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August 29, 2017

The Honorable Tani Cantil-Sakauye, Chief Justice,  
And Honorable Associate Justices  
Supreme Court of the State of California  
350 McAllister Street  
San Francisco, CA 94102-3600

Re: *San Diego County Water Authority v. Metropolitan Water District of Southern California et al.*  
California Supreme Court Case No. S243500  
California Court of Appeal, First Appellate District, Case Nos. A146901, A148266  
Amicus Curiae Letter in Support of Petition for Review (Cal. Rule of Court 8.500(g))

Dear Chief Justice Cantil-Sakauye and Honorable Associate Justices:

The County of Solano submits this letter in support of the Petition for Review filed by the San Diego County Water Authority ("Water Authority"), seeking review of a published decision by Division Three of the First Appellate District of the Court of Appeal. (*San Diego County Water Authority v. Metropolitan Water District of Southern California* (2017) 12 Cal. App. 5th 1124.) The Court of Appeal held that the Metropolitan Water District of Southern California ("Metropolitan") could lawfully treat certain significant State Water Project water supply charges as though they were its own transportation costs, and then charge those costs to customers seeking only water transportation services.

## I. Introduction

In 2009, with passage of the Delta Reform Act, the California Legislature made clear that the State must reduce its reliance on water from the Sacramento-San Joaquin Bay Delta. (Stats. 2010, 7th Ex. Session. 2009, ch. 5, § 39.) Reducing reliance on the Delta requires the development and conservation of new sources of water throughout the State, including within Southern California. Those efforts depend on the availability of a reasonably priced means to transport this water within the region.

But the Court of Appeal's decision erects a significant barrier to California's efforts to reduce its dependence on the Delta. The decision permits Metropolitan to charge water wheeling rates that make it much more expensive for the Water Authority to supply its customers with conserved water than to simply buy water from Metropolitan, including State Water Project water from the Delta. This not only contravenes the State's long-standing commitment to policies favoring the efficient transfer of water resources, it will also discourage water agencies from investing in conservation projects that rely on the ability to transport conserved water, because those projects would be less competitive when compared against further investments in State Water Project water exports. An appellate decision this consequential deserves the attention of our state's highest court.

## **II. Interests of Solano County**

The decision in this case is of major importance to Solano County and its agricultural economy because it hinders statewide efforts to reduce dependence on the Delta. Solano County's eastern and southern portions are located within the legal Delta. Solano County is home to more than 400,000 people, as well as a thriving agricultural industry that is central to the County's identity and economy. The Delta provides irrigation water to Solano County agriculture and approximately forty percent of the municipal water supply for residents of Solano cities. Solano County, as well as residents, landowners, farmers, and local districts within its boundaries, depend on water from the Delta and are vitally interested in decisions that will affect this vulnerable ecosystem.

As a whole, the Delta is an extremely unique, complex landscape system that supports four million residents, more than 500,000 acres of prime farmland, recreational opportunities, commercial fisheries, valuable species habitat, and an extensive water management system. But the Delta has been significantly affected by modified flow patterns, degraded water quality, invasive species, and many other challenges. As the hub of the State's water system, it continues to face increasing, competing demands.

## **III. The Court of Appeal's decision warrants review because it threatens the State's attempts to reduce reliance on the Delta.**

Solano County's Delta-dependent communities, businesses, and farms will be harmed if the Court of Appeal's decision is allowed to stand. But the decision also has significant statewide importance, because it is at odds with the State's policy of regional self-reliance and reduced reliance on the Delta.

State law recognizes the fragile health of the Delta and the impacts of increased demands for Delta water exports. It is "[t]he policy of the State of California to reduce reliance on the Delta through a statewide strategy of investing in improved regional supplies, conservation and water use efficiency." (Wat. Code, § 85021.) The State has proposed to effectuate this policy of reduced reliance on the Delta by requiring that each region that relies on Delta water "shall improve its regional self-reliance for water"

through investment in local and regional water supply projects, among other strategies. (*Id.*) Achieving less reliance on the Delta is essential to meeting the entire State's water supply reliability goals and protecting the ecosystem and communities of the Delta.

The Court of Appeal's decision, however, approves rates for the wheeling of conserved water that make it nearly twice as costly as purchasing Delta water. This prohibitively expensive pricing will deter the Water Authority and other water agencies from complying with the State's mandate to reduce reliance on the Delta through investment in vital local water supply projects, such as the Water Authority's multi-billion-dollar investment in water conservation. The decision creates a perverse incentive: suppliers are obligated to acquire the least expensive water available for their customers, even if that water supply was developed in derogation of State policy. The Court should review the clear conflict between the Court of Appeal's decision and the State policy of reducing reliance on the Delta.

#### **IV. Conclusion**

For the reasons stated, the County of Solano respectfully requests that the Court grant the Water Authority's Petition for Review. Our state's highest court should give due consideration to such a significant appellate decision.

Respectfully submitted,

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