ADMINISTRATIVE AND FINANCE COMMITTEE

ITEM II – 1. FISCAL SUSTAINABILITY TASK FORCE SPECIAL AGRICULTURAL WATER RATE RECOMMENDATION.

LETTER OF SUPPORT

THE ATTACHED INFORMATION WAS RECEIVED AFTER POSTING OF THE AGENDA PACKET FOR THE NOVEMBER 21, 2019 MEETING
November 18, 2019

Honorable Frank Hilliker
Chair, Administrative and Finance Committee
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123

RE: California Avocado Commission Support for the Fiscal Sustainability Taskforce’s Recommendation on the Transitional Special Agricultural Water Rate (TSAWR)

Dear Chair Hilliker:

The California Avocado Commission (Commission) operates under the authority of the California Department of Food and Agriculture and represents California’s roughly 3,500 commercial avocado growers who produce on about 52,000 acres. The San Diego County Water Authority (SDCWA) is home to approximately 1,450 of these growers who farm on about 15,000 acres.

The Commission recognizes the SDCWA’s longstanding support for agricultural customers, as evidenced by the existence of the current Transitional Special Agricultural Water Rate (TSAWR). The SDCWA’s efforts to work with your agricultural customers and your continued commitment to them is greatly appreciated. Year in and year out agricultural customers generate revenue for the SDCWA without placing new demands on the system. Crops do not require treated water so the agricultural sector is not driving needed capital improvements for water treatment or system expansion.

In addition, avocado groves serve as a hedge against fire and urban expansion, generate local taxes while placing low demands on service area services, provide open space and environmental benefits, and add aesthetic qualities to the local landscape.

Accordingly, the Commission formally requests that the Administrative and Finance Committee approve the Fiscal Sustainability Taskforce’s recommendation to make the TSAWR program permanent and open it up for new participants.

We appreciate your consideration and look forward to continuing to work collaboratively with the SDCWA on efforts to ensure the interests of agricultural customers and the SDCWA are mutually served.

Respectfully,

Tom Bellamore
President

Ken Melban
Vice President of Industry Affairs
November 20, 2019

Attention: Imported Water Committee

Metropolitan Water District Delegates’ Report. (Discussion)

Purpose
This report summarizes key discussions held and actions taken at the Metropolitan Water District (MWD) committee and Board meetings, as reported by the Water Authority Delegates (Delegates). This report includes MWD Board activities from November 4, 5, and 12, 2019. The MWD committees and Board meet next on December 9 and 10.

Discussion
The Water Authority Delegation supported all 10 action items approved by the MWD Board at its November 5, 2019 meeting. MWD Board actions of interest to the Water Authority include authorizing:

- $7.5 million for a Stormwater for Recharge Pilot Program;
- Co-sponsorship of legislation to create a statewide program to identify and evaluate drinking water quality constituents of emerging concern (CECs); and
- A Local Resources Program (LRP) agreement with the City of Oceanside and the Water Authority for the Oceanside Pure Water and Recycled Water Expansion Phase 1 Project.

During MWD’s November 5 meeting, General Manager Kightlinger announced there would be another Board meeting later in November to accommodate Board members’ request to continue discussions on issues that took place earlier that day at the Legal and Claims (L&C) Committee. The sole item on the L&C Committee agenda, which took place in closed session without the Delegates in attendance, was to “review [the] settlement proposal received from SDCWA” and receive a report on the rate litigation. A special Board meeting was subsequently held on November 12, during which MWD went into closed session without the Delegates in attendance to receive a “report on and authorize offer to compromise” related to the rate litigation. Prior to the meeting, Chair Madaffer sent two letters (Attachments 1 and 2) to Chairwoman Gray (West Basin) stating appreciation of her assurance that the November 12 meeting had nothing to do with the separately scheduled December item to approve the city of San Diego’s Pure Water LRP agreement. In addition, Madaffer conveyed the Water Authority’s support for a substantive Board review and update of MWD’s Integrated Water Resources Plan (IRP). He also expressed the Water Authority’s support to delay demand management cost allocation action and continue MWD’s existing method of recovering demand management costs through the Water Stewardship Rate (WSR) rate for calendar years 2021 and 2022 so long as MWD also continues to suspend collecting the WSR on the Water Authority’s exchange water, maintaining

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1 Directors Butkiewicz, Hogan, and Smith recused themselves and they were considered by MWD as not “legally present” for the vote on the Local Resources Program agreement with Oceanside; Director Goldberg cast the Water Authority’s entire vote entitlement in support of the item.

2 This is the second LRP agreement with the Water Authority authorized since the Appellate Court’s ruling that found MWD’s so-called “Rate Structure Integrity” clause unenforceable. The first was the for the Fallbrook Groundwater Desalter Project, which was Authorized in September 2019.
Imported Water Committee
November 20, 2019
Page 2 of 4

consistency with the Appellate Court decision. Also, Water Authority General Counsel Hattam sent a letter to MWD’s General Counsel regarding the rate litigation settlement effort (Attachment 3). In his letter, Hattam noted that little progress had been made through the current, confidential settlement effort and, given “the Water Authority’s commitment to a settlement,” offered two alternative approaches to achieve one: 1) have “open, public negotiations;” or 2) move the “discussion to Sacramento under the oversight of Senator Hertzberg.” On the evening of November 15, Gray sent a response letter to Madaffer that assured the city of San Diego’s Pure Water LRP agreement’s “processing and review are irrespective of any actions or positions SDCWA takes in its ongoing litigation against Metropolitan’s rates.” Gray’s letter also included “a statutory Offer to Compromise” and a letter from MWD’s outside counsel, Manatt, Phelps & Phillips, LLP, to the Water Authority’s counsel, Keker Van Nest & Peters LLP (Attachment 4).³

The Finance and Insurance (F&I) Committee received presentations from: 1) MWD staff, which provided an overview of demand management and the motivation behind MWD’s recent efforts to examine its demand management cost allocation, and 2) Rick Giardina of Raftelis Financial Consultants, Inc., who discussed potential demand management cost recovery options. Attachment 1 summarizes these presentations and the subsequent discussion. The F&I committee also received presentations on the fiscal year 2019 year-end financial report and the first quarter report for fiscal year 2020, which showed both expenditures and water sales continue to track below budget.

During the Audit and Ethics (A&E) Committee, MWD’s consultant, Olson Hagel & Fishburn LLP, and Ethics Officer Salinas presented recommendations related to the Ethics Office and received committee input. The A&E Committee approved most of the proposed revisions, made additional changes, and requested further evaluation of specific portions of the proposal. Attachment 2 summarizes these presentations and the following discussion.

During the November 5 Board meeting, Director Hogan reiterated a request previously made by Vice Chair Paskett (Los Angeles) for staff to “present information regarding different approaches to conducting Board and committee meetings” for the Board’s consideration. Paskett’s initial request, which occurred in July 2018, was made after she reviewed the Public Records Act response MWD provided in connection to a Brown Act violation allegation.⁴ Gray said Hogan’s request was “so noted.” This month, the Los Angeles Delegation highlighted seven important MWD issues, including the ones related to Board governance and preventing Brown Act violations that Paskett raised in July 2018. Los Angeles’ other issues include MWD:

• Having a fact-based and “open” discussion on the Bay-Delta project;
• Improving its financial planning;

³ More information on MWD’s “Offer to Compromise” found here: http://www.mwdh2o.com/WhoWeAre/Management/General-Counsel/Pages/default.aspx
⁴ Following Food & Water Watch and the First Amendment Coalition’s allegation that MWD’s April 2018 California WaterFix action violated the Brown Act, Paskett requested Board discussion on Board and committee meeting procedures and rules of order. At the July 2018 Executive Committee meeting, committee members directed staff to return with more information for the Board’s consideration at MWD’s September 2018 Executive Committee meeting; however, this item was not placed on the agenda and no further information was provided.
• Facilitating Board “engagement” via staff sharing “more effective and transparent information;”
• Studying the potential for local resource development and conservation in the region, including how MWD “must support” these efforts through its planning efforts and rate structure, among other things; and
• Providing “equitable” support to its member agencies.

The Board approved a $7.5 million Stormwater for Recharge Pilot Program, which will provide subsidies to retrofit existing projects with monitoring equipment and fund the construction of new projects to monitor groundwater yield resulting from stormwater capture. The Board also authorized the General Manager to co-sponsor legislation that would create a statewide program to identify CECs, evaluate their potential public health impacts, and prioritize responses. Additionally, the Board unanimously authorized the LRP agreement for the Oceanside Pure Water and Recycled Water Expansion Phase 1 Project. This LRP agreement is for sliding scale subsidies of up to $475 per acre-foot per year over a 15-year term, committing MWD to a maximum of $42.7 million.5

During the Water Planning and Stewardship (WP&S) Committee, Regional Director of the U.S. Fish and Wildlife Service in the Pacific Southwest Paul Souza gave a presentation on the newly released biological opinions for the long-term operations of the Central Valley Project and State Water Project.6 He emphasized the new “real-time” monitoring approach to pumping and the use of best available science to set environmental regulations in the Bay-Delta.7

The Conservation and Local Resources (C&LR) Committee received a presentation on MWD’s residential conservation programs, including device rebates, turf replacement subsidies, landscape classes and surveys, Member Agency Administered Program, and research and advocacy efforts. Following the presentation, Director Dick (Metropolitan Water District of Orange County) requested more data on MWD’s conservation expenditures and other figures to help describe its conservation achievements to stakeholders. On a different note, Director Lefevre (Torrance) asked how conservation program expenditures relate to MWD’s IRP; staff replied that they are tied to water savings goals set in the IRP. Director Record (Eastern) expressed concern about focus on spending as water sales decrease; he suggested that MWD could play a role in adjusting retail rate structures to incentivize conservation, which would not have a significant cost impact on MWD. Director Ortega (Fullerton) added that conservation achievements translate into a “new asset” that could provide the region with “some great opportunities that are not just limited to dealing with roll-off and reduced revenues.” Lastly, C&LR Committee Chair Paskett asked staff to bring back data on MWD’s cumulative total

5 For more information on the stormwater pilot, legislation item, and/or LRP agreement see the Metropolitan Water District Program Report starting on page 89 of the Water Authority’s November 2019 Board packet: https://www.sdcwa.org/meetings-and-documents
6 For more information on the Biological Opinions, see the Bay-Delta Update starting on page 81 of the Water Authority’s November 2019 Board packet: https://www.sdcwa.org/meetings-and-documents
conservation spending and savings related to the IRP, and highlighted the importance of having a
discussion on MWD’s rate structure in the future.

During the November 5 Board meeting, Director Dake (Los Angeles) announced his resignation
from the Board, and Director Hawkins (Central Basin) was assigned to the A&E and F&I
committees. Later, at MWD’s November 12 Special Board meeting, Director Quiñonez (Los
Angeles) was appointed Chair of the F&I Committee (replacing Dake), and Directors Blois
(Calleguas), Hall (Inland Empire), and Record were assigned to the A&E Committee.

Prepared by: Megan Couch, Assistant Management Analyst

Reviewed by: Audit and Ethics Committee by Jerry Butkiewicz, Michael Hogan, & Tim Smith
Communications and Legislation Committee by Tim Smith & Jerry Butkiewicz
Conservation and Local Resources Committee by Michael Hogan
Engineering and Operations Committee by Tim Smith
Finance and Insurance Committee by Gail Goldberg & Tim Smith
Legal and Claims Committee by Gail Goldberg & Tim Smith
Organization, Personnel and Technology Committee by the Delegates
Real Property and Asset Management Committee by Michael Hogan & Tim Smith
Water Planning and Stewardship Committee by Gail Goldberg & Michael Hogan

Attachments:

Attachment 1—November 8, 2019 Letter from Water Authority Chair Madaffer to MWD
Chairwoman Gray regarding November 12 Special Board Meeting
Attachment 2—November 12, 2019 Letter from Water Authority Chair Madaffer to MWD
Chairwoman Gray regarding November 12 Special Board Meeting
Attachment 3—November 11, 2019 Letter from Water Authority General Counsel to MWD
General Counsel regarding rate litigation settlement effort
Attachment 4—November 15, 2019 Letter from MWD Chairwoman Gray to Water Authority
Chair Madaffer regarding Madaffer’s Correspondence of November 8 and 12, 2019
Attachment 5—Discussion Summary of Demand Management Cost Allocation
Attachment 6—Discussion Summary of Ethics Office Recommendations
Attachment 7—MWD’s committee and Board meeting agendas dated November 4, 5 and 12, 2019
November 8, 2019

Gloria Gray, Chairwoman
Metropolitan Water District of Southern California
P. O. Box 54153
Los Angeles, CA 90054-0153

RE: November 12 Special Board Meeting

Dear Gloria,

As promised, I wanted to follow up on our call earlier this week regarding next week’s special board meeting to discuss the rate litigation. I appreciate your call and your confirmation that the meeting discussion has nothing to do with the City’s Local Resource Project (LRP) scheduled for approval in December.

We appreciate that the board has already approved two San Diego LRP projects and will confirm our final project in December.

Since some time has passed since we last met (thank you for understanding that our board officers have been very busy with a number of matters not the least of which is our General Manager search), I thought it would be useful to update you on some of our thinking.

First, we believe we are positioned now with our respective teams to reach agreements that could fully conclude some rate years and dismiss Water Stewardship Rate (WSR) on supply claims for all years. This is tremendously encouraging.

Second, we are also encouraged by the recent board retreat and commitment to a substantive board review and update of the Integrated Resources Plan (IRP) beginning early next year, focusing on updating near and long-term demand projections and water supply sources available and necessary to meet that demand, including member agency planned projects. We look forward to that discussion and associated budget and rate process.

Similarly, we are encouraged by the board discussion at Finance & Insurance Committee last week, in which it was suggested that the status quo should be maintained for the 2020 rate setting (continued volumetric WSR + suspension of collection of WSR on Exchange Agreement). We strongly believe this is the right course of action to take now, rather than hastily imposing a new set of charges that
Chairwoman Gray  
November 8, 2019  
Page 2

has not had time to be fully vetted. Moreover, the updated IRP is needed in order to fully inform this process.

In short, we believe we can 1) fully resolve much of the litigation at our next meeting; 2) reach agreements to establish an administrative record to protect both parties for the 2020 rate setting (to address Jeff’s concern); and 3) stay all remaining litigation while we work together on the new IRP and rates.

We are happy to answer any questions you or other members of the board may have.

Sincerely,

Jim Madaffer
Chair of the Board

cc: MWD Board of Directors  
Water Authority Board of Directors  
Sandy Kerl, Water Authority Acting General Manager  
Mark Hattam, Water Authority General Counsel  
Jeff Kightlinger, MWD General Manager  
Marcia Scully, MWD General Counsel
November 12, 2019

Gloria Gray, Chairwoman
Metropolitan Water District of Southern California
P. O. Box 54153
Los Angeles, CA 90054-0153

RE: November 12 Special Board Meeting

Dear Gloria,

I thought it might be helpful to follow up on my letter of last Friday to provide more information and perspective to you, the MWD board and the Water Authority board of directors.

Some of my board members have asked me for confirmation that MWD’s scheduled December 2019 approval of the City of San Diego’s Pure Water LRP is not a “quid pro quo” for settlement or dismissal of litigation, or the product of our settlement negotiations. Based on the process that has been followed and your personal assurances, I have told them no;¹ and that the project has gone through MWD’s competitive and contracting processes in the ordinary course of business, just as the Fallbrook and Oceanside LRP projects were previously approved consistent with MWD board practice.

Looking ahead to the December board meeting decision on demand management and “the big picture” next year, our delegates plan to support the alternative to defer the demand management cost allocation action to the 2022 rate setting, along with continued suspension of collection of the Water Stewardship Rate (WSR) on the Exchange Agreement (consistent with the Court of Appeal decision and what MWD is doing now).

We believe this is the right approach as MWD plans review of its Integrated Resources Plan (IRP) next year and later, its review of financial planning, budget and rates. We believe this action may be taken without any financial risk or rate impact to any MWD member agency. The total annual budget impact from suspension of WSR on the Exchange Agreement is about $18 million. MWD can make up this difference with reserves as it has done until now (starting in 2018), and many other times in the past when it has recommended spending money outside of the planned budget process.² The Water Authority has paid into the reserves that would be used to cover this uncollected revenue while the IRP and supporting budget are being settled.

Water Authority staff has called to our attention that one or more of MWD’s member agency managers has expressed concern that there may not be a sufficient revenue stream from the Water Authority to pay for the City’s LRP contract if demand management fixed charges are not implemented in December. Given that the Water Authority’s current net position is that it has paid $170 million more to fund WSR programs than it has received in benefits, we believe this concern is unfounded. However, if the MWD board of directors shares this concern, I believe the Water Authority would be willing³ to recommend to its board of directors to guarantee a revenue stream to MWD to cover the City’s LRP agreement, on condition that this

¹ The Water Authority has paid into the reserves that would be used to cover this uncollected revenue while the IRP and supporting budget are being settled.

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Gloria Gray, Chairwoman
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P. O. Box 54153
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same requirement is included in all future LRP contracts for all agencies. The overall objective here would be to ensure for all member agencies a reasonable relationship over time between payments to fund WSR and benefits received.\\textsuperscript{v}

With these actions, the Water Authority looks forward to working with the board of directors and its leadership over the coming year to support board review of MWD’s IRP, as discussed at the board retreat. We understand this process will be designed to update demand projections for MWD water and also discuss how MWD should plan to meet and fund its member agencies’ varying demands in the future. We believe this process may provide the foundation for all issues to be resolved in the future without further litigation.\\textsuperscript{v}

We believe an updated IRP, financial plan and budget must include acknowledgement of member agency plans to develop local water supplies consistent with state water policy, and understanding and acceptance of the fact that this will inevitably reduce both demand for MWD water and MWD revenues. This is no different than what we are currently experiencing at the Water Authority, where we are working with our member agencies through a Fiscal Sustainability Task Force to make adjustments and plan for the future. MWD and Water Authority long term resource and financial plans and rate policies must encourage, not punish these planned actions by our member agencies.

In closing, while we all agree there is no quid pro quo or linkage to the settlement process, subject to our Board’s approval the positive net impact of MWD’s board approval of the City of San Diego’s LRP contract is that 1) the Water Authority can dismiss its claims for “Rate Structure Integrity” (RSI) restitution in the 2010-12 cases (and final judgment may be entered accordingly);\\textsuperscript{vi} 2) the Water Authority can dismiss all WSR claims on supply in the 2014 case;\\textsuperscript{vii} and 3) the Water Authority can also dismiss all WSR claims on supply in the 2016 and 2018 cases. This would represent tremendous progress toward resolving the pending litigation.

We very much appreciate MWD’s confirmation and your assurances to the City of San Diego and Water Authority as stated above because it provides comfort to the Water Authority’s other member agencies that are not recipients of LRP funding.

I hope this letter is helpful to you and MWD’s board of directors. Please do not hesitate to contact me if you have any questions.

With best personal regards, as always.

Sincerely,

Jim Madaffer
Chairman of the Board of Directors

cc: MWD Board of Directors
I also explained to my board members that it would probably be unconstitutional and illegal for MWD to condition LRP program benefits on not challenging MWD’s rates because that has already been ruled on by the Court of Appeal.

Although some member agency managers have apparently expressed concern over having a “budget hole,” MWD staff has made many recommendations over the years to spend money outside the budget process, for example, $175 million to buy Delta Islands and $264 million to buy PVID land. Each of these expenditures and others created, in order of magnitude, much larger “budget holes” than suspension of collection of the WSR to the 2022 rate setting. We feel confident MWD staff can manage this issue, either through the use of reserves or by budget reductions to professional services or other operating expenses. Again, the order of magnitude is about $18 million annually or $36 million over the two-year budget period.

This would require Water Authority board approval but given the strong desire of our board to resolve the litigation and the flexibility we have to how this is accomplished, I think we can get there.

The Water Authority has never contended that the WSR/LRP benefit program must be “dollar for dollar” or anything close to that, only that being “under” $170 million such as the Water Authority has been does not strike the right balance. We recognize that this number will be reduced by payment of damages in the 2010-12 and 2014 cases and potentially by payment of the San Diego LRP contracts; however, this still leaves a significant remaining balance on account for the Water Authority at this point that is available to “cover” the City of San Diego’s LRP project for some time.

The Water Authority needs to know the outcome of this IRP update and 2022 budget and rate setting process in order to even consider a fixed rate under the Exchange Agreement. In the meantime, I believe we all should be willing to work with our respective counsel to see if all litigation can be stayed, tolled and/or dismissed without prejudice.

We assume the parties could agree that each should bear its own fees and costs provided there will be no appeal.

If MWD agrees to refund the WSR it collected on the Exchange Agreement consistent with the calculation of payment to be made in the 2010-12 cases, the 2014 case potentially could also be dismissed in its entirety.
November 11, 2019

**VIA EMAIL AND U.S. MAIL**

Marcia Scully, General Counsel
Metropolitan Water District of Southern California
700 N. Alameda Street
Los Angeles, CA 90012

Dear Ms. Scully:

In March of this year MWD and the Water Authority entered into a Confidentiality Agreement that covered the content of certain mutually agreed settlement meetings. This confidential process followed an almost two-year period of informal engagement by our respective board Chairs Record and Muir and other board members, in the hope of settling the litigation and establishing an improved working relationship.

It is now November, and no settlement has occurred in spite of best efforts by both parties. However, the Water Authority’s commitment to a settlement that demonstrates benefit to both parties remains strong. Accordingly, we would like to propose two alternative approaches moving forward.

First, we are prepared to proceed with open, public negotiations.

Second, we are also open to moving our venue for discussion to Sacramento under the oversight of Senator Hertzberg. As you know, the Senator has significant experience in helping to resolve disputes involving the QSA. His past success not only supported San Diego’s decision to embrace a portfolio approach to water reliability and long-term affordability, but also generated significant benefits to MWD.

With the passage of time, many of our member agencies, cities and the public we serve have expressed increasing frustration over the Water Authority’s inability to report in any meaningful way on the status and progress of the settlement talks or what the sticking points are. We understand and appreciate this frustration and expect MWD may be experiencing similar requests for more information and public transparency. We believe either of these approaches will help both of our agencies address these concerns going forward.
We make these suggestions in the sincere belief that the majority of MWD Board members share the strong desire of our Board to move on and work together collaboratively on the challenges we all face in providing a reliable water supply to all of our ratepayers. We ask that this letter be provided to your Board.

Sincerely,

Mark J. Hattam
General Counsel

Cc (via email):

Water Authority Board of Directors
Ms. Sandy Kerl
Mr. Jeffrey Kightlinger
November 15, 2019    VIA EMAIL

Mr. Jim Madaffer, Chair
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123

Dear Chair Madaffer,

Correspondence of November 8 and 12, 2019

Thank you for the letters you sent on November 8 and November 12, 2019. I am pleased that you found the Board retreat and discussion at the November Finance & Insurance Committee both encouraging and as possibly providing a path to resolution of the pending rate litigation.

In response to the concern expressed by some of your Board members, I want to assure you and your Board that San Diego County Water Authority’s (SDCWA) Local Resources Program (LRP) applications will continue to be processed by Metropolitan in the normal course and scope of business. Applications that meet program criteria will be reviewed and voted on by the Metropolitan Board in a timely manner. This processing and review are irrespective of any actions or positions SDCWA takes in its ongoing litigation against Metropolitan’s rates.

The proof of this can be seen in the Metropolitan Board’s unanimous approval of two recent LRP applications from SDCWA member agencies. And we are aware that the SDCWA has approved the City of San Diego’s application for its PureWater project, and that will be brought to the Metropolitan Board for consideration when it is ready.

In an agendized closed session meeting held on November 12, 2019, Metropolitan’s Board considered and authorized making a statutory Offer to Compromise (a “998 Offer”) in the rate litigation. Since SDCWA decided in August to terminate the stay in the 2010-2012 cases and proceed with litigating the remand trial, this is an appropriate time for such an offer prior to commencing the remand trial. We appreciate as you said in your letter that SDCWA has been busy with other matters, and we believe a 998 Offer at this time affords the best opportunity to resolve the litigation in a timely manner before litigation resumes.

A copy of Metropolitan’s 998 Offer, contained in a set of Offers to Compromise across the pending cases, has been attached to this letter and has been provided by Metropolitan’s litigation counsel to SDCWA’s litigation counsel for communication to the SDCWA Board for consideration. As your
counsel is aware, unlike our confidential settlement negotiations, a 998 Offer is a statutory procedure in litigation and is not confidential. The 998 Offer is valid for 30 days. Acceptance by SDCWA of Metropolitan’s 998 Offer will settle all existing litigation between the parties.

You will note that Metropolitan’s 998 Offer is silent as to the SDCWA LRP applications. This is because, as you noted in your recent correspondence, those applications are being processed and acted upon by Metropolitan’s staff and Board in good faith as we would for any Metropolitan member agency. Accordingly, there is no need to include those applications as part of this process. As you have been informed, Metropolitan does not believe that the applications related to the already completed Carlsbad Seawater Desalination Plant meet Metropolitan’s LRP criteria. Waiver of claims related to those applications is included in the 998 Offer, and Metropolitan will be sending a letter to SDCWA staff rejecting those applications shortly.

I look forward to hearing from you after the full SDCWA Board has had an opportunity to review the 998 Offer.

Thank you for your time and consideration.

Sincerely,

Gloria D. Gray
Chairwoman of the Board

cc: Metropolitan Water District Board of Directors
    San Diego County Water Authority Board of Directors
    Sandy Kerl, San Diego County Water Authority Acting General Manager
    Mark Hattam, San Diego County Water Authority General Counsel
    Jeffrey Kightlinger, Metropolitan Water District of Southern California General Manager
    Marcia Scully, Metropolitan Water District of Southern California General Counsel
SAN DIEGO COUNTY WATER AUTHORITY,

v.

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA; ALL PERSONS INTERESTED IN THE VALIDITY OF THE RATES ADOPTED BY THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ON APRIL 13, 2010 TO BE EFFECTIVE JANUARY 1, 2011; and DOES 1-10,

Respondents and Defendants.

Lead Case No. CPF-10-510830
Consolidated With Case No. CPF-12-512466

Assigned for all purposes to the Hon. Ann-Christine Massullo, Dept. 304

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA'S OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER CODE OF CIVIL PROCEDURE SECTION 998
TO PLAINTIFF AND PETITIONER SAN DIEGO COUNTY WATER AUTHORITY,
AND ITS COUNSEL OF RECORD, KEKER, VAN NEST & PETERS LLP:

Pursuant to Code of Civil Procedure Section 998, Defendant and Respondent Metropolitan Water District of Southern California (Metropolitan) offers to compromise the following pending actions:

1. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-10-510830 (the “2010 Case”);
2. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-12-512466 (the “2012 Case”);
3. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-14-514004 (the “2014 Case”);
4. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-16-515282 (the “2016 Case”);
5. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CGC-17-563350 (the “2017 Case”); and
6. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-18-516389 (the “2018 Case”).

Metropolitan makes this Offer of Compromise on the terms set forth below:

1. Metropolitan agrees to pay SDCWA $72,096,671.32 upon execution of this Offer to Compromise. This represents payment of the Water Stewardship Rate on transportation in the Exchange Agreement price for calendar years 2011-2017, with interest for calendar years 2011-2014 applying SDCWA’s calculation, and with no interest for the non-litigated calendar years of
2. The Exchange Agreement shall be amended to change the price term at Section 5.2 as follows. The price shall be $450 per acre-foot commencing with the first monthly payment following execution of this Offer to Compromise, if this Offer to Compromise is executed prior to the December 2019 monthly payment. On January 1, 2020, the $450 per acre-foot price shall be increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as published in Engineering News Record. On January 1 of every subsequent year, the price shall be increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as published in Engineering News Record. The costs of a Delta conveyance project on the State Water Project attributable to transportation as determined by a cost of service study will be added to the price. The price will not be based upon or connected to Metropolitan’s rates. No Water Stewardship Rate, demand management costs, or conveyance costs incurred by Metropolitan for improvement or repair of the Colorado River Aqueduct, local distribution system, or State Water Project other than a Delta conveyance project will be added to the price. SDCWA will permanently waive and forgo any claim of illegality of the Exchange Agreement price term, including but not limited to any claim for offsetting benefits under Water Code 1810, et seq.

3. Metropolitan will work with SDCWA staff to schedule delivery of exchange water on a more flexible basis than current deliveries within a calendar year at no cost to SDCWA. The Exchange Agreement shall be amended to address the delivery flexibility within the calendar year.

4. The parties shall enter into a stipulated judgment in the 2010-2012 Cases and stipulated judgments/dismissals with prejudice in all remaining pending litigation within 30 days of acceptance of this Offer to Compromise. The stipulated judgment in the 2010-2012 Cases shall include the Court of Appeal’s decision (which includes rulings in favor of both Metropolitan and SDCWA), trial court dispositions of claims that were not appealed (e.g., breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing), Judge Mary E. Wiss’ decision as to contract damages for 2011-2014 plus interest, Judge Wiss’ decision as to offsetting benefits, and the entry of declaratory relief on the Rate Structure Integrity provision only as to a
declaration that the provision is invalid and unenforceable. The parties shall affirm in the
judgments that they are intended to have preclusive effect under Code of Civil Procedure Section
870 and collateral estoppel effect.

5. SDCWA shall execute a full and complete general release of Metropolitan, related
persons, and the Metropolitan member agencies participating as parties in the 2010-2018 Cases,
from any and all claims related to Metropolitan’s acts, omissions, and practices through the date
of execution of this Offer to Compromise, including claims for prospective or retroactive
payments of any kind. SDCWA shall also execute a Civil Code Section 1542 waiver. SDCWA
shall expressly and permanently waive and forgo any claim to demand management funding by
Metropolitan (via the Local Resources Program, Seawater Desalination Program, or other
Metropolitan demand management program) for the Carlsbad Desalination Project and/or the
Carlsbad Desalination Plant, any related project of any of SDCWA’s sub-agencies, and any other
project that SDCWA may claim was affected by Metropolitan’s use of the Rate Structure
Integrity provision.

6. SDCWA shall represent and agree that as of the date of execution of this Offer to
Compromise, it is not aware of any unlawful act, omission, or practice by Metropolitan that it has
not already pled in a lawsuit petition/complaint and it does not contend there is any such act,
omission, or practice. SDCWA shall represent and agree that it does not contend that it is
unlawful for Metropolitan to engage in and pay for demand management programs through its
rates and charges.

7. Each party bears its own attorneys’ fees and costs incurred in connection with all
2010-2018 Cases.

8. SDCWA represents and agrees that it will not directly or indirectly seek
Metropolitan’s financial planning model, including in future rate setting cycles, or assert that
failure to provide the model to SDCWA is illegal for any reason.

///

///
If you accept this Offer of Compromise, please date and sign below in the places provided and file and serve this executed Offer of Compromise and Notice of Acceptance in the above-entitled actions within 30 days after the offer is made or else the offer will be deemed withdrawn.

Dated: November 15, 2019

By: ___________________________

Metropolitan Water District of Southern California
By its General Counsel, Marcia Scully

By: ___________________________

Manatt, Phelps, & Phillips, LLP
By Barry W. Lee
Attorneys for Respondent and Defendant
Metropolitan Water District of Southern California

Acceptance by San Diego County Water Authority

Notice is hereby given that Plaintiff and Petitioner San Diego County Water Authority accepts the above Offer of Compromise on the terms set forth above.

Dated: November __, 2019

By: ___________________________

San Diego County Water Authority
By its ___________________________

By: ___________________________

Keker, Van Nest & Peters, LLP
By ___________________________
Attorneys for Plaintiff and Petitioner
San Diego County Water Authority
PROOF OF SERVICE
Lead Case No. CPF-10-510830
Consolidated With Case No. CPF-12-512466

I, Dawn J. Runchey, declare as follows:

I am employed in San Francisco County, San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On November 15, 2019, I served the within:

• METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA'S OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER CODE OF CIVIL PROCEDURE SECTION 998

on the interested parties in this action addressed as follows:

John Keker, Esq,
Daniel Purcell, Esq.
Dan Jackson, Esq.
Warren A. Braunig, Esq.

KEKER, VAN NEST & PETERS, LLP
633 Battery Street
San Francisco, CA 94111-1809
Telephone: (415) 391-5400
Facsimile: (415) 397-7188
Email: jkeker@keker.com
Email: dpmcell@keker.com
Email: djack. on@keker.com
Email: wbraunig@keker.com

Attorneys For Petitioner and Plaintiff
SAN DIEGO COUNTY WATER AUTHORITY

[BY HAND-DELIVERY] By causing such envelope(s) to be delivered by hand to the office of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 15, 2019 at San Francisco, California.

Dawn J. Runchey
MANATT, PHELPS & PHILLIPS, LLP
Phillip R. Kaplan (SBN 76949)
Barry W. Lee (SBN 88685)
One Embarcadero Center, 30th Floor
San Francisco, California 94111
Telephone: (415) 291-7450
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Email: bwlee@manatt.com

MORGAN, LEWIS & BOCKIUS LLP
Colin C. West (SBN 184095)
One Market, Spear Street Tower
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Telephone: (415) 422-1000
Facsimile: (415) 422-1101
Email: colin.west@morganlewis.com

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
Marcia Scully (SBN 80648)
Heather C. Beatty (SBN 161907)
Patricia J. Quilizapa (SBN 233745)
700 North Alameda Street
Los Angeles, CA 90012-2944
Telephone: (213) 217-6834
Facsimile: (213) 217-6890
Email: pquilizapa@mwdh2o.com

Attorneys for Respondent and Defendant
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

SAN DIEGO COUNTY WATER AUTHORITY,

v.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, ALL PERSONS INTERESTED IN THE VALIDITY OF THE RATES ADOPTED BY THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ON APRIL 8, 2014 TO BE EFFECTIVE JANUARY 1, 2016; and DOES 1-10;

Respondents and Defendants.

MWD’S OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER CCP § 998
CASE NO. CPF-14-514004

Exempt from filing fee pursuant to Government Code § 6103
TO PLAINTIFF AND PETITIONER SAN DIEGO COUNTY WATER AUTHORITY,
AND ITS COUNSEL OF RECORD, KEKER, VAN NEST & PETERS LLP:

Pursuant to Code of Civil Procedure Section 998, Defendant and Respondent Metropolitan Water District of Southern California (Metropolitan) offers to compromise the following pending actions:

1. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-10-510830 (the “2010 Case”);

2. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-12-512466 (the “2012 Case”);

3. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-14-514004 (the “2014 Case”);

4. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-16-515282 (the “2016 Case”);

5. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CGC-17-563350 (the “2017 Case”); and

6. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-18-516389 (the “2018 Case”).

Metropolitan makes this Offer of Compromise on the terms set forth below:

1. Metropolitan agrees to pay SDCWA $72,096,671.32 upon execution of this Offer to Compromise. This represents payment of the Water Stewardship Rate on transportation in the Exchange Agreement price for calendar years 2011-2017, with interest for calendar years 2011-2014 applying SDCWA’s calculation, and with no interest for the non-litigated calendar years of 2015-2017.
2. The Exchange Agreement shall be amended to change the price term at Section 5.2 as follows. The price shall be $450 per acre-foot commencing with the first monthly payment following execution of this Offer to Compromise, if this Offer to Compromise is executed prior to the December 2019 monthly payment. On January 1, 2020, the $450 per acre-foot price shall be increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as published in Engineering News Record. On January 1 of every subsequent year, the price shall be increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as published in Engineering News Record. The costs of a Delta conveyance project on the State Water Project attributable to transportation as determined by a cost of service study will be added to the price. The price will not be based upon or connected to Metropolitan’s rates. No Water Stewardship Rate, demand management costs, or conveyance costs incurred by Metropolitan for improvement or repair of the Colorado River Aqueduct, local distribution system, or State Water Project other than a Delta conveyance project will be added to the price. SDCWA will permanently waive and forgo any claim of illegality of the Exchange Agreement price term, including but not limited to any claim for offsetting benefits under Water Code 1810, et seq.

3. Metropolitan will work with SDCWA staff to schedule delivery of exchange water on a more flexible basis than current deliveries within a calendar year at no cost to SDCWA. The Exchange Agreement shall be amended to address the delivery flexibility within the calendar year.

4. The parties shall enter into a stipulated judgment in the 2010-2012 Cases and stipulated judgments/dismissals with prejudice in all remaining pending litigation within 30 days of acceptance of this Offer to Compromise. The stipulated judgment in the 2010-2012 Cases shall include the Court of Appeal’s decision (which includes rulings in favor of both Metropolitan and SDCWA), trial court dispositions of claims that were not appealed (e.g., breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing), Judge Mary E. Wiss’ decision as to contract damages for 2011-2014 plus interest, Judge Wiss’ decision as to offsetting benefits, and the entry of declaratory relief on the Rate Structure Integrity provision only as to a
declaration that the provision is invalid and unenforceable. The parties shall affirm in the
judgments that they are intended to have preclusive effect under Code of Civil Procedure Section
870 and collateral estoppel effect.

5. SDCWA shall execute a full and complete general release of Metropolitan, related
persons, and the Metropolitan member agencies participating as parties in the 2010-2018 Cases,
from any and all claims related to Metropolitan's acts, omissions, and practices through the date
of execution of this Offer to Compromise, including claims for prospective or retroactive
payments of any kind. SDCWA shall also execute a Civil Code Section 1542 waiver. SDCWA
shall expressly and permanently waive and forgo any claim to demand management funding by
Metropolitan (via the Local Resources Program, Seawater Desalination Program, or other
Metropolitan demand management program) for the Carlsbad Desalination Project and/or the
Carlsbad Desalination Plant, any related project of any of SDCWA’s sub-agencies, and any other
project that SDCWA may claim was affected by Metropolitan’s use of the Rate Structure
Integrity provision.

6. SDCWA shall represent and agree that as of the date of execution of this Offer to
Compromise, it is not aware of any unlawful act, omission, or practice by Metropolitan that it has
not already pled in a lawsuit petition/complaint and it does not contend there is any such act,
 omission, or practice. SDCWA shall represent and agree that it does not contend that it is
unlawful for Metropolitan to engage in and pay for demand management programs through its
rates and charges.

7. Each party bears its own attorneys' fees and costs incurred in connection with all
2010-2018 Cases.

8. SDCWA represents and agrees that it will not directly or indirectly seek
Metropolitan’s financial planning model, including in future rate setting cycles, or assert that
failure to provide the model to SDCWA is illegal for any reason.

///
///
///
If you accept this Offer of Compromise, please date and sign below in the places provided and file and serve this executed Offer of Compromise and Notice of Acceptance in the above-entitled actions within 30 days after the offer is made or else the offer will be deemed withdrawn.

Dated: November 15, 2019

By: [Signature]
Metropolitan Water District of Southern California
By its General Counsel, Marcia Scully

By: [Signature]
Manatt, Phelps & Phillips, LLP
By Barry W. Lee
Attorneys for Respondent and Defendant
Metropolitan Water District of Southern California

Acceptance by San Diego County Water Authority

Notice is hereby given that Plaintiff and Petitioner San Diego County Water Authority accepts the above Offer of Compromise on the terms set forth above.

Dated: November 15, 2019

By: [Signature]
San Diego County Water Authority
By its [Signature]

By: [Signature]
Keker, Van Nest & Peters, LLP
By [Signature]
Attorneys for Plaintiff and Petitioner
San Diego County Water Authority
PROOF OF SERVICE
Case No. CPF-14-514004

I, Dawn J. Runchey, declare as follows:

I am employed in San Francisco County, San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On November 15, 2019, I served the within:

• METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA’S OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER CODE OF CIVIL PROCEDURE SECTION 998

on the interested parties in this action addressed as follows:

John Keker, Esq.
Daniel Purcell, Esq.
Dan Jackson, Esq.
Warren A. Braunig, Esq.
KEKER, VAN NEST & PETERS, LLP
633 Battery Street
San Francisco, CA 94111-1809
Telephone: (415) 391-5400
Facsimile: (415) 397-7188
Email: jkeker@keker.com
Email: dpurcell@keker.com
Email: djackson@keker.com
Email: wbraunig@keker.com

Attorneys For Petitioner and Plaintiff
SAN DIEGO COUNTY WATER AUTHORITY

[BY HAND-DELIVERY] By causing such envelope(s) to be delivered by hand to the office of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 15, 2019 at San Francisco, California.

Dawn J. Runchey

325429523.1
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
Marcia Scully (SBN 80648)
Heather C. Beatty (SBN 161907)
Patricia J. Quilizapa (SBN 233745)
700 North Alameda Street
Los Angeles, CA 90012-2944
Telephone: (213) 217-6834
Facsimile: (213) 217-6890
Email: pquilizapa@mwdh2o.com

Attorneys for Respondent and Defendant
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

SAN DIEGO COUNTY WATER AUTHORITY,
Petitioner and Plaintiff,

v.

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA; ALL PERSONS INTERESTED IN THE VALIDITY OF THE RATES ADOPTED BY THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ON APRIL 12, 2016 TO BE EFFECTIVE JANUARY 1, 2017 AND JANUARY 1, 2018; and DOES 1-10,
Respondents and Defendants.

Exempt from filing fee pursuant to Government Code § 6103

Case No. CPF-16-515282
Assigned for all purposes to the Hon. Ann-Christine Massullo, Dept. 304

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA’S OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER CODE OF CIVIL PROCEDURE SECTION 998

MWD’S OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER CCP § 998
CASE NO. CPF-16-515282
TO PLAINTIFF AND PETITIONER SAN DIEGO COUNTY WATER AUTHORITY,
AND ITS COUNSEL OF RECORD, KEKER, VAN NEST & PETERS LLP:

Pursuant to Code of Civil Procedure Section 998, Defendant and Respondent Metropolitan Water District of Southern California (Metropolitan) offers to compromise the following pending actions:

1. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-10-510830 (the “2010 Case”);

2. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-12-512466 (the “2012 Case”);

3. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-14-514004 (the “2014 Case”);

4. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-16-515282 (the “2016 Case”);

5. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CGC-17-563350 (the “2017 Case”); and

6. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-18-516389 (the “2018 Case”).

Metropolitan makes this Offer of Compromise on the terms set forth below:

1. Metropolitan agrees to pay SDCWA $72,096,671.32 upon execution of this Offer to Compromise. This represents payment of the Water Stewardship Rate on transportation in the Exchange Agreement price for calendar years 2011-2017, with interest for calendar years 2011-2014 applying SDCWA’s calculation, and with no interest for the non-litigated calendar years of 2015-2017.

2. The Exchange Agreement shall be amended to change the price term at Section 5.2 as follows. The price shall be $450 per acre-foot commencing with the first monthly payment following execution of this Offer to Compromise, if this Offer to Compromise is executed prior to the December 2019 monthly payment. On January 1, 2020, the $450 per acre-foot price shall be increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as published in Engineering News Record. On January 1 of every subsequent year, the price shall be increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as published in Engineering News Record. The costs of a Delta conveyance project on the State Water Project attributable to transportation as determined by a cost of service study will be added to the price. The price will not be based upon or connected to Metropolitan’s rates. No Water Stewardship Rate, demand management costs, or conveyance costs incurred by Metropolitan for improvement or repair of the Colorado River Aqueduct, local distribution system, or State Water Project other than a Delta conveyance project will be added to the price. SDCWA will permanently waive and forgo any claim of illegality of the Exchange Agreement price term, including but not limited to any claim for offsetting benefits under Water Code 1810, et seq.

3. Metropolitan will work with SDCWA staff to schedule delivery of exchange water on a more flexible basis than current deliveries within a calendar year at no cost to SDCWA. The Exchange Agreement shall be amended to address the delivery flexibility within the calendar year.

4. The parties shall enter into a stipulated judgment in the 2010-2012 Cases and stipulated judgments/dismissals with prejudice in all remaining pending litigation within 30 days of acceptance of this Offer to Compromise. The stipulated judgment in the 2010-2012 Cases shall include the Court of Appeal’s decision (which includes rulings in favor of both Metropolitan and SDCWA), trial court dispositions of claims that were not appealed (e.g., breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing), Judge Mary E. Wiss’ decision as to contract damages for 2011-2014 plus interest, Judge Wiss’ decision as to offsetting benefits, and the entry of declaratory relief on the Rate Structure Integrity provision only as to a
declaration that the provision is invalid and unenforceable. The parties shall affirm in the
judgments that they are intended to have preclusive effect under Code of Civil Procedure Section
870 and collateral estoppel effect.

5. SDCWA shall execute a full and complete general release of Metropolitan, related
persons, and the Metropolitan member agencies participating as parties in the 2010-2018 Cases,
from any and all claims related to Metropolitan’s acts, omissions, and practices through the date
of execution of this Offer to Compromise, including claims for prospective or retroactive
payments of any kind. SDCWA shall also execute a Civil Code Section 1542 waiver. SDCWA
shall expressly and permanently waive and forgo any claim to demand management funding by
Metropolitan (via the Local Resources Program, Seawater Desalination Program, or other
Metropolitan demand management program) for the Carlsbad Desalination Project and/or the
Carlsbad Desalination Plant, any related project of any of SDCWA’s sub-agencies, and any other
project that SDCWA may claim was affected by Metropolitan’s use of the Rate Structure
Integrity provision.

6. SDCWA shall represent and agree that as of the date of execution of this Offer to
Compromise, it is not aware of any unlawful act, omission, or practice by Metropolitan that it has
not already pled in a lawsuit petition/complaint and it does not contend there is any such act,
omission, or practice. SDCWA shall represent and agree that it does not contend that it is
unlawful for Metropolitan to engage in and pay for demand management programs through its
rates and charges.

7. Each party bears its own attorneys’ fees and costs incurred in connection with all
2010-2018 Cases.

8. SDCWA represents and agrees that it will not directly or indirectly seek
Metropolitan’s financial planning model, including in future rate setting cycles, or assert that
failure to provide the model to SDCWA is illegal for any reason.
If you accept this Offer of Compromise, please date and sign below in the places provided and file and serve this executed Offer of Compromise and Notice of Acceptance in the above-entitled actions within 30 days after the offer is made or else the offer will be deemed withdrawn.

Dated: November 15, 2019

By: Marcia Scully
Metropolitan Water District of Southern California
By its General Counsel, Marcia Scully

By: Manatt, Phelps & Phillips, LLP
By Barry W. Lee
Attorneys for Respondent and Defendant
Metropolitan Water District of Southern California

Acceptance by San Diego County Water Authority

Notice is hereby given that Plaintiff and Petitioner San Diego County Water Authority accepts the above Offer of Compromise on the terms set forth above.

Dated: November , 2019

By: San Diego County Water Authority
By its ________________________

By: Keker, Van Nest & Peters, LLP
By
Attorneys for Plaintiff and Petitioner
San Diego County Water Authority

325460797.1

MANATT, PHELPS & PHILLIPS, LLP
ATTORNEYS AT LAW
LOS ANGELES

MWD'S OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER CCP § 998
CASE NO. CPF-16-515282
PROOF OF SERVICE
Case No. CPF-16-515282

I, Dawn J. Runchey, declare as follows:

I am employed in San Francisco County, San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On November 15, 2019, I served the within:

- METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA'S OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER CODE OF CIVIL PROCEDURE SECTION 998

on the interested parties in this action addressed as follows:

John Keker, Esq,
Daniel Purcell, Esq.
Dan Jackson, Esq.
Warren A. Braunig, Esq.

KEKER, VAN NEST & PETERS, LLP
633 Battery Street
San Francisco, CA 94111-1809
Telephone: (415) 391-5400
Facsimile: (415) 397-7188
Email: jkeker@keker.com
Email: dpurcell@keker.com
Email: djackson@keker.com
Email: wbraunig@keker.com

Attorneys For Petitioner and Plaintiff
SAN DIEGO COUNTY WATER AUTHORITY

| (BY HAND-DELIVERY) By causing such envelope(s) to be delivered by hand to the office of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 15, 2019 at San Francisco, California.

Dawn J. Runchey
MANATT, PHELPS & PHILLIPS, LLP
Phillip R. Kaplan (SBN 76949)
Barry W. Lee (SBN 88685)
One Embarcadero Center, 30th Floor
San Francisco, California 94111
Telephone: (415) 291-7450
Facsimile: (415) 291-7474
Email: pkaplan@manatt.com
Email: bwlee@manatt.com

MORGAN, LEWIS & BOCKIUS LLP
Colin C. West (SBN 184095)
One Market, Spear Street Tower
San Francisco, California 94105-1596
Telephone: (415) 422-1000
Facsimile: (415) 422-1101
Email: colin.west@morganlewis.com

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
Marcia Scully (SBN 80648)
Heather C. Beatty (SBN 161907)
Patricia J. Quilizapa (SBN 233745)
700 North Alameda Street
Los Angeles, CA 90012-2944
Telephone: (213) 217-6834
Facsimile: (213) 217-6890
Email: pquilizapa@mwdh2o.com

Exempt from filing fee pursuant to Government Code § 6103

MWD’S OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER CCP § 998
CASE NO. CGC-17-563350
TO PLAINTIFF AND PETITIONER SAN DIEGO COUNTY WATER AUTHORITY, AND ITS COUNSEL OF RECORD, KEKER, VAN NEST & PETERS LLP:

Pursuant to Code of Civil Procedure Section 998, Defendant and Respondent Metropolitan Water District of Southern California (Metropolitan) offers to compromise the following pending actions:

1. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-10-510830 (the “2010 Case”);
2. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-12-512466 (the “2012 Case”);
3. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-14-514004 (the “2014 Case”);
4. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-16-515282 (the “2016 Case”);
5. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CGC-17-563350 (the “2017 Case”); and
6. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-18-516389 (the “2018 Case”).

Metropolitan makes this Offer of Compromise on the terms set forth below:

1. Metropolitan agrees to pay SDCWA $72,096,671.32 upon execution of this Offer to Compromise. This represents payment of the Water Stewardship Rate on transportation in the Exchange Agreement price for calendar years 2011-2017, with interest for calendar years 2011-2014 applying SDCWA’s calculation, and with no interest for the non-litigated calendar years of
2. The Exchange Agreement shall be amended to change the price term at Section 5.2 as follows. The price shall be $450 per acre-foot commencing with the first monthly payment following execution of this Offer to Compromise, if this Offer to Compromise is executed prior to the December 2019 monthly payment. On January 1, 2020, the $450 per acre-foot price shall be increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as published in Engineering News Record. On January 1 of every subsequent year, the price shall be increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as published in Engineering News Record. The costs of a Delta conveyance project on the State Water Project attributable to transportation as determined by a cost of service study will be added to the price. The price will not be based upon or connected to Metropolitan’s rates. No Water Stewardship Rate, demand management costs, or conveyance costs incurred by Metropolitan for improvement or repair of the Colorado River Aqueduct, local distribution system, or State Water Project other than a Delta conveyance project will be added to the price. SDCWA will permanently waive and forgo any claim of illegality of the Exchange Agreement price term, including but not limited to any claim for offsetting benefits under Water Code 1810, et seq.

3. Metropolitan will work with SDCWA staff to schedule delivery of exchange water on a more flexible basis than current deliveries within a calendar year at no cost to SDCWA. The Exchange Agreement shall be amended to address the delivery flexibility within the calendar year.

4. The parties shall enter into a stipulated judgment in the 2010-2012 Cases and stipulated judgments/dismissals with prejudice in all remaining pending litigation within 30 days of acceptance of this Offer to Compromise. The stipulated judgment in the 2010-2012 Cases shall include the Court of Appeal’s decision (which includes rulings in favor of both Metropolitan and SDCWA), trial court dispositions of claims that were not appealed (e.g., breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing), Judge Mary E. Wiss’ decision as to contract damages for 2011-2014 plus interest, Judge Wiss’ decision as to offsetting benefits, and the entry of declaratory relief on the Rate Structure Integrity provision only as to a
declaration that the provision is invalid and unenforceable. The parties shall affirm in the
judgments that they are intended to have preclusive effect under Code of Civil Procedure Section
870 and collateral estoppel effect.

5. SDCWA shall execute a full and complete general release of Metropolitan, related
persons, and the Metropolitan member agencies participating as parties in the 2010-2018 Cases,
from any and all claims related to Metropolitan’s acts, omissions, and practices through the date
of execution of this Offer to Compromise, including claims for prospective or retroactive
payments of any kind. SDCWA shall also execute a Civil Code Section 1542 waiver. SDCWA
shall expressly and permanently waive and forgo any claim to demand management funding by
Metropolitan (via the Local Resources Program, Seawater Desalination Program, or other
Metropolitan demand management program) for the Carlsbad Desalination Project and/or the
Carlsbad Desalination Plant, any related project of any of SDCWA’s sub-agencies, and any other
project that SDCWA may claim was affected by Metropolitan’s use of the Rate Structure
Integrity provision.

6. SDCWA shall represent and agree that as of the date of execution of this Offer to
Compromise, it is not aware of any unlawful act, omission, or practice by Metropolitan that it has
not already pled in a lawsuit petition/complaint and it does not contend there is any such act,
 omission, or practice. SDCWA shall represent and agree that it does not contend that it is
unlawful for Metropolitan to engage in and pay for demand management programs through its
rates and charges.

7. Each party bears its own attorneys’ fees and costs incurred in connection with all
2010-2018 Cases.

8. SDCWA represents and agrees that it will not directly or indirectly seek
Metropolitan’s financial planning model, including in future rate setting cycles, or assert that
failure to provide the model to SDCWA is illegal for any reason.

///

///
If you accept this Offer of Compromise, please date and sign below in the places provided and file and serve this executed Offer of Compromise and Notice of Acceptance in the above-entitled actions within 30 days after the offer is made or else the offer will be deemed withdrawn.

Dated: November 15, 2019

By: [Signature]
Metropolitan Water District of Southern California
By its General Counsel, Marcia Scully

By: [Signature]
Manatt, Phelps, & Phillips, LLP
By Barry W. Lee
Attorneys for Respondent and Defendant
Metropolitan Water District of Southern California

Acceptance by San Diego County Water Authority

Notice is hereby given that Plaintiff and Petitioner San Diego County Water Authority accepts the above Offer of Compromise on the terms set forth above.

Dated: November __, 2019

By: [Signature]
San Diego County Water Authority
By its ____________________________

By: [Signature]
Keker, Van Nest & Peters, LLP
By ____________________________
Attorneys for Plaintiff and Petitioner
San Diego County Water Authority
PROOF OF SERVICE
Case No. CGC-17-563350

I, Dawn J. Runchey, declare as follows:

I am employed in San Francisco County, San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On November 15, 2019, I served the within:

- METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA’S OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER CODE OF CIVIL PROCEDURE SECTION 998

on the interested parties in this action addressed as follows:

John Keker, Esq,
Daniel Purcell, Esq.
Dan Jackson, Esq.
Warren A. Braunig, Esq.
KEKER, VAN NEST & PETERS, LLP
633 Battery Street
San Francisco, CA 94111-1809
Telephone: (415) 391-5400
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Email: dpurcell@keker.com
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Email: wbraunig@keker.com

Attorneys For Petitioner and Plaintiff
SAN DIEGO COUNTY WATER AUTHORITY

(By Hand-Delivery) By causing such envelope(s) to be delivered by hand to the office of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 15, 2019 at San Francisco, California.

Dawn J. Runchey
MANATT, PHELPS & PHILLIPS, LLP
Phillip R. Kaplan (SBN 76949)
Barry W. Lee (SBN 88685)
One Embarcadero Center, 30th Floor
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THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
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Attorneys for Respondent and Defendant
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

SAN DIEGO COUNTY WATER AUTHORITY,

Petitioner and Plaintiff,

v.

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA; ALL PERSONS INTERESTED IN THE VALIDITY OF THE RATES ADOPTED BY THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ON APRIL 10, 2018 TO BE EFFECTIVE JANUARY 1, 2019 AND JANUARY 1, 2020; and DOES 1-10,

Respondents and Defendants.

Exempt from filing fee pursuant to Government Code § 6103
TO PLAINTIFF AND PETITIONER SAN DIEGO COUNTY WATER AUTHORITY,
AND ITS COUNSEL OF RECORD, KEKER, VAN NEST & PETERS LLP:

Pursuant to Code of Civil Procedure Section 998, Defendant and Respondent Metropolitan Water District of Southern California (Metropolitan) offers to compromise the following pending actions:

1. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-10-510830 (the “2010 Case”);
2. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-12-512466 (the “2012 Case”);
3. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-14-514004 (the “2014 Case”);
4. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-16-515282 (the “2016 Case”);
5. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CGC-17-563350 (the “2017 Case”); and
6. San Diego County Water Authority v. Metropolitan Water District of Southern California, San Francisco Superior Court Case No. CPF-18-516389 (the “2018 Case”).

Metropolitan makes this Offer of Compromise on the terms set forth below:

1. Metropolitan agrees to pay SDCWA $72,096,671.32 upon execution of this Offer to Compromise. This represents payment of the Water Stewardship Rate on transportation in the Exchange Agreement price for calendar years 2011-2017, with interest for calendar years 2011-2014 applying SDCWA’s calculation, and with no interest for the non-litigated calendar years of 2015-2018.
2. The Exchange Agreement shall be amended to change the price term at Section 5.2 as follows. The price shall be $450 per acre-foot commencing with the first monthly payment following execution of this Offer to Compromise, if this Offer to Compromise is executed prior to the December 2019 monthly payment. On January 1, 2020, the $450 per acre-foot price shall be increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as published in Engineering News Record. On January 1 of every subsequent year, the price shall be increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as published in Engineering News Record. The costs of a Delta conveyance project on the State Water Project attributable to transportation as determined by a cost of service study will be added to the price. The price will not be based upon or connected to Metropolitan’s rates. No Water Stewardship Rate, demand management costs, or conveyance costs incurred by Metropolitan for improvement or repair of the Colorado River Aqueduct, local distribution system, or State Water Project other than a Delta conveyance project will be added to the price. SDCWA will permanently waive and forgo any claim of illegality of the Exchange Agreement price term, including but not limited to any claim for offsetting benefits under Water Code 1810, et seq.

3. Metropolitan will work with SDCWA staff to schedule delivery of exchange water on a more flexible basis than current deliveries within a calendar year at no cost to SDCWA. The Exchange Agreement shall be amended to address the delivery flexibility within the calendar year.

4. The parties shall enter into a stipulated judgment in the 2010-2012 Cases and stipulated judgments/dismissals with prejudice in all remaining pending litigation within 30 days of acceptance of this Offer to Compromise. The stipulated judgment in the 2010-2012 Cases shall include the Court of Appeal’s decision (which includes rulings in favor of both Metropolitan and SDCWA), trial court dispositions of claims that were not appealed (e.g., breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing), Judge Mary E. Wiss’ decision as to contract damages for 2011-2014 plus interest, Judge Wiss’ decision as to offsetting benefits, and the entry of declaratory relief on the Rate Structure Integrity provision only as to a
declaration that the provision is invalid and unenforceable. The parties shall affirm in the judgments that they are intended to have preclusive effect under Code of Civil Procedure Section 870 and collateral estoppel effect.

5. SDCWA shall execute a full and complete general release of Metropolitan, related persons, and the Metropolitan member agencies participating as parties in the 2010-2018 Cases, from any and all claims related to Metropolitan’s acts, omissions, and practices through the date of execution of this Offer to Compromise, including claims for prospective or retroactive payments of any kind. SDCWA shall also execute a Civil Code Section 1542 waiver. SDCWA shall expressly and permanently waive and forgo any claim to demand management funding by Metropolitan (via the Local Resources Program, Seawater Desalination Program, or other Metropolitan demand management program) for the Carlsbad Desalination Project and/or the Carlsbad Desalination Plant, any related project of any of SDCWA’s sub-agencies, and any other project that SDCWA may claim was affected by Metropolitan’s use of the Rate Structure Integrity provision.

6. SDCWA shall represent and agree that as of the date of execution of this Offer to Compromise, it is not aware of any unlawful act, omission, or practice by Metropolitan that it has not already pled in a lawsuit petition/complaint and it does not contend there is any such act, omission, or practice. SDCWA shall represent and agree that it does not contend that it is unlawful for Metropolitan to engage in and pay for demand management programs through its rates and charges.

7. Each party bears its own attorneys’ fees and costs incurred in connection with all 2010-2018 Cases.

8. SDCWA represents and agrees that it will not directly or indirectly seek Metropolitan’s financial planning model, including in future rate setting cycles, or assert that failure to provide the model to SDCWA is illegal for any reason.

///

///
If you accept this Offer of Compromise, please date and sign below in the places provided and file and serve this executed Offer of Compromise and Notice of Acceptance in the above-entitled actions within 30 days after the offer is made or else the offer will be deemed withdrawn.

Dated: November 15, 2019

By: Metropolitan Water District of Southern California
   By its General Counsel, Marcia Scully

By: Manatt, Phelps & Phillips, LLP
   By Barry W. Lee
   Attorneys for Respondent and Defendant
   Metropolitan Water District of Southern California

Acceptance by San Diego County Water Authority

Notice is hereby given that Plaintiff and Petitioner San Diego County Water Authority accepts the above Offer of Compromise on the terms set forth above.

Dated: November , 2019

By: San Diego County Water Authority
   By its ____________________________

By: Keker, Van Nest & Peters, LLP
   By ________________________________
   Attorneys for Plaintiff and Petitioner
   San Diego County Water Authority
PROOF OF SERVICE
Case No. CPF-18-516389

I, Dawn J. Runchey, declare as follows:

I am employed in San Francisco County, San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On November 15, 2019, I served the within:

• METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA’S OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER CODE OF CIVIL PROCEDURE SECTION 998

on the interested parties in this action addressed as follows:

John Keker, Esq,
Daniel Purcell, Esq.
Dan Jackson, Esq.
Warren A. Braunig, Esq.
KEKER, VAN NEST & PETERS, LLP
633 Battery Street
San Francisco, CA 94111-1809
Telephone: (415) 391-5400
Facsimile: (415) 397-7188
Email: jkeker@keker.com
Email: dpurcell@keker.com
Email: djackson@keker.com
Email: wbraunig@keker.com

Attorneys For Petitioner and Plaintiff
SAN DIEGO COUNTY WATER AUTHORITY

(By HAND-DELIVERY) By causing such envelope(s) to be delivered by hand to the office of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 15, 2019 at San Francisco, California.

Dawn J. Runchey

325429571.1
BY HAND DELIVERY

John Keker, Esq.
Daniel Purcell, Esq.
Dan Jackson, Esq.
Warren A. Braunig, Esq.
Keker Van Nest & Peters LLP
633 Battery Street
San Francisco, CA 94111-1809

Re:  San Diego County Water Authority vs. Metropolitan Water District of Southern California

Dear Counsel:

Enclosed are statutory Offers to Compromise under Code of Civil Procedure Section 998 in all pending SDCWA v. Metropolitan, et al. cases, 2010-2018 (collectively, “Offer to Compromise”).

This cover letter and the attached “Monetized Benefits of Metropolitan’s Offer to Compromise” provide an explanation as to why Metropolitan believes this is a very favorable offer for SDCWA. A proposed settlement agreement and release containing the same terms as the Offer to Compromise will be provided shortly.

We look forward to careful consideration of these materials by the SDCWA Board of Directors.

Value to SDCWA of Metropolitan’s Offer to Compromise


In all of SDCWA’s rate challenges from 2010 to 2018, SDCWA has challenged Metropolitan’s allocation of its Water Stewardship Rate (WSR) to transportation within Metropolitan’s rate structure. The price term in the parties’ Exchange Agreement is based on Metropolitan’s transportation rates, including the WSR.
The WSR recovers the costs of Metropolitan’s demand management programs, under which Metropolitan provides conservation and local resources development incentive funding to its member agencies, their sub-agencies, and in the case of conservation directly to residents and businesses throughout Metropolitan’s Southern California service area. The WSR is part of Metropolitan’s full service rate, which is comprised of both supply and transportation rates for the sale and delivery of water.

In the 2010-2012 rate cases, SDCWA prevailed in its argument that there was not sufficient evidence in the administrative record for the years 2011-2014 to support Metropolitan’s allocation of the WSR to transportation, and therefore that the WSR should not have been included in the parties’ Exchange Agreement price for those years.

Metropolitan already tendered to SDCWA $44,373,872.29, the full amount of these 2011-2014 WSR payments under the trial court’s damages award, plus interest based on Metropolitan’s calculation, with a reservation of Metropolitan’s right to seek on appeal an appropriate set-off from the award. The set-off is based on the fact (under SDCWA’s own argument) that if SDCWA had not paid the WSR as part of its exchange deliveries, it would have paid a higher WSR on its full service deliveries. Although SDCWA returned the tendered payment, Metropolitan’s tender stopped the accrual of interest as of February 2019.

Other Metropolitan rate cycles are based on different administrative records and SDCWA’s challenges to the price term for those years are currently on hold pending final completion of the 2010-2012 cases on remand and any appeal. Metropolitan included further evidence and analysis in the administrative records for the 2014, 2016, and 2018 rate setting cycles to support the allocation of the WSR to transportation. Metropolitan believes the administrative records for each of those cycles, concerning rates for 2015-2020, sufficiently support the allocation of WSR to transportation. Nonetheless, Metropolitan suspended charging SDCWA the WSR on exchange deliveries from 2018-2020, pending a cost of service study of the most appropriate allocation of demand management costs in Metropolitan’s rate structure.

Metropolitan’s Offer to Compromise proposes to settle the litigation in part by paying SDCWA $72,096,671.32, consisting of (a) SDCWA’s WSR payments on Exchange Agreement deliveries for 2011-2014, plus interest, through mid-December 2019, based on SDCWA’s interest calculation; and (b) SDCWA’s WSR payments on Exchange Agreement deliveries for 2015-2017, without interest, since those payments have never been litigated and consequently there has been no finding concerning the sufficiency of the record in those years.
The offered payment is beneficial to SDCWA for the following reasons:

a. Metropolitan would pay the full WSR payment amount on exchange deliveries for 2011-2014 that SDCWA seeks. Metropolitan would forgo its right to appeal the trial court’s damages award for 2011-2014 as lacking the appropriate set-off for the increase in the full service price.

b. Metropolitan would pay interest on the 2011-2014 amount based on SDCWA’s interest calculation, which Metropolitan believes is incorrect.

c. Metropolitan would pay interest on that amount for ten additional months through December 2019, rather than stopping interest as it is entitled to do as of February 2019, due to Metropolitan’s payment tender to SDCWA at that time.

d. Metropolitan would pay the full WSR payment amount on exchange deliveries for 2015-2017 that SDCWA seeks. This matter has never been litigated so SDCWA has no entitlement to this payment. Metropolitan would forgo its right to defend its allocation of the WSR to transportation from 2015 forward based on a different administrative record. Metropolitan believes if litigated, Metropolitan would prevail. Because the 2015-2017 WSR payments have not been litigated and Metropolitan believes it would prevail, Metropolitan would not pay interest on the return of those payments.

2. Exchange Agreement Fixed Price Term (2019-2112)

As noted, the parties’ Exchange Agreement price term is based on Metropolitan’s transportation rates: the WSR, the System Access Rate, and the System Power Rate. The Exchange Agreement has a 110 year term (to 2112) and due to the large volume of water exchanged under it, SDCWA’s contractual payments to Metropolitan are sizable. SDCWA proposed the current price term in 2003 and Metropolitan accepted it as proposed. Before that, the price term was simply a fixed dollar figure with an escalator, and was not tied to Metropolitan’s rates.

Basing the price term on Metropolitan’s rates has created an unfortunate dynamic where SDCWA has an incentive to challenge Metropolitan’s rates in every rate cycle, in an effort to invalidate rates that are part of the price term, claim breach of contract, and thereby reduce SDCWA’s contractual payments. SDCWA has challenged Metropolitan’s rates, with an accompanying claim of breach of the Exchange Agreement price term, in every rate setting cycle since 2010: 2010, 2012, 2104, 2016, and 2018. In these cases, SDCWA seeks court orders not only invalidating rates in the years applicable to each rate cycle, but also court orders directing
Metropolitan to change its rates extending into the future. In this way – except where the court finds the administrative record in a rate cycle to be insufficient – the pending litigation concerns not just rates and the Exchange Agreement price in current years, but also future rates and the price term going forward throughout the contractual term. All of these cases are still pending.

The same rates that SDCWA challenges apply to all 26 Metropolitan member agencies. Metropolitan’s Board of Directors sets the rates the member agencies pay, and the Board is entirely comprised of representatives of those member agency customers. No other member agency has challenged Metropolitan’s rates or supported SDCWA’s efforts, and nine member agencies have joined the litigation in support of Metropolitan to actively defend the rates.

The inherent incentive in the Exchange Agreement price term for SDCWA to continually challenge rates in every cycle is expensive and disruptive for all parties. SDCWA and Metropolitan have each spent tens of millions of dollars on attorneys’ fees in this nearly-ten year litigation, and untold hours of staff time has been expended relating to the litigation. Metropolitan and SDCWA should be spending their time and energy on positive efforts to benefit their customers and service areas, and to address the water challenges of today and tomorrow.

Metropolitan therefore proposes as part of its Offer to Compromise to amend the Exchange Agreement to change the price term, to once again make it a fixed number with an escalator, unrelated to Metropolitan’s rates. Metropolitan has proposed a discounted price, which would be exceptionally valuable to SDCWA. When applied over the length of the Exchange Agreement, the changed price term is estimated to provide SDCWA with savings of between $5.5 billion and $8.4 billion (in 2019 dollars).

Metropolitan’s proposed price starts with the current contract price, which is already discounted based on the Metropolitan Board’s decision to not charge the WSR through 2020, and applies a further discount of $3 per acre-foot. This results in a price of $450 per acre-foot, which could be implemented as early as December 2019. Metropolitan then proposes use of the ENR Construction Cost Index (20 Cities), which is less than Metropolitan’s average rate increases. Should any new state Delta conveyance project go forward, and after a cost of service study, Metropolitan would add the identified portion of the transportation cost of the project to the Exchange Agreement price.

The significant savings to SDCWA is based on the following:
If the current contract price is retained, SDCWA is estimated to pay Metropolitan between $11.978 billion and $17.984 billion (in 2019 dollars) through 2112.\(^1\)

If SDCWA accepts the changed contract price, SDCWA is estimated to instead pay Metropolitan between $6.455 billion and $9.520 billion (in 2019 dollars) going forward.

The difference (in 2019 dollars) is between $5.523 billion and $8.464 billion (in 2019 dollars), not including SDCWA’s avoidance of significant future State Water Project (SWP), Colorado River Aqueduct, and distribution system costs that would no longer be due as part of the Exchange Agreement price.

This offered Exchange Agreement price term is particularly beneficial to SDCWA because:

a. SDCWA would have a price going forward that alleviates its significant litigation loss as to SWP costs. Metropolitan won the major issue in the litigation, when the Court of Appeal ruled that Metropolitan’s System Access Rate and System Power Rate are lawful, properly include SWP transportation costs, and are properly charged as part of the Exchange Agreement price. The California Supreme Court declined SDCWA’s request to review this decision and it is final. Yet, by changing the price term as Metropolitan has offered, SDCWA would not be charged increased SWP costs over time that Metropolitan may lawfully include and SDCWA is unable to challenge. This includes what are expected to be substantial costs to address anticipated subsidence repairs on the SWP.

b. A fixed price term also allows SDCWA to avoid additional significant maintenance and repair costs on the Colorado River Aqueduct, which SDCWA has never contended in court that it is not required to pay. It also allows SDCWA to avoid similar costs on Metropolitan’s local distribution system, which SDCWA has also never challenged in court.

c. SDCWA would have a price going forward that contains no demand management costs, when there has been no such court ruling.

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\(^1\) This is based on the current price term, assuming inclusion of a WSR starting in 2021 that is allocated 75 percent to transportation rather than 100 percent, based on the current cost of service study. Most of the water that SDCWA exchanges is conserved water purchased from the Imperial Irrigation District under a transfer agreement that can extend through either 2047 or 2077. The remainder of the water that SDCWA exchanges is water conserved by lining the All-American and Coachella canals, and that exchange extends through 2112. The two different amounts throughout these estimates are based on whether the IID transfer terminates in 2047 or 2077.
The $3 per acre-foot discount off the current price alone is a savings to SDCWA of $43.2 million to $63.6 million.

SDCWA would have a lower annual escalation through 2012. Metropolitan’s annual transportation rate increases, which reflect increasing costs to Metropolitan, have averaged 4.6 percent. The Construction Cost Index’s annual increases have averaged 3.3 percent.

On January 1, 2020, Metropolitan’s rates will increase based on Metropolitan’s adopted rates and biennial budget for fiscal years 2018/19 and 2019/20. The contract price for 2020, even with WSR excluded, will rise to $482 per acre-foot. Metropolitan’s analysis is that the present value of the additional cost to SDCWA resulting from an Exchange Agreement price term based on the rates in 2020 will exceed any amount that SDCWA could win in the litigation. It is also likely that continued litigation will not be completed in 2020 and future rate increases would further erode the value of any settlement to SDCWA.

3. Exchange Agreement Delivery Flexibility

The Exchange Agreement provides for SDCWA to make the water that it purchases from the Imperial Irrigation District (IID), and obtains from the lining of canals, available to Metropolitan at Lake Havasu. It calls for Metropolitan to deliver a like amount of water from any source to SDCWA in equal 1/12th deliveries every month, regardless of when SDCWA makes the IID and canal lining water available to Metropolitan.

The Exchange Agreement does not provide SDCWA with the ability to change Metropolitan’s exchange deliveries, such as with less water in certain months and more water in other months. Because SDCWA is an annual net purchaser of water from Metropolitan, this was not seen as a problem at the time the Exchange Agreement was executed. However, after the recent drought, Governor Brown’s emergency executive order on conservation, and other factors that have changed water demand patterns, SDCWA now has challenges managing these base loaded deliveries to meet shifting demand patterns in certain times of the year. This past year, SDCWA requested delivery flexibility based on its needs and Metropolitan accommodated the request.

As part of the Offer to Compromise, Metropolitan is offering to provide future flexibility in its delivery of exchange water to SDCWA within a calendar year. The parties would renegotiate this provision in the Exchange Agreement to shape deliveries over the course of the calendar year to more efficiently meet SDCWA’s current demand patterns. This would effectively provide SDCWA access to Metropolitan’s storage, treatment and delivery capabilities.
to regulate its IID and canal lining supplies at no cost. Metropolitan would not be providing delivery flexibility beyond the calendar year. Metropolitan believes the new flexibility offered within a calendar year is of great benefit to SDCWA.

4. Attorneys’ Fees and Costs

Metropolitan’s Offer to Compromise includes each party bearing its own attorneys’ fees and costs. The Court of Appeal vacated the trial court’s attorneys’ fees and costs award, and ordered that court on remand to determine which party, if any, is the prevailing party. Metropolitan had by far the victory with the highest monetary value, when the Court of Appeal upheld the System Access Rate and System Power Rate and their inclusion in the Exchange Agreement price. Metropolitan believes the trial court on remand will find that it is the prevailing party and that SDCWA owes it in excess of $10 million in attorneys’ fees and costs.

SDCWA’s Claims

Metropolitan does not believe that SDCWA can prevail on its claims in the pending cases; and even if it could, it could not expect to exceed the value of Metropolitan’s Offer to Compromise.

SDCWA seeks approximately $30 million in restitution in the Rate Structure Integrity remand trial. Based on its recent court filing, SDCWA no longer seeks other previously-requested equitable relief with respect to certain projects.2

SDCWA challenges various aspects of Metropolitan’s rates and charges – such as contending that Metropolitan’s Water Stewardship Rate as part of the full service rate is invalid, and that other rates and charges do not follow cost of service – but the claims are without legal and factual basis, and in any event the amounts at issue are less than the value of Metropolitan’s offer. SDCWA has also asserted procedural challenges to Metropolitan’s practices that are both without merit and without monetary value.

SDCWA has asserted a claim for “offsetting benefits” pursuant to Water Code Section 1810, et. seq., under a theory that these statutes should be applied to the Exchange Agreement. The trial court found SDCWA’s offsetting benefits claim was waived in the 2010 and 2012 cases, and there are significant procedural, legal, and factual flaws in SDCWA’s assertion of the claim in the 2018 case. SDCWA has asserted the claim in an effort to reduce the Exchange Agreement price term by billions through 2112, but even if the claim had any merit – which it

2 Nonetheless, Metropolitan’s Offer to Compromise requires an express waiver of any claim for funding for projects allegedly affected by Metropolitan’s Rate Structure Integrity provision, including the Carlsbad desalination project.
does not – Metropolitan’s offer to change the price term provides a greater monetary benefit than the offsetting benefits SDCWA has sought.

**Effect of Offer to Compromise**

If SDCWA does not accept the Offer to Compromise, and does not obtain a better result in the litigation, certain cost shifting applies:

a. Even if SDCWA were the prevailing party, it could not recover post-offer statutory costs, and

b. It would be required to pay Metropolitan’s post-offer statutory costs.

These statutory costs include post-offer attorneys’ fees under the Exchange Agreement, which with trials and appeals could be expected to be in the millions.

We request that this letter and the enclosed set of Offers to Compromise and Monetized Benefits sheet be provided to your client – the full SDCWA Board of Directors – in accordance with California Rules of Professional Conduct, Rule 1.4.1. We look forward to SDCWA’s response.

Very truly yours,

Barry W. Lee

Enclosures
San Diego County Water Authority v. Metropolitan, et al.

MONETIZED BENEFITS OF METROPOLITAN’S OFFER TO COMPROMISE

Present Value in 2019 dollars
in millions


2. Exchange Agreement Fixed Price Term (2019-2112)

   If IID Transfer Terminates in 2047
   a. $3/AF discount from $453 to $450 $ 43.031
   b. 1.3% annual assumed discount in escalation 4,392.449
   c. Assumed future 75% WSR on transportation 1,087.665
   Total Exchange Agreement Fixed Price Term $ 5,523.145

   If IID Transfer Terminates in 2077
   a. $3/AF discount from $453 to $450 $ 63.465
   b. 1.3% annual assumed discount in escalation 6,761.143
   c. Assumed future 75% WSR on transportation 1,639.313
   Total Exchange Agreement Fixed Price Term $ 8,463.921

Total monetary value of Metropolitan Offer to Compromise either $5.595 billion or $8.536 billion, not including avoidance of significant future State Water Project, Colorado River Aqueduct, and distribution system costs that would no longer be due as part of the Exchange Agreement price, and not including the value of Exchange Agreement delivery flexibility.
Discussion Summary of Demand Management Cost Allocation

At its November 2019, the Finance and Insurance (F&I) Committee received two presentations related to demand management cost allocation. In its overview of the topic, staff said MWD’s current recovery of demand management costs through the volumetric Water Stewardship Rate (WSR) is based on a 25-year capital planning period that matches the time horizon covered in the 1996 Integrated Water Resources Plan (IRP) that has supply and demand projections through 2020.\(^1\) Staff noted that “the Court of Appeals held that the administrative record for 2011 through 2014 did not support” allocating 100 percent of demand management costs to the WSR. However, staff declared that MWD’s “administrative record for 2015 forward provided additional support,” and noted that “those rates have been challenged but have not yet been litigated.”\(^2\) Staff also noted that the suspension of WSR on the Water Authority’s exchange water is set to end in 2021, absent further Board action.

After F&I Committee Chair Dake (Los Angeles) confirmed that no action would be taken at this meeting, Director Ortega (Fullerton) asked staff to explain how the subsidies MWD offers through its conservation programs and Local Resources Program (LRP) improve reliability for areas that do not have physical connections to MWD. Using the city of Pico Rivera as an example, he said that the city is getting ready to take groundwater wells out of operation because of Per- and polyfluoroalkyl substances (PFAS) contamination, and asked in “practical terms,” how its customers benefit from MWD’s LRP and conservation expenditures. General Manager Kightlinger replied that everyone in MWD’s service area can take advantage of its conservation programs, and the “concept” is that by lowering demands, conservation increases the amount of water in storage that will be available during droughts and emergencies.

Turning to a slide listing MWD’s fiscal years 2019 and 2020 demand management budgets, Director Paskett (Los Angeles) asked staff about MWD’s actual spending. Kightlinger replied that conservation spending is “considerably lower” than budget, while LRP spending is “pretty much consistent” with budget.\(^3\) Staff added that conservation spending has been about half of its budget. Paskett responded that when discussing rates and cost recovery, staff should provide “accurate information” and asked staff to “be better prepared next time.”

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\(^1\) Since 1996, MWD has updated its IRP three times; the Board approved 2004, 2010, and 2015 updates.

\(^2\) In fact, there is no administrative record based on the 1996 IRP (or anything else) that is now “expiring” or creating some kind of risk for MWD. MWD has not had an administrative record to support its WSR since the Court of Appeal ruled against MWD stating, “water conservation is of undeniable importance. However, the narrow question here is whether substantial evidence supports Metropolitan’s determination that the water stewardship rate used to fund conservation programs is recoverable as fair compensation for use of the conveyance system. The answer is no.”

\(^3\) Fiscal year 2019 conservation program costs were about $26.4 million (or 61 percent) under their $43 million budget while LRP costs were $13.2 million (or 30 percent) under their budget of $44.1 million, see slide 14 of MWD’s Quarterly Financial Review presentation dated August 19, 2019 found here: [http://www.mwdh2o.com/WhoWeAre/Board/Board-Meeting/Board%20Archives/2019/08-Aug/Presentations/08192019%20FI%207b%20Presentation.pdf](http://www.mwdh2o.com/WhoWeAre/Board/Board-Meeting/Board%20Archives/2019/08-Aug/Presentations/08192019%20FI%207b%20Presentation.pdf)
Following staff’s presentation, MWD consultant Rick Giardina of Raftelis Financial Consultants Inc., presented the same demand management cost recovery options that he showed in September 2019:

1. Allocate demand management costs to MWD’s variable Tier 1 Supply and System Access rates (consistent with the “functionalization” recommended by MWD’s other consultant, Peter Mayer of Water Demand Management, and would recover about 75 percent of demand management costs on transportation);

2. Assign demand management costs to five of MWD’s existing variable and fixed rates and charges: Tier 1 Supply, System Access, and System Power rates and the Readiness-to-Serve and Capacity charges (consistent with the “functionalization” recommended by Mayer and would recover about 75 percent of MWD’s current budgeted demand management costs on transportation); or

3. Create a fixed charge to recover demand management costs either based on:
   a. Member agencies’ purchases or “transactions” (purchases and exchanges) (consistent with the “functionalization” recommended by Mayer and would recover about 75 percent of MWD’s current budgeted demand management costs on transportation), or
   b. Another “selected metric” like population, acreage, or assessed valuation (not based on Mayer’s recommendation).

Following Giardina’s presentation, Kightlinger commented staff has “teed this [item] up for a December decision” because it “needs to start preparing the cost of services studies in January” in order to set rates and charges in April 2020. He also summarized the information staff presented on the motivation behind the cost allocation discussion, including that MWD needs a “new methodology with a new basis” because “the facts have changed considerably” since the 1996 IRP. Additionally, Kightlinger said if MWD continues to suspend collecting the WSR on the Water Authority’s exchange water, “then the rates need to go up for everyone, everywhere else to cover that or we have a hole in the budget going forward.”

Paskett commented that Giardina leans towards relying on fixed rate options to recover demand management costs and requested that he provide “rationale for a volumetric rate” to “round out” his presentation. Giardina responded that a “volumetric approach” is “consistent with what has been done in the past,” which “doesn’t necessarily make it the best approach.” Giardina said demand management costs “are largely fixed,” which is “an argument for” some portion of these costs being recovered through a fixed charge. He stressed that “even more important is the notion of why we make these investments and who benefits,” maintaining that all member agencies benefit from demand management investments. Paskett opined that Giardina was continuing to “defend just fixed charges,” to which Giardina reiterated that a volumetric

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4 Giardina and other rate consultants MWD has retained over the years, including Peter Mayer, do not provide cost of service analysis to the Board, but rather, act as facilitators, or review and confirm staff’s cost of service reports.

5 For more information on prior discussions about demand management cost allocation, see the memo Metropolitan Water District Demand Management Cost Allocation Discussion starting on page 58 in the Water Authority’s September 2019 Board packet found here: https://sdcwa.org/meetings-and-documents

6 The Water Authority does not disagree that the facts have changed considerably, but this has been true for many years. The Water Authority has objected many times in many different contexts, including when providing comments on IRP updates, budget and rates, and statements made in Appendix A Official Statements, that MWD often relies on outdated information.
approach would be consistent with MWD’s current one but “that may be about where [its merits] stop.” Frustrated, Paskett commented that Giardina “appears” to be “non-responsive.”

Ortega noted that demands for MWD water and population growth “are not what we projected five years ago.” In the same vein as Paskett, Ortega said projects with LRP contracts are not producing at their maximum contractual levels and questioned how fixed charges would account for this variation. Ortega added that this cost recovery discussion relates to the 2020 IRP update and suggested MWD could “grandfather” its current methodology—the WSR—for “the next couple of years, or at least for another year” until the new IRP outlines the “true costs” that will need to be recovered. Kightlinger responded that continuing to use the WSR would mean “we are not collecting the full cost of service on demand management” but said staff can prepare information on that approach. For example, Kightlinger said MWD could temporarily continue recovering demand management costs through its WSR while suspending the collection of WSR on the Water Authority’s exchange water. Additionally, Kightlinger said “if there is a feeling that there’s an equity issue coming out of the litigation for some member agencies,” then the Board could suspend collecting the WSR altogether and use reserves, which he described as “pretty decent,”7 to fund fiscal years 2021 and 2022 demand management costs. When Chair Dake (Los Angeles) repeated Ortega’s question about the logic of variable demand management expenditures being recovered through fixed charges, Giardina said the demand management “costs do not vary with demand” and actual spending rarely equates to budget; however, when the difference between actuals and budget are “significant” then “we need to be concerned.”8 (Giardina did not define “significant.”) Ortega followed by asking what benchmark MWD uses for LRP production. Assistant General Manager/Chief Operating Officer Upadhyay replied that MWD’s budget is based on LRP contracts’ expected production rather than the maximum contractual yield.

Director Blois (Calleguas) asked if a “good rate structure” recovers fixed costs proportionately through fixed revenues. Giardina said “in general you would like that,” but that “it would not be appropriate to cover 100 percent of our fixed cost through fixed charges because we have other pricing objectives we are trying to accomplish.” Blois expressed support for considering a fixed charge to recover MWD’s demand management costs. In contrast, Smith echoed Ortega’s suggestion that MWD “delay” changing its methodology to allow for the 2020 IRP update to be completed, which will better inform the Board’s decision. Also, he stated that MWD demand

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7 At the start of fiscal year 2019, MWD had about $105 million in its Water Stewardship Fund—the balancing account to manage the difference between demand management costs and WSR collections. Fiscal year 2019’s demand management costs were about $48.5 million, more than $40 million under budget, meaning MWD’s WSR was set to collect about $40 million more in revenue than was actually needed to cover demand management expenditures. In comparison, MWD “forecasted” that not collecting the WSR on the Water Authority’s exchange water equated to about $16.5 million and $17.8 million in calendar years 2019 and 2020, respectively.

8 MWD’s demand management spending has historically varied significantly from budget. Since fiscal year 2009, annual demand management spending has ranged from about 46 percent under budget to about 336 percent over budget. These variations are due to several factors, including, but not limited to, LRP contracted projects producing less than anticipated, lower or higher participation in conservation programs, and Board authorizations to provide unbudgeted funding for conservation programs.
management spending is on supply projects, and therefore MWD should collect revenue for these costs “entirely” through supply charges.⁹

Paskett noted that though she recognizes a need to “correct the water stewardship issue,” staff proposing to “fundamentally” change how demand management costs are recovered through a fixed charge echoes back to previous discussions when the Board voted twice to not implement a fixed treated water charge.¹⁰ She added that many agencies’ costs are not “trending toward fixed” and that Los Angeles does not “see it as financially untenable to have 100 percent volumetric rates,” especially as MWD has a AAA bond rating. Paskett requested that staff provide a “more balanced presentation on the merits of rate structure.” She also argued that additional fixed charges serve as “a disincentive” for agencies to invest in local resources. Later, Director Lefevre (Torrance) agreed with Paskett that staff had provided “significantly more analysis” during the fixed treated water charge discussion. He concluded that the materials presented to the Board this month lack “enough detail to make a reasoned judgement.” He also echoed Ortega and Smith’s suggestion that MWD temporarily continue the WSR to allow time for further analysis, including the impacts of alternatives on each agency. Later, Director Ramos (Burbank) agreed with Lefevre that the Board needs more information to see “the whole picture.”

In response to the previous comments, Director McKenney (Municipal Water District of Orange County (MWDOC)) suggested that the Board should focus on MWD’s budget and rate setting rather than discussing actual costs. Related to MWD’s fixed treated water charge discussions, McKenney said the Board’s decision was not that it didn’t want fixed charges, but rather that it was unable to settle on how to change the way it recovers treatment costs. He agreed with Paskett that too many fixed charges can disincentivize local resource investments but suggested that the Board should discuss the “appropriate” amount of fixed charges. McKenney noted that the Board may have different “views” related to fixed charges since MWD member agencies are “diverse in terms of their capability to roll on and off of Met.” He concluded that the Board has an obligation to develop a rate structure that recovers MWD’s expected costs “in a rational way” even if “we don’t think we can get it perfect now.” McKenney said not addressing how MWD recovers its demand management costs and instead continuing with the current rate structure is not “justifiable and I doubt that the San Diego County Water Authority is going to agree not to sue based on that.”

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⁹ During the September 2019 committee meeting, not all Board members were provided time to ask questions following Giardina’s presentation on demand management cost allocation. Smith’s October 5, 2019 letter conveys his additional questions and concerns and is found here: https://mwdprograms.sdcwa.org/wp-content/uploads/2019-10-05-Del-Smith-to-MWD-BOD-re-DM.pdf. MWD’s response is found here: https://mwdprograms.sdcwa.org/wp-content/uploads/2019-10-17-MWD-response-re-Demand-Management.pdf.

¹⁰ MWD staff and Giardina proposed a fixed treatment charge in March 2016 for the 2017 and 2018 rates, but the Board ultimately chose to continue to recover all treatment costs through its volumetric Treatment Surcharge. Subsequently, MWD formed a member agency and MWD staff workgroup facilitated by Thomas Chesnutt of A&N Technical Services to develop a proposed fixed charge alternative. In April 2017, the Board again, voted to continue recovering its treatment costs solely through the volumetric Treatment Surcharge. Like its current demand management cost allocation process, during the fixed treated water charge process, Giardina and Chesnutt did not provide an independent cost of service analysis to the Board, but rather, acted either as a facilitator, or reviewed and confirmed staff’s cost of service reports. For more information see the memo Metropolitan Water District’s Treatment Fixed Charge Discussion starting on page 149 in the Water Authority’s April 2017 Board packet found here: https://sdcwa.org/meetings-and-documents.
Switching gears, Dake asked staff if a member agency that developed additional local resources would have higher “avoided Met costs” under the functionalized fixed charge option, noting that avoiding MWD costs is an important consideration in undertaking local projects. Giardina replied that the magnitude of avoided MWD costs for specific agencies would depend on the charge’s metric (in this case historic MWD purchases or deliveries, which includes transfers).

Director Dick (MWDOC) offered the option of having a “hybrid” approach that has both a fixed and variable component. He agreed that there was insufficient information to make a decision at this time and suggested one area of further analysis would be to understand if MWD’s reserve requirements are reduced by implementing additional fixed charges because it would not need to hold as much cash in its reserves as an “insurance policy.” He said agencies should pay a type of “access fee” to cover the “insurance” MWD offers. Related to previous comments, and specifically addressing Lefevre, Dick said the Board may have decided against a fixed charge in the past, but circumstances have changed.

Turning back to the functionalization of MWD’s costs, Smith pointed out that there are three storage functions for emergency, drought, and regulatory and asked if MWD had a storage charge or fund—a concept that had been discussed during the Board’s October 2019 retreat. Staff stated that the functions listed in the presentation are rolled primarily into the Supply and System Access rates, but there were also smaller portions for emergency and regulatory capacity service in the readiness-to-serve and capacity charges, respectively.

In response to Smith’s question about next steps, Kightlinger said that in December, staff will present several options for the “Board to act on” including the option of “punting” the decision for two years. Staff will incorporate the Board-adopted methodology into the upcoming budget and prepare cost of service studies. Chairwoman Gray (West Basin) encouraged staff to provide more information, especially to respond to suggestions by Paskett, Dick, and others to examine options related to volumetric charges, a hybrid between fixed and volumetric charges, and temporarily continuing collecting the WSR, respectively. Paskett reiterated Los Angeles’ preference that the item not be brought back in December. However, since it appeared staff is determined to return in December, Paskett requested that “at a minimum,” staff provide information on the impacts of the various options at the member agency level. Dake added that staff should also provide the impact of the options on MWD’s reserves, as Dick had suggested, and reiterated his request to understand the avoided MWD costs agencies would have if they implemented local projects under the different options.

Kightlinger said December’s decision will be on “methodology” and staff cannot provide an accurate breakdown of how different methodologies will impact each member agency. Staff added that the Board will decide “the methodology under which you will be collecting these rates and charges” and that the demand management funding level will be determined during the budget process, at which time rate impacts will become clearer. Kightlinger suggested staff could use historical information to get a sense of how the options would impact member agencies. He highlighted that demand management spending is about 5 percent of MWD’s budget, so changing MWD’s methodology to recover these costs is “not going to be a huge change in our rates.” Wrapping up the discussion, Ortega reiterated his belief that the 2020 IRP
update will better inform MWD’s demand management cost allocation discussions. Lastly, Director Smith expressed concern that staff would not have enough time to prepare the information needed to make a decision and requested by the Board; and he asked if the committee “could have consensus” now to defer the decision for two years. Dake replied that he was “not prepared to make that choice now,” concluding the discussion.
Discussion Summary of Ethics Office Recommendations

At its November 2019 meeting, the Audit and Ethics (A&E) Committee received an overview of recommended amendments to MWD’s Administrative Code related to the Ethics Office. First, Lance Olson of Olson Hagel & Fishburn LLP overviewed the recommendations that he previously presented in June 2019, prior to the hiring of Ethics Officer Salinas. Then, Salinas presented his recommendations, including some changes to Olson’s work, that incorporated committee feedback received over the past few months.

Based on discussions during the October 7 meeting, Salinas provided two options for the committee’s consideration on setting a gift limit for MWD employees: 1) require all employees to be subject to the gift limit; or 2) require only all employees that file a Form 700 be subject to the gift limit. Both options included language that employees must have knowledge of the gift limit and that the donor is a “restricted source,” which requires the Ethics Office to provide proper training to staff before issuing violations. Following Salinas’s presentation, A&E Committee Chair Ramos (Burbank) said that though she had previously opposed the idea of having the gift limit apply to all MWD employees, the addition of language requiring knowledge of the rule changed her mind. The Committee agreed and approved option 1 unanimously.

Salinas turned the discussion to addressing the concerns described in the Water Authority Delegates’ November 3 letter. Director Hogan thanked staff for responding to the Water Authority’s previous letters and discussed the three main concerns outlined in the letter:

1. Elimination of independent Ethics Office review of claims against Board members and executive management, including claims of sexual harassment and discrimination;
2. Creation of lobbying provisions related to board policy matters; and
3. Elimination of Senate Bill 60’s (SB 60) statutory, express mandate against misleading behavior.

Investigation of Sexual Harassment and Discrimination by Board members and Executive Management

Hogan outlined the Delegates’ concerns that allowing an ad hoc subcommittee of the A&E Committee (subcommittee) to investigate claims of sexual harassment and discrimination against directors and executive management opens the door for political influence and, instead, suggested these investigations would be better handled by the independent Ethics Office, which is the process MWD’s Administrative Code currently calls for. Director McKenney (Municipal Water District of Orange County) agreed, noting that subcommittee investigations should have the Ethics Office present.

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1 For more about the October 7 A&E meeting discussions, see the Metropolitan Water District Delegates’ Report starting on page 11 of the Water Authority’s October 2019 Supplemental Board packet found here: https://sdcwa.org/meetings-and-documents
2 Elected officials and public employees that make or influence decisions in government are required to submit a Form 700, or a Statement of Economic Interest.
3 The following A&E Committee members were present: A&E Chair Ramos (Burbank) and Directors Butkiewicz, Hogan, Kurtz (Pasadena), McKenney (Municipal Water District of Orange County), Quiñonez (Los Angeles), and Smith.
5 Signed into law in 1999, SB 60, among other things, requires MWD to have an Ethics Office; the complete bill found here: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=199920000SB60
Water District of Orange County) said he understood the desire to have an independent process but said the Board should not delegate Human Resources’ responsibilities to other groups like the Ethics Office. He surmised that because the subcommittee could hire an outside investigator, the process recommended by the Ethics Officer would be adequately independent. After Ramos prompted him, Olson added that the procedure he recommended is similar to the State Assembly’s process, and he feels strongly that the Ethics Office should not be responsible for investigating these types of claims. He noted the subject is not covered by SB 60 and believes Salinas’s suggestion to allow the subcommittee to consult with the Ethics Office during an investigation is a “fair compromise.” Director Quiñonez (Los Angeles) agreed these investigations should not be carried out by the Ethics Office but said they should be “robust” and noted that their contents would be subject to a California Public Records Act request.

Director Butkiewicz questioned why sexual harassment is not considered an ethics violation and therefore handled by the Ethics Office. Director Goldberg said even though sexual harassment is not mentioned in SB 60, given the current #MeToo movement, if the bill were written today, it would most likely include sexual harassment provisions as an ethics violation under the Ethics Office’s jurisdiction. She suggested that MWD should take leadership and include sexual harassment under the independent Ethics Office’s purview. She added that an outside investigator would be required regardless of whether a subcommittee or the Ethics Office oversees the investigation, but the question is who reviews the investigation and makes a recommendation. She surmised the independent Ethics Office would have “less risk” of political or personal influence during such a review and would create less “suspicion” about the outcome than a subcommittee comprised of “three friends” of the accused. Director Kurtz (Pasadena) opined that “the process is suspect” if the investigators are subordinates reviewing their supervisor, so the investigation should be completed by an external party that makes a recommendation to a subcommittee, leaving it out of staff’s hands completely. Directors Smith and Butkiewicz agreed with Goldberg that the most independent person to oversee the investigation would be the Ethics Officer, but Kurtz noted that if the Ethics Officer’s decision is made before his evaluation, “it puts him in an untenable situation to be criticized regardless of what he did.” Butkiewicz said MWD has an opportunity to “show some real leadership” by leveraging its Ethics Officer to handle sexual harassment claims. Quiñonez agreed MWD could show leadership and suggested the committee could decide later on where to house these investigations after getting input from the General Manager and General Counsel. McKenney said the Committee has received plenty of input and that the critical time for the Board to show leadership is when it responds to an allegation.

After subsequent questions, Assistant General Counsel Beatty mentioned that the A&E Committee could recommend that the subcommittee “could consult with the Ethics Officer and/or the General Counsel in managing the investigation.” Ramos supported this modification with the inclusion that the outside investigator share its recommendations with the subcommittee. General Counsel Scully explained that an investigative report would provide “findings” of what occurred and not recommendations on what to do about those findings. After receiving further clarification from Scully that investigative reports’ findings would conclude if a claim was “substantiated” or “unsubstantiated,” Kurtz indicated she was supportive of directing that outside investigators share their findings rather than provide “recommendations.” Smith moved to add the language about consultation with the Ethics Officer or General Counsel but to
delay approving if the Ethics Office or a subcommittee should oversee the outside investigation; Butkiewicz seconded Smith’s motion. McKenney made a substitute motion to approve the recommendation for a subcommittee to manage the outside investigation with the addition of the consultation language. Smith amended his motion to table approving the recommendations related to the process of investigating directors accused of sexual harassment, discrimination, or retaliation of the recommendations until a later date; the motion did not pass.

McKenney made a motion, which was seconded by Quiñonez, to approve that a subcommittee will manage investigations of directors and may consult with the General Counsel or Ethics Officer. Hogan asked whether the recommendation would apply to Board’s “direct reports”—the General Manager, General Counsel, General Auditor, and Ethics Officer. Beatty said allegations against direct reports are not ethics violations under SB 60 and have “always” been handled by Human Resources. She added that they had been misplaced under the Ethics Office section in MWD’s Administrative Code, and under the proposed recommendations, these investigations would be moved to the Personnel section. Ramos asked about the process for the Board being notified of allegations that a direct report committed sexual harassment, discrimination, and/or retaliation. Beatty said that process is not spelled out in the proposed changes, but what is proposed would continue the “status quo” of how it has been managed, which is that as the direct reports’ supervisors, the Board would receive a report of Human Resources’ findings related to allegations. Smith pointed out this could involve a subordinate in Human Resources investigating their supervisor; Kurtz agreed but said this issue could be looked at “in the future.” Scully said, “the only direct report that supervises [Human Resources] is the General Manager.” Ramos suggested the General Manager to go through the same process as Board members. McKenney amended his motion, which was seconded by Quinonez, to include that the General Manager would be investigated by an ad hoc subcommittee of the Board. The motion passed unanimously.

Lobbying Provisions
In response to concerns from the Water Authority Delegates, Olson stated that his recommendation did not intend to classify employees or those retained by government agencies as lobbyists. Smith moved, and Hogan seconded, to add language to clarify those exemptions to the proposed amendment to the Administrative Code; the motion passed unanimously.

Misleading Behavior
Olson said SB 60 includes language prohibiting associations that are likely to mislead the public and this language is restated in MWD’s Administrative Code currently. Olson said this inclusion was unclear and recommended removing the language and adding rules requiring public disclosure of any MWD funds or in-kind contributions made to all associations. He stated that staff was not attempting to “undermine what the [legislature’s] intent was” but rather were trying to find a “practical way of explaining” how to implement this portion of the SB 60. Olson added that “your General Counsel has views about the breadth of this prohibition, that it might possibly be unconstitutional because it seems to prohibit associations from getting together.”

Hogan expressed support for staff’s recommendation to add disclosure rules to increases transparency and proposed keeping the bill’s language related to associations in MWD’s Administrative Code given that misleading associations was a driver for SB 60’s creation and
passage. Olson said he was not supportive of keeping the bill’s wording in the Administrative Code but offered that if the Committee wanted to keep it, then it should also add language to indicate that this section refers to activities undertaken by MWD employees. After Salinas said he was “fine” with this suggestion, Hogan moved, and Smith seconded, to add language to clarify that a prohibition on participating misleading associations applies to MWD employees. McKenney stated his understanding that this change would prohibit MWD employees from participating in “an association that would be likely to mislead people about Metropolitan,” but said it raised First Amendment concerns. McKenney suggested keeping the statutory language but making changes to clarify that MWD has disclosure rules to prevent misleading associations and exclude any reference to MWD employees. Scully raised concern that including the language related to employees is “differentiating between Metropolitan as an entity and the rights of Metropolitan employees to join associations that don’t have anything to do with Metropolitan.” McKenney responded that he was attempting to alleviate that issue and Hogan said he was interested in having staff take another look at this section. Ramos directed staff to further “refine” this recommendation given the committee’s input and bring this specific portion back to the committee after further consideration but asked the committee to approve all the other recommendations including the separate provisions voted on earlier in the meeting. Quiñonez made Ramos’ requested motion, which was seconded by McKenney.

Turning to the Delegates’ last concern, Smith requested removing language from staff’s proposal that would allow misuse of power or authority by MWD officials should it be “naturally arising from proper performance of their governmental duties.” Olson said the purpose of this exception was “to make it clear that if you’re just doing your job even though that may result in a disadvantage to somebody else that that’s not a violation of this rule,” and without this proposed language this portion of the Administrative Code would be subject to “interpretation.” Hogan said the proposed language seemed “ambiguous” and asked if it was “standard” and whether there is a better way to state it. Olson replied that it was not standard language, but it was an improvement on the Administrative Code’s existing language. Mindful that she was going to lose a quorum, Ramos said the motion is to approve staff’s recommendation with the additional modifications made by the committee during this meeting, and that this portion related to misuse of power and authority by MWD officials, along with the language regarding misleading associations, would be reexamined by staff and brought back to the committee for review. (Beatty confirmed Ramos’ explanation). The motion was approved. Lastly, Chairwoman Gray (West Basin) thanked the committee, staff, and Olson for all the “outstanding work” and said she was impressed with the committee’s “level of conversation.”

**Next Steps**

Staff will reexamine specific sections of MWD’s Administrative Code related to the misuse of position or authority by MWD officials and restrictions on misleading associations; and staff will return to the A&E Committee with proposals for the committee’s consideration. The A&E Committee’s recommended changes to the Administrative Code will be communicated to MWD’s bargaining units. Following that communication, final recommendations will be brought to the Board for consideration.
Adjourned Finance and Insurance Committee

Meeting with Board of Directors*

November 4, 2019

9:30 a.m. -- Room 2-456

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1. **Opportunity for members of the public to address the committee on matters within the committee’s jurisdiction** (As required by Gov. Code Section 54954.3(a))

2. **Approval of the Minutes of the meeting of the Finance and Insurance Committee held October 7, 2019**

3. **CONSENT CALENDAR ITEMS — ACTION**

   None

4. **OTHER BOARD ITEMS — ACTION**

   8-1 Approve closing the Water Desalination Trust Fund and transfer balance to unrestricted reserves; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA.
5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

a. Presentation on Demand Management Cost Allocation
b. Year End Financial Report
c. Quarterly Financial Report

7. MANAGEMENT REPORT

a. Chief Financial Officer’s report

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

NOTE: This committee reviews items and makes a recommendation for final action to the full Board of Directors. Final action will be taken by the Board of Directors. Agendas for the meeting of the Board of Directors may be obtained from the Board Executive Secretary. This committee will not take any final action that is binding on the Board, even when a quorum of the Board is present.

Writings relating to open session agenda items distributed to Directors less than 72 hours prior to a regular meeting are available for public inspection at Metropolitan's Headquarters Building and on Metropolitan's Web site http://www.mwdh2o.com.

Requests for a disability related modification or accommodation, including auxiliary aids or services, in order to attend or participate in a meeting should be made to the Board Executive Secretary in advance of the meeting to ensure availability of the requested service or accommodation.
Adjourned Engineering and Operations Committee

Meeting with Board of Directors*

November 4, 2019

11:00 a.m. – Room 2-145

* The Metropolitan Water District’s Engineering and Operations Committee meeting is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Engineering and Operations Committee may attend and participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to the Engineering and Operations Committee will not vote on matters before the Engineering and Operations Committee.

1. Opportunity for members of the public to address the committee on matters within the committee’s jurisdiction (As required by Gov. Code Section 54954.3(a))

2. Approval of the Minutes of the meeting of the Engineering and Operations Committee held October 7, 2019

3. CONSENT CALENDAR ITEMS — ACTION

7-1 Authorize design activities to reline a portion of the Lake Perris Bypass Pipeline; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA
7-2 Award $476,000 equipment procurement contract to Royal Industrial Solutions for upgrade of the ozone control system at the Robert A. Skinner Water Treatment Plant, and authorize an agreement with Suez Treatment Solutions, Inc., in an amount not to exceed $320,000 for specialized technical support during the upgrade; the General Manager has determined that the proposed actions are exempt or otherwise not subject to CEQA

7-3 Authorize refurbishment of the sleeve valves at the Hiram W. Wadsworth Pumping Plant; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

4. OTHER BOARD ITEMS — ACTION

None

5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

a. Update on Climate Action Plan
b. Update on seismic upgrade of Casa Loma Siphon No. 1
c. Update on Emerging Water Quality Issues: Microplastics

7. MANAGEMENT REPORTS

a. Interim Water System Operations Manager’s report
b. Engineering Services Manager’s report
8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

NOTE: This committee reviews items and makes a recommendation for final action to the full Board of Directors. Final action will be taken by the Board of Directors. Agendas for the meeting of the Board of Directors may be obtained from the Board Executive Secretary. This committee will not take any final action that is binding on the Board, even when a quorum of the Board is present.

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Requests for a disability related modification or accommodation, including auxiliary aids or services, in order to attend or participate in a meeting should be made to the Board Executive Secretary in advance of the meeting to ensure availability of the requested service or accommodation.
Adjourned Organization, Personnel and Technology Committee

Meeting with Board of Directors*

November 4, 2019

12:30 p.m. -- Room 2-456

---

1. Opportunity for members of the public to address the committee on matters within the committee’s jurisdiction (As required by Gov. Code Section 54954.3(a))

2. Approval of the Minutes of the meeting of the Organization, Personnel and Technology Committee held October 7, 2019

3. CONSENT CALENDAR ITEMS – ACTION

   None

4. OTHER BOARD ITEMS – ACTION

   None

---

* The Metropolitan Water District’s meeting of the Organization, Personnel and Technology Committee is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Organization, Personnel and Technology Committee may participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to the Organization, Personnel and Technology Committee will not vote on matters before the meeting of the Organization, Personnel and Technology Committee.
5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

a. Business Outreach Annual Report for fiscal year 2018/19

b. Quarterly Cybersecurity Update

[Conference with Metropolitan Cybersecurity Unit Manager of Information Technology, Jacob Margolis, or designated agents on threats to public services or facilities; to be heard in closed session pursuant to Gov. Code Section 54957(a)]

7. MANAGEMENT REPORT

a. Human Resources Manager’s report

b. Information Technology Manager’s report

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

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Adjourned Water Planning and Stewardship Committee

Meeting with Board of Directors*

November 4, 2019

1:30 p.m. – Room 2-145

1. Opportunity for members of the public to address the committee on matters within the committee’s jurisdiction (As required by Gov. Code Section 54954.3(a))

   a. Presentation by Paul Souza, Regional Director of U.S. Fish and Wildlife Service: “Delta Biological Opinions”

2. Approval of the Minutes of the Water Planning and Stewardship Committee held October 7, 2019

3. CONSENT CALENDAR ITEMS — ACTION

   7-6 Adopt resolution to support Metropolitan's $750,000 WaterSMART: Water Reclamation and Reuse Research grant application and authorize General Manager to accept funding and enter into contract if awarded; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA
4. **OTHER BOARD ITEMS — ACTION**

8-3 Authorize $7.5 million for a Stormwater for Recharge Pilot Program for developing and monitoring of stormwater for recharge projects; the General Manager has determined that this action is exempt or otherwise not subject to CEQA.

8-4 Review and consider the City of Oceanside’s approved Final Mitigated Negative Declaration and Addendum and Olivenhain Municipal Water District's certified Final Program Environmental Impact Report, and take related CEQA actions; authorize the General Manager to enter into a Local Resources Program Agreement with the City of Oceanside and San Diego County Water Authority for the Oceanside Pure Water and Recycled Water Expansion Phase I Project.

5. **BOARD INFORMATION ITEMS**

None

6. **COMMITTEE ITEMS**

None

7. **MANAGEMENT REPORTS**

a. Bay-Delta Matters

b. Colorado River Matters

c. Water Resource Management Manager's report

8. **FOLLOW-UP ITEMS**

None
9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

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Adjourned Communications and Legislation Committee

Meeting with Board of Directors*

November 4, 2019

3:00 p.m. -- Room 2-456

* The Metropolitan Water District’s Communications and Legislation Committee meeting is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Communications and Legislation Committee may attend and participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to the Communications and Legislation Committee will not vote on matters before the Communications and Legislation Committee.

1. **Opportunity for members of the public to address the committee on matters within the committee's jurisdiction** (As required by Gov. Code Section 54954.3(a))

2. **Approval of the Minutes of the meeting of the Communications and Legislation Committee held October 7, 2019**

3. **CONSENT CALENDAR ITEMS — ACTION**

   None
4. OTHER BOARD ITEMS — ACTION

Revised subject 8-2

Authorize the General Manager to co-sponsor legislation to create a program at the California Environmental Protection Agency to identify and evaluate drinking water quality constituents of emerging concern statewide program to identify and evaluate drinking water quality constituents of emerging concern; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA.

5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

a. End of Year Legislative Recap
b. Report on activities from Sacramento
c. Report on activities from Washington, D.C.

7. MANAGEMENT REPORT

a. External Affairs Management report

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS
10. ADJOURNMENT

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Adjourned Audit and Ethics Committee

Meeting with Board of Directors*

November 4, 2019

4:00 p.m. – Room 2-145

1. **Opportunity for members of the public to address the committee on matters within the committee's jurisdiction** (As required by Gov. Code Section 54954.3(a))

2. **Approval of the Minutes of the meeting of the Audit and Ethics Committee held October 7, 2019**

3. **MANAGEMENT REPORTS**
   
   a. Ethics Officer’s report
   
   b. General Auditor’s report

4. **COMMITTEE ITEMS**
   
   a. Discussion of Independent Auditor’s Report from KPMG, LLP for fiscal year 2018/19
5. **CONSENT CALENDAR ITEMS – ACTION**

None

6. **OTHER BOARD ITEMS – ACTION**

A. Recommend that the Board, after applicable staff communication with the bargaining units, approve proposed ethics-related amendments to the Administrative Code; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

7. **BOARD INFORMATION ITEMS**

None

8. **FOLLOW-UP ITEMS**

None

9. **FUTURE AGENDA ITEMS**

10. **ADJOURNMENT**

**NOTE:**

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Adjourned Legal and Claims Committee

Meeting with Board of Directors*

November 5, 2019

9:00 a.m. -- Room 2-145

* The Metropolitan Water District’s Legal and Claims Committee meeting is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Legal and Claims Committee may participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to the Legal and Claims Committee will not vote on matters before the Legal and Claims Committee.

1. Opportunity for members of the public to address the committee on matters within the committee’s jurisdiction (As required by Gov. Code Section 54954.3(a))

2. Approval of the Minutes of the Legal and Claims Committee meeting held October 8, 2019

3. MANAGEMENT REPORT
   a. General Counsel’s report of monthly activities

4. CONSENT CALENDAR ITEMS — ACTION
   None

5. OTHER BOARD ITEMS — ACTION
   None
6. **BOARD INFORMATION ITEMS**

   None

7. **COMMITTEE ITEMS**

   a. Review Settlement Proposal received from SDCWA and Report on San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466, CPF-14-514004, CPF-16-515282, CPF-16-515391, CGC-17-563350, and CPF-18-516389; the appeal of the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case Nos. A146901 and A148266 and California Supreme Court Case No. S243500; the petition for extraordinary writ in the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case No. A155310; and the petition for extraordinary writ in the second 2016 action, Court of Appeal for the First Appellate District Case No. A154325 and California Supreme Court Case No. S251025

   [Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)]

8. **FOLLOW-UP ITEMS**

   None

9. **FUTURE AGENDA ITEMS**

10. **ADJOURNMENT**

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Conservation and Local Resources Committee

Meeting with Board of Directors*

November 5, 2019

10:00 a.m. – Room 2-456

* The Metropolitan Water District’s Conservation and Local Resources Committee meeting is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Conservation and Local Resources Committee may attend and participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to the Conservation and Local Resources Committee will not vote on matters before the Conservation and Local Resources Committee.

1. Opportunity for members of the public to address the committee on matters within the committee’s jurisdiction (As required by Gov. Code Section 54954.3(a))

2. Approval of the Minutes of the meeting of the Conservation and Local Resources Committee held October 8, 2019

3. CHAIR’S REPORT

4. COMMITTEE ITEMS
   a. Review of Residential Conservation Programs
   b. Conservation Update
5. FOLLOW-UP ITEMS

None

6. FUTURE AGENDA ITEMS

7. ADJOURNMENT

NOTE: This committee reviews items and makes a recommendation for final action to the full Board of Directors. Final action will be taken by the Board of Directors. Agendas for the meeting of the Board of Directors may be obtained from the Board Executive Secretary. This committee will not take any final action that is binding on the Board, even when a quorum of the Board is present.

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Adjourned Real Property and Asset Management Committee
Meeting with Board of Directors*

November 5, 2019
11:00 a.m. -- Room 2-145

* The Metropolitan Water District’s Real Property and Asset Management Committee meeting is noticed as a joint meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Real Property and Asset Management Committee may attend and participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to the Real Property and Asset Management Committee will not vote on matters before the Real Property and Asset Management Committee.

1. Opportunity for members of the public to address the committee on matters within the committee’s jurisdiction (As required by Gov. Code Section 54954.3(a))

2. Approval of the Minutes of the meeting of the Real Property and Asset Management Committee held September 10, 2019

3. CONSENT CALENDAR ITEMS — ACTION

Revised subject 7-4 Authorize entering into the granting of a ten-year license with T-Mobile West, LLC, for an existing telecommunications services site on Metropolitan’s fee-owned property in the city of Anaheim; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

7-5 Adopt CEQA determination that the proposed action was previously addressed in the certified 2016 Program Environmental Impact Report and authorize the General Manager to acquire a temporary easement over a portion of the property at 475 S. State College Blvd in Brea (Assessor’s Parcel No. 284-181-50) for the Orange County Right-of-Way Infrastructure Protection Program
4. OTHER BOARD ITEMS – ACTION

   None

5. BOARD INFORMATION ITEMS

   None

6. COMMITTEE ITEMS

   a. None

7. MANAGEMENT REPORT

   a. Interim Real Property Manager's Report

8. FOLLOW-UP ITEMS

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

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Adjourned Board Meeting
November 5, 2019
12:00 p.m. – Boardroom

1. Call to Order
   (a) Invocation: Ron Dominguez, Sr IT Infrastructure Administrator, Information Technology Group
   (b) Pledge of Allegiance: Director Gloria Cordero

2. Roll Call

3. Determination of a Quorum

4. Opportunity for members of the public to address the Board on matters within the Board’s jurisdiction. (As required by Government Code Section 54954.3(a))
   a. Phillip A. Washington, CEO, Los Angeles Metro

5. OTHER MATTERS
   A. Approval of the Minutes of the Meeting for October 8, 2019 (A copy has been mailed to each Director) Any additions, corrections, or omissions
   B. Report on Directors’ events attended at Metropolitan expense for month of October 2019
   C. Approve committee assignments
   D. Chairwoman's Monthly Activity Report
6. DEPARTMENT HEADS' REPORTS

A. General Manager's summary of activities for the month of October 2019

B. General Counsel's summary of activities for the month of October 2019

C. General Auditor's summary of activities for the month of October 2019

D. Ethics Officer's summary of activities for the month of October 2019

7. CONSENT CALENDAR ITEMS — ACTION

7-1 Authorize design activities to reline a portion of the Lake Perris Bypass Pipeline; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA. (E&O)

7-2 Award $476,000 equipment procurement contract to Royal Industrial Solutions for upgrade of the ozone control system at the Robert A. Skinner Water Treatment Plant, and authorize an agreement with Suez Treatment Solutions, Inc., in an amount not to exceed $320,000 for specialized technical support during the upgrade; the General Manager has determined that the proposed actions are exempt or otherwise not subject to CEQA. (E&O)

7-3 Authorize refurbishment of the sleeve valves at the Hiram W. Wadsworth Pumping Plant; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA. (E&O)

Revised subject 7-4 Authorize entering into the granting of a ten-year license with T-Mobile West, LLC, for an existing telecommunications services site on Metropolitan’s fee-owned property in the city of Anaheim; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA. (RP&AM)
7-5 Adopt CEQA determination that the proposed action was previously addressed in the certified 2016 Program Environmental Impact Report and authorize the General Manager to acquire a temporary easement over a portion of the property at 475 S. State College Blvd in Brea (Assessor's Parcel No. 284-181-50) for the Orange County Right-of-Way Infrastructure Protection Program. (RP&AM)

7-6 Adopt resolution to support Metropolitan's $750,000 WaterSMART: Water Reclamation and Reuse Research grant application and authorize General Manager to accept funding and enter into contract if awarded; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA. (WP&S)

END OF CONSENT CALENDAR

8. OTHER BOARD ITEMS — ACTION

8-1 Approve closing the Water Desalination Trust Fund and transfer balance to unrestricted reserves; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA. (F&I)

8-2 Authorize the General Manager to co-sponsor legislation to create a program at the California Environmental Protection Agency to identify and evaluate drinking water quality constituents of emerging concern; statewide program to identify and evaluate drinking water quality constituents of emerging concern; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA. (C&L)

8-3 Authorize $7.5 million for a Stormwater for Recharge Pilot Program for developing and monitoring of stormwater for recharge projects; the General Manager has determined that this action is exempt or otherwise not subject to CEQA. (WP&S)
8-4  Review and consider the City of Oceanside’s approved Final Mitigated Negative Declaration and Addendum and Olivenhain Municipal Water District’s certified Final Program Environmental Impact Report, and take related CEQA actions; authorize the General Manager to enter into a Local Resources Program Agreement with the City of Oceanside and San Diego County Water Authority for the Oceanside Pure Water and Recycled Water Expansion Phase I Project. (WP&S)

9.  BOARD INFORMATION ITEMS

9-1  Update on Conservation Program

10. FOLLOW-UP ITEMS

11. FUTURE AGENDA ITEMS

12. ADJOURNMENT

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Special Board Meeting
November 12, 2019
12:00 p.m. – Boardroom

1. Call to Order

2. Roll Call

3. Determination of a Quorum

4. Opportunity for members of the public to address the Board on the subject matter of this special Board meeting. (As required by Government Code Section 54954.3(a))

5. OTHER MATTERS

   A. Approve committee assignments
6. OTHER BOARD ITEMS – ACTION

A. Report on and authorize Offer to Compromise in San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466, CPF-14-514004, CPF-16-515282, CPF-16-515391, CGC-17-563350, and CPF-18-516389; the appeal of the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case Nos. A146901 and A148266 and California Supreme Court Case No. S243500; the petition for extraordinary writ in the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case No. A155310; and the petition for extraordinary writ in the second 2016 action, Court of Appeal for the First Appellate District Case No. A154325 and California Supreme Court Case No. S251025; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA.

[Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)]

7. ADJOURNMENT

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November 20, 2019

Attention: Imported Water Committee

Colorado River Board Representative’s report. (Discussion)

Purpose
The Colorado River Board (CRB) Representative’s report summarizes monthly activities of the Colorado River Board of California.

Discussion
This report covers activities from the November 13, 2019 CRB meeting in Ontario, California. The meeting included the following program and status reports:

Colorado River Basin Water Report
Water supply and storage conditions as of the November 12 Bureau of Reclamation (Reclamation) Weekly Water Supply Report are shown in Table 1.

<table>
<thead>
<tr>
<th>Table 1. Colorado River Reservoir Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conditions as of November 12*</td>
</tr>
<tr>
<td>-------------------------------</td>
</tr>
<tr>
<td>Lake Powell</td>
</tr>
<tr>
<td>Lake Mead</td>
</tr>
<tr>
<td>Total System Storage</td>
</tr>
<tr>
<td>Water Year 2020 Precipitation**</td>
</tr>
</tbody>
</table>

*Conditions shown are updated from those discussed at the CRB meeting.
**Precipitation values may vary significantly from week-to-week early in the water year which began October 1.

Agency Technical Staff Meeting
CRB and member agency technical staff including representatives from the Water Authority met on November 7 to initiate discussions regarding Reclamation’s upcoming required evaluation of the effectiveness of the 2007 Interim Guidelines. The group discussed the proposed timeline for completion of Reclamation’s effectiveness review and initial thoughts regarding preparation for the development of the next set of operating guidelines for the Colorado River. CRB staff proposed the establishment of ad hoc work groups to support the next steps in the process.

Salinity Control Program
The Salinity Control Program Work Group, Forum, and Advisory Council meetings were held on October 22 through October 25. The main topics of discussion at these meetings were the draft 2020 Triennial Review Salinity Control Report, the Paradox Valley Unit project status and project replacement status, the federal accomplishments report, and Salinity Control Program funding recommendations.
Glen Canyon Dam Adaptive Management Program
The Technical Work Group of the Glen Canyon Dam Adaptive Management Program met on October 21 and 22 and received an update on the recently completed National Park Service Expanded Non-Native Aquatic Species Management Plan, which includes tools and strategies to prevent or control the expansion of harmful nonnative aquatic species. The plan was prompted by the recent, dramatic expansion of the nonnative brown trout population below Glen Canyon Dam. The National Park Service will be implementing several of the measures in the plan including incentivized angler harvest to target the trout population.

Proposed Total Maximum Daily Load Listing for Colorado River
On September 27, the Colorado River Basin Regional Water Quality Control Board (Regional Board) released draft proposed listing recommendations for several new total maximum daily load (TMDL) listings for the California section of the Colorado River including total dissolved solids (TDS), specific conductivity, manganese, and sodium. The proposed listings for TDS and specific conductivity were of concern because the Salinity Control Program already addresses these constituents across the entire Colorado River Basin. CRB staff provided testimony at the Regional Board’s October 10 public workshop describing the Salinity Control Program’s purpose and activities as well as additional comments and information used by the Salinity Control Program to ensure compliance with existing standards. The provided information resulted in the removal of the proposed listing for TDS, specific conductivity, and sodium for the Colorado River. Proposed listings are still being considered for manganese and turbidity for certain stretches of the river. A public hearing on the proposed listings is set for November 14.

Prepared by: Kara Mathews, Principal Water Resources Specialist
Reviewed by: Mark Watton, CRB Representative (Alternate)
November 20, 2019

Attention: Water Planning and Environmental Committee

Water Resources Report

Purpose
This report includes the following exhibits for October 2019:

- Rainfall totals and temperature data
- Deliveries to Member Agencies (Exhibit A)
- Water Use by Member Agencies (Exhibit B)
- Potable M&I Water Use (Exhibit C)
- Storage Available to Member Agencies (Exhibit D)
- Firm Water Deliveries to Member Agencies (Exhibit E)
- Summary of Water Authority Member Agency Operations (Exhibit F)

<table>
<thead>
<tr>
<th>RAINFALL TOTALS (inches)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Station</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>Station</strong></td>
</tr>
<tr>
<td>Lindbergh Field (N.O.A.A.)</td>
</tr>
<tr>
<td>Ramona Airport (N.O.A.A.)</td>
</tr>
<tr>
<td>Lake Henshaw (Vista I.D.)</td>
</tr>
</tbody>
</table>

*Accumulated through October 2019.

Sources: National Weather Service, Vista Irrigation District.

<table>
<thead>
<tr>
<th>AVERAGE DAILY MAXIMUM TEMPERATURE (°F)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Station</strong></td>
</tr>
<tr>
<td>Lindbergh Field (N.O.A.A.)</td>
</tr>
</tbody>
</table>

Since January 2014, 64 of last 70 months were hotter than normal at Lindbergh Field.
## MONTHLY WATER RESOURCES REPORT
### Water Deliveries to Member Agencies
(acre-feet)

#### OCTOBER 2019

<table>
<thead>
<tr>
<th>Member Agency</th>
<th>October 2019</th>
<th>October 2018</th>
<th>12 Months Ended October 2019</th>
<th>12 Months Ended October 2018</th>
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</thead>
<tbody>
<tr>
<td>Carlsbad M.W.D.</td>
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<td>960.8</td>
<td>11,800.4</td>
<td>14,921.3</td>
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<td>Del Mar, City of</td>
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<td>80.0</td>
<td>970.4</td>
<td>1,100.0</td>
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<td>1,893.3</td>
<td>6,139.1</td>
<td>13,351.5</td>
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<tr>
<td>Fallbrook P.U.D.</td>
<td>785.6</td>
<td>724.9</td>
<td>7,534.5</td>
<td>9,959.2</td>
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<tr>
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**Deliveries To SDCWA Agencies** 3

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**TOTAL MEMBER AGENCY DELIVERIES**

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1 Carlsbad M.W.D. and Vallecitos W.D. deliveries exclude local desal.
2 Escondido and Vista I.D. deliveries exclude SLR water transfers.
3 Member agency deliveries include puts into Water Authority storage accounts. For October 2019, storage account deliveries totaled 247 AF and 456 AF to San Vicente Reservoir and Lower Otay Reservoir, respectively, through city of San Diego connections. October 2018 storage account deliveries totaled 180 AF and 63 AF to San Vicente Reservoir and Lower Otay Reservoir, respectively, through city of San Diego connections. October 2018 storage sales to the city of San Diego totaled 2,381 AF from San Vicente Reservoir.
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<td><strong>245%</strong></td>
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<td><strong>-7%</strong></td>
<td><strong>-1%</strong></td>
<td><strong>-1%</strong></td>
<td><strong>303%</strong></td>
<td><strong>6%</strong></td>
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1. SLR water transfers were added as local supply sources beginning in December 2017, for Escondido and Vista I.D. only; Valley Center began in September 2019.
2. De Luz figures included in Fallbrook P.U.D. totals.
3. Brackish groundwater figures included in Groundwater figures.
4. Pendleton M.C.B. Imported Use includes South Coast Water District deliveries.
5. Poway's recycled use is reported quarterly.
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**PERCENT CHANGE**

-9% \ -17%

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1. SWRCB emergency regulation went into effect June 2015.
2. The 2013 baseline is utilized to be consistent with the May 2015 SWRCB emergency drought regulation, which was partially rescinded on April 26, 2017. The conservation regulation expired completely on November 25, 2017. Agencies have continued to report to SWRCB beyond November.
3. Excludes recycled water use and Transitional Special Agricultural Water Rate program deliveries. TSAWR deliveries are estimated for months where agencies have not reported.
4. Baseline includes January-December 2013 four times, and June-October 2013 once, in order to establish a base period of 53 months.
5. Sweetwater Authority is comprised of member agencies city of National City and South Bay Irrigation District.
### Exhibit D

**Monthly Water Resources Report**

**Reservoir Storage**

**(acre-feet)**

**October 2019**

<table>
<thead>
<tr>
<th>Member Agency</th>
<th>Reservoir</th>
<th>Capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carlsbad M.W.D.</td>
<td>Maerkle</td>
<td>600</td>
</tr>
<tr>
<td>Escondido, City of</td>
<td>Dixon</td>
<td>2,606</td>
</tr>
<tr>
<td>Subtotals</td>
<td></td>
<td>5,389</td>
</tr>
<tr>
<td>Fallbrook P.U.D.</td>
<td>Red Mountain</td>
<td>1,335</td>
</tr>
<tr>
<td>Helix W.D.</td>
<td>Cuyamaca</td>
<td>8,195</td>
</tr>
<tr>
<td>Jennings</td>
<td></td>
<td>9,790</td>
</tr>
<tr>
<td>Subtotals</td>
<td></td>
<td>17,985</td>
</tr>
<tr>
<td>Poway, City of</td>
<td></td>
<td>3,432</td>
</tr>
<tr>
<td>Rainbow M.W.D.</td>
<td>Morro Hill</td>
<td>465</td>
</tr>
<tr>
<td>Ramona M.W.D.</td>
<td>Ramona</td>
<td>12,000</td>
</tr>
<tr>
<td>San Diego, City of</td>
<td>Barrett</td>
<td>34,806</td>
</tr>
<tr>
<td>El Capitan</td>
<td>112,807</td>
<td></td>
</tr>
<tr>
<td>Hodges</td>
<td>4,652</td>
<td></td>
</tr>
<tr>
<td>Lower Otay</td>
<td>47,067</td>
<td></td>
</tr>
<tr>
<td>Miramar</td>
<td>6,682</td>
<td></td>
</tr>
<tr>
<td>Morena</td>
<td>50,694</td>
<td></td>
</tr>
<tr>
<td>Murray</td>
<td>4,684</td>
<td></td>
</tr>
<tr>
<td>San Vicente</td>
<td>91,695</td>
<td></td>
</tr>
<tr>
<td>Sutherland</td>
<td>29,508</td>
<td></td>
</tr>
<tr>
<td>Subtotals</td>
<td></td>
<td>382,595</td>
</tr>
<tr>
<td>San Dieguito WD / Santa Fe ID</td>
<td>San Dieguito</td>
<td>883</td>
</tr>
<tr>
<td>Sweetwater Authority</td>
<td>Loveland</td>
<td>25,400</td>
</tr>
<tr>
<td>Subtotals</td>
<td></td>
<td>53,479</td>
</tr>
<tr>
<td>Valley Center M.W.D.</td>
<td>Turner</td>
<td>1,612</td>
</tr>
<tr>
<td>Vista I.D.</td>
<td>Henshaw</td>
<td>51,774</td>
</tr>
<tr>
<td><strong>MEMBER AGENCY TOTAL</strong></td>
<td><strong>WATER IN STORAGE</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>531,549</strong></td>
<td><strong>226,453</strong></td>
</tr>
</tbody>
</table>

| Water Authority             | 3,6                      |
| Water Authority Storage Accounts |          |
| Olivenhain                  | 24,774                  |
| San Vicente - Comprised of: | 157,663                 |
| Emergency                   | 19,283                  |
| Carryover                   | 128,387                 |
| Operating                   | 26,819                  |
| Hodges                      | 84,128                  |
| Subtotals                   | 191,186                 |
| Lower Otay                  | 4,473                   |
| Sweetwater (Temporary)      | 0                       |
| Subtotals                   | 4,473                   |

| **TOTAL WATER IN STORAGE**  | **722,735**             |

| **OTHER AGENCIES**          |                         |
| Metropolitan Water District | Skinner                 | 44,264   |
| State Water Project         | Oroville                | 3,537,577|
| **TOTAL OTHER WATER IN STORAGE** | 4,391,841             |

1 Excludes storage allocated to Escondido Mutual Water Co. or its rights to a portion of the unallocated water in Lake Henshaw.

2 Revised capacity volume accounts for lowered reservoir level at Lake Wohlford due to DWR Division of Safety of Dams safety issues.

3 Revised capacity volume accounts for lowered reservoir level at Lake Hodges due to DWR Division of Safety of Dams safety issues and are in accordance with the 1998 Emergency Storage Project Agreement for the Joint Use of Lake Hodges Dam and Reservoir.

4 Includes city’s supply and storage obligations to California American Mutual (Cal-Am) Water Company and San Dieguito WD/Santa Fe ID.

5 Includes allocated and unallocated water in Lake Henshaw.

6 Water Authority carryover, emergency and operating pools in San Vicente Reservoir were established in June 2015. City of San Diego presently states total capacity in San Vicente at with the Water Authority portion being 157,663 AF and the remaining capacity, 91,695 AF, allocable to the city.

7 No defined capacities for storage accounts in El Capitan, Lower Otay and Sweetwater Authority reservoirs.
## Monthly Water Resources Report

### Tier 1 Estimated Deliveries to Member Agencies

**Figures in acre-feet**

#### Calendar Year 2019 (10 Months: January - October 2019)

<table>
<thead>
<tr>
<th>Member Agency</th>
<th>CY2019 Tier 1 Threshold</th>
<th>CYTD Firm Deliveries</th>
<th>% of Tier 1 Threshold (Pre-QSA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carlsbad M.W.D.</td>
<td>12,376.0</td>
<td>7,920.2</td>
<td>64.0%</td>
</tr>
<tr>
<td>Del Mar, City of</td>
<td>935.0</td>
<td>844.4</td>
<td>90.3%</td>
</tr>
<tr>
<td>Escondido, City of ⁵</td>
<td>17,859.0</td>
<td>3,489.8</td>
<td>19.5%</td>
</tr>
<tr>
<td>Fallbrook P.U.D. ⁴</td>
<td>10,325.0</td>
<td>6,183.2</td>
<td>59.9%</td>
</tr>
<tr>
<td>Helix W.D.</td>
<td>25,519.0</td>
<td>17,755.6</td>
<td>69.6%</td>
</tr>
<tr>
<td>Lakeside M.W.D.</td>
<td>3,168.0</td>
<td>2,299.1</td>
<td>72.6%</td>
</tr>
<tr>
<td>Oceanside, City of</td>
<td>19,383.0</td>
<td>16,817.6</td>
<td>86.8%</td>
</tr>
<tr>
<td>Olivenhain M.W.D.</td>
<td>13,071.0</td>
<td>14,405.0</td>
<td>110.2%</td>
</tr>
<tr>
<td>Otay W.D.</td>
<td>21,390.0</td>
<td>22,982.0</td>
<td>107.4%</td>
</tr>
<tr>
<td>Padre Dam M.W.D.</td>
<td>9,939.0</td>
<td>7,821.4</td>
<td>78.7%</td>
</tr>
<tr>
<td>Pendleton M.C.B. / South Coast W.D.</td>
<td>758.0</td>
<td>180.8</td>
<td>23.9%</td>
</tr>
<tr>
<td>Poway, City of</td>
<td>9,348.0</td>
<td>7,169.7</td>
<td>76.7%</td>
</tr>
<tr>
<td>Rainbow M.W.D.</td>
<td>19,018.0</td>
<td>12,337.0</td>
<td>64.9%</td>
</tr>
<tr>
<td>Ramona M.W.D.</td>
<td>8,052.0</td>
<td>3,518.2</td>
<td>43.7%</td>
</tr>
<tr>
<td>Rincon Del Diablo M.W.D.</td>
<td>5,482.0</td>
<td>3,984.4</td>
<td>72.7%</td>
</tr>
<tr>
<td>San Diego, City of</td>
<td>144,555.0</td>
<td>117,939.5</td>
<td>81.6%</td>
</tr>
<tr>
<td>San Dieguito W.D.</td>
<td>3,116.0</td>
<td>2,522.1</td>
<td>80.9%</td>
</tr>
<tr>
<td>Santa Fe I.D.</td>
<td>5,226.0</td>
<td>4,709.7</td>
<td>90.1%</td>
</tr>
<tr>
<td>Sweetwater Authority ⁵</td>
<td>9,650.0</td>
<td>814.4</td>
<td>8.4%</td>
</tr>
<tr>
<td>Vallecitos W.D.</td>
<td>10,557.0</td>
<td>6,079.1</td>
<td>57.6%</td>
</tr>
<tr>
<td>Valley Center M.W.D.</td>
<td>29,774.0</td>
<td>14,580.7</td>
<td>49.0%</td>
</tr>
<tr>
<td>Vista I.D. ³</td>
<td>11,876.0</td>
<td>879.3</td>
<td>7.4%</td>
</tr>
<tr>
<td>Yuima M.W.D.</td>
<td>2,165.0</td>
<td>4,040.3</td>
<td>186.6%</td>
</tr>
</tbody>
</table>

**MEMBER AGENCY TOTALS**

|                                | 393,542.0              | 279,273.5            | 71.0%                         |

Less: QSA deliveries-calendar year 2019

|                                | (194,338.0)            |                     |                               |

Deliveries to CWA storage-calendar year 2019 ⁶

|                                | 29,964.9               |                     |                               |

MWD Under-10% Flows-calendar year 2019

|                                | 72.7                   |                     |                               |

Deliveries from CWA storage-calendar year 2019 ⁷

|                                | (4,769.6)              |                     |                               |

Water Authority WPA desalination deliveries-calendar year 2019

|                                | (33,355.6)             |                     |                               |

**Estimated Tier 1 deliveries calendar year to date ⁸**

|                                | 76,847.9               |                     | 19.5%                         |

**Invoiced Tier 1 deliveries calendar year to date ⁹**

|                                | 76,016.4               |                     | 19.3%                         |

---

1. Tier 1 threshold is 60% of a member agency's historic maximum year firm demand.
2. Carlsbad M.W.D. and Vallecitos W.D. deliveries exclude local desalination supply transported via Water Authority system.
3. Escondido, Valley Center M.W.D. and Vista I.D. deliveries exclude SLR water transfers.
5. Sweetwater Authority is comprised of member agencies city of National City and South Bay Irrigation District.
6. Includes storage puts to San Vicente Reservoir, forced deliveries or deliveries to Olivenhain Reservoir directly off Water Authority's aqueduct.
7. Includes sales from Water Authority storage accounts, including Olivenhain Reservoir.
8. Estimated Tier 1 deliveries are based on member agency deliveries net of QSA deliveries, seawater desalination and storage puts/takes.
9. Invoiced deliveries are as reported on Metropolitan's invoice. Difference between Estimated and Invoiced Deliveries is explained by storage puts or takes of pre-deliveries in Twin Oaks Valley Water Treatment Plant (TOVWTP) or member agency treatment plants.

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MONTHLY WATER RESOURCES REPORT
Summary of Water Authority Member Agency Operations
OCTOBER 2019

Member Agency Deliveries (AF)

<table>
<thead>
<tr>
<th>Month</th>
<th>2018</th>
<th>2019</th>
<th>Trailing 12 Months 2018</th>
<th>Trailing 12 Months 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 2018</td>
<td>39,021</td>
<td>39,714</td>
<td>342,995</td>
<td>428,095</td>
</tr>
</tbody>
</table>

Member Agency Water Use

- **Imported & Desal (83%)**
- **Surface (3%)**
- **Well & Brackish Recovery (4%)**
- **Recycled, SLR water transfers & Local Desal (10%)**

OCTOBER 2019

- Local
- Surface (11%)
- Well & Brackish Recovery (5%)
- Recycled, SLR water transfers & Local Desal (10%)

Previous 12 Months

Member Agency Storage (AF)

<table>
<thead>
<tr>
<th>Month</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 2018</td>
<td>226,453</td>
<td>195,866</td>
</tr>
<tr>
<td>Trailing 12-Month Average</td>
<td>235,680</td>
<td>209,659</td>
</tr>
</tbody>
</table>

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FY20 Appropriations Update

Congress has made very little progress on finalizing the Fiscal Year (FY) 2020 appropriations bills and has yet to pass any of these bills. The federal government is currently being funded by a Continuing Resolution (CR) that runs until Friday, November 22\(^{nd}\). Senate Appropriations Committee Chair Richard Shelby (R-AL) and House Appropriations Committee Chair Nita Lowey (D-NY) announced this past week that they have reached an agreement on another CR that will run until Friday, December 20\(^{th}\). Both the House and the Senate are expected to pass the CR this week and send to the President prior to November 22\(^{nd}\), avoiding a government shutdown.

Shelby and Lowey have indicated that they believe they are very close to reaching a deal on the top-line funding levels for the FY20 appropriations bills. Once a deal is reached, House and Senate Appropriators and their staff will begin to work quickly to finalize the 12 bills, with the goal of passing them all prior to the expiration of the CR on December 20\(^{th}\).

Reclamation and EPA Sign MOU on Water Supply/Water Reuse Projects

The Bureau of Reclamation (Reclamation) and the Environmental Protection Agency (EPA) recently signed a memorandum of understanding (MOU) regarding increased collaboration between the two agencies regarding water supply and water reuse projects. The MOU discusses how the two agencies will work to align funding through EPA's Water Infrastructure Finance and Innovation Act (WIFIA) program and Reclamation’s WaterSMART program.

PFAS Update

This week, the House Energy and Commerce Committee is expected to mark up several bills relating to per- and polyfluoroalkyl substances (PFAS). PFAS chemicals were once used in nonstick kitchenware, as well as firefighting foam, and have now been linked to various health
Energy and Commerce Committee Chair Frank Pallone (D-NJ) has yet to announce which bills the Committee will consider. In late September, the Energy and Commerce Committee Environment and Climate Change Subcommittee passed several PFAS-related bills. Subcommittee Chair Paul Tonko (D-NY) indicated that since the National Defense Authorization Act (NDAA) is currently stalling due to the conversations regarding PFAS, the Committee wanted to try and get some legislative movement on this issue. Members of the House and the Senate are working together to conference the NDAA bill, which both the House and the Senate versions contain different language regarding PFAS.
MEMORANDUM

DATE:    November 20, 2019

TO:       Board of Directors

FROM:     Sandy Kerl, Acting General Manager

SUBJECT:  Activity Report

The following is a list of the key meetings with community groups, stakeholders, and others since the October Board meeting.

October
San Diego Regional EDC Future of Growth Forum
Fiscal Sustainability Task Force

November
Fiscal Sustainability Task Force
The Centre Public Certified Public Manager Academy Graduation
Presented at Farm Bureau Exposition on California Water Outlook
Legislative Roundtable with Congressmember Mike Levin
Edward L. Bernays Mark of Excellence Awards Ceremony
Member Agency Managers’ Meeting
Colorado River Work Group
San Diego Regional EDC Meeting
Rincon & San Luis Rey Indian Water Authority
Hans and Margert Doe Charitable Trust Grant Applicant Interviews
San Diego Central Black Chamber Annual Gala
Assembly Member Shirley Weber’s Office
Assembly Member Todd Gloria
Senator Pro Tempore Toni Atkins
State and Federal Legislative Planning Session
If any Board Member has questions or suggestions of community, business, or philanthropic groups where the Water Authority should have a presence, please contact me.