Proposed Staff Recommendation Consent Calendar for August 23, 2012

LEGISLATION, CONSERVATION AND OUTREACH COMMITTEE

   Adopt a position of Support on S. 3352 (Bingaman).

ADMINISTRATIVE AND FINANCE COMMITTEE

9-2. Treasurer’s report.
   Note and file the monthly Treasurer’s report.

9-3. Resolution establishing amount due from the city of San Diego for the In-Lieu Charge as a condition of providing water service for Fiscal Year 2013.
   Adopt Resolution No. 2012-____ establishing an amount due of $1,593,152.68 from the city of San Diego for the In-Lieu Charge for Fiscal Year 2013.

9-4. Resolution approving amendments to the San Diego County Water Authority Local Conflict of Interest Code.
   Adopt Resolution No. 2012-____ approving amendments to the San Diego County Water Authority Local Conflict of Interest Code.

WATER PLANNING COMMITTEE

9-5. Annual Water Supply report for distribution pursuant to Administrative Code Section 8.00.050.
   Approve the Annual Water Supply report for distribution pursuant to Administrative Code 8.00.050.
August 22, 2012

Attention: Imported Water Committee

Metropolitan Water District Delegates’ Report (Information)

Background
The MWD committees and board met on August 20 and 21. The next regular MWD board and committee meetings are scheduled for September 10 and 11.

Discussion
This section summarizes discussions held and key decisions made at the August MWD committee and board meetings, as reported by the MWD delegates. The Water Authority delegation supported 12 of 15 action items approved by the MWD Board, including adopting a resolution establishing the tax rate for fiscal year 2012/13. The Water Authority delegates opposed an item related to new memberships and increased dues for existing memberships with several organizations because there is no critical need for these expenditures. While the delegates expressed their support for MWD’s effort to reduce costs and take advantage of market opportunities to lower its financing costs, they opposed the item authorizing the execution and distribution of an Official Statement related to the sale of bonds because it did not adequately disclose MWD’s potential risks, such as the continuation of reduced demands and how this reduction may impact its revenues (for the Water Authority’s letter to MWD, see Attachment 1). In addition, the Water Authority delegation did not support MWD providing Local Resource Projects subsidies for a recycled water system expansion project. Similar to their actions related to Local Resources Projects, the delegates applauded member agencies’ effort to develop local projects, but opposed MWD funding of this item because there is a: lack of demonstrated need for this type of project at MWD; lack of demonstrated benefits to ratepayers other than the recipient agency; and lack of access by the Water Authority’s ratepayers to this type of program (for the Water Authority’s letter to MWD, see Attachment 2). The Water Authority’s delegates requested their letters be entered into the administrative record of the respective committee and board meetings.

Attachment 3 is a copy of the August committee and board meeting agendas and MWD’s summary of actions.

Communications and Legislation Committee
The committee and board approved two items. MWD staff sought amendments to MWD’s source water quality protection policy principle to address hydraulic fracturing and related energy development activities to provide staff direction in commenting on legislative and regulatory issues. In response to a question asked by Director Heidel, General Manager Kightlinger said that this authorization will allow staff to take positions and comment on issues consistent with the adopted policy without having to return to the board; as a result, Director Barbre (Municipal Water District of Orange County) said he would not support this item because the amendment leaves a wide door for staff to take positions without input from the directors. Subsequent to the meeting, Heidel met with Deputy General Manager of External Affairs Linda Waade, and expressed the need for the board to have an opportunity to review specific legislation because the policy principles are broad. The second item approved two new memberships and increased dues for four
existing organizations. Heidel observed that MWD’s interaction and involvement with these organizations would remain high regardless of the level of membership and questioned what MWD would gain from the increased payments. The delegates did not support this item.

The committee also heard reports on state and federal legislation and upcoming Bay Delta Conservation Plan outreach efforts.

**Engineering and Operations Committee**

The committee and board approved nine items, including permitting a subcontractor substitution for upgrades at the La Verne Machine and Fabrication Shops based on MWD’s appointed Hearing Officer’s recommendation. Also approved was an item authorizing construction of wide area network (WAN) upgrades on the Colorado River Aqueduct, which will provide necessary redundancy to cover for equipment malfunction or planned shutdowns for maintenance or repairs. The committee also heard an update on current water system operations. Staff said that the State Water Project blend at the Skinner plant is now 70 percent, while State Water Project blends at Weymouth and Deimer are 20 and 40 percent, respectively. Staff also reported that the July demand was 180 thousand acre-feet (TAF), which is 6 TAF lower than July of 2011.

**Finance and Insurance Committee**

The committee and board approved two items – a resolution establishing the tax rate, and the execution and distribution of the Official Statement related to the sale of bonds. The committee also received a report on assessed valuations, which is the basis for tabulating the vote entitlement of the member agencies. The Water Authority’s vote entitlement decreased slightly, from 17.89% to 17.57%. Los Angeles’ vote entitlement increased slightly, from 19.51% to 19.72%.

At July’s board meeting, Chairman Foley indicated that a workshop to discuss MWD’s finances would be held during the August Finance and Insurance Committee meeting. To assist MWD in preparation of the workshop discussions, Director Wilson provided Chief Financial Officer Breaux with copies of past letters, which consistently described concerns raised by the Water Authority on MWD’s finances (for a copy of the letter, see Attachment 4). Rather than a workshop, an update on rate refinement discussions was provided. Breaux acknowledged receiving the Water Authority letters; he, and then later, Committee Chair Grunfeld (Los Angeles Department of Water and Power) indicated that the comments will be reviewed by staff. Another rate refinement update is scheduled in September. Staff plans to return to the committee with an information item in October and a board action letter in November.

During the rate refinement update presentation, staff reported that MWD could manage its financial challenges through its current rate structure and that renewal of purchase orders is unnecessary. Staff presented a proposal that would link rate structure with water management actions. To increase revenue certainty, rates would be set by using a more conservative sales figure of 1.7 million acre-feet (MAF), which staff said has a likelihood of being exceeded 70% of the time. Staff introduced a concept to recover a portion of treated water costs via fixed charges. Lewinger asked why MWD is not considering increasing fixed charges for dry-year peaking, beyond treated water, noting that the current capacity and readiness-to-serve charges do not fully recover the costs to meet peaking. Directors Peterson (Las Virgenes Municipal Water District) and Evans (Eastern Municipal Water District) suggested using replenishment sales to mitigate peaking. Evans also questioned if agencies unable to receive untreated water would be disadvantaged by MWD’s proposal. Kightlinger responded that MWD is willing to work with
agencies to establish a connection to the untreated pipelines, but due to costs, agencies typically choose not to proceed. In response to Peterson’s inquiry on whether the existing State Water Contract includes the Delta Fix, MWD Financial Planning Manager Skillman responded that the contractors believe that it does. She said that the Legislature gave a broad authority on what could be recovered through property taxes; however, the MWD Act currently allows for the recovery of only those costs related to the SWP Burns-Porter Bonds. Kightlinger added that most contractors are contemplating using existing taxing authority to pay for the Delta Fix. Lewinger asked staff to clarify if the MWD board could also increase the tax rate to cover the cost of the Delta Fix; Deputy General Counsel Syd Benion responded that under the MWD Act, the board could make a “thoughtful” annual determination setting the tax rate higher than the status quo if it declares it is essential to the fiscal integrity of the district; otherwise, MWD cannot exceed the statutory cap on MWD’s taxing authority. Lewinger asked that the board give staff clear direction to aggressively pursue increasing fixed revenues – by taxes or take-or-pay contracts – to cover fixed expenses, especially if MWD were to sign a take-or-pay contract with the SWP to fix the Delta. Grunfeld indicated that Lewinger’s suggestions will be covered during next month’s update.

MWD staff also reported on its investment activity.

**Legal and Claims Committee**
The committee withdrew an item that intended to amend an existing contract with Ellison Schneider & Harris for preliminary analysis of a potential consolidation of the place of use of the State Water Project and Central Valley Project and increase its funding. In closed session, the committee discussed several issues, including the rate litigation with the Water Authority, in which no action was reported.

**Organization, Personnel and Technology Committee**
The committee heard an update on progress to implement MWD’s Information Technology Strategic Plan, an update on cyber security program enhancements and a report on MWD’s impasse process.

**Real Property and Asset Management Committee**
The committee and board authorized two long-term agreements – for the construction and maintenance of a linear park in the city of Perris and a telecommunications lease with Verizon Wireless. Heidel asked staff about the likelihood of the park lease agreement turning into a situation similar to that faced by MWD at the Jensen Water Treatment Plant; staff responded that it is unlikely because the Perris property lease is for a linear park for passive use rather than an active park like the one adjacent to the Jensen plant.

**Water Planning and Stewardship Committee**
The committee heard an update from Jay Abbs, Executive Director of the Palo Verde Valley Community Improvement Fund (CIF), on the CIF, which was originally funded by MWD to reimburse the community for losses caused by fallowing land. Abbs reported that the CIF assisted in establishing six new businesses and helped create 136 jobs. CIF is self sustaining with $6.72 million in assets and about $138,000 in annual net income. The committee and board also approved a local resources project, which the Water Authority delegates did not support.

Bay Delta Initiatives Manager Arakawa reported on recent actions related to the Bay Delta Conservation Plan (BDCP), including a joint recommendation by the Secretary of Interior Salazar,
Governor Brown, California Secretary of Natural Resources Laird, and National Oceanic and Atmospheric Administration (NOAA) Assistant Administrator Schwabb, which proposes twin gravity flow tunnels capable of conveying 9,000 cubic feet per second (cfs) of water through the Delta. Peterson asked if cost estimates are anticipated to increase. Arakawa responded that savings will likely be seen in operations. In response to Lewinger’s inquiry on the relationship of MWD’s commitment to conserve 700,000 AF shown in staff’s presentation as retail demand on MWD, Arakawa said that the joint proposal establishes that MWD’s region is responsible for 580,000 AF of conservation, which is consistent with MWD’s Integrated Resources Plan (IRP), while Silicon Valley (Santa Clara Valley Water District) is responsible for about 120,000 AF. Arakawa added that about 380,000 AF would be achieved thru the 20 percent by 2020 retail mandate in the MWD service area with the remaining 200,000 AF made up by MWD through additional regional efforts under the IRP.

Lewinger asked staff what are the ramifications of a contractor not wanting to participate in the Bay-Delta efforts. Kightlinger said that it is difficult to tell at this time, because there is only a proposed project (nothing is firm); Kightlinger added, in a separate but related issue, that there are already existing SWP contracts and no agency at this point is talking about renegotiating those contracts. Kightlinger added that the existing contracts expire in 2035, and in order to bond-finance the State Water Project in a timely manner, discussions will be forthcoming. He said that take-or-pay contracts are one scenario under consideration and that it would make sense to extend the existing SWP take-or-pay contracts. Arakawa then reviewed the schedule moving forward; a BDCP cost analysis is expected to be completed in January 2013.

Assistant General Manager Patterson reported that MWD issued its revised bill notice to the Water Authority based on about 17,000 AF of under conserved water by Imperial Irrigation District. The Water Authority has requested to meet and confer with MWD on this issue. Water Resources Manager Upadhyay gave commentary on the nationwide climate; July was the hottest month on record for the United States.

**Board Meeting**
Kurt Grossman, Chief Executive Officer of Genergy LLC, addressed the board on a submerged power generator able to produce desalted water.

Prepared by: Debbie Discar-Espe, Senior Water Resources Specialist
Approved by: Communications and Legislation Committee by Lynne Heidel
Finance and Insurance Committee by Keith Lewinger and Doug Wilson
Engineering and Operations Committee by Keith Lewinger and Doug Wilson
Legal and Claims Committee by Lynne Heidel
Organization, Personnel and Technology Committee by Doug Wilson
Real Property and Asset Management Committee by Lynne Heidel
Water Planning and Stewardship Committee by Keith Lewinger

Attachment 1: Letter on Official Statement, August 20, 2012
Attachment 2: Letter on Local Resources Program, August 20, 2012
Attachment 3: 2012MWD’s August board meeting agendas and Summary of Actions
Attachment 4: Letter on Rate Refinement Workshop, August 16, 2012
August 20, 2012

Jack Foley, Chair, and
Members of the Board of Directors
Metropolitan Water District of Southern California
700 N. Alameda Street
Los Angeles, CA 90012

RE: Board Memo 8-1: Authorize the execution and distribution of the Remarketing Statement in connection with the remarketing of the Water Revenue Refunding Bonds (Index Mode), 2009 Series A-1, in the amount of $104,185,000; and authorize the execution and distribution of an Official Statement for a potential refunding of Water Revenue Bonds. (F&I) – OPPOSE

Dear Chairman Foley and Board Members:

After careful review of Board Memo 8-1 including Attachments, we must once again vote against the staff recommendation to authorize execution and distribution of the Remarketing Statement in connection with the sale of bonds. We are not comfortable that the Remarketing Statement, as drafted, provides information essential to making an informed investment decision in a manner that is not misleading. While most of the areas of our concern remain unchanged, there is one notable area of improvement and some additional issues upon which we would like to comment.

Reduced Sales
As you know, the Water Authority has been deeply concerned about Metropolitan’s continued reliance on predictions of a steady growth in water sales for financial and resource planning purposes. We began raising this concern in connection with the sale of bonds in September 2010 when Metropolitan estimated sales at 2.0 million acre-feet (MAF) for fiscal years (FY) ending 2012 and 2013 and 2.1 MAF for FYs 2014 and 2015. The actual sales for FY 2012 were 1.68 MAF, including 225,000 acre feet (AF) of discounted water sales which, according to Metropolitan staff, would not have occurred had the price not been discounted. Without the discounted water sales, FY 2012 sales would have been 545,000 AF less than stated by Metropolitan in its Official Statement.

Metropolitan has reduced its water sales projections by 300,000 AF for FY 2013, 400,000 AF for FY 2014 and 350,000 AF for FY 2015 from those predicted in September 2010. While this represents a far more realistic sales forecast, there are a number of related issues associated with projected sales that have not been addressed. They include: 1) failure to adequately adjust current or future spending to reflect reduced sales; 2) failure to identify the quantity of sales that depend upon the availability of discounted water; and 3) failure to identify the financial and water rate impacts and risks associated with reduced sales. Further, these “water sales” projections also include wheeling and exchange transactions that are not the sale of water by Metropolitan at all (see note below), including water the Water Authority purchases from the Imperial Irrigation District (IID) and conserved water supplies from the Coachella and All-American Canal lining projects. We believe it is misleading to characterize these transactions as Metropolitan “water sales” even though

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Failure to Reduce Spending

Metropolitan has failed to reduce its spending to match reduced sales projections. As a result, Metropolitan revenues have not been sufficient to cover its costs in five of the last eight years (2005-2012), even though it has reduced planned pay-as-you-go spending on capital programs and used funds collected from ratepayers for that purpose to pay operating costs. This is discussed at page A-39 of the Draft Official Statement, where it is disclosed that $265 million – more than half of the revenues collected from ratepayers during FY 2008-13 to pay for infrastructure – has instead been spent to pay operating costs. The explanation provided, that these fund transfers have been made to “reduce drawdowns of reserve balances and to mitigate financial risks that could occur in upcoming years,” while technically correct, does not explain the real source of the problem: a continuing disconnect between increasing spending and MWD’s decreasing water sales. (See also the footnotes on page A-58.)

Similarly, in spite of dramatically reduced sales, Metropolitan has continued to fund subsidy programs designed to further reduce its sales. These expenditures have been made on the basis of an outdated, Integrated Resources Plan (IRP) spending program. We have called for – and call again for – a moratorium on all subsidy programs until Metropolitan updates its IRP projections and develops a finance plan evidencing how Metropolitan intends to pay for these projects. It is a matter of grave concern to us that Metropolitan continues to rely not only on an outdated IRP, but on an even more outdated 2004 Long Range Finance Plan that predates it, and does not include the IRP projects that continue to be brought to our board for approval. It is equally of grave concern that Metropolitan has recently abandoned its effort – pending since 2007 – to update the Long Range Finance Plan. The absence of a coherent long range finance plan that links spending with MWD’s water resource plans enables and assures that the disconnect between spending and sales will continue. This is not a fiscally sustainable path for MWD.

Reliance on Sale of Discounted Water

Although Metropolitan has reduced its sales projections, it has not indicated the volume of water sales it expects to be made at a discounted price. Although the budgets adopted by the board four months ago for FYs 2013 and 2014 do not include a replenishment rate or projections for the sale of water at a discount, staff reports to the board since that time as part of the member agency “Rate Refinement” process have indicated that development of a discounted water rate for replenishment is one of the top three priorities for the Metropolitan board to address (we disagree with that conclusion). Given the high cost of developing new water supplies, we do not understand how Metropolitan can continue to “buy high” in order to “sell low.” The cost of every acre foot of water that is sold to one member agency at a discount must be paid for by some other member agency’s ratepayers, thus further driving up the cost of and dampening demand for Metropolitan’s firm water supplies.

Financial Impacts and Risks of Reduced Sales

The draft Official Statement does not adequately describe the financial exposure to Metropolitan of continuing to embark upon large spending projects without any assured source of revenues to pay for them. As member agencies continue to develop local water supplies – as they should – there is a real danger not only of massive stranded investments by Metropolitan, but of spiraling water rates
that will be necessary to pay for them. While Metropolitan has a limited ability to shift existing State Water Project costs on to the tax rolls during fiscal emergencies, that is not the case with regard to other costs and investments.

Specific Comments on Draft Official Statement
In addition to the above broad concerns, we have the following specific comments on the draft Official Statement.

A-1 – Member Agencies
Although the draft Official Statement discloses that no member is required to purchase water from Metropolitan, and states that its member agencies “may, from time to time, develop additional sources of water,” it does not describe that as Metropolitan’s water rates have increased, development of local water supplies has become more cost-competitive. Nor does it disclose that many of Metropolitan’s member agencies are now developing local water supply projects to reduce their purchases of Metropolitan water. As noted above, under the current rate structure, and absent any firm commitments by any of its member agencies to pay for its projects, there is a significant risk that Metropolitan will have stranded investments. One of the three issues staff has reported to the board through the “Rate Refinement” process is a claim that treated water investments by Metropolitan have already been stranded. These facts should be disclosed in the draft Official Statement.

A-3 – Integrated Water Resources Plan
As noted earlier, the IRP is outdated. It does not reflect the substantially reduced water demands Metropolitan has now recognized and reported in the draft Official Statement. The statement that, “the IRP Strategy will be continually reviewed and updated at least every five years to reflect changing demand and supply conditions,” is inaccurate, as MWD has failed to adapt the plan to the sharply lower water sales that it has experienced and is projected to continue to experience over at least the next five years. Continued spending in reliance on this outdated planning tool threatens to strand Metropolitan investments and further reduce revenues at a time Metropolitan most needs them.

A-4 – State Water Project
We view the State Water Project as a core water supply for our region. The description provided of the State Water Project as “important for maximizing local groundwater potential and the use of recycled water” is too limiting and seems to imply that the planned BDCP investments are being made for the purpose of selling discounted water for groundwater replenishment and for blending with recycled water. If this is Metropolitan’s plan to support BDCP investments – again, to “buy high” and “sell low” – we believe the plan has substantial negative implications for Metropolitan’s future water sales and revenues.

A-11 – BDCP
The draft Official Statement describes a “commitment by Metropolitan and the Santa Clara Valley Water District to surpass the 2009 Delta Reform Act water savings targets by 700,000 af per year based on predicted future demands.” The language should be modified to reflect that the board of directors has not yet received any information about this “commitment” or what it means to our region in terms of water supply reliability or cost. No detail is provided on what share of the 700,000
Mr. Foley and Members of the Board
Augusts 20, 2012

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acre-feet of additional conservation MWD has agreed to implement.

A-17 – Quantification Settlement Agreement
While the description provided properly states that the QSA restored the opportunity for Metropolitan to receive special surplus water under the Interim Surplus Guidelines and to enter into other cooperative Colorado River water supply programs, we suggest adding a description of what the impacts on Metropolitan’s water supplies and water rates would be if the QSA is interrupted. As you know, some Metropolitan board members have recently expressed concerns about the “collapse” of the QSA. We also request that you add discussion of Metropolitan’s recent “Notice of Default” under the Exchange Agreement, and, how that ties in to the statement that, “the appropriate accounting for the 2011 IID-SDCWA transfer is under review by the Bureau of Reclamation and will be reflected in a future Colorado River Accounting and Water Use Report.”

A-18 – Sale of Water by the Imperial Irrigation District to SDCWA
We suggest adding a disclosure that the Water Authority’s litigation includes claims for breach of contract and challenges Metropolitan’s calculation of the price for conveyance of water through Metropolitan’s facilities. Also, that IID joined the litigation to challenge Metropolitan’s wheeling rate.

A-27 – Water Conservation
There are no facts to support the general statement that, “all users of Metropolitan’s system benefit from the system capacity made available by investments in demand management programs like the Conservation Credits Program,” and we therefore suggest that the statement be deleted. Indeed, the facts show that Metropolitan has had system capacity available for many years – and that water conservation investments are not needed to make that capacity available. To comply with cost of service requirements, Metropolitan is required to show that the rates it is imposing on each of its member agencies to pay for its water conservation programs are proportional to the benefits each receives.

The discussion of the 2009 20 percent reductions by 2020 is confusing. We are not aware of any “accounting” prepared by Metropolitan that reflects “conservation savings that will reduce retail demands;” to the contrary, all of the IRP projects appear to be moving forward without limitation.

A-28 – Regional Water Sources
We would suggest this entire section be restructured to better reflect that all of Metropolitan’s member agencies have local water supply options as well as the extent to which each is currently developing those options. While the draft Official Statement contains a great deal of detail about the plans of the City of Los Angeles (under the header, “Los Angeles Aqueduct”), similar information is not provided for the Water Authority or other Metropolitan member agencies that have ambitious plans to reduce water purchases from Metropolitan. As noted earlier, this discussion should include the fact that as Metropolitan water rates have increased – with approved increases exceeding 96% since 2006 – local water supply development has become more cost-effective.

With regard to the City of Los Angeles, discussion should be added about the impacts on MWD water rates and the stranded investment risk associated with variable water purchases by the City of Los Angeles which, as described, can swing by more than 250,000 AF annually.

It is unreasonable for purposes of long range planning to limit the local projects Metropolitan
accounts for to those that are “producing water or are under construction at the time a water sales projection is made” for all agencies except LADWP, where the disclosure is based on its Urban Water Management Plan. The same standard of disclosure and measure should be applied to all agencies. We request that a section be added disclosing the Water Authority’s plans to reduce future water purchases from Metropolitan as described in its Urban Water Management Plan. This would include the 205,000 AF of water conserved annually by IID (disclosed at page A-17 but out of context of sales or revenue impacts); 81,507 AF of conserved water from the combined Coachella Canal and All-American Canal lining projects (disclosed at page A-18 but similarly, not in context of sales or revenue impacts); and 56,000 AF from the Carlsbad seawater desalination project (discussed at page A-33). The discussion of the Carlsbad project should also be updated to include the August 9, 2012 announcement of a pending 60-day public review period of the Water Purchase Agreement to be released later this month.

A-39 – Capital Investment Plan Financing
See discussion above. This section should be amended to reflect why transfers from the pay-as-you-go funding has been less than budgeted.

A-43 – Risk Management
Discussion should be added regarding the factors contributing to Metropolitan’s substantial risk of stranded investments and dramatically higher water rates as its member agencies continue to develop local projects in lieu of continued reliance on Metropolitan water supplies.

A-44 – Summary of Receipts by Source
It is misleading to characterize revenues from water wheeling and exchanges as “water sales.” Similarly, revenues from the termination of the Las Posas water storage program should be reflected as “other collections” rather than as a “water sale.”

A-45 – Water Sales Revenues
The discussion about purchase orders should be updated to reflect that, based on review and discussions over the past few years, they are not proposed to be continued when they expire on December 31, 2012.

A-46 – Average Receipts Per Acre Foot
The use of averaging is misplaced. We have suggested previously that Metropolitan account for its water sales by class of service. Given the dynamic market in which Metropolitan finds itself, it is important to identify how much water it can expect to sell at full service rates.

A-47 – Rate Structure
The discussion about Tier 1 and Tier 2 should be updated to reflect the changes now being proposed through the “Rate Refinement” process. According to reports to the board, renewal of the purchase orders is no longer under discussion, because staff is no longer recommending purchase orders or the member agencies are unwilling to sign them, or both. Given that there has been some reliance in past Official Statements on the purchase orders as an indication of member agencies’ commitment to purchase Metropolitan water, we believe this is a fact that should be disclosed. The Water Stewardship Rate (WSR) discussion should also disclose that the Water Authority and its ratepayers have been disqualified from receiving any WSR program benefits and that the Rate Structure Integrity clause is being challenged in court.
A-48 – Litigation Challenging Rate Structure
The statement that, “if Metropolitan’s rates are revised in the manner proposed by SDCWA in the complaint, other member agencies would pay higher rates,” is argumentative. We suggest you delete the sentence, or in the alternative, revise the sentence to read as follows: “If Metropolitan’s rates are revised in the manner proposed by SDCWA in the complaint, it will be because the court determines that those rates were not established in accordance with legal requirements. As a result, other member agencies would pay higher legally appropriate rates.”

A-50 – Interim Agricultural Water Program (IAWP)
We suggest adding language reflecting the volume of sales that historically occurred through the IAWP (almost 120,000 AF in 2008 down to less than 30,000 AF in 2012), along with the volume of sales that have converted to pay Metropolitan’s full service rates.

A-50 – Replenishment
By Metropolitan’s own acknowledgement, the replenishment program has not been operated in a manner that supports the statement that water is sold at a discount because it is subsequently used “to offset demands on Metropolitan in times of shortage.” Further, it has been demonstrated that replenishment sales at a discount do (and not “may”) offset full service water sales. Metropolitan states that its water sales projections estimate the level of future production from groundwater, supported by an assumption of replenishment sales but does not identify in the draft Official Statement the extent to which its projected water sales are of discounted replenishment water. The draft Official Statement should also be amended to state that the budgets recently adopted by the board do not include any replenishment rate or estimate of reduced revenues due to the sale of discounted water (or “incentive” programs which result in the same economic impact).

A-50 – Water Rates by Category
We suggest a statement be added that the Water Authority’s lawsuit questions the legality of Metropolitan’s water rates and charges under California law and Constitution including Proposition 26, including that the capacity charge does not recover the cost of providing peak water supply and delivery capacity.

A-53 – Wheeling and Exchange Charges
We suggest adding a note that IID has joined the Water Authority’s litigation challenging Metropolitan’s wheeling rate.

A-54 – Preferential Rights
We suggest adding a note that Metropolitan’s calculation of preferential rights is being challenged in the Water Authority’s litigation. Also, the statement that, “historically, these rights have not been used in allocating Metropolitan’s water,” is misleading in that the member agencies, not Metropolitan, hold the entitlements.

A-55 – Proposition 26
We suggest a disclosure be included that the Water Authority contends in the litigation it has filed against Metropolitan that Proposition 26 applies to Metropolitan’s water rates and charges, and that those rates and charges exceed the reasonable cost of services provided to the Water Authority by Metropolitan. Further, that the application of Proposition 26 to Metropolitan is used as an example
of application to wholesale providers generally in the Guidebook on Proposition 26 published by the League of California Cities. The ACWA Guide to Proposition 26 contains the same rationale, although Metropolitan is not mentioned by name.

**A-71 – Historical and Projected Revenues and Expenditures**

As noted at the outset, Metropolitan has been wise to finally reduce its expected sales as described. However, if it does not change course to aggressively manage its expenditures, implement a moratorium on local project subsidies and “adapt” its IRP to downsize it to match projected sales, there is no reasonable basis for the claim that water rates will be limited to 3% annually beginning in FY 2015 and “thereafter” as stated in the draft Official Statement. In addition to the costs Metropolitan is paying now, it is proposing to increase OPEB spending (see page A-71) and begin to incur costs associated with the BDCP during that time frame. It simply doesn’t compute.

Thank you for the opportunity to provide comments on the draft Official Statement. We hope to work together with the rest of the board to begin to grapple with these important issues.

Sincerely,

Lynne Heidel  
Director

Keith Lewinger  
Director

Fern Steiner  
Director

Doug Wilson  
Director

cc: Jeff Kightlinger, MWD General Manager  
San Diego County Water Authority Board of Directors and Member Agencies
Re: Board Item 7-1 -OPPOSE

Authorize entering into a Local Resources Program agreement with Municipal Water District of Orange County and El Toro Water District for the El Toro Recycled Water System Expansion Project. (WP&S)

Mr. Foley and Members of the Board,

The Water Authority OPPOSES Board Item 7-1 on the following grounds.

Under California law including Proposition 26, MWD is required to set water rates that do not exceed the reasonable costs of providing the particular service for which the rate is charged, and that are equitable, fair and non-discriminatory. MWD has failed to present in Board Memo 7-1, by reference to its outdated Integrated Resources Plan (IRP), even more outdated 2007 LRP “target” or otherwise, any showing that MWD’s payments for this local water supply project will benefit any ratepayers other than those of the El Toro Water District which will own the water supply. There is no demonstration that any water supply or transportation costs are avoided by MWD as a result of these payments. The assertion in Board Memo 7-1 that, “the project would strengthen regional water supply reliability” is insufficient to meet the requirements of California law.

Far from benefitting ratepayers of other member agencies, MWD’s continued payment of these subsidies under current circumstances harms all other MWD water ratepayers by further reducing demand for MWD water, thereby reducing MWD’s own revenues and driving up the cost of its water purchased by customers of other MWD member agencies. MWD staff’s continued recommendations to approve subsidy agreements is inconsistent with its own actions months ago to suspend its “Local Resource Development Strategy Task Force” in order to reexamine the merits of the program and the water demand projections upon which it is based.

MWD’s expenditures have exceeded its revenues in five out of the past eight years because water sales are down by more than 30% since the 2010 IRP was adopted, let alone the 2007 LRP “target” for local resources development. Rather than respond to these changed circumstances (consistent with the IRP’s articulated “adaptive management”), MWD is choosing to rely on outdated water supply and financial planning that assume water demands that do not exist and are not reasonably projected to exist in the foreseeable future.

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In addition to these grounds, the Water Authority objects to being charged a “Water Stewardship Rate” (WSR) to pay for this project because its ratepayers have been barred by the MWD board’s August 2010 action from receiving any WSR benefits. Accordingly, the WSR is discriminatory, violates California law and may not be collected from the Water Authority’s customers.

As part of the lawsuit it has filed challenging MWD’s 2013 and 2014 water rates, the Water Authority is seeking to be relieved of any financial responsibility for this and other WSR projects approved by the MWD board of directors, so that the agencies that do not object may pay for these projects. As stated previously, the Water Authority has no objection if other MWD member agencies want to “pool” their money, however, that activity must be voluntary and not part of the water rates imposed by MWD on the ratepayers of all of its member agencies.

Sincerely,

Lynne Heidel  
Director

Keith Lewinger  
Director

Fern Steiner  
Director

Doug Wilson  
Director

cc: Jeff Kightlinger, MWD General Manager  
San Diego County Water Authority Board of Directors and Member Agencies
Adjourned Finance and Insurance Committee
Meeting with Board of Directors*
and
Special Board Meeting
August 20, 2012
9:00 a.m. -- Board Room

Date of Notice: August 8, 2012
4. **CONSENT CALENDAR ITEMS — ACTION**

None

5. **OTHER BOARD ITEMS — ACTION**

5. Tax levy for fiscal year 2012/13. (F&I)

5A-1 Report on list of certified assessed valuations for fiscal year 2012/13 and tabulation of assessed valuations, percentage participation, and vote entitlement of member public agencies as of August 15, 2012. *(To be distributed at meeting)*

5A-2 Adopt resolution establishing the tax rate for fiscal year 2012/13. *(To be distributed at meeting)*

8-1 Authorize the execution and distribution of the Remarketing Statement in connection with the remarketing of the Water Revenue Refunding Bonds (Index Mode), 2009 Series A-1, in the amount of $104,185,000; and authorize the execution and distribution of an Official Statement for a potential refunding of Water Revenue Bonds. (F&I)

6. **BOARD INFORMATION ITEMS**

None

7. **COMMITTEE ITEMS**

a. Update on rate refinement discussions

8. **FOLLOW-UP ITEMS**

None

9. **FUTURE AGENDA ITEMS**
10. ADJOURN TO SPECIAL BOARD MEETING

NOTE: At the discretion of the committee, all items appearing on this agenda, whether or not expressly listed for action, may be deliberated and may be subject to action by the committee.

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SPECIAL BOARD MEETING

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 the special meeting. (As required by Gov. Code Section 54954.3(a)

5. OTHER BOARD ITEMS

5. Tax levy for fiscal year 2012/13. (F&I)

5A-1 Report on list of certified assessed valuations for fiscal year 2012/13 and tabulation of assessed valuations, percentage participation, and vote entitlement of member public agencies as of August 15, 2012. (To be distributed at meeting)

5A-2 Adopt resolution establishing the tax rate for fiscal year 2012/13. (Roll call vote—two-thirds vote required) (To be distributed at meeting)

Date of Notice: August 8, 2012
6. ADJOURNMENT

NOTE: At the discretion of the Board, all items appearing on this agenda and all committee agendas, whether or not expressly listed for action, may be deliberated and may be subject to action by the Board.

Each agenda item with a committee designation will be considered and a recommendation may be made by one or more committees prior to consideration and final action by the full Board of Directors. The committee designation appears in parentheses at the end of the description of the agenda item e.g. (E&O, F&I). Committee agendas may be obtained from the Board Executive Secretary.

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Joint Meeting of the
Adjourned Water Planning and Stewardship Committee
and
Special Committee on Bay-Delta
Meeting with Board of Directors*
August 20, 2012

10:30 a.m. -- Room 2-456

* The joint meeting of the Metropolitan Water District's Water Planning and Stewardship Committee and Special Committee on Bay-Delta 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 Water Planning and Stewardship Committee and the Special Committee on Bay-Delta 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 committees as advisory to the Board, members of the Board who are not assigned to the Water Planning and Stewardship Committee and the Special Committee on Bay-Delta will not vote on matters before the Water Planning and Stewardship Committee and the Special Committee on Bay-Delta.

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

WATER PLANNING AND STEWARDSHIP COMMITTEE

2. Presentation by Jay Abbs, CEO of Palo Verde Valley Community Improvement Fund, on “Your Investment at Work”

Date of Notice: August 8, 2012
3. Approval of the Minutes of the meeting of the Water Planning and Stewardship Committee held July 9, 2012

4. CONSENT CALENDAR ITEMS — ACTION

7-1 Authorize entering into a Local Resources Program agreement with Municipal Water District of Orange County and El Toro Water District for the El Toro Recycled Water System Expansion Project. (WP&S)

5. OTHER BOARD ITEMS — ACTION

None

6. BOARD INFORMATION ITEMS

None

7. COMMITTEE ITEMS

None

8. MANAGEMENT REPORTS

a. Bay-Delta Matters

b. Colorado River Matters

c. Water Resource Management Manager’s report

9. FOLLOW-UP ITEMS

None

10. FUTURE AGENDA ITEMS

Date of Notice: August 8, 2012
SPECIAL COMMITTEE ON BAY-DELTA

11. COMMITTEE ITEMS
   
   a. Review of Bay Delta Conservation Plan joint State/Federal proposal
   
   b. Review upcoming six-month schedule of the Special Committee on Bay-Delta agenda items

12. ADJOURNMENT

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Date of Notice: August 8, 2012
Adjourned Engineering and Operations Committee
Meeting with Board of Directors*
August 20, 2012
12:00 p.m. -- Room 2-145

Monday, August 20 2012
Meeting Schedule

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<tr>
<th>Time</th>
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<td>7:00-8:00 a.m.</td>
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* 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 July 9, 2012

3. CONSENT CALENDAR ITEMS — ACTION

   7-2 Appropriate $850,000; and authorize final design of chemical containment upgrades at the Joseph Jensen Water Treatment Plant (Approp. 15371). (E&O)

   7-3 Appropriate $450,000; and authorize (1) two rehabilitation projects at the F. E. Weymouth Water Treatment Plant; and (2) increase in change order authority for the Weymouth Electrical Upgrades (Approp. 15477). (E&O)

Date of Notice: August 8, 2012
7-4 Appropriate $510,000; and award $309,682 contract to Corrpro Companies, Inc. to install cathodic protection on the Upper Feeder (Approp. 15441). (E&O)

7-5 Appropriate $420,000; and authorize construction to reline the fire water reservoir at Metropolitan’s Headquarters Building (Approp. 15441). (E&O)

7-6 Appropriate $470,000; and authorize design of chemical tank farm and lighting improvements at the Robert B. Diemer Water Treatment Plant (Approps. 15478 and 15380). (E&O)

7-7 Award $682,366 contract to Communication Services, Inc. for upgrades to the wide area network on the Colorado River Aqueduct (Approp. 15376). (E&O)

4. OTHER BOARD ITEMS — ACTION

8-2 Appropriate $2.95 million; and award $2,104,770 contract to PPC Construction, Inc. for chemical feed and containment upgrades at the F. E. Weymouth Water Treatment Plant (Approp. 15440). (E&O)

8-3 Appropriate $2.26 million; and award $1,177,580 contract to Fibrwrap Construction Services, Inc. for repairs to four prestressed concrete cylinder pipelines in the Riverside County Operating Region (Approp. 15471). (E&O)

8-4 Adopt the recommendation of the Hearing Officer and permit a subcontractor substitution for the La Verne Machine and Fabrication Shops Upgrades construction contract. (E&O)

5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

a. CIP Quarterly Report

Date of Notice: August 8, 2012
7. MANAGEMENT REPORTS
   a. Water System Operations Manager’s report
   b. Engineering Services Manager’s report

8. FOLLOW-UP ITEMS
   None

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

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Date of Notice: August 8, 2012
Adjourned Organization, Personnel and Technology Committee

Meeting with Board of Directors*

August 20, 2012

1:30 p.m. -- Room 2-456

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1. Opportunity for members of the public to address the committees on matters within the committees’ 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 June 11, 2012

3. COMMITTEE CHAIR’S REPORT

4. CONSENT CALENDAR ITEMS — ACTION

   None

5. OTHER BOARD ITEMS — ACTION

   None

Date of Notice: August 8, 2012
6. **BOARD INFORMATION ITEMS**

   None

7. **COMMITTEE ITEMS**

   a. Update on Information Technology Strategic Plan for period ending March 2012

   b. Update on cyber security program enhancements

   c. Update on impasse process

8. **FOLLOW-UP ITEMS**

   None

9. **FUTURE AGENDA ITEMS**

10. **ADJOURNMENT**

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Date of Notice: August 8, 2012
Real Property and Asset Management Committee

Meeting with Board of Directors*

August 20, 2012

2:30 p.m. -- Room 2-145

Monday, August 20, 2012
Meeting Schedule

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MWD Headquarters Building • 700 N. Alameda Street • Los Angeles, CA 90012

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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 Real Property and Asset Management Committee held April 24, 2012**

3. **CONSENT CALENDAR ITEMS -- ACTION**

   7-9 Authorize two long-term agreements with the city of Perris (long-term license) in Riverside County and Verizon Wireless (long-term lease) in San Bernardino County, pending project approvals. (RP&AM)

4. **OTHER BOARD ITEMS -- ACTION**

   None

Date of Notice: August 8, 2012
5. BOARD INFORMATION ITEMS
   None

6. COMMITTEE ITEMS
   None

7. MANAGEMENT REPORT
   a. Real Property Development and Management Manager’s report

8. FUTURE AGENDA ITEMS

9. ADJOURNMENT

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Date of Notice: August 8, 2012
Adjourned Legal and Claims Committee
Meeting with Board of Directors*

August 21, 2012
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 meeting of the Legal and Claims Committee held July 10, 2012

3. CONSENT CALENDAR ITEMS — ACTION

7-8 Authorize the amendment of contract with Ellison Schneider & Harris to increase the maximum payable from $100,000 to $200,000 for preliminary analysis of the permits for the State Water Project and Central Valley Project. (L&C)

4. OTHER BOARD ITEMS — ACTION

None

Date of Notice: August 8, 2012
5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

a. General Counsel's report of monthly activities

b. Report on Consolidated Delta Smelt Cases, USDC Case No. 1:09-CV-407 LJO-DLB; and Consolidated Salmonid Cases, USDV Case No. 1:09-CV-1053 LJO-DLB.
[Conference with legal counsel—existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(a)]

c. Report on San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case No. CPF-10-510830.
[Conference with legal counsel—existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(a)]

d. Report on existing litigation: Lennar Homes of California v. Metropolitan Water District of Southern California; Santa Margarita Water District, Orange County Superior Court Case No. 30-2012-00543908.
[Conference with legal counsel—existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(a)]; and report on anticipated litigation: Shapell Industries, Inc. v. Moulton Niguel Water District, Orange County Superior Court Case No. 30-2011-00519887.
[Conference with legal counsel—anticipated litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(c)]

7. FOLLOW-UP ITEMS

None

8. FUTURE AGENDA ITEMS

9. ADJOURNMENT
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Adjourned Communications and Legislation Committee
Meeting with Board of Directors*

August 21, 2012
10:30 a.m. -- Room 2-456

Tuesday, August 21, 2012
Meeting Schedule

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<td>C&amp;L</td>
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<tr>
<td>11:30 a.m.</td>
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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 Communications and Legislation Committee held July 10, 2012**

3. **COMMITTEE CHAIR’S REPORT**

4. **CONSENT CALENDAR ITEMS — ACTION**

   None

5. **OTHER BOARD ITEMS — ACTION**

   8-5 **Approve amendments to Metropolitan’s Source Water Quality Protection policy principle to address hydraulic fracturing.** (C&L)

Date of Notice: August 8, 2012
8-6 Approve increased dues for memberships in the Building Industry Association of Southern California, Inland Empire Economic Partnership, San Gabriel Valley Economic Partnership, and Orange County Business Council; and approve new memberships in the Association of California Cities – Orange County, and the League of California Cities – Los Angeles County Division. (C&L)

6. BOARD INFORMATION ITEMS

None

7. COMMITTEE ITEMS

a. Report on activities from Washington, D.C.

b. Report on activities from Sacramento

8. MANAGEMENT REPORT

a. External Affairs Management report

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

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Date of Notice: August 8, 2012
Adjourned Regular Board Meeting

August 21, 2012
11:30 a.m. -- Board Room

1. Call to Order
   (a) Invocation: June Chambliss, Occupational Safety and Health Representative, Water System Operations Group
   (b) Pledge of Allegiance: Director Glenn Brown

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 Gov. Code § 54954.3(a))

5. OTHER MATTERS
   A. Approval of the Minutes of the Meeting for July 10, 2012. (A copy has been mailed to each Director)
      Any additions, corrections, or omissions
   B. Report on Directors’ meetings attended at Metropolitan expense for month of July
   C. Approve 30-day leave of absence for Director Linda Ackerman, commencing August 3, 2012

Date of Notice: August 9, 2012
D. Approve committee assignments

E. Chairman’s Monthly Activity Report

6. DEPARTMENT HEADS' REPORTS

A. General Manager's summary of Metropolitan's activities for the month of July

B. General Counsel's summary of Legal Department activities for the month of July

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

D. Interim Ethics Officer's summary of activities for the month of July

7. CONSENT CALENDAR ITEMS — ACTION

7-1 Authorize entering into a Local Resources Program agreement with Municipal Water District of Orange County and El Toro Water District for the El Toro Recycled Water System Expansion Project. (WP&S)

Recommendation:

Option #1:

Adopt the CEQA determination and authorize the General Manager to enter into a LRP agreement for the El Toro Recycled Water System Expansion Project with MWDOC and El Toro for up to 1,175 acre-feet per year of recycled water under terms included in the board letter.

7-2 Appropriate $850,000; and authorize final design of chemical containment upgrades at the Joseph Jensen Water Treatment Plant (Approp. 15371). (E&O)

Date of Notice: August 9, 2012
Recommendation:

Option #1:

Adopt the CEQA determination and
a. Appropriate $850,000; and
b. Authorize final design of chemical containment upgrades for the Jensen caustic soda tank farm.

7-3 Appropriate $450,000; and authorize (1) two rehabilitation projects at the F. E. Weymouth Water Treatment Plant; and (2) increase in change order authority for the Weymouth Electrical Upgrades (Approp. 15477). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determinations and
a. Appropriate $450,000;
b. Authorize preliminary design to rehabilitate the Weymouth domestic and fire water system;
c. Authorize final design to replace the backup domestic water supply pipeline; and
d. Authorize the General Manager to execute change orders for the Weymouth Electrical Upgrades contract up to an aggregate amount not to exceed $1,960,140.

7-4 Appropriate $510,000; and award $309,682 contract to Corrpro Companies, Inc. to install cathodic protection on the Upper Feeder (Approp. 15441). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and
a. Appropriate $510,000; and
b. Award $309,682 contract to Corrpro Companies, Inc. to install cathodic protection on the Upper Feeder.

7-5 Appropriate $420,000; and authorize construction to reline the fire water reservoir at Metropolitan’s Headquarters Building (Approp. 15441). (E&O)
Recommendation:

Option #1:

Adopt the CEQA determination and
a. Appropriate $420,000; and
b. Authorize relining of the fire water reservoir at Metropolitan's Headquarters Building.

7-6 Appropriate $470,000; and authorize design of chemical tank farm and lighting improvements at the Robert B. Diemer Water Treatment Plant (Approps. 15478 and 15380). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determinations and
a. Appropriate $470,000;
b. Authorize preliminary design of chemical tank farm improvements at the Diemer plant; and
c. Authorize final design of Diemer plant lighting improvements.

7-7 Award $682,366 contract to Communication Services, Inc. for upgrades to the wide area network on the Colorado River Aqueduct (Approp. 15376). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and award $682,366 contract to Communication Services, Inc. to upgrade the wide area network on the Colorado River Aqueduct.

7-8 Authorize the amendment of contract with Ellison Schneider & Harris to increase the maximum payable from $100,000 to $200,000 for preliminary analysis of the permits for the State Water Project and Central Valley Project. (L&C)

Recommendation:

Option #1:

Adopt the CEQA determination and authorize the General Counsel to amend agreement No. 124110 with Ellison, Schneider & Harris to increase the maximum payable by $100,000 to a total of $200,000.
7-9 Authorize two long-term agreements with the city of Perris (long-term license) in Riverside County and Verizon Wireless (long-term lease) in San Bernardino County, pending project approvals. (RP&AM)

Recommendation:

Option #1:

Adopt the CEQA determination and authorize the General Manager to enter into agreements with city of Perris and Verizon Wireless.

(END OF CONSENT CALENDAR)

8. OTHER BOARD ITEMS — ACTION

8-1 Authorize the execution and distribution of the Remarketing Statement in connection with the remarketing of the Water Revenue Refunding Bonds (Index Mode), 2009 Series A-1, in the amount of $104,185,000; and authorize the execution and distribution of an Official Statement for a potential refunding of Water Revenue Bonds. (F&I)

Recommendation:

Option #1:

Adopt the CEQA determination and
a. Approve the draft Remarketing Statement and the Preliminary Official Statement substantially in the form attached to the board letter, with changes approved by the General Manager and General Counsel;
b. Authorize the General Manager to execute the Remarketing Statement and the Official Statement; and
c. Authorize distribution of the Remarketing Statement and the Official Statement in connection with remarketing and marketing of the bonds.

8-2 Appropriate $2.95 million; and award $2,104,770 contract to PPC Construction, Inc. for chemical feed and containment upgrades at the F. E. Weymouth Water Treatment Plant (Approp. 15440). (E&O)
Recommendation:

Option #1:

Adopt the CEQA determination and
a. Appropriate $2.26 million; and
b. Award $1,177,580 contract to Fibrwrap Construction Services, Inc. to repair PCCP joints on the Auld Valley Pipeline, Lake Skinner Outlet Conduit, and San Diego Pipelines Nos. 4 and 5.

8-3 Appropriate $2.26 million; and award $1,177,580 contract to Fibrwrap Construction Services, Inc. for repairs to four prestressed concrete cylinder pipelines in the Riverside County Operating Region (Approp. 15471). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and
a. Appropriate $2.26 million; and
b. Award $1,177,580 contract to Fibrwrap Construction Services, Inc. to repair PCCP joints on the Auld Valley Pipeline, Lake Skinner Outlet Conduit, and San Diego Pipelines Nos. 4 and 5.

8-4 Adopt the recommendation of the Hearing Officer and permit a subcontractor substitution for the La Verne Machine and Fabrication Shops Upgrades construction contract. (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and recommendation of the Hearing Officer and approve the request for subcontractor substitution for the La Verne Machine and Fabrication Shops Upgrades construction contract.

8-5 Approve amendments to Metropolitan’s Source Water Quality Protection policy principle to address hydraulic fracturing. (C&L)

Recommendation:

Option #1:

Adopt the CEQA determination and the amended Source Water Quality Protection Policy Principle as found in Attachment 5 to the board letter.

Date of Notice: August 9, 2012
8-6 Approve increased dues for memberships in the Building Industry Association of Southern California, Inland Empire Economic Partnership, San Gabriel Valley Economic Partnership, and Orange County Business Council; and approve new memberships in the Association of California Cities – Orange County, and the League of California Cities – Los Angeles County Division. (C&L)

Recommendation:

Option #1:

Adopt the CEQA determination and authorize the General Manager to pay the above-listed expected membership dues/assessments for FY 2012/13.

9. BOARD INFORMATION ITEMS

None

10. FUTURE AGENDA ITEMS

11. ADJOURNMENT

NOTE: At the discretion of the Board, all items appearing on this agenda and all committee agendas, whether or not expressly listed for action, may be deliberated and may be subject to action by the Board.

Each agenda item with a committee designation will be considered and a recommendation may be made by one or more committees prior to consideration and final action by the full Board of Directors. The committee designation appears in parentheses at the end of the description of the agenda item e.g. (E&O, F&I). Committee agendas may be obtained from the Board Executive Secretary.

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.

Date of Notice: August 9, 2012
August 16, 2012

Gary Breaux
Chief Financial Officer
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Re: Rate Refinement Workshop

Dear Gary,

I wanted to give you some of my thoughts on the issues the rate refinement board workshop should include on MWD’s finance plan and water rates. The “big picture” was described in the July 9, 2012 letter the San Diego board members sent to Chairman Foley requesting the workshop. That letter included concern for MWD financial stability given the high fixed costs versus low fixed revenues and questions how MWD will ensure sufficient revenues to pay its future costs and avoid stranded investments. Chairman Foley indicated that a workshop would be held. To assist in your preparation for the workshop, I went back through some of the other letters we have written to MWD on issues of concern and I thought it might help you to provide a short list of some of the key questions.

1. How can MWD execute a long term contract for the BDCP unless it has an assured source of revenue to make the payments?
2. Are ad valorem tax increases on a regular basis a real possibility? If so, what steps need to be taken to advance that approach? And, could this be the realistic solution to fund the BDCP?
3. Will the member agencies agree to sign take-or-pay contracts? If not, isn’t MWD being asked to carry all of the risk of stranding the BDCP and other investments? Is that a reasonable risk for our board to agree to assume?
4. What will happen if MWD’s sales continue to decline at the same time we continue to embark on new projects? How will MWD’s liabilities be paid? What legal mechanism exists to recover stranded costs? Will MWD be required to sign so-called “step up” agreements on the remaining ratepayers could have to cover if the other State Water Contractors default?
5. Are peaking costs being adequately charged and collected under the current rate structure? With so many MWD costs being incurred to meet dry-year peaking demands (not just for treated water), what mechanisms can MWD put in place in order to send the right price signal to ensure that agencies generating peaking costs are in fact paying those costs? Our calculations show that the current capacity and RTS charges do not fully recover these peaking costs.
6. In light of reduced sales projections, does it make sense for MWD to continue to pay its member agencies to NOT buy MWD water?
7. Given that the 20% by 2020 requirement is a retail requirement, and that MWD sales are down by more than 30%, does it make sense for MWD to continue to make current investments in water conservation? Or, should it defer those investments until sales begin to improve? Why hasn’t our adaptive IRP adapted to reduced sales?

8. If MWD is going to make additional investments in water conservation, shouldn’t it reduce the amount of money it is spending on other water supplies by a like amount?

9. How will MWD ensure that its revenues are in fact sufficient to meet its operating expenses over the next five years? At my local agency at Padre Dam, we call this “living within the household budget”. That is to say that expense is reduced to match the long term revenue stream, not the reverse.

10. What are the risks associated with projecting water sales based on “average” pricing? Will groundwater agencies buy as much water from MWD if it isn’t discounted? Will other agencies pay more in order to subsidize discounted water sales especially as agencies develop new local supplies reducing their dependence on Met?

11. Given all of the changed circumstances, including the increasing cost of MWD water, is it reasonable to rely on historical data in projecting future water sales?

There are other issues and questions but this is a pretty good list of the issues I see that the Water Authority has raised over the past couple of years. We look forward to working with you and our fellow board members to ensure MWD’s future and long term fiscal sustainability.

Sincerely,

Doug Wilson
Director

Attachments (without original enclosures):
1. July 9, 2012 re: Update on Rate Refinement Discussions
2. July 22, 2012 re: Board item 8-3 (LRP)
3. May 7, 2012 re: Board item 8-4 (conservation program)
4. March 21, 2012 re: Recommendation to cap MWD rate increases at 3%
5. March 12, 2012 re: LRPCs
6. February 13, 2012 re: Board item 8-2 (draft remarketing statement)
7. February 3, 2012 re: Biennial budget
8. December 13, 2011 re: SB60
9. November 4, 2011 re: Board item 8-8 (discounted replenishment program)
10. October 25, 2011 re: KPMG audit report
11. October 7, 2011 re: WP&S items
13. August 16, 2011 re: Member agency willingness to sign take-or-pay contracts
14. May 6, 2011 re: Board item 5-2 (sale of discounted water)
15. December 9, 2010 re: Draft official statement
16. September 22, 2010 re Draft official statement
July 9, 2012

Jack Foley
Chairman
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

RE: Update on Rate Refinement Discussions (Finance & Insurance Committee Item 7-a)

Dear Mr. Foley:

We have reviewed the PowerPoint presentation to the Finance & Insurance Committee, item 7-a, July 9, 2012 RE Update on Rate Refinement Discussions (the PowerPoint). After waiting more than five years – since the Long Range Finance Plan (LRFP) subgroup of member agency managers was formed in mid-2007 to discuss Metropolitan’s Long Range Finance Plan and “Rate Refinement” – we believe the recommendations described in the PowerPoint fail to address the right priorities or solutions for Metropolitan.

Metropolitan’s revenues have been insufficient to pay its expenses in five out of the last six years. Revenue stability and certainty should be a priority, and we agree with the belated conclusion now reached by Metropolitan staff and the member agency managers that the use of purchase orders has failed to meet this board objective over the past ten years. During this time, Metropolitan’s fiscal stability has continued to deteriorate. “Use of the current rate structure” (however that is defined) will not address Metropolitan’s need for revenue stability and cannot be relied upon to ensure that there will be a source of revenue for the multi-billion investments in the Delta and otherwise that Metropolitan is planning to make.

Rather than accepting the narrow “priorities” identified by staff and the member agency managers, we request that a board workshop be scheduled as part of next month’s Finance & Insurance Committee meeting to consider the elements and priorities of a Long Range Finance Plan for Metropolitan – a plan that is now long overdue. Metropolitan should not continue to spend money on water supply projects without evidence describing the need for these projects, and its member agencies unwilling to pay for them over the long term. We ask that the subject of take-or-pay contracts be considered by the board of directors, along with any and all other proposed alternatives to reasonably ensure Metropolitan’s recovery of sufficient revenues to pay its future costs and avoid stranded investments.

At a workshop, the board could consider all issues associated with a Long Range Finance Plan.
Mr. Foley
July 9, 2012
Page 2

Plan, including whether there is any support for ad valorem tax increases and any staff proposals to address the appropriate allocation of all standby service costs (not just treated water). We have distributed to the managers and attach to this letter a slide that depicts projected dry-year peaking by the Los Angeles Department of Water and Power, based on its Urban Water Management Plan. The staff’s recent recommendation that all member agencies “share” this cost is not acceptable to the Water Authority because these costs are required to be charged to and paid by the member agencies that benefit from Metropolitan’s expenditures to provide this service. The Water Authority expects to pay the costs associated with its own peaking – as all agencies should – but cannot and will not ask our ratepayers to “share” the costs of providing service to other agencies.

We ask that the board of directors take this issue up at the proposed workshop along with all other issues proposed for consideration by members of the board.

Sincerely,

Lynne Heidel  Keith Lewinger  Fern Steiner  Doug Wilson
Director    Director   Director   Director

cc: Metropolitan Board of Directors

Attachment: LADWP Historic & Projected Water Purchases from MWD
LADWP Historic & Projected Water Purchases from MWD

*Source: MWD Online Operations (1990-2007) and WINS Table A Report (2008-2011)
**Source: LADWP 2010 Urban Water Management Plan
June 11, 2012

John V. Foley, Chairman
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Re: Board Item 8-3 -OPPOSE
Authorize entering into a Local Resources Program agreement with Municipal Water District of Orange County and the city of San Clemente for the San Clemente Recycled Water System Expansion Project. (WP&S)

Mr. Foley and Members of the Board,

The Water Authority OPPOSES Board Item 8-3 on the following grounds:

Under California law including Proposition 26, MWD is required to set water rates that do not exceed the reasonable costs of providing the particular service for which the rate is charged, and that are equitable, fair and non-discriminatory. MWD has failed to present in Board Memo 8-3, by reference to its outdated Integrated Resources Plan (IRP), even more outdated 2007 LRP "target" or otherwise, any showing that MWD's payments for this local water supply project will benefit any ratepayers other than those of the city of San Clemente, which will own the water supply. There is no demonstration that any water supply or transportation costs are avoided by MWD as a result of these payments. The bald assertion in Board Memo 8-3 that, "the project would strengthen regional water supply reliability" is insufficient to meet the requirements of California law.

Far from benefitting ratepayers of other member agencies, MWD's continued payment of these subsidies under current circumstances harms all other MWD water ratepayers by further reducing demand for MWD water, thereby reducing MWD's own revenues and driving up the cost of its water purchased by customers of other MWD member agencies. Moreover, MWD staff's continued recommendations to approve subsidy agreements is inconsistent with its own actions months ago to suspend its "Local Resource Development Strategy Task Force" in order to reexamine the merits of the program and the water demand projections upon which it is based.

MWD's expenditures have exceeded its revenues in three out of the past four years because water sales are down by more than 30% since the 2010 IRP was adopted, let alone the 2007 LRP "target" for local resources development. Rather than respond to these changed circumstances (consistent with the IRP's articulated "adaptive management"), MWD is consciously choosing to rely on outdated water supply and financial planning that assume bloated water demands that do not exist and are not reasonably projected to exist in the foreseeable future.
In addition to these grounds, the Water Authority objects to being charged a “Water Stewardship Rate” (WSR) to pay for this project because its ratepayers have been barred by the MWD board’s August 2010 action from receiving any WSR benefits. Accordingly, the WSR is discriminatory, violates California law and may not be collected from the Water Authority’s customers.

As part of the lawsuit it has filed challenging MWD’s 2013 and 2014 water rates, the Water Authority is seeking to be relieved of any financial responsibility for this and other WSR projects approved by the MWD board of directors, so that the agencies that do not object may pay for these projects. As stated previously, the Water Authority has no objection if other MWD member agencies want to “pool” their money, however, that activity must be voluntary and not part of the water rates imposed by MWD on the ratepayers of all of its member agencies.

Sincerely,

Lynne Heidel  
Director

Keith Lewinger  
Director

Fern Steiner  
Director

Doug Wilson  
Director

cc: Jeff Kightlinger, MWD General Manager  
San Diego County Water Authority Board of Directors and Member Agencies

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1 Attachment 3 to Board Memo 8-3 states in a footnote that, “IRP studies show reduced long-term costs to the region when local resources are developed due to downsizing or deferral of Metropolitan’s capital improvements, reduction in operating costs for importation, treatment and distribution, and reduction in costs for developing alternative regional supplies. These benefits are realized by all Metropolitan member agencies through improved regional water supply reliability.” However, there is no evidence to support this broad claim, which is insufficient in any case to meet the requirements of California law including but not limited to Proposition 26.

2 See February 14, 2012 Board Letter 8-2, page 60, note 5.
May 7, 2012

John V. Foley, Chairman
and Members of the Board of Directors
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Re: Board Memo 8-4 – OPPOSE
Authorize changes to water conservation incentives (subsidies) as described

Dear Mr. Foley:

The Water Authority and its member agencies have a long and proud record of leadership in water conservation planning and implementation, based on strategic initiatives that will continue to reduce the region’s reliance on imported water supplies at an affordable cost. Given MWD’s role as a supplemental wholesale water provider – and taking into account the state mandate for 20% water conservation by 2020 at the retail level – the San Diego delegation does not support Agenda Item 8-4, to provide additional “incentives” to encourage water conservation. We have written to you and the board many times on this subject (reference to past correspondence is included below but not attached), so we provide only the following brief summary of the basis of our analysis.

Due to reduced demand for MWD water – and associated higher water rates – there is no need for MWD to pay subsidies to encourage water conservation at the wholesale level.

Water sales are already down at MWD by more than 30%. When sales are reduced, water rates go up as ratepayers are forced to pay more for using less water. As outlined in our March 21 letter to you and the rest of the board, it is time to stop punishing water use efficiency efforts by Southern California ratepayers who are already paying for water use efficiency programs at the retail level to meet the 20x2020 mandate.

The Water Stewardship Rate which is collected to pay for MWD conservation subsidies violates California law. The Water Stewardship Rate does not fairly apportion or reflect the actual, reasonable and proportionate costs of the services for which the rate is imposed. The Water Stewardship Rate violates the legal requirements of MWD’s principal act, Proposition 13 and the statutes implementing it, Government Code § 54999.7, the California common law of utility rate-making and Proposition 26. The Water Authority has provided MWD with detailed analyses by expert consultants establishing that the Water Stewardship Rate is legally defective.

A public agency providing a safe and reliable water supply to the San Diego region
The so-called “Rate Structure Integrity” clause adopted and imposed on the Water Authority by the MWD board of directors precludes any possible benefit to San Diego ratepayers from many MWD conservation programs. The board memorandum does not disclose that San Diego ratepayers are precluded from participating in MWD subsidy programs to the same extent as other MWD member agencies. We request that you include information in future board memoranda to fully disclose that information.

From a water resource planning, budget and policy point of view, we strongly encourage MWD to develop and implement a water conservation program that is better suited to its role as a wholesale water provider, that is based upon a calculable demonstration of need and avoided water supply cost (e.g., reduced take from the Delta, elimination of subsidies for member agency seawater desalination, etc.). Unfortunately, rather than viewing water use efficiency as a key part of its water resource plan and cost containment strategy – as recommended by the Water Authority for many years and by NRDC in its April 6, 2012 letter to you – MWD continues to limit itself to subsidy programs that are more appropriate at the retail level where the statewide conservation mandate has been imposed.

Sincerely,

[Signatures]

Lynne Heidel  Keith Lewinger  Fern Steiner  Doug Wilson
Director  Director  Director  Director

cc: Ed Osann, NRDC Senior Policy Analyst

Past correspondence to MWD RE water conservation programs and subsidies:
- August 16, 2010 letter on MWD staff analysis on opt-in/opt-out conservation program
- November 29, 2010 comments on MWD draft Long Term Conservation Plan (LTCP)
- July 20, 2011 comments on LTCP working draft Version 11
- August 15, 2011 letter opposing LTCP and revised policy principles
- November 13, 2011 letter RE turf replacement grant
March 21, 2012

John V. Foley, Chairman
and Members of the Board of Directors
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Re: Recommendation to Cap MWD Rate Increases at 3% for 2013 and 2014

Dear Mr. Foley and Members of the Board,

We were disappointed that the majority of the MWD board of directors did not feel that it would be productive to meet together as a board to discuss approaches to lowering MWD’s proposed rate increases for 2013 and 2014, in advance of our board vote in April. As a result, we are submitting this letter to you and all members of the board for consideration prior to the April 10 board meeting.

RECOMMENDATION

We recommend that the board cap MWD “average” rate increases\(^1\) at 3% for 2013 and 2014. We believe this can be accomplished — without any reduction of capital spending to maintain the Colorado River Aqueduct or any other MWD infrastructure — by reducing MWD’s Operations and Maintenance (O&M) expenditures by 10% and suspending conservation funding for the next two years. These changes would reduce the proposed two-year budget by $116.5 million and allow the “average” rate increases to be capped at 3% or less in 2013 and 2014.\(^2\)

Our recommendation would also direct staff to return to the board with specific budget reductions to accomplish the minimum 10% reduction in O&M (or, $76.5 million in expenditures over the two years — without changing the scheduled OPEB funding).

\(^1\) No one pays an “average” water rate at MWD — for example, MWD’s proposed Tier 1 Treated water rate increase for 2013 is 9.3%, and its Tier 1 Untreated water rate increase is 8.6%.

\(^2\) Staff indicated previously that in order to reduce the rate increase from 7.5% for 2013 and 5% for 2014, to 5% for both years, it would need to cut expenditures by $26.4 million over the two year period. Based on this formula, we assume that cutting expenditures by $116.5 million (more than 4 times $26.4 million) would allow the rate increases for both years to be held to 3% or less. If this assumption is incorrect, then we ask that MWD staff provide the board with the amount of the budget reduction necessary to hold rates to 3% or less over the next two years.
BACKGROUND

In its budget and recommended “average” proposed water rate increases of 7.5% and 5% for 2013 and 2014, respectively, MWD staff proposed to increase the O&M budget by $15 million in 2013 and $22.5 million in 2014, including higher travel expenses, staffing levels and consulting services. This budget proposal increases MWD’s O&M budget by $52.5 million over the two years, and includes staffing increases of at least 42 or as many as 80 new employees. \(^3\)

In response to board member requests to lower the first year “average” rate increase to 5%, staff recommended a mix of reduced expenditures ($14 million and $13 million, respectively for 2013 and 2014), reducing Central Valley storage funding and $5 million per year reduction of conservation funding or other cuts of similar magnitude.

Staff’s recommended budget is inconsistent with MWD water sales and revenue trends, discussed below. It is also out of step with cities and other public water suppliers throughout Southern California that have been forced to make the difficult decisions to reduce expenditures as a result of declining revenues. Rate increases to support expanded budgets, including more staff and increased spending, ignore the economic realities our water ratepayers are facing. Budget reductions should target reduced spending rather than water supply programs such as the Central Valley storage funding.

DISCUSSION AND OTHER CONSIDERATIONS

Protection of Colorado River Aqueduct and Other Infrastructure – We agree it is important to maintain MWD infrastructure investments, including the Colorado River Aqueduct. That’s why our proposal would leave intact all capital spending as proposed by staff. But as we all know, repair and replacement of aging infrastructure is not the “No. 1 driver” of MWD’s proposed water rate increases.

Stop Punishing Water Conservation by Southern California Ratepayers – Water ratepayers across the Southland have responded to our call to reduce water usage over the past few years. Now, water ratepayers do not understand – and they are angry – that they are being asked to pay more for using less water. \(^4\) In fact, reduced demand for MWD water is the principal reason MWD’s rates have risen 75% since 2006, and the principal reason why MWD’s expenditures have

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\(^3\) MWD’s January budget document states that it includes a total authorized personnel complement of 1,907 (including 24 temp equivalents) for 2012/13 and 2013/14, with an assumed vacancy rate of 2.7% and 2.9%, respectively. This translates to 1,832 and 1,828 FTE for each of the two years, respectively. But staff reported to the board in February that it had 1,756 employees on its payroll – which would mean that MWD intends to hire 80 additional staff. A subsequent report by staff at the February board meeting said that applying the vacancy rate would result in 1,798 full time equivalents (exclusive of temps), which would mean that MWD intends to hire 42 additional staff.

exceeded revenues in three of the last four fiscal years. However difficult it is to explain to water ratepayers, we all know that fixed costs are not reduced with reduced sales — and, that it is essential that fixed costs be paid. But MWD’s proposed rate increases go far beyond covering fixed costs — the budget actually increases spending on projects that are not necessary at this time of reduced demand for MWD water.

This is why we recommend that conservation funding for the next two years be suspended. While we understand the popularity of these programs, these expenditures are simply not necessary to “incentivize” water conservation at a time when water sales are already down more than 30% at MWD and most retail water suppliers. Retail ratepayers are already being asked to fund the difference between fixed costs and the amount of revenue available from reduced sales. It isn’t fair — or even logical — to also ask our ratepayers to pay for even more water conservation right now — they need and deserve to take the “break” that suspension of these payments would provide in the form of lower water rates.

Renewed Call for Moratorium on Use of MWD Ratepayer Dollars to Pay for Member Agency Water Projects — MWD has also been relying on its outdated Integrated Resources Plan and unrealistic water sales projections to support its continued payment of MWD water ratepayer dollars to subsidize member agency water supply projects. These projects are not owned or operated by MWD, and MWD has no right to the water supply. MWD has failed to demonstrate that these payments benefit the customers of any member agency other than the agency receiving the payments. The bald statement that these projects “will strengthen regional...
water supply reliability,” absent a substantial factual basis and analysis connecting the facts to the conclusion, is insufficient to support MWD spending under Proposition 26 or other legal requirements.

Stop Underwriting Peaking Costs of Los Angeles and Other Agencies – The Water Authority has calculated that the annual benefit to the City of Los Angeles Department of Water and Power under the current MWD rate structure – resulting from MWD’s failure to identify and allocate the costs of annual peaking – is $35 million to $40 million per year. The Water Authority is not the only agency underwriting these costs – ratepayers from Orange County, Ventura County, Riverside County and San Bernardino County are also paying for LA’s annual peaking. This is because the current rate structure fails to account for the costs associated with annual peaking, including the cost of water, distribution and storage capacity necessary to serve these sporadic annual demands.11

Many agencies, including the Water Authority, have some annual and seasonal peaking that is not accounted for in MWD’s cost of service. These costs should be identified and charged to the agencies that are benefitting from the investments necessary to meet their water supply needs. We raised this issue in our February 3, 2012 letter to Business and Finance Committee Chairman Grunfeld, copied to MWD’s General Manager and Chief Financial Officer (copy attached). Nearly one month later, on March 6, 2012 – after the budget workshops had already been concluded – we received a response from the CFO that did not address the substance of this issue, but stated that, the issue “is worded as a statement or position and should be addressed through the Board or Committee process” (copy attached). On March 8, we responded to the CFO’s letter, again presenting this issue in the form of a question. We asked,

Does the MWD cost of service currently capture and charge to the agencies that benefit, the full costs of system “standby” capacity and supply that enables year-to-year (annual) peaking off MWD?

We still have not received a response from the CFO, from MWD management or from the Chairman of the Board or Chairman of the Business and Finance Committee. Properly assigning these costs would result in additional water rate reductions for many ratepayers throughout MWD’s service area. We ask that you support our request at the April board meeting that this issue be addressed through the board or committee process, as suggested by the CFO – and, that adoption of rates be deferred until the board receives a full explanation why these costs are not accounted for or properly assigned in MWD’s cost of service. By copy of this letter, we are also disproportionately on the agencies – and their customers – that have not been rewarded with rich subsidy contracts.

11 Staff’s February 17, 2012 presentation to the Member Agency Managers on the Proposed Biennial Budget, Revenue Requirements, and Water Rates and Charges Fiscal Years 2012/13 and 2013/14, slide 7, is incorrect. While it correctly states that additional physical capacity must be designed into the system and additional capital costs are incurred, and that these costs include portions of distribution and regulatory storage, it is incorrect in its statement that MWD’s capacity charge “recovers the costs of the system used to meet peak demands.” This is not accurate even as to seasonal peaking, let alone annual peaking, which is not accounted for in MWD’s cost of service allocations.
asking the General Counsel to advise us, in writing, whether she agrees with the CFO that the MWD board has the option, as a “policy” matter, to not charge the cost of the services, facilities and supplies attributable to annual peaking to the agencies that benefit.

SUMMARY

We urge the board to adopt a budget that caps the “average” rate increases at 3% for 2013 and 2014. Further, we recommend that the adoption of water rates and charges be deferred until MWD management has provided a cost of service analysis that properly accounts for and assigns all MWD costs – including the cost of annual peaking – to the agencies that benefit.

Sincerely,

Lynne Heidel  
Keith Lewinger  
Fern Steiner  
Doug Wilson  
Director  
Director  
Director  
Director

Attachments:
  1. Water Authority’s letter to MWD re biennial budget dated February 3, 2012  
  2. MWD response to Water Authority’s comment letter dated March 6, 2012  
  3. Water Authority’s response to MWD letter dated March 8, 2012

cc: Jeff Kightlinger, MWD General Manager  
Gary Breaux, MWD Chief Financial Officer  
Marcia Scully, MWD General Counsel  
San Diego County Water Authority Board of Directors
March 12, 2012

John V. Foley, Chairman
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Re: Oppose Local Resources Program Agreements – Board items:
7-4 – LADWP Chevy Chase Park and Los Feliz Golf Course
8-6 – LADWP Harbor Industrial Project
8-7 – LADWP Hansen Dam Golf Course
8-8 – LADWP Griffith Park
8-9 – Eastern MWD Landscape Irrigation
8-10 – West Basin MWD Seawater Barrier and Landscape Irrigation

Mr. Foley and Members of the Board,

We have reviewed the staff reports recommending board approval of six funding agreements under the Local Resource Programs (Board items 7-4, 8-6, 8-7, 8-8, 8-9, and 8-10). We oppose the use of MWD regional water ratepayer dollars to pay for these local supply projects of these member agencies, on the following grounds.

1) Preparation of the underlying data and cost of service and rate structure proposal purporting to justify these payments is the product of a broken governmental process, all as described in detail in the submittals the Water Authority has presented at the public hearing on MWD’s proposed water rates and charges for 2013 and 2014. As presented at the public hearing earlier this morning, the agencies that are the principal beneficiaries of these programs are draining millions of dollars from the pockets of water ratepayers in other cities and regions in favor of their own.

2) There is no credible basis established by the board memoranda or otherwise to support these payments. The mere statement that, “the project(s) would strengthen regional water supply reliability” is wholly insufficient to support the use of regional ratepayer dollars to pay for these agencies’ local water supply programs. Nor are these payments supported by any demonstration in the board memoranda or otherwise that these payments benefit anyone but the individual agencies to which payments are being made. There is no demonstration that any water supply or transportation costs are avoided by MWD as a result of these payments.

3) To the contrary, these payments harm all MWD water ratepayers by further reducing demand for MWD water and the revenues MWD depends upon for its very existence, and thus driving up the cost of MWD water supply for all other water ratepayers. MWD’s expenditures have
Chairman Foley and members of the Board  
March 12, 2012  
Page 2

exceeded its revenues in three out of the past four years.\(^1\) MWD’s lower sales are driving up the cost of water. Customers are angry because they are being asked to pay more at the same time they are using less. Rather than respond to these circumstances, MWD is further exacerbating the situation by paying some of its member agencies to buy even less water. MWD’s continued reliance on an outdated Integrated Resources Plan that includes bloated water demands that clearly do not exist – and are not reasonably projected to exist any time in the near future, if ever – is an insufficient basis to justify these payments.

4) As of August 2010, the MWD board took action stating that the Water Authority is no longer eligible to receive funds collected through its Water Stewardship Rate. As a result, and because no other direct or indirect benefit to the Water Authority and its customers is demonstrated, the rates and charges violate California law and may not be collected from the Water Authority’s customers.

5) Staff’s recommendation to the board to approve these projects is inconsistent with its own action in the public member agency process to suspend further discussions with the Local Resource Development Strategy Task Force, in order to reexamine the merits of this program and the water demand projections upon which it is based. Until that examination is completed, consideration of all local resource projects should be suspended.

6) The board memoranda proposing funding for these projects are insufficient to inform the board of directors of the costs associated with these projects. For example, Board Letter 8-9 (Eastern Municipal Water District) states that MWD’s share of the cost will be $2.3 million, but that it could go up to $31.3 million – almost 14 times higher. Similarly, Board Letter 8-10 (West Basin) states that the financial impact to MWD is $7 million, but that it could go up to $50 million – more than 7 times higher. The board has no way of knowing based on the Board Letters what the benefits and risks are, or what MWD’s financial exposure in connection with these projects will be.

The Water Authority would have no objection if the other MWD member agencies and the cities and customers they serve wish to subsidize the local water supply projects of the City of Los Angeles and other large agencies benefitting from this program. However, if they wish to do so, a separate fund that they pay into should be created for that purpose.

Sincerely,

Lynne Heidel  
Director

Keith Lewinger  
Director

Fern Steiner  
Director

Doug Wilson  
Director

cc: Jeff Kightlinger, MWD General Manager

\(^1\) See February 14, 2012 Board Letter 8-2, page 60, note 5.
February 13, 2012

Board of Directors
Metropolitan Water District of Southern California
700 N. Alameda Street
Los Angeles, CA 90012

Re: Board Memo 8-2: Authorize the execution and distribution of Remarketing Statement in connection with the remarketing of the Water Revenue Refunding Bonds (Index Mode), 2011 Series A-1 and A-3, in the amount of $128,875,000

Dear Chairman Foley and Board Members,

We have reviewed Board Memo 8-2 including Attachments. For reasons we have described in detail in prior correspondence concerning the sale of bonds by Metropolitan – as well as in recent correspondence regarding the proposed budget (Attachment 1) – we are not comfortable that the Remarketing Statement as drafted by Metropolitan allows us to meet our legal responsibilities in voting to approve the draft Remarketing Statement. We must therefore respectfully vote against the staff recommendation.

We understand the need for the remarketing. And, we acknowledge the edits Metropolitan made in response to our comments on the last draft Appendix A (Attachment 2). However, we do not believe the edits went far enough to ensure that information essential to making an informed investment decision is being presented in a manner that is not misleading. The draft Remarketing Statement does not correct these deficiencies. In summary, the principle (but not exclusive) areas of concern remain the following:

- Failure to sufficiently describe the changed circumstances that have resulted in reduced demand for Metropolitan water.
- Failure to adequately describe the impact on water sales of conservation requirements and higher water rates.
- Risk associated with Metropolitan’s inability to secure long term purchase contracts or legal equivalent from its member agencies.
- Risk to Metropolitan of its heavy reliance on water sales revenues to pay its fixed costs.
- Failure to adequately describe the risks and costs associated with uncertainly and volatility of water purchases by City of Los Angeles.
- Risk associated with projecting water sales based on “average” pricing.
- Failure to reasonably estimate future water rate increases, generally, and as associated with Metropolitan’s Integrated Resources Plan as adopted by the Board.
• Impact of Proposition 26 on setting water rates and charges.
• Failure to describe impacts resulting from the fact that Metropolitan expenditures have exceeded revenues in three out of the last four years.
• Undue reliance on historical data to predict future outcomes in the current, changed water supply and fiscal environment.

While we are aware and have taken into account that the draft Remarketing Statement includes a number of “disclaimers” in these and other areas, we are concerned that certain of these disclaimers could be challenged because they relate to matters that could or should have reasonably been known by Metropolitan and its Board of Directors.

We do not come to this decision lightly. If Metropolitan and the Board wish to work with us to address our concerns, we will provide detailed comments on the draft Remarketing Statement. We note that we have raised these concerns repeatedly in the context of many different board actions, without receiving a substantive response.

Sincerely,

Lynne Heidel  Keith Lewinger  Fern Steiner  Doug Wilson
Director  Director  Director  Director

cc: Jeffrey Kightlinger, General Manager  Gary Breaux, Chief Financial Officer
San Diego County Water Authority Board of Directors

Attachments:
1. February 3, 2012 letter re: MWD Budget and Rates
2. August 22, 2011 letter re: Appendix A
February 3, 2012

Aaron Grunfeld
Business and Finance Committee Chairman
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Re: Proposed Biennial Budget and Associated Rates and Charges for 2012/13 and 2013/14

Dear Mr. Grunfeld:

First, we want to thank you for your commitment to hold budget workshops so the board may review, ask questions and understand the proposed budget.

We have reviewed staff’s proposed biennial budget and associated rates and charges for 2012/13 and 2013/14, as well as the slides presented at the January workshop. Based on this preliminary review, we are providing you with the comments, requests and questions which are attached. In order to facilitate the board’s deliberation of these issues, we request that staff respond to our comments and questions in writing prior to the next budget workshop.

We look forward to continuing this important dialogue at the next budget workshop.

Sincerely,

Lynne Heidel
Director

Keith Lewinger
Director

Fern Steiner
Director

Doug Wilson
Director

Attachment

cc: Jack Foley, MWD Board Chairman
Jeff Kightlinger, MWD General Manager
Gary Breaux, MWD Chief Financial Officer
MWD Budget Workshop #1 – January 24, 2012

San Diego County Water Authority (SDCWA)’s MWD Delegates’ questions and comments on proposed biennial budget and associated water rates and charges for FY 2012/13 and 2013/14

All references are to Budget Memo 8-1 for the January 10, 2012 Board meeting or to the power point presentation at the January 24, 2012 budget and rate workshop.

1. The Board must take steps to “right-size” MWD in order to ensure that revenues – based on more reasonable demand projections – are sufficient to pay MWD’s costs.

   - MWD’s water deliveries declined almost 500,000 acre feet over the last four years from 2.26 million acre feet (MAF) in 2008 to 1.68 MAF in 2012. Moreover, the 2012 delivery figures included 164,000 acre feet of San Diego County Water Authority’s (Water Authority) QSA transfer water and 225,000 of “one-time” discounted water sales that would not have occurred at full price. MWD’s 2010 Regional Urban Water Management Plan (RUWMP) shows its average year sales in 2030 will be 22% lower than projected in MWD’s prior RUWMP just five years ago. MWD’s sales projections are flat or trending downward and yet, the Board has taken no meaningful actions, in terms of programs or staffing, to reduce the expense side of the budget to reflect this dramatic reduction in MWD sales.

   - What is basis of budget demand projections assuming full service sales of 1.5 MAF next year and in future years? The Board memo states that the sales estimate is “conservative,” yet, this assumption is 200,000 acre feet more than this and last year’s full service sales of 1.3 MAF.

   - MWD has not covered its operating costs in six out of the last eight years (2004-2011). The first order of business must be to reduce spending, consistent with budget cuts already implemented by most of the cities and retail agencies in Southern California.

   - Given that retail demand is down 20% or more across the MWD service area, we recommend a moratorium on all subsidy programs designed to further reduce MWD sales (and revenues). The moratorium should remain in place until MWD updates its IRP projections and conducts a comprehensive study to evaluate the need for MWD to pay for such programs. This recommendation should not be interpreted to suggest that the Water Authority does not fully support the development of local supply projects including increased water use efficiency, but rather, that funding should be at the local level.

   - The budget notes that replenishment water will be sold at full service rates, however, it does not appear to account for the cost of “incentives” or “rebates” that are also part of the staff recommendation for a revised replenishment program. Please identify the amount and cost of service category to which these incentives or rebates are assigned. What rate is proposed to generate the revenue to pay the cost of these incentives or rebates?

2. MWD should reasonably spread cost burdens among current and future rate payers; it should not raid revenues intended for capital projects to pay operating expenses, and should not overburden future rate payers by deferring OPEB funding.

   - The budget includes a reduction of PAYGo revenue collections in 2012/13 that is inconsistent with the Board’s adopted policy. If the Board approves this recommendation, MWD will have failed to follow its own PAYGo funding policy in eight out of the last ten years (2005-2014). Funding capital projects at such low PAYGo levels unfairly shifts obligations from current
ratepayers to future ratepayers. Moreover, several years of midyear reallocation of PAYGo funds intended for capital to meet operating expenses has distorted cost of service. The Board should not continue to apply revenues that are collected for capital projects to pay operating costs.

- The proposed budget continues to shift a disproportionate share of unfunded OPEB liability to future ratepayers. The funding schedule presented at the January workshop to begin ramping up payments to match MWD’s Annual Required Contribution (ARC) does not go far enough. MWD should cut costs now in order to increase funding to match its ARC.

- A greater share of MWD’s Capital Improvement Program (CIP) now consists of R&R projects. Indeed, the January workshop presentation showed R&R expenditures represent about two-thirds of CIP costs over the two years reviewed. Aside from the misuse of PAYGo to pay operating expenses, we would also suggest that the Board consider changing its PAYGo funding strategy so it is proportionate to the total CIP over time. This would ensure that current ratepayers are not being asked to pay a disproportionate share of R&R.

3. **MWD must properly account for the cost of storing water.**

Based on data assembled from the proposed budget, the supply and delivery balance is as followed:

<table>
<thead>
<tr>
<th>Supply/Demand</th>
<th>2012/13</th>
<th>2013/14</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Water Project (Exchange)*</td>
<td>1,260 TAF</td>
<td>1,140 TAF</td>
</tr>
<tr>
<td>Net to MWD</td>
<td>(120 TAF)</td>
<td>(108 TAF)</td>
</tr>
<tr>
<td>Colorado River**</td>
<td>727 TAF</td>
<td>890 TAF</td>
</tr>
<tr>
<td>Total supply to MWD service area</td>
<td>1,867 TAF</td>
<td>1,922 TAF</td>
</tr>
<tr>
<td>Total MWD demand**</td>
<td>1,700 TAF</td>
<td>1,700 TAF</td>
</tr>
<tr>
<td>Excess supply</td>
<td>167 TAF</td>
<td>222 TAF</td>
</tr>
</tbody>
</table>

*The budget document does not describe the exchange; if this is not MWD’s exchange obligation with Coachella and Desert Water, please provide details.

**The budget document includes Water Authority’s QSA water at 172.7 TAF and 177.7 TAF for 2012/13 and 2013/14, respectively, as both supply and demand. MWD does not report the local water supplies and associated demand of its other member agencies, and has no basis for treating Water Authority's QSA water differently. In accordance with the terms of the Exchange Agreement, the revenues generated from payments made under the Exchange Agreement should be treated as transportation or wheeling revenues.

- Staff reported at the workshop that it plans to store 300,000 acre feet of water this year, which is more water than is estimated to be available for storage in the supply and delivery balance. What is the source of the water staff is planning to store, and, how are the costs of that water captured in the cost of service? How much funding is included in the budget to pay for storage costs? Finally, is the energy cost of moving the water into storage being captured in the System Power Rate or through Supply Programs?
4. **The cost of service does not recover the costs of system “standby” capacity and supply that enables year-to-year peaking off MWD.**

- Many agencies peak off the MWD system from year-to-year, depending on hydrology and the availability of local water supplies. MWD has developed and continues to develop water supplies and incur storage and facility costs in order to meet these demands, but is not fully allocating the costs associated with these investments from the agencies that benefit from them. MWD must change its rate structure in order to account for and allocate these costs so that they are borne by the agencies that benefit by being able to peak and then roll off the MWD system.

5. **The Delta Supply Surcharge should be continued because the purpose for which it was established by the Board has not changed.**

- Please provide the basis of the staff recommendation to delete the Delta Surcharge. Given the rationale stated in Board Memo Revised 8-3 dated April 14, 2009, the Delta Surcharge should remain in place. In fact, the budget states at page three that increased funding is being included to aggressively pursue exactly the type of projects the Delta Surcharge was intended to cover.

- Was the Delta Supply Surcharge combined with the Tier 1 supply rate? If not, how were these costs reassigned?

6. **Staff needs to provide more information why individual rate components are increasing or decreasing; and, take steps to better smooth rate increases at the retail level.**

- The proposed individual rates and charges include changes that vary significantly from the “average” 7.5% increase staff reports. Since no agency pays “average” rates, information needs to be provided on why individual rates and charges are increasing or decreasing. Please provide the data supporting the System Access Rate increases. Also, please provide the data supporting the supply rate decrease.

- Staff should also explain why some elements show decreases one year and increases the next year – or vice versa, and, present alternatives to avoid swings in the rates and charges.

7. **Staff must track all rate component costs and expenditures, not just the Water Stewardship Fund.**

- MWD tracks over- and under- expenditures for revenues collected under Water Stewardship rate, but not others. What is the basis for this disparate treatment? For example, although MWD has a Treatment Surcharge Rate Stabilization Fund, when fund revenues are insufficient to pay those costs, MWD uses General Fund revenues to cover the difference. The net effect is that raw water customers are subsidizing treated water customers. We request that MWD provide a cost of service analysis for all rate components and identify or develop internal tracking mechanisms to prevent cross-subsidies.
8. **All operations and staffing should be “right-sized” to reflect reduced demands.**

- What were staffing levels and budget in 2008? What are they today?
- What criteria has staff used to “optimize” staffing levels?
- Are the staffing levels recommended in the budget higher than current actual levels? If so, why?
- Please provide a list of the O&M association dues that total $5 million annually.

9. **A contingency plan should be included in the proposed budget.**

- The biennial budget should include a contingency plan that would automatically be triggered mid-year to reduce current costs in the event projected revenues are lower than budgeted.
- Similarly, the budget should provide a plan that describes in detail how MWD will apply excess funding in the event projected revenues exceed expenditures. This is especially important in light of the recent draw-down of reserves, raids on the PAYGo fund and cross-subsidies that have been created by the failure to track individual rate components – or to budget so that projected revenues are reasonably expected to be sufficient to pay MWD’s expenses.

10. **Even if it is unwilling to update or modify its cost of service analysis generally – which it should – MWD must at a minimum provide a new cost of service analysis to ensure compliance with Proposition 26.**

- Even if the Board does not require staff to update or modify its cost of service analysis, or, support a moratorium on local projects spending to mitigate the impacts of reduced demands and MWD revenues, staff must identify the benefits it claims are associated with these payments and demonstrate that those benefits are received by those paying the charges and that the amount of the charge is reasonably related to the benefits. The benefits that have been stated but which have not been supported by any data or analysis include (1) capacity will be made available that is otherwise not available for the transportation of MWD water; (2) investments MWD would otherwise need to make in other facilities and/or water supply will be avoided as a result of these payments; and (3) MWD needs and will benefit from the local water supply it is paying for. Please provide the analysis required by Proposition 26.
December 13, 2011

John V. Foley
Chairman of the Board
Metropolitan Water District of Southern California
P. O. Box 54153
Los Angeles, CA 90054-0153

Re: SB 60 Annual Public Hearing and Report to the Legislature Regarding Adequacy of MWD’s Urban Water Management Plan
REQUEST TO INCLUDE INFORMATION IN REPORT TO LEGISLATURE

Dear Chairman Foley and Members of the Board of Directors:

We request that this letter and all of its attachments be made a part of today’s board record and included in MWD’s Annual Report to the Legislature regarding the adequacy of MWD’s Urban Water Management Plan to achieve increased emphasis on cost-effective conservation, recycled water and groundwater recharge as described in the MWD Act.

As background to yesterday’s public hearing on this subject, the Water Authority prepared and submitted to MWD a short PowerPoint presentation that was not allowed by Mr. Kightlinger to be shown to the board of directors. MWD staff also refused to distribute hard copies of the presentation to the board in accordance with the usual practice as stated on the speaker’s request form; because of these refusals, San Diego Director Lewinger distributed the copies. We were not aware at the time of the hearing that the Water Authority’s PowerPoint had already been loaded on the MWD computer, or we would have objected at that time. Water Authority staff was also informed yesterday that no presentations may be made to the MWD board unless they are first reviewed and approved by MWD management. We do not believe that MWD may place any such prior restraint on the content of material proposed to be presented at any public meeting of the MWD board of directors. As Chair, you undoubtedly know that the Brown Act expressly states that “a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or the acts or omissions of the legislative body.” (Government Code § 54954.3 (c.).)

Copies of the Water Authority’s PowerPoint presentation, written testimony by Assistant General Manager Dennis Cushman and a report by Gordon Hess and Associates titled, Comparison of MWD Demand Projections, Member Agency UWMPs and Local Water Supply Development Plans (Hess Report), are attached. As you know, for the reasons described in Mr. Cushman’s testimony and attachments, we believe that MWD focused on the wrong question at yesterday’s public hearing and in its draft Report to the Legislature by limiting it to a report on MWD subsidy programs.

A public agency providing a safe and reliable water supply to the San Diego region
Chairman Foley
December 13, 2011
Page 2

We also request that MWD inform the Legislature about its “Rate Structure Integrity” (RSI) “policy” and clause, which may be used by MWD to terminate all MWD funding agreements for conservation, recycled water and groundwater recharge in the event that agency challenges MWD’s water rates in court or before the Legislature. Further, MWD should include in its SB 60 report that the MWD board has, in fact, terminated, with limited exception, all of the Water Authority’s funding agreements that contain the RSI provision, and refused to enter into future funding agreements supporting conservation, recycled water and groundwater recharge in San Diego County. (A copy of MWD’s June 23, 2011 to the Water Authority is attached.) MWD has essentially blackballed the Water Authority from participation in these programs, in spite of the fact that it continues to collect more than $16 million annually from San Diego County water ratepayers to pay for these programs. MWD should also inform the Legislature that the Water Authority is challenging MWD’s actions and the constitutionality and legal propriety of the RSI clause in the lawsuit now pending in Superior Court in San Francisco.

For the reasons described in Mr. Cushman’s testimony and in the Hess Report, we do not believe that MWD has done the analyses necessary – either in its 2010 Integrated Resources Plan (IRP) or 2010 Regional Urban Water Management Plan (RUWMP) to support and enhance water conservation, recycled water and groundwater recharge in Southern California. Indeed, the greatest impediment may be the very perpetuation of the notion that these projects will only be developed if MWD subsidizes them. Conservation is at an all-time high throughout the Southland as a result of the higher water rates being charged by MWD and its member agencies. More local water supply projects are being developed because they have become cost-competitive due to the higher water rates being charged by MWD. It is clearly time for a fresh and realistic look at MWD’s demand and rate projections and to tie future resource planning directly to the willingness and firm financial commitment of its member agencies to pay.

Sincerely,

Lynne Heidel  Keith Lewinger  Fern Steiner  Doug Wilson
Director  Director  Director  Director

cc:  MWD Board of Directors
     Jeff Kightlinger, General Manager
     San Diego County Water Authority Board of Directors

Attachments:
1. Water Authority’s PowerPoint Presentation to MWD WP&R dated December 12, 2011
2. Water Authority Assistant General Manager Dennis Cushman’s testimony
4. MWD June 23, 2011 letter to Water Authority
November 4, 2011

John V. Foley  
Chairman of the Board  
Metropolitan Water District of Southern California  
P. O. Box 54153  
Los Angeles, CA 90054-0153

Re: Board Memo 8-8 –  
Approve Policy Principles for a Replenishment (Discounted Water) Program

Dear Chairman Foley,

Board Memo 8-8 asks the board to approve policy principles to guide the development of a new program for the sale of discounted water. We do not believe that the policy principles as proposed by staff provide a sufficient and clear basis to guide the development of a new program. Indeed, we do not believe that the staff has established the need for a new program to sell discounted water, whether it is described as “replenishment,” “regional water management,” or otherwise.

We have raised a number of questions over the past several months, since the General Manager first proposed the sale of discounted water last April. Our concerns have focused on the unprecedented budgetary and fiscal challenges confronting Metropolitan, including the fact that its expenditures have exceeded revenues in six out of the last nine years. Over the last four years, Metropolitan has resorted to raiding funds intended for pay-as-you-go capital expenditures in order to meet normal operational expenses. The discounted water program is a concern because when Metropolitan sells water at a discount, it displaces full-rate water sales, which in turn leads to lower revenues overall and insufficient recovery of fixed costs.

While the staff continues to bring back recommendations based on the wishes of the member agencies, it has failed again to address the needs of Metropolitan. We understand why the member agencies would like Metropolitan to sell them water at a discount, what we do not understand is how the Metropolitan staff proposes to ensure benefit to all member agencies when discounted water is sold to some, or, how Metropolitan will be in a position to reverse its declining financial condition through the sale of discounted water.

The analysis provided in Board Memo 8-8 fails to address the very concerns raised by staff in its April 26, 2011 Board Memo (5-1) that first recommended reinstituting the sale of discounted water. Those concerns included – and remain:
• Questionable and unquantifiable performance criteria for a discounted water program;
• Loss of full service sales due to availability of discounted water;
• Unequal distribution of costs and benefits among member agencies; and
• Cash flow and budget issues associated with availability of discounted water.

The staff has also failed to respond to questions about Metropolitan’s existing storage programs or the assumptions it is making about the use of that storage in the future. As a result, there is no basis for determining either the need for, or benefit of another new program.

We are attaching our past communications to the board on this subject. We request that staff respond, in writing, to the questions asked in our letters. Doing so would provide the board with a sound foundation to discuss the real policy principles involved in the proposed sale of discounted water. We would appreciate a written response to our letters in any event because they raise issues and concerns of great interest to our member agencies and water ratepayers.

Sincerely,

Lynne Heidel                 Keith Lewinger                Fern Steiner
Director                    Director                        Director

cc: MWD Board of Directors
    Jeff Kightlinger, General Manager
    San Diego County Water Authority Board of Directors

Attachments:
1. April 25, 2011 letter to Jack Foley re: Board Memo 5-1 – Sale of Discounted Water and Attachment 1: Issues Associated with the Sale of Discounted Water by MWD
2. May 6, 2011 letter to Jeff Kightlinger re: Board Memo 5-1 – Sale of Discounted Water
3. September 12, 2011 Comments and Questions on Board Memo 9-2 – Update on Replenishment Service Program, Director Keith Lewinger
4. October 7, 2011 letter to Jack Foley re: Water Planning and Stewardship Committee Items 6a, 6b, and 6d
October 25, 2011

Jack Foley, Chairman
Metropolitan Water District of Southern California
PO Box 54153
Los Angeles, CA 90054-0153

Re: KPMG Audit Report of MWD’s Basic Statements for Years ended June 30, 2011 and 2010

Dear Chairman Foley:

The Auditor’s report states that it is prepared in accordance with Government Auditing Standards. Though these standards do not require the presentation of budgetary information for Enterprise funds, it would be extremely helpful for this information to be presented as supplemental information in the Comprehensive Annual Financial Report (CAFR) following the notes to the financial statements, so it could provide a context for evaluating evidence and understanding of findings, conclusions and recommendations in the report.

Referring to page 13, the information on future debt service is misleading as it does not include projected future debt issuance. It should be noted that it does not include projected future debt issuance.

In the CAFR transmittal letter it would be prudent to disclose the potential impacts of Proposition 26 on revenue policies, in particular, that the collection of revenues under the current policy for conservation and Local Resource Programs may not meet Proposition 26 or other legal requirements.

Referring to page 58, Bay Delta discussion mentions it is expected that the BDCP will be approved, and a permit decision will be made in 2012, but the report should disclose the potential cost impacts to MWD of the BDCP plan.

Referring to page 60, SDCWA litigation disclosure mentions that the Exchange Agreement requires MWD pays the disputed portion paid by SDCWA if the Water Authority prevails, but it should also disclose that in accordance with the Exchange Agreement MWD is required to escrow the disputed funds each year until the litigation is completed.

Referring to page 69, the discussion should disclose that there is an escrow account for the SDCWA litigation, identify where it is held and that as well as any implications for reserve fund Board policy minimums.
We request that management respond in writing to the issues identified in this letter.

Sincerely,

Jim Bowersox
Director

Lynne Heidel
Director

Keith Lewinger
Director

Fern Steiner
Director

cc: MWD Board of Directors
October 7, 2011

John V. Foley, Chairman
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Re: Water Planning and Stewardship Committee items 6a, 6b, and 6d

Dear Chairman Foley,

We have reviewed the staff reports to be discussed under Committee items 6a, 6b and 6d at the October 11, 2011 Water Planning and Stewardship Committee. The reports provide a long list of activities described as implementation of the 2010 Integrated Resources Plan (IRP) including BDCP and other imported water projects, recycled water projects, conservation, seawater desalination and, the sale of discounted water. What is absent from the reports is any analysis showing:

- The demand for all of the water that will be produced by these projects;
- The rate increases associated with implementation of all of these projects;
- The regional benefit (to all member agencies paying the rates) of payments by Metropolitan for some member agency local water supply projects;
- The regional benefit (to all member agencies paying the rates) of the sale of discounted water by Metropolitan at a time when its water sales are more than 25 percent lower than projected and water rates are far higher than projected in Metropolitan’s adopted Long Range Finance Plan; or
- How all of these projects are expected to be paid for.

Almost twenty years ago, the Metropolitan Blue Ribbon Committee Task Force urged Metropolitan to fully integrate its resource planning and rate structure efforts because, “reliability, cost and demand are all interdependent and should be treated that way in the IRP and rate structure reform processes” (page 9). Unfortunately, Metropolitan has steadfastly refused to do so – as reflected in this month’s board reports of ongoing project implementation without any discussion whatsoever about cost or demand. Metropolitan’s stubborn refusal to reduce its spending and operations is inconsistent with the economic reality today facing every city and water retailer in Southern California.

The IRP states that it is based on “adaptive management.” It is time now for Metropolitan to “adapt” to actual, changed circumstances including dramatically reduced sales, dramatically
reduced projected demand for Metropolitan water, and, rapidly escalating water rates that will further dampen demand for Metropolitan water.

Since 2003, Metropolitan’s expenditures have exceeded its revenues for six out of nine years, and for the same number of years, it has diverted funds intended for pay-as-you-go capital projects to pay for operational expenses. Metropolitan’s financial reserves are being depleted, and now stand at their lowest level in 20 years. Metropolitan must stop analyzing project implementation in a vacuum and on a piecemeal basis.

The rate increases associated with declining sales and new projects are inevitable. The impacts of these rate increases are already being felt throughout Southern California. We strongly urge Metropolitan to cease entering into any new project funding agreements and cease the sale of discounted water until Metropolitan staff and board update IRP demand projections to reflect current realities.

Metropolitan needs a rate structure and long-term financial plan that are fully integrated with realistic demand projections. Metropolitan must conduct a cost/benefit and cost of service analysis to justify both the investment of regional ratepayer dollars in member agency water supply projects and the sale of water at a discount. Not only is this required by law, but it is sound fiscal planning that is essential at a time when Metropolitan’s revenues are clearly insufficient to pay for its current costs and programs.

Sincerely,

Jim Bowersox
Director

Lynne Heidel
Director

Keith Lewinger
Director

Fern Steiner
Director

Cc: MWD Board of Directors
    Jeff Kightlinger
August 22, 2011

Board of Directors
Metropolitan Water District of Southern California
700 N. Alameda Street
Los Angeles, CA 90012

Dear Chairman Foley and Members of the Board:

We have reviewed Appendix A of MWD’s Draft Official Statement, distributed to the members of the board on August 15 relating to the upcoming refunding of certain fixed revenue bonds (Draft or Appendix A). While we support MWD’s desire to take advantage of the market to reduce its debt obligation, we remain concerned that MWD’s financial condition is not accurately described in Appendix A. As you know, the Water Authority’s MWD representatives have sent three prior letters regarding Appendix A dated September 22 and December 9, 2010 and May 16, 2011, copies of which are attached as Attachments 1-3, respectively, and incorporated herein by reference. Although MWD made specified changes as described in response letters dated September 23 and December 13, 2010 and email dated May 24, 2011, respectively, we do not believe that MWD has adequately addressed the stated concerns or that the August 15, 2011 Appendix A fairly presents MWD’s financial position currently or prospectively. We request that the Draft be modified to address these concerns in order to provide adequate disclosure to potential investors.

The Water Authority has previously raised many of the questions and concerns noted in this letter in prior written communications with MWD. These past communications include but are not limited to letters regarding the budget, dated April 11, 2011; adoption of the Long Term Conservation Plan, dated August 15, 2011; and, Member Agency Willingness to Sign Take-or-Pay Contracts and Request to Correct the Record of July 12, 2011 MWD Board of Directors Meeting, dated August 16, 2011. A copy of each of these letters is attached again for consideration by you and the other members of the board, MWD’s management team, General Counsel, outside bond counsel, underwriter’s counsel and other members of the financing team (Attachments 4-6, respectively). Unfortunately, MWD has not responded to our letters directly or indirectly by addressing the issues on the merits in changed MWD board policy or management actions.

In addition to the concerns that are described in this past correspondence, which we request you address in your response to this letter, we have the following specific comments on the Draft.

Appendix A, as a whole, fails to adequately describe the financial impacts associated with reduced water sales. Although the Draft discloses that its member agencies are not required to purchase any water from MWD (page 27), the Draft fails to describe the associated risk to MWD, or, its inability to secure long term purchase contracts or other firm financing commitments that are not subject to change by the board of directors to meet its current and future fixed obligations.

Although the Draft includes a section titled, “Regional Water Resources” (beginning at page 27), the
discussion does not make clear what MWD’s role is – or is not – in developing local water supplies. Many of the projects noted as “Regional Water Resources” will actually be developed at the local level without any involvement by MWD and, thus, further reduce MWD water sales in the future. The Draft should disclose that local water supplies have become much more cost-competitive as a result of the increasing cost of MWD’s imported water and that as a result, many MWD member agencies are now pursuing the development of local water supply alternatives.

In addition to the development of local water supplies described above, the escalating cost of MWD water will likely result in reduced sales in the future. The Blue Ribbon Committee Task Force noted this more than 15-years ago. However, MWD continues to present analyses that do not consider the cost of water as a feature that will dampen future water sales. See, for example, Management’s Discussion of Historical and Projected Revenues and Expenditures at page 71 (future sales forecasts will reflect “a return to more normal weather conditions, a recovering economy and population growth, notwithstanding impacts of conservation and projected increases in water rates” (emphasis added). The Draft appears to mistakenly rely on past history as an indicator of future MWD sales (page 27) rather than assessing the dramatically changed circumstances confronting MWD.

Although the state legislature has mandated 20% conservation by 2020, MWD’s IRP, recently adopted Long Term Conservation Plan and Appendix A do not describe any impact on MWD water sales. In fact, the Draft states that MWD water sales will return to historic levels at 2 million acre feet beginning in fiscal year 2013-14 “notwithstanding impacts of conservation” (page 71). The Draft should explain how sales are expected to continue at these levels at the same time the retail agencies in the MWD service area are achieving 20% conservation.

Although the Draft discloses the Water Authority’s purchase of conserved water from IID and the water it has developed from lining the All-American and Coachella Canals, the Draft describes MWD’s transportation of this water under the Exchange Agreement as an MWD water sale. This characterization is misleading and disguises the true fact that MWD water sales have been reduced by the amount of water the Water Authority has independently secured from these sources.

The discussion of the Water Supply Allocation Plan (WSAP) (page 26) is also misleading in that it does not state that Preferential Rights is the statutory method for allocating MWD water during a time of shortage. Preferential Rights is discussed briefly much later in the Draft (page 50) but the two topics are not tied together. The discussion of Preferential Rights should also make clear that any “use” of Preferential Rights is at the discretion of the member agencies that hold the rights, not MWD.

The Draft should connect the discussion of Regional Water Resources (beginning at page 27) with the discussion of both MWD revenues (page 41) and Management’s Discussion of Historical and Projected Revenues (page70) (Management Opinion). While MWD continues to project returning sales of 2 million acre feet, its discussion of seawater desalination programs alone shows potential reduced sales of almost 400,000 acre feet, exclusive of the many other local water supplies that are now being developed throughout the MWD service territory.

All of the information relating to the sale of discounted water is in the section on resources (page 30). The Draft should be revised to tie this discussion to Revenues (beginning at page 41) and should also be addressed in Management’s Opinion. By its own report, MWD chose to sell water at a discount in part because its member agencies would not pay full service rates for replenishment
Chairman Foley and Members of the Board  
August 22, 2011  
Page 3

water. See MWD Board Memo dated May 10, 2011, a copy of which is attached, explaining that MWD water sales would only increase if water is sold at a discount due to the “budgetary or other financial constraints that the member agencies have” (Board Memo at page 3) and that offering water at full service rates would not “significantly increase the demand for replenishment water.” And yet, as noted above, the Draft excludes consideration of the impact of the cost of water on future MWD water sales. The Draft should describe how MWD’s sale of discounted water reduces full service water sales – reduces water sales revenues – and causes the cost of MWD’s full service water to escalate even higher as the true costs are spread among an even lower sales base.

In its May 10, 2011 Board memo recommending the sale of discounted water as replenishment sales, MWD staff asserted that the sales would increase current year (FY 2012) net revenues by $57.8 million (see “Options 3 and 4 Replenishment Service Program,” top of page 5). In their ratings reports in May 2011, the rating agencies relied on the promise of additional revenues from replenishment sales to help improve MWD’s fiscal position. However, four months into this eight-month discounted water sales period, MWD is not realizing “positive Net Revenue” as the board memo forecast. On the same day MWD staff released this Draft Appendix A for review by the board, our board heard reports in the Finance and Insurance Committee and the Engineering and Operations Committee that, taken together, foretell that the discounted water sales program will result in a net revenue shortfall of approximately $30 million in the current year, assuming 225,000 acre-feet of discounted water is sold by the end of December. In the Business and Finance Committee, the Board was informed that current year water sales are projected to fall short of budget projections by 13,000 acre-feet (assuming a budget based upon 1.8 MAF of sales; the Draft Appendix A says MWD’s FY 2012 forecast was for 1.85 MAF of sales). In the Engineering and Operations Committee, the Board was informed that MWD has already sold 118,000 acre-feet of discounted water, and has demands from the member agencies for 323,600 acre-feet of discounted water. Thus, it appears that projected sales of 1.787 MAF includes assumed sales of 225,000 acre-feet of discounted water. As we warned last May, discounted water sales are cannibalizing full-rate water sales, and will lead to a revenue shortfall this fiscal year of $30 million on the differential alone. This represents a nearly $90 million shift from the MWD staff prediction in May of “positive Net Revenue” of $57.8 million as a result of discounted water sales. MWD is likely to end FY 2012 with yet another revenue shortfall, making it the fourth year out of the past five years in which revenues were not sufficient to cover expenditures.

The Draft should include a discussion and cost estimate for the BDCP and potential impact on water rates. These projected costs of MWD’s imported water supplies are the measure by which current decisions are being made to invest in alternative local water supply development and are having an impact now on MWD water sales.

The Draft discloses the ongoing draw down of reserve balances in its discussion of the Capital Investment Plan (page 37), but does not tie these trends into Management’s Opinion. The Draft should also disclose the amount of the reserves that are currently held in escrow as a result of the San Diego County Water Authority litigation as well as amounts projected to meet future escrow requirements and the impact this will have on reserve balances.

The Draft should disclose that MWD has had the same external financial auditor for more than 19 years. Further, that a question has been raised regarding MWD’s treatment of its State Water Project contract for accounting purposes (see discussion at page 63).
Chairman Foley and Members of the Board
August 22, 2011
Page 4

The Summary of Receipts by Source (page 42) and Summary of Water Sold and Water Sales Receipts (page 43) should disclose receipts for the transportation of water by MWD. Although footnote 3 (page 44) states that “water sales” includes wheeling, the sale of water and the transportation of water are two completely different service functions.

The Draft’s Summary of Water Sold and Water Sales Receipts (page 43) also fails to disclose important information by reporting “Average Receipts Per Acre Foot.” Since no water is sold by MWD at “average” rates, MWD should disclose the amount of water it sells at full price and under discounted water programs.

The Draft should include a more detailed explanation of current and potential litigation. MWD is on notice of the additional claims the Water Authority intends to file including Rate Structure Integrity, Preferential Rights and Breach of Fiduciary Duty. The Water Authority has also informed MWD that it does not believe that current conservation and Local Resources Programs meet Proposition 26 or other legal requirements. The Water Authority has informed MWD that it does not believe that there is a legal basis for the sale of discounted water to some but not all MWD member agencies. Although the litigation is disclosed in the Draft (discussion of the rate structure at page 45), the litigation should also be noted in the discussion of MWD’s Principal Customers (page 49).

Agricultural water sales are discussed in the section entitled, “Classes of Water Service,” but should be tied to both Revenues and Management’s Opinion on future water sales. The Draft should note that agricultural water sales have historically accounted for as much as 150,000 acre feet or more of MWD’s total annual sales, but were less than 35,000 acre feet in 2010. Most of the water sales under the Interim Agricultural Water Program were to customers of the San Diego County Water Authority and are not expected to continue at full service rates when the IAWP terminates on January 1, 2013.

The Draft taken as a whole does not disclose the financial impacts to MWD of significantly reduced future water sales by MWD. The projected sales decline is significant. MWD’s 2000 Urban Water Management Plan (UWMP) projected that MWD would sell approximately 2.3 million acre-feet of water in 2020 (average year demand). By the time of its 2005 UWMP, MWD revised the 2020 projection downward to approximately 2 million acre-feet. MWD’s 2010 UWMP – adopted nine months ago – again lowered the 2020 projection, this time to 1.66 million acre-feet. In all, MWD’s current projected (average year) sales for 2020 are nearly 30 percent lower than it projected just 10 years earlier. The factors contributing to reduced MWD water sales are not accurately described in Appendix A.

The Draft notes in a footnote that disbursements exceeded revenues in the fiscal years ended June 30, 2008, 2010 and 2011. This is a material factor that should be discussed more fully in the Draft and included in Management’s Opinion, particularly in light of the likelihood that expenditures will once again exceed revenues in FY 2012.

For the reasons described above and in the Water Authority’s letter on the budget (Attachment 4), we do not believe that the projection of MWD’s water sales and water rates described in Management’s Opinion (page 68) are reasonable. We believe sales will be substantially less than described and that water rates will be substantially higher than described.
Please contact me if you have any questions.

Sincerely,

Keith Lewinger, on behalf of San Diego County Water Authority Representatives on the MWD Board of Directors

cc: Jeffrey Kightlinger, General Manager
    Thomas DeBaker, Interim Chief Financial Officer
    San Diego County Water Authority Board of Directors

Attachments:
1. September 22, 2010 letter re: Appendix A
2. December 9, 2010 letter re: Appendix A
3. May 16, 2011 letter re: Appendix A
4. April 11, 2011 letter re: MWD Budget
5. August 15, 2011 letter re: Adoption of Long Term Conservation Plan
6. August 16, 2011 letter re: Member Agency Willingness to Sign Take-or-Pay Contracts and Request to Correct the Record of July 12, 2011 MWD Board of Directors Meeting
7. MWD Board Memo dated May 10, 2011 re: Sale of Discounted Water
August 16, 2011

Mr. Jeffrey Kightlinger
General Manager
Metropolitan Water District of Southern California
P. O. Box 54153
Los Angeles, California 90054-0153

Re: Member Agency Willingness to Sign Take-or-Pay Contracts
Request to Correct the Record of July 12, 2011 MWD Board of Directors Meeting

Dear Mr. Kightlinger:

During discussion of your business plan at the MWD Board of Directors meeting on July 12, 2011, Water Authority Director Lewinger asked if you would incorporate into your business plan several suggestions, including one specifically suggesting MWD secure take-or-pay contracts with its member agencies. In response, you stated that “...with respect to securing Board approval of firm take-or-pay contracts, we discussed this for two years in 2000-2002 and staff comments of the Water Authority at the time were against take-or-pay contracts.” Your statement is incorrect. In fact, the Water Authority has a long track record advocating that MWD obtain long-term take-or-pay contracts with its member agencies in order to stabilize its revenues and improve its fiscal sustainability. Indeed – please correct us if we are wrong – the Water Authority is the only MWD member agency that has indicated a willingness to make a firm funding commitment to pay for MWD spending programs.

Fifteen years ago, in 1996, the Water Authority made a proposal for a take-or-pay contract as outlined in its “Summary of Proposal to Resolve Colorado River and Rate Refinement Issues, dated April 22, 1996” (Attachment 1).

Later, as a part of the rate restructuring process for years 2000-2002, the Water Authority Board of Directors adopted, and then formally submitted a proposal to MWD’s Board of Directors entitled “Framework of Key Contract Terms, dated February 17, 2000” (Attachment 2). The basic premise of the framework was that member agencies should specify by contract the water and services MWD would provide and a formula by which the agency agrees to pay for the water and services. Details of a take-or-pay contract between the Water Authority and MWD are included in Attachment F of the proposed framework. The framework sought to address many of the fiscal challenges that existed then, but which have grown far worse over the past decade. We asked the question at that time, on page 6, item 8: “Given the magnitude of its expenditures, is there any legally enforceable method other than take-or-pay contracts that can provide MWD with the certainty it needs to assure its fiscal integrity and stability?”

A public agency providing a safe and reliable water supply to the San Diego region
As these documents – and many other comments by the Water Authority’s staff and MWD delegates over the years – reflect, the Water Authority has long advocated that take-or-pay contracts with MWD’s member agencies are necessary to address deficiencies in its revenue structure. Specifically, MWD continues to incur more and more fixed costs and debt obligations – amounting to more than 70 percent of its total costs – at the same time it has no financial commitments from its member agencies to pay for these costs. Instead, MWD continues to rely upon revenues from water sales, which today provide approximately 80 percent of MWD’s revenues and yet are highly variable. The gulf between MWD’s fixed expenses, at 70 percent, and fixed revenues, at 16 percent, is a key reason why MWD is in the worst financial crisis in its history.

More than 15 years ago, the MWD Water District Blue Ribbon Task Force (Blue Ribbon Task Force) found that the “greatest challenge” confronting MWD was the disconnect between its water supply planning process and its member agencies’ actual willingness to pay (or not pay) for MWD programs (see generally, Task Force Report, The IRP/Rate Structure Process and MWD Decision Making at pages 5-9 and The Integrated Resources Planning (IRP) process at pages 10-15). The Blue Ribbon Task Force found that:

- “An effective rate structure should generate sufficiently stable revenues to cover fixed costs” (page 15); and noted that,
- “Some of the member agencies most strongly supporting big-ticket projects...also had the most aggressive plans to reduce their future MWD water purchases and develop independent supplies.” (Page 23.)

In order to address MWD’s long term fiscal sustainability, the Blue Ribbon Task Force recommended that MWD’s rate structures should ensure coverage of fixed costs without substantial modifications based on water use or other variable factors (page 20).

More than 15 years have now passed since the Water Authority and Blue Ribbon Task Force independently recommended that MWD adopt fixed payment commitments to address the growing instability of MWD’s financial structure. At that time, the Blue Ribbon Task Force warned that, “[c]omprehensive rate structure revisions should not be further delayed, and pressing MWD revenue needs should be addressed as soon as possible.” (Page 21.) Unfortunately, as you noted during your August 10, 2010 IRP presentation in San Diego (full quotation is included at Attachment 3), the rest of MWD’s member agencies “…prefer it the way it is” and remain unwilling to sign take-or-pay contracts or other firm funding commitments to pay for MWD spending programs.

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1 A second Blue Ribbon Committee was established by the MWD Board of Directors in January 2010. It has issued a Report, dated April 12, 2011, which has not yet been addressed by the MWD Board of Directors. Although the principal purpose of the 2011 Blue Ribbon Committee was to consider trends and uncertainties over the next 50 years that could affect MWD, it noted the importance of ensuring that the MWD rate structure provide a stable level of revenues to cover fixed costs – and, that if MWD’s member agencies find they can procure water more cheaply and reliably from other sources, they will reduce their purchases from MWD. See generally, Report of the Blue Ribbon Committee dated April 12, 2011, Finances and Pricing, at pages 73-76.
At the same time the MWD board has refused to ask or require MWD’s member agencies to commit to pay for MWD spending programs, it continues to adopt business and water resource plans that include massive spending for future State Water Project Bay Delta Conservation Plan costs, Integrated Resources Plan capital spending and long-term subsidy expenditures. While the Blue Ribbon Task Force appreciated the risk that was apparent more than 15 years ago (“MWD can no longer afford to build major facilities and hope that member agencies will buy enough water to pay for them over several years” (page 23)), MWD appears now to be reaching the breaking point due to reduced demands and implementation of member agencies’ ongoing plans to buy less water from MWD. MWD’s downward fiscal spiral is being hastened by the approval of more and more subsidies to its member agencies that will lead to even lower MWD sales – and revenues. Furthermore, the resumption of discount water sales by MWD in May of this year, which are displacing full service sales, will lead to even lower water sales revenues and continued operating budget shortfalls as MWD’s spending is not curtailed to match its lower water sales.

While MWD’s “Purchase Orders” are clearly no substitute for enforceable contracts, the expiration of the current Purchase Orders in December 2012 provides the board with another opportunity to address the deficiencies in the current financial structure and rate model. The Water Authority recommends that a board process be established as soon as possible to grapple with these issues. The Water Authority remains willing to execute a take-or-pay contract with MWD, and, to make the other tough decisions that are necessary in order to stabilize MWD’s revenues and fiscal sustainability.

MWD’s rising rates and debt burden, coupled with the lack of political will on the part of the MWD board to require its member agencies to commit to pay for MWD spending programs, is exactly the kind of political risk that was identified in the recent downgrade of our country’s credit rating by Standard & Poors. In May of this year, the rating agencies noted that while MWD is heavily dependent upon variable sales of water for its revenues, its member agencies are not obligated to purchase any water from MWD, a finding that appeared to be a factor in Fitch Ratings’ downgrade. We would like to work together with MWD staff and the rest of the board to avoid further downgrades of MWD’s credit ratings.

Finally, the Water Authority requests that you correct the record regarding the statements made by you at the July 12, 2011 Board meeting discussion on the business plan. This can be accomplished by appending this letter, with attachments, to the July Board meeting minutes, as well as incorporating this letter by reference and attaching it to the minutes of the August 2011 board meeting – and we request that you do so.

Sincerely,

Fern Steiner, on behalf of the Water Authority’s MWD Board Directors

cc: Water Authority Board of Directors
    MWD Board of Directors
    MWD Member Agency Managers
Attachments:

1. Summary of Proposal to Resolve Colorado River and Rate Refinement Issues, dated April 22, 1996
2. Framework of Key Contract Terms, dated February 17, 2000
3. Jeff Kightlinger quote from August 10, 2010 IRP presentation in San Diego
May 6, 2011

Jeff Kightlinger, General Manager
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Board Memo 5-1 – Sale of Discounted Water

Dear Jeff,

Thank you for responding to our April 25, 2011 letter regarding MWD’s proposed sale of discounted water to selected member agencies. We appreciate that water supply conditions in 2011 have improved significantly; however, the question before the board is what to do with the water that is now available to MWD.

You state in your letter that MWD will maximize the use of its storage assets in 2011 to store available supplies. Director Steiner has requested and you have agreed to provide detailed information how MWD will do that. Past MWD board reports show that MWD has ample storage and put capacity available to store all of the available water in MWD storage facilities. Indeed, by our calculation, even if all of the available water is stored by MWD – as we believe it should be – MWD’s storage will remain less than half full.

You also state that MWD will likely end the year with its regional storage reserves at the “highest levels in history”; however, this observation fails to take into account the fundamental shift in MWD’s water supply reliability planning which – unlike past history – now relies heavily upon the withdrawal of water from storage in dry years. That is why the Water Authority has supported MWD’s multi-billion dollar investment in storage facilities and agreements, which provide more than 5 million acre feet of storage capacity. Given this water supply strategy and investment, it is difficult to understand why MWD now has no intention of maximizing its investment in storage in a year like this, when water is available. MWD is barely out of a multi-year allocation, yet instead of filling its storage reserves, it wants to sell it at a discount.

The problems with the replenishment program have been previously documented and we will not repeat them here. MWD has been well aware of these concerns for many years but has failed to address the problems in any revised board policy or otherwise. Suffice it to say that the program does not provide benefits to MWD commensurate with the cost to MWD of the program. If MWD is intent on selling discounted water, then it should be made available to all MWD member agencies equally, not just to select agencies on the purported basis of a clearly flawed water supply management program.

On the financial side, the board memo and your letter are clear that under the discounted sales
Mr. Kightlinger  
May 6, 2011  
Page 2

proposal, MWD will not recover its fixed costs. This month’s staff report shows MWD’s FY 2011 sales have further dropped to 1.6 million acre feet (MAF), from the budgeted 1.93 MAF. Although short term cash flow may be improved by the proposed sale of discounted water, it has a deleterious effect on MWD’s financial position overall. We believe you know that MWD’s fiscal crisis is real – we would welcome the opportunity to work with you on finding real solutions.

Regarding your comments on the member agencies’ willingness to pay for current and future fixed costs, our comments were taken directly from the MWD board memo citing the member agencies’ “budgetary and fiscal constraints” as the reason they are not buying MWD water now at the full price that was assumed in the current fiscal year budget. Clearly, the sale of water at full price would be the preferred option because the region would achieve the same storage and water supply benefits and MWD would come closer to hitting its own budget, which is more than $150 million short that also threatens to leave reserves precariously low.

Finally, we believe you know that the Water Authority’s litigation has nothing to do with challenging State Water Project costs – the only question is how those costs should be allocated between supply and transportation. The Water Authority expects to remain one of MWD’s largest customers and to pay its fair share of MWD’s costs under its State Water Project supply contract. Indeed, to our knowledge, the Water Authority is the only MWD member agency that has actually offered to enter into a long-term contract with MWD for the purchase of State Water Project water and other supplies and services. With firm contracts, MWD could count on being able to cover its fixed costs, now and in the future. We would be happy to make a presentation to the board on the history of that offer as well as make a proposal for the future. We agree that MWD is in a fiscal crisis and the gimmicks being employed this year – including a “fire sale” of discounted water – will not solve or even address the real problem.

Sincerely,

Jim Bowersox  Lynne Heidel  Keith Lewinger  Fern Steiner  
Director  Director  Director  Director  

cc: Jack Foley, MWD Board Chairman
Dear Mr. Thomas:

We reviewed Appendix A of MWD’s Draft Official Statement, distributed to members of the Board of Directors on November 24, 2010 for an upcoming bond sale. We have a number of concerns. A principal concern is that the Draft Statement does not disclose MWD’s present and future reduction in water sales due to a variety of key facts.

**2010 Integrated Resources Plan**

The recently adopted 2010 IRP articulated a new untested business strategy for MWD that is different than the historical role it has played in importing supplemental water supplies to Southern California. The implementation of this strategy would result in an overdevelopment of supplies by at least 200,000 acre-feet in 2020 and as much as 500,000 acre-feet per year through the overdevelopment of local supplies – either by MWD directly, or developed in concert with MWD subsidies. This new strategy has significant cost implications that have not been adequately described in the IRP or disclosed in the Draft Official Statement and could result in reduced sales rather than increased sales by MWD in the future. We described our concerns in our October 11, 2010 letter to MWD (copy attached and incorporated herein by reference). The 2010 IRP showed an MWD demand ranging from 1.67 million acre-feet to 1.75 million acre-feet in 2015, depending on how aggressively MWD would pursue local resources development. MWD demand is projected to be even lower in 2035 at between 1.35 million acre-feet and 1.65 million acre-feet. These are significant projected reductions in MWD sales. The Draft Statement fails to adequately disclose this fact.

Moreover, a month after MWD’s board adopted the 2010 IRP, MWD staff released new water sales projections as part of its Long Range Finance Plan that show even lower potential sales by 2020, in a range from of a low of 1 million acre-feet, a high of 2
million acre-feet and a “projected expected” sales of 1.6 million acre-feet. The financial impact on MWD of 400,000 to 500,000 acre-feet of lower sales represented by the “projected expected” forecast is significant, and MWD must reconcile this major discrepancy in its Appendix A.

In addition to these concerns, MWD must analyze and disclose applicable limitations on its ability to fund local projects anticipated by the IRP under its existing rate structure, and, subject to the new Constitutional limitations under Proposition 26 as recently passed by California voters.

Projected Water Sales
The projected sales for the near term are overstated given current and reasonably anticipated water sales. After a series of steep rate hikes (increasing Tier 1 Treated Rate by 55 percent between 2008 and 2012), water management actions including aggressive conservation messaging, cessation of discounted replenishment water sales, phasing out of the agricultural program rate, and the implementation of M&I water allocation, MWD has significantly lowered its water demand. For the 10-year period of 2000-2009, MWD’s annual water sales averaged 2.17 million acre-feet. This calendar year, MWD’s sales are projected to equal a multi-decade low of about 1.5 million acre-feet – nearly 700,000 acre-feet below past decade’s average (and 1 million acre-feet below its peak sales year) and importantly, 250,000 acre-feet below MWD’s budgeted amount. Staff reported just last month that MWD’s current year revenue is expected to be $120 million less than budgeted due to declining sales. This will put ever-increasing pressure to raise rates even higher, if not in CY 2012, then in following years.

We do not believe it is reasonable to assume MWD water sales will return to the 2 million acre-feet level in the time frame noted in the Official Statement, or, that it has the water supplies available to sustain sales in this range continuously. Moreover, as noted above, the implementation of the IRP could actually result in further reduction in MWD’s own water sales.

Use of Bond Proceeds and Need for Funds
Given today’s extraordinary upward rate pressure, and downward water sales trends, it is unclear why MWD is considering selling bonds at this time. We were informed by staff just last month due to lower water sales, MWD would be drawing down about $100 million from its Rate Stabilization Fund to help cover the impacts of low sales, resulting in reserves that are lower than the Board’s established minimum level. We should be reviewing all expenditures, including scrubbing the Capital Investment Program, to reduce rate pressure. Selling the bonds now would result in MWD needing to expend the money within the specified time – that does not make sense. MWD needs to first figure
out what its new CIP expenditures should be in the current fiscal situation, and sustained lower water sales before committing itself to spending additional funds.

In conclusion, we believe MWD’s exposure to sustained lower water sales is significant due to factors such as challenges to MWD’s supplies, implementation of SBX7-7, the adoption of the 2010 IRP, and high water rates’ impact on consumer demand; these factors must be disclosed in detail. As such, we request that the Draft Statement be modified to ensure MWD provides adequate disclosure to potential investors.

Thank you.

Sincerely,

Keith Lewinger
Director

Attachment

Cc: MWD Board of Directors
    Jeff Kightlinger, General Manager
    MWD Member Agency Managers
MEMBER AGENCIES

Carlsbad Municipal Water District
City of Del Mar
City of Escondido
City of National City
City of Oceanside
City of Poway
City of San Diego
Fallbrook Public Utility District
Helix Water District
Lakeside Water District
Oceanside Municipal Water District
Oceanside Otay Water District
Padre Dam Municipal Water District
Camp Pendleton Marine Corps Base
Rainbow Municipal Water District
Ramona Municipal Water District
Rincon del Diablo Municipal Water District
San Diego County Water District
Santa Fe Irrigation District
South Bay Irrigation District
Vallecitos Water District
Valley Center Municipal Water District
Vista Irrigation District
Yuma Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

September 22, 2010

Brian Thomas
Assistant General Manager/Chief Financial Officer
Metropolitan Water District of Southern California
700 N. Alameda Street
Los Angeles, CA 90012

Dear Brian:

On the afternoon of September 16, you distributed to members of the Board of Directors Appendix A of MWD’s Draft Official Statement for an upcoming refunding bond sale and asked for comments to be submitted by noon today; given the tight deadline, we limit our comments in this letter and the attachments to only the most significant issues and concerns with Appendix A. These comments are presented to you by the four of us as directors representing the San Diego County Water Authority. We request that you respond to the questions presented in this letter and make the necessary modifications to Appendix A of the Official Statement before it is finalized and issued. We believe additional time is warranted to schedule a full board review of the issues noted in this letter and in our IRP Comment Letter discussed below.

2010 Integrated Resources Plan

On page A-3, fourth paragraph, MWD makes only passing reference – and does not disclose key facts – about its 2010 Integrated Resources Plan Update. The document states that the IRP “…is expected to be completed in late 2010.” In fact, the IRP is expected to be presented by MWD staff to the Board of Directors for adoption at its October 12, 2010 meeting – only 13 days after the initiation of bond sales covered by this Official Statement. Appendix A fails to disclose material facts about the 2010 IRP that should be disclosed to potential investors, including but not limited to MWD’s plan to develop so-called “buffer” water supplies in the amount of up to 500,000 acre-feet per year, at a cost of billions of dollars over the next 25 years. On September 10, 2010, the Water Authority submitted to MWD extensive comments on the IRP. A copy of that letter is attached and the questions and comments incorporated herein (IRP Comment Letter). We request that MWD provide a substantive discussion in Appendix A regarding potential legal and financial implications from the shift from MWD’s historic role as a supplemental imported water supplier to local water supply developer; that identifies the breadth of the IRP implementation strategies under consideration, and the extent of costs and future water rates that would be necessary to implement the IRP recommendation. Appendix A should also include a discussion – here and elsewhere – on the effects higher water rates are expected to have on MWD sales. Experience over the past several years clearly shows a nexus between sharply higher water
rates and conservation (demand reduction) by customers (ratepayers). MWD should disclose the impacts of its IRP strategies that would lead to water rates exceeding $2,000 an acre-foot by 2035 if not sooner and the impacts increasing water rates would have on water demands on MWD. Further, as discussed at length in the IRP Comment Letter, how will MWD ensure that there will be customers to pay for its regional local water supply projects when so many agencies are in the process of developing local water supply projects of their own for which their retail customers will pay through retail water rates. This concern should also be discussed in connection with the renewal of purchase orders at page A-1.

We are also concerned that the discussion is misleading about the purpose and importance of the IRP in the development and implementation of the “Preferred Resource Mix.” Responding to questions about the necessity of CEQA review prior to adoption of the draft IRP update, MWD staff has stated that such review is not required because the IRP is not a document that controls future decision-making in a manner that could result in the possibility of a significant effect on the environment. However, MWD staff has also stated that it intends to take immediate action to implement projects and programs identified in the draft IRP should it be adopted by the Board. When viewed in its entirety, the discussion of the IRP and the Preferred Resource Mix suggest the IRP is viewed by MWD as a controlling document that would be the first step in the implementation of a major new supply program and would be subject to CEQA. If this is not the case, MWD must make that clear and should also provide assurance that CEQA compliance will be accomplished before any actions are taken to implement any of the programs or projects contemplated as part of the draft IRP’s Supply Buffer.

Seawater Desalination Project Subsidies
On page A-4 and again on page A-31, under Seawater Desalination, MWD mischaracterizes the Carlsbad seawater desalination project and the status of the incentive payment agreement with MWD relating to this project. MWD also fails to disclose the fact that MWD has initiated termination proceedings on incentive funding agreements with the Water Authority and its member agencies, and, that it is MWD that has refused to sign the Carlsbad Seawater Desalination Project agreement approved by its own board on November 10, 2009.

In the Seawater Desalination Sections of Appendix A on Pages A-4 and A-31, Metropolitan addresses the status of member agency agreements for incentive funding for seawater desalination projects, including the Water Authority’s incentive funding agreement. Metropolitan states that “SDCWA has not executed the proposed agreement.” This statement would mislead the reader to conclude that but for SDCWA’s execution, the agreement would be in effect today. That is not true. The Water Authority’s incentive funding agreement, approved by the Metropolitan Board on November 10, 2009 and by the Water Authority Board on December 17, 2009, includes rate structure integrity language that allows Metropolitan to terminate the agreement should the Water Authority file litigation to challenge Metropolitan’s rate structure. Following the Water Authority’s initiation of litigation in June 2010 (briefly discussed on page A-47) challenging Metropolitan’s rates and charges, Metropolitan’s Board initiated termination of existing Water Authority funding agreements that include rate structure integrity language. On August 25, 2010, in a letter to the Water Authority from Metropolitan’s General Manager (attached), the Water Authority was notified that “Metropolitan’s Board of Directors also directed staff to defer execution” of the Water Authority’s seawater desalination incentive funding agreement “…as termination proceedings would begin
immediately upon execution.” These facts regarding the Carlsbad Seawater Desalination Project agreement should be stated on pages A-4 and A-31.

**Near-Term Delta Actions**
On page A-25, under *Near-Term Delta Actions*, MWD discusses the potential supply benefit of the proposed Two-Gate System and other “near-term” actions to improve water supply and ecosystem of the Delta. However, MWD does not provide a timeline estimate of when it expects the Two-Gate project to be in place and producing improved supply reliability of approximately 150,000 acre-feet per year in certain years. We request an estimated operational date for the Two-Gate project be added to this discussion.

**Five-Year Supply Plan**
On page A-26, under *Local Resources*, MWD projects that 122,000 of additional, new supply could be online by 2014 from recycled water treatment plants, groundwater recovery plants, desalination plants and new hookups to existing recycled water plants. This figure seems optimistic based on the experience. If MWD indeed projects this level of implementation, it is not our belief that the costs associated with such level of local resources development have been included in the budget or water rates adopted for 2011 or 2012. We request that the estimated costs and associated water rate increases be added to this discussion. In addition, given the long lead time generally associated with the development of such projects, we believe MWD should describe the process by which it will be able to implement local projects of this magnitude within the timeline described in the O.S.

**Significant Exposure to Reduced Sales**
On page A-29, Appendix A describes a construction project that will provide an interconnection between the Antelope Valley-East Kern Water Agency and the Los Angeles Aqueduct. Under an agreement with MWD, the City of Los Angeles will be able to acquire and move into the LA Aqueduct supplies obtained independently of MWD. This section notes that the annual quantity of supplies moving into the LA Aqueduct through the interconnection is “…not to exceed the supplies lost to the City as a result of its Eastern Sierra environmental obligations, including water for the Lower Owens River Project and Owens Lake Dust Mitigation Project…” That amount, Appendix A notes, was 98,000 acre-feet from April 2009 to March 2010. However, MWD does not disclose that the City of Los Angeles currently purchases water used to offset the use of its own Eastern Sierra supplies for environmental purposes from MWD, and that the interconnection with AVEK will allow LA to reduce its purchase from MWD on an acre-foot-for-acre-foot basis. Reduction of sales by approximately 100,000 acre-feet per year will have a material effect on MWD revenues and on MWD’s water rates. And yet, on page A-30, MWD asserts that the City of LA’s “future reliance on Metropolitan supplies may increase with implementation of these (Eastern Sierra environmental) projects.” The motivation for LA to pursue the interconnection with AVEK in the first place is its apparent belief that it can acquire independent supplies at a lower cost than MWD’s supply cost. Therefore, in contrast to the statement on page A-30, it is more likely LADWP will acquire any additional environmental offset water needed from sources other than MWD.

**Future Water Sales and Receipts**
On Page A-69, and again at A-71 to A-72, MWD projects steady growth in water sales over the next five years from 1.77 million acre-feet in the current fiscal year (2011), to 2.11 million acre-feet in FY 2015, “…reflecting a return to average weather conditions.” This projection appears to attribute the current low water demands on MWD (and reduced sales) to a single factor: weather. A return to
normal weather, the report implies, will result in returning sales to pre-shortage levels. No
discussion or consideration is provided to what effect other factors –most notably higher water rates
– have had, and continue to have in suppressing water demand and sales. The O.S. also fails to
discuss or take into account the recently passed 20x2020 legislation requiring 20% conservation at
the retail level. Appendix A should provide an analysis of the impacts higher water rates and
conservation requirements are having on demand and sales, and factor those impacts into projections
of future water sales (e.g. the next five fiscal years and beyond).

Page A-72 notes that because of lower-than-budgeted water sales in the current year (160,000 acre-
feet lower than budgeted), MWD will make a draw of $34 million from its Water Rate Stabilization
Fund. However, on September 17, 2010, at the MWD Member Agency Managers meeting, MWD
management reported that the net draw from the Water Rate Stabilization Fund this year is projected
to be $100 million. MWD should reconcile these two figures and ensure the number reflected
Appendix A is the correct one.

We believe the comments contained in this letter and the attachments must be addressed through
substantive modifications to Appendix A and request those changes be made to ensure MWD
provide accurate and adequate disclosure to potential investors.

Thank you.

Sincerely,

Lynne Heidel  Keith Lewinger
Director     Director

Bud Pocklington  Fern Steiner
Director     Director

Attachments

Cc:  MWD Board of Directors
     Jeff Kightlinger, General Manager
August 23, 2012

Attention: Imported Water Committee

Colorado River Board Representative’s Report (Information)

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

Background
This report covers activities from the August 15, 2012 CRB meeting.

Discussion
The CRB took actions and heard informational reports from CRB staff on activities discussed below:

Water supply and reservoir operations
The Colorado River Basin is on track for its third driest year on record. Runoff into Lake Powell is expected to be 47 percent of average for the water year ending September 30, 2012. The observed inflow for the month of July was only 14 percent of average. Coincidentally, July was also the hottest July on record for the contiguous 48 states. Water storage conditions are better, with Lake Powell at 59 percent of capacity (14.3 maf) and Lake Mead at 51 percent of capacity (13.3 maf), as of August 20.

Reclamation held its second consultation on the 2013 Annual Operating Plan on July 26. The draft AOP provides for continued “ICS” surplus conditions, allowing Colorado River water contractors to create surplus water for storage in Lake Mead, or receive water that has previously been stored there under the ICS program. MWD has indicated it will store an additional 200,000 af of ICS water in calendar year 2013.

Binational discussions
U.S. and Mexican parties are continuing discussions on a proposed formal agreement, known as Minute 319, that would improve river management and develop projects that could benefit both nations. Recent work has focused on developing a pilot project that could be implemented during the term of the minute, and be used to identify linkages to other elements of the minute that provide areas of common interest for the parties. A workgroup formed to develop a pilot project began meeting last month. A workgroup was also formed to develop a method under Minute 319 for determining compliance with existing rules governing the salinity of water delivered to Mexico.

U.S. Colorado River Basin states representatives met August 20 to discuss the status of binational negotiations, as well as the EIS being developed for proposed Lake Powell operations, California’s progress on meeting QSA water use benchmarks, and 2012 consumptive use and overrun accounting.
Status of Colorado River Basin Water Supply and Demand Study
Reclamation and other project team members met last month to complete the development of “portfolios” of options that could be used to balance future water demands and supplies. The supply options are being evaluated for cost, timing, feasibility, implementation risk, reliability, and other factors. Water conservation options will undergo a similar evaluation. Agricultural water conservation options are being divided into two classes: those which would use a basin-wide incentive program, and targeted programs that could include water transfers and water banking, similar to QSA projects. The project team met again on August 21-22. The final draft version of the report is expected to be published in September 2012.

Glen Canyon Dam operations
In early July, the Basin states submitted an alternative for consideration in the EIS for the Long-Term Experimental and Management Plan (LTEMP) for operating Glen Canyon Dam. The LTEMP is being developed by Reclamation and the National Park Service to review alternative operating strategies for improving river resources, including environmental and recreational resources. The basin states’ alternative includes elements to address long-term habitat requirements for endangered species (humpback chub), non-native fish control, and modified flow regimes to conserve and redistribute river sediments. The draft EIS is expected to be released by March 2013 for a 60-day public comment period.

Board executive director position
The Board approved the hiring of Tanya Trujillo as executive director of the CRB. Ms. Trujillo is currently Counselor to the Assistant Secretary for Water and Science at the Department of Interior. She previously worked for New Mexico’s Senator Bingaman as counsel to the Senate Energy and Natural Resources Committee’s Subcommittee on Water and Power; as general counsel to the New Mexico Interstate Stream Commission; and as an attorney in private practice with Holland & Hart in New Mexico.
## SUMMARY WATER REPORT
### COLORADO RIVER BASIN
#### August 6, 2012

### RESERVOIR STORAGE
(as of Aug. 5)

<table>
<thead>
<tr>
<th>Reservoir</th>
<th>MAF</th>
<th>ELEV. IN FEET</th>
<th>% of Capacity</th>
<th>MAF</th>
<th>ELEV. IN FEET</th>
<th>% of Capacity</th>
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</thead>
<tbody>
<tr>
<td>Lake Powell</td>
<td>14.596</td>
<td>3,627.7</td>
<td>60</td>
<td>15.272</td>
<td>3,633.7</td>
<td>63</td>
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<tr>
<td>Flaming Gorge</td>
<td>3.083</td>
<td>6,022.9</td>
<td>82</td>
<td>3.108</td>
<td>6,023.6</td>
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<tr>
<td>Navajo</td>
<td>1.167</td>
<td>6,044.9</td>
<td>69</td>
<td>1.243</td>
<td>6,051.5</td>
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<tr>
<td>Lake Mead</td>
<td>13.225</td>
<td>1,116.1</td>
<td>51</td>
<td>13.203</td>
<td>1,115.9</td>
<td>51</td>
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<tr>
<td>Lake Mohave</td>
<td>1.724</td>
<td>643.9</td>
<td>95</td>
<td>1.682</td>
<td>642.4</td>
<td>93</td>
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<tr>
<td>Lake Havasu</td>
<td>0.600</td>
<td>449.0</td>
<td>97</td>
<td>0.586</td>
<td>448.3</td>
<td>95</td>
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<tr>
<td><strong>Total System Storage</strong></td>
<td>35.273</td>
<td>36.018</td>
<td>60</td>
<td>36.018</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td><strong>System Storage Last Year</strong></td>
<td>39.305</td>
<td>36.977</td>
<td>62</td>
<td>36.977</td>
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### July 2, 2012

<table>
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<tr>
<th>Date</th>
<th>Precipitation (Basin Weighted Avg) 10/01/11 through 8/06/12</th>
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<tbody>
<tr>
<td>WY 2012</td>
<td>74 percent (21.2&quot;)</td>
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<tr>
<td>Snowpack Water Equivalent (Basin Weighted Avg) on day of 8/06/12</td>
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</tr>
<tr>
<td>WY 2012</td>
<td>69 percent (18.3&quot;)</td>
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<tr>
<td>(Above two values based on average of data from 116 sites.)</td>
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</table>

### July 14, 2012

<table>
<thead>
<tr>
<th>Forecast of Unregulated Lake Powell Inflow MA</th>
<th>% of Normal</th>
<th>% of Avg.</th>
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</thead>
<tbody>
<tr>
<td>2012 April through July unregulated inflow forecast</td>
<td>2.064</td>
<td>29 %</td>
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<tr>
<td>2012 Water Year forecast</td>
<td>5.154</td>
<td>48 %</td>
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</table>

### USBR Forecasted Year-End 2012 and 2011 Consum. Use, August 6, 2012

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<tr>
<th>State</th>
<th>Diversion</th>
<th>Return</th>
<th>Net</th>
<th>2012</th>
<th>2011</th>
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<tbody>
<tr>
<td>Nevada (Estimated Total)</td>
<td>0.479</td>
<td>0.209</td>
<td>0.270</td>
<td>0.221</td>
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<tr>
<td>Arizona (Total)</td>
<td>3.703</td>
<td>0.890</td>
<td>2.813</td>
<td>2.785</td>
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<tr>
<td>CAP Total</td>
<td>1.606</td>
<td>1.625</td>
<td>0.134</td>
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<tr>
<td>Az. Water Banking Authority</td>
<td>1.242</td>
<td>1.160</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>OTHERS</td>
<td>0.722</td>
<td>0.699</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>California (Total) b./</td>
<td>5.046</td>
<td>0.632</td>
<td>4.414</td>
<td>4.315</td>
<td></td>
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<tr>
<td>MWD</td>
<td>0.038</td>
<td>0.016</td>
<td></td>
<td></td>
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<tr>
<td>3.85 Agriculture</td>
<td>0.038</td>
<td>0.016</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IID c./</td>
<td>3.198</td>
<td>-0.306</td>
<td>2.892</td>
<td>2.916</td>
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<tr>
<td>CVWD d./</td>
<td>0.362</td>
<td>-0.031</td>
<td>0.331</td>
<td>0.309</td>
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<tr>
<td>PVID</td>
<td>0.381</td>
<td>0.320</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>YPRD</td>
<td>0.043</td>
<td>0.048</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Island e./</td>
<td>0.007</td>
<td>0.007</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Ag.</td>
<td>3.991</td>
<td>-0.337</td>
<td>3.654</td>
<td>3.600</td>
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<tr>
<td>Others</td>
<td>0.007</td>
<td>0.007</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>PVID-MWD falling to storage (to be determined)</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Arizona, California, and Nevada Total f./</td>
<td>9.228</td>
<td>1.731</td>
<td>7.497</td>
<td>7.321</td>
<td></td>
</tr>
</tbody>
</table>

### Notes
- a./ Incorporates Jan.-June USGS monthly data and 75 daily reporting stations which may be revised after provision data reports are distributed by USGS. Use to date estimated for users reporting monthly and annually.
- b./ California 2012 basic use apportionment of 4.4 MAF has been adjusted to 4.175 MAF for creation of Intentionally Created Surplus Water by IID (-25,000 AF), and Creation of Extraordinary Conservation (ICS) by MWD (-200,000 AF).
- c./ In 2012, 0.105 MAF being conserved by IID-MWD Agreement as amended in 2007: 112,500 AF being conserved for SDCWA under the IID-SDCWA Transfer Agreement as amended, 90,000 AF of which is being diverted by MWD; 21,000 AF being conserved for CVWD under the IID-CVWD Acquisition Agreement, 67,700 AF being conserved by the All American Canal Lining Project.
- d./ In 2012, 30,850 AF conserved by the Coachella Canal Lining Project (may be amended by 4,850 AF for mitigation).
- e./ Includes estimated amount of 6,660 acre-feet of disputed uses by Yuma Island pumpers and 653 acre-feet by Yuma Project Ranch 5 being charged by USBR to Priority 2.
- f./ Includes unmeasured returns based on estimated consumptive use/diversion ratios by user from studies provided by Arizona Dept. of Water Resources, Colorado River Board of California, and Reclamation.
A resurvey of Lake Powell changed the MUC and MOL in June 1991.
Sacramento

The end of session push has begun in Sacramento, just as the weather has begun to heat up as well. The legislature has around 1,000 bills to consider prior to the Friday, August 31st deadline of the adjournment of session. The Governor will have until September 30 to sign or veto bills that make it to his desk. There are several big issues that remain to be dealt with during the closing two weeks of session - those include pension reform, worker's compensation, and CEQA. It remains to be seen if there is the political will or fortitude to deal with these big issues, but the people in Sacramento are constantly reminded of the Governor's initiative in November and its importance to the Governor.

Legislatively, the bills of interest to the Water Authority continue through the process meeting their deadlines. Friday, August 24th is the last day to amend bills on the floors of each house so we will continue to keep an eye out for any bills that have been gutted and amended that may be of interest to the Water Authority.

Green house gas and cap and trade auction – As we have reported previously, efforts have continued in Sacramento to develop a solution for addressing the problems created by the California Air Resources Board (CARB) when they included both the State Water Contractors and MWD in this fall’s carbon auction. We have been working closely with MWD on this issue and hope to have a solution in place by the time the legislature adjourns on August 31st. Besides the water agencies, both the CSU and UC university systems are also impacted by the decision at CARB and will most likely be included in a final solution. There are also outside efforts by California industrial interests to modify the carbon auction - as typical with the end of the legislative session, things remain very dynamic in terms of what a final resolution will be.

Washington, DC

Congress on Recess Until September 10 – The House and Senate have been meeting in pro forma session during the month. Members of each chamber will return to regular business following the week of Labor Day.
Six-Month Continuing Resolution Deal – Before leaving for the August break, Senate Majority Leader Harry Reid, House Speaker John Boehner, and the White House reached an agreement to move a six-month Continuing Resolution (CR) to keep the federal government funded beyond Election Day and the lame duck negotiations over sequestration and tax policy.

According to Senate Majority Leader Harry Reid, the six-month CR will contain no policy riders and it will be prorated at the 2013 spending level set by the Budget Control Act last August. The Office of Management & Budget is using this month to assemble requests for “anomalies,” specific technical exemptions that would extend certain programs and activities that would not normally be covered under a CR.

The Budget Control Act of 2011 (BCA) set the discretionary spending limit for FY 2013 at $686 billion for the “security category” (everything in the Pentagon, DHS, the VA, the intelligence community, and the defense side of the Energy Department, as well as all foreign aid) and $361 billion for the “non-security category” (everything else in the discretionary budget), for a total of $1.047 trillion. The Boehner-Reid announcement adheres to the $1.047 trillion total, but does not specify that the security/non-security split in the BCA limits will be adhered to.

The $1.047 trillion total does not include funding for the conflicts in Iraq and Afghanistan, nor does it apply to disaster relief appropriations of up to $11 billion in FY 2013. It also does not account for a likely emergency drought relief package that may be enacted later this year. It is possible Congress might use a drought-aid package to serve as the basis for a conference committee on the soon-to-expire Farm Bill, but that is only speculation at this time. The BCA allows the cap to increase by $1.05 billion in FY13 if disability fraud and Medicare fraud enforcement is increased, but that will not offset the items just discussed.

Deal Does Not Affect Pending Sequestration

If the negotiations over all of the other parts of federal fiscal policy in the post-election lame-duck session in November and December do not result in an agreement, then the BCA's automatic “sequestration” cuts will take place on January 2, 2013. This will result in an automatic 7.8 percent in cuts to non-defense discretionary appropriations. It will also lead to cuts of at least 10 percent in defense discretionary programs. The President can choose to exempt defense payroll accounts from sequestration, but this would cause deeper cuts in other, non-payroll, and Pentagon accounts.

If the BCA’s sequester cuts take effect on January 2, then under the CR deal just reached, Congress will still be required to enact some sort of new appropriations measure for the second half of the fiscal year, which could shift the burden of the cuts between accounts (invariably cutting capital accounts by greater percentages in order that salary and expense accounts can get reprieves). There would be a government shutdown deadline of March 31 for a new appropriations measure that could fix at least some of the problems caused by the sequester.

Field Hearing Focuses on Disaster Preparedness in the Bay-Delta Region – Led by Subcommittee Chairman Jeff Denham (R-Fresno), the House Subcommittee on Economic

Sacramento          Washington, DC
Development, Public Buildings and Emergency Management held a field hearing in Stockton to examine disaster preparedness in the Sacramento-San Joaquin Delta region. The focus of the hearing was the continuing threats to the security of the Bay-Delta region, and efforts at the federal, state and local level in ensuring the appropriate disaster planning and preparedness.

The subcommittee received testimony from representatives of FEMA, the California Emergency Management Agency, a former San Joaquin County emergency preparedness official, the California Public Utilities Commission, and the East Bay Municipal Utility District. In particular, Chairman Denham was interested in the continuing efforts to implement recommendations from the Sacramento-San Joaquin Delta Multi-Hazard Coordination Task Force and ways in which Congress can assist at the federal level.

**Presidential Debates Set** – The timing of the debates preceding the presidential election are now set. Barak Obama and Mitt Romney will debate domestic policy on October 3 and 16, and will debate foreign policy on October 22. Joe Biden and Paul Ryan will debate domestic policy on October 11. Several groups have requested that the debates at least touch upon domestic infrastructure issues, including water treatment and delivery needs.
August 22, 2012

TO: Board of Directors

VIA: Administrative and Finance Committee

FROM: Ken Weinberg, Director of Water Resources

RE: Agenda Item IL2.

Attached please find a revised Attachment 5, referenced in the previously distributed Board memo *Alternative structures for incorporation of Carlsbad Desalination into Water Authority rates and charges*, Agenda Item II. 2., to be heard at the Administrative and Finance Committee’s August 23, 2012 meeting.

The revisions contained in the attachment reflect values that exclude the Water Authority’s Special Agriculture Water Rate (SAWR) deliveries, as during the 10-year period these were non-firm deliveries. This results in revised fixed cost shares for each member agency. A change in document title to “Allocation of Carlsbad Fixed Desalination Cost based on Maximum M&I Sales to Member Agencies” is also reflected.
### Allocation of Carlsbad Fixed Desalination Cost based on Maximum M&I Sales to Member Agencies

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Carlsbad M.W.D.</td>
<td>19,448</td>
<td>19,331</td>
<td>20,282</td>
<td>19,390</td>
<td>20,370</td>
<td>21,212</td>
<td>20,579</td>
<td>19,532</td>
<td>17,114</td>
<td>15,785</td>
<td>21,212</td>
<td>3.504%</td>
</tr>
<tr>
<td>Del Mar, City of</td>
<td>1,354</td>
<td>1,285</td>
<td>1,401</td>
<td>1,324</td>
<td>1,312</td>
<td>1,443</td>
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<td>1,202</td>
<td>1,129</td>
<td>1,088</td>
<td>1,443</td>
<td>0.238%</td>
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<tr>
<td>Escondido, City of</td>
<td>23,011</td>
<td>24,066</td>
<td>24,542</td>
<td>19,754</td>
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<td>9,903</td>
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<td>8,267</td>
<td>9,903</td>
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<td>39,932</td>
<td>32,693</td>
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<td>29,423</td>
<td>39,818</td>
<td>38,763</td>
<td>28,903</td>
<td>23,513</td>
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<td>4,962</td>
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<td>3,998</td>
<td>4,679</td>
<td>4,328</td>
<td>3,867</td>
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<td>1,213</td>
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<td>27,724</td>
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<td>30,307</td>
<td>29,015</td>
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<td>13,913</td>
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<td>96</td>
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<td>72</td>
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<td>96</td>
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<td>14,432</td>
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<td>14,455</td>
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<td>11,286</td>
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<td>17,090</td>
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<td>14,596</td>
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<td>11,294</td>
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<td>9,246</td>
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<td>18,267</td>
<td>20,646</td>
<td>15,467</td>
<td>15,269</td>
<td>10,783</td>
<td>22,789</td>
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<td>Yuima M.W.D.</td>
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<td>49</td>
<td>100</td>
<td>66</td>
<td>61</td>
<td>46</td>
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<tr>
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<td><strong>542,377</strong></td>
<td><strong>543,510</strong></td>
<td><strong>481,016</strong></td>
<td><strong>491,085</strong></td>
<td><strong>562,110</strong></td>
<td><strong>546,691</strong></td>
<td><strong>498,796</strong></td>
<td><strong>447,708</strong></td>
<td><strong>385,136</strong></td>
<td><strong>605,381</strong></td>
<td><strong>100.000%</strong></td>
</tr>
</tbody>
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**Footnote:**

1) Sales data from Water Authority PRIMA database
2) Shaded values denote maximum M&I sales volume for each agency
INTEROFFICE MEMORANDUM

August 21, 2012

TO: Board of Directors

VIA: Water Planning Committee

FROM: Ken Weinberg, Director of Water Resources

RE: Agenda Item II 1-C

Attached please find the first draft of a member agency purchase contract, referenced in the previously distributed Board memo; Draft Member Agency Purchase Contract for Potential Water Authority-owned Local Supply from the Carlsbad Desalination Project, Agenda Item II. 1-C, to be heard at the Water Planning Committee’s August 23, 2012 meeting.

The draft purchase contract is being developed in response to interest from the Desal Partner member agencies to potentially purchase a portion of the Carlsbad Desalination Project supply from the Water Authority. Prior to the Water Authority approval of the 2010 Term Sheet with Poseidon, the Desal Partners had individual contracts with Poseidon for Project supply. The attached draft contract terms are based on the June 2011 Board approved Purchase Principles and draft Water Authority-Poseidon Water Purchase Agreement (WPA).

Staff has held a series of meetings with member agency staff to review and get comments on the basic terms of the contract. An additional member agency meeting has been scheduled for September 11, 2012 to respond to comments received and review the draft contract language. In accordance with Board adopted principles, the member agencies have 60 days from public release of the draft WPA to provide notice of intent to purchase a specific quantity of supply.
1. **Purpose and Intent.**

The San Diego County Water Authority ("Water Authority") has entered into an agreement titled “Carlsbad Seawater Desalination Project Water Purchase Agreement between the San Diego County Water Authority and Poseidon Resources (Channelside) LP dated as of __________, 2012” (“Poseidon WPA”). The Water Authority also has entered into an agreement titled “Design Build Agreement for Product Water Pipeline Improvements Relating to the Carlsbad Seawater Desalination Project between the San Diego County Water Authority and Poseidon Resources (Channelside) LP dated as of __________, 2012” (“Poseidon DBA”). Together the Poseidon WPA and the Poseidon DBA will provide new facilities for the production and provision of desalinated water to the Water Authority and for the purposes of this contract constitute and are referred to as the “Carlsbad Desalination Project.” The Water Authority has entered into long term financing agreements in conjunction with the Carlsbad Desalination Project. It also has undertaken improvements and modifications to its aqueduct system and the Twin Oaks Valley Water Treatment Plant for purposes of taking delivery of and incorporating desalinated water into its treated water supply system.

Under the Poseidon WPA the Water Authority has made a Minimum Annual Demand Commitment, as defined in the Poseidon WPA, of 48,000 acre-feet (pro-rated for years of less than 365 days) and is required to take delivery of, purchase, and pay for that amount of desalinated water to the extent it is produced and made available for delivery according to the terms of that agreement. In June 2011 the Water Authority board of directors adopted guiding principles for the Water Authority to make available to its member agencies up to 49 percent of the Minimum Annual Demand Commitment and provide the opportunity for member agencies to enter into uniform contracts to make firm commitments to individually purchase from the Water Authority treated water in designated amounts that represent a portion of the Minimum Annual Demand Commitment. In addition, the Water Authority has the option to take Additional Product Water Deliveries under the Poseidon WPA and has provided the member agencies the opportunity to acquire a portion of the additional water as it is acquired by the Water Authority up to a total quantity for all participating member agencies of 49 percent of the additional water. Pursuant to the guiding principles, the Water Authority working in cooperation with its member agencies has developed this and the other uniform contracts for member agency purchase of treated water in connection with the Carlsbad Desalination Project.

The parties intend that the purchase and payment obligations of the member agencies under the uniform contracts reasonably match the purchase and payment obligations of the Water Authority under the Poseidon WPA. Thus, for example, the parties intend that a contracting member agency will be responsible for payment if a member agency fails to take delivery of all
or a portion of its Contract Quantity because of a reason other than a condition of its facilities that would come within the definition of an Excused Demand Shortfall under the Poseidon WPA in a manner similar to the Water Authority’s obligations for such payments. Similarly, contracting member agencies will share the benefit of Drought Shortfall Payments, if any, made by the Project Company under the Poseidon WPA should it fail to make deliveries in times of a water supply shortage. However, the parties acknowledge that the water provided by the Water Authority under the uniform contracts will be treated water from any source determined by the Water Authority at its sole discretion, and may be a blend of desalinated water and other treated water of the Water Authority, other treated water of the Water Authority without blending with desalinated water or, in some limited cases, direct delivery of desalinated water, and that such water will deemed to be delivered in equal monthly amounts.

2. **Parties.**

The parties to this contract are the Water Authority and _____________________________________ (“Member Agency”).

3. **Term.**

This contract is effective on the date it is fully executed and will continue until the earlier of either (a) the Expiration Date of the Poseidon WPA as defined therein, or (b) the date of early termination of this contract pursuant to section 10.

4. **Condition Precedent.**

Attainment of the Commercial Operation Date under the Poseidon WPA is a condition precedent to the obligations of the parties under this contract.

5. **Contract Quantity.**

(a) The Member Agency’s Contract Quantity is _______ acre feet of treated water per Contract Year, subject to paragraph (d) of this section and adjustment pursuant to paragraph (d) of section 6. In the event of an adjustment pursuant to section 6, Contract Quantity means the Adjusted Contract Quantity for the duration of the adjustment. As used in this contract, Contract Year has the same meaning as in the Poseidon WPA.

(b) The Total Contracted Quantity of water subject to uniform contracts, including this contract, is _______ acre feet annually. If a member agency having executed a uniform contract subsequently chooses to early terminate its contract pursuant to section 10 or a member agency contract is terminated as a consequence of breach by the member agency, the Total Contracted Quantity will be reduced in the amount of that member agency’s Contract Quantity.

(c) The Member Agency’s Contract Quantity and the Total Contracted Quantity are part of the Minimum Annual Demand Commitment of the Water Authority under the Poseidon WPA. In addition, under the Poseidon WPA the Water Authority has the option to take Additional Product Water Deliveries. With respect to Additional Product Water Deliveries, the
Member Agency: will purchase Additional Product Water made available by the Water Authority according to the provisions of section 9: YES ____ / NO ____; waives any participation in the purchase of Additional Product Water: YES ____ / NO ____.

(d) Under the Poseidon WPA, the Water Authority has a right to make an elective decrease in the Minimum Annual Demand Commitment based on the performance testing prior to Commercial Operation of the desalination plant. If the Water Authority elects to reduce the Minimum Annual Demand Commitment pursuant to the Poseidon WPA, the Total Contracted Quantity will be reduced so that the reduced Total Contracted Quantity bears the same ratio to the reduced Minimum Annual Demand Commitment as the amount specified in subparagraph (b) of this section bears to 48,000 acre-feet, and the Contract Quantity of each member agency having a uniform contract will be reduced to maintain the ratios of their respective Contract Quantities and the Total Contracted Quantity. The Water Authority will give notice to each member agency of the reductions, and once given, the reduced quantities will be used for all purposes of this contract and the other uniform contracts.

6. Purchase and Delivery.

(a) The Member Agency will purchase and the Water Authority will deliver the Contract Quantity as monthly deliveries of treated water equal to one-twelfth of the Contract Quantity.

(b) Purchase and delivery of the Contract Quantity will commence on the first day of the calendar month following Commercial Operation of the Carlsbad Desalination Plan pursuant to the Poseidon WPA. For the first Contract Year of Commercial Operation the Contract Quantity will be one-twelfth of the Contract Quantity times the number of full months following Commercial Operation remaining in the Contract Year.

(c) Daily water orders will be subject to the Water Authority’s rules and regulations generally applicable to the ordering and delivery of treated water.

(d) If at any time the Water Authority reasonably determines that it will receive desalinated water pursuant to the Poseidon WPA in an amount less than the Minimum Annual Demand Commitment for a Contract Year based on the existence of an Uncontrollable Circumstance, Event of Default, breach, or other failure of performance of the Project Company under the Poseidon WPA, the Member Agency will purchase from the Water Authority and the Water Authority will delivery to the Member Agency an Adjusted Contract Quantity for that year in an amount determined by the following formula: 

\[ x = \frac{a}{b} \times \left( \frac{b}{d} \times c \right) \]

where \( a \) is the Member Agency’s Contract Quantity, \( b \) is the Total Contracted Quantity, \( c \) is the amount of desalinated water the Water Authority reasonably expects to actually receive pursuant to the Poseidon WPA in that Contract Year, \( d \) is the Minimum Annual Demand Commitment and \( x \) is the Adjusted Contract Quantity. The purchase and delivery will be in monthly deliveries of treated water equal to one-twelfth of the Adjusted Contract Quantity. If an adjustment is made after the commencement of a Contract Year, the Adjusted Contract Quantity for the remainder of the Contract Year will take effect at the beginning of the next month following the Water Authority’s notice to the Member Agency of the adjustment under this paragraph.
(e) If at any time the Water Authority reasonably determines that it will receive less than the water under the Poseidon WPA because of the existence of an Uncontrollable Circumstance, Event of Default, breach, or other failure of performance under the Poseidon WPA, except for an Event of Default, breach, or failure of performance that is a result solely of an act or omission of the Water Authority, the Member Agency’s obligation to purchase and the Water Authority’s obligation to deliver water will be suspended until deliveries to the Water Authority under the Poseidon WPA resume.

(f) If the Water Authority is unable to deliver treated water to the Member Agency due to scheduled shut-down of Water Authority facilities, the Water Authority is excused from performance of its delivery obligations for the duration of the shut down. However, the Water Authority will provide make-up water during the Contract Year proportionate to the number of days of the shut-down.

(g) The Water Authority’s obligation to deliver water will be relieved for the duration of a Product Water Purchase Relief Event as defined in the Poseidon WPA. The Member Agency’s obligation to purchase water will be relieved during the period of a Member Agency Water Purchase Relief Event, which for the purposes of this contract means the formal declaration by the Member Agency’s board of directors based upon the existence of a sudden, unpredictable event resulting in a condition closing all or a portion of the Member Agency’s treated water facility system and preventing the Member Agency from taking all or a portion of the Contract Quantity.


(a) The Contract Quantity will be considered as a source and supply of water independently owned and managed by the Member Agency in the application of all Water Authority ordinances, plans, programs, rules, and regulations.

(b) The Contract Quantity will be treated as a “local supply” pursuant to the Water Authority’s Water Shortage and Drought Response Plan and will be eligible for the Local Projects Development Adjustment under the Water Authority’s Supply Allocation Methodology, as either may be amended from time-to-time. Nothing in this subdivision is intended to limit the ability of the Water Authority to amend, replace, repeal, adopt, or re-adopt either the Plan or the Methodology, or another plan or methodology to allocate supplies in time of shortage or otherwise, provided that the Water Authority complies with subdivision (a) of this section.

8. Price and Payment for the Contract Quantity.

(a) The price for the Member Agency Contract Quantity will be the sum of the (1) Carlsbad Desalination Project Costs and (2) the Aqueduct Costs determined as follows:

(1) Unless the circumstance described in paragraph (b) of this section has occurred, the portion of the unit price attributable to Carlsbad Desalination Project Costs will be determined and apportioned by the Water Authority on a per-acre foot unit price basis:
(A) For each acre-foot of the Contract Quantity delivered in a month the Member Agency will pay the Fixed Unit Price and the Variable Unit Price determined for that month pursuant to Article 17 of the Poseidon WPA. For each Unexcused Demand Shortfall Unit attributed to the Member Agency the Member Agency will pay the Fixed Unit Price determined for that month pursuant to Article 17 of the Poseidon WPA. As used in this contract, an Unexcused Demand Shortfall Unit attributed to the Member Agency means any failure to take treated water equal to one-twelfth the Member Agency’s Contract Quantity unless the failure is due to a Member Agency Water Purchase Relief Event as defined in paragraph (g) of section 6.

(B) For each acre-foot of the Contract Quantity delivered in a month and for each Unexcused Demand Shortfall Unit attributed to the Member Agency the Member Agency will pay a unit price equal to (a) the monthly debt service payment amounts and amounts set aside in reserves pursuant to agreements made by the Water Authority for financing of the obligations of the Water Authority under the Poseidon DBA, including refinancing agreements, apportioned on a per acre foot basis over the Minimum Annual Demand Commitment under the Poseidon WPA; plus (b) the budgeted operation and maintenance costs (including without limitation reasonable reserves for repair or replacement) for the facilities that are the subject of the Poseidon DBA determined according to the Water Authority’s adopted budget for the fiscal year in which the price is to be paid apportioned on a per acre foot basis over the Minimum Annual Demand Commitment under the Poseidon WPA.

(C) For each acre-foot of the Contract Quantity delivered in a month and for each Unexcused Demand Shortfall Unit attributed to the Member Agency the Member Agency will pay the Twin Oaks Valley Water Treatment Charge determined [to be developed].

(2) For each acre-foot of the Contract Quantity delivered in a month the Member Agency will pay a unit price for Aqueduct Costs determined by the Water Authority based on the Transportation Charge established by the Water Authority under its rate structure in existence on the date of this contract or a similar charge under any other future rate structure adopted by the Water Authority for use of its water delivery facilities, which Transportation Charge will be adjusted to provide appropriate credit for amounts determined under paragraphs (1)(A) and (B) and paid by the Member Agency and other member agencies having uniform contracts as part of the price attributable to Carlsbad Desalination Project Costs.

(b) If the Water Authority acquires the Carlsbad Desalination Plant in accordance with the Poseidon WPA, the portion of the Carlsbad Desalination Project Costs that are determined under paragraph (1)(A) of subsection (a) will be WPA redetermined by the Water Authority board of directors based upon the full cost (including without limitation, capital, debt service, acquisition, operation, maintenance, administrative overhead, depreciation, reserves) of the Water Authority’s ownership, operation, and maintenance of the plant.

(c) In addition to the unit price determined according to subsections (a), (b), and (c), the Member Agency will pay an annual Administration Charge of $xx,xxxx. The Administrative Charge will be adjusted each Contract Year after the first full Contract Year.
following satisfaction of the condition precedent under paragraph 4 to reflect changes in [CPI?]
from the prior calendar year.

(d) The Water Authority will rebate to the Member Agency a share of any Drought
Shortfall Payments received by the Water Authority pursuant to the Poseidon WPA based on the
ratio of the Member Agency’s Contract Quantity to the Minimum Annual Demand Commitment.

(e) If the amount of water received by the Water Authority pursuant to the Poseidon
WPA is less than its Minimum Monthly Demand Commitment under that agreement, then the
Member Agency’s Contract Quantity deemed delivered in that month will be reduced to reflect
the ratio of the Member Agency’s Contract Quantity to the Minimum Annual Demand
Commitment times the amount of desalinated water delivered to the Water Authority in that
month.

(f) The [unit price] [administrative charge] may include an additional charge to
recover additional costs paid by the Water Authority for Base Product Water Deliveries pursuant
to the Poseidon WPA for the prior fiscal year that were not recovered in the cumulative
payments of the unit price for that prior year.

(g) Nothing in this contract precludes the Water Authority from establishing or
excuses the Member Agency from paying any other non-discriminatory fee or charge generally
applicable to Water Authority member agencies, except that the Contract Quantity will not be
used to calculate the Member Agency’s customer service or storage charges under the Water
Authority rate structure in existence on the date of this contract or any similar future rate
structure of the Water Authority.

(h) The unit price upon commencement of this contract and for the initial fiscal year
(July 1 – June 30) following the Commercial Operation Date under the Poseidon WPA is
estimated to be $_________ for the Carlsbad Desalination Project Costs and $_____________ for the Aqueduct Costs. The Water Authority will determine and give notice to the Member
Agency of the actual unit price for the Contract Year of the Commercial Operation Date and the
first Contract Year thereafter on ____________. Thereafter the Water Authority will determine
and give notice to the Member Agency of the unit price for a Contract Year on or before July 1
of each year. The notice will be given in writing and include a brief description of the basis
determination consistent with subdivision (a).

(i) The unit price for water deemed delivered in a calendar month is due on the 15th
day of the following month in accordance with the Water Authority’s billing practices applicable
to water delivery generally. The Administrative Charge is payable in twelve equal monthly
installments due on the 15th day of each month. Delinquent payments are subject to the same
policies, including provisions or payment of interest and penalties, established by the Water
Authority for billing and collection of fees, rates, and charges generally.
9. **Additional Product Water.**

Additional Product Water will be made available to each member agency that has agreed to participate in the purchase of Additional Product Water according to paragraph (c) of section 5 if and when the Water Authority determines to take Additional Product Water pursuant to the Poseidon WPA. As it is received, the Additional Product Water will be delivered to each participating member agency as treated water at the same price paid by the Water Authority for that water under the Poseidon WPA; in addition the Member Agency will pay the Aqueduct Cost pursuant to paragraph (a)(2) of section 8 for each acre-foot of water delivered. Additional Product Water made available to the Member Agency will be treated as a local supply as provided in section 7.

10. **Early Termination.**

(a) If the Water Authority acquires the Carlsbad Desalination Plant pursuant to the Poseidon WPA, other than pursuant to the provisions for transfer upon expiration of the term of that agreement, the Member Agency will have 90 days after the date of such acquisition to terminate this contract by giving written notice to the Water Authority. The Member Agency will be deemed to have waived the provisions of this section if it does not deliver the written notice to the Water Authority within 90 after the date of acquisition.

(b) [Placeholder. Termination for breach provision?]

11. **Entire Agreement.**

This contract constitutes the entire understanding among the parties with respect to the matters set forth herein, and supersedes all prior or contemporaneous understandings or agreements among the parties with respect to the subject matter hereof, whether oral or written.

12. **Non-severability.**

The covenants and obligations of each party constitute consideration for the covenants and obligations of the other parties and that the provisions of this contract cannot be severed one from the other without affecting the respective and mutual benefits to be obtained by the parties from enforcement of the contract as a whole.

13. **Amendment.**

Neither this contract nor any of its provisions may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such writing. However, for purposes of this contract, the Poseidon WPA, the Poseidon DBA, and any agreements relating to the financing, construction, reconstruction, operation, or maintenance of the Carlsbad Desalination Project includes any amendments to those agreements approved and executed by the Water Authority, and no
amendment of any of those agreements will be considered an amendment to this or any of the uniform contracts.

14. **Construction.**

This contract constitutes a fully-negotiated agreement among commercially sophisticated parties, each assisted by legal counsel, and the terms of this contract shall not be construed or interpreted for or against any party hereto because that party or its legal representative drafted or prepared such provision. Headings, titles and captions are for convenience only and shall not be used for the interpretation of the provisions of this contract.

15. **Controlling Law.**

This contract shall be governed by, and construed and interpreted in accordance with, the laws of the State of California, without giving effect to any choice-of-law or conflicts-of-laws rule or principle that would result in the application of any other laws.

16. **Notices.**

Any notice, approval, consent, waiver or other communication required or permitted to be given or to be served upon any party in connection with this contract shall be in writing. Such notice shall be personally served, sent by facsimile, sent prepaid by registered or certified mail with return receipt requested, or sent by reputable overnight delivery service, such as Federal Express, and shall be deemed given: (a) if personally served, when delivered to the Party to whom such notice is addressed; (b) if given by facsimile, when sent, provided that the confirmation sheet from the sending fax machine confirms that the total number of pages were successfully transmitted; (c) if given by prepaid or certified mail with return receipt requested, on the date of execution of the return receipt; or (d) if sent by reputable overnight delivery service, such as Federal Express, when received. Such notices shall be addressed to the party to whom such notice is to be given at the address specified below or as such party shall otherwise direct in writing to the other parties delivered or sent in accordance with this paragraph. The "copy to" notice to be given as set forth below is a courtesy copy only; a notice given to such person is not sufficient to effect giving a notice to the principal party, and a failure to give such a courtesy copy of a notice does not constitute a failure to give notice to the principal party.

**To the Water Authority:**
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123
ATTN: General Manager

**With a copy to:**
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123
ATTN: General Counsel

**To the Member Agency:**
With a copy to:

17. **Cumulative Rights; Waiver.**

The rights created under this contract, or by law or equity, shall be cumulative and may be exercised at any time and from time to time. Except as otherwise expressly provided in this contract or except passage of time specified by statute for limitation of actions, a failure, delay, or omission by any party in exercising any right, shall not be construed or deemed to be, or operate as a waiver of that right, and no single or partial exercise by any party of a right preclude any other or future exercise thereof or the exercise of any other right. No party may waive any right and no non-defaulting party may waive any breach by the defaulting party of any provision of this contract unless the waiver is in writing, and any waiver by any non-defaulting party of any breach by a defaulting party of any provision of this contract shall not operate as or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of this contract. The failure of any party to insist upon strict adherence to any term of this contract on one or more occasions shall not be considered a waiver of any provision or any breach of any provision of this contract or deprive that party of the right thereafter to insist upon strict adherence to that provision or any other provision of this contract.

16. **No Third Party Beneficiaries.**

This contract does not create, and shall not be construed to create, any rights enforceable by any person, partnership, corporation, joint venture, limited liability company or other form of organization or association of any kind that is not a party to this contract. Nothing in this contract shall be construed to make the Member Agency a third party beneficiary of the Poseidon WPA.

17. **Execution in Counterparts; Facsimile Signatures.**

This contract may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto except for having an additional signature page executed by the other party. Each party agrees that the other parties may rely upon the facsimile signature of a party on this contract as constituting a duly authorized, irrevocable, actual, current delivery of this contract as fully as if this contract contained the original ink signature of the party supplying a facsimile signature.

18. **Time of the Essence.**

Time is of the essence of each and every provision of this contract.
19. **Proof of Authority.**

Each party shall deliver to the other party copies of such resolutions, certificates or written assurances evidencing authorization to execute, deliver, and perform this contract.

20. **Number, Gender.**

Where a word or phrase is defined in this contract, its other grammatical forms have a corresponding meaning. As used herein, and as the circumstances require, the plural term shall include the singular, the singular shall include the plural, the neuter term shall include the masculine and feminine genders, the masculine term shall include the neuter and the feminine genders, and the feminine term shall include the neuter and the masculine genders.

21. **Relationship.**

Nothing in this contract shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers' compensation, pension rights or liabilities, other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to any party's agent or employee as a result of this contract or its performance. Each party is responsible for own acts and omissions, and the acts or omissions of its respective officers, employees and agents.

22. **Defense.**

The parties agree to cooperate to defend this contract by any person or entity that is not a party to this contract, provided, however, that each party shall bear its own attorneys’ fees and costs, unless the parties otherwise agree.

23. **Assignment.**

Neither the Member Agency nor the Water Authority will assign any of its rights, interests, or obligations under this contract, except that upon a governmental reorganization the obligations of a party under this contract will be transferred to the successor agency.

24. **Limitation of Liability.**

The Water Authority shall not be liable to the Member Agency for any special, indirect, incidental or consequential damages of any kind or nature whatsoever, whether based on contract, warranty, tort (including negligence or strict liability), or otherwise, resulting from the failure to deliver the Contract Quantity. The Member Agency’s exclusive remedy for the Water Authority’s breach of this contract is a reduction in the withholding of the payment of the unit price to the extent of the shortfall in delivery of the Contract Quantity.
25. **Force Majeure**

The performance of the Water Authority’s obligation to deliver and the Member Agency’s obligation to purchase the Contract Quantity is excused to the extent and for the duration that the performance is prevented by: acts or failure to act by any government agency or authority (other than the Water Authority or the Member Agency); natural disaster such as earthquake, fire, or flood; war; labor strike or lockout; riots, insurrection, rebellion, acts of the public enemy, acts of terrorism and sabotage; or other cause beyond the control of the party claiming the prevention of performance. A reduction of the Member Agency’s treated water demand due to weather, consumer consumption, availability of alternate supplies, or similar reason will not be grounds for relief under this section. In the event the performance of a party is prevented under this section, the performance of both parties will be excused until the performance is no longer prevented. The parties will reasonably cooperate to seek a restoration of the performance, however, neither party is obliged to expend resources to restore, repair, or replace facilities or services of the other party the damage or interruption of which is the cause of the prevention of performance. This section does not apply to circumstances within the scope of relief under section 6 of this contract.

26. **Execution and Effective Date.**

This contract is effective as of the last date of execution by the parties as shown below:

**Water Authority**

By: ___________________ Date: ___________________

**Member Agency**

By: ___________________ Date: ___________________