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.” (*Id.*, subd. (e), final par.)

### **3. This Case**

It is undisputed that the Agency’s challenged rates are designed “to recover all of its fixed costs via a fixed charge,” and not to generate surplus revenue. Indeed, Newhall recognizes the Agency’s right to impose a fixed water-rate component to recover its fixed costs. The dispute here is whether the fixed rate component may be based in significant part on the purchaser’s use of a product – groundwater – not provided by the Agency.

We conclude the Agency cannot, consistent with Proposition 26, base its wholesale water rates on the retailers’ use of groundwater, because the Agency does not supply groundwater. Indeed, the Agency does not even have the statutory authority to regulate groundwater, without the consent of the retailers (and other major groundwater extractors). As a consequence, basing its water rates on groundwater it does not provide violates Proposition 26 on two fronts.

First, the rates violate Proposition 26 because the method of allocation does not “bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from,” the Agency’s activity. (Art. XIII C, § 1, subd. (e), final par.) (We will refer to this as the reasonable cost allocation or proportionality requirement.)

Second, to the extent the Agency relies on its groundwater management activities to justify including groundwater use in its rate structure, the benefit to the retailers from those activities is at best indirect. Groundwater management activities are not a “service . . . provided directly to the payor that is not provided to those not charged” (art. XIII C, § 1, subd. (e)(2)), but rather activities that benefit the Basin as a whole, including other major groundwater extractors that are not charged for those services.

For both these reasons, the challenged rates cannot survive scrutiny under Proposition 26. The Agency resists this straightforward conclusion, proffering two principal arguments, melded together. The first is that the proportionality requirement is measured “collectively,” not by the burdens on or benefits received by the individual purveyor. The second is that the “government service or product” the Agency provides to the four water retailers consists not just of providing wholesale water, but also of “managing the Basin water supply,” including “management . . . of the Basin’s groundwater.” These responsibilities, the Agency argues, make it reasonable to set rates for its wholesale water service by “tak[ing] into account the entire Valley water supply portfolio and collective purveyor-benefits of promoting conjunctive use, not just the actual amount of Agency imported water purchased by each Purveyor . . . .”

Neither claim has merit, and the authorities the Agency cites do not support its contentions.

**a. *Griffin I* and the proportionality requirement**

It seems plain to us, as it did to the trial court, that the demand for a product the Agency does not supply – groundwater – cannot form the basis for a reasonable cost allocation method: one that is constitutionally required to be proportional to the benefits the rate payor receives from (or the burden it places on) the Agency’s activity. The Agency’s contention that it may include the demand for groundwater in its rate structure because the proportionality requirement is measured “collectively,” not by the burdens on or benefits to the individual retail purveyor, is not supported by any pertinent authority.

In contending otherwise, the Agency relies on, but misunderstands, *Griffith I* and other cases stating that proportionality “ ‘is not measured on an individual basis,’ ” but



rather “ ‘collectively, considering all rate payors,’ ” and “ ‘need not be finely calibrated to the precise benefit each individual fee payor might derive.’ ” (*Griffith I, supra*, 207 Cal.App.4th at p. 997, quoting *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 438 [discussing regulatory fees under the Water Code and Proposition 13].) As discussed *post*, these cases do not apply here, for one or more reasons. *Griffith I* involves a different exemption from Proposition 26, and other cases involve Proposition 218, which predated Proposition 26 and has no direct application here. In addition to these distinctions – which do make a difference – the cases involved large numbers of payors, who could rationally be (and were) placed in different usage categories, justifying different fees for different classes of payors.

In *Griffith I*, the defendant city imposed an annual inspection fee for all residential rental properties in the city. The court rejected a claim that the inspection fee was a tax requiring voter approval under Proposition 26. (*Griffith I, supra*, 207 Cal.App.4th at p. 987.) *Griffith I* involves another of the seven exemptions in Proposition 26, the exemption for regulatory fees – charges imposed for the regulatory costs of issuing licenses, performing inspections, and the like. (Art. XIII C, § 1, subd. (e)(3) [expressly excepting, from the “tax” definition, a “charge imposed for the reasonable regulatory costs to a local government for . . . performing inspections”].)

The inspection fees in *Griffith I* met all the requirements of Proposition 26. The city’s evidence showed the fees did not exceed the approximate cost of the inspections. (*Griffith I, supra*, 207 Cal.App.4th at p. 997.) And the proportionality requirement of Proposition 26 was also met: “The fee schedule itself show[ed] the basis for the apportionment,” setting an annual registration fee plus a \$20 per unit fee, with lower fees for “[s]elf-certifications” that cost the city less to administer, and greater amounts charged when reinspections were required. (*Griffith I*, at p. 997.) The court concluded: “Considered collectively, the fees are reasonably related to the payors’ burden upon the inspection program. *The larger fees are imposed upon those whose properties require the most work.*” (*Ibid.*, italics added.)

*Griffith I* did, as the Agency tells us, state that “ ‘the question of proportionality is not measured on an individual basis’ ” but rather “ ‘collectively, considering all rate payors.’ ” (*Griffith I, supra*, 207 Cal.App.4th at p. 997.) But, as mentioned, *Griffith I* was considering a regulatory fee, not, as here, a charge imposed on four ratepayers for a “specific government service or product.” As *Griffith I* explained, “ ‘[t]he scope of a regulatory fee is somewhat flexible’ ” and “ ‘must be related to the overall cost of the governmental regulation,’ ” but “ ‘need not be finely calibrated to the precise benefit each individual fee payor might derive.’ ” (*Ibid.*) That, of course, makes perfect sense in the context of a regulatory fee applicable to numerous payors; indeed, it would be impossible to assess such fees based on the individual payor’s precise burden on the regulatory program. But the inspection fees *were* allocated by categories of payor, and were based on the burden on the inspection program, with higher fees where more city work was required.

Here, there are four payors, with no need to group them in classes to allocate costs. The *Griffith I* concept of measuring proportionality “collectively” simply does not apply. Where charges for a government service or product are to be allocated among only four payors, the only rational method of evaluating their burdens on, or benefits received from, the governmental activity, is individually, payor by payor. And that is particularly appropriate considering the nature of the Proposition 26 exemption in question: charges for a product or service that is (and is required to be) provided “directly to the payor.” Under these circumstances, allocation of costs “collectively,” when the product is provided directly to each of the four payors, cannot be, and is not, a “fair or reasonable” allocation method. (Art. XIII C, § 1, subd. (e), final par.)

**b. *Griffith II* – the proportionality requirement and related claims**

In *Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586 (*Griffith II*), the court concluded, among other things, that a groundwater augmentation charge complied with the proportionality requirement of Proposition 218. The Agency relies on *Griffith II*, asserting that the court applied the “concept of collective reasonableness with respect to rate allocations . . . .” Further, the case

demonstrates, the Agency tells us, that its activities in “management . . . of the Basin’s groundwater” justify basing its rates on total water demand, because all four retailers benefit from having the Agency’s imported water available, even when they do not use it. Neither claim withstands analysis.

*Griffith II* involved a challenge under Proposition 218, so we pause to describe its relevant points. Proposition 218 contains various procedural (notice, hearing, and voting) requirements for the imposition by local governments of fees and charges “upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.” (Art. XIII D, § 2, subd. (e).) Fees or charges for water service (at issue in *Griffith II*) are exempt from voter approval (art. XIII D, § 6, subd. (c)), but substantive requirements apply. These include a proportionality requirement: that the amount of a fee or charge imposed on any parcel or person “shall not exceed the proportional cost of the service attributable to the parcel.” (*Id.*, subd. (b)(3).)

In *Griffith II*, the plaintiffs challenged charges imposed by the defendant water management agency on the extraction of groundwater (called a “groundwater augmentation charge”). The defendant agency had been created to deal with the issue of groundwater being extracted faster than it is replenished by natural forces, leading to saltwater intrusion into the groundwater basin. (*Griffith II, supra*, 220 Cal.App.4th at p. 590.) The defendant agency was specifically empowered to levy groundwater augmentation charges on the extraction of groundwater from all extraction facilities, “ ‘ ‘for the purposes of paying the costs of purchasing, capturing, storing, and distributing supplemental water for use within [defendant’s boundaries].’ ’ ” (*Id.* at p. 591.) The defendant’s strategy to do so had several facets, but its purpose was to reduce the amount of water taken from the groundwater basin by supplying water to some coastal users, with the cost borne by all users, “on the theory that even those taking water from [inland] wells benefit from the delivery of water to [coastal users], as that reduces the amount of groundwater those [coastal users] will extract [from their own wells], thereby keeping the water in [all] wells from becoming too salty.’ ” (*Id.* at pp. 590-591.)

*Griffith II* found the charge complied with the Proposition 218 requirement that the charge could not exceed the proportional costs of the service attributable to the parcel. (*Griffith II, supra*, 220 Cal.App.4th at pp. 600-601.) Proposition 218, the court concluded, did not require “a parcel-by-parcel proportionality analysis.” (*Griffith II*, at p. 601.) The court found defendant’s “method of grouping similar users together for the same augmentation rate and charging the users according to usage is a reasonable way to apportion the cost of service,” and Proposition 218 “does not require a more finely calibrated apportion.” (*Griffith II*, at p. 601.) The augmentation charge “affects those on whom it is imposed by burdening them with an expense they will bear proportionately to the amount of groundwater they extract at a rate depending on which of three rate classes applies. It is imposed ‘across-the-board’ on all water extractors. All persons extracting water – including any coastal users who choose to do so – will pay an augmentation charge per acre-foot extracted. All persons extracting water and paying the charge will benefit in the continued availability of usable groundwater.” (*Griffith II*, at pp. 603-604.)

The court rejected the plaintiffs’ claim the charge for groundwater extraction on their parcels was disproportionate because they did not use the agency’s services – that is, they did not receive delivered water, as coastal landowners did. This claim, the court said, was based on the erroneous premise that the agency’s only service was to deliver water to coastal landowners. The court pointed out that the defendant agency was created to manage the water resources for the common benefit of all water users, and the groundwater augmentation charge paid for the activities required to prepare and implement the groundwater management program. (*Griffith II, supra*, 220 Cal.App.4th at p. 600.) Further, the defendant agency “apportioned the augmentation charge among different categories of users (metered wells, unmetered wells, and wells within the delivered water zone).” (*Id.* at p. 601.) (The charges were highest for metered wells in the coastal zone, and there was also a per acre-foot charge for delivered water. (*Id.* at p. 593 & fn. 4.))

We see nothing in *Griffith II* that assists the Agency here. The Agency focuses on the fact that the defendant charged the plaintiff for groundwater extraction even though

the plaintiff received no delivered water, and on the court's statement that the defendant was created to manage water resources for the common benefit of all water users. (*Griffith II, supra*, 220 Cal.App.4th at p. 600.) From this the Agency leaps to the erroneous conclusion that the rates here satisfy the proportionality requirement simply because all four retailers "benefit from having the Agency's supplemental water supplies available," even when they do not use them. This is a false analogy. In *Griffith II*, the defendant charged all groundwater extractors proportionately for extracting water (and had the power to do so), and charged for delivered water as well. *Griffith II* does not support the imposition of charges based on a product the Agency does not supply.

We note further that in *Griffith II*, more than 1,900 parcel owners were subject to the groundwater augmentation charge, and they were placed in three different classes of water extractors and charged accordingly. (*Griffith II, supra*, 220 Cal.App.4th at pp. 593, 601.) Here, there are four water retailers receiving the Agency's wholesale water service, none of whom can reasonably be placed in a different class or category from the other three. In these circumstances, to say costs may be allocated to the four purveyors "collectively," based in significant part on groundwater not supplied by the Agency, because "they all benefit" from the availability of supplemental water supplies, would effectively remove the proportionality requirement from Proposition 26.

That we may not do. Proposition 26 requires by its terms an allocation method that bears a reasonable relationship to the payor's burdens on or benefits from the Agency's activity, which here consists of wholesale water service to be provided "directly to the payor." In the context of wholesale water rates to four water agencies, this necessarily requires evaluation on a "purveyor by purveyor" basis. (Cf. *Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1514 (*Capistrano*) ["[w]hen read in context, *Griffith [II]* does not excuse water agencies from ascertaining the true costs of supplying water to various tiers of usage"; *Griffith II*'s "comments on proportionality necessarily relate only to variations in property location"; "trying to apply [*Griffith II*] to the [Proposition 218 proportionality] issue[] is fatally flawed".])

The Agency's claim that it is not charging the retailers for groundwater use, and its attempt to support basing its rates on total water demand by likening itself to the defendant agency in *Griffith II*, both fail as well. The first defies reason. Because the rates are based on total water demand, the more groundwater a retailer uses, the more it pays under the challenged rates. The use of groundwater demand in the rate structure necessarily means that, in effect, the Agency is charging for groundwater use.

The second assertion is equally mistaken. The differences between the Agency and the defendant in *Griffith II* are patent. In *Griffith II*, the defendant agency was created to manage all water resources, and specifically to deal with saltwater intrusion into the groundwater basin. The Agency here was not. It was created to acquire water and to "provide, sell, and deliver" it. It is authorized to develop and implement groundwater management plans only with the approval of the retail water purveyors (and other major groundwater extractors). In other words, while the Agency functions as the lead agency in developing and coordinating groundwater management plans, its only authority over groundwater, as the trial court found, is a shared responsibility to develop those plans. Further, in *Griffith II*, the defendant agency was specifically empowered to levy groundwater extraction charges for the purpose of purchasing supplemental water. The Agency here was not. As the trial court here aptly concluded, *Griffith II* "does not aid [the Agency] for the simple reason that [the Agency] has no comprehensive authority to manage the water resources of the local groundwater basin and levy charges related to groundwater."<sup>4</sup>

Finally, the Agency insists that it "must be allowed to re-coup its cost of service," and that the practice of setting rates to recover fixed expenses, "irrespective of a customer's actual consumption," was approved in *Paland v. Brooktrails Township*

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<sup>4</sup> The trial court also observed that, "[a]part from [the Agency's] lack of authority to supply or manage Basin groundwater, Newhall correctly notes that [the Agency] has presented no evidence of its costs in maintaining the Basin."

*Community Services Dist. Bd. of Directors* (2009) 179 Cal.App.4th 1358 (*Paland*).

*Paland* has no application here.

*Paland* involved Proposition 218. As we have discussed, Proposition 218 governs (among other things) “property related fees and charges” on parcels of property. Among its prohibitions is any fee or charge for a service “unless that service is actually used by, or immediately available to, the owner of the property in question.” (Art. XIII D, § 6, subd. (b)(4).) The court held that a minimum charge, imposed on parcels of property with connections to the district’s utility systems, for the basic cost of providing water service, regardless of actual use, was “a charge for an immediately available property-related water or sewer service” within the meaning of Proposition 218, and not an assessment requiring voter approval. (*Paland, supra*, 179 Cal.App.4th at p. 1362; see *id.* at p. 1371 [“Common sense dictates that continuous maintenance and operation of the water and sewer systems is necessary to keep those systems immediately available to inactive connections like [the plaintiff’s].”].)

We see no pertinent analogy between *Paland* and this case. This case does not involve a minimum charge imposed on all parcels of property (or a minimum charge for standing ready to supply imported water). Newhall does not contest the Agency’s right to charge for its costs of standing ready to provide supplemental water, and to recoup all its fixed costs. The question is whether the Agency may recoup those costs using a cost allocation method founded on the demand for groundwater the Agency does not supply, and is not empowered to regulate without the consent of groundwater extractors. The answer under Proposition 26 is clear: it may not. *Paland* does not suggest otherwise.<sup>5</sup>

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<sup>5</sup> The parties refer to other recent authorities to support their positions in this case. We may not rely on one of them, because the Supreme Court has granted a petition for review. (*City of San Buenaventura v. United Water Conservation District* (2015) 235 Cal.App.4th 228, review granted June 24, 2015, S226036.) The Agency cites the other case extensively in its reply brief, but we see nothing in that case to suggest that the challenged rates here comply with Proposition 26. (*Great Oaks Water Co. v. Santa Clara Valley Water District* 242 Cal.App.4th 1187 (*Great Oaks*).)

**c. Other claims – conservation and “conjunctive use”**

The Agency attempts to justify the challenged rates by relying on the conservation mandate in the California Constitution, pointing out it has a constitutional obligation to encourage water conservation. (Art. X, § 2 [declaring the state’s water resources must “be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water [must] be prevented”].) The challenged rates comply with this mandate, the Agency contends, because reducing total water consumption will result in lower charges, and the rates encourage “a coordinated use of groundwater and supplemental water” (conjunctive use). This argument, too, misses the mark.

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The Agency’s brief fails to describe the circumstances in *Great Oaks*. There, a water retailer challenged a groundwater extraction fee imposed by the defendant water district. Unlike this case, the defendant in *Great Oaks* was authorized by statute to impose such fees, and its major responsibilities included “preventing depletion of the aquifers from which [the water retailer] extracts the water it sells.” (*Great Oaks, supra*, 242 Cal.App.4th at p. 1197.) The Court of Appeal, reversing a judgment for the plaintiff, held (among other things) that the fee was a property-related charge, and therefore subject to some of the constraints of Proposition 218, but was also a charge for water service, and thus exempt from the requirement of voter ratification. (*Great Oaks*, at p. 1197.) The trial court’s ruling in *Great Oaks* did not address the plaintiff’s contentions that the groundwater extraction charge violated three substantive limitations of Proposition 218, and the Court of Appeal ruled that one of those contentions (that the defendant charged more than was required to provide the property related service on which the charge was predicated) could be revisited on remand. The others were not preserved in the plaintiff’s presuit claim, so no monetary relief could be predicated on those theories. (*Great Oaks*, at pp. 1224, 1232-1234.)

The Agency cites *Great Oaks* repeatedly, principally for the statements that the “provision of alternative supplies of water serves the long-term interests of extractors by reducing demands on the groundwater basin and helping to prevent its depletion,” and that it was not irrational for the defendant water district “to conclude that reduced demands on groundwater supplies benefit retailers by preserving the commodity on which their long-term viability, if not survival, may depend.” (*Great Oaks, supra*, 242 Cal.App.4th at pp. 1248-1249.) These statements, with which we do not disagree, have no bearing on this case, and were made in connection with the court’s holding that the trial court erred in finding the groundwater extraction charge violated the statute that created and empowered the defendant water district. (*Id.* at pp. 1252-1253.)



Certainly the Agency may structure its rates to encourage conservation of the imported water it supplies. (Wat. Code, § 375, subd. (a) [public entities supplying water at wholesale or retail may “adopt and enforce a water conservation program to reduce the quantity of water used by [its customers] for the purpose of conserving the water supplies of the public entity”]. But the Agency has no authority to set rates to encourage conservation of groundwater it does not supply. Moreover, article X’s conservation mandate cannot be read to eliminate Proposition 26’s proportionality requirement. (See *City of Palmdale v. Palmdale Water District* (2011) 198 Cal.App.4th 926, 936-937 [“California Constitution, article X, section 2 is not at odds with article XIII D [Proposition 218] so long as, for example, conservation is attained in a manner that ‘shall not exceed the proportional cost of the service attributable to the parcel.’ ”]; see *id.* at p. 928 [district failed to prove its water rate structure complied with the proportionality requirement of Proposition 218]; see also *Capistrano, supra*, 235 Cal.App.4th at p. 1511, quoting *City of Palmdale* with approval.)

The Agency also insists that basing its rates only on the demand for the imported water it actually supplies – as has long been the case – would “discourage users from employing conjunctive use . . . .” The Agency does not explain how this is so, and we are constrained to note that, according to the Agency’s own 2003 Groundwater Management Plan, Newhall and the other retailers “have been practicing the conjunctive use of imported surface water and local groundwater” for many years. And, according to that plan, the Agency and retailers have “a historical and ongoing working relationship . . . to manage water supplies to effectively meet water demands within the available yields of imported surface water and local groundwater.”

In connection, we assume, with its conjunctive use rationale, the Agency filed a request for judicial notice, along with its reply brief. It asked us to take notice of three documents and “the facts therein concerning imported water use and local groundwater production” by Newhall and the other water retailers. The documents are the 2014 and 2015 Water Quality Reports for the Santa Clarita Valley, and a water supply utilization table from the 2014 Santa Clarita Valley Water Report published in June 2015. All of

these, the Agency tells us, are records prepared by the Agency and the four retailers, after the administrative record in this case was prepared. The documents “provide further support” as to the “cooperative efforts of the Agency and the Purveyors in satisfying long-term water supply needs,” and “provide context and useful background to aid in the Court’s understanding of this case.” The Agency refers to these documents in its reply brief, pointing out that since 2011, Newhall has increased its imported water purchases because of the impact of the current drought on certain of its wells, while retailer Valencia Water Company increased groundwater pumping and purchased less imported water in 2014. These cooperative efforts, the Agency says, “reflect the direct benefit to Newhall of having an imported water supply available to it, whether or not it maximizes use of imported water in a particular year.”

We deny the Agency’s request for judicial notice. We see no reason to depart from the general rule that courts may not consider evidence not contained in the administrative record. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 564; cf. *id.* at p. 578 [the exception to the rule in administrative proceedings, for evidence that could not have been produced at the hearing through the exercise of reasonable diligence, applies in “rare instances” where the evidence in question existed at the time of the decision, or in other “unusual circumstances”].) Denial is particularly appropriate where judicial notice has been requested in support of a reply brief to which the opposing party has no opportunity to respond, and where the material is, as the Agency admits, “further support” of evidence in the record, providing “context and useful background.” These are not unusual circumstances.

Returning to the point, neither conservation mandates nor the Agency’s desire to promote conjunctive use – an objective apparently shared by the retailers – permits the Agency to charge rates that do not comply with Proposition 26 requirements. Using demand for groundwater the agency does not supply to allocate its fixed costs may “satisf[y] the Agency’s constitutional obligations . . . to encourage water conservation,”

but it does not satisfy Proposition 26, and it therefore cannot stand.<sup>6</sup> (Cf. *Capistrano, supra*, 235 Cal.App.4th at pp. 1511, 1498 [conservation is to be attained in a manner not exceeding the proportional cost of service attributable to the parcel under Proposition 218; the agency failed to show its tiered rates complied with that requirement].)

**d. Other Proposition 26 requirements**

We have focused on the failure of the challenged rates to comply with the proportionality requirement of Proposition 26. But the rates do not withstand scrutiny for another reason as well. Proposition 26 exempts the Agency’s charges from voter approval only if the charge is imposed “for a specific government service or product provided *directly* to the payor that is *not* provided to those not charged . . . .” (Italics added.) The only “specific government service or product” the Agency provides directly to the retailers, and not to others, is imported water. As the trial court found: the Agency “does not provide Newhall groundwater. It does not maintain or recharge aquifers. It does not help Newhall pump groundwater. Nor does it otherwise contribute directly to the natural recharge of the groundwater Newhall obtains from its wells.”

The groundwater management activities the Agency *does* provide – such as its leadership role in creating groundwater management plans and its perchlorate remediation efforts – are not specific services the Agency provides directly to the retailers, and not to other groundwater extractors in the Basin. On the contrary, groundwater management services redound to the benefit of all groundwater extractors in the Basin – not just the four retailers. Indeed, implementation of any groundwater

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<sup>6</sup> The Agency also cites *Brydon v. East Bay Municipal Utility District* (1994) 24 Cal.App.4th 178 for the principle that, in pursuing a constitutionally and statutorily mandated conservation program, “cost allocations . . . are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity.” (*Id.* at p. 193.) But *Brydon* predated both Proposition 218 and Proposition 26. (See *Capistrano, supra*, 235 Cal.App.4th at pp. 1512-1513 [*Brydon* “simply has no application to post-Proposition 218 cases”; “it seems safe to say that *Brydon* itself was part of the general case law which the enactors of Proposition 218 wanted replaced with stricter controls on local government discretion”].)

management plan is “subject to the rights of property owners and with the approval of the retail water purveyors *and other major extractors* of over 100 acre-feet of water per year.” (Wat. Code Appen., § 103-15.2, subs. (b)&(c), italics added.)

Certainly the Agency may recover through its water rates its entire cost of service – that is undisputed. The only question is whether those costs may be allocated, consistent with Proposition 26, based in substantial part on groundwater use. They may not, because the Agency’s groundwater management activities plainly are not a service “that is not provided to those not charged . . . .” (Art. XIII C, § 1, subd. (e)(2).)

In light of our conclusion the challenged rates violate Proposition 26, we need not consider the Agency’s contention that the rates comply with Government Code section 54999.7 and the common law. Nor need we consider the propriety of the remedy the trial court granted, as the Agency raises no claim of error on that point.

#### **DISPOSITION**

The judgment is affirmed. Plaintiff shall recover its costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.

Transcription

Keith Lewinger (Director, San Diego County Water Authority)  
Tom DeBacker (Controller, Metropolitan Water District of Southern California)

3b: Financial highlights

Finance and Insurance Committee Meeting

July 8, 2013

**DeBacker** (16:53): That was not based on a percentage. There was a point in time when we did use a percentage and that percentage was about 20 percent of the CIP. When we changed from that practice we went to a 95 million dollars and that was just to kind of, you know, get us close to what a 20 percent amount would be, but it was not precisely 20 percent.

**Lewinger**: So it was meant to represent approximately 20 percent?

**DeBacker**: Yeah and I was just using that going forward.

# The Metropolitan Water District Act

## PREFACE

This volume constitutes an annotated version of the Metropolitan Water District Act, as reenacted by the California State Legislature in 1969 and as amended in 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1978, 1981, 1984, 1985, 1995, 1998, 1999, 2001, 2004, and 2008. Where there is no legislative history given for a section of this act, it is because the section was enacted as part of the nonsubstantive revision of the Metropolitan Water District Act, Statutes 1969, chapter 209. The editorial work was done by the office of the General Counsel of The Metropolitan Water District of Southern California. To facilitate use of the act, catchlines or catchwords enclosed by brackets have been inserted to indicate the nature of the sections which follow. Also, a table of contents has been set at the beginning of the act. Such table of contents and catchlines or catchwords are not a part of the act as enacted by the Legislature. This annotated act will be kept up to date by means of supplemental pages issued each year in which there is a change to the act.

(Statutes 1969, ch.209, as amended;  
West's California Water Code – Appendix Section 109  
Deering's California Water Code – Uncodified Act 570)

A contract between the State and a metropolitan water district for a water supply from the State Water Resources Development System was a contract for the furnishing of continued water service in the future, payments by the district being contingent upon performance of contractual duties by the State and not incurred at the outset, so the district did not incur an indebtedness in excess of that permitted by former Section 5(7) of the Metropolitan Water District Act (now Sec. 123).

*Metropolitan Water District v. Marquardt*, 59 Cal.2d 159, 28 Cal. Rptr. 724 (1963).

#### **Sec. 124. [Taxes, Levy and Limitation]**

A district may levy and collect taxes on all property within the district for the purposes of carrying on the operations and paying the obligations of the district, except that such taxes, exclusive of any tax levied to meet the bonded indebtedness of such district and the interest thereon, exclusive of any tax levied to meet any obligation to the United States of America or to any board, department or agency thereof, and exclusive of any tax levied to meet any obligation to the state pursuant to Section 11652 of the Water Code, shall not exceed five cents (\$.05) on each such one hundred dollars (\$100) of assessed valuation. The term "tax levied to meet the bonded indebtedness of such district and the interest thereon" as used in this section shall also include, but shall not be limited to, any tax levied pursuant to Section 287 to pay the principal of, or interest on, bond anticipation notes and any tax levied under the provisions of any resolution or ordinance providing for the issuance of bonds of the district to pay, as the same shall become due, the principal of any term bonds which under the provisions of such resolution or ordinance are to be paid and retired by call or purchase before maturity with moneys set aside for that purpose.

Amended by Stats. 1969, ch. 441.

#### **CASE NOTE**

An article in a contract between the State and a metropolitan water district for a water supply from the State Water Resources Development System which article is based upon Water Code Section 11652, requiring the district to levy a tax to provide for all payments due under the contract, does not contravene former Section 5(8) of the Metropolitan Water District Act, imposing a limit on taxation, as Section 11652 is a special provision relating only to taxation to meet obligations from water contracts with state agencies, whereas said Section 5(8) is a general provision relating to taxation by a district for all purposes and the special provision controls the general provision.

*Metropolitan Water District v. Marquardt*, 59 Cal.2d 159, 28 Cal. Rptr. 724 (1963).

#### **Sec. 124.5. [Ad valorem Tax Limitation]**

Subject only to the exception in this section and notwithstanding any other provision of law, commencing with the 1990-91 fiscal year any ad valorem property tax levied by a district on taxable property in the district, other than special taxes levied and collected pursuant to annexation proceedings pursuant to Articles 1 (commencing with Section 350), 2 (commencing with Section 360), 3 (commencing with Section 370), and 6 (commencing with Section 405) of Chapter 1 of Part 7, shall not exceed the composite amount required to pay (1) the principal and interest on general obligation bonded indebtedness of the district and (2) that portion of the district's payment obligation under a water service contract with the state which is reasonably

allocable, as determined by the district, to the payment by the state of principal and interest on bonds issued pursuant to the California Water Resources Development Bond Act as of the effective date of this section and used to finance construction of facilities for the benefit of the district. The restrictions contained in this section do not apply if the board of directors of the district, following a hearing held to consider that issue, finds that a tax in excess of these restrictions is essential to the fiscal integrity of the district, and written notice of the hearing is filed with the offices of the Speaker of the Assembly and the President pro Tempore of the Senate at least 10 days prior to that date of the hearing.

Added by Stats. 1984, ch. 271.

**Sec. 125. [Investment of Surplus Money]**

Investment of surplus moneys of a district is governed by Article 1 (commencing with Section 53600) of Chapter 4, Part 1, Division 2, Title 5 of the Government Code.

Amended by Stats. 1969, ch. 441.

**Sec. 125.5 Guidelines for intended use of unreserved fund balances.**

On or before June 20, 2002, the board of directors of a district shall adopt a resolution establishing guidelines for the intended use of unreserved fund balances. The guidelines shall require that any disbursement of funds to member public agencies that represents a refund of money paid for the purchases of water shall be distributed based upon each member agency's purchase of water from the district during the previous fiscal year.

Added Stats. 2001 ch 632 §1 (SB350)

**Sec. 126. [Dissemination of Information]**

A district may disseminate information concerning the activities of the district, and whenever it shall be found by two-thirds vote of the board to be necessary for the protection of district rights and properties, the district may disseminate information concerning such rights and properties, and concerning matters which, in the judgment of the board, may adversely affect such rights and properties. Expenditures during any fiscal year for the purposes of this section shall not exceed one-half of one cent (\$0.005) for each one hundred dollars (\$100) of assessed valuation of the district.

**Sec. 126.5.[Proscription on Use of Public Money for Investigations Relating to Elected Officials, Advocacy Groups, or Interested Persons: Right to Public Records]**

(a) The Metropolitan Water District of Southern California and its member public agencies may not expend any public money for contracting with any private entity or person to undertake research or investigations with regard to the personal backgrounds or the statements of



board to be equitable, may fix rates for the sale and delivery to member public agencies of water obtained by the district from one source of supply in substitution for water obtained by the district from another and different source of supply, and may charge for such substitute water at the rate fixed for the water for which it is so substituted.

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

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

Amended by Stats. 1984, ch. 271

#### **Sec. 134.5. [Water Standby or Availability of Service Charge]**

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

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

(c) The service charge may be collected from the member public agencies of a district. As an alternative, a district may impose a service charge as a standby charge against individual parcels within the district.

In implementing this alternative, a district may exercise the powers of a county water district under Section 31031 of the Water Code, except that, notwithstanding Section 31031 of the Water Code, a district may (1) raise the standby charge rate above ten dollars (\$10) per year by a majority vote of the board, and (2) after taking into account the factors specified in subdivision (b), fix different standby charge rates for parcels situated within different member public agencies.



## San Diego County Water Authority

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

November 17, 2014

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

#### MEMBER AGENCIES

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

#### OTHER REPRESENTATIVE

County of San Diego

RE: Finance and Insurance Committee Item 6c – Balancing Accounts

Dear Committee Chair Barbre and Members of the Board:

Thank you for placing the balancing accounts issue on the committee agenda this month.

In September, when staff last presented the item for discussion, we noted that the content of the presentation was not responsive to the question, namely, how can revenues from individual rates be tracked to improve accountability and ensure compliance with cost-of-service requirements. We are disappointed to see that the same non-responsive staff presentation will be made again this month.

The concept of balancing accounts is well-known and easy to understand. It is a long-standing accounting practice among private water utilities used to protect both the utility and its customers from changes in costs the utility has no ability to control (for example, the weather,) and at the same time, ensure that rates accurately reflect the costs of providing service. Because MWD now derives significant revenues from transportation services, it is imperative that MWD's accounting methods ensure all of its member agencies and ratepayers that the rates they are paying are fair, and used for the intended purpose as established during the public rate-setting and cost-of-service process.

We are asking that MWD implement an accounting mechanism that tracks revenues from all individual rates and expenditures associated with those rates. To the extent that MWD actual sales differ from forecasted sales, it may collect more or less than the revenue requirement upon which the rate for a particular service is determined. Discrepancies between revenue requirements and actual revenues and expenses are captured through balancing account mechanisms, which "true-up" the actual revenue to the revenue requirement in the following year. This "true-up" ensures that MWD only collects the revenue requirement for the rate that is charged in compliance with applicable law.

We do not understand why MWD would be unwilling to extend its current practice of tracking

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

Committee Chair Barbre and Members of the Board  
November 17, 2014  
Page 2

treatment and water stewardship rates to also include supply, system access and system power rates. We are asking only that MWD account for all of its rates just as it now does for its treatment and water stewardship rates. Tracking rates and revenue collection in this manner does not impede MWD's ability to meet bond covenants or any other requirement or function described in the staff presentation.

We are also concerned with the position expressed at the last committee meeting that the Water Rate Stabilization Fund (WRSF) requirements should flow into a single fund with board discretion to expend those funds on any purpose. The melding of surplus funds received from different rates and charges would necessarily lead to cross-funding of unrelated services. Furthermore, the priority for fund flows (dollars in/out) could first be to the separate fund accounts for each identified service, rather than flowing first to the WRSF, as is the current practice, or sub-account funds could be created within the WRSF to track and account for sources of the "puts" into the WRSF and the "takes" from the fund. This would ensure collections from the rate for each service are accounted for and attributed to that service. Surplus collections remaining in that account may then be used to mitigate corresponding rate increases in the following years so funds are spent for that service in accordance with cost-of-service and Proposition 26 (2010) requirements.

We look forward to discussing this important transparency issue at the committee and board meeting this month.

Sincerely,



Michael T. Hogan  
Director



Keith Lewinger  
Director



Fern Steiner  
Director



Yen C. Tu  
Director





## San Diego County Water Authority

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

February 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

Olivewood  
Municipal Water District

Otay Water District

Padre Dam  
Municipal Water District

Camp Pendleton  
Marine Corps Base

Rainbow  
Municipal Water District

Ramona  
Municipal Water District

Rincon del Diablo  
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center  
Municipal Water District

Vista Irrigation District

Yuima  
Municipal Water District

**OTHER REPRESENTATIVE**

County of San Diego

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

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

Dear Ms. Chin:

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

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

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

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

Ms. Dawn Chin  
February 18, 2016  
Page 2

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

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

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

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

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

The requested records are:

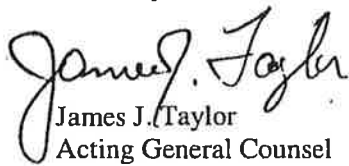
1. Any rate model or models used in formulating proposed rates for the 2017 and 2018 calendar years.
2. All data, analyses and studies, if any, and cost of service analysis used to generate or supporting the rates and charges proposed for the 2017 and 2018 calendar years, as described in MWD Board Memo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

Ms. Dawn Chin  
February 18, 2016  
Page 3

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

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

Sincerely,

  
James J. Taylor  
Acting General Counsel

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







THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

*Office of the General Manager*

**VIA EMAIL**

February 22, 2016

Director Michael T. Hogan  
Director Keith Lewinger  
Director Yen C. Tu  
Director Fern Steiner  
San Diego County Water Authority  
4677 Overland Avenue  
San Diego, CA 92123

Dear Directors:

Your letter dated October 26, 2015 regarding Audit and Ethics Committee Agenda Item 3-b

This letter addresses your comments, received October 26, 2015, on Audit and Ethics Committee Agenda Item 3-b: Discussion of Independent Auditor's report from MGO, LLP for fiscal year 2014/15.

You commented that Metropolitan's water sales amount for fiscal year ending June 30, 2015 "is not accurate; that number is only achieved by characterizing as 'water sales' the revenue MWD is actually paid for wheeling the Water Authority's independent Colorado River water under the Exchange Agreement." SDCWA's payments under the Exchange Agreement are not for wheeling. SDCWA has previously stated that the agreement is not for wheeling, in statements before the California State Water Resources Control Board, the San Francisco and Sacramento Superior Courts, and the California Court of Appeal, including in sworn testimony.

You also commented that Note 1(c) does not acknowledge receipt of revenues such as those under the Exchange Agreement. In fact, Note 1(c) states that water sales revenues includes revenues from exchange transactions.

You further commented that "Judge Karnow specifically found that the Water Authority is not buying water from MWD under the Exchange Agreement" (emphasis in original), in reference to the San Francisco Superior Court's ruling on the preferential rights claim in the SDCWA v. Metropolitan litigation. The Superior Court's decision is under appeal and does not have binding

SDCWA Directors  
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Page 2

effect. In any event, the parties' disagreement in the litigation as to whether the Exchange Agreement payments are for the "purchase of water," as that term is used in the preferential rights statute and as it has been interpreted by the California Court of Appeal, has no bearing on Metropolitan's stated water sales revenues. The stated water sales revenues show the revenues received from the payment of Metropolitan water rates. It is agreed that under the Exchange Agreement's price term, SDCWA pays Metropolitan water rates (the System Access Rate, System Power Rate, and Water Stewardship Rate).

The matters raised in your comments are not material to a reader of the financial statements. Metropolitan prepares its financial statements in accordance with accounting principles generally accepted in the United States. Information relevant to the fair presentation of financial statements that are free from material misstatement and in accordance with the aforementioned accounting principles was provided to MGO during the course of the audit. Such information was not inclusive of SDCWA's comments on Metropolitan's bond disclosures, since SDCWA's comments did not provide additional undisclosed information which was relevant to the financial statements.

We do note that Metropolitan issued its Comprehensive Annual Financial Report on December 15, 2015, which includes the basic financial statements. Note 15, Subsequent Events, includes a discussion of the final judgment issued on November 18, 2015 by the San Francisco Superior Court for the 2010 and 2012 SDCWA v. Metropolitan cases, the damages and prejudgment interest awards, and the filing of the Notice of Appeal in each case on November 19, 2015.

Thank you for your comments on Metropolitan's Basic Financial Statements.

Sincerely,



Gary Breaux  
Assistant General Manager/ Chief Financial Officer





THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

*Office of the General Manager*

**VIA EMAIL**

February 23, 2016

Director Michael T. Hogan  
Director Keith Lewinger  
Director Fern Steiner  
Director Yen C. Tu  
San Diego County Water Authority  
4677 Overland Avenue  
San Diego, CA 92123

Re: Your letters dated February 4, 2016, February 6, 2016, and February 9, 2016

Dear Directors:

This letter addresses your comments and requests in your letters dated February 4, 2016, February 6, 2016, and February 9, 2016, relating to Metropolitan's 2016 budget and rate setting process.

February 4, 2016 Letter re Written Request for Notice and Request for Data and Proposed Methodology under Government Code Section 54999.7

We have received your request for notice of the public meetings relating to establishment of Metropolitan's 2017 and 2018 rates and charges, and the data and proposed methodology relating to such rates and charges, pursuant to Government Code Section 54999.7. SDCWA has and will continue to receive notice of all meetings, workshops, and public hearings relating to Metropolitan's 2017 and 2018 rates and charges, as well as the information, data, and methodology supporting the rates and charges proposal, in accordance with Metropolitan's practices and the Brown Act.

As you know, Metropolitan disputes SDCWA's litigation position that Section 54999.7 applies to Metropolitan's rates. SDCWA has previously agreed that Section 54999.7 does not apply to Metropolitan. This is an issue in the pending litigation between SDCWA and Metropolitan. The judgment in the litigation is currently on appeal and, therefore, is not binding on Metropolitan. Nevertheless, Metropolitan has and will continue to fully comply with Section 54999.7's requirements through the budget and rates and charges information provided and to be provided to the member agencies and the public.

SDCWA Directors  
February 23, 2016  
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February 6, 2016 Letter Re Board Memo 9-2

We appreciate receiving your preliminary written comments in advance of the first workshop of the 2016 budget and rate setting process, held on February 8, 2016 (“Workshop #1”). Staff has reviewed your written comments, as well as your and other Metropolitan Directors’ comments made at Workshop #1, at the February 9 Board meeting, and at the February 23, 2016 Workshop #2. Consistent with past practice, staff has and will continue to address all Directors’ comments and questions at the scheduled workshops to ensure full participation of the Finance & Insurance Committee and Board. As we have informed the Board, the proposed schedule for the 2016 budget and rate setting process will consist of four workshops, with a fifth workshop available if the Board requests it, and one public hearing before the Board may take action on April 12 to adopt the biennial budget and rates and charges.

You have also included in your February 6 letter a request that the General Counsel provide (1) a public presentation regarding the applicability of Proposition 26 to wholesale water agencies such as Metropolitan, and (2) a legal opinion “why MWD’s actions” with respect to the Readiness-to-Serve and Capacity Charges “are not the opposite of what was intended by passage of” Sections 124.5 and 134 of the Metropolitan Water District Act. As you know, the applicability of Proposition 26 to Metropolitan’s wholesale water rates is an issue in the pending litigation between SDCWA and Metropolitan. Metropolitan contends that Proposition 26 does not apply to its rates and Metropolitan has explained that position extensively in the litigation. As stated above, the judgment in the litigation is on appeal and is not currently binding on Metropolitan. Metropolitan’s position is that its rates and charges comply with all applicable law, including but not limited to, the Metropolitan Water District Act.

February 9, 2016 Letter re “2016 Rate Setting Process and Schedule for Public Hearing; Request for Distribution of Cost of Service Report Prior to the Public Hearing”

You commented in your February 9 letter that you have not received “MWD’s 2016 Cost of Service Report” and that Government Code Section 54999.7(d) and (e) require distribution of such report no later than 30 days before rates and charges are adopted.

First, we note that staff has made available prior to Workshop #1 the proposed biennial budget and ten-year forecast, containing revenue requirements and cost of service analysis. Staff also made an extensive presentation regarding the revenue requirements that form Metropolitan’s projected costs of service. Moreover, as explained in the February 9 Board Letter, “[t]he estimated rates are based on Metropolitan’s current methodology for developing rates and charges to produce the necessary revenue required to cover costs.” (Board Memo 9-2, p. 1.) In other words, the proposed rates and charges, with the exception of the Treatment Surcharge, will continue to be proposed pursuant to the rate structure that has been in place since January 1, 2003. Further explanation of the cost of service analysis supporting the continuing rate structure, including a Cost of Service Report, will be presented throughout the budget and rate process.

Second, as stated above, Metropolitan agrees with SDCWA’s prior position that Government Code Section 54999.7 does not apply to Metropolitan. In any event, we point out that SDCWA

SDCWA Directors  
February 23, 2016  
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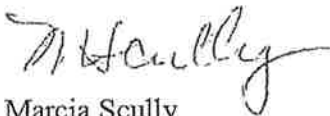
has misread Section 54999.7. The Section requires that the “request of any affected public agency” be “made not less than 30 days prior to the date of the public meeting to establish or increase any rate, charge, surcharge, or fee ... .” (Cal. Gov. Code § 54999.7(e).) The 30-day deadline applies to the request for information – not to the provision of information as you represent in your letter.

We will respond separately to your correspondence received after February 9, 2016. Thank you again for providing your comments in advance and in writing.

Sincerely,



Gary Breaux  
Assistant General Manager/ Chief Financial Officer



Marcia Scully  
General Counsel

cc: Metropolitan Board of Directors





THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

Office of the General Counsel

February 26, 2016

James J. Taylor, Esq.  
General Counsel  
San Diego County Water Authority  
4677 Overland Avenue  
San Diego, California 92123-1233

Dear Mr. Taylor:

**Response to Public Records Act Request Dated February 18, 2016**

We received your Public Records Act request, dated February 18, 2016, on that date. A copy of your request is attached.

This response is made in compliance with California Government Code Section 6253(c), which requires an agency to notify a person making a request within 10 days whether a request seeks disclosable records. We have determined that your request seeks disclosable records, with the exception of Metropolitan's financial planning model, which is exempt from disclosure under Government Code Section 6254.9(a) as a proprietary software program developed by Metropolitan that contains nondisclosable formulas and programming code.<sup>1</sup>

Disclosable records that are responsive to your request, to the extent material has not already been provided to the Metropolitan Board, are being collected and will be provided to SDCWA in electronic format on DVD(s).

Pursuant to Government Code Section 6253(c), Metropolitan will notify you within 14 days of the date on which we will provide the responsive and disclosable records to you. The voluminous amount of records and our need to remove the proprietary formulas and code from spreadsheets impact the timing of the production and our ability to state the production date at

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<sup>1</sup> SDCWA already received the financial planning model through the rate litigation, subject to the parameters and restrictions of the Court's protective order, so SDCWA has had full opportunity to view it and understands its operations.



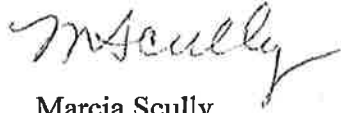
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

James J. Taylor, Esq.  
February 26, 2016  
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this time. We will also post this material on-line so it is available to all Metropolitan Board members, member agency staff, and the public. In addition, if any Board member would like, we will provide the material to them on DVD(s).

Thank you for your request. Please direct all communications regarding your request to me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "M. Scully".

Marcia Scully  
General Counsel





## San Diego County Water Authority

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

March 4, 2016

Marcia Scully, Esq.  
General Counsel  
Metropolitan Water District of Southern California  
P.O. Box 54153  
Los Angeles, CA 90054-0153

### MEMBER AGENCIES

Carlsbad  
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook  
Public Utility District

Hellix Water District

Lakeside Water District

Olivenhain  
Municipal Water District

Olney Water District

Padre Dam  
Municipal Water District

Camp Pendleton  
Marine Corps Base

Rainbow  
Municipal Water District

Ramona  
Municipal Water District

Rincon del Diablo  
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Vallay Center  
Municipal Water District

Vista Irrigation District

Yuima  
Municipal Water District

### OTHER REPRESENTATIVE

County of San Diego

Re: San Diego Public Records Act Request of February 18, 2016

Dear Ms. Scully:

I have reviewed your February 26 correspondence, which responds to our February 18 California Public Records Act Request (the "Request"). As you know, the Request seeks categories of information necessary to evaluate MWD's current proposed rates for 2017 and 2018.

In your correspondence, you have denied our request for Metropolitan's financial planning model, claiming that it is exempt under Government Code section 6254.9 as "a proprietary software program developed by Metropolitan that contains nondisclosable formulas and programming code." As you note, the Water Authority received the previous financial planning model in 2013. That disclosure, made in litigation, was subject to a protective order requested by MWD, which for timing reasons, the Water Authority chose not to challenge at that time. Our Request seeks public disclosure of the financial planning model, with updated data, relating to the current rate setting process for 2017 and 2018 rates and charges.

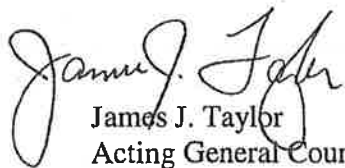
You may or may not be aware, after the protective order was issued, the California Supreme Court issued a decision that confirms the Water Authority's position that the data contained within MWD's financial planning model is a disclosable public record, and is not exempt from disclosure under Government Code 6254.9. See Sierra Club v. Superior Court (2013) 57 Cal.4th 157. Therefore, we ask again that MWD immediately provide us with its current financial planning model, in a fully functional electronic format, including all of the data contained therein. If MWD still refuses to do so, we will have no choice but to commence litigation to obtain this information, which is necessary in order to analyze how MWD has assigned its costs and set its rates.

As to the other requested records, your correspondence notes that MWD will notify us in 14 days of the date on which you will provide responsive records. However, a delay in both your response and the production of records is unacceptable since MWD is currently

Marcia Scully  
March 4, 2016  
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in the process of setting rates that will be formally acted upon by the board at its April 12 board meeting. Given the immediacy of rate adoption, it is evident that the responsive records, which all seek the underlying data that MWD used in determining its proposed rates, are readily available and should be immediately disclosed. Since the public hearing on MWD's proposed rates is just four days away, and the proposed rates are scheduled to be adopted on April 12, it is of great public importance that both MWD and the public receive as much information as possible now. At a minimum, MWD should immediately provide access to all available data, including any cost of service studies or reports upon which the data rely, and studies that may have been conducted, and more detailed budget information to the lowest level of data that MWD collects or uses to develop the budget (typically, this would include line by line account numbers, by department, including all activities and programs). Any additional data should also be provided on a rolling production basis.

Sincerely,

  
James J. Taylor  
Acting General Counsel



**Attachment 8:**

**Master Index of Documents San Diego County Water Authority Requests be Included in the Administrative Record for Setting of MWD Rates and Charges for Calendar Years 2017 and 2018**

<b>SDCWA Item No.</b>	<b>CD#</b>	<b>Date</b>	<b>Description</b>
SDCWA 001	6	1/27/14	SDCWA Written Request for Notice under Gov. Code Section 54999.7(d) and Request for Data and Proposed Methodology for Establishing Rates and Charges (Government Code Section 54999.7(e))
SDCWA 002	6	2/28/14	SDCWA Renewed written request for data and proposed methodology for establishing rates and charges (Gov. Code 54999.7 and 6250)
SDCWA 003	6	3/10/14	MWD Response to Request for Information Dated February 28, 2014
SDCWA 004	6	3/10/14	Testimony of Dennis Cushman before MWD Finance and Insurance Committee Meeting Agenda Item 8b: Proposed Rates for 2015 and 2016
SDCWA 005	6	3/11/14	Testimony of Dennis Cushman at MWD Board Meeting Public Hearing on Proposed Rates for Calendar Years 2015 and 2016
SDCWA 006	6	3/11/14	March 11, 2014 Letter - Public Hearing Comments on Proposed Rates and Charges, with attachments
SDCWA 007	1	3/11/14	Administrative Record for Setting of MWD's 2013 and 2014 Rates in <i>SDCWA v. MWD</i> , Case No. CPF-12-512466 (S.F. Superior Court) which is inclusive of the Administrative Record in the case challenging MWD's 2011 and 2012 Rates ( <i>SDCWA v. MWD</i> , Case No. CPF-10-510830 (S.F. Superior Court))
SDCWA 008	2	3/11/14	Additional documents SDCWA requested be included in Administrative Record for the adoption of MWD's calendar year 2015 and 2016 rates
SDCWA 009	3	3/10/14	CD of Post-Trial Briefs, Transcripts, and Statements of Decision in 2014 Rate Case; Cushman Testimony to MWD Finance and Insurance Committee, and Cushman Board Public Hearing Testimony and Transmittal Letter
SDCWA 010	6	3/19/14	MWD letter to SDCWA forwarding DVD containing MWD records
SDCWA 011			<i>Reserved</i>
SDCWA 012			<i>Reserved</i>
SDCWA 013	5		Documents and Testimony from Phase II of the <i>SDCWA v. MWD</i> Trial (2010 and 2012 Rate Cases)

SDCWA 014	6	4/8/14	Letter Re: April 7, 2014 Finance and Insurance Committee Meeting Board Memo 8-1 - Approve proposed biennial budget for fiscal year 2014/15 and 15/16, proposed ten-year forecast, proposed revenue requirement for fiscal year 2014/15 and 2015/16 and recommend water rates; adopt resolution fixing and adopting water rates and charges for 2015 and 2016; and transmit the General Manager's Business Plan Strategic Priorities for FY 2014/15 and 2015/16 - COMMENTS ON PROPOSED WATER RATES AND CHARGES (FOR 2015 AND 2016)
SDCWA 015	6	4/8/14	Documents forwarded with SDCWA 014
SDCWA 016	6	8/16/10	Comment Letter on MWD Staff Analysis on Opt-in/Opt-out Conservation Program (August 16, 2010)
SDCWA 017	6	10/11/10	Integrated Resources Plan (October 11, 2010)
SDCWA 018	6	11/29/10	MWD Draft Long Term Conservation Plan (November 29, 2010)
SDCWA 019	6	1/5/11	Draft Long Range Finance Plan (January 5, 2011)
SDCWA 020	6	4/25/11	MWD Discounted Water Program (April 25, 2011)
SDCWA 021	6	5/4/11	MWD's Response to the Water Authority's April 25, 2011 Discounted Water Program Letter (May 4, 2011)
SDCWA 022	6	5/6/11	Sale of Discounted Water (May 6, 2011)
SDCWA 023	6	6/13/11	MWD Local Resources Program – Chino Desalter (June 13, 2011)
SDCWA 024	6	7/20/11	Comments on Long Term Conservation Plan Working Draft Version 11 (July 20, 2011)
SDCWA 025	6	8/16/11	Member Agency Willingness to Sign Take-or-Pay Contracts (August 16, 2011)
SDCWA 026	6	9/9/11	Adjustments to MWD's Water Supply Allocation Plan Formula (September 9, 2011)
SDCWA 027	6	9/12/11	Comments and Questions – Replenishment Service Program (September 12, 2011)
SDCWA 028	6	10/7/11	Water Planning and Stewardship Reports – lack of justifications to demonstrate needs and benefits (October 7, 2011)
SDCWA 029	6	10/25/11	KPMG Audit Report (October 25, 2011)
SDCWA 030	6	11/4/11	Letter on Approve Policy Principles for a Replenishment (Discounted Water) Program (November 4, 2011)

SDCWA 031	6	11/23/11	Turf Replacement Grant (November 23, 2011)
SDCWA 032	6	12/12/11	Letter on Review Options for Updated Replenishment (Discounted Water) Program (December 12, 2011)
SDCWA 033	6	12/13/11	Water Authority's Request to Include Information in MWD's SB 60 (December 13, 2011)
SDCWA 034	6	1/5/12	Response letter to MWD Letters on Replenishment Dated December 21, 2011 (January 5, 2012)
SDCWA 035	6	1/18/12	MWD Response to January 5, 2012 Letter on Replenishment Workgroup Materials addressed to MWD Delegation (January 18, 2012)
SDCWA 036	6	3/12/12	Oppose Local Resources Program Agreements (March 12, 2012)
SDCWA 037	6	3/13/12	San Diego County Water Authority's Annexation (March 13, 2012)
SDCWA 038	6	4/9/12	Re: Board Memo 8-2: Authorize the execution and distribution on the Official Statement in connection with the issuance of the Water Revenue Refunding Bonds (April 9, 2012)
SDCWA 039	6	5/7/12	Oppose changes to water conservation incentives (subsidies) as described (May 7, 2012)
SDCWA 040	6	6/11/12	Re: Agenda Item 8-8: Authorize the execution and distribution of Official Statements in connection with issuance of the Water Revenue Refunding Bonds (June 11, 2012)
SDCWA 041	6	6/11/12	Oppose Local Resources Program Agreement with MWDOC and the City of San Clemente for the San Clemente Recycled Water System Expansion Project (June 11, 2012)
SDCWA 042	6	7/9/12	Update on Rate Refinement Discussions (July 9, 2012)
SDCWA 043	6	8/16/12	Rate Refinement Workshop (August 16, 2012)
SDCWA 044	6	8/20/12	Re: Board Memo : Authorize the execution and distribution of an Official Statement for potential refunding of Water Revenue Bonds (August 20, 2012)
SDCWA 045	6	8/20/12	Oppose Local Resources Program Agreement with MWDOC and El Toro Water District for the El Toro Recycled Water System Expansion Project (August 20, 2012)
SDCWA 046	6	8/29/12	Re: Confirmation of MWD's review of Water Authority's August 20, 2012 comments on Appendix A and OS (August 29, 2012)
SDCWA 047	6	9/10/12	Update on "Rate Refinement" (Board Information Item 7-b) (September 10, 2012)



SDCWA 048	6	9/10/12	Comments and Positions on Proposed Amendments to the MWD Administrative Code (September 10, 2012)
SDCWA 049	6	10/8/12	Water Authority's Response to MWD's September 4, 2012 Letter Regarding Water Authority's Comments on Appendix A to Remarketing Statement and Official Statement (October 8, 2012)
SDCWA 050	6	10/8/12	Water Authority's letter on Board Memo 8-3 – Approve the Form of the Amended and Restated Purchase Order and Authorize Amendment to the Administrative Code (October 8, 2012)
SDCWA 051	6	10/9/12	Water Authority's testimony, as given by Dennis Cushman, on benefits of QSA to MWD (October 9, 2012)
SDCWA 052	6	11/4/12	Director Lewinger's letter to CFO Breaux re: Tracking Revenues from Rate Components Against Actual Expenditures (November 4, 2012)
SDCWA 053	6	11/5/12	Water Authority Opposition to Board Memo 8-1: Authorize the Execution and Distribution of the Official Statement in Connection with the Issuance of the Water Revenue Refunding Bonds, 2012 Series G (November 5, 2012)
SDCWA 054	6	12/10/12	Water Authority's letter re: 7-2: Authorize MOU for Greater LA County Region Integrated Regional Water Management Plan Leadership Committee and join other IRWM groups in our service area if invited by member agencies (December 10, 2012)
SDCWA 055	6	12/10/12	Water Authority's Letter re: SB 60 Annual Public Hearing and Report to the Legislature Regarding Adequacy or MWD's UWMP – Request to Include Information in Report to Legislature (December 10, 2012)
SDCWA 056	6	12/10/12	Oppose Local Resources Program agreement with TVMWD and Cal Poly Pomona for the Cal Poly Pomona Water Treatment Plant (December 10, 2012)
SDCWA 057	6	12/27/12	Water Authority's letter on Amended and Restated Purchase Order for System Water to be Provided by the Metropolitan Water District of Southern California ("Revised Purchase Order Form") (December 27, 2012)
SDCWA 058	6	1/14/13	Water Authority's response to MWD's letter regarding the Amended and Restated Purchase Order dated January 4, 2013 (January 14, 2013)
SDCWA 059	6	2/11/13	Water Authority Opposition to Board Memo 8-1: Authorize the Execution and Distribution of the Official Statement in Connection with the Issuance of the Water Revenue Refunding Bonds, 2013 Series A, 2013 Series B, and 2013 Series C, and Amendment and Termination of Interest Rate Swaps (February 11, 2013)

SDCWA 060	6	2/11/13	Oppose Local Resources Program agreement with Calleguas MWD and Camrosa Water District for the Round Mountain Water Treatment Plant (February 11, 2013)
SDCWA 061	6	2/11/13	Water Authority Delegation Statement on Item 7-5 re WaterSMART grant funding (February 11, 2013)
SDCWA 062	6	3/7/13	Water Authority's Letter re: Board Item 9-1 – Proposed Foundational Actions Funding Program (March 7, 2013)
SDCWA 063	6	4/8/13	Water Authority's Letter regarding Board Memo 8-1: Adopt resolutions imposing Readiness-to-Serve Charge and Capacity Charge effective January 1, 2014 – REQUEST TO TABLE OR IN THE ALTERNATIVE, OPPOSE (April 8, 2013)
SDCWA 064	6	4/8/13	Water Authority's Letter re: Board Item 8-4: Approve Foundational Actions Funding Program -- OPPOSE (April 8, 2013)
SDCWA 065	6	5/10/13	Oppose Local Resources Program agreement with Long Beach and Water Replenishment District for the Leo J. Vander Lands Water Treatment Facility Expansion Project (May 10, 2013)
SDCWA 066	6	5/13/13	Water Authority Opposition to Board Memo 8-3: Authorize the Execution and Distribution of the Official Statement in Connection with the Issuance of the Special Variable Rate Water Revenue Refunding Bonds, 2013 Series D (May 13, 2013)
SDCWA 067	6	5/14/13	Water Authority's Letter regarding the Public Hearing on Freezing the Ad Valorem Tax Rate (May 14, 2013)
SDCWA 068	6	5/29/13	MWD letter to State Legislature Notifying of Public Hearing on Ad Valorem Tax Rate (May 29, 2013)
SDCWA 069	6	6/5/13	Water Authority letter re 8-1: Mid-cycle Budget Review and Use of Reserves (June 5, 2013)
SDCWA 070	6	6/7/13	Water Authority Opposition to Board Memo 8-5 Authorize the Execution and Distribution of the Official Statement in connection with issuance of the Special Variable Rate Water Revenue Refunding Bonds (June 7, 2013)
SDCWA 071	6	7/5/13	Oppose Local Resources Program agreement with the city of Anaheim for the Anaheim Water Recycling Demonstration Project (July 5, 2013)
SDCWA 072	6	8/16/13	Water Authority's letter re 5G-2: Adopt resolution maintaining the tax rate for fiscal year 2013/14 – Oppose (August 16, 2013)
SDCWA 073	6	8/19/13	Water Authority's Letter re: Entering into an exchange and purchase agreement with the San Gabriel Valley Municipal Water District (August 19, 2013)

SDCWA 074	6	9/9/13	Water Authority Delegation Opposition letter to 8-3: Authorization to implement New Conservation Program Initiatives (September 9, 2013)
SDCWA 075	6	9/10/13	Water Authority Delegation letter Opposing 8-2: Authorize staff to enter into funding agreements for Foundational Actions Funding Program proposals (September 10, 2013)
SDCWA 076	6	9/11/13	Letter from Water Authority General Counsel Hentschke regarding Record of September 10, 2013 MWD Board Meeting (September 11, 2013)
SDCWA 077	6	9/16/13	Letter from MWD General Counsel Scully responding to Hentschke's September 11, 2013 letter regarding Record of September 10, 2013 MWD Board Meeting (September 16, 2013)
SDCWA 078	6	10/4/13	Residents for Sustainable Mojave Development comment letter on MWD's Role in Approving the Cadiz Valley Water Conservation, Recovery and Storage Project (October 4, 2013)
SDCWA 079	6	10/4/13	Water Authority's letter supporting with reservation of rights to object to cost allocation regarding 8-3: Authorize agreement with the SWC to pursue 2014 Sacramento Valley water transfer supplies (October 4, 2013)
SDCWA 080	6	10/4/13	Oppose Local Resources Program agreement with Eastern for the Perris II Brackish Groundwater Desalter (October 4, 2013)
SDCWA 081	6	10/8/13	Water Authority's letter requesting to table or in the alternative to oppose 8-1: Authorize amendment to MWD's Cyclic Storage Agreement with Upper San Gabriel Valley Municipal Water District and the Main San Gabriel Basin Watermaster (October 8, 2013)
SDCWA 082	6	11/1/13	AFSCME letter regarding the compensation recommendations for board direct reports (November 1, 2013)
SDCWA 083	6	11/13/13	Water Authority letter regarding Foundational Actions Funding Program Agreement (November 13, 2013)
SDCWA 084	6	11/14/13	Ethics Officer Ghaly letter to Ethics Committee Chair Edwards regarding Responses to Director Questions re Ethics Workshops (November 14, 2013)
SDCWA 085	6	12/9/13	Water Authority Delegation letter regarding Board Memo 8-1: Authorize the execution and distribution of Remarketing Statements in connection with the remarketing of the water Revenue Refunding Bonds (December 9, 2013)
SDCWA 086	6	12/9/13	Water Authority Delegation letter regarding SB 60 Report – Water Planning and Stewardship Committee Public Hearing (December 9, 2013)

SDCWA 087	6	12/9/13	Water Authority Delegation letter regarding Applicability of MWD's Administrative Code (December 9, 2013)
SDCWA 088	6	1/10/14	MWD General Counsel response to Water Authority letter regarding Applicability of MWD's Administrative Code (January 10, 2014)
SDCWA 089	6	1/27/14	Water Authority General Counsel letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (January 27, 2014)
SDCWA 090	6	2/3/14	Mayors of 14 cities in San Diego Region letter regarding MWD's Calendar Years 2015 and 2016 rate setting and fiscal years 2013 and 2014 over-collection (February 3, 2014)
SDCWA 091	6	2/5/14	MWD General Counsel response to the Water Authority's January 27, 2014 letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (February 5, 2014)
SDCWA 092	6	2/10/14	Water Authority Delegation letter regarding Board Memo 8-2 on On-Site Retrofit Pilot Program and Board Memo 8-7 on Increase of \$20 million for conservation incentives and outreach (February 10, 2014)
SDCWA 093	6	2/28/14	Water Authority General Counsel response to MWD's February 5, 2014 response letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (February 28, 2014)
SDCWA 094	6	3/7/14	Water Authority Delegation letter to California State Senator Steinberg and California State Assemblyman Pérez regarding MWD's Public Hearing on Suspension of Tax Rate Limitation (March 7, 2014)
SDCWA 095	6	3/10/14	MWD General Counsel response to the Water Authority's February 28, 2014 response letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (March 10, 2014)
SDCWA 096	6	3/10/14	Water Authority Delegation letter regarding Board Memo 8-3 on Water Savings Incentive Program (WSIP) Agreement with Altman's Specialty Plants, Inc. (March 10, 2014)
SDCWA 097	6	3/19/14	MWD General Counsel response with DVD of information to the Water Authority's February 28, 2014 response letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (March 19, 2014)

SDCWA 098	6	4/4/14	MWD General Counsel further response with DVD of information to the Water Authority's February 28, 2014 response letter regarding Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (April 4, 2014)
SDCWA 099	7	3/4/16	CD of Correspondences between SDCWA and MWD during the 2015 and 2016 calendar years relevant to the determination, evaluation, and legitimacy of water rates for 2017 and 2018
SDCWA 100	7	12/9/10	Comments to MWD on Draft Official Statement
SDCWA 101	7	12/13/10	MWD's response to the Water Authority's December 9 Official Statement on MWD's Appendix A
SDCWA 102	7	5/24/11	MWD's Response to Water Authority's May 16 Official Statement
SDCWA 103	7	8/15/11	Opposition Letter on Long Term Conservation Plan and Revised Policy Principles on Water Conservation (August 15, 2011)
SDCWA 104	7	12/21/11	MWD's Response to Water Authority's December 12, 2011 letter on Replenishment Program (December 21, 2011)
SDCWA 105	7	1/18/12	MWD's Letter on Request to Include Information in Report to Legislature (January 18, 2012)
SDCWA 106	7	1/18/12	MWD's Replenishment Workgroup Documentation Response Letter to Water Authority's January 5, 2012 "MWD Letters on Replenishment dated December 21, 2011" addressed to Ken Weinberg (January 18, 2012)
SDCWA 107	7	2/10/12	MWD Response Letter to Proposed Biennial Budget and Associated Rates and Charges for 2012/13 and 2013/14 (February 10, 2012)
SDCWA 108	7	3/9/12	MWD's Response to Water Authority's March 5, 2012 "Comments on Proposed Rates and Charges" (March 9, 2012)
SDCWA 109	7	4/5/12	MWD's Response to Water Authority Report on Cost of Service Review (April 5, 2012)
SDCWA 110	7	9/4/12	MWD's Response to Comments on Appendix A to Remarketing Statement and Official Statement
SDCWA 111	7	9/7/12	MWD Response to August 16, 2012 Rate Refinement Workshop Letter (September 7, 2012)
SDCWA 112	7	10/25/12	MWD's Response to Water Authority's October 8, 2012 letter re: MWD's September 4, 2012 letter regarding Appendix A to Remarketing Statement and Official Statement
SDCWA 113	7	10/30/12	MWD's Response to Water Authority's October 8, 2012 letter regarding Board Memo 8-3 on Purchase Orders (October 30, 2012)

SDCWA 114	7	11/19/12	MWD's Response to Water Authority's November 5, 2012 Letter Regarding Board Item 8-1: Authorize the Execution and Distribution of the Official Statement in Connection with the Issuance of the Water Revenue Refunding Bonds, 2012 Series G
SDCWA 115	7	12/26/12	Letter from Water Authority Chair Wornham inviting MWD Chair Foley to lunch (December 26, 2012)
SDCWA 116	7	1/4/13	MWD's response to Water Authority's letter on Amended and Restated Purchase Order dated December 27, 2012 (January 4, 2013)
SDCWA 117	7	1/16/13	MWD's response to Water Authority's letter on Amended and Restated Purchase Order dated January 14, 2013 (January 16, 2013)
SDCWA 118	7	2/19/13	MWD's response to Water Authority's Letter re: Board Memo 8-1 dated February 11, 2013
SDCWA 119	7	5/22/13	MWD's response to Water Authority's Letter re: Board Memo 8-3 dated May 13, 2013
SDCWA 120	7	6/18/13	MWD's response to Water Authority's June 7, 2013 letter re: Board Memo 8-5 Authorize the Execution and Distribution of the Official Statement in connection with issuance of the Special Variable Rate Water Revenue Refunding Bonds
SDCWA 121	7	11/18/13	Water Authority letter regarding Unlawful recording by MWD of telephone conversations with Water Authority staff (November 18, 2013)
SDCWA 122	7	11/20/13	MWD response to Water Authority's November 13 letter regarding Foundational Actions Funding Program Agreement (November 20, 2013)
SDCWA 123	7	11/20/13	MWD's response to Water Authority's November 18 letter regarding Skinner Treatment Plan Telephone Recordings (November 20, 2013)
SDCWA 124	7	11/21/13	MWD's response to AFSCME's November 1 letter regarding compensation recommendations for board direct reports (November 21, 2013)
SDCWA 125	7	12/13/13	MWD response to Water Authority's December 9, 2013 letter regarding Board Memo 8-1: Authorize the execution and distribution of Remarketing Statements in connection with the remarketing of the water Revenue Refunding Bonds

SDCWA 126	7	4/8/14	Water Authority Assistant General Manager's letter to MWD General Manager Kightlinger and Board regarding MWD's proposed biennial budget for fiscal years 2014/15 and 2015/16, proposed ten-year forecast, and recommended water rates for calendar years 2015 and 2016 (April 8, 2014)
SDCWA 127	7	4/8/14	Water Authority Assistant General Manager's letter to MWD Clerk of the Board Chin regarding MWD's proposed biennial budget for fiscal years 2014/15 and 2015/16, proposed ten-year forecast, and recommended water rates for calendar years 2015 and 2016 (April 8, 2014)
SDCWA 128	7	5/2/14	Water Authority General Manager letter regarding Compliance with Paragraph 11.1 of the Amended and Restated Agreement between MWD and the Water Authority for the Exchange of Water dated October 10, 2003 (May 2, 2014)
SDCWA 129	7	5/12/14	Water Authority Delegation letter regarding Board Memo 8-2: Authorize execution and distribution of the Official Statement in connection with the issuance of the Special Variable Rate Water Revenue Refunding Bonds, 2014 Series D, and authorize payment of costs and issuance from bond proceeds – Oppose
SDCWA 130	7	5/12/14	Water Authority Delegation letter regarding Board Item 8-6 – Authorize changes to conservation program in response to drought conditions – Support Implementation of Conservation Measures in Response to State Drought Conditions; Oppose Use of Illegal Rates to Pay for Water Conservation Measures (May 12, 2014)
SDCWA 131	7	5/16/14	Please see section 11 (Subsidy Programs – Conservation) for the Water Authority General Manager's letter to California Natural Resources Agency Secretary Laird regarding Water Conservation and MWD Rates (May 16, 2014)
SDCWA 132	7	5/16/14	Water Authority General Manager's letter to California Natural Resources Agency Secretary Laird regarding Water Conservation and MWD Rates (May 16, 2014)
SDCWA 133	7	5/19/14	MWD's response letter to Water Authority's May 12, 2014 letter regarding MWD's Official Statement
SDCWA 134	7	7/14/14	MWD General Manager's letter to the State Water Resources Control Board regarding Emergency Water Conservation Regulations (July 14, 2014)
SDCWA 135	7	8/18/14	MWD General Manager's letter to the State Water Resources Control Board regarding Emergency Water Conservation and Curtailment Regulations (August 18, 2014)

SDCWA 136	7	10/11/14	Water Authority Delegation letter to MWD regarding Refinements to Local Resources Program (October 11, 2014)
SDCWA 137	7	10/11/14	Water Authority Chair Weston's letter to MWD Chair Record regarding the MWD Board Room Demeanor (October 11, 2014)
SDCWA 138	7	10/13/14	Water Authority Delegation letter to MWD regarding Update on Purchase Orders (October 13, 2014)
SDCWA 139	7	10/15/14	Central Basin Water Association letter to Central Basin regarding MWD's failure to deliver 60,000 acre-feet of groundwater replenishment supplies (October 15, 2014)
SDCWA 140	7	10/17/14	MWD Chair Record's response letter to Water Authority Chair Weston regarding MWD Board Room Demeanor (October 17, 2014)
SDCWA 141	7	10/31/14	Central Basin letter to MWD regarding delivery of 60,000 acre-feet of groundwater replenishment supplies and preferential rights (October 31, 2014)
SDCWA 142	7	11/12/14	MWD's response to Central Basin's letter regarding delivery of 60,000 acre-feet of groundwater replenishment supplies and preferential rights (November 12, 2014)
SDCWA 143	7	11/17/14	Water Authority Delegates letter to MWD regarding MWD's Official Statement
SDCWA 144	7	11/17/14	Water Authority Delegates letter to MWD regarding Purchase Orders (November 17, 2014)
SDCWA 145	7	11/17/14	Water Authority Delegates letter to MWD regarding Balancing Accounts (November 17, 2014)
SDCWA 146	7	11/18/14	City of Signal Hill Letter to MWD Chair Record regarding Central Basin's request for replenishment water (November 18, 2014)
SDCWA 147	7	11/20/14	MWD's response letter to Water Authority's November 17, 2014 letter regarding MWD's Official Statement
SDCWA 148	7	12/5/14	Central Basin Letter to MWD regarding replenishment deliveries and rescinding preferential rights (December 5, 2014)
SDCWA 149	7	12/8/14	Water Authority Delegates letter to MWD regarding modifications to Water Supply Allocation Plan (December 8, 2014)
SDCWA 150	7	12/8/14	Mayors of the cities of San Diego and Los Angeles joint letter to MWD regarding modifications to Water Supply Allocation Plan and separate groundwater replenishment allocation (December 8, 2014)
SDCWA 151	7	12/8/14	Water Authority Delegates letter to MWD regarding SB 60 Report – Water Planning and Stewardship Committee Public Hearing (December 8, 2014)



SDCWA 152	7	12/8/14	Water Authority Delegates letter to MWD regarding Conservation Spending and Efforts (December 8, 2014)
SDCWA 153	7	12/8/14	Southwest Water Coalition Letter to MWD Chair Record regarding Central Basin's Groundwater Replenishment Requests (December 8, 2014)
SDCWA 154	7	12/9/14	MWD Chair Record response letter to Signal Hill regarding Central Basin's request for replenishment water (December 9, 2014)
SDCWA 155	7	12/17/14	MWD Chair Record response letter to Southwest Water Coalition regarding Central Basin's request for replenishment water (December 17, 2014)
SDCWA 156	7	12/18/14	MWD response letter to mayors of the cities of San Diego and Los Angeles joint letter to MWD regarding modifications to Water Supply Allocation Plan and separate groundwater replenishment allocation (December 18, 2014)
SDCWA 157	7	1/5/15	Gateway Cities response letter to mayors of the cities of San Diego and Los Angeles joint letter to MWD regarding modifications to Water Supply Allocation Plan and separate groundwater replenishment allocation (January 5, 2015)
SDCWA 158	7	3/5/15	MWDOC's letter to MWD supporting to Approve and Authorize Execution and Distribution of Remarketing Statements in Connection with Remarketing of water revenue refunding bonds (March 5, 2015)
SDCWA 159	7	3/6/15	Water Authority Delegation letter to MWD regarding Water Planning and Stewardship Committee Agenda and Water Supply Management Strategies including Use of Storage (March 6, 2015)
SDCWA 160	7	3/9/15	Water Authority Delegates letter to MWD regarding MWD's Official Statement (March 9, 2015)
SDCWA 161	7	3/17/15	MWD s response letter to Water Authority's November 17, 2014 letter regarding MWD's Official Statement (March 17, 2015)
SDCWA 162	7	3/26/15	MWD Chair letter to Assembly Minority Leader Olsen regarding Invitation to Tour Diamond Valley Lake (March 26, 2015)
SDCWA 163	7	3/26/15	MWD Chair letter to Assembly Speaker Atkins regarding Invitation to Tour Diamond Valley Lake (March 26, 2015)
SDCWA 164	7	4/13/15	Water Authority Delegates letter to MWD Board regarding Calendar Year 2016 Readiness-to-Serve and Capacity charges (April 13, 2015)
SDCWA 165	7	5/4/15	Water Authority General Manager's letter to State Water Resources Control Board regarding Drought Regulation (May 4, 2015)

SDCWA 166	7	5/8/15	Water Authority Delegates letter to MWD regarding Authorization of \$150 million in Additional Funding for Conservation Incentives and Implementation of Modifications to the Turf Removal Program (May 8, 2015)
SDCWA 167	7	5/9/15	Water Authority Delegates letter to MWD Board regarding MWD's Water Standby Charge for Fiscal Year 2016 (May 9, 2015)
SDCWA 168	7	5/25/15	Water Authority Delegates letter to MWD regarding Authorization of \$350 million in Additional Funding for Conservation Incentives and Implementation of Modifications to the Turf Removal Program (May 25, 2015)
SDCWA 169	7	6/5/15	Water Authority Delegates letter to MWD opposing MWD's Official Statement (June 5, 2015)
SDCWA 170	7	6/22/15	MWD's response letter to the Delegates' June 5 letter regarding MWD's Official Statement (June 22, 2015)
SDCWA 171	7	7/1/15	Water Authority General Manager's letter to State Water Resources Control Board regarding Conservation Water Pricing and Governor's Executive Order for 25 Percent Conservation (July 1, 2015)
SDCWA 172	7	7/9/15	Water Authority Delegates letter to MWD Board regarding Adopt a Resolution for the Reimbursement with Bond Proceeds of Capital Investment Plan projects funded from the General Fund and Replacement and Refurbishment Fund (July 9, 2015)
SDCWA 173	7	8/5/15	Water Authority General Counsel's letter to MWD regarding Public Records Act request and MWD's Turf Removal Program (August 5, 2015)
SDCWA 174	7	8/6/15	MWD response to Water Authority's August 5 letter regarding Public Records Act request and MWD's Turf Removal Program (August 6, 2015)
SDCWA 175	7	8/7/15	Water Authority Delegate Lewinger's letter to MWD requesting Information on MWD's Turf Removal Program (August 7, 2015)
SDCWA 176	7	8/11/15	Olivenhain General Manager letter to MWD and Water Authority regarding Public Records Act request and MWD's Turf Removal Program (August 11, 2015)
SDCWA 177	7	8/12/15	Rincon Del Diablo letter to MWD and Water Authority regarding Public Records Act request and MWD's Turf Removal Program (August 12, 2015)
SDCWA 178	7	8/13/15	MWD response to Olivenhain's letter regarding Public Records Act request and MWD's Turf Removal Program (August 13, 2015)

SDCWA 179	7	8/14/15	Poway letter to MWD and Water Authority regarding Public Records Act request and MWD's Turf Removal Program (August 14, 2015)
SDCWA 180	7	8/15/15	Water Authority Delegates letter to MWD Board regarding Maintaining the Ad Valorem Tax Rate for Fiscal Year 2016 (August 15, 2015)
SDCWA 181	7	8/16/15	Water Authority Delegates letter to MWD Board regarding Amendment to the California Agreement for the Creation and Delivery of Extraordinary Conservation Intentionally Created Surplus (August 16, 2015)
SDCWA 182	7	8/17/15	MWD response to Poway's letter regarding Public Records Act request and MWD's Turf Removal Program (August 17, 2015)
SDCWA 183	7	8/17/15	MWD response to Rincon Del Diablo's letter regarding Public Records Act request and MWD's Turf Removal Program (August 17, 2015)
SDCWA 184	7	9/18/15	Water Authority Joint Letter to State Water Resources Control Board regarding Mandatory Drought Regulations (September 18, 2015)
SDCWA 185	7	9/20/15	Water Authority Delegates Letter to MWD regarding approve the introduction by title only of an Ordinance Determining That The Interests of The District Require The Use of Revenue Bonds In The Aggregate Principal Amount of \$5 Million (September 20, 2015)
SDCWA 186	7	9/20/15	Water Authority Delegates letter to MWD regarding Recycled Water Program with Los Angeles County Sanitation Districts (September 20, 2015)
SDCWA 187	7	10/10/15	Water Authority Delegates Letter to MWD regarding Adopt Ordinance No. 149 determining that the interests of MWD require the use of revenue bonds in the aggregate principal amount of \$500 million (October 10, 2015)
SDCWA 188	7	10/11/15	Water Authority Delegates letter to MWD opposing MWD's Official Statement (October 11, 2015)
SDCWA 189	7	10/26/15	Water Authority Delegates letter to MWD regarding MGO fiscal year 2015 audit report (October 26, 2015)
SDCWA 190	7	11/5/15	Water Authority Interim Deputy General Counsel letter to MWD regarding procedures to authorize the sale of water revenue bonds (November 5, 2015)
SDCWA 191	7	11/6/15	Water Authority Delegates letter to MWD opposing the authorization to sell up to \$250 million in Water Revenue Bonds (November 6, 2015)

SDCWA 192	7	11/7/15	Water Authority Delegate letter regarding exchange and storage program with Antelope Valley-East Kern Water Agency (November 7, 2015)
SDCWA 193	7	11/9/15	Water Authority Delegates letter to MWD regarding Recycled Water Program with Los Angeles County Sanitation Districts (November 9, 2015)
SDCWA 194	7	11/10/15	MWD response to Water Foundation letter to MWD supporting Recycled Water Program with Los Angeles County Sanitation Districts (November 10, 2015)
SDCWA 195	7	11/12/15	MWD response to Water Authority Delegates' October 11 letter to MWD opposing MWD's Official Statement (November 12, 2015)
SDCWA 196	7	12/1/15	Water Authority General Manager's Letter to State Water Resources Control Board regarding comments on potential modifications to emergency conservation regulations (December 1, 2015)
SDCWA 197	7	12/7/15	MWD letter to LACSD General Manager regarding potential recycled water program (December 7, 2015)
SDCWA 198	7	1/6/16	Water Authority General Manager's letter commenting on State Water Resources Control Board's proposed regulatory framework (January 6, 2016)
SDCWA 199	7	1/10/16	Water Authority Delegates' letter to MWD commenting on MWD's 2015 Integrated Water Resources Plan Update (January 10, 2016)
SDCWA 200	7	1/28/16	Water Authority General Manager's letter commenting on State Water Resources Control Board's extended emergency conservation regulations (January 28, 2016)
SDCWA 201	7	2/4/16	Water Authority General Counsel's letter to MWD requesting data and proposed methodology for establishing rates and charges (February 4, 2016)
SDCWA 202	7	2/6/16	Water Authority Delegates' letter to MWD regarding MWD's proposed budget and rates for 2017 and 2018, and ten-year forecast (February 6, 2016)
SDCWA 203	7	2/9/16	Water Authority Delegates' letter to MWD regarding cost of service report for proposed budget and rates for 2017 and 2018 (February 9, 2016)
SDCWA 204	7	2/22/16	Water Authority Delegates' letter to MWD regarding budget and rates workshop #2 and information request (February 22, 2016)



## **Attachment 9: CD#3 Index**

### **I. Post-Trial Briefs & Statements of Decision folder**

- 1) MWD folder
  - Exhibits
  - Transcripts and Docket Items
  - MWD Post-Trial Brief Hyperlinked
- 2) SDCWA folder
  - S1401 folder
  - SDCWA Post Trial Brief Hyperlinked
- 3) 2014.02.25 Tentative Determination & Proposed Statement
- 4) Final Statements of Decision
- 5) 2014-03-10 Testimony of Dennis Cushman to MWD Finance and Insurance Board, in both Word and PDF forms

### **II. 2014-03-11 Cushman Board Public Hearing Testimony and Transmittal Letter**

### **III. 2014-04-08 Additional Testimony and MWD related documents**

- 2014-04-08 Cushman Testimony file
- 2014-04-08 MWD budget and Rates file
- 2014-04-MWD Rate Submittals COMPLETE file
- 2014-04 WA Documents CD Disk 1 or 1 file with listing of document
- Table of Contents



### Attachment 10: CD#5 Index

Note, these items are in two folders: Exhibits and Testimony

<b>Trial Ex. No.</b>	<b>Date</b>	<b>Description</b>
DTX-624	2/10/2011	Letter from Hentschke to Kightlinger re Notice of Payment Under Protest and Demand for Establishment of Escrow Account Fund
DTX-767	10/11/2001	SDCWA Board Workshop presentation, Proposed MWD Rate Structure
PTX-095	8/16/2004	Letter from Kightlinger to Hentschke in response to letter dated August 13, 2004 re RSI language
PTX-120	8/2/2005	Letter From Arakawa To Weinberg Re Commercial/Industrial/Institutional Conservation Credits Program Agreement
PTX-169	5/3/2010	Letter From Stapleton, Hentschke To Kightlinger Re Request For Negotiation Under Para 11.1
PTX-175	6/30/2010	Letter From Hentschke To Tachiki Re Confirmation Of Satisfaction Of 2003 Exchange Agreement Para 11.1
PTX-189	2/24/2011	Letter From Tachiki To Hentschke Re: Acknowledgment Of Payment Under Protest
PTX-207	8/26/2011	Letter from Hentschke to Kightlinger re payment under protest, and attachments
PTX-225	5/4/2012	Letter From Kightlinger To Stapleton Re Request For Negotiation
PTX-229	10/2/2012	Letter From McCrae To Breaux Re: Amended And Restated Exchange Agreement - Price Dispute Remedies
PTX-230	10/15/2012	Letter From Breaux To McCrae Re: Balance In Separate Interest Bearing Account As Provided In Section 12.4[C] Of The Exchange Agreement
PTX-232	2/5/2013	Letter From Hentschke To Kightlinger Re: Notice Of Payment Under Protest, Demand For Establishment Of Separate Interest-Bearing Account, Demand For Refund
PTX-234	2/25/2013	Letter From Kightlinger To Stapleton And Hentschke Re Acknowledgment Of Payment Under Protest
PTX-243	6/18/2013	Letter From Breaux To SDCWA Board Members Re: Your Letter Dated June 7, 2013, Regarding Board Memo 8-5
PTX-246	7/24/2013	Excerpts from MWD Responses to SDCWA Special Interrogatories (Nos. 7-13) (Case No. CPF-12-512466)
PTX-247	7/24/2013	Excerpt from MWD Responses to SDCWA Special Interrogatories (Nos. 23-29) (Case No. CPF-10-510830)
PTX-302	7/3/2006	Email string from Kightlinger to MWD BOD re LADWP-AVEK Turnout Agreement



<b>Trial Ex. No.</b>	<b>Date</b>	<b>Description</b>
PTX-314	2003	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2003
PTX-315	2004	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2004
PTX-316	2005	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2005
PTX-317	2006	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2006
PTX-318	2007	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2007
PTX-319	2008	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2008
PTX-320	2009	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2009
PTX-321	2010	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2010
PTX-322	2011	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2011
PTX-323	2012	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2012
PTX-358	7/7/2010	Letter from Kightlinger to Stapleton re Request for Wheeling Services for Transfer of Water
PTX-430	5/1/2014	U.S. Dept. of Interior Bureau of Reclamation, Accounting for Colorado River Water use within the States of Arizona, California, and Nevada - Calendar Year 2013
PTX-469		Compilation of MWD Invoices to SDCWA from January 2003 through December 2014
PTX-471		Summary Chart - MWD Overcharges to SDCWA
PTX-472	6/30/2014	MWD spreadsheet – Sec. 135 Preferential Rights to Purchase Water
PTX-473		Spreadsheet – Adjusted Preferential Rights to Purchase Water

<b>Trial Ex. No.</b>	<b>Date</b>	<b>Description</b>
PTX-478	6/12/2009	Email from Skillman to Leta Hais re Response to Questions, and attachment
PTX-479	1/14/2010	Email from Lambeck to Acuna re San Diego Union Tribune looking for info re power costs for SWP and Colorado River
PTX-481	1/5/1998	Letter from Kennedy to Frahm re Suggestions Regarding Wheeling Rate
PTX-487A		Excerpt from MWD Annual Report for 2011
PTX-488A		Excerpt from MWD Annual Report for 2012
PTX-489A		Excerpt from MWD Annual Report for 2013
PTX-490A		Excerpt from MWD Annual Report for 2014
PTX-506		SDCWA WSR Payments and Demands Management Program Benefits 2011-2014
PTX-507		Ramp Up of Exchange Agreement Deliveries 2003 to 2047
PTX-508		MWD Overcharge Calculation 2011
PTX-509		MWD Overcharge Calculation 2012
PTX-510		MWD Overcharge Calculation 2013
PTX-511		MWD Overcharge Calculation 2014
PTX-512		Summary of SDCWA Contract Damages Under Exchange Agreement 2011-2014
PTX-513	9/13/2013	Deposition testimony excerpt of Stephen Arakawa in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>
PTX-514	9/17/2013	Deposition testimony excerpt of June Skillman in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>
PTX-515	9/12/2013	Deposition testimony excerpt of Brian Thomas in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>
PTX-516	9/13/2013	Deposition testimony excerpt of Devendra Uphadyay in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>
PTX-517	9/24/2013	Deposition testimony excerpt of Arnout Van Den Berg in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>
PTX-519	5/27/2010	Email from Kostopoulos to Skillman re COS reports updated
PTX-520	7/19/2010	Email from Kostopoulos to Bennion re COS FY10/11 final and adopted
PTX-521	7/7/2010	Email from Gonzales to Skillman re COS Report
NA	4/2/2015	Trial testimony of Devendra Uphadyay in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>
NA	4/27/2015	Trial testimony of Brent Yamasaki, Lambeck in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water</i>

<b>Trial Ex. No.</b>	<b>Date</b>	<b>Description</b>
		<i>authority v. Metropolitan Water Authority of So. California</i>
NA	4/28/2015	Trial testimony of Jon Lambeck, June Skillman in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>
NA	4/29/2015	Trial testimony of June Skillman in S.F. Superior Court Case No. CPF-10-510830, CPF-12-512466, <i>San Diego Co. Water authority v. Metropolitan Water Authority of So. California</i>