

**Key Points on MWD’s Brief Responding to the
Water Authority’s Petition to the California Supreme Court**

MWD’s Argument	Reality
<ul style="list-style-type: none"> The Water Authority proposed paying and agreed to pay an inflated price for IID/canal water in exchange for state funding and future canal water, "worth well over a billion dollars." 	<ul style="list-style-type: none"> This is made up by MWD, and based only on testimony by Jeff Kightlinger that Judge Karnow heard and expressly determined was not credible. MWD made the same arguments on appeal, and the Court of Appeal rejected them without even bothering to engage them. The Water Authority assumed all the risk and paid \$190 million of the costs of the canal lining projects over and above state funding.
<ul style="list-style-type: none"> The Water Authority is having buyer's remorse because its IID/canal water is many times more expensive than MWD water. 	<ul style="list-style-type: none"> This is false. Imposition of MWD's wheeling rate, which improperly includes more than 75% of its total State Water Project costs, drives up the total cost of the Water Authority's QSA water. If the Supreme Court reverses the Court of Appeal on this issue, Water Authority’s QSA water will be <u>less expensive</u> than MWD’s supply. Coming from IID's third priority on the Colorado River, the QSA water is also <u>more reliable</u> than MWD's fourth and fifth priority Colorado River water.
<ul style="list-style-type: none"> The one, simple issue on this appeal is whether MWD has substantial evidence to include costs billed to transportation by the SWP costs as its own transportation costs. 	<ul style="list-style-type: none"> MWD is applying the wrong, outdated standard. This appeal is about whether MWD has complied with: <ol style="list-style-type: none"> 1) The cost causation and proportionality standards of Proposition 26, and 2) The Wheeling Statutes' requirement that it adopt rates that encourage wheeling.
<ul style="list-style-type: none"> The SWP is part of MWD's "integrated system," because MWD funded the SWP and must pay SWP costs even if it does not receive any water. 	<ul style="list-style-type: none"> MWD does not own or operate the SWP. MWD is only one of many SWP contractors. The entire purpose for MWD to enter into its SWP contract was to obtain a water supply.
<ul style="list-style-type: none"> The old MWD v. IID case settled the legality of MWD's postage stamp wheeling rate. 	<ul style="list-style-type: none"> That case held only that postage stamp rates <u>may</u> be lawful if they comply with the requirements of the Wheeling Statutes, but remanded for a trial on that issue, which MWD avoided by dismissing the case. The trial MWD v. IID required is the trial Judge Karnow conducted in 2013, which resulted in invalidation of MWD's rates.
<ul style="list-style-type: none"> Postage stamp wheeling rates like MWD's are "inherently" proportional and therefore lawful. 	<ul style="list-style-type: none"> No evidence was presented and there is no legal authority for the notion that volumetric rates are "inherently" proportional. Postage stamp rates <u>may</u> be lawful, but only if they: <ol style="list-style-type: none"> 1) Comply with the cost causation and proportionality standards of Prop. 26, and 2) Are reasonable given the Wheeling Statutes' requirement of encouraging and facilitating wheeling.

MWD's Argument	Reality
<ul style="list-style-type: none"> MWD's wheeling rate follows principles of cost causation. 	<ul style="list-style-type: none"> In adopting its wheeling rate, MWD expressly said its purpose was holding non-wheelers harmless from rate increases that might be caused by wheeling -- in other words, to require wheelers to pay subsidies to benefit non-wheelers. <ul style="list-style-type: none"> This is illegal under the Wheeling Statutes because it prevents wheeling rather than encouraging and facilitating it.
<ul style="list-style-type: none"> The Exchange Agreement is not a wheeling agreement, but rather, a unique, one-off agreement negotiated by sophisticated parties. The Water Authority agreed to the price it pays, and the contract shouldn't be judged by the legal standards otherwise applicable. 	<ul style="list-style-type: none"> It doesn't matter what the agreement is called. MWD agreed to follow the law -- including the Wheeling Statutes -- in the Exchange Agreement, and must satisfy those requirements regardless of how one characterizes the contract. The Water Authority agreed to pay no more than a lawful wheeling rate.
<ul style="list-style-type: none"> The Water Authority is hypocritical because it complains about MWD including SWP costs on its transportation rates, but doesn't object to MWD including CRA costs on those rates. 	<ul style="list-style-type: none"> There is no inconsistency here. The Water Authority doesn't object to paying CRA costs because it actually uses the CRA to wheel its third-party water, unlike the SWP. Further, MWD owns and operates the CRA, but does neither with respect to the SWP.