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15 California

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF SAN FRANCISCO

18 SAN DIEGO COUNTY WATER
AUTHORITY,

19 Petitioner and Plaintiff,

20 vs.

21 METROPOLITAN WATER DISTRICT OF
22 SOUTHERN CALIFORNIA; ALL PERSONS
INTERESTED IN THE VALIDITY OF THE
23 RATES ADOPTED BY THE
24 METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA ON APRIL 10,
25 2012 TO BE EFFECTIVE JANUARY 1, 2013
AND JANUARY 1, 2014; and DOES 1-10,

26 Respondents and Defendants.

Case No. CPF-10-510830
Case No. CPF-12-512466

**DECLARATION OF ERIC J. EMANUEL
IN SUPPORT OF DEFENDANT AND
RESPONDENT METROPOLITAN
WATER DISTRICT OF SOUTHERN
CALIFORNIA'S MOTION IN LIMINE TO
EXCLUDE EVIDENCE OF SPECIAL
DAMAGES**

Hon. Curtis E.A. Karnow
Dept.: 304
Hearing Date: February 5, 2015
Hearing Time: 9:00 a.m.

Actions Filed: June 11, 2010; June 8, 2012

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DECLARATION OF ERIC J. EMANUEL

I, Eric J. Emanuel, declare as follows:

1. I am a member of the bar of the State of California and a member of Quinn Emanuel Urquhart & Sullivan LLP, attorneys for Metropolitan Water District of Southern California (“MWD”) in the above-captioned action. I make this declaration of personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently thereto.

2. Attached as Exhibit A is a true and correct copy of excerpts of the September 10, 2013 deposition of Dennis Cushman.

3. Attached as Exhibit B is a true and correct copy of excerpts of San Diego County Water Authority’s Response to Metropolitan Water District of Southern California’s First Set of Special Interrogatories, dated July 24, 2013.

I declare under penalty of perjury and under the laws of the State of California that the foregoing is true and correct. Executed on January 12, 2015, in Los Angeles, California.



Eric J. Emanuel
Attorney for Respondent and Defendant,
Metropolitan Water District of Southern
California

EXHIBIT A

1	<p>1 SUPERIOR COURT OF THE STATE OF CALIFORNIA 2 COUNTY OF SAN FRANCISCO 3 4 SAN DIEGO COUNTY WATER) AUTHORITY,) 5) Petitioner and Plaintiff,) 6) vs.)No. CPF-10-510830 7) METROPOLITAN WATER DISTRICT) 8 OF SOUTHERN CALIFORNIA,) et al.,) 9) Respondents and Defendants.) 10 _____) 11 12 13 14 15 16 VIDEOTAPED DEPOSITION OF PERSON MOST KNOWLEDGEABLE 17 DENNIS CUSHMAN 18 San Francisco, California 19 Tuesday, September 10, 2013 20 Volume I 21 Reported by: CARLA SOARES 22 CSR No. 5908 23 Job No. 1728585 24 25 Pages 1 - 244</p>	3
2	<p>1 APPEARANCES: 2 3 For the Petitioner and Plaintiff: 4 KEKER & VAN NEST LLP 5 BY: DANIEL PURCELL 6 Attorney at Law 7 633 Battery Street 8 San Francisco, California 94111 9 415.773.6697 10 dpurcell@kvn.com 11 12 13 For the Respondent and Defendant Metropolitan Water 14 District of Southern California: 15 MORRISON & FOERSTER LLP 16 BY: SOMNATH RAJ CHATTERJEE 17 Attorney at Law 18 425 Market Street 19 San Francisco, California 94105 20 415.268.7537 21 schatterjee@mof.com 22 23 24 25</p>	4
2	<p>1 SUPERIOR COURT OF THE STATE OF CALIFORNIA 2 COUNTY OF SAN FRANCISCO 3 4 SAN DIEGO COUNTY WATER) AUTHORITY,) 5) Petitioner and Plaintiff,) 6) vs.)No. CPF-10-510830 7) METROPOLITAN WATER DISTRICT) 8 OF SOUTHERN CALIFORNIA,) et al.,) 9) Respondents and Defendants.) 10 _____) 11 12 13 14 15 16 VIDEOTAPED DEPOSITION of PERSON MOST 17 KNOWLEDGEABLE DENNIS CUSHMAN, Volume I, taken on 18 behalf of Respondents and Defendants, at 425 Market 19 Street, San Francisco, California, beginning at 9:03 20 a.m., and ending at 3:46 p.m., on Tuesday, September 21 10, 2013, before CARLA SOARES, Certified Shorthand 22 Reporter No. 5908. 23 24 25</p>	4
2	<p>1 APPEARANCES (Continued): 2 3 For the Respondent and Defendant West Basin 4 Municipal Water District, Foothill Municipal Water 5 District, Las Virgenes Municipal Water District, 6 Eastern Municipal Water District, and Western 7 Municipal Water District: 8 LEMIEUX AND O'NEILL 9 BY: CHRISTINE CARSON (via speakerphone) 10 Attorney at Law 11 4165 E. Thousand Oaks Boulevard, Suite 350 12 Westlake Village, California 91362 13 805.495.4770 14 christine@lemieux-oneill.com 15 16 ALSO PRESENT: John Schlotterbeck, Senior Deputy General Counsel, Office of the 17 General Counsel, Metropolitan Water District of Southern 18 California 19 Tais Deschamps, Video Operator 20 21 --o0o-- 22 23 24 25</p>	4

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1 specifically reserved the right in the
 2 quantification settlement agreement through the
 3 exchange agreement with Metropolitan, specifically
 4 in the exchange agreement with Metropolitan,
 5 reserved the right to challenge Metropolitan's water
 6 rates after a five-year timeout that's delineated in
 7 that exchange agreement.
 8 We agreed in the exchange agreement not to
 9 sue Metropolitan for five years but expressly
 10 reserved the right to do so in the future.
 11 BY MR. CHATTERJEE:
 12 Q So if I understand your testimony
 13 correctly, it is correct that in November 2004, the
 14 Water Authority had no plans to undertake a
 15 challenge to Metropolitan's rate structure, correct?
 16 A Correct. The question -- only the Water
 17 Authority board is authorized to authorize
 18 litigation. The question of whether to sue
 19 Metropolitan was not presented to the board in 2004.
 20 Q Right. And at the same time, San Diego
 21 Water Authority was not willing to agree not to
 22 challenge Metropolitan's rate structure in a manner
 23 that would reduce Metropolitan's wheeling rate or
 24 exchange rate as defined in the QSA agreements; is
 25 that true?

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1 A The Water Authority was not willing to
 2 forego the right to challenge Metropolitan's rights
 3 in accordance and compliance with the exchange
 4 agreement, which provided for certainly during 2004.
 5 2004 was one of the five years, the second of five
 6 years in which the Water Authority agreed not to sue
 7 Metropolitan under the exchange agreement. The
 8 Water Authority was not willing to forego its right
 9 to challenge Metropolitan's rates after the
 10 expiration of that five-year agreement.
 11 MR. CHATTERJEE: Let's mark this document
 12 as Exhibit 28. It's a memo to the board of
 13 directors from Ron Gastelum. That's what it
 14 purports to be.
 15 (Exhibit 28 was marked for identification
 16 by the court reporter and is attached hereto.)
 17 BY MR. CHATTERJEE:
 18 Q Mr. Cushman, have you seen Exhibit 28
 19 before?
 20 A Yes.
 21 Q And this is a memo from Ron Gastelum to
 22 the board of directors; is that right?
 23 A Yes.
 24 Q And did you see this document -- did you
 25 receive this document on or about December 8th,

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1 2004?
 2 A Yes.
 3 Q Does this refresh your recollection -- and
 4 this document attaches the white paper that we saw
 5 earlier, right?
 6 A Um-hum. Yes.
 7 Q And it attaches Mr. Gastelum's response to
 8 that white paper, right?
 9 A Yes, it does.
 10 Q And it also attaches the frequently asked
 11 questions on the RSI provision, a version of what we
 12 saw earlier, right?
 13 A Yes.
 14 Q And does this refresh your recollection
 15 that San Diego's white paper went to the board of
 16 directors for Metropolitan?
 17 A I believe my earlier statement was widely
 18 distributed and that it may have.
 19 Q Yeah. It did, right?
 20 A It was. Yes.
 21 MR. CHATTERJEE: Let's mark this document,
 22 which purports to be a December 14, 2004, board
 23 letter to Met, as Exhibit 29, please.
 24 (Exhibit 29 was marked for identification
 25 by the court reporter and is attached hereto.)

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1 BY MR. CHATTERJEE:
 2 Q Mr. Cushman, do you see Exhibit 29?
 3 A Yes.
 4 Q What is it?
 5 A It's a board memorandum from Metropolitan
 6 management staff to the Metropolitan board of
 7 directors through its water planning quality and
 8 resources committee, dated December 14th, 2004.
 9 It's a board action memo.
 10 Q And this board action memo went to the
 11 Metropolitan board of directors, right?
 12 A Yes.
 13 Q And this concerns the adoption of the RSI
 14 provision, right?
 15 A Yes.
 16 Q And this board action memo sets forth the
 17 staff's reasoning regarding the RSI provision,
 18 correct?
 19 A Metropolitan's staff reasoning, yes.
 20 Q And it included various options, right,
 21 for the board to choose?
 22 A It presented two options, yes.
 23 Q It presented four options, right, if you
 24 look on page 2 of Exhibit 29?
 25 A Two options for the language and two other

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1 options, defer action or do not authorize the
 2 inclusion.
 3 Q If you turn to -- and it has three
 4 exhibits, right? Three attachments?
 5 A Yes.
 6 Q The third attachment is a letter dated
 7 November 18th, 2004, to Ron Gastelum from six member
 8 agencies; is that right?
 9 A Yes.
 10 Q And one of the member agencies is San
 11 Diego, right?
 12 A Yes.
 13 Q And in this letter, San Diego requests a
 14 deferral on the decision to adopt the rate structure
 15 integrity language; is that right?
 16 A All six signatories do. All six agencies.
 17 Q All six agencies including San Diego,
 18 right?
 19 A Yes.
 20 Q What was San Diego's involvement with the
 21 other agencies? Was there a meeting before this
 22 letter was prepared?
 23 A There were e-mail communications,
 24 telephonic discussions between the groups. I don't
 25 recall whether or not there were in-person meetings

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1 involving all six of these individuals.
 2 Q Were you involved in the preparation of
 3 this letter?
 4 A I certainly saw it at the time. I don't
 5 recall specifically participating in the drafting of
 6 the letter.
 7 Q The first page of the letter says that
 8 there was a member agency managers group that held a
 9 meeting on November 15th at the Western Municipal
 10 Water District offices.
 11 A Um-hum.
 12 Q Were you there at that meeting?
 13 A I don't recall, but -- I don't recall.
 14 Q Do you recall any discussions with the
 15 other member agencies about the preparation for this
 16 letter?
 17 MR. PURCELL: Objection. Asked and
 18 answered.
 19 THE WITNESS: I don't recall who took the
 20 laboring oar to write this letter, to draft this
 21 letter for the signatures.
 22 BY MR. CHATTERJEE:
 23 Q Did San Diego participate in the writing
 24 of this letter?
 25 A We participated in the content of the

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1 letter certainly. Yes.
 2 Q Were you at the -- this board action memo
 3 was discussed on December 14th, 2004, at the board
 4 meeting, right?
 5 A Yeah, I believe that's the date of the
 6 board meeting.
 7 Q Were you -- did you attend that board
 8 meeting?
 9 A Yes, I believe so.
 10 Q What was the discussion about the RSI
 11 provision at that board meeting?
 12 MR. PURCELL: Objection. Vague, compound.
 13 THE WITNESS: What did the Metropolitan
 14 board members discuss?
 15 BY MR. CHATTERJEE:
 16 Q Was a presentation made?
 17 A Yeah, there were -- I believe there were
 18 several presentations made at the meeting. I
 19 believe the member agencies made a presentation to
 20 the Met board. I believe Met staff made a
 21 presentation to the Met board. There was quite a
 22 discussion, a debate among the Metropolitan board
 23 members. It was a highly contentious issue.
 24 And ultimately the vote to adopt the
 25 language as presented by the general manager was

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1 narrowly approved by the board vote in a pretty
 2 split vote of the board that represented I think the
 3 division in opinions over the rate structure
 4 integrity provision.
 5 Q Did San Diego make a presentation at that
 6 meeting?
 7 A I think another member agency manager made
 8 a presentation to the board. I don't recall if a
 9 Water Authority official presented to the board.
 10 Q Do you recall who that was?
 11 A I don't want to guess. I don't want to
 12 guess. I don't recall which one or more managers
 13 made a presentation to the Met board.
 14 Q Did San Diego have an opportunity to make
 15 its own presentation to the board?
 16 A Yes.
 17 Q And San Diego elected not to?
 18 A Yeah. We have an opportunity to comment
 19 under public comment at the very least at the
 20 Metropolitan board meeting.
 21 Q And as a matter of record, so you agree
 22 that in the four options, option one, option two
 23 were two competing versions of the RSI language,
 24 right?
 25 A Yes.

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1 Q And the language set forth in the
2 attachments, right?
3 A I beg your pardon?
4 Q The actual competing languages in option
5 one and option two are set forth in the two
6 attachments to the board letter?
7 A In the first two attachments, yes.
8 Q Correct. And what did the board do at
9 that meeting?
10 A They adopted option one.
11 Q And in connection with adopting option
12 one, the board also authorized further discussion
13 regarding the RSI language, right?
14 A Yes. They adopted the language and set an
15 implementation date for when the language would
16 begin to be included in agreements sometime around
17 mid April of 2005.
18 They authorized a work group, or welcomed,
19 I guess, a work group of member agency managers to
20 continue to work together on putting together an
21 alternative proposal to present to Metropolitan's
22 board for consideration before the language of the
23 rate structure integrity provision was actually
24 inserted -- began to be inserted or included,
25 rather, in agreements, and I believe that was mid

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1 April, a date in mid April of 2005.
2 So the board afforded an opportunity of
3 about four months for a group of member agencies to
4 continue to work on the issue in the hopes of
5 developing a less onerous alternative for the board
6 to consider.
7 Q San Diego participated with other member
8 agencies in an alternative proposal?
9 A Yes.
10 Q And that alternative proposal was
11 presented to the board, right?
12 A Yeah, it was presented to the board in the
13 spring, maybe in the March or the April meeting.
14 Q And what happened to that proposal?
15 A It was not accepted.
16 Q It was tabled by the board, right?
17 A Yeah. I can't remember the specific
18 action, whether they rejected or tabled it. I think
19 it was tabled.
20 Q And that was tabled by a decision of the
21 full board of directors, right?
22 A Yeah, a vote was made to table the issue.
23 Q And so after that point, Metropolitan's
24 board of directors made a decision that the RSI
25 language would go into all local resource project,

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1 conservation project, and desalinization project
2 contracts; is that right?
3 A Yes, subject to the agreements. Yeah.
4 Q After the RSI provision was adopted, did
5 the RSI provision change the process of awarding
6 incentive contracts in any way?
7 MR. PURCELL: Objection. No foundation.
8 Vague, also.
9 THE WITNESS: By "process of awarding," do
10 you mean like through the -- did it change the
11 process of the evaluation made of applications for
12 funding under the program?
13 BY MR. CHATTERJEE:
14 Q Well, before the RSI provision was
15 adopted, San Diego had applied for and had obtained
16 project contracts, right?
17 A Yes.
18 Q And were you involved in those
19 applications?
20 A Yes.
21 Q And so there was a process for submitting
22 an application, right?
23 A Yes.
24 Q Did the adoption of the RSI language
25 change that process in any way?

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1 A For the Water Authority? Yes. The Water
2 Authority board of directors, in 2004, the July -- I
3 believe the July meeting of 2004, July 22nd, adopted
4 a formal position articulating its objection to the
5 rate structure integrity provision and its objection
6 to being coerced into preventing it from filing suit
7 in return for the receipt of the benefits of its
8 payments under the water stewardship rate.
9 Q So San Diego adopted a policy not to apply
10 for any further project contracts, incentive
11 contracts?
12 A That's correct, that contained the rate
13 structure integrity provision, yes.
14 Q And have you set forth your explanation
15 for the reason for that decision?
16 A Yeah. It was actually set forth in the
17 document you presented earlier, which was the
18 recommendation the board adopted on July 22nd. So
19 if I may read from it.
20 Q The PowerPoint that you referred to?
21 A Yes, Exhibit 20. The board adopted the
22 following: "Oppose, on the basis of poor public
23 policy, any proposals that would condition receipt
24 of MW services or money on a waiver of
25 constitutional rights or otherwise impair the

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1 ability of member agencies to seek resolution of
 2 issues in all appropriate forums."
 3 Q What incentive contracts did San Diego
 4 have at the time that the RSI language was adopted?
 5 A Before the language was adopted?
 6 Q Yeah.
 7 A There were a number of subsidy agreements
 8 involving the Water Authority and including
 9 individual Water Authority member agencies within
 10 our service area; so a water recycling project in
 11 the Padre Dam Municipal Water District, water
 12 recycling projects in the Otay Water District. Any
 13 number of those kind of agreements.
 14 Typically water recycling projects,
 15 certainly the conservation program -- Metropolitan's
 16 conservation programs, we participated fully and
 17 actively in those programs throughout the years
 18 prior to the RSI implementation.
 19 Q Do you know how many project contracts or
 20 incentive contracts San Diego had?
 21 A No, I don't know the specific number.
 22 Q Do you know the amount of funding San
 23 Diego was receiving under those incentive contracts?
 24 A By the time the rate structure integrity
 25 provision had been adopted or implemented in 2005,

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1 millions of dollars. I don't have a specific figure
 2 in mind, but certainly we were -- we applied and
 3 were awarded agreements to provide the funding, and
 4 we and our member agencies carried out those
 5 projects and conservation programs to develop those
 6 water supplies.
 7 Q And San Diego continued to receive funding
 8 under those contracts, right, even after the RSI
 9 language was adopted?
 10 A By action of the Met board. It wasn't
 11 retroactively -- the rate structure integrity
 12 provision was not retroactively applied to existing
 13 agreements anywhere in the Met service area,
 14 including San Diego.
 15 Q So San Diego retained funding under all
 16 the existing project contracts and incentive
 17 contracts at the time the RSI language was adopted?
 18 A Yeah, through the ultimate termination or
 19 the term -- through the term of those agreements.
 20 Q At some point, San Diego changed its
 21 policy on the RSI language; is that right?
 22 A Yes.
 23 Q And San Diego agreed -- made a decision to
 24 enter into contracts that contained the RSI
 25 language?

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1 A Yes, under -- while reserving its rights
 2 and making a reservation that the Water Authority
 3 board of directors believed that the provision was
 4 unlawful and unenforceable.
 5 Q When did San Diego change its policy?
 6 A In mid 2007.
 7 Q What discussions did San Diego have within
 8 San Diego about changing its position?
 9 MR. PURCELL: I'd like to caution you not
 10 to discuss anything that was talked about in closed
 11 session with counsel.
 12 BY MR. CHATTERJEE:
 13 Q I'm not asking for attorney/client
 14 privileged communications. So what non-privileged
 15 discussion did San Diego have about changing its
 16 policy on the RSI provision?
 17 A Well, there's the discussion that was held
 18 in the public -- in the public board meetings of the
 19 Water Authority. There were discussions with and
 20 among our member agencies who were very upset that
 21 their revenues through the water stewardship rates
 22 were being collected and the Water Authority was not
 23 receiving any benefit of the water stewardship rate
 24 monies being paid into Metropolitan through the
 25 imposition of the rate structure integrity

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1 provision.
 2 Q So San Diego wanted the money?
 3 MR. PURCELL: Objection. Argumentative.
 4 BY MR. CHATTERJEE:
 5 Q Is that true?
 6 MR. PURCELL: Objection. Argumentative.
 7 THE WITNESS: The answer is that member
 8 agencies of the Water Authority were expressing
 9 concern that they were being denied the opportunity
 10 to obtain funding from Metropolitan under the
 11 program because of that punitive provision.
 12 BY MR. CHATTERJEE:
 13 Q Did San Diego want the funding from
 14 Metropolitan for the incentive contracts?
 15 MR. PURCELL: Objection. Asked and
 16 answered.
 17 BY MR. CHATTERJEE:
 18 Q You mentioned San Diego's member agencies
 19 were demanding something. My question is what the
 20 San Diego Water Authority wanted. Did the San Diego
 21 Water Authority want funding from Metropolitan under
 22 the funding contracts?
 23 A The issue was presented to the Water
 24 Authority board of directors. There was a lengthy
 25 discussion about the rate structure integrity

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1 for a moment.

2 THE VIDEO OPERATOR: The time is 3:36

3 p.m., and we are going off the record.

4 (Recess, 3:36 p.m. - 3:45 p.m.)

5 THE VIDEO OPERATOR: This is the

6 continuation of DVD No. 4. The time is 3:45 p.m.,

7 and we are back on the record.

8 MR. CHATTERJEE: Mr. Cushman, we're back

9 on the record on the RSI deposition.

10 There's some issues regarding documents

11 that weren't produced here today that I asked for,

12 some privilege issues that came up and some

13 instructions not to answer. And we'll reserve the

14 right to pursue that and resume this deposition if

15 we need to based on those. But otherwise, I think

16 we're done with the RSI deposition at this point.

17 MR. PURCELL: All right. And it's

18 probably needless to say, but we reserve our rights

19 to oppose any demands by MWD, and I have no

20 questions.

21 MR. CHATTERJEE: And in terms of -- your

22 view is you want to go forward with the preferential

23 rights deposition tomorrow?

24 MR. PURCELL: Yeah. I'd rather give the

25 witness a couple of hours this afternoon and go

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1 forward tomorrow morning.

2 MR. CHATTERJEE: Okay. Thank you. We'll

3 see you tomorrow morning.

4 THE VIDEO OPERATOR: The time is 3:46 p.m.

5 This is the end of DVD No. 4, and we are suspending

6 the deposition until tomorrow. We are off the

7 record.

8 (TIME NOTED: 3:46 p.m.)

9 --o0o--

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8 I, DENNIS CUSHMAN, do hereby declare under

9 penalty of perjury that I have read the foregoing

10 transcript; that I have made any corrections as

11 appear noted, in ink, initialed by me, or attached

12 hereto; that my testimony as contained herein, as

13 corrected, is true and correct.

14 EXECUTED this ____ day of _____,

15 2013, at _____, _____.

16 (City) (State)

17

18

19 _____

20 DENNIS CUSHMAN

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4 I, the undersigned, a Certified Shorthand

5 Reporter of the State of California, do hereby

6 certify:

7 That the foregoing proceedings were taken

8 before me at the time and place herein set forth;

9 that any witnesses in the foregoing proceedings,

10 prior to testifying, were placed under oath; that a

11 verbatim record of the proceedings was made by me

12 using machine shorthand which was thereafter

13 transcribed under my direction; that the foregoing

14 is an accurate transcription thereof.

15 I further certify that I am neither

16 financially interested in the action nor a relative

17 or employee of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date

19 subscribed my name.

20

21 Dated: 9/13/13

22

23

24 _____

25 CARLA SOARES
CSR No. 5908

EXHIBIT B

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Attorneys for Petitioner and Plaintiff
SAN DIEGO COUNTY WATER AUTHORITY

EXEMPT FROM FILING FEES
[GOVERNMENT CODE § 6103]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND 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 13, 2010 TO BE EFFECTIVE
JANUARY 2011; and DOES 1-10,

Respondents and Defendants.

Case No. CPF-10-510830

**SAN DIEGO COUNTY WATER
AUTHORITY'S RESPONSE TO
METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA'S FIRST SET
OF SPECIAL INTERROGATORIES**

1 **RESPONSE TO INTERROGATORY NO. 67:**

2 SDCWA objects to this interrogatory to the extent it calls for information protected by the
3 attorney-client privilege, work-product doctrine, deliberative process privilege, common interest
4 privilege, the right to privacy, or any other common law, constitutional, or statutory privilege,
5 immunity, or protection from disclosure. SDCWA further objects to this contention interrogatory
6 on the grounds that it is overbroad and unduly burdensome and oppressive. SDCWA has not
7 completed its investigation of the facts of this case, discovery, or preparation for any dispositive
8 proceeding at trial. SDCWA's response to this interrogatory is based on information presently
9 known to SDCWA and is given without prejudice to SDCWA's right to supplement its response
10 and/or provide or introduce at any dispositive proceeding or trial evidence of further supporting
11 facts and/or documents. Subject to and without waiving the foregoing objections and
12 reservations, SDCWA hereby responds as follows:

13 SDCWA incorporates by reference as though fully set forth herein its Responses to
14 Interrogatory Nos. 63, 64 and 66, above. *See* Cal. Code Civ. Proc. § 2030.230.

15 **INTERROGATORY NO. 68:**

16 Describe all damages sought by SDCWA under the Fourth Cause of Action, including the
17 amount of all requested damages and the basis for such requested damages.

18 **RESPONSE TO INTERROGATORY NO. 68:**

19 SDCWA objects to this interrogatory to the extent it calls for attorney work product, or
20 information subject to the attorney-client privilege, the deliberative process privilege, or any other
21 relevant privilege or immunity granted by federal or California law. SDCWA objects on the basis
22 that it has still not obtained or gained access to MWD's "Financial Planning Model," in which
23 MWD has contended it specifies the costs associated with various functions and rates. SDCWA's
24 response to this interrogatory is based on information presently known to SDCWA and is given
25 without prejudice to SDCWA's right to supplement its response and/or provide or introduce at
26 any dispositive proceeding or trial evidence of further supporting facts and/or documents.
27 Subject to and without waiving the foregoing objections and reservations, SDCWA hereby
28

1 responds as follows:

2 The Exchange Agreement specifies that the Price charged for MWD's transportation of
3 IID water "shall be equal to the charge or charges set by Metropolitan's Board of Directors
4 pursuant to applicable law and regulation and generally applicable to the conveyance of water by
5 Metropolitan on behalf of the member agencies." (EA ¶ 5.2). SDCWA seeks damages in the
6 amount by which it has been overcharged by MWD for transportation under the Exchange
7 Agreement due to MWD's improper allocation of costs to its System Access Rate, System Power
8 Rate, and Water Stewardship Rate. The Exchange Agreement further specifies that, "[i]n the
9 event of a dispute over the Price, SDCWA shall pay when due the full amount claimed by
10 Metropolitan; provided, however, that, during the pendency of the dispute, Metropolitan shall
11 deposit the difference between the Price asserted by SDCWA and the Price claimed by
12 Metropolitan in a separate interest bearing account. If SDCWA prevails in the dispute,
13 Metropolitan shall forthwith pay the disputed amount, plus all interest earned thereon, to
14 SDCWA." On February 10, 2011, SDCWA demanded that MWD begin depositing into a
15 separate interest-bearing account, as required by the Exchange Agreement, the disputed amount
16 of \$236 per acre-foot for each acre-foot of water delivered to SDCWA pursuant to the Exchange
17 Agreement in 2011 and 2012. On February 5, 2013, SDCWA demanded that MWD put aside an
18 equivalent amount for water delivered in 2013 and 2014. MWD has failed to deposit the disputed
19 funds in a separate interest-bearing account, but has represented that, as of September 30, 2012,
20 MWD was holding in its reserves \$57,425,309.11 as the disputed amount, plus interest. At bare
21 minimum, this is the amount by which SDCWA has been damaged by MWD's breaches of the
22 Exchange Agreement, and MWD will be obligated to pay the disputed amount forthwith if MWD
23 is found to have breached the Exchange Agreement.

24 To the extent SDCWA is required to prove up the amount that MWD should have
25 deposited in the interest bearing account, or prove a stand-alone measure of damages under the
26 Exchange Agreement, SDCWA's damages consist of three categories of overcharges that have
27 been imposed on SDCWA by MWD pursuant to the Exchange Agreement. First, MWD has
28

1 improperly charged SDCWA for MWD's costs of obtaining water supply from the California
2 Department of Water Resources. Second, MWD has improperly charged SDCWA its Water
3 Stewardship Rate, which is used to fund water supply development projects at MWD member
4 agencies (though MWD refuses to fund water supply projects at SDCWA). Both of these
5 properly should be treated as "supply costs" and not charged on SDCWA under the Exchange
6 Agreement. Third, MWD's rates fail to assign the costs of standby capacity (water and facilities)
7 to the member agencies that cause those costs to be incurred, by engaging in substantial peaking
8 of usage in dry years. When MWD instead allocates standby costs into rates like the System
9 Access Rate (which is then incorporated into the Exchange Agreement Price), MWD again
10 overcharges SDCWA and forces SDCWA to bear costs that are in no way caused by SDCWA's
11 Exchange Agreement.

12 The precise amount of SDCWA's damages under the Exchange Agreement will require
13 further information from MWD and will be a subject of expert discovery and disclosures.
14 SDCWA will meet and confer with MWD about this request and an appropriate schedule for
15 expert disclosures and testimony.

16 **INTERROGATORY NO. 69:**

17 State all facts upon which SDCWA bases its claim for damages sought by SDCWA under
18 the Fourth Cause of Action.

19 **RESPONSE TO INTERROGATORY NO. 69:**

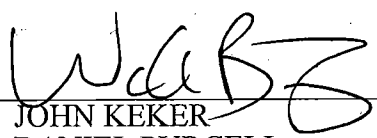
20 SDCWA objects to this interrogatory to the extent it calls for information protected by the
21 attorney-client privilege, work-product doctrine, deliberative process privilege, common interest
22 privilege, the right to privacy, or any other common law, constitutional, or statutory privilege,
23 immunity, or protection from disclosure. SDCWA further objects to this contention interrogatory
24 on the grounds that it is overbroad and unduly burdensome and oppressive. SDCWA has not
25 completed its investigation of the facts of this case, discovery, or preparation for any dispositive
26 proceeding at trial. In particular, SDCWA objects on the basis that it has still not obtained or
27 gained access to MWD's "Financial Planning Model," in which MWD has contended it specifies
28

1 any dispositive proceeding at trial. SDCWA's response to this interrogatory is based on
2 information presently known to SDCWA and is given without prejudice to SDCWA's right to
3 supplement its response and/or provide or introduce at any dispositive proceeding or trial
4 evidence of additional individuals. Subject to and without waiving the foregoing objections and
5 reservations, SDCWA hereby responds as follows:

6 Persons with relevant knowledge include: All persons identified in response to Special
7 Interrogatory No. 83.

8
9 Dated: July 24, 2013

KEKER & VAN NEST LLP

10
11 By: 
12 JOHN KEKER
13 DANIEL PURCELL
14 DAN JACKSON
15 WARREN A. BRAUNIG

16
17 Attorneys for Petitioner and Plaintiff
18 SAN DIEGO COUNTY WATER
19 AUTHORITY

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**PROOF OF SERVICE BY ELECTRONIC TRANSMISSION
AND EMAIL VIA PDF FILE**

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 Kecker & Van Nest LLP, 633 Battery Street, San Francisco, CA 94111-1809.

On July 24, 2013, I served the following documents described as:

**SAN DIEGO COUNTY WATER AUTHORITY'S RESPONSE TO METROPOLITAN
WATER DISTRICT OF SOUTHERN CALIFORNIA'S FIRST SET OF SPECIAL
INTERROGATORIES**

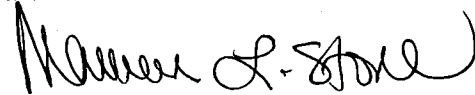
by serving a true copy of the above-described documents in the following manner:

BY LEXIS NEXIS® FILE & SERVE

On the date executed below, I electronically served the documents via Lexis Nexis® File & Serve described as on the recipients designated on the Transaction Receipt located on the via Lexis Nexis® File & Serve website.

Executed on July 24, 2013, 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.



Maureen L. Stone