ENGINEERING AND OPERATIONS COMMITTEE

9-1. Professional services contract with KPFF Consulting Engineers for design of the microwave communications project.
Authorize the General Manager to award a professional services contract in the amount of $500,000 to KPFF Consulting Engineers for design of the microwave communications project.

ADMINISTRATIVE AND FINANCE COMMITTEE

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

9-3. Adopt an ordinance amending Administrative Code provisions relating to goods and services and public works.
Adopt Ordinance 2012-___ an ordinance of the board of directors of the San Diego County Water Authority to make clean-up amendments to Chapters 4.04 and 4.08 of the Administrative Code.

9-4. Establish 2013 Board meeting dates.
Combine the November and December Board meeting dates to November 21, 2013, and approve the 2013 Board meeting dates calendar.

WATER PLANNING COMMITTEE

9-5. Professional services contract to RECON Environmental, Inc. to provide environmental consulting services for a 24-month period for a not-to-exceed amount of $285,000.
Award a professional services contract to RECON Environmental, Inc. to provide environmental consulting services for preparation of the Nob Hill Modifications Environmental Impact Report and other environmental compliance support for a 24-month period for a not-to-exceed amount of $285,000.

9-6. Approval of uniform contract for member agency purchase of treated water from the Water Authority-Carlsbad Desalination Project.
Approve the uniform contract for member agency purchase of treated water from the San Diego County Water Authority-Carlsbad Desalination Project.

9-7. Resolution establishing preliminary informal terms and conditions for the Valley Center Municipal Water District’s proposed Meadowood Annexation.
Adopt Resolution No. 2012-___ establishing preliminary informal terms and conditions for the Valley Center Municipal Water District’s proposed Meadowood Annexation, and requesting that Metropolitan Water District of Southern California grant conditional approval and give notice of intent to impose water standby charges.
Sacramento

Fall recess and November Election – With the end of the 2011-2012 Legislative Session, things have been very quiet in Sacramento. Campaigns for individual legislative seats, as well as the 10 ballot measures, have been the primary focus and the outcomes from the November Election will have far reaching impacts to the California political landscape. There will be at least 35 brand new legislators in the Assembly with the possibility of 1 or 2 in the Senate. Those 35 members (and as many as 38) represent over 40% of the membership of the Assembly. These new members will be covered under the new term limit rules which means that they can serve 12 years total in the Legislature, split however they choose. So for example, its assumed that many of the new Assembly Members will choose to serve their entire 12 year cycle in the Assembly and not jump to the Senate after 6 years which is currently the practice. What this means is that with 40% of the Assembly turning over in this election cycle, and those new members having the ability to serve a full 12 year term in the Assembly, we suspect that you will begin to see the Assembly become the more stable and powerful house in comparison to the State Senate.

Additionally, the passage or failure of either Propositions 30 or 38 will have significant impacts on the California political landscape. The failure of Proposition 30 will most likely result in the Legislature returning to Sacramento and convening a lame duck session in order to revisit the budget trigger cuts - either to make changes to the amounts, or more likely to shift where those trigger cuts will occur. The ramifications of the passage or failure of Proposition 38 are tougher to predict but would also lead to the Legislature revisiting the 2012 budget, but probably wouldn't result in a "lame-duck" session. Couple these changes in the legislative make-up with the implications of Propositions 30 & 38 for the California budget, and the 2012 November Election will have significant impacts on the future direction of California politics.

Washington, DC

Congress continues to meet in pro forma session. Both chambers will reconvene for legislative business after the elections on November 6. The outcome of the presidential race and the possible change of partisan control in both the House and Senate are muting forecasts for the upcoming lame duck session.
Garamendi Introduces Bill Requiring Cost-Benefit Study of Delta Tunnels – Representative John Garamendi (D-Fairfield) introduced the SAFE Levee Act (H.R. 6484). The bill would authorize funding for levee repairs in the Bay-Delta region and require a cost-benefit study on the impact of the Peripheral Tunnels proposed under the Bay Delta Conservation Plan (BDCP). The bill was referred to the House Subcommittee on Water and Power on October 4, but any additional action on the bill during the current session of Congress is unlikely.

Representatives Jerry McNerney (D-Stockton), Doris Matsui (D-Sacramento), George Miller (D-Martinez), and Mike Thompson (D-St. Helena) have signed on to the bill as cosponsors. No companion legislation has yet been introduced in the Senate.

H.R. 6484 would amend the Calfed Bay-Delta Authorization Act to authorize the Secretary of the Interior to provide assistance to non-Federal interests for levee stability improvements located Bay-Delta region related to Central Valley Project water deliveries. In announcing his support for the bill, Congressman George Miller stated: “We know that any long-term solution to the Bay-Delta's problems will need to address our region's levees, and will need to make economic sense for California. This bill starts an important -- and long-overdue -- conversation about strengthening our levees and fully evaluating the BDCP's costs and benefits.”

Currently, the U.S. Army Corps of Engineers, in conjunction with the State’s Department of Water Resources, manages the flood control levees within the Delta. This legislation’s proposal to introduce the Bureau of Reclamation as a flood control manager will elicit much debate within Congress if it is to move forward. Additionally, the added Federal cost of levee maintenance – whether by the Bureau or the Corps – will add another complicating factor in moving forward with the proposed BDCP plan.

Restore the Delta, a coalition of farmers, fishermen, environmentalists and business owners in the area, is supporting Garamendi’s legislation. They cite, in part, their concern that little is being done to improve and strengthen Sacramento-San Joaquin River Delta levees and thereby provide needed flood control protection to the area. They also object to habitat restoration elements of the BDCP plan would take agricultural land out of production while offering no guarantees that declines in smelt, salmon, and other species would be reversed under the new plan. They also hope the cost-benefit study will provide more information on what will happen to water rates and other revenue sources resulting from completion of the proposed tunnels.

In a separate, but related development, the EIR/EIS for the proposed tunnel/canal plan will not be released until late December. It had originally been scheduled for September, then delayed until October.

“Fiscal Cliff” Positioning Continues Ahead of Lame Duck Session – While Members of Congress continue to campaign ahead of next month’s elections, the pending debate over federal funding sequestration and tax policy is getting more attention. While failure to avert sequestration would undoubtedly cause damaging cuts in many discretionary programs, it is difficult to pinpoint the exact cost to specific projects and programs of interest to the Authority.
In his final debate with Mitt Romney, President Obama flatly declared that sequestration will not happen. Earlier, he also stated that he would veto any budget plan this year that did not raise taxes on earners making over $250,000 per year. This sets up another possible showdown with congressional Republicans during the upcoming lame duck session.

House Speaker John Boehner said he did not think a lame duck session was the best time to strike a “grand bargain” on these issues, due to the short timeframe and the possibly disputed role of defeated and retiring Members. In the Senate, the bipartisan “Gang of Eight” has been meeting in an attempt to strike a deal. However, reports indicate they have made little progress. Senator Chuck Schumer (D-NY) has called for greater tax increases on high earners and corporations in place of budget cuts.

The uncertain outcome of both the electoral season and the fiscal cliff debate is coloring congressional opinions on numerous issues pending consideration after the election and that await the next Congress. These issues include federal funding and regulatory support for the BDCP and other water infrastructure funding and financing tools.
October 24, 2012

Attention: Imported Water Committee

Metropolitan Water District Delegates’ Report (Information)

Background
The MWD committees and board met on October 8 and 9. The next regular MWD board and committee meetings are scheduled for November 5 and 6.

Discussion
This section summarizes discussions held and key decisions made at the October MWD committee and board meetings, as reported by the MWD delegates. The MWD board approved 12 action items, which included an employment contract for a new Ethics Officer, compensation increases for the general manager and general auditor, and nomination and election of the Board Chairman. The Water Authority delegation supported 10 of the 12 items. The delegates opposed an item that extended existing Purchase Orders from a 10-year to a 12-year agreement because the extension was not a simple extension; instead, it included unexplained changes to the existing terms and conditions and left out certain policy changes previously adopted by the board. A letter was submitted to the Finance and Insurance Committee and board, which conveyed the delegates’ concerns regarding the Purchase Order item (see Attachment 1). The delegates also opposed the compensation recommendations for the General Manager and General Auditor due to the magnitude of some of the increases recommended, the current economic environment, and MWD’s recent rates increases for 2013 and 2014.

A letter responding to MWD Chief Financial Officer Gary Breaux’s September 4, 2012 correspondence was also submitted to the Finance and Insurance Committee. The letter pointed out that the Revised Official Statement did not address all comments made in the delegates’ August letter. In fact, the revision included some changes that could have been made before the draft was first distributed and reviewed by the board last September (see Attachment 2). As such, the delegates provided additional comments on the Revised Official Statement for the board to discuss and consider. Subsequently, the delegates requested that the Purchase Order and Official Statement letters be entered into the administrative record of the respective committee and board meetings.

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

Communications and Legislation Committee
The committee received reports on state and federal activities and legislation. Staff also gave an overview on the upcoming 2012 General Election. Executive State Legislative Representative Kathy Cole said that during the June 2012 Primary, only 31 percent of the statewide registered voters participated – a record low for a presidential election year. For November, Cole said that the State legislative races within MWD’s service area include 43 races for Assembly and 11 races for Senate District seats. Deputy General Manager Linda Waade added that there are 31 Congressional (House of Representatives) races within MWD’s service area and one U.S. Senate
race (Dianne Feinstein is the incumbent). Staff said that Congress recessed in mid-September and plans to return to Washington in mid-November for a “lame duck” session of Congress.

The committee also received an update on the Inspection Trip Program.

**Engineering and Operations Committee**

The committee and board approved seven board items, including a rehabilitation item regarding bolt fatigue, which if not repaired, may impact the Colorado River Aqueduct. The committee also heard oral reports on taste and odor control strategies and on the California Cap and Trade Regulation. The latter item reviewed the implementation of the California Air Resources Board’s (CARB) cap-and-trade regulation and MWD’s coverage under the regulation. Under current law, MWD is required to buy greenhouse gas (GHG) emission allowances rather than receiving a free allocation, a consideration given to other utility interests and trade industries. MWD is working with CARB for MWD to receive grant funding for programs that would provide a reduction in GHG emissions to mitigate MWD’s GHG obligations. In response to Director Peterson’s (Las Virgenes) inquiry regarding the State Water Project’s GHG obligations, staff said the Department of Water Resources have a contract for coal energy that will expire in mid-2013 and is also a new participant in a natural gas-fired plant; energy brought in from the two plants would have an obligation. In reply to Peterson’s follow-up question, staff added that only 8 percent of a covered entity’s compliance obligations can be met by offsets and only four programs have been certified by CARB as meeting its requirements.

**Finance and Insurance Committee**

The committee and board approved the form of the amended and restated Purchase Orders and authorized an amendment of the Administrative Code as it pertains to the approval. Staff said that absent action by the board to extend the Purchase Orders, Tier 1 limit for those member agencies that currently have Purchase Orders would revert to 60% of the base firm demand. Staff reported that as of August 31, 2012, 19 of the 23 member agencies with Purchase Orders have already met the 12-year Purchase Order Commitment resulting from the extension. While the Water Authority has not yet met the additional commitment (which needs to be met by December 31, 2014 for member agencies who chose to extend Purchase Order agreement), it is trending to meet the commitment by the end of this calendar year. Because MWD staff’s recommendation includes unexplained changes to the Purchase Order’s terms and conditions, Director Wilson indicated that the Water Authority delegates could not support the action.

The committee received updates on MWD’s financial highlights. Breaux said that a recent Revenue Refunding Bond Sales for Series F resulted in savings of $360,000 annually or $3.85 million in present value. MWD Controller Tom DeBacker detailed MWD’s Fiscal Year 2012/13 first quarter financial highlights (as of September 2012). He reported the projected revenue is anticipated to be $17.2 million higher than the approved budget, due to increased water sales and higher negotiated sales price on power; while the expenses are forecasted to decrease by $89.6 million, mostly due to decreased State Water Project expenses ($66.4 million), reduced Colorado River Aqueduct power due to lower than average purchase price ($9.3 million), savings from refundings and lower debt administrative fees ($7.1 million) and lower conservation spending ($6 million). DeBacker said that the Revenue Bond Debt Service Coverage is the only board-adopted target MWD is not meeting; but MWD is moving in the right direction as it ended last year’s coverage at 1.91 times its annual payments and is now at 1.93 times. MWD’s target is greater than 2 times its annual payments.
The committee also received a report on Governmental Accounting Standards Board (GASB) 68, Accounting and Financial Reporting for Pensions. DeBacker said that the effective date for the GASB 68 rule is June 30, 2015 to accommodate for development of a similar reporting rule for the Other than Post-Employment Benefits (OPEB). DeBacker said the impact of the new accounting rules to MWD means a showing of increased liability, thereby reducing its bonding capacity. In response to a question from Director Evans’ (Western), both Breaux and General Manager Jeff Kightlinger assured Evans that barring the need to finance any large capital project, MWD’s increasing debt-to-equity ratio is manageable. Breaux added that if MWD were to follow through on its build-up plan to fully fund the Annual Required Contribution (ARC) for OPEB, it would drop its liability by $150 million and reduce the impact to MWD’s debt-to-equity ratio. Breaux said that with MWD moving towards funding $125 million in Pay-As-You-Go (PAYGo) per year, it will increase its pace of building equity; thus improving its debt-to-equity ratio.

Director Wunderlich (Beverly Hills) asked how much MWD funding would be needed to extinguish its OPEB unfunded liability within 10 years; Breaux responded MWD would need to contribute about an additional $50 million to 60 million a year to pay down the unfunded liability (in addition to fully funding the ARC). DeBacker added that of the estimated Fiscal Year 2012/13 ARC totaling $53.5 million, MWD has budgeted to fund $14.8 million of PAYGo costs (premiums paid for those retired MWD employees) and $5.0 million toward prefunding the unfunded liability, leaving an additional $33.7 million not funded. Wilson pointed out two areas that may increase the reported liability – the basis of the liability by market value rather than actuarial, and the assumed rate used to calculate the liability. He also reiterated the delegates concern over the lack of adequate fixed revenues to cover the fixed costs, particularly, before entering into any new debt; Breaux responded that MWD could sufficiently cover its costs with the current rate structure, as long as it remains conservative in its sales projections when setting rates. Director Dick (Municipal Water District of Orange County) expressed that he is not supportive of increasing fixed revenues to offset a higher level of fixed costs because in doing so, it takes away staff’s incentive to keep costs down. Responding to Wilson and Director Steiner’s request, Acting Finance and Insurance Committee Chair Barbre (Municipal Water District of Orange County) confirmed that staff will return with an update of the Pension and OPEB liability when CalPERS releases its new study (projected to be released within the next two weeks). Breaux said staff will update the committee during the next quarterly report.

**Legal and Claims Committee**
The committee discussed several issues in closed session, including the rate litigation with the Water Authority, in which no action was reported.

**Organization, Personnel and Technology**
The committee heard a report regarding MWD’s Business Outreach program and received two updates pertaining to Health Care Reform and Pension Reform.

**Water Planning and Stewardship Committee**
The committee received an oral report on the Water Surplus and Drought Management. Based on the allocated supplies and estimated demands, MWD is projecting it will be able to store 246,000 AF of water in its regional storage portfolio by the end of Calendar Year 2012. Staff noted that for 2013, MWD has access to between 1.6 MAF and 2.0 MAF from storage to meet its demands, based on 10% State Water Project allocation for the low estimate and 100% for the high estimate.
Staff’s take assessment for CY 2013 included consideration of facility capacity and contractual obligations.

The committee also received Part 1 of a two-part oral report series on Quantification Settlement Agreement (QSA) issues. In short, staff described the first 10 years of the QSA as “successful.” Steiner added that a potential outcome of mitigation discussions being held with the State Water Resources Control Board is to make water that is earmarked for the Salton Sea available for purchase and, in turn, the revenue generated would be applied to the restoration of the Salton Sea. Kightlinger clarified that MWD is not a party to the mitigation agreement for the Salton Sea. Staff said that Part 2 of the QSA report will cover current QSA disputes and resolution efforts, MWD’s staff analysis on the Colorado River Aqueduct water supply with and without the Imperial Irrigation District/Water Authority Transfer, and MWD’s long-term Colorado River Aqueduct Management Strategy.

Staff reviewed the Integrated Resources Plan (IRP) implementation report, which summarizes MWD’s progress in achieving its implementation goals. Staff said efforts are underway to develop a Foundational Actions Plan that analyzes alternative supply options in the various IRP approaches. Additionally, the committee heard reports on Bay-Delta and Colorado River matters. Director Brick (Pasadena) asked about the Water Authority’s seawater desalination draft Water Purchase Agreement (WPA), particularly the impacts to financing the project when the WPA is “non-binding,” as he characterized. MWD staff responded that it is reviewing the draft document and will report back to the committee.

Board Meeting
During the public comment period, Assistant General Manager Dennis Cushman summarized the benefits MWD receives as a result of the QSA (See Attachment 4 for Cushman’s testimony). During the General Manager’s report, Kightlinger commented that he did not “think anyone was implying that the QSA is not of value to MWD.” He also said that when MWD declared a water shortage (July 2009-April 2011), it did so as a “precautionary measure,” and that MWD “could have met all demands” with its 1.0 MAF of storage supplies. Kightlinger also reported on a “resolved” issue pertaining to the revised bill notice to the Water Authority regarding under-conserved water by IID; Kightlinger acknowledged that the Water Authority paid the water bill under protest.

Prepared by: Debbie Discar-Espe, Senior Water Resources Specialist
Approved by: Communications and Legislation by Fern Steiner
Financial and Insurance by Doug Wilson
Engineering and Operations by Fern Steiner
Legal and Claims by Fern Steiner
Organization, Personnel and Technology by Doug Wilson
Water Planning and Stewardship by Fern Steiner
Board Meeting by Doug Wilson and Fern Steiner

Attachment 1: Letter on Purchase Order, October 9, 2012
Attachment 2: Response Letter on Official Statement, October 9, 2012
Attachment 3: MWD’s October board meeting agendas and Summary of Actions
Attachment 4: Testimony of Dennis Cushman, October 9, 2012
October 8, 2012

Jack Foley, Chair of Board  
and Members of the Board  
Metropolitan Water District  
P. O. Box 54153  
Los Angeles, CA 90065-0153

RE: Board Memo 8-3 – Approve the form of the amended and restated Purchase Order; and  
authorize amendment of section 4122 of the Administrative Code

Dear Mr. Foley and Board Members,

We have reviewed Board Memo 8-3 including Attachments. We are prepared to recommend to  
the Water Authority board of directors renewal of the purchase order commitment for two  
years, to December 31, 2014, “under the existing terms and conditions,” in accordance with the  
recommendation stated in the “Executive Summary” at page one, paragraph one of the board  
memo and as reflected in Attachment 3, Page 1 of 1, 2013, Tier 1 Limit and 2003 – 2014  
Purchase Order Commitment. However, we are unable to recommend execution of the new form  
of Purchase Order which contains unexplained changes to the existing terms and conditions.

The “Details” section at page one, paragraph two of the board memo states that the new form of  
agreement contains amendments to definitions “to align the Purchase Orders with water  
programs implemented since the 2002 execution of the Purchase Order.” However, there is no  
explanation provided of the “alignment.” In fact, none of the definitional changes are necessary  
in order to achieve the stated objective of extending the purchase order for an additional two  
years under the existing terms and conditions or to “align” the Purchase Order to “new water  
programs.” The extension of the purchase order commitment could be accomplished simply by  
amending Section 4122 and the Purchase Order to reflect a “twelve-year” instead of a “ten-year”  
rolling average of deliveries of water (subject to adding one additional board policy change  
noted below).

Instead of presenting this simple amendment, however, an “amendment and restatement” of  
the Purchase Order is proposed. A contract amendment does not replace the whole original  
contract (just the part that’s changed by the amendment, here, a simple change from ten-years  
to twelve-years). Only when a contract requires extensive changes is it the common practice to  
create an entirely new agreement in the form of an “amendment and restatement.”

For example, a number of terms that are not defined in Metropolitan’s Administrative Code or  
included in its cost of service analysis are used in the new form of Purchase Order (e.g., “non-  
interruptible System Water supplies,” and “Recharge and Recovery Operating Agreement
Mr. Foley and Members of the Board  
October 8, 2012  
Page 2

water,” among others). The edits to the definitions are unnecessary and whatever the intent, the proposed amendments are inconsistent with the explanation being provided by staff that the Purchase Orders are being extended under the “existing terms and conditions.”

Finally, while staff has included a number of unexplained changes to the form of the Purchase Order, it has left out the only policy change that has actually been adopted by the board of directors. That is that any member agency may withdraw and terminate its Purchase Order commitment upon the payment of a $5,000 administrative withdrawal fee. See November 8, 2011 Board Memorandum 8-3, adopted by the board on the same date. This provision should be included in the amended Purchase Order commitment.

In closing, we reiterate the concerns expressed in our September 10, 2012 letter to you RE Update on Rate Refinement (Board Information Item 7-b) (copy attached) including the inefficacy of Metropolitan’s Purchase Orders to achieve the objective of securing a revenue stream sufficient to pay Metropolitan’s costs, or, to provide a reasonable basis for the planning and provision of long term capital facilities and water supply programs. Metropolitan’s staff has acknowledged that Purchase Orders do not achieve these objectives, and yet, these critical financial decisions are being deferred for another two years. We are troubled by the continued spending patterns and practices at Metropolitan which do not provide sufficient fixed revenues at the same time the member agencies and board members are unable to agree how these fixed costs will be paid for over the long term. The trend and signals that we see are that Metropolitan’s member agencies intend to purchase less, not more water from Metropolitan. The continued spending could result in substantial stranded costs as well as massive rate hikes that would be necessary to pay for these programs with a declining sales base.

We assume other agencies will be required to obtain the approval of their governing boards. Our recommendations to the Water Authority’s board of directors will be as described in this letter.

Sincerely,

Keith Lewinger  
Fern Steiner  
Doug Wilson  
Director  
Director  
Director

Attachment

cc: San Diego County Water Authority Board of Directors
October 8, 2012

Gary Breaux  
Assistant General Manager/Chief Financial Officer  
Metropolitan Water District of Southern California  
P. O. Box 54153  
Los Angeles, CA 90065-0153


Dear Mr. Breaux:

We have reviewed the edits you made to the attachment to your September 4, 2012 letter (Revised Appendix A), which you represented as responding to the comments we provided in our letter to you dated August 20, 2012 (San Diego Comment Letter) and “other comments.” We request to be provided with a copy of any other comments you received that you took into account in making the edits to the Revised Appendix A. If we do not receive any response from you, we will understand that no other comments were submitted and that the edits were made by Metropolitan management.

While some of the edits respond to our comments, others clearly do not; and, many of our comments were not addressed in the Revised Appendix A. We also note that many of the changes you made to the final Revised Appendix A could have been made prior to the draft being distributed to the board for review (i.e., were not based on new developments). We would have commented on these edits at that time had the opportunity been provided. The following are our additional comments on Revised Appendix A, including some important issues we request be brought back to the board for discussion. All references are to the page numbers as in the Revised Appendix A attachment to your September 4, 2012 letter.

A-12: We presume your deletion of reference to the “commitment” by Metropolitan and the Santa Clara Valley Water District to surpass the 2009 Delta Reform Act water savings targets by 700,000 acre-feet per year based on predicted future demands was made in response to the San Diego Comment Letter (page 3, A-11 – BDCP). Our request, however, was not to delete the comment, but only to make clear that the board of directors has not made any such “commitment,” as described. Since this representation has apparently been made as part of the BDCP process and widely circulated in the media, we would still ask that you provide information to the board of directors regarding the details of the proposal, i.e., what share of the 700,000 acre-feet of additional conservation MWD staff has indicated a
willingness to implement and how that will be factored into Metropolitan’s water resources plans and cost projections.

A-18: The edits you made to the section describing the *Sale of Water by the Imperial Irrigation District to San Diego County Water Authority* misrepresent the language of the QSA and Exchange Agreements. The edits appear to be calculated to be more consistent with MWD’s recently constructed interpretation of the Exchange Agreement to support its claim that the Water Authority is in default under the Exchange Agreement. It is noteworthy the very language which has been used in past Official Statements is only now being edited (and as noted, without any opportunity having been provided to the board of directors to review the language in advance of the changes being made). We specifically object to the following changes on the grounds that the edits are inconsistent with the QSA and Exchange Agreements:

- Deletion of “delivered to” and substitution of “that is conserved within”
- Deletion of “deemed” and substitution of “that has been”
- All edits to the sentence that formerly began as, “Metropolitan makes no payment” and now begins, “In consideration for the conserved water.”
- Deletion of the sentence at the bottom of page A-18 through the first two lines of page A-19.
- Addition of the first sentence to the first full paragraph of page A-19.
- Addition of the last three sentences of the first full paragraph of page A-19, except the language, “Metropolitan served SDCWA with a Notice of Default” and “has invoiced SDCWA for its higher water rate.”

In addition, the Revised Appendix A is misleading in that you failed to make any changes to describe the substantial risks to Metropolitan and its ratepayers if the QSA agreements are interrupted, specifically, reduced availability of Colorado River water supplies, reduced water supply reliability, increased chances of water shortages and likelihood of increased water rates for MWD ratepayers.

A-30: MWD should delete the words, “if any,” from the sentence that begins, “Future reliance on Metropolitan supplies.” Given all of the local projects already being developed and planned to be developed within the Metropolitan service territory, it is unreasonable to suggest the possibility that, in the future, *no amount* of water will be derived from sources other than Metropolitan.

A-31: Regarding the turnout agreement between the California Department of Water Resources, Antelope Valley-East Kern Water Agency (AVEK) and Metropolitan, we request a full board report on the edit made deleting the word “limits” and substituting the words “allows for.” This agreement was the subject of significant controversy at the time it was executed by then General Manager, Ron Gastelum, without the knowledge or approval of
Mr. Breaux  
October 8, 2012  
Page 3

the Metropolitan board of directors. One of the representations that was made was that the turnout would be strictly limited. Please explain why this edit was made. Also, please explain why you moved the following sentence from the Revised Appendix A from A-31 to A-30:

“The City’s future reliance on Metropolitan supplies will be dependent on these projects and the amount of water, if any, that may be derived from sources other than Metropolitan.” The original disclosure following the LA-AVEK agreement is a more logical location than the revised.

Our concerns about these edits are exacerbated by your failure to correct a major deficiency in the Official Statement, namely, that it contains a great deal of information about the plans of the City of Los Angeles to buy less water from Metropolitan in the future, based on its Urban Water Management Plan, but does not disclose the same information for the Water Authority and other agencies who also have plans described in their Urban Water Management Plans to purchase less water from Metropolitan in the future. We again ask that you make all of the edits suggested in the San Diego Comment Letter RE A-28 – Regional Water Sources so that the Official Statement reports all of Metropolitan’s member agency plans to develop local water supplies. You may also wish to add a disclosure that Metropolitan has mounted a public affairs campaign in San Diego and elsewhere to try to convince local elected officials and water ratepayers to abandon these plans and instead rely upon Metropolitan’s imported water supplies which it alleges will be available to replace local supplies and can be obtained at a lower cost.

A-33 and A-52: The edits made regarding replenishment service are misleading in that they appear to be designed to suggest that MWD’s flawed business model of buying “high” and selling “low” has been addressed by elimination of replenishment service. As noted in the San Diego Comment Letter, Metropolitan has refused to disclose how much of its “demand” is only for discounted water (i.e., sales that will only occur at a discount). When one agency buys water at a discount, another agency has to pay for that discount. While it is accurate that no replenishment sales are budgeted (or included in Metropolitan’s cost of service) for Metropolitan’s fiscal years 2012-13 and 2013-14 budgets, Metropolitan and the member agencies have identified the continued sale of discounted water as a “priority” using new lingo (“incentive-based”) that has the same net effect to Metropolitan’s revenues and fiscal stability. The edits you made do not address the issues presented in the San Diego Comment letter. See San Diego Comment Letter, A-50 – Replenishment.

A-40: You did not make any of the edits requested to reflect the real reason why actual and projected pay-as-you-go funding has consistently been less than budgeted. Here again, your edits have made the Revised Appendix A more misleading, by changing the word “budgeted” to “projected.” Recent actual pay-as-you-go has consistently been less than budgeted and it is misleading to state otherwise.

A-50: You made edits changing the following sentence: “If Metropolitan’s rates are revised
in the manner proposed by SDCWA in the complaint, other member agencies would pay higher rates,” to, “If Metropolitan’s rates are revised in the manner proposed by SDCWA in the complaint, other member agencies may pay higher rates unless other actions are taken by the Board.” What is the reason for this change and what is the basis of the revised statement? Metropolitan and the member agencies have widely published in the litigation and elsewhere the premise that if the water rates were revised in the manner proposed by SDCWA, it would result in a commensurate increase in the water rates of other member agencies. If management has developed alternatives under which the member agencies would not pay more if the Water Authority litigation is successful, we request these be brought back to an upcoming Finance and Insurance Committee for review and discussion. Those alternatives should also be fully disclosed in Metropolitan’s Official Statement Appendix A.

A-72: The edit made to eliminate the reference to “water purchase estimates” associated with DWR’s annual billing for State Water Project Water are noted as self-serving and another late attempt to shore up Metropolitan’s own arguments in the SDCWA litigation.

With the exception of your response to A-4 – State Water Project and A-53 – Wheeling and Exchange Charges, and parts of A-18 – Sale of Water by the Imperial Irrigation District and A-50 – Interim Agricultural Water Program (IAWP), none of the concerns raised in the San Diego Comment Letter have been addressed by your edits to the Revised Appendix A.

Sincerely,

Keith Lewinger  Fern Steiner  Doug Wilson
Director  Director  Director

cc:  Jeff Kightlinger, MWD General Manager
     San Diego County Water Authority Board of Directors and Member Agencies
Finance and Insurance Committee
Meeting with Board of Directors*

October 8, 2012

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

Monday, October 8, 2012
Meeting Schedule

<table>
<thead>
<tr>
<th>Time</th>
<th>Location</th>
<th>Agenda Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:00-8:00 a.m.</td>
<td>Rm. 2-413</td>
<td>Dirs. Computer Training</td>
</tr>
<tr>
<td>9:00 a.m.</td>
<td>Rm. 2-145</td>
<td>F&amp;I</td>
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MWD Headquarters Building • 700 N. Alameda Street • Los Angeles, CA 90012

* The Metropolitan Water District’s Finance and Insurance 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 Finance and Insurance 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 Finance and Insurance Committee will not vote on matters before the Finance and Insurance 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 Finance and Insurance Committee held September 10, 2012

3. MANAGEMENT REPORTS
   a. Report on investment activity
   b. Financial highlights

4. CONSENT CALENDAR ITEMS — ACTION
   None
5. **OTHER BOARD ITEMS — ACTION**

8-3 Approve the form of the amended and restated Purchase Orders; and authorize amendment of section 4122 of the Administrative Code. (F&I)

6. **BOARD INFORMATION ITEMS**

None

7. **COMMITTEE ITEMS**


8. **FOLLOW-UP ITEMS**

None

9. **FUTURE AGENDA ITEMS**

10. **ADJOURN MEETING TO MONDAY, NOVEMBER 5, 2012 (due to Veterans Day holiday)**

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Water Planning and Stewardship Committee

Meeting with Board of Directors*

October 8, 2012

10:00 a.m. -- Room 2-456

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* The joint meeting of the Metropolitan Water District’s Water Planning and Stewardship Committee is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Water Planning and Stewardship 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 committees as advisory to the Board, members of the Board who are not assigned to the Water Planning and Stewardship Committee will not vote on matters before the Water Planning and Stewardship Committee.

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 Water Planning and Stewardship Committee held September 10, 2012**

3. **CONSENT CALENDAR ITEMS — ACTION**

   None

4. **OTHER BOARD ITEMS — ACTION**

   None

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Date of Notice: September 26, 2012
5. **BOARD INFORMATION ITEMS**

   None

6. **COMMITTEE ITEMS**

   a. Oral report on Water Surplus and Drought Management Plan
   
   b. Oral report on IRP implementation
   
   c. Oral report on QSA issues

7. **MANAGEMENT REPORTS**

   a. Bay-Delta Matters
   
   b. Colorado River Matters
   
   c. Water Resource Management Manager's report

8. **FOLLOW-UP ITEMS**

   None

9. **FUTURE AGENDA ITEMS**

10. **ADJOURN MEETING TO MONDAY, NOVEMBER 5, 2012 (due to Veterans Day holiday)**

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Date of Notice: September 26, 2012
Monday, October 8 2012
Meeting Schedule

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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 September 10, 2012

3. CONSENT CALENDAR ITEMS — ACTION

7-2 Appropriate $130,000; and authorize preliminary design to replace the heating, ventilating, and air conditioning system at Metropolitan’s Water Quality Laboratory in La Verne (Approp. 15391). (E&O)

7-3 Appropriate $1.88 million; and authorize final design of two seismic upgrade projects at the Robert B. Diemer Water Treatment Plant (Approp. 15436). (E&O)
Appropriate $1.35 million; and authorize final design and construction to replace the Bixby Valve on the Second Lower Feeder (Approp. 15441). (E&O)

7-5 Appropriate $840,000; and award $638,000 contract to Acuna Corp. to rehabilitate electrical transmission tower foundations at Danby Dry Lake (Approp. 15384). (E&O)

7-6 Appropriate $950,000; and authorize (1) Phase 1 of a program to rehabilitate the main pumps on the Colorado River Aqueduct; and (2) refurbishment of pump suction joint at Iron Mountain Pumping Plant (Approp. 15481). (E&O)

4. OTHER BOARD ITEMS — ACTION

8-1 Appropriate $3.42 million; award $1,912,990.78 procurement contract to Val-Matic Valve & Manufacturing; and authorize final design to replace filter valves at the Joseph Jensen Water Treatment Plant (Approp. 15371). (E&O)

8-2 Appropriate $3.5 million; award two contracts to J. F. Shea Construction, Inc. in the amounts of $798,000 and $1,068,000; and authorize design to rehabilitate delivery pipeline supports at the Colorado River Aqueduct pumping plants (Approp. 15483). (E&O)

5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

a. Overview of Taste and Odor Control Strategies

b. Update on California’s Cap and Trade Program

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. ADJOURN MEETING TO MONDAY, NOVEMBER 5, 2012 (due to Veterans Day holiday)

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Date of Notice: September 26, 2012
Organization, Personnel and Technology Committee
Meeting with Board of Directors*
October 8, 2012

1:00 p.m. -- Room 2-456

Monday, October 8, 2012
Meeting Schedule

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

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 August 20, 2012

3. COMMITTEE CHAIR’S REPORT

4. CONSENT CALENDAR ITEMS — ACTION

   None

5. OTHER BOARD ITEMS — ACTION

   None
6. BOARD INFORMATION ITEMS

   None

7. COMMITTEE ITEMS

   a. Annual report on Business Outreach
   b. Update on Health Care Reform
   c. Update on Pension Reform

8. FOLLOW-UP ITEMS

   None

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

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Legal and Claims Committee
Meeting with Board of Directors*

October 9, 2012
9:00 a.m. -- Room 2-145

Tuesday, October 9, 2012
Meeting Schedule

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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 Legal and Claims Committee held September 11, 2012

3. CONSENT CALENDAR ITEMS — ACTION

   None

4. OTHER BOARD ITEMS — ACTION

   None

5. BOARD INFORMATION ITEMS

   None

Date of Notice: September 26, 2012
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, USDC 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 and No. CPF-12-512466. [Conference with legal counsel—existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(a)]

7. FOLLOW-UP ITEMS
   None

8. FUTURE AGENDA ITEMS

9. ADJOURN MEETING TO TUESDAY, NOVEMBER 6, 2012 (due to Veterans Day holiday)

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Date of Notice: September 26, 2012
REVISED AGENDA

Communications and Legislation Committee

Meeting with Board of Directors*

October 9, 2012

10:00 a.m. -- Room 2-456

Tuesday, October 9, 2012
Meeting Schedule

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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 September 11, 2012**

3. **COMMITTEE CHAIR’S REPORT**

4. **CONSENT CALENDAR ITEMS — ACTION**

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

   None

6. **BOARD INFORMATION ITEMS**

   None

7. **COMMITTEE ITEMS**

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

   Added

   c. 2012 General Election Overview
   
   d. Inspection trip report

8. **MANAGEMENT REPORT**

   a. External Affairs Management report

9. **FUTURE AGENDA ITEMS**

10. **ADJOURN MEETING TO TUESDAY, NOVEMBER 6, 2012 (due to Veterans Day holiday)**

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**REVISED:** Date of Notice: October 1, 2012
Regular Board Meeting

October 9, 2012

11:30 a.m. -- Board Room

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1. **Call to Order**
   
   (a) **Invocation**: (Guest)
   
   (b) **Pledge of Allegiance**: Director Robert Wunderlich

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 September 11, 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 September**

   C. **Approve committee assignments**
D. Chairman's Monthly Activity Report

E. Approve employment contract for new Ethics Officer

F. Compensation recommendation for General Manager, General Counsel, and General Auditor

G. Report from Executive Committee on nominations

H. Nomination and election of Board Chairman for two-year term effective January 1, 2013

6. DEPARTMENT HEADS' REPORTS

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

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

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

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

7. CONSENT CALENDAR ITEMS — ACTION

7-1 Approve amendments to Metropolitan Water District Administrative Code regarding the Audit Department Charter. (A&E)

Recommendation:

Option #1:

Adopt the CEQA determination and approve the amendments to the Administrative Code as set forth in Attachment 1 to the board letter.
7-2  Appropriate $130,000; and authorize preliminary design to replace the heating, ventilating, and air conditioning system at Metropolitan’s Water Quality Laboratory in La Verne (Approp. 15391).  (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and
a.  Appropriate $130,000; and
b.  Authorize preliminary design to replace the original HVAC system at Metropolitan's Water Quality Laboratory in La Verne.

7-3  Appropriate $1.88 million; and authorize final design of two seismic upgrade projects at the Robert B. Diemer Water Treatment Plant (Approp. 15436).  (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and
a.  Appropriate $1.88 million; and
b.  Authorize final design of seismic upgrades for the Diemer Administration and Filter Buildings.

7-4  Appropriate $1.35 million; and authorize final design and construction to replace the Bixby Valve on the Second Lower Feeder (Approp. 15441).  (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and
a.  Appropriate $1.35 million; and
b.  Authorize final design and construction to replace the Bixby Valve on the Second Lower Feeder.

7-5  Appropriate $840,000; and award $638,000 contract to Acuna Corp. to rehabilitate electrical transmission tower foundations at Danby Dry Lake (Approp. 15384).  (E&O)
Recommendation:

Option #1:

Adopt the CEQA determination and
a. Appropriate $840,000; and
b. Award $638,000 contract to Acuna Corp. to rehabilitate electrical transmission tower foundations at Danby Dry Lake.

7-6 Appropriate $950,000; and authorize (1) Phase 1 of a program to rehabilitate the main pumps on the Colorado River Aqueduct; and (2) refurbishment of pump suction joint at Iron Mountain Pumping Plant (Approp. 15481). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and
a. Appropriate $950,000;
b. Authorize Phase 1 of the CRA Main Pump Reliability Program; and
c. Authorize refurbishment of one suction joint at Iron Mountain Pumping Plant.

(END OF CONSENT CALENDAR)

8. OTHER BOARD ITEMS — ACTION

8-1 Appropriate $3.42 million; award $1,912,990.78 procurement contract to Val-Matic Valve & Manufacturing; and authorize final design to replace filter valves at the Joseph Jensen Water Treatment Plant (Approp. 15371). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and
a. Appropriate $3.42 million;
b. Award $1,912,990.78 contract to Val-Matic Valve & Manufacturing to furnish 82 butterfly valves; and
c. Authorize final design for installation of filter valves at Jensen Module No. 1.
8-2  Appropriate $3.5 million; award two contracts to J. F. Shea Construction, Inc. in the amounts of $798,000 and $1,068,000; and authorize design to rehabilitate delivery pipeline supports at the Colorado River Aqueduct pumping plants (Approp. 15483). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and
a. Appropriate $3.5 million;
b. Award $798,000 contract to J. F. Shea Construction, Inc. for rehabilitation of pipe supports on delivery lines Nos. 2 and 3 at Gene and Intake Pumping Plants;
c. Award $1,068,000 to J. F. Shea Construction, Inc. for rehabilitation of pipe supports on delivery lines Nos. 2 and #3 at Julian Hinds, Eagle Mountain, and Iron Mountain Pumping Plants; and
d. Authorize detailed studies and final design for rehabilitation of the delivery line supports.

8-3  Approve the form of the amended and restated Purchase Orders; and authorize amendment of section 4122 of the Administrative Code.  (F&I)

Recommendation:

Option #1:

Adopt the CEQA determination and
a. Approve the Amended and Restated Purchase Order, substantially in the form of Attachment 1 to the board letter with changes approved by the General Manager and General Counsel, to provide a two-year extension of existing member agency Purchase Orders;
b. Authorize the General Manager to execute the Amended and Restated Purchase Order with member agencies opting to extend their Purchase Orders; and
c. Authorize amendment of section 4122 of the Administrative Code as shown in Attachment 4 to the board letter.

9. BOARD INFORMATION ITEMS

None
10. FUTURE AGENDA ITEMS

11. ADJOURN MEETING TO TUESDAY, NOVEMBER 6, 2012 (due to Veterans Day holiday)

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NOMINATION AND ELECTION OF BOARD CHAIRMAN

The Board:

Received a report from the Executive Committee on nominations for the office of Board Chairman. (Agenda Item 5G)

Elected John V. Foley Board Chairman for a second two-year term effective January 1, 2013. (Agenda Item 5H)

COMMITTEE ASSIGNMENTS

None (Agenda Item 5C)

ENGINEERING AND OPERATIONS COMMITTEE

Appropriated $3.42 million; awarded $1,912,990.78 contract to Val-Matic Valve & Manufacturing to furnish 82 butterfly valves; and authorized final design for installation of filter valves at Jensen Module No. 1. (Agenda Item 8-1)

Appropriated $3.5 million; awarded $798,000 contract to J.F. Shea Construction, Inc. for rehabilitation of pipe supports on delivery lines Nos. 2 and 3 at Gene and Intake Pumping Plants; awarded $1,068,000 contract to J.F. Shea Construction, Inc. for rehabilitation of pipe supports on delivery lines Nos. 2 and 3 at Julian Hinds, Eagle Mountain, and Iron Mountain Pumping Plants; and authorized detailed studies and final design for rehabilitation of the delivery line supports. (Agenda Item 8-2)

FINANCE AND INSURANCE COMMITTEE

Approved the Amended and Restated Purchase Order, substantially in the form of Attachment 1 of the board letter with changes approved by the General Manager and General Counsel, to provide a two-year extension of existing member agency Purchase Orders; authorized the General Manager to execute the Amended and Restated Purchase Order with member agencies opting to extend their Purchase Orders; and authorized amendment of section 4122 of the Administrative Code as shown in Attachment 4 of the board letter. (Agenda Item 8-3)

CONSENT CALENDAR

In other action, the Board:

Approved amendments to the Metropolitan Water District Administrative Code regarding the Audit Department Charter. (Agenda Item 7-1)
Appropriated $130,000; and authorized preliminary design to replace the original HVAC system at Metropolitan’s Water Quality Laboratory in La Verne.  (Agenda Item 7-2)

Appropriated $1.88 million; and authorized final design of seismic upgrades for the Diemer Administration and Filter Buildings.  (Agenda Item 7-3)

Appropriated $1.35 million; and authorized final design and construction to replace the Bixby Valve on the Second Lower Feeder.  (Agenda Item 7-4)

Appropriated $840,000; and awarded a $638,000 contract to Acuna Corp. to rehabilitate electrical transmission tower foundations at Danby Dry Lake.  (Agenda Item 7-5)

Appropriated $950,000; authorized Phase 1 of the CRA Main Pump Reliability Program; and authorized refurbishment of one suction joint at Iron Mountain Pumping Plant.  (Agenda Item 7-6)

OTHER ACTION

In other action, the board:

Approved the employment contract for the new Ethics Officer.  (Agenda Item 5E)

Approved the compensation recommended for the General Manager, General Counsel, and General Auditor.  (Agenda Item 5F)

THIS INFORMATION SHOULD NOT BE CONSIDERED THE OFFICIAL MINUTES OF THE MEETING.

Board letters related to the items in this summary are generally posted in the Board Letter Archive approximately one week after the board meeting.  In order to view them and their attachments, please copy and paste the following into your browser http://edmsidm.mwdh2o.com/idmweb/home.asp.
Chairman Foley and members of the board, I am Dennis Cushman, assistant general manager of the San Diego County Water Authority. I would like to comment on an item discussed at yesterday’s Water Planning and Stewardship Committee: item 6-c: oral report on QSA issues. While staff outlined some of the QSA’s benefits to MWD, some important facts were left out.

1. **Because of the QSA**, the term of MWD’s 1988 transfer agreement with IID was extended from 2028 to 2041, an extension of 13 years. As a result, MWD will be able to transfer nearly one and one-half million acre-feet more water from IID than it would have been able to do so in the absence of the QSA.

2. MWD’s transfer with Palo Verde Irrigation District would not have been possible without the consent of the Imperial Irrigation District and the Coachella Valley Water District. Only through the QSA agreements was MWD able to obtain IID and Coachella’s consent to not only do this transfer, but also to do other transfers through the agricultural priorities. Even though we all refer to MWD’s IID-1 and PVID programs as water transfers, we have to remember that is really not what they are. Instead, they are conservation programs in which the conserved water passes through intervening priority holders to MWD only because of quantification and QSA-related forbearance agreements. Absent the QSA and quantification, there could be no assurance that money paid for agricultural water conservation would actually result in water flowing to MWD. Some of you may recall this was the case with MWD’s IID-1 program.

3. While staff noted that MWD has benefitted from the ability to store 500,000 acre-feet in Lake Mead under the Intentionally Created Surplus program, it has rights under that program to store up to 1.5 million acre-feet. The QSA was, and remains the linchpin of this important storage program. The other states simply would not have allowed California to store water in the river without the commitments under the QSA.

4. MWD and its member agencies have benefitted greatly from the investments the Water Authority is making under its transfer agreement with IID and the canal lining projects. It was less than 18 months ago that MWD emerged from nearly two years of water shortages. During that period, the Water Authority paid for, and moved into MWD’s service area more than 260,000 acre-feet of QSA water. If those water supplies had instead been a demand on MWD, then rather than a Level 2 shortage, MWD’s shortage would have been at least twice as deep. You are all aware that during that period, MWD’s own storage was severely depleted.

We also need to remember what MWD staff said about the QSA in September 2003 when it was recommended approval to this Board. In their words, the QSA provides, quote “a reliable mechanism for additional agricultural to urban transfers benefitting Metropolitan…. Progressive water management actions such as the IID/SDCWA water transfer and the Palo Verde Irrigation District/Metropolitan transfer become viable under the QSA.” We hope these issues and others will be discussed the next time staff brings this back to the board, Thank you.
October 17, 2012

Attention: Water Planning Committee

Approval of Uniform Contract for Member Agency Purchase of Treated Water from the Water Authority-Carlsbad Desalination Project (Action)

Staff recommendation
Approve the attached uniform contract for member agency purchase of treated water from the San Diego County Water Authority-Carlsbad Desalination Project.

Alternatives
1. Make modifications to the uniform contract and approve at October Board meeting;
2. Direct staff to make modifications to the uniform contract and return next month for Board consideration.

Fiscal Impact
There is no fiscal impact associated with this action. The uniform contract provides for full cost recovery of the costs associated with producing and delivering the product water from the Carlsbad Desalination Project to the member agency, along with all administrative and oversight costs associated with managing the contract.

Background
At the August 23, 2012 Board meeting, staff provided information on an initial member agency contract for the purchase of potential Water Authority-owned local supply from the Carlsbad Desalination Project (CDP). The initial draft was developed in coordination with the member agencies and based on the June 23, 2011 Board adopted guiding principles. The following provides a summary of the principles:

- The contracts will be uniform except for quantity;
- The member agencies will pay a price that reflects the full costs of the contracted amount of desalinated water;
- Contract water would be classified as treated local water supply;
- A member agency will be obligated to pay for its contracted supplies if produced by Poseidon;
- Total member agency purchases will be limited to a maximum of 49 percent of the amount plant production under the Water Purchase Agreement (WPA); and
- Member agencies have 60 days from public release of the WPA to provide notice of intent to purchase a specific quantity of supply.

Based on additional member agency input received on the initial draft, staff has prepared an updated uniform contract and is requesting Board approval of the contract. With release of the WPA on September 27, 2012, member agencies interested in purchasing the local supply will have until November 26, 2012 to provide a resolution of intent that will include the specific
annual purchase amount. Following receipt of the member agency intent resolutions, individual contracts for each member agency will be prepared based on the uniform contract. The Board will then consider approval of the individual contracts.

Discussion
The purpose of the purchase contract is to provide member agencies an opportunity to purchase a local “drought-proof” supply that could provide additional reliability in shortage situations and diversify the agency’s supply portfolio. For the Water Authority, the sale of Water Authority-owned supplies to member agencies at its full cost would provide a fixed revenue stream and reduce the amount of project costs that need to be recovered through Water Authority rates and charges. Included below is a summary of the proposed contract terms included in the attached uniform contract.

Contract Quantity and Delivery Schedule
The contract will require the member agencies to purchase a fixed minimum annual amount. The contract quantity would be a portion of the Minimum Annual Demand Commitment (48,000 acre-feet) as defined in the WPA. The member agencies generally will not receive direct deliveries of desalinated water, but will receive treated water in the amount of their respective contract quantity. The contract quantity for each member agency will be deemed delivered in twelve equal monthly deliveries of treated water. Water deliveries are subject to actual production and delivery of desalinated water by Poseidon to the Water Authority. The member agency will be required to enter into the contract for a fixed term equal to the WPA term of 30 years. The agencies will have the option to renew the term for an additional 20 years.

Additional Product Water Delivery
As stated in the draft WPA, Additional Product Water Deliveries above the Minimum Annual Demand Commitment are available to the Water Authority. Purchase of the deliveries is at the discretion of the Water Authority and payment is tied to the variable costs as defined in the WPA. Under the proposed uniform contract, if the Water Authority purchases additional deliveries, the member agency must also purchase additional deliveries. The member agency will have the option to permanently waive access to the Additional Product Water Deliveries when they enter into the purchase contract.

Supply and Demand Shortfalls
If Poseidon is unable to deliver the Minimum Annual Demand Commitment to the Water Authority from the Project, pursuant to the draft WPA, any shortfalls will be shared proportionally between the contract member agencies and Water Authority. The member agency would only pay for water delivered. If a member agency is unable to take delivery due to an excused event such as a local emergency affecting the member agency’s water system that prevented the agency from taking treated water from the Water Authority, it would be excused from purchasing water for the duration of the event. Member agencies would be responsible for paying for the contract quantity if the reason they do not take a delivery is due to an unexcused event (for example, low demands).
Characterization of Contract Quantity
Under the member agency uniform contract, the contract quantity and additional deliveries will be considered an independent local supply source in application of all Water Authority ordinances, plans and programs. It will be considered a local supply under the Water Authority Water Shortage Drought Response Plan and would be eligible for the Local Projects Development Credit under the allocation methodology. The purchase would be for treated water and delivered in a manner similar to other Water Authority treated deliveries.

Price and Payment
The derivation of the unit price for water delivered under the uniform contract is based on full cost recovery, consistent with the Board’s guiding principles. Under the proposed purchase contract, the unit price paid by the member agency for each acre-foot of water will be the sum of (1) Project Costs and (2) Aqueduct Costs.

Under the Project Costs category, the member agency’s monthly payment would be derived based on a per acre-foot unit cost multiplied by the member agency purchase. The following components would serve as a basis for the unit cost:

- Payments made by the Water Authority to Poseidon pursuant to the WPA;
- Monthly debt service payments for bonds issued to the Water Authority’s costs under the product water pipeline design build agreement with Poseidon;
- Budgeted operation and maintenance costs for facilities constructed under the design build agreement and related facilities; and
- Twin Oaks Valley Water Treatment Plant inefficiencies due to desalinated production.

Under the Aqueduct Costs category, the member agency would pay the Water Authority transportation charge for water purchased to cover costs associated with utilizing the Water Authority aqueduct system. If the Board makes a determination to include desalination project pipeline costs in the general transportation charge, then amounts recovered as Aqueduct Costs under the contract would be adjusted to account for any amounts already paid under the Project Costs to avoid double counting.

The member agency would also be required to pay an annual fee to cover costs associated with administering the contracts. The member agency would not pay the Water Authority’s customer service charge or storage charge under the Water Authority’s rate structure. The storage charge is not paid because the Project water offsets the need for supplies from the emergency storage project.

Prepared by: Dana L. Friehauf, Principal Water Resource Specialist
Reviewed by: Ken Weinberg, Director of Water Resources
Approved by: Sandra L. Kerl, Deputy General Manager

Attachment
Uniform Contract for Member Agency Purchase of Treated Water from the San Diego County Water Authority - Carlsbad Desalination Project
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. **Initial Term and Option to Extend.**

   (a) This contract is effective on the date it is fully executed and will continue for an Initial Term until the earlier of either (a) 30 years following Commercial Operation as defined in the Poseidon WPA or the Expiration Date of the Poseidon WPA as defined therein, whichever is later, or (b) the date of early termination of this contract pursuant to section 10.

   (b) If the Water Authority chooses to exercise its option to acquire the Carlsbad Desalination Plant pursuant to the provisions of the Poseidon WPA for transfer upon expiration of the term of that agreement, the Water Authority will offer to each Member Agency that has an unexpired contract on that date a new uniform contract for the Contract Quantity. It is the intent of the parties that the new contract will have a term of twenty years and provide price and water supply benefits to participating member agencies in recognition of their proportional contribution to the financing of the Plant during the Initial Term.

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 __________ per Contract Year. 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 deliver 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 Total Contract Quantity or the sum of the Adjusted Contract Quantities in a Contract Year under the Poseidon WPA because the Project Company is relieved from performance due to the existence of an Uncontrollable Circumstance, or because of a Project Company default, breach, or other failure of performance under the Poseidon WPA, the Water Authority’s obligation to deliver water will be reduced until deliveries to the Water Authority under the Poseidon WPA resume and the Water Authority reasonably determines that the basis for suspension no longer exists. To the extent water is delivered to it, the Water Authority will deliver and the Member Agency will purchase a reduced monthly quantity determined by the Water Authority based on the amount of desalinated water it receives and the proportion that the Member Agency’s Contract Quantity bears to the Total Contract Quantity or the sum of the Adjusted Contract Quantities.

(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, or a later period as agreed between the Water Authority and the Member Agency, proportionate to the number of days of the shut-down.

(g) The Water Authority’s obligation to deliver water will be relieved and the Member Agency’s obligation to purchase will be suspended for the duration of a Product Water Purchase Relief Event as defined in the Poseidon WPA.

(h) The Member Agency’s obligation to purchase water will be relieved and the Water Authority’s obligation to deliver water to the Member Agency will be suspended 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.

(c) For purposes of administering the ordinances, plans, programs, rules, and regulations described in paragraphs (a) or (b) of this section, to the extent that a Member Agency receives less than its Contract Quantity in an applicable yearly accounting period because of an authorized suspension of deliveries by the Water Authority under this contract, the Water Authority will apply the same considerations as for other local supplies that would be produced by other Member Agency projects, programs, or rights.

(d) 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 paragraph (a) of this section. If the Water Authority amends, replaces, or repeals the Plan or the Methodology to eliminate or materially reduce the local supply benefit, the Member Agency may terminate this Contract as provided in paragraph (b) of section 10.

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 [methodology 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 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 [charge amount to be developed]. The Administrative Charge will be adjusted each Contract Year after the first full Contract Year following satisfaction of the condition precedent under paragraph 4 [adjustment factor to be developed].

(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 additional charges 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, or credits to allocate the benefit of payments received by the Water Authority pursuant to the Poseidon WPA for the prior fiscal 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.


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) If the Water Authority amends, replaces, or repeals the Water Shortage and Drought Response Plan or Supply Allocation Methodology to eliminate or materially reduce the local supply benefit, the Member Agency will have 90 days after notice of the amendment, replacement, or repeal 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 days.

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 monetary 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 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: ______________________