Case No. S243500

IN THE SUPREME COURT OF CALIFORNIA

SAN DIEGO COUNTY WATER AUTHORITY,
Plaintiff and Appellant,

v.

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA. ET AL.,
Defendants and Appellants.

After a Decision by the Court of Appeal,
First Appellate District, Division Three,
Case Nos. A146901, A148266

The Superior Court of the City and County of San Francisco,
Case Nos. CFP-10-510830, CFP-12-512466

REPLY IN SUPPORT OF PETITION FOR REVIEW

HOGAN LOVELLS US LLP
NEAL KUMAR KATYAL
(pro hac vice pending)
COLLEEN ROH SINZDAK
(pro hac vice pending)
EUGENE A. SOKOLOFF
(pro hac vice pending)
MITCHELL P. REICH
(pro hac vice pending)
555 Thirteenth Street NW
Washington, DC 20004
Telephone: (202) 637-5600
Facsimile: (202) 637-5910
neal.katyal@hoganlovells.com
colleen.sinzdak@hoganlovells.com
eugene.sokoloff@hoganlovells.com
mitchell.reich@hoganlovells.com

KEKER, VAN NEST & PETERS LLP
JOHN W. KEKER
(Bar No. 49092)
DANIEL PURCELL
(Bar No. 191424)
DAN JACKSON
(Bar No. 216091)
WARREN A. BRAUNIG
(Bar No. 243884)
633 Battery Street
San Francisco, CA 94111
Telephone: (415) 391-5400
Facsimile: (415) 397-7188
jkeker@keker.com
dpurcell@keker.com
djackson@keker.com
wbraunig@keker.com

SAN DIEGO COUNTY WATER AUTHORITY
MARK J. HATTAM
(Bar No. 173667)
General Counsel
4677 Overland Avenue
San Diego, CA 92123
Telephone: (858) 522-6791
Facsimile: (858) 522-6566
mhattam@sdcwa.org

Counsel for Plaintiff and Appellant
SAN DIEGO COUNTY WATER AUTHORITY

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

Other Authorities

INTRODUCTION

The Court of Appeal held that Metropolitan may charge wheeling customers a rate that includes costs Metropolitan incurs to obtain a supply of water. That holding violates the Wheeling Statutes—vitally important provisions this Court has yet to construe—Proposition 26, and a host of other laws that protect California's water conservation efforts, and ensure that government entities charge reasonable rates for the services they provide. It also breaks with decisions of other courts of appeal and sets a dangerous precedent that warrants this Court's review.

Metropolitan tries to wave off the Petition with forty pages of "nothing to see here." But the Court of Appeal's decision in this multibillion dollar case will have repercussions for every dispute involving wheeling rates or government rate-setting. Metropolitan refused to set its rates according to longstanding cost-causation principles most recently expressed in Proposition 26. And it violated the Wheeling Statutes' mandate to facilitate and encourage wheeling. By upholding Metropolitan's system access and power rates, the Court of Appeal contradicted decades of California law and policy. Worse yet, it did so at a time when the Legislature has directed regions that rely on the vulnerable Sacramento-San Joaquin Bay Delta to redouble efforts to find *regional* solutions to their water needs—efforts that will be directly undermined by the decision below.

Metropolitan's attempt to defend the Court of Appeal's decision on the merits is equally unavailing. Nothing in the record could justify charging Metropolitan's transportation-only customers what *Metropolitan itself* called "costs attributable to Metropolitan's supply" of water. (9-AR-2010-2449, at § 7.)

Metropolitan points to the Court of Appeal's "finding" that the *State*-owned and *State*-operated facilities the *State* uses to deliver Metropolitan's supply of State Water Project water are integrated with Metropolitan's conveyance system. Even if that were true, it could not justify Metropolitan's rates. The Wheeling Statutes entitle the "*owner* of [a] conveyance system" to charge wheeling customers "fair compensation" limited to the costs the *owner* incurs because of wheelers' "use of th[at] conveyance system," (Wat. Code § 1811, subd. (c), emphasis added)—a requirement the court ignored. (See [Pet. 25-27].) Metropolitan's limited right to ask the State to wheel non-Project water—which exists only thanks to what the State calls a "contract for a water supply from the State Water Project," (18-AA-05029)—cannot change the dispositive fact that Metropolitan neither owns nor operates the State's facilities.

The Court of Appeal's analysis under Proposition 26 was just as flawed. The plain text of that provision requires an agency to prove that its charges for a service are proportional to the payor's "burdens on, or benefits received from" the agency's activities. (Cal. Const., art. XIIIC, § 1, subd. (e), final par.) Yet the Court of Appeal broke with appellate precedent to hold that Metropolitan had met its burden, even though Metropolitan admitted—and does not dispute here—that it never attempted to determine what benefits, if any, transportation-only customers obtain from Metropolitan's contract with the State.

Metropolitan refuses to engage with these issues. Instead, its brief attempts to sow enough confusion to avoid scrutiny of the Court of Appeal's decision and its obvious implications. That effort should not succeed. The decision below sets a dangerous precedent that calls for this Court's urgent intervention.

ARGUMENT

I. THE COURT OF APPEAL'S DECISION HAS FAR-REACHING CONSEQUENCES.

A. The Decision Below Contravenes California Water Policy.

The Legislature has repeatedly expressed a preference for water transfers as a means of addressing local and regional water needs. (See [Pet. 20-21].) Yet the decision below gives cover to protectionist wheeling rates like Metropolitan's, which are designed specifically to *discourage* transfers. (See [9-AR-2010-2449, at § 7 (explaining Metropolitan's intention to shift supply costs to wheelers to "protect" full-service customers)].) With an ecological crisis looming in the Bay Delta, that precedent could not come at a worse time.

Metropolitan's response is a smokescreen. Metropolitan spends pages (at 37-39) rehashing an alternative history of the Exchange Agreement that the courts below rejected. (See [Opn. 33; Aug. 28, 2015 Statement of Dec. at 18-24].) These counter-factual [1] contentions are simply an effort to distract from the dangerous precedent this case sets for virtually every potential wheeling transaction in Southern California.

Under the Exchange Agreement, Metropolitan promised to charge a rate set "*pursuant to applicable law and regulation and generally applicable*" to wheeling transactions. (Opn. 10, emphasis added.) Both of

[1] Notably, Metropolitan claims (at 38) that the supply costs the Water Authority pays to obtain Imperial water are "quadruple" Metropolitan's water supply rate. But Metropolitan conceals the true cost of its water supplies by unlawfully shifting part of those costs to its *transportation* rate, effectively cross-subsidizing its full-service customers. And while it points to alleged benefits the Water Authority received under the Agreement, Metropolitan is contractually bound to charge *lawful* transportation rates, whatever it may think of the Water Authority's bargained-for benefits.

the lower courts recognized that this provision obligates Metropolitan to charge rates in compliance with the Wheeling Statutes, Proposition 26, and other applicable laws. (See [*id.* at 32-33].) The Court of Appeal thus set a precedent that will govern *every* dispute that involves those laws.

Without this Court's review, that precedent will encourage inflated, protectionist transportation rates that will undercut the State's water policies. Contrary to Metropolitan's incredible suggestion (at 40) that making "water transfers and exchanges more costly" is somehow consistent with state policy, it has long been the "established policy of this state to facilitate the voluntary transfer of water" and "water conservation measures which will make additional water available for transfer." (Wat. Code § 109, subds. (a) and (b)).

Nor should this Court ignore the decision's serious implications for the Bay Delta because they supposedly were not fleshed out below. The fate of the Bay Delta has driven water policy since the enactment of the Wheeling Statutes. (See [5-RA-1216].) The Legislature has now made "reduc[ing] reliance on the Delta" a central priority and directed "[e]ach region that depends on water from the Delta watershed" to "improve its regional self-reliance for water through . . . local and regional water supply projects." (Wat. Code § 85021.) The Water Authority repeatedly raised these points below. (See, e.g., [Respondent's Br. 30 (quoting 1-RA-123); 40-AR-2010-11338; 4-AA-1093].) In any event, the *effect* of the decision below is not limited by the contents of the record, and that effect—which is to subvert California policy—is what necessitates this Court's review.

B. The Decision Below Undermines California Voters' Efforts To Improve Government Accountability.

Metropolitan's efforts to downplay the decision's effect on government cost-control and accountability are similarly unpersuasive. California voters have spent the last four decades reining in the costs of government services. (See [*Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 258-260].) The decision below directly undercuts those efforts by endorsing rates that ignore the constitutional requirements of cost-causation and proportionality. (See [Pet. 21-23].) Without this Court's intervention, government agencies will look to the reasoning below to justify allocating costs without regard to customers' actual benefits from or burdens on their operations, despite their constitutional obligations. (See [Cal. Const., art. XIII C, § 1, subd. (e)].)

Metropolitan responds by arguing (at 41) that *it* has not been wasteful. Even if that were so, it is irrelevant. This case merits review because its consequences will sweep far beyond the dispute here. It is not true, as Metropolitan contends (*ibid.*), that the same policy arguments could be raised in "any" rate-setting case. Not every decision in a rate challenge erodes constitutional rate-setting standards—this is the rare one that does. It gives future rate-setters a blueprint for evading constitutional limits by rebranding costs incurred to provide one service to *appear as though* they are incurred to provide an entirely different service. This Court's review is needed to ensure that government agencies respect the reasonable rules voters have set.

C. The Decision Below Cannot Be Squared With *Newhall*, *Morro Bay*, or *Palmdale*.

Unsurprisingly, the Court of Appeal's failure to heed core elements of California law put it at odds with prior appellate decisions. In attempting to disguise this split, Metropolitan ignores the legal propositions that those cases stand for.

Start with *Newhall County Water District v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430. The court in that case held that Proposition 26 requires an agency's rates to "be proportional to the benefits the rate payor receives from (or the burden it places on) the Agency's activity." (*Id.* at 1442.) That squarely refutes Metropolitan's assertion (at 30 n.7) that Proposition 26 does not require an agency to tailor charges to the cost of providing a service to a particular payor. It is also fatal to Metropolitan's transportation rates. As Metropolitan observes (at 34), the agency in *Newhall* failed the proportionality test outright because it based its rates in part on demand for groundwater the agency did not provide. But the core defect in Metropolitan's rates is the same: Metropolitan charges its wheeling customers the cost of obtaining a supply of water those customers never asked for.[2] The result in either case is unconstitutional rates that do not "bear a fair or reasonable relationship" to the actual cost of providing the relevant services. (*Newhall*, *supra*, 243 Cal.App.4th at 1441, quoting [Cal. Const., art. XIII C, § 1, subd. (e)].)

The decision below is likewise incompatible with *San Luis Coastal Unified School District v. Morro Bay* (2000) 81 Cal.App.4th 1044. That

[2] Metropolitan asserts (at 15) that it provides a "blend" of water to the Water Authority that includes Project water. The Superior Court found that this blend is "gratuitous," (Pet. Ex. C at 53), and the Court of Appeal did not revisit that conclusion.

decision held that a desire to shield an agency's full-service customers from higher rates cannot justify burdening a wheeler's right to use a water conveyance system. (See [*id.* at 1050; Wat. Code § 1810, subd. (d)].) Yet that is precisely what happened here. The Wheeling Statutes require an agency to support any determination with "written findings." (Wat. Code § 1813.) Metropolitan's findings expressly stated that it was saddling wheelers with "costs attributable to Metropolitan's supply" of water "in order to protect Metropolitan's [other] member agencies from financial injury." (9-AR-2010-2449, at § 7.)

Metropolitan contends (at 36) that this admission was somehow beyond the scope of the lower courts' review. But the Wheeling Statutes provide that "[i]n any judicial action challenging any determination made under this article the court shall consider *all relevant evidence*, and the court shall give due consideration to the purposes and policies of this article." (Wat. Code § 1813, emphasis added.) Metropolitan's findings demonstrate that it designed its transportation rates to discourage wheeling in favor of full-service customers—exactly what the *Morro Bay* court (and the Wheeling Statutes) said it may not do.

Metropolitan's attempt to distinguish *City of Palmdale v. Palmdale Water District* (2011), 198 Cal.App.4th 926, falls similarly flat. In *Palmdale*, the court recognized that it is an agency's constitutionally imposed burden to justify its charges. (See [*id.* at 937].) The *Palmdale* court accordingly performed a searching review of the record and concluded that the agency in that case violated Proposition 26's precursor provision when it chose rates designed to ensure "rate stability" instead of rates based on cost of service. (*Id.* at 938; see [*id.* at 928-930].) That is just what Metropolitan did here.

Unlike the *Palmdale* court, however, the Court of Appeal did not hold Metropolitan to its burden. Instead, the court applied the *same* analysis to the Water Authority's Proposition 26 challenge that it used in its discussion of the Wheeling Statutes, effectively shifting the burden to the Water Authority. In doing so, the Court of Appeal ignored a sea of evidence demonstrating that Metropolitan's transportation-only rates include charges unrelated to the cost of transportation services—including credible expert testimony to that effect and Metropolitan's own admission that its wheeling rate included "costs attributable to Metropolitan's *supply*" of water in order to prevent rate increases for full-service customers. (9-AR-2010-2449, at § 7, emphasis added; see also, e.g. [39-AR2010-11207-10, 57-AR2012-16161-64].)

In short, had the *Palmdale* court—or the *Newhall* court, or the *Morro Bay* court—considered this case, the outcome would have been different. The Court of Appeal's break from these precedents offers yet another reason for this Court's review.

II. METROPOLITAN CANNOT REHABILITATE THE COURT OF APPEAL'S DEEPLY FLAWED ANALYSIS.

A. The Court Of Appeal Misapplied The Wheeling Statutes And Proposition 26.

The Court of Appeal adopted the Superior Court's holding that the Exchange Agreement required Metropolitan to charge no more than a lawful wheeling rate. (See [Opn. 32-33].) And both courts squarely rejected Metropolitan's attempts to interject its revisionist history of the agreement into what should be a straightforward question as to whether Metropolitan's transportation rates comply with the laws and constitutional provisions governing those rates. (*Ante*, p. 6.) But the Court of Appeal

seriously misconstrued the applicable laws, including the Wheeling Statutes and Proposition 26.

Correctly understood, both of those laws require Metropolitan (and other government agencies) to charge wheelers no more than the costs Metropolitan incurs when it allows wheelers to transport water over the Metropolitan-owned system. But, under the Court of Appeal's reading—and under the reading Metropolitan presses in this Court—the owner of a conveyance system may incorporate in its wheeling rates any cost that can be characterized as "transportation-related," whether or not that cost is actually incurred as a result of wheelers using the system, or even incurred by the system's owner.

That holding runs counter to basic cost-causation and proportionality principles, and simple common sense. It is tantamount—as Metropolitan apparently acknowledges (at 29)—to saying that a florist's cost to deliver local wildflowers includes expenses she incurs to import exotic lilies because both costs are transportation-related.[3] This fundamental legal error, and the cascade of additional errors that flow from it, cannot be allowed to stand.

1. Metropolitan's Rates Violate The Wheeling Statutes.

As the Petition explained, Metropolitan's rates violate the Wheeling Statutes because they include costs Metropolitan pays to the State in order to obtain a supply of Project water that is transmitted to Metropolitan over

[3] Metropolitan's discussion of the lily analogy (at 29) suggests that making extensive investments to provide one service justifies recovering the cost of those investments from customers who purchase a *different* service. But Metropolitan cannot say why that should be so and, more importantly, Proposition 26 prohibits such cost-spreading.

the State-owned California Aqueduct. Metropolitan makes much (at 26-27) of the Court of Appeal's summary conclusion that "[t]he California Aqueduct unquestionably is an integral part of the system by which Metropolitan transports water to its member agencies." (Opn. 22-23.) But that statement—which is contrary to the trial court's analysis and findings (see [Pet. Ex. C at 53-55])—cannot justify Metropolitan's transportation rates or the Court of Appeal's decision.

The Wheeling Statutes confine wheeling rates to the "reasonable charges incurred by the *owner* of the conveyance system . . . for the use of the conveyance system." (Wat. Code § 1811, subd. (c), emphasis added.) Metropolitan is not the "owner" of the California Aqueduct or any of the State Water Project's facilities. (See [*Metro. Water Dist. v. Marquardt* (1963) 59 Cal.2d 159, 201-202].) And Metropolitan admits it does not operate those facilities. (See [9-AA-2331].) Metropolitan's claims of system "integrat[ion]" cannot overcome the plain textual bar on charging for costs associated with the use of a conveyance system that Metropolitan does not own.

The Court of Appeal appears to have concluded that, despite the plain text of the Wheeling Statutes, actual ownership is irrelevant because, under its "contract for a water supply from the State Water Project," (18-AA-05029), the State charges Metropolitan a rate meant to recover the costs of maintaining the State-owned system that delivers Metropolitan's supply of Project water to Metropolitan's distribution system. (See [Pet. at 26].) But neither the Court of Appeal nor Metropolitan can explain how

that justifies treating *State*-owned facilities as though they were owned by Metropolitan. (See [Pet. 26-27].)[4]

Metropolitan gestures (at 27-28 & n.6) toward the court's discussion of record evidence that allegedly supports allocating the State's costs to Metropolitan. (See [Opn. 24-27].) But that evidence consists primarily of Metropolitan's paid experts asserting that the State's costs qualify as transportation costs because they are "transmission-related." The question under the Wheeling Statutes is not whether the charges are in some sense "related" to transmission. The question is whether they are charges "occasioned, caused, or brought about by the [wheelers'] use of [*Metropolitan's*] conveyance system." (See *Metro. Water Dist. v. Imperial Irrigation Dist.* (2000), 80 Cal.App.4th 1403, 1431, internal quotation marks omitted.)

The answer to that question in this case is plainly no. Metropolitan has long understood its contract with the State to be "a contract for a *water supply* from the State Water Project," just as its invoices from the Department of Water Resources say. (18-AA-05029, emphasis added; see [9-AR-2010-2449, at § 7].) The "transmission-related" charges the court pointed to are designed to recover the *State's* costs of transporting that supply of Project water to Metropolitan, a quintessential *supply* cost for Metropolitan. (See, e.g., [62-AR-2012_16288_1743-46, 1757].) Metropolitan protests that the State has wheeled non-Project water for

[4] Moreover, while Metropolitan asserts (at 9) that the "State pays none of" the Water Project's costs, that is inaccurate. As *Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900, explains, the Project contract rates are "set so as to *return*" project costs "to the state." (*Id.* at 905, emphasis added.) In other words, the State recovers its expenditures through the prices it charges, just as Metropolitan—or any business—does.

Metropolitan. (See [Pet. 12-13]). But that rarely-used incidental benefit, for which Metropolitan must separately pay the State, does not convert a charge that Metropolitan incurs to obtain a *supply* of water into a "transportation cost" that may be charged on every acre-foot of water wheeled over Metropolitan's own conveyance system.

Metropolitan also invokes the so-called "postage-stamp" principle (at 17, 26, 41) to justify including the State's "transportation charges" in Metropolitan's transportation rates. But that principle does not suspend the Wheeling Statutes' cost-causation rule. (See [Pet. 8].) On the contrary, the decision Metropolitan relies on held only that the Wheeling Statutes do not *preclude* recovering certain system-wide costs from wheelers. (See [*Imperial Irrigation Dist.*, *supra*, 80 Cal.App.4th at 1427-28].) The *Imperial Irrigation* court remanded to permit the trial court to determine whether the particular system-wide costs at issue in that case were "occasioned, caused, or brought about by the [wheelers'] use of the conveyance system." (*Id.* at 1431, internal quotation marks omitted; *id.* at 1433.)

The Court of Appeal cited *Imperial Irrigation*, (Opn. 22), but ignored its teaching. Having declared that the State's facilities were part of Metropolitan's "system," the court never considered whether the payments Metropolitan makes under its "contract for a water supply from the State Water Project," (18-AA-05029), are actually "occasioned, caused, or brought about" by wheelers. (*Imperial Irrigation*, *supra*, 80 Cal.App.4th at 1431.) That basic legal error is fatal to the court's decision.

2. The Court Of Appeal Failed To Enforce Proposition 26's Proportionality Requirement.

The Court of Appeal committed yet another legal error when it failed to hold Metropolitan to the requirements of Proposition 26.[5] Proposition 26 requires Metropolitan to charge a rate that corresponds to the burdens it undertakes and the benefits it conveys when it provides wheeling services. (See [Cal. Const., art. XIIIC, § 1, subd. (e), final par.].) The *only* connection Metropolitan can draw between the State Water Project costs it passes on to wheelers and the service the wheelers actually use is that the State has wheeled non-Project water for Metropolitan. But Metropolitan cannot show how this *de minimis* fringe benefit of its "contract for a water supply from the State Water Project," (18-AA-05029), could possibly justify charging wheeling customers a full pro-rata share of the State's "transportation charges." Instead, Metropolitan advances a parade of disconnected arguments, none of which respond to the Petition.

Metropolitan begins with a quixotic effort (at 30-31 & n.7) to deny that Proposition 26 imposes a proportionality requirement. But Proposition 26 is explicit: it requires an agency to prove that "the amount [of any charge] is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor *bear a fair or reasonable relationship to the payor's*

---

[5] To the extent Metropolitan implies (at 33 n.9) that this Court may ignore these violations because its rates are not "imposed" and Proposition 26 does not apply, that argument cannot survive this Court's decision in *California Cannabis Coalition v. City of Upland* (Aug. 28, 2017, S234148) __Cal.5th__. (See [pp. 21-22 & n.16 (holding that " 'impose' most plausibly means to establish or enact")].) In any event, Metropolitan's cryptic footnote is plainly insufficient to preserve the point. (See, e.g., [*Sourcecorp, Inc. v. Shill* (2012), 206 Cal.App.4th 1054, 1061 n.7].)

burdens on, or benefits received from, the governmental activity." (Cal. Const., art. XIIIC, § 1, subd. (e), final par., emphasis added; see [*Newhall*, *supra*, 243 Cal.App.4th at 1440, 1443 (holding that a rate "violate[s] Proposition 26" if it is not based on a proportional cost allocation)].) Metropolitan does not dispute that it failed utterly to carry that burden. Indeed, Metropolitan freely conceded below that it made no attempt to break out the proportion of Project "transportation charges" it incurred to wheel non-Project water. (See [Pet. 28].)

Metropolitan incorrectly claims (at 31-32) that the Petition is predicated on the assertion that Metropolitan passes on the State Water Project "transportation charges" *only* to wheelers. That is a straw man. Metropolitan's rates violate Proposition 26 because they require wheeling and full-service customers to pay the same share of the Water Project "transportation charges," even though full-service customers receive the benefit of a supply of Project water, while wheeling customers do not.

Metropolitan's next gambit is misdirection. It argues (at 32) that its rates are "inherently proportional" because they are volumetric. But volumetric rates assure only that the rates charged each payor are proportional to the *amount* of water they receive—they do not establish that those rates are proportional to the *cost of providing* that amount of water. Moreover, the incidental benefit of wheeling non-Project water is *not* linked to volume; Metropolitan charges wheelers Project costs even though it has not asked the State to wheel water in years. So the fact that Metropolitan's rates are volumetric does not "refute" the fact that the Water Authority already pays for Metropolitan's right to wheel non-Project water as a full-service customer. (See [Pet. 29].)

Finally, Metropolitan claims that the Water Authority's position would somehow require treating the expenses of maintaining Metropolitan's Colorado River Aqueduct as supply costs. Not so. The Water Authority agrees that Metropolitan may recover an appropriate share of the cost of building and maintaining its proprietary Colorado River Aqueduct from wheelers, even though the aqueduct is also used to carry Metropolitan's own water supplies for resale.

The difference is elemental: Metropolitan owns and operates the Colorado River Aqueduct and it actually incurs costs associated with the aqueduct's construction and upkeep when it transports water on behalf of the Water Authority. By contrast, the California Aqueduct—and all of the State Water Project facilities—are owned and operated by the State and used exceedingly rarely to wheel water for Metropolitan's customers. Based on these facts, it should come as no surprise that the law would treat the costs associated with these different systems differently.

B. This Court's Immediate Intervention Is Necessary To Ensure The Water Authority's Entitlement To Offsetting Benefits Under The Wheeling Statutes.

Metropolitan closes by insisting once again (at 42) that there is "no basis to apply" the Wheeling Statutes to the Exchange Agreement's price term. Both lower courts squarely rejected that contention, (see [Opn. 32-33]), which Metropolitan does not press in its discussion of the merits. (See [Answer 25-26].)[6] The Water Authority contracted for prices "equal

[6] Metropolitan trots out a series of statements (at 42-43) that it claims are "inconsistent" with this conclusion. Those statements addressed different features of the Exchange Agreement and different provisions of the Wheeling Statutes. *Not one* referred either to the Agreement's price term or to the Statutes' definition of fair compensation.

to the charge or charges set by Metropolitan's Board of Directors pursuant to applicable law and regulation and generally applicable to the conveyance of water by Metropolitan on behalf of its member agencies." (*Ibid*.) That includes the Wheeling Statutes' definition of "fair compensation."

As explained in the Petition (at 30), fair compensation includes "reasonable credit for any offsetting benefits for the use of [Metropolitan's] conveyance system." (Wat. Code § 1811, subd. (c).) The Water Authority raised that issue before the Superior Court, (see [26-AA-7333-34]), but it was mooted when the court invalidated Metropolitan's transportation rates. The Court of Appeal reversed in part but never addressed offsetting benefits. Without this Court's immediate intervention, the parties will be forced needlessly to litigate the meaning of the Court of Appeal's uncertain mandate in the Superior Court. Even if it does not grant review, this Court should prevent the further waste of judicial resources by ordering the Superior Court to calculate the offsetting benefits on remand.

CONCLUSION

For these reasons, and the reasons set forth in the Petition, the Water Authority respectfully requests that this Court grant review and reverse the Court of Appeal.

Dated: August 31, 2017

HOGAN LOVELLS US LLP

s/Neal Kumar Katyal
Neal Kumar Katyal
(pro hac vice application pending)

KEKER, VAN NEST & PETERS, LLP

s/John W. Keker
John W. Keker

Counsel for *Plaintiff and Appellant*
SAN DIEGO COUNTY WATER AUTHORITY

CERTIFICATE OF WORD COUNT

The undersigned counsel certifies that pursuant to California Rule of Court 8.504(d)(1)-(2) of the California Rules of Court, the text of this Reply in Support of Petition for Review was produced using 13 point Times New Roman type and contains 4,200 words. Counsel relies on the word count of the computer program (Microsoft Word 2010) used to prepare this brief.

Dated: August 31, 2017

s/John W. Keker
John W. Keker

PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker, Van Nest & Peters LLP, 633 Battery Street, San Francisco, CA 94111-1809.

On August 31, 2017, I served the following document(s):

REPLY IN SUPPORT OF PETITION FOR REVIEW

by **ELECTRONICALLY POSTING** to the TrueFiling website for and requesting service on the following registered entities in this matter.

Colin C. West Thomas S. Hixson Morgan Lewis & Bockius, LLP One Market, Spear Street Tower San Francisco, CA 94105 colin.west@morganlewis.com thomas.hixson@morganlewis.com John B. Quinn Eric J. Emanuel Valerie S. Roddy Quinn Emanuel Urquhart & Sullivan, LLP 865 S. Figueroa Street, 10th Floor Los Angeles, CA 90017 johnquinn@quinnemanuel.com ericemanuel@quinnemanuel.com valerieroddy@quinnemanuel.com Kathleen Marie Sullivan Quinn Emanuel Urquhart & Sullivan, LLP 555 Twin Dolphin Drive #560 Redwood Shores, CA 94065 kathleensullivan@quinnemanuel.com	Counsel for Defendant and Appellant Metropolitan Water District of Southern California

Marcia Scully Heather C. Beatty John D. Schlotterbeck Metropolitain Water District of Southern California 700 North Alameda Street Los Angeles, CA 90012 mscully@mwdh2o.com hbeatty@mwdh2o.com jschlotterbeck@mwdh2o.com	Counsel for Defendant and Appellant Metropolitan Water District of Southern California
Michael Nelson Feuer Richard Myles Brown Julie Conboy Riley Tina P. Shim Melanie A. Tory Los Angeles City Attorneys' Office 111 North Hope Street, Room 340 Los Angeles, CA 90012 lacityatty@lacity.org richard.brown@ladwp.com julie.riley@ladwp.com tina.shim@ladwp.com melanie.tory@ladwp.com Amrit Satish Kulkarni Julia L. Bond Edward Grutzmacher Meyers Nave Riback Silver & Wilson 555 12th Street, Suite 1500 Oakland, CA 94607 akulkarni@meyersnave.com jbond@meyersnave.com egrutzmacher@meyersnave.com Gregory Joe Newmark Meyers Nave Riback Silver & Wilson 707 Wilshire Boulevard, Suite 2400 Los Angeles, CA 90017 gnewmark@meyersnave.com	Counsel for Real Party in Interest The City of Los Angeles, Department of Water and Power

Stephen Robert Onstot Aleshire & Wynder LLP 18881 Von Karman Avenue, Suite 1700 Irvine, CA 92612 sonstot@awattorneys.com	Counsel for Real Party in Interest and Appellant Municipal Water District of Orange County
John L. Fellows, III Patrick Q. Sullivan Torrance City Attorney 3031 Torrance Blvd. 3/F Torrance, CA 90503 jfellows@torranceca.gov psullivan@torranceca.gov	Counsel for Real Party in Interest and Appellant City of Torrance
Steven P. O'Neill Michael Silander Christine M. Carson Lemieux & O'Neill 4165 E. Thousan Oaks Blvd., Suite 350 Thousand Oaks, CA 91362 steve@lemieux-oneill.com michael@lemieux-oneill.com ccarson@awattorneys.com	Counsel for Real Party in Interest and Appellant Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, West Basin Municipal Water District, and Western Municipal Water District
Steven M. Kennedy Brunick, McElhaney, Beckett, Dolen & Kennedy 1839 Commercenter West San Bernardino, CA 92408-3303 skennedy@bmblawoffice.com	Counsel for Real Party in Interest and Appellant Three Valleys Municipal Water District
Donald Matthias Kelly Utility Consumers' Actin Network 3405 Kenyon Street, Suite 401 San Diego, CA 92110 dkelly@ucan.org	Counsel for Real Party in Interest Utility Consumer's Action Network
Dorine Martirosian Office of the City Attorney 613 E. Broadway, Suite 220 Glendale, CA 91206 dmartirosian@ci.glendale.ca.us	Counsel for Real Party in Interest City of Glendale

Steven P. O'Neill Lemieux & O'Neill 4165 E. Thousan Oaks Blvd., Suite 350 Thousand Oaks, CA 91362 steve@lemieux-oneill.com	Counsel for Amicus Curiae Upper San Gabriel Valley Municipal Water District
Thomas Bunton County of San Diego Office of County Counsel 1600 Pacific Highway, Room 355 San Diego, CA 92101 thomas.bunton@sdcounty.ca.gov	Counsel for Amicus Curiae San Diego County
Clerk of the Court California Court of Appeal First District, Division Three 350 McAllister Street San Francisco, CA 94102	

by **FEDEX**, by placing a true and correct copy in a sealed envelope addressed as shown below. I am readily familiar with the practice of Keker, Van Nest & Peters LLP for correspondence for delivery by FedEx Corporation. According to that practice, items are retrieved daily by a FedEx Corporation employee for overnight delivery.

Clerk of the Court
for delivery to the
Honorable Curtis Karnow
San Francisco County Superior Court
400 McAllister Street
San Francisco, CA 94102

Executed on August 31, 2017, at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

s/Laura Lind
Laura Lind