Proposed Staff Recommendation Consent Calendar for April 23, 2015

ENGINEERING AND OPERATIONS COMMITTEE

   Authorize the General Counsel to execute a contract amendment with VanNess Feldman for special counsel services to increase the contract amount by $50,000.

9-2. Reimbursement agreement for street paving work within the City of Carlsbad right-of-way work area of the Carlsbad Desalination Project Conveyance Pipeline.
   Authorize the General Manager to execute an agreement with the City of Carlsbad for reimbursable costs for street paving work within the City of Carlsbad right-of-way work area of the Carlsbad Desalination Project Conveyance Pipeline; and increase the FY 2014/2015 Capital Improvement Program appropriation and lifetime budget for the Carlsbad Desalination Project by $1,300,000 for reimbursable costs related to street paving work within the City of Carlsbad right-of-way work area of the Carlsbad Desalination Project Conveyance Pipeline.

IMPORTED WATER COMMITTEE

9-3. Amend agreement for Consulting Services with SCN Strategies.
   Amend the agreement with SCN Strategies for continued consulting services to the Water Authority through June 30, 2016, for a period of 12 additional months, and increasing total contract funding to an amount not to exceed $839,050.

9-4. Amend agreement for Consulting Services with Southwest Strategies.
   Amend the agreement with Southwest Strategies for continued consulting services to the Water Authority through June 30, 2016, for a period of 12 additional months, and increasing total contract funding to an amount not to exceed $327,000.

ADMINISTRATION AND FINANCE COMMITTEE


9-6. Approve the Recommended Debt Management Activities.
   1. Authorize the issuance of Senior Lien Water Revenue Refunding Bonds – Series 2015A to refund certain outstanding long-term debt to yield debt service savings.
      • Adopt Resolution No. 2015- ___ authorizing the issuance of Senior Lien Water Revenue Refunding Bonds, Series 2015A, for the purpose of refunding certain existing long-term debt; and authorize the Director of Finance to utilize a negotiated method of sale;
• Approve the forms of financing documents for the refunding bond issuances including the Preliminary Official Statement for the 2015A Bonds; and
• Approve the selection of the underwriting team and US Bank as trustee.

2. Approve the extension of the JP Morgan liquidity facility agreement and adopt Resolution No. 2015-___ authorizing the amendment of the JP Morgan agreement.

LEGISLATION, CONSERVATION AND OUTREACH COMMITTEE

9- 7. Professional services agreement with Mission Resource Conservation District for WaterSmart Field Services.
Authorize the General Manager to execute a two-year professional services agreement in an amount not-to-exceed $468,412 with Mission Resource Conservation District to implement the WaterSmart Field Services Program through June 30, 2017, with an option for a two-year extension.

9- 8. Amendment to Professional Services Contract with Building Blocks Entertainment, Inc., to conduct assembly programs for elementary public and private schools in San Diego County.
Approve an amendment to the professional services contract with Building Blocks Entertainment, Inc., to increase the contract value to a not-to-exceed amount of $230,000 and to extend the contract for two years. The amended contract would terminate on June 30, 2017.

1. Adopt a position of Support if Amended on AB 645 (Williams)
2. Adopt a position of Support on AB 723 (Rendon)
3. Adopt a position of Support if Amended on AB 1095 (Garcia)
4. Adopt a position of Support if Amended on AB 1332 (Quirk)
5. Adopt a position of Support if Amended on AB 1333 (Quirk)
6. Adopt a position of Support and Seek Amendments on SB 317 (DeLeon)
7. Adopt a position of Support if Amended on SB 350 (DeLeon)
8. Adopt a position of Support and Seek Amendments on SB 555 (Wolk)
April 22, 2015

Attention: Imported Water Committee

Metropolitan Water District Delegates’ Report (Information)

Background
This report summarizes discussions held and key actions made at the Metropolitan Water District (MWD) committee and Board meetings, as reported by the MWD Delegates. The MWD committees and Board met on April 13 and 14, 2015. The next regular MWD Board and committee meetings are scheduled for May 11 and 12.

Discussion
The Water Authority Delegation supported 10 of the 13 action items approved by the MWD Board. The Delegates opposed an item to fix and adopt MWD’s Readiness-to-Serve and Capacity charges for calendar year 2016 because the cost of service reports utilized to set MWD’s rates and charges fail to support the two charges (for the Water Authority Delegates’ letter to MWD, see Attachment 1). In addition, although supportive of the Governor’s call for a 25 percent reduction in water use as well as of MWD declaring a “Water Supply Condition 3” and implementing a supply allocation, the Delegates opposed MWD’s action to implement the allocation at a Level 3 Regional Shortage Level (Level), which equates to about a 15 percent reduction at the regional level. The Delegates advocated that the MWD Board adopt a Level 4 allocation (about a 20 percent reduction), which would further reduce member agencies’ demands while better responding to uncertain supply conditions and diminishing storage reserves. On an item related to the rate litigation, the Delegates recused themselves.

Attachment 2 is a copy of MWD’s April 2015 committee and Board meeting agendas and summary report.

Communications and Legislation Committee
The committee, and later the Board, expressed opposition, unless amended, to AB 647 (Eggman, D-Stockton) – Beneficial use: diversion of water underground. In its current form, MWD reported AB 647 may impact MWD’s State Water Project (SWP) supply availability because it defines the diversion of surface water for permanent placement in groundwater basins as a beneficial use. Additionally, the committee, and later the Board, expressed support for SB 385 (Hueso, D-San Diego) – Primary Drink Water Standards: Hexavalent Chromium. (The Water Authority Board adopted a position of support for SB 385 at its March 2015 meeting.)

The committee also received reports on current state and federal activities.

Engineering and Operations Committee
The committee received an update on MWD’s algae control program. The Board was provided with background on the health impact of algae as well as legislation currently being considered in Congress and the state Legislature to address the issue.

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1 Each increase in a WSAP Regional Shortage Level equates to approximately an additional 5 percent reduction.
During the Water System Operations Manager’s report, MWD staff reported that demands on MWD increased by about 22,000 acre-feet in March 2015 compared to March 2014. MWD continues to implement its operational drought actions to enable Colorado River water to be delivered to portions of MWD’s SWP-exclusive area and will begin drawing water from Diamond Valley Lake (DVL) in April to meet the anticipated increased summer demands. MWD expects to use 150,000 acre-feet to 200,000 acre-feet of water from DVL\(^2\) to meet demands in 2015. Noting the concern of introducing Quagga Mussel (Quagga) into DVL, Director Barbre (Municipal Water District of Orange County) asked if MWD would consider using Colorado River water to refill DVL if SWP water is not available. (Quagga was introduced into the Colorado River Aqueduct System but has not been found in the SWP system or MWD’s DVL). Green said that if the Board decides to refill DVL with Colorado River water then MWD would treat the water to minimize the introduction of Quagga into DVL. Green also reported that although MWD will take a significant amount of stored water from DVL, it will not dip into its emergency storage supplies.

**Finance and Insurance Committee**

Controller Soper provided a quarterly financial review and reported that MWD is on track for water sales to exceed budget by more than 209,000 acre-feet, or $140.1 million, at the close of fiscal year 2015. The higher water sales along with higher-than-budgeted interest earnings and tax collections (due to lower number of delinquencies) are slightly offset by lower-than-budgeted revenues from hydroelectric power sales. Soper projected that MWD will end fiscal year 2015 with more than $133 million in revenues than budget, while expenditures will fall below budget by almost $98 million despite adjustments approved by the Board that increased budgeted expenditures for supply and demand management programs.\(^3\) Although demand management expenses and Colorado River Aqueduct power costs are exceeding budget, MWD’s expenses are on track to come in below budget due to lower-than-budgeted expenses for the SWP, supply programs, debt service, operations and maintenance, and construction. In March, Director Lewinger requested that staff provide quarterly reports on the balance of the Water Management Fund, including the amounts that specific programs and projects received from this fund. Soper reported that at the beginning of fiscal year 2015, the Water Management Fund held $232 million, and that MWD projects to spend about $114.4 million for conservation efforts and supply programs.

The committee also received a report on MWD’s investment activities, and fixed and adopted the Readiness-to-Serve and Capacity charges for calendar year 2016.

**Legal and Claims Committee**

In closed session, without the Delegates present, the committee heard a report on the rate litigation with the Water Authority. In open session, the Board authorized increases in the amounts payable under contract for legal services to Quinn Emanuel Urquhart & Sullivan, LLP, by $1.1 million and to Miller Barondess, LLP, by $150,000 to amounts not to exceed $6.6 million and $250,000, respectively. This action brings MWD’s rate litigation related costs to at least $24.4 million.

\(^2\) MWD has 388,555 acre-feet of water in DVL as of April 9, 2015.

\(^3\) Subsequent to the budget adoption, the Board increased budgeted expenditures for supply and demand management programs by about $134.4 million.
Organization, Personnel and Technology Committee
The committee received a presentation on MWD’s Equal Employment Opportunity Policy and Affirmative Action Program. Following the presentation, Director Steiner asked about the recent increase in the number of employees over the past two years. Staff responded that staff increases occurred throughout MWD and opined that the increases may be in response to the lifting of a hiring freeze. In response to Director Hogan’s inquiry on the increases in new hiring, Kightlinger replied that the increased activity reflects the growth in retirements and the need to fill those vacant positions.

During the Revised Department Head Evaluation Process and Timeline presentation, staff reviewed the new evaluation process for department heads, describing refinements made to the evaluations to increase efficiency and establishing a more condensed timeline to complete the process.

Real Property and Asset Management Committee
Real Property Development and Management Group Manager Clairday reported that MWD will start drawing water from DVL later this week, which will drop the lake level too low for private boat launches. Clairday responded to questions related to the DVL recreation budget and previous ramp extension posed by Director Peterson’s (Las Virgenes). Clairday said that MWD has spent a little over $67 million of the $92.8 million DVL recreation budget, leaving about $25 million available. He also said that for the boat ramp extension completed in 2009, MWD recovered the costs via increased user fees and that MWD received more money from its agreement with the marina operator than the estimated cost of the ramp.

The committee also authorized granting the easements of two small properties, one at the Robert R. Diemer Water Treatment Plant to Southern California Edison, and another in Riverside County to the city of Perris.

Water Planning and Stewardship Committee
The committee received a Water Supply Drought Management report, during which staff provided three allocation scenarios. The scenarios varied between curbing demands through three levels: Level 2 (10 percent cut-back), Level 3 (15 percent cut-back), and Level 4 (20 percent cut-back). Staff presented these three allocation scenarios in the context of two supply portfolio assumptions based on either a SWP Table A allocation of 20 percent or 25 percent.

The Department of Water Resources’ (DWR) March operations study supports a SWP allocation of 20 percent under dry conditions. Under a 20 percent SWP allocation (about 382,000 acre-feet of SWP supplies for MWD), MWD anticipates having a supply gap of 590,000 acre-feet assuming 925,000 acre-feet of Colorado River Aqueduct base supplies, 165,000 acre-feet of dry-year spot transfers, and demands of 2.1 million acre-feet (including losses and the Water Authority’s QSA supplies). But MWD only has access to about 440,000 acre-feet of its stored water under an SWP allocation of 20 percent, requiring MWD to implement its Water Supply Allocation Plan (WSAP) to close the gap between available supplies and demands on MWD. Staff recommended that the Board implement a Level 3 allocation, which will require about 330,000 acre-feet of take from storage supplies. This is accomplished by assuming an additional 100,000 acre-feet of collective

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4 MWD funded the boat ramp extension and increased boater user fees to recoup its cost.
demand reduction by member agencies when MWD imposes an allocation. \(^5\) Staff’s analysis indicates that if current supply and demand conditions persist in 2016, then MWD would need to implement a Level 4 allocation and take 200,000 acre-feet of its storage (out of its maximum 290,000 acre-feet of dry-year storage supplies available in 2016).

In response to Steiner’s questions about its assumptions, staff confirmed that about 80,000 acre-feet of the assumed 165,000 of transfer supplies are currently unavailable due to curtailment notices issued by the State Water Resources Control Board (SWRCB). Staff later stated that it is seeking replacement transfer supplies. However, Steiner reflected that despite staff’s best efforts to secure the 80,000 acre-feet of replacement supplies, they are unlikely to materialize. Replying to a question posed by Lewinger, Water Resources Group Manager Upadhyay said that the scenarios include adjustments in member agencies’ allocation amounts for conservation hardening and loss of local supplies.

After the discussion on the Water Supply Demand Management report, staff presented the action item related to the implementation of MWD’s WSAP. Within staff’s recommended action, the committee, and later the Board, separately considered four distinct items: 1) express support for Governor Brown’s Executive Order calling for a 25 percent reduction in urban water use; 2) declare a “Water Supply Condition 3 – Water Supply Allocation;” 3) implement a WSAP Level 3; and 4) adopt a WSAP Level 3 allocation as a water conservation program pursuant to Water Code Section 375 et seq. Following staff’s presentation, Kightlinger added that beyond this month’s actions the Board may need to modify how the WSAP’s surcharges are implemented considering the SWRCB’s framework also includes penalties to curb water waste, as well as how the Executive Order may impact MWD’s ability to deliver the WSAP’s separate groundwater allocation (to maintain the health of drought impacted groundwater basins) should member agencies request such deliveries.

Following Kightlinger’s comments, the committee held a public hearing to review MWD’s WSAP. Two speakers from the Lyndon LaRouche Political Action Committee and one from the Environmental Water Caucus addressed the committee. The Lyndon LaRouche PAC speakers suggested that rather than a water supply crisis, California is experiencing a water management crisis and urged investment in large scale water infrastructure projects and the involvement of the federal government. The Environmental Water Caucus supported MWD implementing a Level 4 and focusing efforts on reducing demands while describing the current situation as both a water supply and management crisis.

The committee then considered the four components of the WSAP action item. It approved Director Lewinger’s substitute motion to express support for MWD Chair Record’s (Eastern) letter to the Governor regarding his Executive Order (Attachment 3) and directed staff to work with the SWRCB to implement the Executive Order in addition to expressing support for the Executive Order. The committee, and later the Board, approved declaring a Water Supply Condition 3 – Water Supply Allocation.

During the committee, substantial discussion ensued regarding which allocation level the Board should implement. Director Wunderlich (Beverly Hills) said he would support a Level 3, but would

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\(^5\) In other words, MWD assumes member agencies will collectively reduce demands on MWD equivalent to a Level 4 allocation, when it imposes a Level 3 allocation.
“advocate” for a Level 4 because it would be more consistent with Governor’s Executive Order, leave more water in storage, and take advantage of the public’s current focus on the water community; later, Director Blois (Calleguas) echoed Wunderlich’s comments. Steiner made a substitute motion, which was seconded by Director Abdo (Santa Monica), to implement a Level 4. Steiner suggested that a Level 4 would better respond to the Governor’s Executive Order, protect MWD’s storage reserves, soften the impact on MWD’s storage if staff’s transfer assumptions fall short, and prevent MWD from needing to consider a more aggressive level later during the allocation year (offering MWD’s member agencies certainty on expected supplies). Director Koretz (Los Angeles) said a Level 4 was “the right thing to do,” but that as a representative of Los Angeles he could only support a Level 3 allocation because Los Angeles will risk exposure to MWD’s allocation surcharges at a higher allocation level. Several directors, including Kurtz (Pasadena) and De Jesus (Three Valleys Municipal Water District), voiced their support for a Level 3, calling it a balanced approach and noting that if it becomes necessary, the Board could increase the allocation level later. Director Dick (Municipal Water District of Orange County) expressed support for a Level 3 because it would allow the business community time to react and implement the necessary conservation measures to comply with potential future steeper allocation levels. Kightlinger commented that staff believes a Level 3 is sufficient and can be sustained for the entire allocation year.

Voicing support for Level 4, Lewinger commented that water supply decisions cannot be made based on the hope that staff’s supply assumptions will come true. He pointed out the known fact that MWD lost transfer supplies of 80,000 acre-feet and the likelihood of Colorado River base supplies being reduced due to agricultural adjustments on the river, which can swing MWD’s available supply by 100,000 acre-feet. Additionally, he expressed that it is optimistic to assume that member agencies will reduce demands by an additional 100,000 acre-feet as a result of the imposed allocation level. Although stating support for a Level 3, Director Gray (West Basin) agreed with Lewinger’s points and suggested that as information on these assumptions becomes more certain that it be brought back to the Board for reconsideration.

Discussion continued with Directors Caulkins (Anaheim), Touhey (Upper San Gabriel), McKenney (Municipal Water District of Orange County), Ackerman (Municipal Water District of Orange County), and Quiñonez (Los Angeles) supporting Level 3. McKenney echoed Lewinger’s concern with the assumption that member agencies will reduce demands substantially below their allocated amount and said MWD’s first priority should be protecting storage. McKenney suggested that MWD establish milestones to monitor the region’s response to the Level 3 allocation and to allow the Board to respond to changing supply conditions. Director Camacho (Inland Empire Utilities Agency) suggested a Level 4 implementation based on current conditions, but to allow for modifications to the allocation level later in the year should conditions change. Director Tu advocated that MWD show leadership and implement a Level 4, adding that implementing a more aggressive allocation this year would place MWD in a stronger position next year to responsibly manage its storage reserves.

After much discussion, Steiner’s substitute motion to implement a Level 4 received support from four committee members, but did not gain the majority’s support. The committee approved implementing a Regional Shortage Level 3 with committee members Lewinger and Steiner voting against implementing the lower allocation level.
During the Board meeting, Abdo reinitiated the allocation level discussion by making a substitute motion, which Director Lowenthal (Long Beach) seconded, to implement a Level 4 allocation. McKenney requested that Abdo consider amending her substitute motion to implement a Level 3 but require staff to return to the Board in December with more updated information and the opportunity to reconsider the allocation level. Abdo declined and her motion was voted on but failed, garnering support of 24.35 percent of the Board (the Delegates supported it along with Directors Abdo, Apodaca (Central Basin), Lowenthal, and Wunderlich).

The Board then considered McKenney’s substitute motion to implement a regional shortage level 3 and require the Board to reconsider its allocation level in December. Lowenthal sought clarification on whether the implementation of MWD’s WSAP would be consistent with the recently approved changes, which include a separate allocation for drought impacted groundwater basins. Koretz indicated that it was his understanding, based on staff’s comments made in committee the previous day, that to comply with the Governor’s Executive Order, MWD would not allocate water for groundwater storage purposes. Responding to the confusion about comments he made on groundwater allocation during committee, Kightlinger said that he does not anticipate that groundwater basins will request a separate allocation because if there is a “25 percent reduction at the consumer level across the board that is going to be extremely protective of local supplies and the groundwater basins.” Focusing on McKenney’s substitute motion, Director Peterson (Las Virgenes) called the December timeline “arbitrary” and said it “burdens” MWD’s member agencies by not clearly indicating the amount of water MWD will provide. Record and Camacho expressed their understanding that the Board could change the allocation level at any time, but that the motion would ensure the Board revisits the level in December. Reiterating the concerns the Water Authority Delegates expressed in committee related to staff’s supply assumptions, Steiner expressed support for Level 4. The Board approved McKenney’s substitute motion; although, the Delegates and Directors De Jesus, Dear (West Basin), Gray, Lefevre (Torrance), Peterson, and Record opposed the motion. (Directors De Jesus, Dear, Gray, Lefevre, Peterson, and Record voted against both motions.)

Prepared by: Liz Mendelson, Water Resources Specialist
Approved by: Communications and Legislation Committee by Keith Lewinger and Yen Tu
Engineering and Operations Committee by Fern Steiner
Finance and Insurance Committee by Keith Lewinger
Legal and Claims Committee by Fern Steiner and Yen Tu
Real Property and Asset Management Committee by Michael Hogan
Water Planning and Stewardship Committee by Keith Lewinger and Fern Steiner

Attachment 1: Letter to MWD on the fixing and adopting a Readiness-to-Serve Charge and a Capacity Charge for calendar year 2016, dated April 13, 2015
Attachment 2: MWD’s committee and Board meeting agenda and Summary of Actions, dated April 13 and 14, 2015
Attachment 3: MWD Chair Record letter to Governor Brown on Executive Order B-29-15, dated April 13, 2015
April 13, 2015

Randy Record and
Members of the Board of Directors
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

RE: Board Memo 8-1: Approve resolutions fixing and adopting a Readiness-to-Serve Charge and a Capacity Charge for calendar year 2016 - OPPOSE

Chair Record and Members of the Board,

Copies of the following letters (without attachments) are attached:

1) April 8, 2014 letter from Dennis Cushman to Dawn Chin, Clerk of the Board RE: Board Memo 8-1 - Approve proposed biennial budget for fiscal years 2014/15 and 2015/16, proposed ten-year forecast, proposed revenue requirements for fiscal years 2014/15 and 2015/16, and recommended water rates and charges to be effective on January 1, 2015 and January 1, 2016; and transmit the General Manager's Business Plan Strategic Priorities for FY 2014/15 and 2015/16 - COMMENTS ON PROPOSED WATER RATES AND CHARGES (FOR 2015 AND 2016); and

2) April 8, 2014 letter from Dennis Cushman to Jeff Kightlinger RE: April 8, 2014 Board Meeting, Board Memo 8-1 - Approve proposed biennial budget for fiscal years 2014/15 and 2015/16, proposed ten-year forecast, proposed revenue requirements for fiscal years 2014/15 and 2015/16, and recommended water rates and charges to be effective on January 1, 2015 and January 1, 2016; and transmit the General Manager's Business Plan Strategic Priorities for FY 2014/15 and 2015/16 - REQUEST TO CONTINUE BOARD ACTION ONE MONTH, UNTIL THE MAY BOARD MEETING, TO ALLOW AN OPPORTUNITY FOR REVIEW OF INFORMATION PROVIDED TO THE BOARD OF DIRECTORS ON APRIL 4, 2014, AT 4:03 PM; IN THE ALTERNATIVE - OPPOSE.
The Water Authority requests inclusion of this letter and the attached letters and each and every attachment provided to MWD on April 8, 2014, in the record of proceedings relating to the actions and resolutions to fix and adopt Readiness-to-Serve (RTS) Charge and a Capacity Charge effective January 1, 2016, based on the rates and charges adopted by the Board on April 8, 2014. MWD's Engineer's Report dated April 2015 and 2014 cost of service reports are lacking a reasonable basis to support the RTS and Capacity Charges being imposed on the Water Authority for calendar year 2016, in that they fail to identify either the benefit of each facility or project to be financed with RTS revenues or the recipient of that benefit.

Declarations by the Chief Financial Officer and Board of Directors in resolutions are not a sufficient factual or legal basis for the assessment of the RTS and Capacity Charges and are, in fact, contrary to testimony provided by MWD itself in the Water Authority litigation presently pending against MWD, in which MWD's cost allocations and rates have already been determined to violate the common law, Govt. Code Section 54999.7(a), the Wheeling Statute and Proposition 26. The Water Authority also requests inclusion of the April 2, 2015 trial testimony of Devendra Upadhyay in the record of proceedings relating to the Board's actions and resolutions to fix and adopt the RTS and Capacity Charges.

For these reasons, we OPPOSE Board Memo 8-1.

Sincerely,

Michael T. Hogan
Director

Keith Lewinger
Director

Fern Steiner
Director

Yen C. Tu
Director

Attachments:
1. Letter to Dawn Chin re: Board Memo 8-1, dated April 8, 2014
2. Letter to Jeff Kightlinger re: Board Memo 8-1, dated April 8, 2014
3. Trial testimony of Devendra Upadhyay, dated April 2, 2015
Dear Ms. Chin:

Accompanying this letter are a CD containing a copy of all of the documents listed in the attached Index, “Documents San Diego County Water Authority Requests be Included in the Administrative Record for Setting of 2015-2016 MWD Rates, Part II” (a copy is marked as Attachment 1 to this letter). The documents on the CD are comprised solely of prior correspondence between the San Diego County Water Authority and MWD.

Also attached are copies of the following letters and information:

1. Letter from Marcia Scully to Dan Hentschke dated March 19, 2014 RE: Response to Request for Information Dated February 28, 2014 (a copy is marked as Attachment 2 to this letter).

2. Letter from Marcia Scully to Dan Hentschke dated April 4, 2014 RE: Further Response to Request for Information Dated February 28, 2014 (a copy is marked as Attachment 3 to this letter).

3. Email transmittal of the April 4, 2014 information to the MWD Board of Directors dated April 4, 2014, transmitted at 4:03 PM (a copy is marked as Attachment 4 to this letter).

4. Government Finance Officers Association, Best Practice, Long-Term Financial Planning (2008) (BUDGET) (a copy is marked as Attachment 5 to this letter) and Overview of the Characteristics of Effective Financial Planning Documents, which may be found at the following link: http://www.gfoa.org/index.php?option=com_content&task=view&id=366.

5. Public meeting excerpt RE MWD’s draft 2010 Integrated Resources Plan, August 10, 2010. (Attachment 6)
6. Audio files of the following MWD Finance and Insurance Committee (F&I) and Board meetings (Board), which may be found at the following links (discussions at the April 7 F&I and April 8 board meetings are not yet available from MWD but are requested to be made part of the record):

   f. April 7, 2014 F&I meeting: Approve biennial budget and rates (8-1)
   g. April 8, 2014 Board meeting: Approve biennial budget and rates (8-1)

The Water Authority requests inclusion of this letter and its Attachments, including each and every document listed on the Index and included on the CD, in the record of the proceedings relating to the actions and resolutions for adoption and imposition of MWD’s rates and charges for 2015 and 2016.

Sincerely,

Dennis A. Cushman
Assistant General Manager

Attachments
Documents San Diego County Water Authority Requests be Included in the Administrative Record for Setting of 2015-2016 MWD Rates, Part II

List of Contents

- Water Authority’s Director Steiner letter re: Member Agency Willingness to Sign Take-or-Pay Contracts (August 16, 2011)
- Water Authority Delegation letter re: Board Memo 8-2: Authorize the execution and distribution of the Official Statement in connection with the issuance of the Water Revenue Refunding Bonds (April 9, 2012)
- Water Authority Delegation letter re: Agenda Item 8-8: Authorize the execution and distribution of Official Statements in connection with issuance of the Water Revenue Refunding Bonds (June 11, 2012)
- Water Authority Delegation letter re: Board Memo 8-1: Authorize the execution and distribution of the Remarketing Statement in connection with the remarketing of the Water Revenue Bonds (August 20, 2012)
- Water Authority’s Director Wilson letter re: Comments on Appendix A and OS (August 29, 2012)
- Water Authority Delegation letter re: Board Memo 8-1: Authorize the Execution and Distribution of the Official Statement in Connection with the Issuance of the Water Revenue Refunding Bonds (November 5, 2012)
- Water Authority Delegation letter re: Board Memo 8-1: Authorize the execution and distribution of the Official Statement in connection with the issuance of the Water Revenue Refunding Bonds (February 11, 2013)
- Water Authority Delegation letter re: Board Memo 8-3: Authorize the execution and distribution of the Official Statement in connection with the issuance of the Special Variable Rate Water Revenue Refunding Bonds (May 13, 2013)
- Water Authority Delegation letter re: Board Memo 8-5: Authorize the execution and distribution of the Official Statement in connection with issuance of the Special Variable Rate Water Revenue Refunding Bonds (June 7, 2013)
- Water Authority Delegation letter re: Board Memo 8-1: Authorize the execution and distribution of Remarketing Statements in connection with the remarketing of the water Revenue Refunding Bonds (December 9, 2013)
- Water Authority letter re: Draft Long Range Finance Plan (January 5, 2011)
- Water Authority Delegation letter re: Update on Rate Refinement Discussions (Finance & Insurance Committee Item 7-a) (July 9, 2012)
• Water Authority’s Director Wilson letter re: Rate Refinement Workshop (August 16, 2012)
• Water Authority Delegation letter re: Update on “Rate Refinement” (Board Information Item 7-b) (September 10, 2012)
• Water Authority Delegation letter 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 (October 8, 2012)
• Water Authority letter re: Amended and Restated Purchase Order for System Water to be Provided by the Metropolitan Water District of Southern California (“Revised Purchase Order Form”) (December 27, 2012)
• Water Authority letter re: Amended and Restated Purchase Order for System Water to be Provided by the Metropolitan Water District of Southern California (January 14, 2013)
• Water Authority Director Lewinger’s letter re: Tracking Revenues from Rate Components Against Actual Expenditures (November 4, 2012)
• Water Authority Delegation letter re: Board Memo 8-1: Adopt resolutions imposing Readiness-to-Serve Charge and Capacity Charge effective January 1, 2014 – Request to Table or in the Alternative, Oppose (April 8, 2013)
• Water Authority Delegation letter re: Board Memo 8-1 – Set public hearing to consider suspending Section 124.5 of the Metropolitan Water District Act to maintain the current ad valorem tax rate (May 14, 2013)
• MWD letter re: Public Hearing scheduled pursuant to section 124.5 of the Metropolitan Water District Act (Stats. 1984, ch. 271) (May 29, 2013)
• MWD Board Memo 8-1 re: Mid-cycle Biennial Budget Review and Recommendations for Use of Reserves over Target signed by the general manager on May 30, 2013
• MWD Board Memo 8-2 re: Suspend the tax rate limitations in Section 124.5 of the Metropolitan Water District Act to maintain the ad valorem tax rate for fiscal year 2013/14 signed by the general manager on May 31, 2013
• Water Authority Delegation letter re 8-1 – Mid-cycle Biennial Budget Review and Recommendation for Use of Reserves over Target Water Rate Increases – Oppose and Request for Refund to Ratepayers of Excess Reserves and Board Memo 8-2 – Suspend the tax rate limitations in Section 124.5 of the Metropolitan Water District Act to maintain the ad valorem tax rate for fiscal years 2013/14 – Oppose (June 5, 2013)
• Water Authority Delegation letter re: Board Memo 5G-2: Adopt resolution maintaining the tax rate for fiscal year 2013/14 – Oppose (August 16, 2013)
• AFSCME letter re: October 8, 2013 Board Meeting (November 1, 2013)
• Water Authority letter re: Written Request for Notice Request for Data and Proposed Methodology for Establishing Rates and Charges (January 27, 2014)
• Mayors of 14 cities in San Diego Region letter re: MWD’s calendar years 2015 and 2016 rate setting and fiscal years 2013 and 2014 over-collection (February 3, 2014)
- MWD’s response letter re: Written Request for Notice Regarding Rate Setting (February 5, 2014)
- Water Authority response letter re: Renewed written request for data and proposed methodology for establishing rates and charges (February 28, 2014)
- Water Authority Delegation letter re: Metropolitan Water District Public Hearing on Suspension of Tax Rate Limitation (March 7, 2014)
- Water Authority letter re: San Diego County Water Authority’s Annexation (March 13, 2012)
- Water Authority Delegation letter re: Adoption of 2010 Integrated Resources Plan - Oppose (October 11, 2010)
- Water Authority Delegation letter re: Board Memo 8-3 – Adjustments to Metropolitan’s Water Supply Allocation Plan Formula; Request to Defer Action Pending Board Workshop (September 9, 2011)
- Water Authority Delegation letter re: Water Planning and Stewardship Committee items 6a, 6b, and 6d (October 7, 2011)
- Water Authority Delegation letter re: SB 60 Annual Public Hearing and Report to the Legislature Regarding Adequacy of MWD’s Urban Water Management Plan; Request to Include Information in Report to Legislature (December 13, 2011)
- Water Authority Delegation letter re: Board Memo 7-2: Authorize execution of Memorandum of Understanding for the greater Los Angeles County Region Integrated Regional Water Management (IRWM) Plan leadership committee and join other IRWM groups in our service area if invited by member agencies (December 10, 2012)
- Water Authority Delegation Letter re: SB 60 Annual Public Hearing and Report to the Legislature Regarding Adequacy of MWD’s UWMP; Request to Include Information in Report to Legislature (December 10, 2012)
- Water Authority Delegation Letter re: Board Item 9-1 – Proposed Foundational Actions Funding Program (March 7, 2013)
- Water Authority Delegation Letter re: Board Item 8-4: Approve Foundational Actions Funding Program -- OPPOSE (April 8, 2013)
- Water Authority Delegation letter re: Board Memo 7-3: Authorize entering into an exchange and purchase agreement with the San Gabriel Valley Municipal Water District (August 19, 2013)

- Water Authority Delegation letter re: Board Memo 8-2: Authorize staff to enter into funding agreements for Foundational Actions Funding Program proposals - Oppose (September 10, 2013)

- Residents for Sustainable Mojave Development letter re: Metropolitan Water District’s Role in Approving the Cadiz Valley Water Conservation, Recovery and Storage Project (October 4, 2013)

- Water Authority Delegation letter re: Board Memo 8-3- Authorize (1) agreement with the State Water Contractors, Inc. to pursue 2014 Sacramento Valley water transfer supplies; and (2) $5 per acre-foot initial administrative deposit not to exceed $500,000 – Support with Reservation of Rights to object to cost allocation (October 4, 2013)

- Water Authority Delegation letter re: Board Letter 8-1 - Authorize amendment to Metropolitan’s Cyclic Storage Agreement with Upper San Gabriel Valley Municipal Water District and the Main San Gabriel Basin Watermaster – Request to Table or in the Alternative to Oppose (October 8, 2013)

- Water Authority letter re: Foundational Actions Funding Program Agreement (November 13, 2013)

- Water Authority Delegation letter re: SB 60 Report – Water Planning and Stewardship Committee Public Hearing (December 9, 2013)

- Water Authority Delegation letter re: Board Memo 8-6 – Consolidated Agreement for Chino Basin Desalination Program – Oppose (June 13, 2011)

- Water Authority Delegation letter re: Board Item 8-3 –Oppose: Authorize entering into a Local Resources Program Agreement with Municipal Water District of Orange County and the city of San Clemente for the San Clemente Recycled Water System Expansion Project (June 11, 2012)

- Water Authority Delegation letter re: Board Item 7-1 –Oppose: Authorize entering into a Local Resources Program Agreement with Municipal Water District of Orange County and El Toro Water District for the El Toro Recycled Water System Expansion Project (August 20, 2012)

- Water Authority Delegation letter re: Board Item 7-4 –Oppose: Authorize entering into a Local Resources Program Agreement with Calleguas Municipal Water District and Camrosa Water District for the Round Mountain Water Treatment Plant (February 11, 2013)
- Water Authority Delegation letter re: Board Item 7-2 – Oppose: Authorize entering into a Local Resources Program Agreement with the city of Long Beach and Water Replenishment District of Southern California for the Leo J. Vander Lands Water Treatment Facility Expansion Project (May 10, 2013)

- Water Authority Delegation letter re: Board Item 7-1 – Oppose: Authorize entering into a Local Resources Program Agreement with the city of Anaheim for the Anaheim Water Recycling Demonstration Project (July 5, 2013)

- Water Authority Delegation letter re: Board Item 7-4 – Oppose: Authorize entering into a Local Resources Program Agreement with Eastern Municipal Water District for the Perris II Brackish Groundwater Desalter (October 4, 2013)

- Water Authority Director Steiner letter re: August 2010 Board Memo 9-1, MWD Water Conservation Program (August 16, 2010)

- Water Authority letter re: Metropolitan’s Draft Long Term Conservation Plan (November 29, 2010)


- Water Authority letter re: Turf Replacement Grant Programs (November 23, 2011)

- Water Authority Delegation letter re: Board Memo 8-4 – Oppose: Authorize changes to water conservation incentives (subsidies) as described (May 7, 2012)

- Water Authority Delegation statement re: Item 7-5: Adopt resolutions to (1) support applications and (2) authorize General manager to accept funding and enter into contracts with the Bureau of Reclamation for WaterSMART grant funding if awarded (February 11, 2013)


- Water Authority Delegation letter re: Board Memo 8-2 – Authorize $3 million for an On-Site Retrofit Pilot Program: Table Pending Development of Program Criteria and Cost of Service Analysis, or in the Alternative, Oppose and Board Memo 8-7 – Authorize an increase of $20 million for conservation incentives and outreach: Oppose Unless Amended to Allow the Water Authority to Receive Program Benefits and Comply with Cost of Service Requirements (February 10, 2014)

- Water Authority Delegation letter re: Board Memo 8-3 – Table Pending Receipt of Additional Information or in the Alternative, Oppose: Authorize entering into a Water Savings Incentive Program (WSIP) Agreement with Altman’s Specialty Plants, Inc. to provide financial incentives for a water use efficiency project (March 10, 2014)

- Water Authority Delegation letter re: Board Memo 5-1 – Sale of discounted water Program (April 25, 2011)

• Water Authority Delegation letter re: Board Memo 5-1 Sale of Discounted Water (May 6, 2011)
• Water Authority Director Lewinger re: Comments and Questions on Board Memo 9-2 – Update on Replenishment Service Program (September 12, 2011)
• Water Authority Delegation letter re: Board Memo 8-8 - Approve Policy Principles for a Replenishment (Discounted Water) Program (November 4, 2011)
• Water Authority Delegation letter re: Board Memo 9-1 - Review Options for Updated Replenishment (Discounted Water) Program (December 12, 2011)
• Water Authority Delegation letter re: MWD Letters on Replenishment dated December 21, 2011 (January 5, 2012)
• MWD response letter re: Replenishment Workgroup Documentation (January 18, 2012)
• Water Authority Delegation letter re: Item 7-3 – Approve amendments to the Metropolitan Water District Administrative Code to current laws and practices and makes corrections (September 10, 2012)
• Testimony of Dennis Cushman, Water Authority assistant general manager, re: Water Planning and Stewardship Committee Item 6-c: oral report on QSA issues (October 9, 2012)
• Water Authority letter re: Record of September 10, 2013 Meeting of the Board of Directors of the Metropolitan Water District of Southern California - Item 8-2 (September 11, 2013)
• MWD response letter re: Record of September 10, 2013 MWD Board Meeting of the Board of Directors of the Metropolitan Water District of Southern California - Item 8-2 (September 16, 2013)
• MWD letter re: Responses to Director Questions re Ethics Workshops (November 14, 2013)
• Water Authority Delegation letter re: Applicability of MWD’s Administrative Code (December 9, 2013)
• MWD response letter re: Applicability of MWD’s Administrative Code (January 10, 2014)
VIA FEDERAL EXPRESS

March 19, 2014

Daniel Hentschke, Esq.
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123-1233

Re: Response to Request for Information Dated February 28, 2014

Dear Daniel,

Enclosed is a DVD containing Metropolitan records provided in response to San Diego County Water Authority’s (SDCWA) February 28, 2014 Public Records Act request for the “database, inputs, outputs, spreadsheets, and reports used or prepared by Metropolitan staff or consultants in the development of the recommended rates, charges, surcharges, or fees,” to the extent that such material has not already been provided to Metropolitan’s Board of Directors, including SDCWA’s delegates. Proprietary formulas and programming code have been removed from spreadsheets, and employee names and identifying employee numbers have been redacted.

As stated in my March 10 letter, although Metropolitan disagrees with SDCWA’s assertion that Government Code Section 54999.7 is applicable to Metropolitan (and SDCWA has agreed in the past that the Section does not apply to Metropolitan), Metropolitan has fully complied with Government Code Section 54999.7’s requirements through the proposed budget and rates information that has been provided and will continue to be provided to the Board, member agencies and the public. As part of its regular budget-setting and rate-setting process, Metropolitan provides to the Board, member agencies and the public the detailed data and proposed methodology for the proposed rates and charges, through the budget and rate Board letters, proposed budget, costs of services studies for various rate proposals, presentations and discussions at the multiple committee and Board meetings and workshops.

The DVD contains Metropolitan Finance staff’s working materials that underlie this detailed, previously-provided material. This includes drafts and calculations, and also includes materials concerning potential rate scenarios that were not presented to the Board. Metropolitan’s budget-setting and rate-setting process is still in progress. The DVD contains materials through the February 25, 2014 Board budget and rate workshop and some subsequent underlying materials. As the staff continues to work on rate scenarios in response to requests from the Board and
direction from management until final adoption of the budget and rates, we will provide one or more additional productions with later records as well.

As noted in my March 10 letter, we will post this material on-line so it is available to all Metropolitan Board members, member agency staff and the public. If any Board member requests, we will also provide the material on a DVD.

Very truly yours,

Marcia Scully
General Counsel

Enclosure

cc (without enclosure):
  Members of the Metropolitan Board of Directors
  Member Agency Managers
  Jeffrey Kightlinger
  Maureen Stapleton
April 4, 2014

Daniel Hentschke, Esq.
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123-1233

Re: Further Response to Request for Information Dated February 28, 2014

Dear Dan:

This follows up on my letter of March 19, 2014, which enclosed a DVD containing materials provided in response to San Diego County Water Authority’s February 28, 2014 Public Records Act request. My March 19 letter noted that as Metropolitan’s budget-setting and rate-setting process is still in progress, we would also provide one or more additional productions of later records. Enclosed is a DVD containing Metropolitan’s second production of requested records. Proprietary formulas and programming code have been removed from spreadsheets.

As with Metropolitan’s first production, we have posted this material on-line so it is available to all Metropolitan Board members, member agency staff and the public. If any Board member requests, we will also provide the material on a DVD.

Very truly yours,

Marcia Scully
General Counsel

MS:jmm

Enclosure

cc: (without enclosure)
   Members of the Metropolitan Board of Directors
   Member Agency Managers
   Jeffrey Kightlinger
   Maureen Stapleton
From: Office of the General Counsel  
Sent: Friday, April 04, 2014 4:03:02 PM (UTC-08:00) Pacific Time (US & Canada)  
Cc: Kightlinger, Jeffrey; Lichtenberger, Julia  
Subject: Further Response to San Diego County Water Authority’s Request for Information Dated February 28, 2014

Date: April 4, 2014  
To: Board of Directors  
Member Agency Managers  
From: Marcia Scully, General Counsel  
Subject: Further Response to San Diego County Water Authority’s Request for Information Dated February 28, 2014

Attached is our further response to SDCWA’s Request for Information dated February 28. If you have any questions, please feel free to contact me.
LONG-TERM FINANCIAL PLANNING (2008) (BUDGET)

**Background.** Long-term financial planning combines financial forecasting with strategizing. It is a highly collaborative process that considers future scenarios and helps governments navigate challenges. Long-term financial planning works best as part of an overall strategic plan.

Financial forecasting is the process of projecting revenues and expenditures over a long-term period, using assumptions about economic conditions, future spending scenarios, and other salient variables.

Long-term financial planning is the process of aligning financial capacity with long-term service objectives. Financial planning uses forecasts to provide insight into future financial capacity so that strategies can be developed to achieve long-term sustainability in light of the government's service objectives and financial challenges.

Many governments have a comprehensive long-term financial planning process because it stimulates discussion and engenders a long-range perspective for decision makers. It can be used as a tool to prevent financial challenges; it stimulates long-term and strategic thinking; it can give consensus on long-term financial direction; and it is useful for communications with internal and external stakeholders.

**Recommendation.** The Government Finance Officers Association (GFOA) recommends that all governments regularly engage in long-term financial planning that encompasses the following elements and essential steps.

A long-term financial plan should include these elements.

1. **Time Horizon.** A plan should look at least five to ten years into the future. Governments may elect to extend their planning horizon further if conditions warrant.

2. **Scope.** A plan should consider all appropriated funds, but especially those funds that are used to account for the issues of top concern to elected officials and the community.

3. **Frequency.** Governments should update long-term planning activities as needed in order to provide direction to the budget process, though not every element of the long-range plan must be repeated.

4. **Content.** A plan should include an analysis of the financial environment, revenue and expenditure forecasts, debt position and affordability analysis, strategies for achieving and maintaining financial balance, and plan monitoring mechanisms, such as scorecard of key indicators of financial health.

5. **Visibility.** The public and elected officials should be able to easily learn about the long-term financial prospects of the government and strategies for financial balance. Hence, governments should devise an effective means for communicating this information, through either separate plan documents or by integrating it with existing communication devices.
A long-term financial plan should include these steps.

(1) Mobilization Phase. The mobilization phase prepares the organization for long-term planning by creating consensus on what the purpose and results of the planning process should be. The mobilization phase includes the following items.

a. Alignment of Resources. This step includes determining the composition of the project team, identifying the project sponsor, and formulating a strategy for involving other important stakeholders. This step also involves the creation of a high-level project plan to serve as a roadmap for the process.

b. Preliminary Analysis. This step helps raise awareness of special issues among planning participants, such as the board or non-financial executive staff. A scan of the financial environment is common at this point.

c. Identification of Service Policies and Priorities. Service policies and priorities have important implications on how resources will be spent and how revenues will be raised. A strategic plan or a priority setting session with elected officials could be useful in identifying service policies and priorities.

d. Validation and Promulgation of Financial Policies. Financial policies set baseline standards for financial stewardship and perpetuate structural balance, so a planning process must corroborate policies in place (as well as the organization’s compliance with those policies) and also identify new policies that may be needed.

e. Definition of Purpose and Scope of Planning. The purpose and scope of the planning effort will become clear as a result of the foregoing activities, but the process should include a forum for developing and recognizing their explicit purpose and scope.

(2) Analysis Phase. The analysis phase is designed to produce information that supports planning and strategizing. The analysis phase includes the projections and financial analysis commonly associated with long-term financial planning. The analysis phase involves information gathering, trend projection, and analysis as follows:

a. Information Gathering. This is where the government analyzes the environment in order to gain a better understanding of the forces that affect financial stability. Improved understanding of environmental factors should lead to better forecasting and strategizing.

b. Trend Projection. After the environment has been analyzed, the planners can project various elements of long-term revenue, expenditure, and debt trends.

c. Analysis. The forecasts can then be used to identify potential challenges to fiscal stability (e.g., “imbalances”). These could be fiscal deficits (e.g., expenditures outpacing revenues), environmental challenges (e.g., unfavorable trends in the environment), or policy weaknesses (e.g., weaknesses in the financial policy structure). Scenario analysis can be used to present both optimistic, base, and pessimistic cases.

(3) Decision Phase. After the analysis phase is completed, the government must decide how to use the information provided. Key to the decision phase is a highly participative process that involves elected officials, staff, and the public. The decision phase also includes a culminating event where the stakeholders can assess the planning process to evaluate whether the purposes for the plan described in the mobilization phase were fulfilled and where a sense of closure and accomplishment can be generated. Finally, the decision phase should address the processes for executing the plan to ensure tangible results are realized.
(4) **Execution Phase.** After the plan is officially adopted, strategies must be put into action (e.g. funding required in achieving goals). The execution phase is where the strategies become operational through the budget, financial performance measures, and action plans. Regular monitoring should be part of this phase. The following diagram highlights the various long-term financial planning phases discussed in this recommended practice.

![Financial Planning Diagram](image)

**References**

- **Financing the Future Long-Term Financial Planning for Local Government; GFOA, 2007.**
- [http://www.gfoa.org/ltfp](http://www.gfoa.org/ltfp), GFOA Web site containing a wealth of supporting materials for financial planning.

Approved by the GFOA’s Executive Board, February 22, 2008.
“A quick comment on contracts. That is an interesting point. Metropolitan and all the State Water Contractors agreed to what are commonly referred to as ‘take-or-pay’ contracts. I’ve never understood the word ‘or,’ because the reality is, you pay regardless of what you take, to be honest. So it’s more like ‘pay’ and ‘sometimes take.’ But, these ‘take-or-pay’ Contractors, we have made a firm commitment to the State of California that we are going to pay half of the fixed costs of the State Water Project every single year, regardless of whether we get one drop of water from the project. There has been debate within Metropolitan that perhaps Member Agencies should do that same kind of commitment as well, so there is a certain base-load of funding and financing available for our projects. Because Member Agencies develop local resources on their own, and start using less and less of Metropolitan water. To date, that while staff thinks contracts are a terrific idea, to date, most of our board members have said ‘we’re not so sure about that.’ And, most of our Member Agencies have said ‘No. Thanks, but no thanks, because we prefer this the way it is.’ We do try to, though, keep a certain amount of our revenue stream in fixed costs, and a certain amount of our revenue stream in the water supply. But, right now it’s about 80% or more comes from the sale of water. We have about 15% in property taxes, and we’ve slowly but surely added to a fixed fee that everybody pays every single year. But that’s an ongoing debate within Metropolitan. Should people make those firm commitments going into the future? So far, the Member Agencies have opted not to. They prefer it the way it is. I think we’re going to continue to have that discussion at Metropolitan, particularly as costs increase. “Oh, and we’ll definitely take that into consideration, I definitely want to make sure that’s put into the Integrated Resources Plan.¹ Because I do believe, if we are successful – and this is something I keep telling people - if we are successful on the State Water Project – and success means a very expensive eco-system rehab project the size of what we’ve done in the Florida Everglades, and success means building a new tunnel or canal that we’re looking in the eight- to 12-billion-dollar range with the State of California - and Metropolitan coming on board to pay 25% of that cost – that’s a significant new cost that Metropolitan, the next generation of Metropolitan ratepayers will be paying. And we need to take a look at different financing mechanisms that everyone is comfortable with region-wide.”

¹Requirement for firm contractual commitments by Member Agencies to pay MWD’s State Water Project costs was not included in MWD’s adopted 2010 Integrated Resources Plan.
April 8, 2014

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

RE: April 8, 2014 Board Meeting Board Memo 8-1 – Approve proposed biennial budget for fiscal years 2014/15 and 2015/16, proposed ten-year forecast, proposed revenue requirements for fiscal years 2014/15 and 2015/16, and recommended water rates and charges to be effective on January 1, 2015 and January 1, 2016; adopt resolutions fixing and adopting water rates and charges for 2015 and 2016; and transmit the General Manager’s Business Plan Strategic Priorities for FY 2014/15 and 2015/16 – REQUEST TO CONTINUE BOARD ACTION ONE MONTH, UNTIL THE MAY BOARD MEETING, TO ALLOW AN OPPORTUNITY FOR REVIEW OF INFORMATION PROVIDED TO THE BOARD OF DIRECTORS ON APRIL 4, 2014, AT 4:03 PM; IN THE ALTERNATIVE – OPPOSE

Dear Mr. Kightlinger and Board Members:

We have reviewed Board Memo 8-1 and the supplemental information that was provided by MWD via Ms. Scully’s March 19, 2014 letter to Dan Hentschke and DVD, as the basis of its proposed rates and charges for 2015 and 2016. The Water Authority has not had an opportunity to review the additional information that was provided by Ms. Scully last Friday afternoon in her letter dated April 4, 2014 and an attached DVD, which states that it is in response to the Water Authority’s February 28, 2014 Public Records Act request.

Request to continue Board action one month, until the May Board meeting, to allow an opportunity for review of information provided to the Board of directors on April 4, 2014 at 4:03 PM

The information provided to the Water Authority last Friday afternoon was first requested more than two months ago, on January 27, 2014. Based upon a cursory review, there does not appear to be any reason why this information could not have been provided in a timely manner, which would have allowed for meaningful review and consideration of the information by MWD Board members, agency staff and the public. For this reason, we request that the Board continue action on the 2015 and 2016 rates ("the 2015/16 rates") until the May 13 Board meeting.
Leaving aside for the moment that Judge Karnow has already ruled that Government Code § 54999.7 does apply to MWD, and leaving aside that your delivery of the data today is not timely under the Public Records Act, we do not understand why the MWD staff and Board of Directors would not want to make available all of the data and methodology MWD relies upon in setting its rates and charges. As stated earlier, in Mr. Hentschke’s February 28, 2014 letter to Ms. Scully (RE: Renewed written request for data and proposed methodology for establishing rates and charges (Government Code §§54999.7 and 6250 et seq.)), we believe the “financial planning model” computer program MWD uses in setting its rates and charges should be provided in the interest of making review of the data and methodology easier to understand and more transparent. This would be a great service to the MWD member agencies and public we serve and enable it to meet the burden it now has under Proposition 26. Based upon the information that has been provided, it is not possible for MWD to meet its burden because there is insufficient data to determine the cause of the costs MWD is incurring or the relative benefits each of its member agencies and ratepayers is receiving.

The cost-of-service methodology used by MWD in support of its rates and charges violates Proposition 26, the California wheeling statute, Government Code § 54999.7 (a) and the common law

The cost-of-service methodology used to establish water rates and charges under the three rate options presented by MWD (which do not vary substantively but only provide for varying percentage increases in the proposed 2015/16 rates) in Board Memo 8-1 (“the Board Memo”) is based on the very same rate structure and cost-of-service methodology that was at issue in the recent trial in San Francisco challenging the 2010-2014 rates and charges (“the rate litigation”). We are disappointed that the MWD Board has not taken a closer look at the issues and tentative decision by Judge Karnow in the rate litigation, as well as the reasons for his decision. MWD has not changed how it allocates State Water Project and Water Stewardship Rate costs; as a result, unless the trial court’s ruling is reversed on appeal, the 2015/16 rates will suffer from exactly the same deficiencies as have already been determined to be unlawful in the rate litigation.

Although MWD has once again provided a lot of paperwork relating to the proposed rates and charges for 2015/16, it fails to present relevant or timely factual data, or, follow a cost-of-service process that allows costs to be allocated based on cost causation and according to the benefits received by its member agencies and ratepayers. Although the MWD Board has been told during this process that staff has allocated costs consistent with cost-of-service requirements, MWD has argued in court that none of these requirements even applies to MWD. This includes state constitution Article XIII C (Proposition 26), Government Code Section 54999.7 and the common law. In other words, MWD argues that all these legal requirements – intended to ensure that ratepayers are charged fair rates for government services – simply do not apply to MWD.
MWD’s claim of immunity from cost causation requirements exposes its cost-of-service report for what it is – a pretense that portrays the impression that MWD follows cost causation principles, when it does not. Perhaps that is why MWD refuses to release its financial planning model, which would allow member agencies and the public to understand how MWD has allocated its costs. MWD’s position is that its actions are subject only to the requirement that uniform rates be charged and approved by a majority of the MWD Board of Directors. This should be a cause of concern for all MWD Board members and the millions of ratepayers they collectively serve. MWD has offered no explanation why it would be in the public interest to allow MWD to charge ratepayers more than the actual cost of the services it provides.

**MWD’s newly created “full service exchange cost” is based on litigation strategies and “labels,” not cost-of-service requirements**

MWD has added – without any substantive explanation or analysis – a new line item to its schedule of rates and charges for the 2015/16 rates, namely, a “Full Service Exchange Cost” (Table 2. Rates and Charges by Option, at page 5 of the Board Memo). MWD has not supported this new “rate” by any cost-of-service analysis, because none exists or could exist. In fact, until MWD’s Board Memo was distributed, there was no such thing as a “Full Service Exchange Cost” rate.

The full service exchange cost rate is yet another litigation-driven invention designed to be consistent with MWD’s most recent litigation theory, advanced for the first time in the objections to the court’s tentative decision that MWD filed on March 27, 2014. MWD is now saying that its individual rates – which it had previously claimed were adopted for more transparency and were based on cost of service – are in fact, nothing more than “labels.” It doesn’t matter, MWD now argues, whether a dollar of costs or a hundred dollars of costs is assigned to any particular rate component. While obviously intended to salvage its position in the rate litigation, this argument by MWD actually supports what the Water Authority has been saying all along – that MWD’s rates are arbitrary and capricious and not based on data or cost-of-service requirements.

**MWD’s “revenue requirements” are based on a false set of assumptions and purposely underestimate revenues, rather than on facts and data available to MWD**

In the current budget and rate-setting process, MWD staff has abandoned any effort to estimate MWD’s real revenue requirements. Instead, the budget and long term “projections” are based on an artificial water sales assumption of 1.75 million acre feet, which staff has said would be exceeded three out of every four years. In years when high demands are anticipated – such as during the current drought – this artificial assumption purposely under-estimates projected revenues. MWD has also purposely over-stated its costs by, for example, including costs associated with assumed delivery of State Water...
Project water in volumes that MWD itself projects will not be delivered.

These budget and rate-setting practices do not conform to any industry or agency standard. To the contrary, these practices are purposely designed to put MWD in the same position it has been in over the last budget cycle: collecting hundreds of millions of dollars in revenues without any basis in cost of service and making budget and spending decisions ex post facto. The Board’s budget and rate-setting process is broken. MWD should set its rates based on rational projections, rather than assumptions it knows are incorrect and will result in hundreds of millions of dollars in over- and under-collections.

**Board Memo 8-1 shows on its face that suspension of the tax rate restriction is not now, and will not in August be “essential to the fiscal integrity of MWD”**

Section 124.5 permits MWD to suspend the limitation on property tax collections if the MWD Board finds that tax revenue in excess of the restriction is “essential to the fiscal integrity” of MWD. The Board Memo states that, “if the Board decides to not suspend the tax rate restriction in August, any reduction in revenues will be made up from the R&R Fund, and projected rate increases in FY 2016/17 and 2017/18 will be 2 percent higher.” Given this explanation and the massive over-collection of revenues MWD continues to plan for and impose on ratepayers through the adoption of the proposed budget and rates, suspension of the tax rate restriction cannot plausibly be “essential to the fiscal integrity” of MWD.

**The General Manager’s “Business Plan Strategic Priorities” include large spending priorities that have not been presented to policy committees or even to the Board as part of the budget deliberations**

The Board should bring back the General Manager’s “Business Plan Strategic Priorities,” for discussion and deliberation by the Board of Directors. The Board has not yet voted on key issues that would be foundational to moving forward with the “priorities” being declared by the General Manager, for example, “developing procedures and structures to handle the mechanics and logistics of managing a mega-construction project.” The General Manager’s priorities should not exist separate and apart from the priorities that the Board establishes during the budget deliberations and in other long-range planning processes that have not yet occurred.

**MWD’s “10-year forecast” lacks the essential elements of long-term planning and does not constitute a long range finance plan**

MWD’s “10-year rate forecast” lacks both the substance and process of a long-range finance plan. The 10-year “forecast” is not based on any data, and does not include any planning scenarios, risk analysis or input and data from its member agencies. Instead, it describes a set of assumed, static conditions.
Long range finance planning is a dynamic, fact-based process of aligning financial capacity with long-term service objectives. Forecasts of future financial capacity are used so strategies can be developed to achieve long-term sustainability in light of the stated service objectives and financial challenges. None of these key issues are discussed in the “projection” included in the budget, which has been unilaterally prepared and presented by MWD staff without any involvement whatsoever by the MWD Board of Directors or input or participation by the member agencies. Neither does the purported long term plan contain any scenarios and risk analyses that a real long range finance plan includes. The 10-year rate forecast that MWD labels a long range finance plan has the same attribute as its budget process – it is based on assumptions, rather than engaging in the more difficult and important process of financial planning based on best available data and articulation of service objectives.

In closing, MWD’s Board of directors is being asked by its staff to adopt a budget based upon data and assumptions it knows are incorrect, and two more years of rates based upon the same defective methodology that the court has ruled violates Proposition 26, the wheeling statutes, Government Code §54999.7 and the common law.

Sincerely,

Dennis A. Cushman
Assistant General Manager
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE CURTIS E. A. KARNOW
DEPARTMENT 304

SAN DIEGO WATER AUTHORITY, )
) Petitioner and Plaintiff,
) Case No.
) CPF-10-510530 &
) CPF-12-512466
) vs.
) METROPOLITAN WATER DISTRICT OF )
) SOUTHERN CALIFORNIA; ALL )
) PERSONS INTERESTED IN THE )
) VALIDITY OF THE RATES ADOPTED BY )
) THE METROPOLITAN WATER DISTRICT )
) OF SOUTHERN CALIFORNIA ON APRIL )
) 10, 2012 TO BE EFFECTIVE JANUARY )
) 1, 2013 AND JANUARY 1, 2014, and )
) DOES 1-10, )
) Respondents and Defendants.
)________________________________

REPORTER'S TRANSCRIPT OF PROCEEDINGS
San Francisco Superior
San Francisco, California
Thursday, April 2, 2015

Reported By:
TARA SANDFORD, RPR, CSR #3374

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EXHIBITS
NUMBER FOR ID EVIDENCE
95 8/17/04 fax 25 25
120 8/2/05 letter 68 68
169 5/3/10 letter 11 11
175 6/30/10 letter 14 14
189 2/24/11 letter 12 12
207 8/26/11 letter 134 134
219 9/25/03 presentation 17 17
199 5/4/12 letter 12 13
130 10/1/1 letter from McCrae 15 15
230 10/15 letter from Breaux 15 15
222 2/13/13 letter 17 17
234 6/18/13 letter 17 17
337 8/23/13 letter 17 17
395 8/15/13 letter 17 17
1114 9/14/13 letter 17 17
470 12/28/01 Draft Report Rates 95 95
520 2/10/11 letter 17 17
576 10/1/11 MWD Rate Structure 93 93
624 2/28/02 Minutes 97 97
829 9/9/03 email 112 112
830 9/10/03 email 118 118
834 9/16/03 email 122 122
909 7/30/04 letter 20 20
139 2/2011 SB-60 Report 59 87
1114 Water Authority's MWD Work Plan 162 162

EXHIBITS (continued)
358 7/7/10 letter 80 80
475 12/28/01 Draft Report Rates 95 95
624 2/10/11 letter 17 17
767 10/11/01 MWD Rate Structure 93 93
772 2/28/02 Minutes 97 97
829 9/9/03 email 112 112
830 9/10/03 email 118 118
837 9/16/03 email 122 122
856 9/24/03 document re Water Policy Committee 128 128
909 7/30/04 letter 20 20
979 2/2011 SB-60 Report 59 87
1114 Water Authority's MWD Work Plan 162 162
THE COURT: Good morning.

I had a chance to look at Metropolitan's motion brought at the conclusion of the Plaintiff's case. And I am going to defer this until the end of trial. I think I understand the differences in approaches here. We've got two views as to how it is proper to establish a breach and how it is proper to measure damages. I think the wisest course is to defer ruling until the end of this trial.

So let's proceed with our witnesses.

JEFF KIGHTLINGER, resumed the stand and testified further as follows:

THE COURT: You recall you are still under oath?

THE WITNESS: Yes, sir.

CROSS-EXAMINATION (resumed)

BY MR. PURCELL:

Q. Good morning, Mr. Kightlinger.

A. Good morning, sir.

Q. I would just like to clear one thing up to start with. There's a lot of testimony yesterday about the Metropolitan rate structure; correct?

A. Yes.

Q. Now, the rate structure is the buckets that Met arranges for the rates; right? There is a supply bucket; there's a power bucket, and there is a system access bucket?

A. Yes.

Q. San Diego's objections aren't to the buckets, really; they are to the allocation of costs that go into the buckets; correct?

A. That is how I understand their objections, yes.

Q. Okay, good.

So I am going to talk about in terms of cost allocations, really, rather than the rate structure, and if there is any confusion, please let me know.

You testified yesterday about the five-year period following the execution of the exchange agreement; correct?

A. Yes.

"Q. Okay. The Water Authority waited until beyond that five-year period before it filed this lawsuit; correct?

"A. Yes.

"Q. During the -- during the time between the filing of the exchange agreement or, rather, the signing of the exchange agreement and the filing of this lawsuit, the Water Authority participated in various Metropolitan processes related to the setting of Met's rates; right?

"A. Yes.

"Q. The Water Authority continued to advocate for changes to Met's rates in the boardroom and in committee meetings; right?

"A. Yes.

"Q. That was part of the rate -- for example, the rate refinement process?"
"A   Yes. Staff, as well. In
staff meetings, as well.
"Q   And in staff meetings, as
well. "And likewise, there was a cost
of service review process that
the Water Authority
participated in during that
process?
"A   Yes.
"Q   And as part of the cost of
service review process, the
Water Authority again advocated
in the boardroom, and in
committee meetings and in staff
meetings for changes to
Metropolitan's rates?
"A   Yes."

Q.   Mr. Kightlinger, was Mr. Thomas wrong?
A.   No.
Q.   We talked yesterday a little bit about the
dispute resolution process in Section 11.1 of the
exchange agreement.
Do you remember that discussion?
A.   Yes.

Q.   Prior to the Water Authority filing this
lawsuit, the Water Authority invoked that dispute
resolution process; correct?
A.   Yes, they sent us a letter at some point,
around 2010, I believe.
Q.   And Metropolitan responded with a letter of its
own?
A.   I believe so. I don't think you showed it to
me yesterday. I think we did respond.
Q.   I would just like to do that now and hopefully
we can do it quickly. Can I get PTX 169 up on the
screen?
Mr. Kightlinger, is this the letter the Water
Authority sent to you invoking paragraph 11.1?
A.   Yes.

MR. PURCELL: Can I get PTX 175 up on the
screen?
Q.   Mr. Kightlinger, is this a subsequent letter to
the Water Authority sent to Karen Tachiki, your
successor as Metropolitan general counsel, involving
the resolution dispute process in paragraph 11.1?
A.   Yes, it looks like it.
Q.   Did you get a copy of this letter when it was
sent to Ms. Tachiki?
A.   Probably.

MR. PURCELL: Your Honor, I would like to move
PTX 175 into evidence.
MR. EMANUEL: I have an objection. This was
not part of Plaintiff's exhibit list in advance of
trial. I will not object to it being admitted, but I do
want it noted that it is not really playing by the
rules.
MR. PURCELL: It is on our list, your Honor.
We are happy to provide a copy of the list.
THE COURT: What's your objection?
MR. EMANUEL: No objection, your Honor.
THE COURT: We can take care of that at one of
the convenient breaks today. In the meantime, PTX 175
is admitted.
(Exhibit 175 was received into evidence.)

MR. PURCELL: Can I have PTX 207 up on the
screen?
Q.   Mr. Kightlinger, is this a letter that the
Water Authority sent to Metropolitan, to you
specifically, stating that all payments made to the
water stewardship rate after June 23, 2011, are made
under protest?
A.   Yes.

MR. PURCELL: I would like to move PTX 207 into
evidence.
MR. EMANUEL: No objection, your Honor.
THE COURT: I am looking at the record. It
clearly reflects your position.
PTX 207 is admitted.
(PTX 207 was received into evidence.)
MR. PURCELL: Can I have PTX 225 up on the
screen?
Q.   Mr. Kightlinger, is this a letter you sent in
response to the Water Authority's request for a
negotiation under paragraph 11.1 of the exchange
agreement?
A.   I can't see the bottom. I don't know if I
signed it or Karen signed it, but this is certainly a
letter in response from Metropolitan, yes.
Q.   I think PTX 225 is in the new binder I gave you
this morning, if you want to confirm that fact. It is
in fact.
Actually, Mr. Kightlinger, you can see on the screen, I pulled up the signature block.

A. That is my signature, yes.

MR. PURCELL: I would like to move 225 into evidence.

MR. EMANUEL: No objection.

THE COURT: PTX 225 is admitted.

Q. BY MR. PURCELL: Mr. Kightlinger, Metropolitan has never contended that the Water Authority failed to satisfy the dispute resolution obligation in paragraph 11.1 of the exchange agreement; correct?

A. That's correct.

Q. Similarly, there's a procedure under the exchange agreement for Metropolitan to set aside disputed amounts of payments under the exchange agreement when there's a price dispute; correct?

A. Yes.

Q. And the Water Authority sent some correspondence to Metropolitan invoking that set-aside procedure?

A. Yes.

Q. And Metropolitan responded to the Water Authority's letters?

A. Yes, they did.

Q. In fact, money was set aside?

A. Yes, it was.

MR. PURCELL: I would like to show you a few letters on that. PTX 189, please.

Q. Mr. Kightlinger, is this a letter that the Metropolitan general counsel sent to Dan Hentschke, San Diego general counsel, regarding payments under protest under the exchange agreement?

A. Yes, it is.

MR. PURCELL: I would like to move PTX 189 into evidence.

MR. EMANUEL: No objection, your Honor, although the copy that is on the screen doesn't have a number on it. Is it there somewhere else?

MR. PURCELL: It is at the top.

MR. EMANUEL: That's all I needed.

THE COURT: PTX 189 is admitted.

(Exhibit 189 is received in evidence.)

MR. PURCELL: I am happy to do this one by one. We invited Metropolitan to stipulate to admission of these letters between the parties. I don't think there is any objection to the authenticity of any of them.

MR. EMANUEL: I am a little put off that they asked for a stipulation. That is not really appropriate to argue in front of the Court. Right now I am just asking they lay a foundation and let's go through it.

THE COURT: All right. Let's go.

MR. PURCELL: Let's just do it.

PTX 229, next, please. I would like to move PTX 229 in evidence, your Honor.

THE COURT: Any objection?

MR. EMANUEL: No objection.

THE COURT: PTX 229 is admitted.

(Exhibit 229 was received in evidence.)

MR. PURCELL: PTX 230 is the next exhibit. I would like to move PTX 230 into evidence.

MR. EMANUEL: No objection.

THE COURT: PTX 230 is admitted.

(Exhibit 230 was received in evidence.)

MR. PURCELL: PTX 232. I would like to move PTX 232 into evidence.

MR. EMANUEL: No objection.

THE COURT: PTX 232 is admitted.

PTX 234 into evidence.

MR. EMANUEL: No objection.

THE COURT: PTX 234 is admitted.

MR. PURCELL: PTX 243. I would like to move PTX 243 into evidence.

MR. EMANUEL: No objection.

THE COURT: PTX 243 is admitted.

PTX 243 into evidence.

MR. EMANUEL: No objection.

THE COURT: PTX 243 is admitted.

MR. PURCELL: PTX 243. I would like to move PTX 243 into evidence.

THE COURT: I would like to ask whether these are coming in to try to prove any disputed fact?

MR. PURCELL: Your Honor, these are trying -- these are being submitted for the purpose of proving the amounts that were set aside -- under the set-aside provision of the contract. We don't think there's a dispute about it.

THE COURT: Is it part of your case that X dollars were set aside or that money was set aside?

MR. PURCELL: It relates to the availability of interest under the damages calculation.

THE COURT: Okay.

MR. EMANUEL: Your Honor, if I may, these don't go to the amount that has been set aside.

THE COURT: How many of these are there?

MR. EMANUEL: One more.

THE WITNESS: This letter is about a bond.

THE COURT: We will wait for a question. Is there an objection to PTX 243?

MR. EMANUEL: No.

THE COURT: PTX 243 is admitted.

MR. PURCELL: The last one is DTX 624.

THE COURT: This last one only is a D; correct?

MR. EMANUEL: No objection, your Honor.

THE COURT: DTX 624 is admitted.
(Exhibits 232, 234, 243 and 624 were received in evidence.)

Q. BY MR. PURCELL: Mr. Kightlinger, getting back to the substance of the case here for a second, one of the issues that San Diego objected to, I think you testified yesterday, was the inclusion of State Water Project costs in Metropolitan's transportation rates; correct?

A. Yes. Going back to the late '90s, they protested that when we were doing the unbundling process.

Q. Mr. Kightlinger, the State Water Project is not the start of the Metropolitan's facilities and infrastructure; correct?

A. It is owned by the State of California.

Q. I would like to put up PTX 302. Is this an e-mail that you sent to your board of directors in July of 2006 about the LADWP AVEK turnout agreement?

A. It appears to be. I don't recall the issue.

MR. PURCELL: I move Exhibit 302 into evidence.

MR. EMANUEL: No objection.

THE COURT: PTX 302 is admitted.

(Exhibit 302 was received in evidence.)

Q. BY MR. PURCELL: Going to the last paragraph on page one, the second sentence says, "Distilled to its essence, this agreement permits AVEK to transport non State Water Project, SWP water, through the California aqueduct, and to deliver such water to LADWP at a turnout to be constructed within AVEK's service area."

A. Yes.

Q. This refers to the agreement that permits LADWP to obtain non State Water Project water through the State Water Project facilities without needing to move through Metropolitan's facilities; correct?

A. Yes.

Q. I would like to highlight the first paragraph under Authority for the turnout agreement, page three. This paragraph reads, "Another question that has been raised is whether the former CEO had the authority to execute the turnout agreement without obtaining prior approval from the board of directors."

"As I explained at the meeting, Mr. Gastelum posed this question to me, as then general counsel, and it was my conclusion it was within his authority to execute the turnout agreement because it is, "one, was consistent with enforcement of Metropolitan's rights under the State water contract; two, did not require the use of Metropolitan's facilities or infrastructure; three, did not require any expenditure of Metropolitan's funds; and, four, did not conflict with any applicable provisions of the Metropolitan Water District Act, Administrative Code or adopted board policies."

Do you see that?

A. I do.

Q. One of the reasons that this agreement was within the authority of Mr. Gastelum to execute without submitting to the Metropolitan board of directors was because LADWP moving non State Water Project water through the State Water Project did not require the use of any Metropolitan facilities or infrastructure; correct?

A. That's right.

Q. Mr. Kightlinger, you are familiar with the rate structure integrity program; correct?

A. Yes.

Q. And that language that Metropolitan included in contracts permitted Metropolitan to terminate the contract if the recipient member agency mounted a challenge to Metropolitan's current rate structure; correct?

A. Yes.

Q. It did not permit Metropolitan to terminate the contract if Metropolitan were to change its rate structure and then the agency were to mount a challenge to the new rate structure; correct?

A. I don't recall that twist on it. That sounds right. I would have to take a look at it.

Q. We can show you the documents and hopefully refresh you.

Can we have PTX 80 to put on the screen. This is in evidence.

This is a little bit of background. This is a memo, June 18, 2004, from Ron Gastelum, who was then the CEO and general manager of Metropolitan; correct?

A. Yes.

Q. Your predecessor. Not your immediate predecessor, but one of them in that role?

A. Exactly.

Q. It's the job you have today?

A. Yes.

Q. The first paragraph says, "For years we have been discussing the continuing financial risk to Metropolitan and the member agencies from the threat of legal or legislative actions undermining our rate structure. As in the past, some entities for their own gain may challenge the rate structure in order to convey..."
Mr. Gastelum writes Miss Stapleton, "Thank you for.

Q. THAT ACCURATELY SUMMARIZES WHY METROPOLITAN WANTED TO PUT THE RATE STRUCTURE INTEGRITY INTO PLACE; CORRECT?

A. YES.

Q. AND THEN IN THE SECOND PARAGRAPH MR. GASTELUM WRITES: "ONE INDICATION THAT SUCH CONCERN IS STILL VALID WAS THE SAN DIEGO WATER AUTHORITY'S POSITION IN THE QSA AGREEMENT RESERVING THEIR RIGHT TO CHALLENGE METROPOLITAN'S UNIFORM WHEELING RATES AFTER FIVE YEARS FROM THE DATE OF EXECUTION OF THE QSA."

A. YES.

Q. THAT REFERENCE TO FIVE YEARS, THAT'S A...

A. YES.

Q. MR. GASTELUM IS SPECIFICALLY REFERRING TO SAN DIEGO AS A MEMBER AGENCY THAT MIGHT LITIGATE IN THE FUTURE; CORRECT?

A. YES.

Q. THAT REFERENCE TO FIVE YEARS, THAT'S A...

A. YES.

Q. MR. GASTELUM IS STATING WHAT HIS IMPRESSION IS OF MISS STAPLETON TOLD HIM; CORRECT?

A. THAT'S MY UNDERSTANDING OF THIS.

Q. MR. GASTELUM, WHEN HE TALKS ABOUT THE RESERVATION BY THE AUTHORITY TO CHALLENGE METROPOLITAN'S RATE STRUCTURE AFTER FIVE YEARS, HE DOESN'T SAY ANYTHING ABOUT A NEW RATE STRUCTURE, DOES HE?

A. NOT IN THIS SENTENCE, NO.

Q. HE DOESN'T LIMIT HIS UNDERSTANDING OF SAN DIEGO'S RIGHT TO CHALLENGE METROPOLITAN'S RATE STRUCTURE AS TO SOME MATERIAL CHANGE IN THE COST ALLOCATION?

A. HE DOESN'T GO INTO THAT DETAIL, NO.

Q. I WOULD LIKE TO SHOW YOU PTX 95.

IS THIS AN AUGUST 17, 2004, FAX FROM YOU TO YOUR THEN COUNTERPART AT THE WATER AUTHORITY, DAN HENTSCHKE, THE GENERAL COUNSEL?

A. IT LOOKS LIKE IT, YES.

MR. PURCELL: I WOULD LIKE TO MOVE PTX 95 INTO EVIDENCE.

MR. EMANUEL: CAN WE SEE ALL THE PAGES?

THE COURT: OF COURSE. THIS IS A ONE-PAGE DOCUMENT?

MR. PURCELL: I'M SORRY. NO, YOUR HONOR. IT IS A THREE-PAGE LETTER ATTACHED TO THE COVER PAGE.

MR. EMANUEL: NOW THEY HAVE HANDED ME -- WAIT A MINUTE. PART OF THE PROBLEM, IT WASN'T ON THE EXHIBIT LIST. I AM LOOKING AT IT FOR THE FIRST TIME NOW.

CAN I HAVE A MINUTE?

THE COURT: OF COURSE.

MR. EMANUEL: YOUR HONOR, BECAUSE IT WASN'T ON THE EXHIBIT LIST AND I HAVEN'T HAD A CHANCE TO PREPARE, I AM GOING TO OBJECT TO ITS USE AND ADMISSION.

THE COURT: DO YOU KNOW IF IT WAS ON THE LIST OR NOT?

MR. PURCELL: I BELIEVE IT WAS INADVERTENTLY OMITTED. IT WAS ON OUR PHASE 1 EXHIBIT LIST.

MR. EMANUEL: IT WASN'T OMITTED IN THE PHASE 1;
<table>
<thead>
<tr>
<th>Q.</th>
<th>This is your letter; correct?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Yes.</td>
</tr>
<tr>
<td>Q.</td>
<td>You wrote this to Mr. Hentschke at the Water Authority?</td>
</tr>
<tr>
<td>A.</td>
<td>Yes.</td>
</tr>
<tr>
<td>Q.</td>
<td>This was in response to a letter they had written to you objecting to the rate structure integrity language as unconstitutional and objectionable in various other ways?</td>
</tr>
<tr>
<td>A.</td>
<td>I don’t remember exactly all their objections, but I do know they were upset with it.</td>
</tr>
<tr>
<td>Q.</td>
<td>This accurately reflected your understanding of what the language covered; correct?</td>
</tr>
<tr>
<td>A.</td>
<td>Yes.</td>
</tr>
<tr>
<td>Q.</td>
<td>And you say pretty clearly there that “member agencies remain free to challenge any material change to the existing rate structure under the RSI language.” Correct?</td>
</tr>
<tr>
<td>A.</td>
<td>Yes.</td>
</tr>
</tbody>
</table>

Q. So if the RSA language limited only changes to the existing rate structure, your testimony yesterday was under the exchange agreement San Diego gave up the right to challenge the existing rate structure; correct?

A. Yes.

Q. This was in response to a letter they had written to you objecting to the rate structure integrity language as unconstitutional and objectionable in various other ways?

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Q. And you say pretty clearly there that “member agencies remain free to challenge any material change to the existing rate structure under the RSI language.” Correct?

A. Yes.

Q. So if the RSA language limited only changes to the existing rate structure, your testimony yesterday was under the exchange agreement San Diego gave up the right to challenge the existing rate structure; correct?

A. Yes.
seeking low-cost water he does call out by name, but he
does talk about other entities and organizations.

Q. He doesn't call out any other Met member agency
by name other than San Diego?
A. Not in that memo, no.
Q. As regarding San Diego, if San Diego had really
given up its right to sue under the exchange agreement
over the existing rate structure, there would be no need
for the rate structure integrity provision as against
San Diego, would there?
A. That was the intent, yes.

MR. PURCELL: Nothing further.

THE COURT: Thank you.

Redirect, sir?

MR. EMANUEL: Thank you.

THE COURT: If you need a break because of this
new document, let me know.

MR. EMANUEL: I appreciate that. I have my
team looking at it.

THE COURT: In a situation like that, if there
is something I can do to ameliorate the situation, let
me know.

MR. EMANUEL: I apologize. It got the better
of me. It is such a long document, single space, it was
a lot.

THE COURT: I understand.

REDIRECT EXAMINATION

BY MR. EMANUEL:

Q. Let's go back. Let's start with that last
point about there is an agreement under the exchange
that the -- limiting what San Diego could sue on.
Sir, isn't it true, or in your experience, San
Diego has found any number of reasons to sue
Metropolitan, isn't that true?
A. In the last 15 years we've had probably four or
five different lawsuits over various issues with the
Water Authority.
Q. Would it be accurate to say that your
understanding of the exchange agreement isn't a
guarantee that suit still couldn't be filed?
A. No. It only dealt with the existing rate
structure. Their rate structure integrity language is
intended to sweep in all our member agencies as well,
but we've had lawsuits over the applicability of the
Brown Act. We've had lawsuits over preferential rights.
We've had lawsuits over point-to-point versus postage
stamp rates. So we had other challenges.
Q. How can I put this question? It seems fair to
say that there is a certain lack of trust between these

A. No. Simply challenges to the existing rate
structure.
Q. Would it apply to ill-conceived or
non-meritorious lawsuits?
A. I assume they were challenging the existing
rate structure, it would apply to that.
Q. I want to go back to some exhibits that were
shown you yesterday.
Could you put up PTX 56, please. Zoom this on
the date.
Mr. Kightlinger, do you see the date on this?
A. Yes.
Q. You see how it is "for your information, San
Diego's latest proposal," do you see that?
A. Yes.
Q. Based on the date, would this proposal have
been the one we talked about yesterday, Option-1 and
Option-2?
A. No. This predates that by some months.
Q. Can you give me an estimate of when Option-1
and Option-2 was proposed?
A. The late July, early August time frame of 2003.
No. This preceded that by some months.
Q. Can you give me an estimate of when Option-1
and Option-2 was proposed?
A. The late July, early August time frame of 2003.
Q. Close enough. Give me PTX 57.
   Do you see the date?
A. Yes.
Q. Do you see the subject line?
A. "Getting to yes."
Q. This originated with an email from Mr. Slater; correct?
A. Yes.
Q. Was this part of that process after Option-1, Option-2, to work out the points and reach an agreement?
A. That's correct.
Q. I take it as of this point, just by the phrase "getting to yes," what was your understanding as to whether you had in fact reached yes?
A. No. We had a number of deal points that still had not yet been worked out.
Q. Can we go down to the bottom of this exhibit, item number five. Do you see that?
A. I do.
Q. Was that literally true?
MR. PURCELL: Objection. Vague.
THE COURT: I am not sure what that question means. The record will be a little bit easier if you just read that line into the record.
A. Certainly. "Item five, San Diego will draft an 'I love you MWD' reso." Reso meaning resolution.
Q. BY MR. EMANUEL: How did you understand that?
A. We had talked about the intent was if we got to yes and our agencies agreed on this, that this was intended to start a new page and peace and harmony, etcetera, between our two agencies and put aside the lawsuits and the rancor. So they were going to draft a resolution to that effect.
Q. You were asked about the State Water Project?
A. Yes.
Q. Does Metropolitan consider it part of its conveyance system? Do you remember that question?
A. Yes.
Q. I think your answer didn't answer the question. You said, "The state owns it."
The question was, sir, as asked by Mr. Purcell, does Metropolitan consider it part of its conveyance system?
A. We do not consider it part of our conveyance system, but we do consider our agency as having an ownership interest in the State Water Project based on the contract we entered into with the State of California and the way in which we make our payments on that project.
Q. Please explain why you consider it to be a part owner of that system?
A. We have certain rights to use that facility. We have transportation rights. We have to pay for it every year, so a significant sum. But with that, even if we don't aren't getting water just from the State of California, if we wish to move water within it, we have capacity rights that enable us to move water, Metropolitan transfer water, in our ownership capacity rights. And in fact we can do so on behalf of our member agencies, and we have done so, including San Diego.
They have purchased transfers in the past and they have moved that water within Metropolitan's capacity rights in the State Water Project system.
Q. When San Diego moved non-State Water Project, non-Metropolitan water through the conveyance system, did San Diego have to pay a wheeling rate to Metropolitan?
A. Only when it reached our system and then they had the ability to use the State system through our ownership capacity.
Q. Did they have to pay a wheeling rate through the State or could they use Metropolitan's?
Q. What I'm asking you, have you ever heard or have an understanding that the payments to the State is the State's mere conduit?

MR. PURCELL: Objection. Vague.

THE COURT: Has he ever heard it? That's not vague.

Have you ever heard that?

THE WITNESS: I've not heard it actually expressed that way.

MR. EMANUEL: Can you pull up the 2003 exchange agreement. Would you go to the paragraph just before 5.2?

THE COURT: For the record, the exhibit number is --

MR. KEKER: 65 PTX and DTX 51, but they have 51 up, I think.

THE COURT: PTX 65 we will call it.

Q. BY MR. EMANUEL: Do you see paragraph 5.1 and that deals with pricing? Do you see that, sir?

A. I do.

Q. Would you go to the paragraph above that? You see paragraph 4.2?

A. I do.

Q. Let's back up. So 4.1 deals with characterization of exchange water. Do you see that?

THE COURT: See everybody in five minutes.

(Recess.)

THE COURT: Sir.

MR. PURCELL: Your Honor, before we get started, we have a motion to strike.

THE COURT: All right.

MR. PURCELL: We move to strike Mr. Kightlinger's testimony about Metropolitan having an ownership interest in the State Water Project as being directly contrary to Metropolitan's response to Request for Admission 44, which is in evidence as PTX 237A.

THE COURT: How does that read?

MR. PURCELL: It reads, Request for Admission Number 44, "Admit that Metropolitan does not own the State Water Project."

Response to Request for Admission Number 44, "Admit."

THE COURT: I will tell you that I actually made a note and he used the phrase "ownership interest" but I don't think -- I didn't interpret the answer actually to be that he says he has interest to certain rights. My sense is that Metropolitan is not contending they actually have any literal ownership interest in the State Water Project. Right?

MR. EMANUEL: Right. And the witness said

Metropolitan water and not as local water."

Do you see that?

A. I do.

Q. What is your understanding of that?

A. Notwithstanding for the purposes of drought management and the readiness-to-serve charges, at the -- the way the exchange worked is that when the water hits our intake, it's Metropolitan's water. And then we take it and then what we exchange with San Diego is Metropolitan water.

Q. And when does it hit your intake?

A. In theory, when it's made available by IID to us, we order from the Bureau of Reclamation, and it comes to Lake Havasu, and that is where our intake is and that is where we pump the water.

Q. You are still on the Colorado River?

A. Yes.

Q. The location is the Colorado River?

A. Yes, it is a location on the Colorado River, yes.

MR. EMANUEL: Your Honor, if I could have a minute?

THE COURT: Of course

MR. QUINN: Would it be possible for us to have five minutes?
Q. Was there an advantage to the Water Authority for the water to be considered Metropolitan water?

A. Yes. One of the complications in their transfer with IID is the water from IID is Colorado River water. The only parties that can receive Colorado River water are parties that have what's called a Section 5 contract with the Bureau of Reclamation under the Boulder Canyon Project Act.

The Water Authority, not being a Colorado River contractor, technically, unless it got such a contract with the United States, could not receive Colorado River water. So Metropolitan, by receiving that water as Metropolitan and then exchanging it, solved the issue of how to get delivery from the United States Bureau of Reclamation.

Q. But explain, how did that solve that problem?

A. It was deemed Metropolitan's water. And so we have a contract for delivery of Colorado River water with the United States and, therefore, the Water Authority wasn't deemed -- they were not getting a delivery of Colorado River water. Metropolitan was.

Q. Thank you very much.

Let's turn back to this rate structure integrity clause. I believe you testified this was a subject that was discussed at the board level of Metropolitan; is that correct?

A. Yes.

Q. And were there agencies in favor of it, agencies against it?

A. Yes.

No. It was a controversial proposal, and my recollection there were a number of amendments proposed by various board members on behalf of their agencies to be made to the policy before it was adopted.

Q. Was the Water Authority for or against it?

A. They were flat-out opposed to it from the get-go.

Q. Do you have a recollection whether or not the Water Authority made an amendment that the rate structuring integrity clause should only be triggered if someone sued and lost?

A. I don't recall the Water Authority proposing any suggested amendments to it. They felt it shouldn't be adopted at all. The amendments I recall being proposed were from agencies such as Orange County agencies and the Riverside County agencies having a number of concerns and proffering a number of amendments.

MR. EMANUEL: Nothing more, your Honor.

MR. PURCELL: No recross.
Devendra Upadhyah, called as a witness by the Defendant, was sworn and testified as follows:

THE COURT: You are calling?

MR. EMANUEL: Mr. Upadhyah.

THE WITNESS: I do.

THE CLERK: Go ahead and be seated. Would you please state and spell your full name for the record.


DIRECT EXAMINATION

BY MR. EMANUEL:

Q. By whom are you employed?

A. The Metropolitan Water District of Southern California.

Q. What is your position?

A. My position is the group manager for the water resources management group.

Q. What programs fall within the water resources management group?

A. Water resource management group manages demand management programs, conservation programs that provide incentives to consumers in Southern California, local resources program aimed at helping to develop supplies among the customer member agencies.

We have a group that looks at forecasting for the needs of Southern California out in the future. We also manage our contracts with the State Water Project, the Department of Water Resources and with the U.S. Bureau of Reclamation for supplies that we receive on the Colorado River along with many other partners we have. We manage the contracts for those supplies.

MR. EMANUEL: In advance, and according to the Court's deadline, we prepared a declaration for Mr. Upadhyah that had been submitted to the other side and filed with the Court.

Does the Court want a copy? I am not going to direct him on those questions.

THE COURT: I would appreciate it if you have a spare copy.

MR. EMANUEL: I will leave one for the witness in case it comes up on cross.

Q. Sir, a topic not covered in your declaration has to do with the demand management programs.

THE COURT: Thank you very much, sir.

You are excused.

THE WITNESS: Thank you.

Can you tell me what's under those programs?

A. Sure. Demand management programs consist of two different programs that Metropolitan runs. One of them is a conservation program. That program provides incentives through throughout Southern California for consumers to purchase water-efficient devices, things like, for example would be, high-efficiency clothes washers or high-efficiency toilets that reduce demands for water. We provide incentives that buy down the costs of those things for consumers. That's the conservation program.

Another program is the local resources program. That program provides financial incentives for our local agencies to develop projects that fall into three major categories: Wastewater recycling, groundwater recovery and seawater desalination at some point in the future. These would be projects that would produce supplies that those local agencies are able to use to meet their customers' needs.

Q. You referred to incentives. Did you mean financial incentives? Are there other kinds of incentives?

A. Financial incentives.

Q. How long have you been the manager of the water resources management group?

A. Since the beginning of 2010.

Q. How long have you been an employee of Metropolitan?

A. I started with Met back in 1995, and there was a period for about three years there where I was working for another agency.

Q. Going back to the local resources program, who receives the dollars that are part of these financial incentives?

A. The local agencies, the member agencies and their subagencies that actually develop the projects.

Q. What are the benefits to local agencies for these local resource programs?

A. They are receiving a financial incentive from Metropolitan. But ultimately the benefit of those projects is that those projects produce supplies that they are able to use to meet the needs of their customers and they are able to sell those supplies to their customers.

Q. You used the word "they."

A. They receive supplies.

Q. What are the benefits to local agencies for these local resource programs?

A. They are receiving a financial incentive from Metropolitan. But ultimately the benefit of those

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<tr>
<th>Q.</th>
<th>You used the word &quot;they.&quot; They receive supplies. Who is &quot;they&quot; referring to?</th>
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<tr>
<td>A.</td>
<td>The member agencies or the local agency that develop the project.</td>
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<tr>
<th>Q.</th>
<th>Is that also true for other demand management programs that these supply? Who owns the supplies that were produced through those other demand management programs?</th>
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<tr>
<td>A.</td>
<td>That's correct. There are supplies that are produced by the local agencies. They are their supplies. They are able to use those to meet their customers' demands.</td>
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<tr>
<th>Q.</th>
<th>What I am asking, there are conservation programs and there are other kinds of programs, all of which produce water, I take it?</th>
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<tr>
<td>A.</td>
<td>Either produce water or reduce demand for water, right.</td>
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<th>Q.</th>
<th>And my point is, whose supply is it?</th>
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<tr>
<td>A.</td>
<td>It's those local agencies.</td>
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<tr>
<th>Q.</th>
<th>You used the word &quot;they.&quot; They receive supplied that they are able to use through that project, it's theirs to sell to their customers.</th>
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<tr>
<td>Q.</td>
<td>BY MR. EMANUEL: From Metropolitan's point of view, does Metropolitan consider whether or not this is part of Metropolitan's supply?</td>
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<tr>
<td>A.</td>
<td>It is not part of Metropolitan's supply. These aren't supplies that we have access to. It doesn't come into our system. We don't sell them to our member agencies. At no point is it a supply that Metropolitan has to provide to our customers. Rather, it is at the local level.</td>
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<tr>
<th>Q.</th>
<th>Why does Metropolitan have these demand management programs?</th>
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<tr>
<td>A.</td>
<td>These demand management programs provide a benefit to Metropolitan in that it reduces the demand for water to move through our system. But there's also a piece of legislation that was passed in 1999, we refer to it as Senate Bill 60, that requires that Metropolitan increase or focus on conservation, water recycling and groundwater recovery recharge.</td>
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<tr>
<th>Q.</th>
<th>Are you familiar with the phrases &quot;upstream&quot; and &quot;downstream&quot;?</th>
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<tr>
<td>A.</td>
<td>Yes, I am.</td>
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<tr>
<th>Q.</th>
<th>Would you explain what &quot;upstream&quot; means and &quot;downstream&quot; means in the context of what we've been talking, conservation?</th>
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<tr>
<td>A.</td>
<td>Sure. Metropolitan has service connections that demark the point of delivery between Metropolitan's distribution system into our member agencies' distribution systems. And so we refer to anything that is downstream of those service connections, that are then within our member agencies and their local agencies, as downstream.</td>
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<tr>
<th>Q.</th>
<th>The demand management programs that you referred to, are they upstream or downstream?</th>
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<tr>
<td>A.</td>
<td>They are downstream.</td>
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<th>Q.</th>
<th>What rate at Metropolitan generates the income that pays for demand management programs?</th>
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<tr>
<td>A.</td>
<td>The cost of the demand management programs is recovered through our water stewardship rate.</td>
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<th>Q.</th>
<th>Are you aware of whether any part of that water stewardship rate -- let me back up.</th>
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<td>Q.</td>
<td>Does the entirety of the water stewardship rate go upstream, downstream or split between the two streams?</td>
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| THE COURT: | Overruled. |

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<th>THE WITNESS:</th>
<th>Can you please restate the question?</th>
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<td>Q.</td>
<td>BY MR. EMANUEL: Let me take it one at a time.</td>
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<th>Q.</th>
<th>Has that been true -- how long has that been true?</th>
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<tr>
<td>A.</td>
<td>To my knowledge, it's been true since the beginning of the water stewardship rate.</td>
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<th>Q.</th>
<th>Does Metropolitan have -- strike that.</th>
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<td>Q.</td>
<td>What benefits -- what benefits, if any, do wheelers enjoy because of demand management programs?</td>
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| A. | Demand management programs that we run reduce the need for water to move through Metropolitan's system. And as a result of that it is creating capacity.
A. Yes, it is.

Q. Is the production of this report one of your recharge, conservation, recycling, groundwater recovery and some of the actions that we had taken in the areas of report to the State legislature each year that showed earlier Senate Bill 60 that placed some requirements on Metropolitan, and one of those requirements was filing a report to the State legislature each year that showed some of the actions that we had taken in the areas of conservation, recycling, groundwater recovery and recharge.

Q. Is the production of this report one of your duties and responsibilities, at least, to oversee?

A. Yes, it is.

Q. If you would turn to page 7 of this report, tell us what this achievement scorecard represents.

A. This -- what you see on the screen is the scorecard that we include in the report that shows both the acre-feet associated with the demand management programs and the dollars associated with the demand management programs.

This is a part of what we're reporting to the legislature that we've been able to do in combination with the member and local agencies.

Q. If you look at the very first line under conservation, would you explain what that 15,500 acre-feet are?

A. Okay. So as part of the demand management programs, I mentioned one of the programs we run is a conservation program where we're providing incentives for consumers, businesses, residents in our service area to purchase devices that save water, are more efficient.

That line is showing that in fiscal year 2009-'10, which was the period that we were reporting on for this year in this report, those new conservation devices that were installed and funded by that program saved 15,500 acre-feet. That is the new savings from those actions.

Q. How is that line different from the line below it?

A. The line below it is showing that we've actually been doing this program for a number of years, and that devices that were installed in previous years are also still saving water.

The first line is showing just the new things that were installed that year and their savings. But the next -- the second line, 147,000 acre-feet, depicts the savings associated with things that had been installed before that are still saving water in that year.

Q. Now, if we look at the third line, what does that represent?

A. The third line is showing that since the program's inception in the early 1990s, the cumulative water savings across all of those things that have been installed is estimated to be about 1.4 million acre-feet.

Q. Let's move down the chart to under "recycled water." Look at the first line there.

Please explain what that represents.

A. The first line under "recycled water" is similarly showing for 2009-'10 the acre-feet that was produced in that year by wastewater recycling facilities that were funded, in part, by this program.

Q. Could you give us an example of a wastewater recycling program or type of program?

A. Sure. The -- an example there, and there are many different facilities that are funded that are producing as part of this, but an example would be an agency would take wastewater that is coming from the wastewater plant and treat that wastewater to a higher grade of treated supply, and then would pipe that to, as an example, outdoor irrigation on a park or on a golf course, so that they are able to use that treated wastewater to meet the needs of that irrigated territory.

Q. If we look two lines below that, see where it says, "cumulative production." Please explain what that represents.

A. The cumulative production line is showing that since this program's inception, the projects that were partially funded by these incentives for Metropolitan are producing or have produced about 1.3 million acre-feet.

Q. Move down to "groundwater recovery," and looking at the first line. What is an example of a groundwater recovery program?

A. Groundwater recovery refers to a situation where there is groundwater that is contaminated in some...
THE COURT: Exhibit 979.

MR. EMANUEL: DTX 979, your Honor, we move it into evidence.

THE COURT: Are there more pages than the ones we talked about that I'll be reading?

MR. EMANUEL: There are certainly more pages. I don't know that you need to read them. Maybe we should do a redacted.

THE COURT: Yes. Then remind me later on to admit it as redacted.

(Exhibit 979 was marked for identification.)

THE COURT: Cross-examination.

CROSS-EXAMINATION
BY MR. BRAUNIG:

Q. Good morning, Mr. Upadhyah.

A. Good morning.

Q. I am Warren Braunig and we met at your deposition.

You testified that the primary benefit of the -- of the water stewardship rate in the demand management programs is the creation of local supply for use by -- by the local member agencies; correct?

A. The primary benefit to the local agencies is the supply.

MR. BRAUNIG: Yes.

Q. Met's investments in local water grow the supply of water for Metropolitan in the region; correct?

A. The benefit to Metropolitan is the reduced demand on our system.

Q. And that's a supply benefit?

A. I would not argue that's a supply benefit.

Q. Met's investments in local water grow the supply of water for Metropolitan in the region; correct?

A. That's not correct.

Q. You have Tab 1 of your deposition, Tab 1 of the binder one, Volume I is your deposition, and I would ask you to turn to page 109, line 16.

MR. EMANUEL: It's Tab 2, Volume I.

THE COURT: The page is 109?

MR. BRAUNIG: Yes.

(Reading:) 
"Q And my question is does Metropolitan invest in local resources in order to grow the pie of supply?"

"A That's -- yes, that's one of the benefits we're investing for, yes."

THE COURT: Cross-examination. It looks like maybe one more question.

MR. EMANUEL: I will move it into evidence.
MR. EMANUEL: Where were we?

THE COURT: Sixteen through 20.

Q. BY MR. BRAUNIG: That's correct, that's true testimony that you gave?

A. That's correct.

Q. The demand management programs also create a benefit for Metropolitan by not having to spend money on imported water supplies; correct?

A. The demand management programs reduce the need for the movement of water through the Metropolitan system. It may not be Metropolitan's imported supplies.

MR. BRAUNIG: Your deposition, page 109, line 11 through page 110, line one.

THE COURT: Go ahead.

MR. BRAUNIG: (Reading:)

"Q Okay. Is metropolitan's -- is one of the benefits that you articulated of these programs, that it creates a benefit of not having to spend money on other imported supplies?

"A Yeah. That's part of the basis for the incentive."

Q. That's true testimony?

A. Correct.

Q. Would you agree -- you testified in addition to creating local supplies, the demand management programs have regional benefits for Metropolitan; correct?

A. Correct.

Q. Met has never calculated the regional benefit of the aggregate group of water supply projects and desalination projects and conservation programs funded in a given calendar year, has it?

A. Metropolitan calculates the benefit of the water that's produced, and we report that each year in the SB-60 report.

Q. You calculate the number of acre-feet created?

A. Right.

Q. Met does not calculate the regional benefit beyond the calculation of acre-feet; it does not calculate the regional benefit of the group of programs that were funded in 2011, does it?

A. The SB-60 report we are producing is showing the supplies that are benefiting the local agencies as a result of those programs. It is a characterization of what's produced through those programs.

Q. I am asking you a specific question. I am asking you about the regional benefit. Met has not calculated the regional benefit of the programs Met invested in in 2011?

A. WE DID THAT INITIALLY WHEN THE PROGRAM WAS SET UP, BUT WE'RE NOT DOING THAT ON AN ANNUAL BASIS, NO.

Q. And you didn't do that for the money that was invested in 2011?

A. Not to my knowledge.

Q. Or 2012 through '14?

A. Again, not to my knowledge.

Q. On an ongoing basis the only thing that Met keeps track of is how many acre-feet of water are we creating for these programs?

A. The acre-feet that are produced by the local agencies and used by the local agencies.

Q. You don't know what percentage of the benefits to Metropolitan associated with these demand management programs are associated with avoiding supply costs versus what percentage are attributable to avoiding any other costs, do you?

A. We know that these programs are reducing the demand for water moving through our system, so we know that there is a benefit associated with that reduced flow in our system.

MR. BRAUNIG: I am going to use the deposition again. Page 126, lines four through ten.

THE COURT: I really should do this the right way, which is to ask if there is any objection.

THE WITNESS: On an annual basis we are not calculating a separate benefit from what's being reported in SB-60. Although the development of the programs initially was based on a calculation of benefits to the region overall, and we continue those programs as a result of that.

Q. BY MR. BRAUNIG: To be clear, just so the record is clear, for the programs that Met invested in through the water stewardship rate in 2011, Met has not gone in and said, here's what the -- in dollar terms -- here's what the regional benefits are to the region?

A. No. I don't believe we've done it in dollar terms.

Q. You didn't do that in 2012, '13 or '14 either?

A. Not to my knowledge.

Q. Met doesn't do any regular calculation of the benefits to Metropolitan in terms of avoided capital or transportation costs associated with these programs, does it?
MR. EMANUEL: I am reading it right now.
Thank you, your Honor.
No objection.
THE COURT: Go ahead.

MR. BRAUNIG: (Reading:)
"Q Of the investment that Metropolitan is making in LRP
programs, what percentage of the benefits are attributable
to avoiding water supply costs and what percentage are
attributable to avoiding some of these other costs that you
described?

"A I don't know."
Q. That's true testimony?
A. Yes.
Q. When Met is deciding whether to invest in specific demand management programs, Met doesn't consider whether those specific programs will help Met avoid some future transportation or facility costs, does it?
A. The basis for the program is the avoidance of those costs and the reduced demand on our system and the specific programs we're trying to implement in order to meet that overall objective.
Q. On a project-by-project basis Met doesn't evaluate whether a specific project it invests in will have a transportation or facility benefit, does it?
A. No.
Rather, we have overarching goals for the programs. They are articulated in our integrated resource plan in terms of goals. We are trying to put programs together that meet those goals.
Q. Water stewardship is not a service that is inherent to the delivery of water, is it?
A. A service that is inherent to the delivery of water?
Q. Met could supply and deliver water to its member agencies without charging for water stewardship, correct?
A. If by that you mean we could exist without running these programs, I think that's true.
Q. Met has made a policy decision that it wants to fund these demand management programs?
A. That's correct.
Q. And Met collects money from the water stewardship rate to fund the programs; correct?
A. That's correct. And one thing we're also doing is complying with SB-60. We are carrying out these duties.
Q. Met then, after it takes the money, after it collects the money, then distributes -- then distributes the demand management subsidies to its member agencies; right?
A. The conservation programs largely do not go directly to the member agencies. They are benefit to the consumers throughout Southern California. The local resources program financial incentives are provided to local agencies that enter into a contract with Metropolitan and produce supplies for their customers through those projects.
Q. Met makes the decision, though, about how those subsidies are going to be distributed out to the member agents; right?
A. To the extent member agencies are applying for or consumers are applying for those rebates, then they are ultimately going to be getting those benefits. There isn't a pre-decision distribution of funds.
Q. The decision about how these funds are going to be distributed out is a decision made by Met in response to applications made by the member agencies?
A. That's correct.
Q. That's created situations where some large member agencies receive a lot more in demand management subsidies than they pay into the water stewardship rate; right?
A. I'm not sure.
Q. You are not sure because Met hasn't done that analysis?
A. Because I know the projects that are pursued, but I can't say as to whether that compares with the amounts that agencies are paying in.
Q. So Met has the data to determine how much each agency contributes to the water stewardship rate; right?
A. Probably, yes.
Q. As far as you know, they would?
A. As far as I know.
Q. And Met also possesses data about how much it pays out in subsidies to each member agency; correct?
A. Correct.
Q. Met has never compiled that data in order to determine whether there's a proportional relationship between the amount of water stewardship rate monies that are contributed and the amount of subsidies that are going out to those member agencies?
A. Not to my knowledge, and, frankly, that's not the way our programs are measured. Our programs are measured against overall regional goals.
Q. But Met has never done that; Met has never
Q. And the actions that have been triggered are because San Diego filed this lawsuit, they are not allowed to participate in new local resource program projects?

A. That is a follow-on action that has occurred as a result of San Diego’s litigation.

Q. That means no matter how good a program San Diego might have to generate supply of water, no matter how cost effective it is, no matter how shovel-ready it is, Met is not going to fund it because San Diego filed this lawsuit; correct?

MR. EMANUEL: I am going to object. The question is argumentative and the Court may recall this was the subject of a motion in limine, as well.

THE COURT: It is a little argumentative. I will allow it.

Go ahead.

THE WITNESS: What was the question?

MR. BRAUNIG: The question is argumentative and the Court may recall this was the subject of a motion in limine, as well.

THE WITNESS: What was the question?

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THE WITNESS: What was the question?
Q. By Mr. Braunig: I want to draw your attention, please, to the second line of that first paragraph. "Metropolitan is unable to execute your agreement because your modified version departs from the uniform rate structure integrity provision required by Metropolitan's board of directors for all new incentive program agreements with the member agencies."

A. The board has instructed that specific language?

MR. EMANUEL: I don't think there was a failure --

THE COURT: Sustained.

Q. By Mr. Braunig: For member agencies the rate structure integrity language is nonnegotiable; right?

A. The process that we would consider or our board would consider would be their own board process to take a look at whether changes to the rate structure integrity provision are things they would want to undertake.

Q. The RSI language is nonnegotiable; correct?

A. Once the board has adopted the language, they then gave us direction to include that in all of our contracts.

THE COURT: Does that mean it's nonnegotiable?

THE WITNESS: The negotiation that could occur would be at a board level.

MR. EMANUEL: I am going to use his deposition, please, your Honor.

Page 34, line 21, through 35, line four.

MR. EMANUEL: Give me a second, your Honor.

THE COURT: This was Tab 2.

MR. BRAUNIG: Tab 2. It will come up on the board for you.

THE COURT: Any objection?

MR. EMANUEL: No objection.

MR. BRAUNIG: (Reading:) "Q Is it negotiable?

"A No.

"Q So as a member agency your choice is to sign an agreement that includes the rate structure integrity language or you're not eligible to obtain certain incentive benefits for local resources or conservation or desalination?

"A You need to sign an agreement that has standard provisions."

MR. EMANUEL: To be fair, you should read the question and answer above that.

THE COURT: The question and answer above that, starting at line 13?

MR. EMANUEL: Starting at line seven.

THE COURT: Starting at line seven?

MR. BRAUNIG: I think it is a different question. If he wants to read it in and spend his time doing it, he can do that.

THE COURT: I don't think it changes the meaning. Let's go ahead at this time and read that in, line seven and ending at line 12.

MR. EMANUEL: Yes.

THE COURT: We can do that now.

MR. BRAUNIG: (Reading:)

"Q What if an agency -- what if a member agency refuses to sign an agreement with that language?

"A To the extent that it's part of the standard language that the board has instructed to have in all of these contracts, then the agency would be agreeing to not participate in those programs."

Q. You testified earlier when this program was initiated, the demand management programs were initiated back in the mid-1990s or so, Metropolitan evaluated the regional benefits or the benefits associated with doing these programs; correct?

A. That's correct.

Q. Metropolitan has never done a backward-looking analysis to determine if demand management programs are actually avoiding particular costs, has it?

A. Not to my knowledge.

Q. Since the mid-1990s Metropolitan has never done another forward look to see if additional demand management spending would avoid transportation facility costs, has it?

A. Additional demand management spending itself may not be analyzed, but I do believe we looked at the projected capital investment program at Metropolitan in the, maybe, mid-2000s to see if reductions in demand would help reduce the expenditures to our capital program in the future. But I don't think it was directly related to the incentive program itself.

Q. Changing gears a little bit, when a member agency...
Q. The same goes for the demand management programs, doesn't it?

A. It's a waste of time to discuss conceptually, you can't do that.

Q. Metropolitan is providing but supplies that would be wheeled by other parties through the system.

A. That individual agreement may not, but when Metropolitan is looking at our programs, as I said before, you're looking back, say, the 1990s, we were considering in the future the needs for the system to be determined to be able to move water to meet customer demands.

And that includes both supplies that Metropolitan is providing but supplies that would be wheeled by other parties through the system.

Q. You're not able to identify any specific wheeling transactions that are attributable to spending on demand management programs, are you?

A. What do you mean by attributable to spending?

I'm not sure I understand.

Q. Your testimony is that spending this money frees up space that then makes wheeling possible; is that right?

A. It reduces demand for deliveries in our system.

Q. But you're not able to identify any specific wheeling transaction that's attributable to the spending that's been made on demand management programs, are you?

A. Again, I'm not sure what you mean by "attributable."

Q. It had been caused by or as a result of.

A. I don't know why a wheeling transaction would be caused by demand management programs.

Q. You have been a Met staffer for more than a decade; correct?

A. That's true.

Q. And you have been involved in a number of different rate refinement or rate-related initiatives; correct?

A. Yes, sir.

Q. Since 2003, when Met unbundled its rates, Met has not presented any rate structures to its board other than the one it's using today, has it?

A. Not to my knowledge.

Q. Metropolitan is providing but supplies that would be wheeled by other parties through the system.

A. That's true.

Q. Metropolitan to need to spend more money on local resource projects and conservation, did it?

A. That individual agreement may not, but when Metropolitan is looking at our programs, as I said before, you're looking back, say, the 1990s, we were considering in the future the needs for the system to be determined to be able to move water to meet customer demands.

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A. Yes, sir.

Q. Since 2003, when Met unbundled its rates, Met has not presented any rate structures to its board other than the one it's using today, has it?

A. Not to my knowledge.
as part of your testimony, you note that Metropolitan and its member agencies have the right to wheel third-party water on the State Water Project; do you recall that?

A. Yes.

Q. Met has never attempted to put a financial value on the right of Metropolitan or its member agencies to wheel water on the State Water Project, has it?

A. A financial value on right to wheel water?

Q. Metropolitan's right to wheel water?

A. That's right.

Q. Not to my knowledge. It is one of the benefits we get as State water contractor and part of the fees we pay under our State water contract allow us part of that right.

A. But you've never attempted to put a financial value on that right, Metropolitan hasn't?

Q. I don't believe that we put a financial value on it other than the fact that the bill we pay for the State Water Project is broken up into conservation/supply and transportation from the Department of Water Resources. We are getting that value for the transportation.

Q. Is it your opinion that the disaggregation of the DWR bill into conservation and conveyance that has -- that has legal meaning, that that -- that that, therefore, means that's the value to Metropolitan?

MR. EMANUEL: I will object to the question.

THE COURT: It is two different questions. I think you mean the latter.

MR. BRAUNIG: I'll re-ask the question.

Q. Your -- you were present during the first phase of this trial; correct?

A. Correct.

Q. Have you read the Court's statement of decision on the issue of whether or not DWR -- the fact that DWR disaggregates its bill means those are Met's transportation costs?

A. I have.

Q. You have, okay.

Since 2013, since December of 2013, has the structure of DWR's billing to Met changed?

A. Not to my knowledge.

Q. DWR still breaks up its bill in the same way?

A. Correct.

Q. Met still doesn't own the State Water Project, does it?

A. Correct.

Q. Met still doesn't operate the State Water Project, does it?

A. We don't operate the State Water Project, to my knowledge.

Q. And the State Water Project still is not part of Met's conveyance system, is it?

A. It is included in our conveyance rates.

Q. With respect to this idea of State Water Project wheeling, there are many years where Met doesn't wheel any third-party water on the State Water Project; correct?

A. That's correct.

Q. There are many years where Metropolitan member agencies don't wheel any water on the State Water Project; correct?

A. Correct.

Q. In fact, isn't it true that of the water that's been moved on the State Water Project over the last decade, less than five percent of that is wheeling by Metropolitan or its member agencies?

A. I think that's probably right. I don't know the exact statistic, but I would imagine that is a very small amount.

Q. Met makes decisions about whether a member agency like San Diego can stand in Met's shoes and wheel water on the State Water Project, doesn't it?

A. Can stand in Metropolitan's shoes and wheel water? If -- in a scenario where San Diego wants to execute a transfer that's purchasing supply from another entity?

Q. Right.

A. Then they could enter into an arrangement with Metropolitan to wheel the water, yes.

Q. And Metropolitan would have the discretion to decide whether or not San Diego is allowed to do that; correct?

A. Well, there are wheeling provisions that would apply in terms of the ability to move the water.

Q. Can we bring up PTX 358, please.

This is Tab 24 in your binder. It's in the binder that's in the binder one.

This is PTX 358. This is a letter from Metropolitan to San Diego concerning a proposed wheeling transaction?

A. Okay.

Q. The answer is yes, that's what this is?

A. Yes, it appears that way, yes.

MR. BRAUNIG: We would move PTX 358 into evidence.

MR. EMANUEL: No objection.
THE COURT: PTX 358 is admitted.

(Exhibit 358 was received in evidence.)

Q. BY MR. BRAUNIG: In PTX 357 San Diego had requested wheeling service on the State Water Project for water it was getting from the San Juan Water District? That's what is in the first paragraph.

A. That appears to be, yes.

Q. If you look on the third paragraph, Metropolitan was refusing to consent to wheel this water or to allow the State Water Project to wheel this water on San Diego's behalf; correct?

A. It -- yes, it appears we are not consenting to it.

Q. That is a decision that Metropolitan can make?

A. Right. There would be many considerations behind that, but yes.

MR. BRAUNIG: We are five minutes from noon and it is a good time.

THE COURT: Do you have more questions after lunch?

MR. BRAUNIG: I might have a little more.

THE COURT: Why don't we get together again at 1:30. Thank you very much.

(Noon recess.)

San Francisco, California
Thursday, April 2, 2015
1:30 p.m.
Department No. 304 Hon. Curtis E.A. Karnow, Judge

DEVENDRA UPADHYAH,
resumed the stand and testified further as follows:

THE COURT: Shall we continue. Do we have a witness?
Sir, if you'll join us.

MR. BRAUNIG: Your Honor, counsel for Met had sought to move in DTX 979, which is the SB-60 report, a 30-page document, and you had asked them to prepare an excerpted version. We think for purposes of completeness the entire 979 should come in, and we don't object to it. Since he sought to move it in, we don't object, if the Court would allow it.

MR. EMANUEL: I am withdrawing 979. I would ask to enter evidence 979A which is only the two pages we used. I think that would be more efficient.

MR. BRAUNIG: Your Honor, I think, that putting in two pages of a 30-page document, it's not an enormous document.

THE COURT: Is there something else that when you write the post-trial briefs you will be pointing me to some of the other pages?

MR. BRAUNIG: Possibly. We would like to have the opportunity to do that.

THE COURT: One of the requests -- I'll make it now -- when we finish the exhibits, you are going to be providing to me the courtesy copies, you are going to take everything out of this room and you are going to be providing me only the pages you will be relying on and you think I need to read afterwards.

If you want the entire 979 in, I will admit the entire 979. It is hereby admitted. And I apologize to counsel for having gone to the trouble of doing what I asked you to do.

MR. EMANUEL: No apologies necessary.

MR. BRAUNIG: Your Honor, also there is some discrepancy as to whether or not I moved PTX 358 in.

THE COURT: I have an indication that you did.

MR. BRAUNIG: It's admitted.

THE COURT: That's my indication. The clerk confirms.

THE CLERK: I do not. I do confirm now that you saw it.

THE COURT: Now he does.

MR. BRAUNIG: With that, your Honor, I have nothing further.

THE COURT: Any further questions of this witness, redirect?

REDIRECT EXAMINATION

BY MR. EMANUEL:
Q. We are going to look again at PTX 358.
Mr. Upadhyah, do you have that in front of you?

THE WITNESS: Yes, I do.

Q. BY MR. EMANUEL: Let's look into the third paragraph, and specifically, I think, to the third sentence of the third paragraph.

For the record, "If SDCWA possesses a change in place of use from the State Water Resources Control Board for CVP supplies from SJWD, then Metropolitan will provide transportation for this water as non-SWP supplies."

Sir, would you explain to us what that means?

A. Sure. When San Diego was proposing this transfer at the time, it was with a party that has rights on the Central Valley project, which in this paragraph is referred to as CVP. And there is a certain
place of use defined for the Central Valley Project and contractors that are on the Central Valley Project, that is separate from the place of use for the State Water Project and contractors on the State Water Project.

Q. Let's stop you right there. Would you explain the importance of place of use?

A. Sure. It's defined that permanent operations of the CVP is for the benefit of contractors on the CVP and its use of water in the CVP area, that place of use, which is completely different than the State Water Project and the place of use within the State Water Project area.

So what we were saying there is there is a process that is used to go to the State board and request a change in place of use. There was risk from Metropolitan if we were to agree to a wheeling arrangement for a transfer that does not have that approval, so we were saying if you are able to process that change in place of use through the State board then we'll move the water as nonproject water.

THE COURT: Do you need the permission of the State board to do any wheeling deal?

THE WITNESS: If it's in this situation where there's the risk of not -- the State board not approving, so we were saying if you are able to process acknowledging the change of place of use, then there is a risk that, for example, if we had done that without that change in place of use, the State Board could look, after the fact, could look and say, you took delivery of your State Water Project allocation, we are not acknowledging that it was a transfer.

Q. BY MR. EMANUEL: We were talking about the conservation and the demand management program. Do you have an estimate of how much water was produced through these demand management programs?

A. The number changes as we go through time, as the benefits increase. It is more than three million acre-feet over the life of the programs.

MR. EMANUEL: Thank you. Nothing more, your Honor.

MR. BRAUNIG: Nothing further.

THE COURT: Thank you. You are excused.

MR. KEKER: Let me get Miss Stapleton who is next, your Honor.

THE COURT: Thank you.

MR. EMANUEL: Can we do administrative housekeeping? Do you remember there was the Administrative Code, the Court asked that only some portion of it, so we have -- what was the number -- 1149A, Metropolitan moves into evidence, your Honor.

THE COURT: Does San Diego have a copy of that?
767. There has been no objection to this, your Honor, and I would offer it into evidence.

MR. KEKER: No objection.

MR. QUINN: You should have a binder up there that will have copies of all the exhibits I will refer to.

THE COURT: Exhibit 767, I take it that's a DTX?

MR. QUINN: DTX 767.

THE COURT: It is admitted.

(Exhibit 767 was received in evidence.)

Q. BY MR. QUINN: Could you please identify this document for us?

A. It appears to be a PowerPoint presentation by the Water Authority, or it's referenced as the Water Authority.

Q. And it bears a date that we see on the first page of October 11, 2001?

A. Yes.

Q. And do you recall participating in a San Diego Water Authority workshop concerning Met's unbundling proposal back in October of 2001?

A. Yes. I don't remember this specific meeting per se, but I attended all of these workshops.

Q. This exhibit appears to be a PowerPoint presentation that was used in connection with one of those workshops in San Diego where you were considering this unbundled rate proposal?

A. It does.

Q. If you could turn to, I think it is, slide number five. It is page 28 of the document. It is the page entitled "Wheeling." We've got it up on the screen. If it is easier for you to look at the screen there, is a screen -- you can also see it right in front of you on the left-hand side.

A. Oh, yes. Thank you.

Q. This slide, of course, shows that under this unbundled proposal for wheeling there is a system access rate and a water stewardship rate, an incremental power cost, and there is a question mark there. You see that?

A. Yes.

Q. San Diego knew that these components were going to be on this unbundled conveyance rate and also got information about what the charges would be?

A. Yes.

Q. In fact, San Diego received cost of service reports that specified, for example, the amount of the State Water Project costs that would go into, for example, the system access rate; do you recall that?

A. Yes.

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Q. Can you tell us what this document is?
A. **This is an at-a-glance voting record of our MWD delegates from the Water Authority.**

Q. So is it true, then, that in this document we can see how the delegates from the San Diego Water Authority, who sit on the Metropolitan board, how they vote on various issues?

A. **Yes.**

**MR. QUINN:** That's what this reflects. And then if we could turn, please, to Defense Exhibit 772, DTX 772, not yet admitted, your Honor. As I understand there is no objection to it. I am going to offer this, as well.

(Exhibit 772 was received into evidence.)

**MR. KEKER:** No objection.

**THE COURT:** DTX 772 is admitted.

Q. **BY MR. QUINN:** You see this exhibit, 772, these are minutes of a San Diego Water Authority board meeting on February 28, 2002?

A. **Yes.**

Q. And if you turn, please, to page 11, that's page 11 on the lower right-hand side. You can also see that on the screen. You see there in the first paragraph, but I would like to read that to you. The first paragraph under 1B it says, "Director of imported water has provided reasons why CWA staff--"

**A. County Water Authority. That's our agency.**

Q. -- "had recommended that the board take a position on MWD's proposed rates and charges. He reviewed the proposed rate structure and described rate structure components. He showed potential impact to CWA member agencies. Mr. Hess compared existing and proposed MWD rates and charges, and said the IID transfer would provide a benefit to the proposed MWD rate structure."

You see that?

A. **Yes, I do.**

Q. The second paragraph says, "After a lengthy discussion, the staff recommendation was revised to read: "The board direct the Met delegates to support the proposed Met rates and charges for 2003, with the statement and understanding that the action is without prejudice to the continuation of the preferential rights lawsuit.""

You see that?

A. **Yes, I do.**

Q. Apparently there was some lawsuit then going on between San Diego and who?

A. **And Metropolitan Water District.**

Q. About this preferential rights issues?

A. **Yes.**

Q. After a discussion at San Diego about the unbundled rate structure and the components of it, the San Diego board, after looking at this, directed the San Diego delegates on the Met board to vote for the rates that went into effect January 1, 2003; is that correct?

A. **Yes. To support the rate structure, correct.**

Q. And to vote, you understand that?

A. **Yes, to vote affirmative.**

Q. The only reservation related to this other issue, which was the subject of a pending lawsuit regarding preferential rights, at least as reflected in the minutes?

A. **Yes.**

Q. There was no reservation, at least as reflected in the minutes, in terms of the vote on these unbundled rates with respect to either State Water Project costs or the water stewardship rate; correct?

A. **Correct.**

Q. In fact, San Diego delegates, if we go back and look at Defense Exhibit 129, San Diego's members on the Met board did, in fact, vote in favor of those unbundled rates; correct?

A. **They voted in favor of the rate structure, correct.**

Q. And those rates and that rate structure and the components of it, that's the same structure which San Diego maintains in this case is a breach of the 2003 exchange agreement?

A. **Yes.**

Q. You are aware Mr. Slater has been -- Mr. Scott Slater was designated by San Diego as the person most knowledgeable to testify on various issues relating to damages, breach and mistake. You are aware of that?

A. **Yes, I am. I would like to read to you from Mr. Slater's deposition as the person most knowledgeable, from page 216 to 217, 12.**

**MR. KEKER:** No objection.

Q. **BY MR. QUINN:** I will read to you Mr. Slater's testimony as the person most knowledgeable.

"Q. You knew that at the time the October 2003 agreement was signed, that that $235 charge included charges, costs relating to the State Water Project that were included in the system access rate, that
Q. My point is you believed it was unlawful under the law, as it existed in 2003, the existing law at that time?
A. Yes.
Q. Now, on occasion over the years, you haven't been bashful about writing to Metropolitan to express concerns that the San Diego Water Authority had about various issues. Would that be fair to say?
A. Yes. That is fair to say. I am not a bashful woman.
Q. And if an issue is important enough, you would put those concerns in writing?
A. It depends on what forum we would be at and it depends on what we're trying to achieve. So I wouldn't say wholesale I would put something like that in writing.
Q. What I'm saying is, without regard to the forum, you wouldn't wait -- if you had a particular concern you thought it was important enough -- you wouldn't necessarily wait until the next board meeting. You might send off a letter or an email and document your strongly held views?
A. Or make a phone call to let my views be known; correct.
Q. And if an issue was important enough that you thought it ought to be documented, you wouldn't hesitate to put San Diego's views in writing; is that fair to say?
A. I guess I am hesitating on documented. I am not sure I understand the question.
Q. Let me withdraw it again.
A. Correct.
Q. And you thought it was appropriate. Again, depending upon what venue I'm using to try to make a change.
A. Yes. I would put them in writing from time to time, if it was appropriate. Again, depending upon what venue I'm using to try to make a change.
Q. So in particular, in 2003, after Metropolitan

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Q. And if an issue was important enough that you
A. Yes. We believed that they were not lawfully to be included.
Q. And you heard him express that opinion and you believed that also, even before the exchange agreement was signed up; correct?
A. Correct.
Q. When, Miss Stapleton, did you first reach the conclusion that the inclusion of State Water Project costs in the unbundled conveyance rate was unlawful?
A. When Metropolitan started talking about unbundling of the rates and of the cost allocation of the State Water Project. That's what we believed that was a misinterpretation of what was allowed by law.
Q. You had that belief when you first heard that Metropolitan had proposed to include those costs in the unbundled conveyance rate?
A. Correct.
Q. That could have been in 2001, 2002, but certainly by 2003; correct?
A. Correct.
Q. You believed that it was unlawful, based upon the law as it existed then in 2003; correct?
A. Yes. We believed that the interpretation by Metropolitan was not correct.
unbundled its rates, and after the new rates went into effect, you wrote Mr. Gastelum --

A. Yes.
Q. -- your counterpart at Metropolitan at the time, about those rates and documented your concerns. Do you recall that?
A. Yes, I do.
Q. Let's take a look at DTX 794. This is in evidence. And you say in the first line of your letter that you have identified some issues in the setting and the adoption of Metropolitan's proposed rates. Do you see that?
A. I do see that.
Q. And then it goes on -- and I am not going to take the time to go through your three-page single-spaced letter -- but continuing in the second paragraph there, and on to the second paragraph, you list certain of these issues; correct?
A. Yes.
Q. And these include something called "pay-as-you-go funding." I'm not even going to ask you what that is.
A. Yes.
Q. "Excess revenue collection. The use of reserved funds."

Do you see all that?
A. I do see that.
Q. And then it goes on -- and I am not going to take the time to go through your three-page single-spaced letter -- but continuing in the second paragraph there, and on to the second paragraph, you list certain of these issues; correct?
A. Yes.
Q. And these include something called "pay-as-you-go funding." I'm not even going to ask you what that is.
A. Yes.
Q. "Excess revenue collection. The use of reserved funds."

Do you see all that?
A. I do see that.
Q. And then on page two there is a -- you reach -- in the first full paragraph on page two, in the last sentence, you refer to "rate stability." Do you see that?
THE COURT: Can you say that one more time, Mr. Quinn?
MR. QUINN: Yes.
Q. On page two, last sentence of the first full paragraph on page two, if you look at the second-to-last maybe you can highlight that, "rate stability."
A. Yes, I see it now.
Q. And that was an issue. You thought that rate stability was something that was important to Metropolitan's members, including San Diego. Fair to say?
A. Yes, it was the use of reserves.
Q. Okay. But the rate stability was something that you thought was important; correct?
A. Yes. That the use of the planned increase of reserves could be more properly applied to maintaining existing rates, in this case, system access and water stewardship. And that would provide rate stability to the member agency, right.
Q. So you say, "Thus providing overall rate stability to agencies."
A. Yes.
Q. Further, further down the page, you actually discuss the system power rate. Do you see that? You have a numbered paragraph.
A. I do.
Q. What you say there about the system power rate, the only thing you say about it there is it is kind of positive. Would you agree?
A. Yes. It was the first time that we were able to distinguish with specificity the system power rate in its detail, so we thought that was -- we wanted to give kudos where we could for doing that.
Q. The answer to my question was, yes, it was a positive thing?
A. Yes, it was.
Q. You say, "it is an excellent example of rate component transparency." Is what you wrote?
A. Yes.
Q. You don't -- you didn't actually hear, say, by the way, we think it is unlawful; you don't see that in that paragraph?
A. Not in that paragraph.
Q. Or anywhere in that letter. You don't say that use of power, inclusion of power in the rate is unlawful?
A. Yes, that's true. We kind of reference State Water Project in the next section.
Q. Sure. We will come to that. You did not request or even suggest that the State Water Project costs come out of the power rate?
A. Not in this paragraph, no.
Q. In the next paragraph you write about water delivery costs. Do you see that?
A. Yes, I do.
Q. There you do say that, "San Diego objects to the inclusion of significant water supply costs, e.g., State Water Project costs, as a component in Metropolitan's system access rate."
A. Yes, I do.
Q. That is part of what we're talking about, what this lawsuit is about; right?
A. Correct.
<table>
<thead>
<tr>
<th>Q.</th>
<th>You go on to explain why San Diego objects. You say, and I quote, &quot;The inclusion of supply costs in the system access rate creates subsidies for Metropolitan's supplies and increased costs for water delivery. This result sends inappropriate economic signals on both the costs of alternative supplies and appropriate delivery costs.&quot; Do you see that?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>I do.</td>
</tr>
<tr>
<td>Q.</td>
<td>At that time you thought that those costs, actually, that it was unlawful, it was illegal?</td>
</tr>
<tr>
<td>A.</td>
<td>Yes, we believed it was unlawful.</td>
</tr>
<tr>
<td>Q.</td>
<td>But you decided not to put that in the letter?</td>
</tr>
<tr>
<td>A.</td>
<td>Not in this letter.</td>
</tr>
<tr>
<td>Q.</td>
<td>Well, let me ask you: Before this lawsuit was filed, are you aware of any written communication that you wrote to anyone at Metropolitan saying that any of these challenged rates were illegal or unlawful?</td>
</tr>
<tr>
<td>A.</td>
<td>I cannot recall offhand a written letter that says, hello, these rates are unlawful.</td>
</tr>
<tr>
<td>Q.</td>
<td>Are you aware of any written communication, prior to the filing of this lawsuit, at any time, where anybody at San Diego tells anybody at Metropolitan that the inclusion of these State Water Project costs and the water stewardship rate in the unbundled conveyance rate is illegal?</td>
</tr>
<tr>
<td>A.</td>
<td>Yes, sir, they do.</td>
</tr>
<tr>
<td>Q.</td>
<td>If somebody thought it was illegal, they are illegally being charged tens of millions of dollars, or that a proposal was on the table that would contemplate illegally charging tens of millions of dollars, that would be something significant, wouldn't you agree?</td>
</tr>
<tr>
<td>A.</td>
<td>It is something significant, yes.</td>
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<tr>
<td>Q.</td>
<td>And there is nothing in this letter where you say that -- Let me turn now to the water stewardship rate and what you write there. The last paragraph on that page, &quot;The Water Authority&quot; -- it says, &quot;The Water Authority supports the goal of increasing the production of recycled water and increasing support for economic water conservation programs, requiring an increase in the water stewardship rate. The Water Authority would like to continue to support local resource management and development programs,&quot; and it goes on. You can read ahead and read it to yourself.</td>
</tr>
<tr>
<td>Q.</td>
<td>There is nothing there where you say the water stewardship rate should not be included in the water delivery costs or the costs of conveyance, is there?</td>
</tr>
<tr>
<td>A.</td>
<td>Well, it references that the Water Authority believes that these goals could be met without unnecessarily increasing the system access charge in the water stewardship rate this year.</td>
</tr>
<tr>
<td>Q.</td>
<td>So that was our reference to they should not be in the transportation rates.</td>
</tr>
<tr>
<td>Q.</td>
<td>There is nothing there where you indicate or even suggest that you thought that the inclusion of the water stewardship rate charges was actually unlawful or illegal?</td>
</tr>
<tr>
<td>A.</td>
<td>Correct.</td>
</tr>
<tr>
<td>Q.</td>
<td>Did you have any role in the negotiation and approval of the exchange agreement that ended up being signed in October of 2003?</td>
</tr>
<tr>
<td>A.</td>
<td>Yes, I did.</td>
</tr>
<tr>
<td>Q.</td>
<td>And what was your role?</td>
</tr>
<tr>
<td>A.</td>
<td>I was the team leader of the negotiating team.</td>
</tr>
<tr>
<td>Q.</td>
<td>And do you recall that, just kind of jumping into the middle of that, that around August of 2003, San Diego proposed to Metropolitan two different ways of entering into this conveyance arrangement for the water that San Diego had contracted to get; do you recall?</td>
</tr>
<tr>
<td>A.</td>
<td>I do.</td>
</tr>
<tr>
<td>Q.</td>
<td>And if we could take a look at DTX 8- -- just a second. DTX 829.</td>
</tr>
<tr>
<td>MR. QUINN:</td>
<td>This is not in evidence but there isn't an objection to it and I would offer this, your Honor.</td>
</tr>
<tr>
<td>MR. KEKER:</td>
<td>No objection.</td>
</tr>
<tr>
<td>THE COURT:</td>
<td>DTX 829 is admitted.</td>
</tr>
<tr>
<td>(exhibit 829 was received into evidence.)</td>
<td></td>
</tr>
<tr>
<td>Q.</td>
<td>BY MR. QUINN: You are in the e-mail string down at the bottom, between you and Mr. Campbell, and Mr. Campbell refers it up to Lee Miller, I guess.</td>
</tr>
<tr>
<td>A.</td>
<td>Yes.</td>
</tr>
<tr>
<td>THE COURT:</td>
<td>Willer, W-I-L-L-E-R.</td>
</tr>
<tr>
<td>MR. QUINN:</td>
<td>Thank you, your Honor.</td>
</tr>
<tr>
<td>Q.</td>
<td>Who is Lee Willer?</td>
</tr>
<tr>
<td>A.</td>
<td>She was an employee of the Water Authority who was a subordinate of Campbell.</td>
</tr>
<tr>
<td>Q.</td>
<td>This is dated in -- your email is dated September 8. This is, I guess, kind of early on, not too long after the idea of these two different options have been put on the table; is that right?</td>
</tr>
<tr>
<td>A.</td>
<td>Correct.</td>
</tr>
</tbody>
</table>
Q. In your email you ask Mr. Campbell to develop some written material for San Diego's board concerning the potential deal points for this exchange agreement?

A. Yes.

Q. Mr. Campbell then writes to Mr. Willer asking also, "How are you doing on the last canal lining analysis? We talked about comparing the exchange agreement versus wheeling rate differential and spreading the difference over canal lining water for 75 years. I would like to do some escalation sensitivities on the MWD wheeling rate, two percent, three percent, four percent, to see the per AF" --

I have come to learn that's acre-foot.

A. Yes, it is.

Q. "on the canal lining water."

Do you see that?

A. I do.

Q. What was requested here was an analysis of the assumption that the MWD conveyance or wheeling rate would escalate over a 75-year period; correct?

A. Right. We were doing a range of escalations.

Q. Among the ranges you did, do you ever recall being a range of escalations done where you only looked at a five-year period, and assume those rates would only be in effect for five years?

A. No. We actually did it on a worst-case scenario.

Q. If you look at your e-mail, the second at the bottom, in the second sentence in the first paragraph, where it says, "The handout needs to articulate the deal points and identify the canal lining projects and its water as an alternative path that is at the sole discretion of the authority."

Do you see that?

A. Yes.

Q. Do you recall that Metropolitan, when these two options were put on the table by San Diego, Metropolitan came back to San Diego and said, "They look roughly the same to us from an economic standpoint. San Diego, you can choose which one. You choose, Option-1 or Option-2." Do you recall that?

A. I do recall that Metropolitan said that they were okay with either Option-1 or Option-2.

Q. Right. I was interested in an answer you gave a moment ago. Are you telling us the reason you didn't run the numbers, the projections for five years, is you're only interested in a worst-case analysis?

A. Yes, a worst-case scenario to present to my board, so that they knew if, in fact, we were unsuccessful in negotiating what we thought was the lawful wheeling rate, that they knew what their exposure would be.

Q. You didn't think the board would be interested in knowing what the future scenarios might look like if the rate structure was only in place for five years?

A. No. They want to know what the worst case is. You hope for the best but you plan for the worst.

So we did the worst-case scenario in a two to five percent, I believe it was, escalation, so we knew what our maximum exposure would be.

Q. So that's your experience in the business world when you're looking at a particular potential deal. You don't look at -- you only look at a worst case. You don't run the numbers for what the case is, for what you hope to achieve, it's not the worst case; you don't run those numbers?

A. We did not. We were under a very short time period. We were talking about a huge risk that we were taking on, and I would rather tell my board what I believed was the worst-case scenario so they wouldn't come back and say, why didn't you tell me what that maximum exposure was.

Q. I understand, ma'am, why you -- the board would want to know worst case, and I understand why you would want to tell them worst case. My question is a little different.

Isn't it your experience in the business world, that decision makers also want to see a projection based on what you realistically think you can achieve, something that is not the worst case?

MR. KEKER: Objection. Argumentative. No foundation. And I move to strike the speech at the beginning.

THE COURT: Overruled.

Go ahead.

THE WITNESS: We had been on a monthly or twice or three times a month been talking to our board about the various options. The All-American Canal option was a new option, and that was the focus of what my board needed to look at, was whether to take Option-1, which was already out there, or Option-2, which was new. And, therefore, I directed staff to take the number that Metropolitan had, escalate it out, and assuming that it would not change over that 45 years, what was our exposure based on the escalation of two to five percent. That is what I wanted the board to know, what the maximum exposure would be so they could make the most informed decision.

The worst thing for a manager is to have a board member come back and say why didn't you tell me...
Q. You know with respect, I don't think that answered my question, which was directed to, in the real world, if you want to give them, I think you just said, you want to give them the best information, don't you also want to give them a projection, based not just on the worst case but by what you hoped to achieve in negotiating the agreement? Don't you want them also to have that information?

A. No. Because the exposure would be less than that maximum that you provided to the board. It would be nothing but better than what you gave to the board as the worst-case scenario. That would be a positive. They would be happy. So, no.

Q. So the way it works at San Diego is the board only wants to hear worst-case scenarios. They are not interested in hearing what you think is actually realistic or what you can achieve? Is that your experience at San Diego?

A. In this case it is.

Q. Is it your testimony that you had some discussion with some board members where they said to you, "No, don't present us with any scenarios reflecting what you really intend to achieve in this agreement or what you can think you can realistically do. We are not interested in that. All we want to see is the absolute worst case?" Did you have a conversation like that with anybody on the San Diego board?

A. No, I did not.

MR. QUINN: Let's take a look at DTX 830.

I understand this is not in evidence and I understand there is no objection.

THE COURT: The PowerPoint slides.

MR. KEKER: No objection, your Honor.

MR. QUINN: We have offered this.

THE COURT: DTX 830 is admitted.

(EXHIBIT 830 was received into evidence.)

Q. BY MR. QUINN: Just so you know where I'm going, ma'am, I want to walk through the written records that exist leading up to the execution of the exchange agreement in October.

What we're looking at here, the cover note is an e-mail from Amy Chen to some people, including yourself, and it is dated September 10, 2003; correct?

A. Correct.

Q. Who is Amy Chen?

A. She is one of my staff members who is assigned the MWD program and she's located in Los Angeles in the MWD building.

Q. She lives in enemy territory. It's a joke.

Q. Is it your testimony that you had some experience at San Diego?

A. In this case it is.

Q. You know with respect, I don't think that answered my question, which was directed to, in the real world, if you want to give them, I think you just said, you want to give them the best information, don't you also want to give them a projection, based not just on the worst case but by what you hoped to achieve in negotiating the agreement? Don't you want them also to have that information?

A. Correct.

Q. Who is Amy Chen?

A. She is one of my staff members who is assigned the MWD program and she's located in Los Angeles in the MWD building.

Q. She lives in enemy territory. It's a joke.

Q. This is a document generated by Metropolitan, to your understanding?

A. Yes.

Q. Do you have any understanding why it was sent to the folks at San Diego?

A. I don't have any specific knowledge. We were trying to keep each agency informed of what the other one was doing.

Q. If you thumb through, I think, four or five pages, you will see one slide that is entitled at the top "peace treaties." You see that?

A. Yes.

Q. It says, "Wheeling laws, no legislative change by San Diego and MWD."

A. Yes.

Q. Do you see that?

A. I do.

Q. And then if you skip forward a couple of pages there is a heading that says, "Alternate SDCWA Pathways." Two bullets. "Two options available. SDCWA to choose by October 1."

A. Yes.

Q. That is probably referring to that San Diego can choose which option?

A. Correct.

Q. The next slide at the top, it says, "SDCWA Option-1."

And the second bullet there is "SDCWA pays discount wheeling rate for 35 years or 5.1 MAF."

A. Million acre-feet.

Q. So Option-1, that was -- this is we are going to continue just to go -- we will continue under that exchange agreement that we negotiated a few years ago; right?

A. Correct.

Q. Which had a discounted wheeling rate in it?

A. We would argue it's not discounted.

Q. If you look at the next slide on the top, SDCWA Option-2, the second option, what Met is saying is here, "SDCWA pays full wheeling rate for IID, SDCWA transfer water and canal lining conserved water."
Do you see that?

A. I do.

Q. And you understood that was Met's position about what the proposal was?

A. Yes. It doesn't reference a year on this one. So I can't tell how long they thought that would be.

Q. It just says full wheeling rate?

A. Yes.

Q. You understood that was their understanding and expectation?

A. No, I did not know that full wheeling rate -- it's not the same language we used, but I presume it referenced the $253 rate.

Q. And that's what ultimately ended up going into the agreement?

A. It did.

MR. QUINN: And then if we could look at DTX 837, which has not been admitted. I understand there is no objection to it. We would offer it, your Honor.

MR. KEKER: No objection.

THE COURT: DTX 837 is admitted.

(Exhibit 837 was received into evidence.)

MR. KEKER: It is also 846. You're right. No objection.

MR. QUINN: And then if we could look at DTX 837, which has not been admitted. I understand there is no objection to it. We would offer it, your Honor.

Q. It's worth -- I understand you don't know whether it's worth billions. Are you in a position to dispute that?

A. I wouldn't know.

Q. You just don't know?

A. I'd have to do a calculation of what it would be worth compared to other transfers.

Q. Would you dispute that that quantity of water is worth -- I understand you don't know whether it's worth billions. Are you in a position to dispute that?

Would you dispute -- if somebody said that was worth $2 billion, with a B, would you dispute that?

A. I would not, no.

Q. You just don't know?

A. I wouldn't know what, you know, what the costs would be over 110 years and how to present value the cost of that water.

Q. How about just the current cost? Let's talk in terms of today. If you could get that much water today -- let's not worry about for now the discounting -- that would be worth billions of dollars?

A. Yes, it would be worth a lot of money.

Q. Billions?

A. Sir, I don't want to say what it's worth unless I had the ability to spend some time to calculate its value.

Q. Certainly anyone who said it might only be worth $100,000, that would be flat-out wrong?

A. I would say it's worth much more than that.

Q. Let's go to the second attachment, the memorandum from Mr. Campbell. And I assume you would read this memo before you sent it -- before you attached it to your email to your board of directors?

A. Yes, I would have read it.

Q. And insofar as you know, everything that's in this memo is accurate?

A. Yes.

Q. And the description of Option-2, in this memo, there in that first paragraph, it says, "The assignment of Met's canal lining project water rights to SDCWA, in
consideration for SDCWA's paying Met's wheeling rate, in lieu of the exchange agreement to transport the IID/SDCWA transfer water and canal lining water. Currently the Met wheeling rate is set at $253 per acre-foot, including the system access and water stewardship rates and power cost.

Do you see that?
A. Yes.
Q. And then it says, where it says, "In consideration," what you understood that to mean was that Met would get what's stated there, Met's wheeling rate, instead of the rate under the 1998 exchange agreement, which is what the existing exchange agreement provided for; right?
A. Yes. That would be included in that $253 that we would pay for a minimum of the five years.

Q. So you were going to pay a lot more?
A. Yes.
Q. You understood that $253, probably beating the dead horse here, but it included that system access rate, the power rate with the State Water Project costs built into both of them, and the water stewardship rate; correct?
A. Yes. That would be included in that $253 that we would pay for a minimum of the five years.

Q. In the next full paragraph Mr. Campbell writes about how the staff used two different approaches to evaluate the costs of the two options.
A. Yes.
Q. And in both approaches he assumed that under Option-2 Met's wheeling rate would escalate over the term of the contract; correct?
A. Correct.
Q. In the last paragraph on page one, third sentence he writes, "The Met wheeling rate is established annually by the Met board of directors and is assumed to escalate over time." Correct?
A. Correct.
Q. In this memorandum that you sent, you said we are anticipating that the wheeling rate, at least for purposes of trying to value this option, we assume the wheeling rate will include these components, will be starting at $253, and there will be a factor for inflation over time; correct?
A. That -- I'm not sure about the way we would value this option. But that -- what the potential costs could be for this option.
Q. Right.
A. It would be done in this manner.
Q. Thank you. You are trying to compare the two, and in looking at the potential costs of the second option, the staff is looking at these two different ways, but they are assuming it is going to start at 253 and escalate up over time; right?
A. Right. In this calculation or analysis, that is exactly what we're doing.
Q. Again, there is no numbers here run on just a five-year scenario. This only --
A. No.
Q. -- the 253 and escalator is only for five years?
A. No. Because the canal lining was for 110 years.
Q. A week after that you helped prepare and approved a memorandum to the water policy committee?
A. Yes.
MR. QUINN: And let's take a look at DTX 856. Not admitted yet. No objection, as I understand it.
MR. KEKER: No objection.
THE COURT: DTX 856 is admitted.
We'd offer this, your Honor.
MR. QUINN: And let's take a look at DTX 856.
A. Yes.
Q. In particular to Option-2, if we can enlarge that paragraph, you wrote, "In consideration for Met's assignment of All-American and Coachella canal lining water rights to the authority, the authority would pay Met's lawful wheeling rate in lieu of the exchange agreement. The Met's current published wheeling rate is $253 per acre-foot and is comprised of the system access charge, water stewardship charge and power cost." Do you see that?
A. I do.
Q. In this memo, at any point, do you tell the water policy committee when you're laying this out that you think those charges are unlawful?
A. In the public sessions we did not.
Q. Go back to my question. In this memo.
A. In the memo, no, we did not.
Q. Did you ever write a memo to your board, did you, considering these various proposals and leading up to the execution of the agreement, did you personally write a memo to your board at any point which indicates that any of these charges are unlawful?
A. We never provided any written documentation to our board related to this. It was never in writing.
Q. Related to this --
A. Related to our belief that Met's wheeling rate at that time was not lawful. We did not provide anything in writing to the board on that.
Q. It wasn't important enough to include in any of the documents?
A. Oh, not in the documents. It was absolutely important for the board to know that what our concerns were about Met's rates not being lawful and those -- and those discussions, and there were many of those discussions were held with our board.
Q. You don't have anything in writing that you can share with us?
A. We do not provide any written documentation to the board for closed session items.
Q. So this is something that -- this view about the illegality is something you wanted to keep in closed session?
A. Absolutely.
Q. You regarded that as something that was confidential?
A. Absolutely.
Q. You didn't want that to be publicly known, that you thought these rates were --
A. The discussions, it was not appropriate to have those discussions in open session.
THE COURT: Ma'am, you have to just let him finish his question. Just give it a beat and then answer.
Q. BY MR. QUINN: I am not asking about the discussions. I am focusing on your view that these rates were illegal. You didn't want that to be publicly known.
A. No, that is not true.
Q. If you look at pages five and six, there is a discussion of the staff, two approaches to the analysis of the cost of Option-1 and -2.
Do you see that?
A. Yes, I do.
Q. And, again, each of those approaches assumes the $253 rate will escalate over time, using inflation factors ranging from two to five percent?
A. Yes.
Q. And, again, if we look in here, there's nothing in here about proposed -- any other proposed alternative scenario, like a five-year period, in terms of length of the wheeling deal?
A. There is not.
Q. At the bottom of page six there is a beginning of a summary in which you present various factors to assist the board in assessing the risks and benefits of Option-2. Do you see that?
A. I do.
Q. On the next page, page 7, you discuss supply reliability, saying "There is no other readily available water supply with the priority level, cost amount and duration of water supply resulting from the canal lining." Do you see that?
A. I do.
Q. How did you know that, that there wasn't other similar available water supply?
A. Because we had been negotiating for so long and were very familiar with the Colorado River and the availability of various supplies on the river.
Q. On page 7 you indicate how the marginal cost of the canal lining water compares favorably to other water transfers that range in supply costs alone --
A. Yes.
Q. -- between $250 and $300; do you see that?
A. I do see that.
Q. On page 8 under "Supply risks are significantly lower," you write, and I quote, "While choosing Option-2 exposes the authority to higher wheeling costs, comprised of Met rate components and system access charge, stewardship and fluctuations of power costs, it protects the authority from even greater exposure associated with securing an alternative imported supply, whether or not that supply" -- I'm sorry -- "securing an alternative imported supply, whether or not that supply comes from Met or another seller."
Did you believe that to be true at the time?
A. Yes.
Q. And you recommended that Option-2 be approved; right?
A. I did.
Q. Notwithstanding your view that these rates are illegal; correct?
A. Correct.
Q. And you concluded that this was a good deal for San Diego, to start with the wheeling rate -- it was a
good deal even if, worst-case scenario, if you had to pay this illegal wheeling rate of $253, with an inflation factor of up to five percent over the life of the contract, even at that scenario you were recommending that this was a good deal for San Diego?

A. Yes.

MR. QUINN: If we could turn now to DTX 221, which is not yet admitted, and to which the Plaintiff has objected on the grounds of relevance.

THE COURT: Are you offering it now?

MR. QUINN: I am offering it, your Honor.

THE COURT: I am trying to figure out if you are going to ask the witness some questions to lay a foundation. Why don't you tell me what the relevance is and then they can tell me why it's not.

MR. QUINN: This raises -- this addresses the same issues, your Honor, about the risk, the wheeling rate, the proposed exchange deal. It talks also about the other related agreements, the allocation, the quantification settlement agreement and identifies the various risks of Option-2.

MR. KEKER: Your Honor, I think our objection -- I know our objection as to relevance is based on that portion that talks about everything but what this trial about, which is the terms of the exchange agreement. And this going back to the motive, the other benefits and so on is a complete red herring to the issue of what the parties agreed to in 2003 and 5.2 of the agreement. We said before, we are all over the place with parole evidence; we get it. But our argument is going to be read the contract and follow it, and none of this atmosphere and the earth cooled and then land was formed and canals were dug and so on is useful to making that decision.

So that's our objection, and I'll sit down.

THE COURT: I understand. I do understand your position, you should look at the other contracts. And part of the defense is that we should, and so it is admissible on that basis. DTX 221 is admitted.

(Q. BY MR. QUINN: Do you recall this -- we are now up to September 25, 2003, just a few days, a couple of weeks before the exchange agreement is actually signed?

A. Yes, a few days before the deadline, where we had to make a decision.

Q. It actually was signed -- somebody help me -- do you remember the date of the exchange agreement?

A. I want to say October 10.

Q. I am hearing a chorus of October 10, so I think you're right.)
A. We have -- yes, there's nothing in the agreement that talks about what a specific dollar amount would be after year five.

Q. Or what the increases would be?

A. Correct.

Q. There was no index, in other words, like there was under the previous exchange agreement?

A. Correct.

THE COURT: Whenever you get to a good point in the next five minutes or so, just pick a time and take a break.

MR. QUINN: Why don't I finish this exhibit.

It won't take long.

Q. BY MR. QUIIN: And then you say, you describe here the cost for benefit received from canal lining.

You describe that as, "The present value difference between the 1998 exchange agreement cost and the MWD wheeling rate cost for 35 years." Do you see that?

A. I do.

Q. And it refers there, below that, to "Inflation sensitivity for the wheeling rate." Do you see that?

A. I do.

Q. That is something that needs to be considered?

A. Yes.

---

Q. So it is still anticipated that San Diego would pay the MWD wheeling rate for 35 years and that rate would increase over time; correct?

A. Yes. As I explained earlier, we had a range of escalations that we used to determine what we felt was the maximum wheeling rate that we would be exposed to.

Q. So if we look at the present value analysis that's done here, and you are kind of summarizing here, that present value analysis, again, was based on an assumption that the Met wheeling rate would escalate over the existing rate of the life term of the contract?

A. Correct.

Q. If we turn to slide 22, "Option-2, financial risk analysis," that identifies what we have been talking about, the price under the 1998 agreement as $97 per acre-foot for 2003. Do you see that?

A. Yes.

Q. It goes on to say, "Risk is in difference between Met wheeling rate cost and wheeling rate cost under the exchange agreement." And using the numbers in the slide the risk was the difference between $253 and $97 per acre-foot or $156 per acre-foot with an inflation factor for each?

A. Yes.

Q. That was the important information that you were presenting to the board in making this decision; correct?

A. Absolutely.

Q. It says, "The present value of differential is the cost of getting the canal lining water benefit." Right?

A. Right.

Q. So the board understood that the canal lining water was a trade-off for the payment of the existing Met wheeling rate plus an inflation factor?

A. I don't think that's exactly correct.

I think that they felt that the canal lining project was a trade for giving up the 1998 exchange agreement for the exchange agreement that was proposed in -- that now is the 2003. It is not correct that we traded absolutely the canal lining project for the Met determined wheeling rate for 45 years.

Q. In terms of the analysis that was presented to the board --

A. Yes. In terms of the analysis, yes.

Q. -- it was presented to the board, and what you were asking the board to make its decision based on, you were presenting them this present value analysis and comparing the cost.

In terms of the analysis that was presented to the board --

A. Yes. In terms of the analysis, yes.

Q. It was presented to the board, and what you were asking the board to make its decision based on, you were presenting them this present value analysis and comparing the cost; correct?

A. Right. We were comparing the costs and the maximum exposure of costs.

Q. And we looked earlier at Mr. -- is it Campbell's memorandum? -- where he talked in terms about the consideration for the canal lining water paying the wheeling rate; do you recall that?

A. Yes.

Q. You understand that -- I mean, you don't have any disagreement with that? That was part of the consideration, forgetting this huge volume of water for 110 years was agreeing to pay this much increased wheeling rate; correct?

A. Yes.

Q. And that was -- those were key points in the deal; fair?

A. Yes.

Q. They are reflected in the -- that deal, those key points of this deal are reflected in different documents, the exchange agreement and the allocation
quite a bit of time trying to figure this out, coming up with some rules of thumb about how to deal with the amount of time people need on direct and cross. I don't think anything's changed. So I'm not going to grant the motion. I am just going to live with the time we set.

MR. KEKER: The second request, your Honor, is that in the back of the courtroom Jessica Fromm, who is an 8th grade teacher from Denver, is here and she wanted to take a picture of the courtroom to show her students, and we wondered if you had any objection to her doing that.

THE COURT: Of course not.

MR. QUINN: I object. Mr. Keker is going to be in the photo.

THE COURT: That I understand. I appreciate it if you don't take pictures of someone who is on the witness stand. We will arrange the room. Because the witness might object to that. You can always take a picture of everybody after the witness has stepped down, if you want. If anybody else has any objection to being in a picture, please just make that known and move when the picture is being taken.

Let's proceed.

Q. BY MR. QUINN: Miss Stapleton, I would like to read to you again some testimony from Mr. Slater, San Diego's person most knowledgeable. And this will be from page 64 of his deposition, lines 14 to 25.

"Q. I want to jump back to the 2003 agreement for a second.
I'm jumping back here like Marty McFly. I'm jumping between time frames here.
"A. I'm not Marty McFly.
"Q. Okay. Get that on the record. 2003, the negotiations for the 2003 agreement, was it ever discussed excluding -- did any party ever propose excluding State Water Project costs from the price -- from the price, the contract price to be charged under that agreement?
"A. I do not recall that, no."

Was Mr. Slater wrong about that?

A. **He was not. We did not propose a lower price.**

Q. And you also -- at no point did San Diego in negotiations for that agreement, Mr. Slater, the person most knowledgeable testified, never proposed taking out the State Water Project costs from the wheeling rate, in
connection with the negotiation of that agreement; correct?
   A. For the price that started, that we started within the exchange agreement?
   Q. At no point, did any party ever propose excluding State Water Project costs from the price, the contract price to be charged under that agreement; is that true?
   A. That is true.
   Q. So is it your testimony, just reading between the lines, Miss Stapleton, are you saying that you brought up with Met excluding State Water Project costs in year two?
   A. No.
   Q. Year three?
   A. No.
   Q. Four?
   A. No.
   Q. For any year?
   A. Yes.
   Q. What year did you propose backing out the State Water Project costs on, you personally?
   A. Yes. In year six or beyond, that we had to come to some agreement in that we believed the State water projects were not lawfully included in the rates.
   Q. And who did you propose that to on the Met side?
   A. Dennis Underwood.
   Q. Anyone else?
   A. I believe it was referenced among the group, which would be the Met team and the Water Authority team.
   Q. I am trying to find out who, other than Mr. Underwood, you say you proposed taking State Water Project costs out after the five years you identified --
   A. I personally?
   Q. Yes.
   A. I personally?
   Q. Yes.
   A. No. It would be just Mr. Underwood.
   Q. And sadly he's deceased?
   A. Yes, unfortunately.
   Q. By 2005 the 2003 exchange agreement had been in effect for over a year?
   A. Correct.
   Q. Met initially billed San Diego for conveyance charges at that initial price of $253?
   A. Yes.
   Q. And over the next five years that price escalated, just as San Diego had anticipated in those projections that you presented to the board?
   A. It escalated. I can't tell you if it escalated between the two and five percent. I do not recall.
   Q. But it did escalate every year?
   A. Yes, it did.
   Q. In 2005, it's true to say that San Diego did not write to Metropolitan saying that the rates were unlawful?
   A. Correct.
   Q. And in 2005, San Diego did not make any claim with Met that charging a price based on these unlawful rates was a breach of contract?
   A. Correct.
   Q. And San Diego, in 2005, did not object in writing to the price or to any invoice; true?
   A. Correct.
   Q. And that would be true if I asked you those same questions for 2006, 2007, 2008, 2009, your answers would be the same? Do you want me to go through them?
   A. I believe we started some dialogue and there may be in writing some references to us beginning -- wanting to talk about the negotiations for the wheeling rate.
   Q. Is there any writing that you can point us to in any of those years where San Diego wrote to Met, prior to 2010, stating that the rates being charged were unlawful?
   A. I cannot go to any specific document. I cannot recall any right now.
   Q. You cannot recall, can't identify for us any document in any of those years where San Diego made a claim with Met that it was charging a price that was in breach of contract?
   A. No.
   Q. Or even objecting in writing to the price being charged or to any invoice before 2010?
   A. I don't recall any.
   Q. If you'd look at -- if we could turn to the exchange agreement itself, DTX 55, PTX 65, and turn to page 26, there is a Section 12.4(c), if you would take a look at that.
   And you recall this provision here that says, "In the event of a dispute over the price, SDCWA shall pay, whenever due, the full amount claimed by Metropolitan, provided, however, during the pendency of the dispute, Metropolitan shall deposit . . ."
   You know the provision I'm referring to?
   A. I do.
   Q. Unless you want me to, I won't read the whole paragraph.
A. I do know that provision.
Q. You understood since -- at any time after 2003, if San Diego disputed a price, it could deposit money with Met and Met would have to keep that money in an account until the dispute was resolved?

A. Yes.
Q. The first time that San Diego did that was in February of 2011; right?

A. Yes.
MR. QUINN: Let's look at DTX 624, not yet admitted. I understand there is no objection, and I would offer it, February 10, 2010, letter from Mr. Hentschke to Mr. Kightlinger.

MR. KEKER: No objection.
THE COURT: DTX 624 is admitted.
(Exhibit 624 was received in evidence.)
Q. BY MR. QUINN: You recognize this as a letter from San Diego's general counsel to Mr. Kightlinger?

A. Yes.
Q. This is the first time San Diego asked Met to set aside money under that Section 12.4(c); correct?

A. Correct.
Q. There is nothing in that five-year provision, sometimes referred to as a standstill or year of good feelings, whatever -- there is nothing in that that prevented San Diego during that time from invoking this deposit procedure under 12.4(c), was there?

A. I believe we could not challenge the rate for the first five years. So unless they were charging more than the Met established rate, we could not -- we couldn't dispute it.
Q. Let's take a look at that section and see what it provides that you couldn't do in the first five years, Section 5.2, pages 16 and 17.

I think you will see in the second line there, it says, "For the term of this agreement neither San Diego nor Met shall seek or support in any legislative, administrative or judicial forum any change in the form, substance or interpretation of any applicable law or regulation."

Do you see that?

A. I do.
Q. It refers to not taking actions in legislative, administrative or judicial forums; correct?

A. Yes.
Q. Does that refresh your recollection there was nothing that prevented San Diego from invoking this 12.4(c) procedure even during the first five years?

A. I see that.
Q. You are aware that from 2000 -- during this time frame, 2005 through 2009, Met every single year, Metropolitan's conveyance rates were submitted for approval by the Met board every year; correct?

A. Yes.
Q. You recall, if we can look at DTX 129, I think we looked at this already, in 2005 San Diego's members of the Met board voted for the wheeling rate which included the State Water Project costs and the water stewardship rate; correct?

A. Correct.
Q. As we discussed earlier, San Diego's delegates to the Met board received direction from the San Diego board as to how to vote on certain matters; right?

A. Only -- the only one I see is the one you referenced earlier. That's the only one that I have seen.
Q. Let me ask, is it generally a custom and practice on the issue of rates that San Diego's delegates will be instructed how to vote?

A. No. It's actually opposite of that. They are not instructed by our board of directors on how to vote.
Q. In any event, we can see here, this is a record of how in fact they did vote; right?

A. Yes.
Q. And as part of that, you know that when these rates and rate structures come up for vote, there's a whole package that goes to the whole members of the board to support the requested action; correct?

A. Correct.
Q. And that includes a cost of service breakdown which specifically identifies the components of the rates that the delegates are being asked to vote on; correct?

A. Correct.
Q. So it would not be true to say, would it, that when these things come up for vote at the Met board, the only thing the board members can vote on is whether the rates should be increased?

A. That is the primary issue. But in addition, it is they are aware of how the costs are allocated.
Q. Ma'am, it would not be true to say, that when these packages come up for review, that the only thing the board members have an opportunity to approve is an increase in the rates; that they have no ability to address the rate structures?

A. I do not know what that specific package is. I don't know what the resolution is. So I don't believe I can answer that accurately.
Q. As far as you know --

A. I do not know.
Q. For example, if we could look at DTX 75 -- this is in evidence -- December 1, 2008, letter to Mr. Kightlinger from you, this is an example of a -- one instance where San Diego was requesting that water be wheeled through Met -- through State Water Project facilities under Met's contract with the State; is that correct?

A. That is correct.

Q. And San Diego requested that Met -- San Diego knew that Met had this ability, this right to use the State Water Project facilities for that purpose; right?

A. Yes.

Q. And San Diego knew that Met pays for those facilities through its contract with the State; correct?

A. Yes.

Q. And San Diego, when it did that, when it wheeled water through the State Water Project facilities, it would pay the full Met wheeling rate for those services without objection; correct?

A. I don't know.

Q. You don't know whether or not the wheeling rate that San Diego was charged for wheeling through the State Water Project facilities included the system access rate, power rate and including the State water costs, you just don't know?

A. I am aware that they included that. I am not aware if it included other costs.

Q. Okay. You are aware when you request wheeling, transportation of water, you are going to be paying system access rate, power rate, including the State Water Project costs; correct?

A. Correct.

Q. And San Diego pays those charges without objections?

A. Correct.

Q. No objection to paying those costs when you are wheeling water through the State Water Project?

A. We did not object when we moved this water in, it looks like, probably 2009 when we moved this water.

Q. Similarly, if the State Water Project was being used to perform under the exchange agreement, San Diego would have no objection to paying those costs related to use of the State Water Project?

A. Could you explain what "objection" is?

Q. San Diego would have no issue with being charged for use of State Water Project facilities if they had to be used to perform the exchange agreement; correct?

A. I don't know.
Q. Well, the use of -- it's true, isn't it, that
the use of the State Water Project facilities was
essential to Met's performance under the exchange
agreement; it had to be done? Correct?
A. Not necessarily.
Q. Is it your understanding that Met could perform
the exchange agreement simply by using the Colorado
River Aqueduct exclusively?
A. Yes.
Q. Well, you knew, in fact, that the State Water
Project facilities would be used to deliver water under
the exchange agreement; you knew that at the time the
exchange agreement was negotiated and signed; correct?
A. No. I knew it could be used, but I did not
know it would be used.
Q. In fact, San Diego understood, at the time that
the agreement was negotiated and signed, that even a
temporary inability to use the State Water Project
facilities could cause a change in the delivery of water
to San Diego under the exchange agreement?
A. Yes, it could.
Q. So if we look at DTX 51, Section -- this is the
exchange agreement -- Section 3.3, pages 13 to 14. You
see where it says, "SDCWA understands that any number of
factors, including emergencies, inspection, maintenance
or repair of Metropolitan facilities or the State Water
Project facilities may result in a temporary and
incidental modification of the delivery schedule
contemplated in paragraph 3.2." Correct?
A. Correct.
Q. The parties clearly contemplated that the use
of the State Water Project facilities were an essential
aspect under the exchange agreement?
A. I don't see that. "They may result." It
doesn't say "they shall result."
Q. You understood if there were a shutdown of the
State Water Project facilities, that might have certain
consequences for the schedule of the deliveries?
A. Yes, it might.
Q. So you understood from that that Met might well
be using the State Water Project facilities to perform
under the exchange agreement?
A. Yes, they might.
Q. And as a historical fact, you know that a large
portion of the water that has been delivered under the
exchange agreement has come through the State Water
Project; you know that?
A. Yes.
Q. Do you know how much?
A. I do not.
Q. Is it more than 50 percent of the water that's
been exchanged?
A. I don't believe so.
Q. Is it more than a third of the water that's
been exchanged?
A. I don't know.
Q. Can you give us an order of magnitude?
A. I cannot. Sorry.

MR. QUINN: I would like to read you another
passage of Mr. Slater's deposition, Volume II, page 243,
line 20, to 244, eight.

MR. KEKER: No objection, your Honor.
THE COURT: Go ahead, please.
MR. QUINN: (Reading):
"Q So would it be true to say
that, as of 2007, San Diego
would sue if Met did not change
the way it calculated its
wheeling rate upon -- it would
sue upon the exp- -- sometime
between the expiration of the
five-year period and ten years
after that?
"A Correct.
"Q And that was San Diego's
state of mind as of 2007?
"A Yes.
"Q And that if I ask you that
same question about 2006, 2005,
2004, your answer would be the
same"
"A Yes.
"Q And 2008?
"A Yes."
Q. That is flatly not true, isn't it? Correct?
A. No. We had every intention to negotiate an
acceptable rate with Met and knew if we were unable to
do so that our only alternative was lawsuit.
Q. Mr. Slater says as of 2007 they intend -- there
would be an intention to sue.
That is simply not true as of 2007?
A. An intention to sue, no. We did not in 2007
intend to sue.
Q. When he says that San Diego's state of mind as
of 2007 that it intended to sue upon expiration of the
five-year period, that's simply wrong?
MR. KEKER: Objection, your Honor.
THE COURT: Sustained.
Q. By Mr. Quinn: Let's take a look at DTX 555,
which is admitted. This is an April 18, 2007, memo to
the imported water committee.

A. Yes.

Q. On the second page, this is a memorandum prepared by Daniel Hentschke?

A. Yes.

Q. Approved by you?

A. Yes.

Q. The last sentence reads, "The Water Authority does not intend to litigate Met's current rate structure but it cannot know what future actions the Met board may take since the Met rates are established annually and are subject to change by Met's board of directors."

Do you see that?

A. I do.

Q. That is language you approved?

A. Yes.

Q. In 2007 there was no intention to sue; correct?

A. Correct. We did not intend to litigate.

Q. And the price of San Diego contends it should pay for 2011, for example, according to your expert, Mr. Denham is $136 per square foot?

A. Per acre-foot.

Q. Per acre-foot.

A. Yes.

Q. So is it your understanding of the exchange agreement San Diego is entitled to the benefits of Option-2, the canal lining water, for 110 years and the $235 million, and the other thing it gets but should pay about half of what San Diego assumed it would pay under option two when it was running those analyses?

A. No. We assumed we would pay a lawful wheeling rate, and we would get the benefit of the exchange agreement by a lawful wheeling rate.

Q. If I understand correctly what you're telling us is you believe that Mr. Denham is right, that for 2011, for example, you can get all those same benefits and only pay the $136; correct?

A. The benefits derived were not directly related to the exchange agreement number. The benefits, the totality of benefits of the QSA related to the exchange agreement, the $253.

Q. I mean, again, not to gild the lily, I hope, we've seen these memos that say the consideration for the canal lining water was the wheeling rate, which starts out $238; right? I'm sorry. $253?

A. Correct.

Q. And so San Diego's position now is it should be able to get all those benefits anticipated under the exchange agreement but actually it should only have to pay much, much less than what that initial year's price was?

A. We should only have to pay the lawful wheeling rate.

Q. Your testimony, Miss Stapleton, was -- I was
asking about whether you brought up taking out the State Water Project costs, you personally brought it up with anyone on the Met side. And you said that you did that in -- I have 2009.

A. About the State Water Project costs?
Q. Yes.
A. We raised that issue way before 2009.
Q. I'm talking about the conversation with Mr. Underwood.

A. I raised that conversation with Dennis all the way back to -- I mean, we were having conversations in 1999 or 2000, 2001, 2002, all the way up to the execution of the exchange agreement.
Q. I asked you what year did you propose backing out the State Water Project costs on, you personally, and you said, yes, in year six or beyond --

A. Right.
Q. Right?
A. After the execution of the exchange agreement.
Q. You did that with Mr. Underwood?
A. No, no. Mr. Underwood had passed since then.
Q. That is what I was going to ask. He passed in 2005?
A. Yes. I'm sorry. I misunderstood.

I had ongoing discussions with Dennis Underwood in 2000, 2001, 2002, 2003. The 2009 is when the Water Authority or I actually issued formal objections to the State Water Project costs being included in the Met rate.

Q. Wasn't it your testimony that you believed it was improper to allocate State Water Project costs to the transportation rate?

MR. QUINN: Objection. Speculation. Foundation.
THE COURT: Sustained.
Q. BY MR. KEKER: Did you talk to somebody at Met about your objection to including State Water Project costs in the transportation rates?

MR. QUINN: Objection. Vague. Time, as to time.
THE COURT: Overruled.
THE WITNESS: Yes, I did.
Q. BY MR. KEKER: When?

A. Our first concerns regarding wheeling were in 1996 and they were -- we continued those dialogues for a number of years.
Q. Did -- did people that you talked to at Met understand that you believed it was improper to allocate State Water Project costs to the transportation rate?

MR. QUINN: Objection. Speculation. Foundation.
THE COURT: Sustained.
Q. BY MR. KEKER: Did you talk to somebody at Met about your objection to including State Water Project costs in the transportation rates?

MR. QUINN: Objection. Vague. Time, as to time.
THE COURT: Overruled.
THE WITNESS: Yes, I did.
Q. BY MR. KEKER: When?

A. I had continuing conversations about this issue with Dennis Underwood beginning in about 2000 and continuing on.
Q. To your knowledge, did San Diego staff have similar conversations with people on Met staff objecting to the inclusion of State Water Project costs in the transportation rates?

A. Yes.
that I thought it was inconsistent with the wheeling statute.

Q. What wheeling statute are you referring to?
A. The Katz wheeling statute.
Q. Do you know if that has a Water Code designation?
A. Yes. 1810.
Q. Who is Mr. Katz?
A. Mr. Katz was in the legislature and he was the author of the wheeling statute.
Q. Was Mr. Katz the author of the wheeling statute involved in the negotiations -- in 2003, what was his role in 2003?
A. In 2003 Richard Katz actually was a -- was on the Governor's staff and he and another individual on behalf of Governor Davis participated and facilitated the negotiations in 2003.
Q. Did Mr. Katz, for example, understand there was a dispute between San Diego and Met about how to calculate the wheeling rate?
A. Yes, he was aware.
MR. QUINN: Objection. Foundation.
THE COURT: I'll sustain. We are probably going off a little bit.
Q. BY MR. KEKER: Just generally, had this been a subject of a great deal of discussion and objection and contention between San Diego and Met since the rates were unbundled?
A. Yes. We had many, many conversations with Met staff and during this period of time trying to come to resolution.
Q. Could anybody in these agencies or involved in this process not understand that there was a dispute about where to allocate these State Water Project costs?
MR. QUINN: Objection. Foundation.
THE COURT: Sustained. It is argumentative.
Q. BY MR. KEKER: You mentioned something about closed sessions and so on. Was San Diego's position prior to 2003 about the proper allocation of State Water Project costs, was it public or private? Was it publicly known, publicly discussed?
A. Yes. It was known by MWD and the member agencies at Metropolitan that we disputed the inclusion of the State Water Project in the wheeling rate.
Q. When you talked about closed sessions during Mr. Quinn's examination, what was your point about the closed sessions?
A. Was that we had repeated and frequent closed sessions with our board of directors during the negotiations of the QSA, and a huge amount of the information and the analysis were done in closed session with the board as we continued to try to reach agreement.
Q. What about the water stewardship rate? When had you directly begun communicating your concern about the placement of the water stewardship rate costs on transportation to anybody at Met?
A. In about the year 2000.
Q. And to whom did you communicate that concern and what did you say about it?
A. For me, it was to Dennis Underwood who was my counterpart on the negotiating team of Met. And, again, I indicated the water stewardship charge was directly related to supply development and it didn't belong on the transportation charge. I didn't believe it was consistent, again, with the wheeling law.
Q. And did you say -- did you tell him it was improper, invalid or anything like that?
A. Yes. The language I would use is it's improper or that it's not consistent with the law or that it -- that is not a valid charge to the transportation or system access rate.
Q. To your knowledge did Met staff -- excuse me. San Diego Water Authority staff communicate similar concerns to their contemporaries at Met?
MR. QUINN: Objection; foundation.

THE COURT: Did you overhear these communications?

THE WITNESS: I did in some cases.

THE COURT: Tell us about what you heard.

THE WITNESS: I heard both Scott Slater, my special counsel, and Bob Campbell, one of my staff members, having discussions with either Brian Thomas, who was an employee of Metropolitan, or Jeff Kightlinger, the general counsel, about the wheeling rate and our objections to the inclusion of certain charges in that wheeling rate.

Q. BY MR. KEKER: By the way, was Mr. Gastelum, who was the general manager in 2003, is he still around and available to Met as a witness?

A. Yes, he is around.

Q. Miss Stapleton why did the Water Authority agree -- let me back up. You said the $253 wheeling rate made up of the current system access rate, water stewardship rate and system power rate, adding to $253.

You said you believed at the time of the exchange agreement that rate was not -- was illegal, was not properly calculated. Do you remember that?

A. Correct.

Q. Why did San Diego agree in the exchange agreement to pay that rate for the initial year?

A. For a couple reasons. We needed to make modifications in the exchange agreement from 1998. We had to solve some problems, which is the exchange agreement term was shorter than our water transfer term and we had 15 years of exposure.

The second issue was there was some conditions precedent that we had been told by Ron Gastelum that would invalidate the 1998 agreement.

So we decided if we could put boundaries on our exposure to Met's wheeling rate and had the opportunity to either negotiate something we both could live with and that it was lawful, that that was worth -- that was worth the risk.

Q. You said you agreed as part of the exchange agreement to pay Met's wheeling rate, whatever they said, for five years?

A. Correct.

Q. And thereafter, what wheeling rate did you agree to pay?

A. The lawful wheeling rate.

Q. Did you make sure that the agreement reflected that agreement?

A. Yes.

Q. Could we look at Plaintiff's 65 and put up 5.2, please?

A. I don't think I have 65.

Q. Sorry, Miss Stapleton, I am rushing. Let's put up 5.2 on the screen.

This is an agreement for exchange water, and in 5.2 it says the price on the date of execution is $253; right?

A. Correct.

Q. At the time was there a dispute between Met and San Diego about whether or not that was a lawful wheeling rate?

A. Yes, that was.

Q. Did Mr. Underwood understand there was a dispute?

A. Absolutely.

Q. Did you understand there was a dispute?

A. Yes.

Q. Did anybody at Met not understand that there was a dispute?

A. No.

MR. QUINN: I object. Move to strike.

THE COURT: Sustained.

Q. BY MR. KEKER: And it says, "Thereafter, the price shall be equal to the charge or charges set by the Met board of directors pursuant to applicable law and regulations."

What did that mean to you?

A. That meant thereafter Met -- that the price would be a lawful wheeling rate that was set by MWD.

Q. And had there been some discussion about how long San Diego would sit still if Met didn't change its ways about cost allocation?

A. Yes.

Q. And what did the discussion lead to?

A. It led to that we could not challenge the MWD established rate for the first five years.

Q. And what was the purpose for you, for San Diego, to agree to a wheeling rate that you thought was higher than the law permitted and to agree to it, to pay it for five years?

A. Because it provided an exchange agreement that matched our water transfer agreement in the length of time. And it got rid of the conditions precedent. So we knew we would have a firm capacity within the aqueduct in this exchange agreement, and we were willing to take the risk.

Q. During the negotiations, as Mr. Kightlinger told us, did Met say we want you to agree to whatever we say the wheeling rate is for the next 45 and maybe 75 years?
A. That was their initial offer to us.
Q. And did San Diego agree to eat whatever they
wanted to call the wheel rate, whatever number they
wanted to put on it, for 45 to 75 years?
A. Absolutely not.
Q. What did the negotiation yield in that regard?
A. We finally got down to a five-year time period
where we agreed to pay the MWD established rate, and
after five years we had the opportunity to seek either
administrative or judicial remedy.
Q. Let's look at the next term. It says, still in
5.2, "For the term of this agreement neither San Diego
nor Met shall seek or support in any legislative,
administrative or judicial forum."
Does administrative include Met?
A. Yes.
Q. So you are promising you are not going to go to
Met, you are not going to go to the legislature and you
are not going to go to court for the life of this
agreement --
A. Yes.
Q. -- pertaining to the charge or charges set by
the board of directors. That's what that says; right?
A. Correct.
Q. And then it comes down and it says, "Provided
further that, A, after the conclusion of the first five
years" --
What are the next two words?
A. "Nothing herein."
Q. -- "shall preclude San Diego from contesting in
an administrative or judicial forum," blah, blah, blah.
What did you understand that to mean about this
five-year period?
A. After five years, if we were unsuccessful
reaching an agreement on what would be considered the
lawful rate, the Water Authority had the ability to
contest the wheeling rate that Met had established in
either an administrative or judicial manner.
A. Yes.
Q. After the five years with respect to what the
subject matter of your lawsuit could be, did you
understand that there was any condition about only
procedural or only something that didn't exist when we
started or anything, any limitation on that?
A. Absolutely not.
Q. Did you expect there was a possible -- did you
anticipate there was a possibility the law might change
or develop and make the wheeling situation work more
plain over the next five years?
A. Yes. That there were some court cases
regarding wheeling during this period of time, and we
thought that there may be additional court decisions
that might have an influence on -- an influence to help
clarify what a lawful wheeling rate might be.
Q. In San Diego's mind did the term "lawful
wheeling rate" have meaning?
A. It had essential meaning.
Q. Was there any part of California or
constitutional law that was excluded from the term
"lawful?"
A. No.
Q. And in your discussions with Mr. Underwood, did
he seem to understand that, as well?
A. He did.
Q. Would you look at 11.1, please. 11.1 says you
have to negotiate if you have a problem, but it also
says, "San Diego shall not dispute whether the price
determined pursuant to paragraph 5.2 for the first five
years of this agreement was determined in accordance
with applicable law or regulation ('a price dispute')."
What price did you think they were talking
about that you couldn't dispute for five years?
A. Met's wheeling rate as selected or as set by
the board of directors.
Q. Where the parentheses are around "price
dispute," look over at 12.4, please, and 12.4(c), which
says, "In the event of a dispute over the price, San
Diego shall pay when due. . . ."
And then it goes and talks about the escrow
accounts?
A. Right.
Q. Was there anything in this agreement that
limited San Diego's ability to complain about any aspect
whatsoever of the price it was being charged by Met
after five years were over?
A. No.
Q. Was that something that was negotiated for
hard?
A. Very hard.
Q. And was that contrary to the position that Met
wanted, which is you can never challenge our prices?
A. Yes.
Q. That was the compromise?
A. This was the compromise.
Q. For five years you couldn't challenge --
THE COURT: I have to interrupt. I have
another case coming in at 4:00. I have a ferocious
amount of work to do.
Can we pick this up on our next trial date?
MR. KEKER: Yes, sir.
THE COURT: I do have some other cases. Thank
you. I will see you next time we get together.  
(Evening recess was taken.)

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA, )
   ) ss
COUNTY OF SANTA BARBARA. )

I, TARA ANN SANDFORD, CSR #3374, Certified Shorthand Reporter, in the County of Santa Barbara, State of California, hereby certify:

That the court proceedings were taken down by me in stenotype at the time and place herein named and thereafter reduced to typewriting by computer-aided transcription under my direction.

I further certify that I am not interested in the event of the action.

WITNESS my hand this 3rd day of April, 2015, at San Francisco, California.

[Signature]

TARA SANDFORD, RPR, CSR No. 3374
Certified Shorthand Reporter
State of California
Finance and Insurance Committee
Meeting with Board of Directors*

April 13, 2015

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

---

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

2. Approval of the Minutes of the meeting of the Finance and Insurance Committee held March 9, 2015

3. CONSENT CALENDAR ITEMS — ACTION

   None

4. OTHER BOARD ITEMS — ACTION

   8-1 Adopt resolutions fixing and adopting Readiness-to-Serve Charge and Capacity Charge for calendar year 2016. (F&I)

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* 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.
Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not defined as a project and is not subject to CEQA, and
a. Adopt resolution to fix and adopt the Readiness-to-Serve Charge; and
b. Adopt resolution to fix and adopt the Capacity Charge.

5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

a. Oral report on investment activities

b. Quarterly financial review

7. MANAGEMENT REPORT

a. Chief Financial Officer’s report

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

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Date of Notice: March 30, 2015
REVISED AGENDA
Water Planning and Stewardship Committee
Meeting with Board of Directors*

April 13, 2015
9:30 a.m. – Board Room

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. PUBLIC HEARING
   a. Review of Metropolitan’s Water Supply Allocation Plan

3. Approval of the Minutes of the meeting of the Water Planning and Stewardship Committee held March 9, 2015

4. CONSENT CALENDAR ITEMS — ACTION
   None

REVISED: Date of Notice: April 7, 2015
5. **OTHER BOARD ITEMS — ACTION**

Revised

Express support for Governor’s Executive Order B-29-15; declare Water Supply Condition for 2015; approve implementation of Water Supply Allocation Plan; adopt supporting resolution; and conduct public hearing.

(WP&S)

**Recommendation:**

Option #1:

Adopt the CEQA determination that the proposed actions are statutorily and categorically exempt, are not defined as a project, and are not subject to CEQA, and

a. Express support for the Governor's call for a 25 percent reduction in consumer water use and Executive Order B-29-15;

b. Declare a “Water Supply Condition 3 – Water Supply Allocation”;

c. Implement the Water Supply Allocation Plan at a Level 3 Regional Shortage Level, effective July 1, 2015, through June 30, 2016;

d. Adopt the Water Supply Allocation Plan Level 3 allocation as a water conservation program pursuant to Water Code Section 375 et seq.; and

e. Adopt the resolution shown in Attachment 3 of the board letter implementing actions listed above.

6. **BOARD INFORMATION ITEMS**

None

7. **COMMITTEE ITEMS**


b. Update on Conservation Activities

c. Update on Foundational Actions Funding Program

8. **MANAGEMENT REPORTS**

a. Bay-Delta Matters

b. Colorado River Matters

c. Water Resource Management Manager's report

**REVISED:** Date of Notice: April 7, 2015
9. FOLLOW-UP ITEMS

None

10. FUTURE AGENDA ITEMS

11. ADJOURNMENT

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REVISED: Date of Notice: April 7, 2015
Engineering and Operations Committee
Meeting with Board of Directors*

April 13, 2015
12:00 p.m. -- Room 2-145

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

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

2. Approval of the Minutes of the meeting of the Engineering and Operations Committee held March 9, 2015

3. CONSENT CALENDAR ITEMS — ACTION

   7-1  Appropriate $700,000; and award $418,600 contract to T. E. Roberts, Inc. for structural protection of the Upper Feeder (Approp. 15480). (E&O)
Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is categorically exempt, and
a. Appropriate $700,000; and
b. Award $418,600 contract to T. E. Roberts, Inc. for structural protection of the Upper Feeder.

7-2  Authorize reimbursable agreement for relocation of the Middle Feeder within the city of Monterey Park. (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA, and alternatively, is exempt from CEQA under the State CEQA Guidelines, and authorize the General Manager to execute an agreement with Southern California Edison for relocation of the Middle Feeder.

7-3  Appropriate $680,000; and award $374,867 contract to Kaveh Engineering & Construction, Inc. to upgrade the Iron Mountain Pumping Plant Vehicle Service Center (Approp. 15438). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is categorically exempt, and
a. Appropriate $680,000; and
b. Award $374,867 contract to Kaveh Engineering & Construction, Inc. to upgrade the vehicle service center at Iron Mountain Pumping Plant.

4. OTHER BOARD ITEMS — ACTION

8-2  Appropriate $41 million; award $31,762,914 contract to J. F. Shea Construction, Inc. to rehabilitate filters at the F. E. Weymouth Water Treatment Plant; and authorize increase of $815,000 to agreement with MWH Americas, Inc., for a new not-to exceed total of $2.09 million (Approp. 15477). (E&O)
Recommendation:

Option #1:

Certify that the Final EIR has been completed in compliance with CEQA and the State CEQA Guidelines; certify that the Board has reviewed and considered the information presented in the Final EIR; certify that the Final EIR reflects Metropolitan's independent judgment and analysis; and adopt the Findings, the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, and

a. Appropriate $41 million;

b. Award $31,762,914 contract to J. F. Shea Construction, Inc. to rehabilitate filters at the Weymouth plant; and

c. Authorize increase of $815,000 to the existing agreement with MWH Americas, Inc., for a new not-to-exceed total of $2.09 million.

5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

a. Update on Metropolitan’s algae control 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. ADJOURNMENT
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REVISED AGENDA
Communications and Legislation Committee
Meeting with Board of Directors*

April 13, 2015
1:00 p.m. -- Room 2-456

---

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

2. Approval of the Minutes of the meeting of the Communications and Legislation Committee held March 9, 2015

3. CONSENT CALENDAR ITEMS — ACTION
   None

4. OTHER BOARD ITEMS — ACTION
   8-4 Express support for SB 385 (Hueso, D-San Diego) – Primary Drinking Water Standards: Hexavalent Chromium. (C&L)

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Added Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not subject to CEQA, and authorize the General Manager to express support for SB 385.

8-5 Express opposition, unless amended, to AB 647 (Eggman, D-Stockton) – Beneficial use: diversion of water underground. (C&L)

Added Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not subject to CEQA, and authorize the General Manager to express opposition, unless amended, to AB 647.

5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

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

b. Report on activities from Sacramento

7. MANAGEMENT REPORT

a. External Affairs Management report

8. FUTURE AGENDA ITEMS

9. ADJOURNMENT
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Legal and Claims Committee
Meeting with Board of Directors*

April 14, 2015

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

Tuesday, April 14, 2015
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 March 10, 2015

3. CONSENT CALENDAR ITEMS — ACTION

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

8-6 Report on *San Diego County Water Authority v. Metropolitan Water District of Southern California, et al.*, San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466 and CPF-14-514004; and in connection with these matters authorize a contract for legal services with Quinn Emanuel Urquhart & Sullivan, LLP for an amount not to exceed $1,100,000; and authorize increase in maximum amount payable under contract for legal services with Miller Barondess, LLP by $150,000 to an amount not to exceed $250,000.

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

(To be mailed separately)

5. **BOARD INFORMATION ITEMS**

None

6. **COMMITTEE ITEMS**

   a. General Counsel’s report of monthly activities

7. **FOLLOW-UP ITEMS**

None

8. **FUTURE AGENDA ITEMS**

9. **ADJOURNMENT**

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Real Property and Asset Management Committee

Meeting with Board of Directors*

April 14, 2015

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

Tuesday, April 14, 2015
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 Real Property and Asset Management Committee held March 10, 2015

3. CONSENT CALENDAR ITEMS -- ACTION

7-4 Authorize granting a 2.4226-acre non-standard permanent easement to Southern California Edison on the Metropolitan-owned Robert B. Diemer Water Treatment Plant located in Orange County. (RP&AM)

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action was previously addressed in the certified 2006 Final SEIR and in the related documents (i.e., findings, SOC, and MMRP), and that no further environmental analysis or documentation is required, and authorize the General Manager to grant a permanent easement to Southern California Edison.

Date of Notice: April 2, 2015
Authorize granting a permanent easement to the city of Perris on Metropolitan-owned property located in Riverside County. (RP&AM)

Recommendation:

Option #1:

Review and consider information provided in the certified Environmental Impact Report and adopt the Lead Agency’s findings related to the proposed action, and authorize the General Manager to grant a permanent easement to the city of Perris.

4. OTHER BOARD ITEMS – ACTION

None

5. COMMITTEE ITEMS

None

6. MANAGEMENT REPORT

a. Real Property Development and Management Manager's Report

7. FUTURE AGENDA ITEMS

8. ADJOURNMENT

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Date of Notice: April 2, 2015
Organization, Personnel and Technology Committee

Meeting with Board of Directors*

April 14, 2015

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

Monday, April 14, 2015
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 Organization, Personnel and Technology Committee held March 9, 2015

3. CHAIRMAN’S REPORT

4. COMMITTEE ITEMS


   b. Revision of Department Head Evaluation Process and Timeline
5.  ADJOURNMENT

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REVISED AGENDA

Regular Board Meeting

April 14, 2015

12:00 p.m. – Board Room

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

1. Call to Order
   (a) Invocation: Gilbert Ivey, Assistant General Manager/Chief Administrative Officer
   (b) Pledge of Allegiance: Director Michele Martinez

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 March 10, 2015. (A copy has been mailed to each Director)
      Any additions, corrections, or omissions

REVISED: Date of Notice: April 7, 2015
B. Report on Directors' events attended at Metropolitan expense for month of March

C. Approve preparation of Memorial Resolution for past Director Glenn Brown

D. Approve preparation of Memorial Resolution for past Director Vernon Watkins

E. Approve preparation of Commendatory Resolution for former Director Daniel Griset

F. Approve preparation of Commendatory Resolution for former Director Phillip Hawkins

G. Approve committee assignments

H. Chairman’s Monthly Activity Report

6. DEPARTMENT HEADS' REPORTS

A. General Manager’s summary of Metropolitan’s activities for the month of March

B. General Counsel’s summary of Legal Department activities for the month of March

C. General Auditor’s summary of activities for the month of March

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

7. CONSENT CALENDAR ITEMS — ACTION

7-1 Appropriate $700,000; and award $418,600 contract to T. E. Roberts, Inc. for structural protection of the Upper Feeder (Approp. 15480). (E&O)
Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is categorically exempt, and
a. Appropriate $700,000; and
b. Award $418,600 contract to T. E. Roberts, Inc. for structural protection of the Upper Feeder.

7-2 Authorize reimbursable agreement for relocation of the Middle Feeder within the city of Monterey Park. (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA, and alternatively, is exempt from CEQA under the State CEQA Guidelines, and authorize the General Manager to execute an agreement with Southern California Edison for relocation of the Middle Feeder.

7-3 Appropriate $680,000; and award $374,867 contract to Kaveh Engineering & Construction, Inc. to upgrade the Iron Mountain Pumping Plant Vehicle Service Center (Approp. 15438). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is categorically exempt, and
a. Appropriate $680,000; and
b. Award $374,867 contract to Kaveh Engineering & Construction, Inc. to upgrade the vehicle service center at Iron Mountain Pumping Plant.

7-4 Authorize granting a 2.4226-acre permanent easement to Southern California Edison on the Metropolitan-owned Robert B. Diemer Water Treatment Plant located in Orange County. (RP&AM)

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action was previously addressed in the certified 2006 Final SEIR and in the related documents (i.e., findings, SOC, and MMRP), and that no further environmental analysis or documentation is required, and authorize the General Manager to grant a permanent easement to Southern California Edison.
7-5 Authorize granting a permanent easement to the city of Perris on Metropolitan-owned property located in Riverside County. (RP&AM)

Recommendation:

Option #1:

Review and consider information provided in the certified Environmental Impact Report and adopt the Lead Agency’s findings related to the proposed action, and authorize the General Manager to grant a permanent easement to the city of Perris.

(END OF CONSENT CALENDAR)

8. OTHER BOARD ITEMS — ACTION

8-1 Adopt resolutions fixing and adopting a Readiness-to-Serve Charge and a Capacity Charge for calendar year 2016. (F&I)

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not defined as a project and is not subject to CEQA, and
a. Adopt resolution to fix and adopt a Readiness-to-Serve Charge; and
b. Adopt resolution to fix and adopt a Capacity Charge.

8-2 Appropriate $41 million; award $31,762,914 contract to J. F. Shea Construction, Inc. to rehabilitate filters at the F. E. Weymouth Water Treatment Plant; and authorize increase of $815,000 to agreement with MWH Americas, Inc., for a new not-to exceed total of $2.09 million (Approp. 15477). (E&O)
Recommendation:

Option #1:

Certify that the Final EIR has been completed in compliance with CEQA and the State CEQA Guidelines; certify that the Board has reviewed and considered the information presented in the Final EIR; certify that the Final EIR reflects Metropolitan’s independent judgment and analysis; and adopt the Findings, the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, and

a. Appropriate $41 million;
b. Award $31,762,914 contract to J. F. Shea Construction, Inc. to rehabilitate filters at the Weymouth plant; and
c. Authorize increase of $815,000 to the existing agreement with MWH Americas, Inc., for a new not-to-exceed total of $2.09 million.

Revised 8-3 Express support for Governor’s Executive Order B-29-15; declare Water Supply Condition for 2015; approve implementation of Water Supply Allocation Plan; adopt supporting resolution; and conduct public hearing. (WP&S)

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed actions are statutorily and categorically exempt, are not defined as a project, and are not subject to CEQA, and

a. Express support for the Governor’s call for a 25 percent reduction in consumer water use and Executive Order B-29-15;
b. Declare a “Water Supply Condition 3 – Water Supply Allocation”;
c. Implement the Water Supply Allocation Plan at a Level 3 Regional Shortage Level, effective July 1, 2015, through June 30, 2016;
d. Adopt the Water Supply Allocation Plan Level 3 allocation as a water conservation program pursuant to Water Code Section 375 et seq.; and

e. Adopt the resolution shown in Attachment 3 of the board letter implementing actions listed above.

8-4 Express support for SB 385 (Hueso, D-San Diego) – Primary Drinking Water Standards: Hexavalent Chromium. (C&L)

Added Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not subject to CEQA, and authorize the General Manager to express support for SB 385.
8-5 Express opposition, unless amended, to AB 647 (Eggman, D-Stockton) – Beneficial use: diversion of water underground. (C&L)

Added Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not subject to CEQA, and authorize the General Manager to express opposition, unless amended, to AB 647.

8-6 Report on San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466 and CPF-14-514004; and in connection with these matters authorize a contract for legal services with Quinn Emanuel Urquhart & Sullivan, LLP for an amount not to exceed $1,100,000; and authorize increase in maximum amount payable under contract for legal services with Miller Barondess, LLP by $150,000 to an amount not to exceed $250,000. (L&C)

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

9. BOARD INFORMATION ITEMS

None

10. FUTURE AGENDA ITEMS

11. ADJOURNMENT

REVISED: Date of Notice: April 7, 2015
NOTE: At the discretion of the Board, all items appearing on this agenda and all committee agendas, whether or not expressly listed for action, may be deliberated and may be subject to action by the Board.

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

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

Requests for a disability related modification or accommodation, including auxiliary aids or services, in order to attend or participate in a meeting should be made to the Board Executive Secretary in advance of the meeting to ensure availability of the requested service or accommodation.
Summary Report for
The Metropolitan Water District of Southern California
Board Meeting
April 14, 2015

COMMITTEE ASSIGNMENTS
Director Martinez was assigned to the Finance and Insurance Committee, Communications and Legislation Committee, and Water Planning and Stewardship Committee. (Agenda Item 5G)

FINANCE AND INSURANCE COMMITTEE
Adopted resolution to fix and adopt a Readiness-to-Serve Charge; and adopted resolution to fix and adopt a Capacity Charge for calendar year 2016. (Agenda Item 8-1)

ENGINEERING AND OPERATIONS COMMITTEE
Appropriated $41 million; awarded $31,762,914 contract to J. F. Shea Construction, Inc. to rehabilitate filters at the Weymouth plant; and authorized increase of $815,000 to the existing agreement with MWH Americas, Inc., for a new not-to-exceed total of $2.09 million. (Agenda Item 8-2)

WATER PLANNING AND STEWARDSHIP COMMITTEE
Expressed support for Governor’s Executive Order B-29-15; expressed support for the recommendations in the Chairman’s letter to the Governor regarding the Executive Order; directed staff to work with the State Water Resources Control Board regarding implementation of the Governor’s Executive Order; declared Water Supply Condition 3; approved implementation of Water Supply Allocation Plan at a Level 3 Regional Shortage Level for the period July 1, 2015 through June 30, 2016; adopted the Level 3 allocation as a water conservation program pursuant to Water Code Section 375; expressed the intent of the Board to review the matter again in December 2015; adopted supporting resolution; and conducted public hearing at the committee. (Agenda Item 8-3)

COMMUNICATIONS AND LEGISLATION COMMITTEE
Authorized the General Manager to express support for SB 385 (Hueso, D-San Diego) – Primary Drinking Water Standards: Hexavalent Chromium. (Agenda Item 8-4)

Authorized the General Manager to express opposition, unless amended, to AB 647 (Eggman, D-Stockton) - Beneficial use: diversion of water underground. (Agenda Item 8-5)

LEGAL AND CLAIMS COMMITTEE
In connection with San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466 and CPF-14-514004, authorized a contract for legal services with Quinn Emanuel Urquhart & Sullivan, LLP for an amount not to exceed $1,100,000; and authorized increase in maximum amount payable under contract for legal services with Miller Barondess, LLP by $150,000 to an amount not to exceed $250,000. (Agenda Item 8-6)
CONSENT CALENDAR

In other action, the Board:

Appropriated $700,000; and awarded $418,600 contract to T. E. Roberts, Inc. for structural protection of the Upper Feeder. (Approp. 15480). (Agenda Item 7-1)

Authorized the General Manager to execute an agreement with SCE for relocation of the Middle Feeder within the city of Monterey Park. (Agenda Item 7-2)

Appropriated $680,000; and awarded $374,867 contract to Kaveh Engineering & Construction, Inc. to upgrade the vehicle service center at Iron Mountain Pumping Plant. (Approp. 15438) (Agenda Item 7-3)

Authorized granting a 2.4226-acre permanent easement to Southern California Edison on the Metropolitan-owned Robert B. Diemer Water Treatment Plant located in Orange County. (Agenda Item 7-4)

Authorized granting a permanent easement to the city of Perris on Metropolitan-owned property located in Riverside County. (Agenda Item 7-5)

OTHER MATTERS:

In other action, the Board:

Approved preparation of Memorial Resolution for past Director Glenn Brown. (Agenda Item 5C)

Approved preparation of Memorial Resolution for past Director Vernon Watkins. (Agenda Item 5D)

Approved preparation of Commendatory Resolution for former Director Daniel Griset. (Agenda Item 5E)

Approved preparation of Commendatory Resolution for former Director Phillip Hawkins. (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.
Office of the Board of Directors

April 13, 2015

The Honorable Edmund G. Brown
Governor of California
State Capital, Suite 1173
Sacramento, CA 95814

Dear Governor Brown:

I want to thank you for the opportunity to meet with you and other water leaders across the State last week to discuss the drought emergency. Metropolitan supports and appreciates your strong leadership in managing this statewide crisis.

I do feel compelled as Chairman of the Board for the Metropolitan Water District of Southern California to share with you some of the perspective we bring to this situation and the statewide call to cut urban consumption by 25%.

Southern California has led the state these past 25 years in establishing a strong conversation ethic that reduces water demands every year, not just in times of drought. We use less water to serve 19 million Californians today than we used to serve 14 million in 1990. We have achieved this result by directly investing more than $400 million in conservation efforts, reducing our per capita usage across Southern California by over 25%. Metropolitan also sponsored the legislation in 2009 that called for a 20% reduction in per capita use by 2020 and we are on target to meet that goal.

We also did more than focus on water conservation. In order to ensure water reliability, we developed new local supplies by investing over $350 million in water recycling and reclamation, brackish water desalination and groundwater cleanup. We made our region more drought resistant by building enhanced water treatment and new water storage facilities, including both surface and groundwater storage. All told Southern California has spent over $12 billion since the 1990’s on water delivery facilities to better serve our region.

Since your visit to Metropolitan in February 2014, Metropolitan has stepped up our efforts to deal with this drought. This past year we have spent $100 million on conversation rebates alone and by the end of this year our service area will have singlehandedly met your statewide goal of removing fifty million square feet of lawn. Metropolitan also raised its financing support of
The Honorable Edmund G. Brown  
Page 2  
April 13, 2015  

recycled and reclaimed water by more than 50%, increased funding for all our other consumer  
rebate programs and spent $5.5 million on public outreach and awareness. All of this was on top  
of the individual efforts of the cities and water districts throughout our area that have either  
supplemented our programs or ran their own.  

These past few days there have been many in our service area that have expressed frustration to  
me that by measuring water reduction from 2013 as the new target, our past 25 years of  
investment and leadership on water management has either been forgotten or ignored. I hear  
complaints that other regions that have done little until recently can now easily meet this goal by  
simply adjusting their outdoor watering schedule or take steps on toilets and showers that we did  
in the early 1990’s.  

Despite this frustration, Metropolitan believes that we need to stand together as one state and  
unite in dealing with this drought. I am asking my Board to support your goal of a 25%  
reduction in water usage and for all Southern Californians to dramatically cut their water usage.  
I will direct our staff to work cooperatively with the State Water Resources Control Board to  
develop a practical plan that can meet this ambitious goal. Today I am asking our Board to  
approve mandatory restrictions on deliveries of Metropolitan water to comply with the Executive  
Order. And next month I will be asking our Board for yet another significant increase in funding  
for conservation reates and turf removal to help Southern Californians meet this target.  

I invite you to come meet with Metropolitan and mayors of our cities to hear how we are going  
to work with the state on meeting this goal and what the impact will be to our cities and our  
economy. And I would ask that you and the state work with us to provide our cities and water  
districts with the tools to help meet this goal.  

Thank you again for your leadership during this crisis. I look forward to further dialogue with  
you and your leadership team as we work together to make California a stronger state.  

Sincerely,  

[Signature]

Randy Record  
Chairman of the Board  

cc: MWD Board of Directors  
    F. Marcus, SWRCB Chair
April 22, 2015

Attention: Imported Water Committee

Colorado River Board Representative’s Report (Information)

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

Discussion
This report covers activities from the April 15, 2015 CRB meeting held in Ontario, California. The CRB meeting included special presentations by Denise Hosler of the Bureau of Reclamation’s Research Group and Chuck Cullom from the Central Arizona Water Conservation District, as well as informational reports from CRB staff on Colorado River Basin Programs. This report also includes an overview of the April tour celebrating the tenth anniversary of the Lower Colorado River Multi-Species Conservation Program.

Special Presentations:
Quagga Mussel Research
Denise Hosler from the Environmental Applications and Research Group of the Bureau of Reclamation (Reclamation) presented on the current research and status of Quagga mussels in the Colorado River. Quagga mussels first appeared in Lake Mead in 2007. These mussels are an invasive species that can create negative impacts on water quality; damage physical structures and mechanical equipment; clog drainage and inflow structures; and cause other problems in water bodies. There are a variety of prevention and control methods for this species. Reclamation has an outreach campaign focused on preventing the spread of Quagga mussels by boat. There are also control methods that have shown success including coating surfaces to discourage mussel settlement and using fish species that eat Quaggas.

Arizona’s Plan for Intentionally Created Surplus (ICS)
Chuck Cullom, Central Arizona Project (CAP) Colorado River Programs Manager, presented on the proposed plan for development of an ICS account for Arizona as a follow up to a preliminary report at the CRB meeting in November 2014. CAP is proposing a variety of programs to reduce impacts of a Colorado River shortage including storage and recovery of groundwater, Lake Mead reservoir protection planning, innovative conservation efforts, and supply augmentation projects. Through these programs, CAP plans to develop 345,000 acre-feet of water to be stored in Lake Mead as system water and ICS through 2017. Arizona plans on requesting forbearance from California and Nevada contractors in the upcoming weeks, which is required as part of their ICS creation. Other steps in the administrative process are also underway to get approvals that would allow creation of ICS account for Arizona.
Colorado River Basin Program Updates:
Water Supply and Reservoir Conditions
A water supply and reservoir conditions update was provided with data from April 6 (Table 1). A more detailed water supply report is included as Attachment 1.

Table 1. Colorado River Reservoir Conditions

<table>
<thead>
<tr>
<th>Conditions as of April 6, 2015</th>
<th>Volume (million acre-feet)</th>
<th>Percent of Capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total System Storage</td>
<td>28.76</td>
<td>48%</td>
</tr>
<tr>
<td>Lake Powell</td>
<td>10.91</td>
<td>45%</td>
</tr>
<tr>
<td>Lake Mead</td>
<td>10.35</td>
<td>40%</td>
</tr>
<tr>
<td>Unregulated Inflow to Lake Powell for Water Year 2015</td>
<td>7.20</td>
<td>66% of Average</td>
</tr>
</tbody>
</table>

As of April 5, the snowpack was predicted to be 61 percent of average. March 9 was the peak of the snowpack for the season.

California Drought Update
The March 31, 2015 Drought Monitor map for California indicates that over 40 percent of the State continues to be classified in “exceptional drought.” On April 1, Governor Brown announced the first ever statewide mandatory cutbacks through Executive Order B-29-15. The Governor also approved legislation for emergency funding to allocate $1 billion in drought relief and infrastructure funding.

Basin States Drought Contingency Planning
The Lower Basin States continue to implement the Memorandum of Understanding for Pilot Drought Response Actions entered among the Lower Basin States, the United States, and certain municipal water agencies in December 2014. A public announcement regarding awards is expected in April.

Colorado River Basin Water Supply and Demand Study
The Phase I reports as part of the Next Steps process of the Colorado River Basin Water Supply and Demand Study are expected to be released in April or May.

Minute 319
A binational meeting of the U.S. and Mexican Commissioners to review the progress of Minute 319 is planned for May 14, 2015 in San Diego.

Glen Canyon Dam Adaptive Management Program
The Department of Interior (DOI) reported that the draft Environmental Impact Statement (EIS) for the Long-Term Experimental and Management Plan for Glen Canyon Dam is expected to be distributed to cooperating agencies next month and released for public comment in July. The Technical Work Group has their next meeting April 21-22.
Lower Colorado River Multi-Species Conservation Program (MSCP)
The MSCP hosted a tenth anniversary celebration and tour of the conservation areas on April 6-9. The tour began with a ceremony with speakers including Reclamation Commissioner Estevan Lopez describing the program, its planning, and its accomplishments. The most recent site, Laguna Division Conservation Area, was dedicated with the ceremonious planting of the final cottonwood trees. The tour visited established and proposed habitat conservation areas along the Lower Colorado River from the United States-Mexico border up to Laughlin, Nevada.

Announcements
Vice Chair Selection
The Water Authority’s Representative on the CRB, Director Doug Wilson, was selected as vice chairman.

Prepared by: Kara Mathews, Assistant Water Resources Specialist
Reviewed by: Dan Denham, Colorado River Program Director
Approved by: Doug Wilson, CRB Representative
Attachment: CRB Water Supply Report
### LOWER COLORADO WATER SUPPLY REPORT

**River Operations**

**Bureau of Reclamation**

Questions: BCOOWaterops@usbr.gov

(702) 293-8373

http://www.usbr.gov/lc/region/g4000/weekly.pdf

<table>
<thead>
<tr>
<th>PERCENT</th>
<th>Storage</th>
<th>1000 ac-ft (kaf) above mean sea level</th>
<th>7-Day Release (CFS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CURRENT</td>
<td>STORAGE</td>
<td>LAKE POWELL 45% 10,909 3590.97 10,300</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>* LAKE MEAD 40% 10,350 1084.06 17,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>LAKE MOHAVE 93% 1,684 642.45 18,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>LAKE HAVASU 93% 574 447.67 13,600</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TOTAL</td>
<td>SYSTEM CONTENTS ** 48% 28,758</td>
<td></td>
</tr>
<tr>
<td></td>
<td>LAST</td>
<td>YEAR 47% 28,075</td>
<td></td>
</tr>
</tbody>
</table>

* Percent based on capacity of 26,120 kaf or elevation 1219.6 feet.

** TOTAL SYSTEM CONTENTS includes Upper & Lower Colorado River Reservoirs, less Lake Mead exclusive flood control space.

<table>
<thead>
<tr>
<th>System</th>
<th>PERCENT</th>
<th>Content</th>
<th>Elev. (Feet)</th>
<th>7-Day Release</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salt/Verde System</td>
<td>58%</td>
<td>1,333</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Painted Rock Dam</td>
<td>0%</td>
<td>0</td>
<td>530.00</td>
<td>0</td>
</tr>
<tr>
<td>Alamo Dam</td>
<td>7%</td>
<td>67</td>
<td>1094.59</td>
<td>25</td>
</tr>
</tbody>
</table>

### Forecasted Water Use for Calendar Year 2015 (as of 04/06/2015) (values in kaf)

<table>
<thead>
<tr>
<th>State</th>
<th>Nevada</th>
<th>California</th>
<th>Arizona</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOUTHERN NEVADA WATER SYSTEM</td>
<td>246</td>
<td>4,345</td>
<td>2,800</td>
</tr>
<tr>
<td>OTHERS</td>
<td>33</td>
<td>1,571</td>
<td>1,229</td>
</tr>
<tr>
<td>METROPOLITAN WATER DISTRICT OF CALIFORNIA</td>
<td>812</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IRRIGATION DISTRICTS</td>
<td>3,394</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OTHERS</td>
<td>139</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CENTRAL ARIZONA PROJECT</td>
<td></td>
<td></td>
<td>1,571</td>
</tr>
<tr>
<td>OTHERS</td>
<td></td>
<td></td>
<td>1,229</td>
</tr>
<tr>
<td>TOTAL LOWER BASIN USE</td>
<td></td>
<td></td>
<td>7,425</td>
</tr>
<tr>
<td>DELIVERY TO MEXICO - 2015 (Mexico Scheduled Delivery + Preliminary Yearly Excess)</td>
<td>1,524</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### OTHER SIGNIFICANT INFORMATION

**UNREGULATED INFLOW INTO LAKE POWELL - APRIL FINAL FORECAST DATED 04/02/2015**

<table>
<thead>
<tr>
<th>Water Year 2015</th>
<th>7.182</th>
<th>66%</th>
</tr>
</thead>
<tbody>
<tr>
<td>April-July 2015</td>
<td>3.750</td>
<td>52%</td>
</tr>
<tr>
<td>March Observed</td>
<td>0.552</td>
<td>83%</td>
</tr>
<tr>
<td>April Inflow</td>
<td>0.720</td>
<td>68%</td>
</tr>
</tbody>
</table>

### Current Basin Snowpack

<table>
<thead>
<tr>
<th>Water Year 2015 Precip to Date</th>
<th>74% (13.8&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Basin Snowpack</td>
<td>61% (9.8&quot;)</td>
</tr>
</tbody>
</table>

* Delivery to Mexico forecasted yearly excess calculated using year-to-date observed and projected excess.
ARIZONA, CALIFORNIA, NEVADA, MEXICO
FORECAST OF END OF YEAR CONSUMPTIVE USE
FORECAST BASED ON USE TO DATE AND APPROVED ANNUAL WATER ORDERS 1
(ACRE-FEET)

WATER USE SUMMARY

<table>
<thead>
<tr>
<th></th>
<th>Use To Date</th>
<th>Forecast Use</th>
<th>Approved Use</th>
<th>Excess to Approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARIZONA</td>
<td>697,646</td>
<td>2,800,373</td>
<td>2,799,878</td>
<td>495</td>
</tr>
<tr>
<td>CALIFORNIA</td>
<td>969,731</td>
<td>4,345,317</td>
<td>4,351,727</td>
<td>-6,410</td>
</tr>
<tr>
<td>NEVADA</td>
<td>31,823</td>
<td>279,662</td>
<td>300,000</td>
<td>-20,338</td>
</tr>
<tr>
<td>STATES TOTAL</td>
<td>1,699,200</td>
<td>7,425,352</td>
<td>7,451,605</td>
<td>-26,253</td>
</tr>
<tr>
<td>MEXICO IN SATISFACTION OF TREATY (Including downward delivery)</td>
<td>575,440</td>
<td>1,523,713</td>
<td>1,500,000</td>
<td>23,713</td>
</tr>
<tr>
<td>MEXICO IN EXCESS OF TREATY</td>
<td>573,810</td>
<td>1,500,000</td>
<td>1,500,000</td>
<td>0</td>
</tr>
<tr>
<td>BYPASS PURSUANT TO MINUTE 242</td>
<td>1,630</td>
<td>23,713</td>
<td>23,713</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL LOWER BASIN &amp; MEXICO</td>
<td>2,305,338</td>
<td>9,074,873</td>
<td>9,074,873</td>
<td>0</td>
</tr>
</tbody>
</table>

1/ Incorporates Jan-Jan USGS monthly data and 80 daily reporting stations which may be revised after provisional data reports are distributed by the USGS. Use to date estimated for users reporting monthly and annually.
2/ These values reflect adjusted apportionments. See Adjusted Apportionment calculation on each state page.
3/ Includes unmeasured returns based on estimated consumptive use/diversion ratios by user from studies provided by Arizona Department of Water Resources, Colorado River Board of California, and Reclamation.

Graph notes: Jan 1 forecast use is scheduled use in accordance with the Annual Operating Plan’s state entitlements, available unused entitlements, and over-run paybacks. A downward sloping line indicates use at a lower rate than scheduled, upward sloping is above schedule, and a flat line indicates a use rate equal to schedule. Lower priority users such as CAP, MWD, and Robt.B.Griffith may adjust use rates to meet state entitlements as higher priority use deviates from schedule. Abrupt changes in the forecast use line may be due to a diversion schedule change or monthly updating of provisional realtime diversions.
## California Water Users

### Forecast of End of Year Consumptive Use

#### Forecast Based on Use to Date and Approved Annual Water Orders

**California Schedules and Approvals**

**Historic Use Records (Water Accounting Reports)**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Use To Date</strong></td>
<td><strong>Forecast Use</strong></td>
<td><strong>Estimated Use</strong></td>
<td><strong>Diversion To Date</strong></td>
<td><strong>Forecast Diversion</strong></td>
<td><strong>Approved Diversion</strong></td>
<td><strong>Excess to Approved Diversion</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CALIFORNIA PUMPERS</strong></td>
<td>404</td>
<td>1,680</td>
<td>1,680</td>
<td>---</td>
<td>732</td>
<td>3,047</td>
<td>3,047</td>
<td>0</td>
</tr>
<tr>
<td><strong>FORT MOJAVE INDIAN RESERVATION, CA</strong></td>
<td>2,150</td>
<td>6,662</td>
<td>8,996</td>
<td>---</td>
<td>3,996</td>
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### California Adjusted Apportionment Calculation

- **California Basic Apportionment**: 4,400,000
- **Conservation for Salton Sea Restoration - 2010**: -23,273
- **Creation of Extraordinary Conservation ICS (IID)**: -25,000
- **Total State Adjusted Apportionment**: 4,351,727
- **Excess to Total State Adjusted Apportionment**: -6,410

### ISG Annual Target Comparison Calculation

- **Priorities 1, 2, 3b Use (PVID+YPRD+Island+PVID Mesa)**: 487,583
- **MWD Adjustment**: -67,583
- **Total California Agricultural Use (PVID+YPRD+Island+IID+CVWD)**: 3,394,171
- **California Agricultural Paybacks**: 23,273
- **Misc. PPRs Covered by IID and CVWD**: 14,500
- **California ICS Creation (IID ICS)**: 25,000
- **Total Use for Target Comparison**: 3,389,361
- **ISG Annual Target (Exhibit B)**: 3,448,000
- **Amount over/(under) ISG Annual Target**: -58,639

**Notes:**
- Click on California Schedules and Approvals above for incoming diversion schedules and approvals.
- **1/** Pending approval by Imperial Irrigation District's Board of Directors.
- **2/** Includes MWD Adjustment, California Agricultural Use and Paybacks, IID-CVWD covered PPRs, and taking out the MWD-CVWD Exchange

---

**NOTE:**
- Diversions and uses that are pending approval are noted in red italics.
- Water users with a consumptive use entitlement - **Excess to Estimated Use** column indicates overrun/underrun of entitlement. Dash in this column indicates water user has a diversion entitlement.
- Water user with a diversion entitlement - **Excess to Approved Diversion** column indicates overrun/underrun of entitlement. Dash in this column indicates water user has a consumptive use entitlement.

---

**Diagram:**

- IID Forecast
- CVWD Forecast
- MWD Forecast
- CA Priority's 1 & 2 Forecast
- YPRD Forecast
- PVID Forecast
### Arizona Water Users Forecast of End of Year Consumptive Use

**Forecast Based on Use to Date and Approved Annual Water Orders**

#### Arizona Schedules and Approvals

#### Historic Use Records (Water Accounting Reports)

<table>
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<tr>
<th>WATER USER</th>
<th>Use To Date</th>
<th>Forecast Use</th>
<th>Estimated Use</th>
<th>Excess to Estimated Use</th>
<th>Diversion To Date</th>
<th>Forecast Diversion</th>
<th>Approved Diversion</th>
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### Arizona Adjusted Apportionment Calculation

| Arizona Basic Apportionment | 2,800,000 |
| Payback of IOPP overruns - (Cocopah and Beattie) | -122 |
| CAGRD/YMIDD Pilot Conservation Program | 1 |

Total Adjusted Apportionment: 2,799,876

Excess to Total State Adjusted Apportionment: 495

Estimated Allowable Use for CAP: 1,576,674

**Notes:**

- Diversions and uses that are pending approval are noted in red italic.
- Water users with a consumptive use entitlement - Excess to Estimated Use column indicates overrun/underrun of entitlement. Dash in this column indicates water user has a diversion entitlement.
- Water user with a diversion entitlement - Excess to Approved Diversion column indicates overrun/underrun of entitlement. Dash in this column indicates water user has a consumptive use entitlement.
# Nevada Water Users Forecast of End of Year Consumptive Use

## Forecast Based on Use to Date and Approved Annual Water Orders

### Nevada Schedules and Approvals

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<td>LAKE MEAD NRA, NV - Diversions from Lake Mohave</td>
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<td>3,886</td>
<td>---</td>
<td>860</td>
<td>5,460</td>
<td>5,800</td>
<td>-340</td>
</tr>
<tr>
<td>LAS VEGAS WASH RETURN FLOWS</td>
<td>-59,292</td>
<td>-206,709</td>
<td>-201,668</td>
<td>---</td>
<td>92,688</td>
<td>494,276</td>
<td>510,000</td>
<td>-15,731</td>
</tr>
</tbody>
</table>

### Nevada Adjusted Apportionment Calculation

- **Nevada Basic Apportionment**: 300,000
- **Excess to Total State Adjusted Apportionment**: -20,338

### Tributary Conservation & Imported Intentionally Created Surplus

- Total Requested Tributary Conservation Intentionally Created Surplus: 37,000
- Total Requested Imported Conservation Intentionally Created Surplus: 9,000
- 5% System Cut for Creation of Intentionally Created Surplus Left in Lake Mead: -2,300
- Total Intentionally Created Surplus Left in Lake Mead: 43,700

### Nevada Water Use Forecast

#### Robert Griffith Forecast

- Forecast Use, ac-ft: 476,000
- Jan: 406,000
- Feb: 416,000
- Mar: 426,000
- Apr: 436,000
- May: 446,000
- Jun: 456,000
- Jul: 466,000
- Aug: 476,000
- Sep: 200,000
- Oct: 210,000
- Nov: 220,000
- Dec: 230,000

#### LV Wash Return Forecast

- Forecast Use, ac-ft: 210,000
- Jan: 200,000
- Feb: 205,000
- Mar: 210,000
- Apr: 215,000
- May: 220,000
- Jun: 225,000
- Jul: 230,000
- Aug: 235,000
- Sep: 240,000
- Oct: 245,000
- Nov: 250,000
- Dec: 255,000

### Notes

- Diversions and uses that are pending approval are noted in red italic.
- Water users with a consumptive use entitlement - Excess to Estimated Use column indicates overrun/underrun of entitlement. Dash in this column indicates water user has a diversion entitlement.
- Water user with a diversion entitlement - Excess to Approved Diversion column indicates overrun/underrun of entitlement. Dash in this column indicates water user has a consumptive use entitlement.

---

**NOTE:** Click on Nevada Schedules and Approvals above for incoming diversion schedules and approvals.
**U.S. Drought Monitor**

**California**

![Map of California showing drought conditions](image)

**March 31, 2015**

(Released Thursday, Apr. 2, 2015)

Valid 7 a.m. EST

<table>
<thead>
<tr>
<th>Drought Conditions (Percent Area)</th>
<th>D1</th>
<th>D2</th>
<th>D3</th>
<th>D4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current</td>
<td>0.15</td>
<td>99.95</td>
<td>99.11</td>
<td>0.04</td>
</tr>
<tr>
<td>Last Week</td>
<td>0.15</td>
<td>99.95</td>
<td>99.11</td>
<td>0.04</td>
</tr>
<tr>
<td>J Months Ago</td>
<td>0.00</td>
<td>100.00</td>
<td>99.12</td>
<td>0.34</td>
</tr>
<tr>
<td>Start of Calendar Year</td>
<td>0.00</td>
<td>100.00</td>
<td>99.12</td>
<td>0.34</td>
</tr>
<tr>
<td>Start of Water Year</td>
<td>0.00</td>
<td>100.00</td>
<td>100.00</td>
<td>0.04</td>
</tr>
<tr>
<td>One Year Ago</td>
<td>0.00</td>
<td>100.00</td>
<td>99.01</td>
<td>0.91</td>
</tr>
</tbody>
</table>

**Interpretation:**
- D0: Abnormally Dry
- D1: Moderate Drought
- D2: Severe Drought
- D3: Exceptional Drought

This Drought Monitor focuses on broad-scale conditions. Local conditions may vary. See accompanying text summary for story-telling statements.

**Author:**
Eric Liebenthal
U.S. Department of Agriculture

http://droughtmonitor.unl.edu/
April 22, 2015

Attention: Imported Water Committee

Seven Basin States Update (Information)

Purpose
This report provides an update on hydrologic conditions, reservoir operations, and shortage predictions for the Colorado River.

Background
The Colorado River Basin is in a fifteen-year prolonged drought period. Below-average snowpack and inflows have resulted in supply volumes not coinciding with already reduced demands or allowing for much needed carry-over storage. The supply deficit has been made up through existing storage in Lakes Powell and Mead, causing storage volumes and reservoir elevation levels to decrease. Lake Mead reached an all-time low elevation in August 2014 and is currently approaching another record low. As lake levels continue to drop, there is an increased likelihood of triggering a shortage on the Lower Basin which would result in reduced allocations to some users as well as other restrictions to certain Lower Basin programs.

Hydrologic Conditions
The Upper Basin snowpack supplies the vast majority of water to the Colorado River system. This year, the combination of warm temperatures and low precipitation resulted in record low snowpack throughout the Colorado River Basin. Snow has completely melted out of a large portion of the lower and mid-level elevations with significant early snowmelt at higher elevations as well. Current snowpack is around 56 percent of average. Snowpack is the main driver of inflows to the Colorado River, which has resulted in very low forecasted unregulated inflows to Lake Powell for water year 2015—currently around 6.8 million acre-feet or 68 percent of average.

Lake Powell and Lake Mead are the two major Colorado River reservoirs with a combined storage capacity of over 50 million acre-feet. Storage in both reservoirs has been on a decreasing trend since the drought period started in 2000. As of April 20, Lake Powell contained 10.87 million acre-feet of storage, which is 45 percent of its capacity. Lake Mead is 39 percent full with 10.12 million acre-feet of water. The low inflow forecasts will result in the need to continue to supplement supplies with stored water from these reservoirs to meet downstream allocations.

Reservoir Operations
Every month, the Bureau of Reclamation (Reclamation) produces a 24-month study which models the river’s water budget and projects reservoir elevations over the upcoming two years. Reservoir releases for the coming year are based on the projected January 1 elevation levels of Lakes Powell and Mead shown in the August 24-month study. The projected elevation of Lake Powell determines its operational status for the upcoming year and indicates the associated release volume. Release volumes from Lake Powell incorporate conditions at Lake Mead as part of coordinated reservoir operations as outlined in the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (2007 Interim Guidelines).
The August 2014 24-month study determined that Lake Powell would be operated under its Upper Elevation Balancing Tier in water year 2015 which had an initial annual release of 8.23 million acre-feet. Under the 2007 Interim Guidelines when Lake Powell is operating in this tier, another review of the conditions at Lake Powell and Lake Mead will be performed based on the upcoming April’s study projections. The April 24-Month study produced last week indicates that Lake Powell’s water releases will likely be increased to 9.0 million acre-feet for water year 2015. The actual release volume is dependent on inflows to Lake Powell. Current projections indicate that 9.0 million acre-feet is the most likely release volume and there is only a 10 percent chance that the release would be at or below 8.9 million acre-feet.

The annual August 24-month study is also used to categorize Lake Mead’s operations for the upcoming year, which is determined by the projected January elevation of the reservoir. The August 2014 study indicated the January 1, 2015 projected elevation of Lake Mead was 1,083.4 feet, which categorized the reservoir as falling into normal or ICS surplus conditions for 2015 with all users receiving full deliveries.

**Shortage Predictions**

To date, an official shortage has never been declared on the river for the Lower Basin. However, the record-low elevation in Mead coupled with the trending multi-year dry hydrology throughout the Colorado River Basin indicates increased probabilities of shortages in the next few years (Table 1). Current projections indicate that there is greater than a 50 percent chance of shortage in each of the years 2017, 2018, and 2019.

<table>
<thead>
<tr>
<th>Probability of Lower Basin Shortage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Based on January 2015 Projections</td>
</tr>
<tr>
<td>2015</td>
</tr>
<tr>
<td>0%</td>
</tr>
</tbody>
</table>

The 2007 Interim Guidelines are the first set of rules established for allocating shortages of water on the Colorado River. The guidelines established surface elevation triggers on Lake Mead, which indicate the degree of shortage and determine the reductions in water apportioned to each of the Lower Basin States. Table 2 displays the trigger elevations for shortage deliveries and the amounts of shortage apportionments for California, Arizona, and Nevada. As part of the Minute 319 binational agreement, Mexico will share in shortage declarations on the river through reductions to its annual allocation of 1.5 million acre-feet. At or below the first shortage trigger elevation of 1,075 feet in Lake Mead, Mexico deliveries will be reduced by 50,000 acre-feet. Mexico’s deliveries will be reduced by 125,000 acre-feet if elevation drops below 1,025 feet.

California’s allocation does not change in shortage conditions. Due to California’s high priority rights on the river, it is largely protected from impacts of shortages and its annual allocation remains at 4.4 million acre-feet. The other Lower Basin states have begun planning and
preparations for future shortages. Arizona is developing a proposal to create system water (water produced and stored in the river for the benefit of the river system rather than an individual contractor) and develop an intentionally created surplus storage account in Lake Mead with hopes of building enough elevation in the reservoir to stave off a shortage declaration. Nevada would only face a small reduction to their allocation in a shortage but are concerned with declining lake elevations for another reason: the elevation of their intake pipes. Nevada is at risk of losing all diversion capabilities if Lake Mead drops below 1,000 feet in elevation. The Southern Nevada Water Authority (SNWA) is currently constructing an intake pipe that would allow Nevada to take water at all foreseeable elevations of Lake Mead (dead pool elevation is 897 feet and the intake pipe is around 860 feet).

### Table 2. Lake Mead Shortage Elevation Triggers and Reductions to Annual Allocations

<table>
<thead>
<tr>
<th>Lake Mead Operating Condition</th>
<th>Arizona</th>
<th>California</th>
<th>Nevada</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Normal Conditions</td>
<td>2.8 maf</td>
<td>4.4 maf</td>
<td>300,000 af</td>
<td>7.5 maf</td>
</tr>
<tr>
<td>Shortage Trigger A</td>
<td>2.48 maf</td>
<td>4.4 maf</td>
<td>287,000 af</td>
<td>7.167 maf</td>
</tr>
<tr>
<td>Elevation 1,075 to 1,050 ft</td>
<td>320,000 af</td>
<td>13,000 af</td>
<td>333,000 af</td>
<td></td>
</tr>
<tr>
<td>Shortage Trigger B</td>
<td>2.4 maf</td>
<td>4.4 maf</td>
<td>283,000 af</td>
<td>7.083 maf</td>
</tr>
<tr>
<td>Elevation 1,050 to 1,025 ft</td>
<td>400,000 af</td>
<td>17,000 af</td>
<td>417,000 af</td>
<td></td>
</tr>
<tr>
<td>Shortage Trigger C</td>
<td>2.32 maf</td>
<td>4.4 maf</td>
<td>280,000 af</td>
<td>7 maf</td>
</tr>
<tr>
<td>Elevation 1,025 ft or below</td>
<td>480,000 af</td>
<td>20,000 af</td>
<td>500,000 af</td>
<td></td>
</tr>
</tbody>
</table>

The Basin States are working together on basin-wide shortage and drought contingency planning efforts. In 2014, a Pilot Program for System Water Conservation was developed through an agreement between Reclamation, Denver Water, Metropolitan Water District of Southern California (MWD), SNWA, and Central Arizona Project (CAP) to fund the production of system water over the next two years using conservation measures. The Upper Basin States have also continued their drought contingency planning efforts through strategies including continued implementation of weather modification programs, planning for revised reservoir operations, and planning for demand management alternatives.
April 21, 2015

Attention: Water Planning Committee

Update on Supply Conditions and Drought Response Actions by the State Water Resources Control Board and Metropolitan Water District of Southern California (Discussion)

Purpose
To provide an update on: 1) supply conditions; 2) Metropolitan Water District Board April 2015 action to set a 15% supply cutback level; and 3) State Water Resources Control Board draft Drought Emergency Water Conservation Regulation. Staff will provide recommended drought response actions to the Board for their consideration at the May 14, 2015 Special Board meeting.

Background
California is experiencing its fourth consecutive dry year, with the current water year considered critically dry. Snow water content in the northern Sierra was at a record low level of five percent of average for April 1, the date which usually marks the maximum accumulation of snow pack before it begins to melt. The low figure reflects California’s below average precipitation and the warming trend that made this winter the warmest in the state’s recorded history. What precipitation there was fell mostly as rain due to warmer temperatures. According to the Department of Water Resources (DWR), under normal conditions, California’s snowpack supplies about 30 percent of the state’s water needs as it melts in the spring and summer. Lake Oroville on the State Water Project (SWP) is currently at 51% of capacity and San Luis Reservoir is at 64% of capacity. DWR has stated that supplies in San Luis Reservoir will generally be utilized to meet the SWP contractors’ needs this summer. The current SWP allocation is at 20% of the contractors’ requested deliveries.

With the critically dry conditions this year and possibility that the current drought could extend into 2016 and beyond, it is vital that the residents and businesses of the San Diego region support Governor Brown’s call for increased conservation efforts. The savings will provide for better management of the supplies available and help maintain storage reserves. The drought conditions are resulting in severe impacts to California’s water supplies and its ability to meet all of the water demands in the state.

In response to the developing dry conditions, the Water Authority activated its Water Shortage and Drought Response Plan in February 2014 and notified its member agencies of a Drought Watch, voluntary conservation. In July 2014, the Water Authority took action again, notifying agencies of a Drought Alert condition, which includes mandatory water use restrictions. The actions were based on the need to increase conservation efforts in order to preserve water supplies in storage and assist member agencies in complying with the State Water Resources Control Board (State Water Board) emergency regulation.

The Water Authority and its member agencies have developed an orderly, progressive and coordinated approach to preparing for and managing water shortages due to drought. The 2006
Water Planning Committee  
April 21, 2015  
Page 2 of 5

Water Shortage and Drought Response Plan established a comprehensive and regional approach to managing droughts that reduces the impacts of supply shortages. During shortages, the plan also includes a fair and equitable means to allocate available supplies to the member agencies. The Water Authority worked closely with its member agencies in 2008 to also develop a model drought response ordinance to provide consistency throughout the region. The water-use restrictions in the model focus on reducing discretionary water use to avoid economic impacts and protect health and safety. All of the member agencies have updated their ordinances based on the model and enacted them in a unified manner consistent with the State Water Resources Control Board’s (State Water Board’s) existing emergency regulation. The Water Authority’s model ordinance is included in the Governor’s Office of Planning and Research March 2014 drought toolkit as a model to be used by agencies throughout the state.

On April 1, 2015, Governor Brown issued an Executive Order containing actions necessary to address California’s severe drought conditions. The Order contains a number of directives to be carried out by state agencies. The directives range from a mandated 25% reduction in urban water use to updating the State Model Water Efficient Landscape Ordinance through expedited regulation. The directives associated with immediate conservation savings due to drought fell primarily under the auspices of the State Water Board.

To achieve the mandated 25% reduction required in the Order, the State Water Board released a proposed regulatory framework on April 7, 2015. Staff submitted a letter providing comments and recommendations on the framework, a copy of which is attached. The recommendations focused on the five key areas listed below:
1. Include development of drought-proof supplies as a means for agencies to achieve compliance;
2. Focus reduction in the commercial, industrial and institutional (CII) sectors on discretionary landscape uses, not CII uses needed to support the economy;
3. Exempt all agricultural deliveries from mandatory 25% reduction in urban water use;
4. Agencies should be provided adequate time to enforce water use reductions and enforcement penalties should consider agencies’ compliance efforts; and
5. Do not use a single month to determine an agency’s conservation standard.

On April 14, 2015, the Metropolitan Water District (MWD) Board approved implementation of the Water Supply Allocation Plan (WSAP) Level 3 Regional Shortage Level, effective July 1, 2015, through June 30, 2016. A Level 3 equates to a 15% supply cutback of MWD supplies to the Water Authority.

Discussion
There are currently two drought related activities occurring outside the region that will influence the drought response actions of the Water Authority and its member agencies. At the May 14, 2015 Special Board meeting, staff will return with recommended drought response actions for Board consideration.

The first activity relates to water supply availability and the expected allocation from MWD under a 15% cutback in MWD supplies. This figure, combined with the Water Authority and
member agencies’ supplies, will equate to the estimated amount of water that the San Diego region will have starting July 1, 2015.

The second activity is the State Water Board’s emergency conservation regulation that will establish a required water savings target for each member agency based on the Governor’s 25% conservation mandate. The member agencies’ targets are being required by the State Water Board in response to the severe drought conditions statewide.

**MWD Water Supply Allocation Plan Level 3, 15% Supply Cutback**

On April 14, 2015, the MWD Board took action to establish a 15% supply cutback to its member agencies, including the Water Authority. Under its Water Supply Allocation Plan (WSAP), the MWD Board may determine that a regional shortage exists, establish a regional shortage level and implement an allocation surcharge for water use in excess of a member agency’s annual allocation. The WSAP is intended to be implemented during periods of regional water shortages in order to promote conservation of scarce water supplies.

Given the severity of the drought, the MWD delegates from the Water Authority supported a steeper cutback level, because key assumptions made by MWD on its available water supplies this year were overly optimistic. They also believed that the Level 4 cutback of 20% would be more protective of MWD’s stored supplies and would help MWD avoid potentially steeper allocations next year, should drought conditions persist.

Under a MWD Level 3 cutback of 15%, the Water Authority will be provided an annual amount of water based on the allocation methodology contained in MWD’s WSAP. MWD has established July 1, 2015 through June 30, 2016 as the allocation period. If the Water Authority exceeds its allocation by the end of the allocation period, a surcharge will be applied on water use in excess of the allocation limit on a per acre-foot basis. Surcharges from MWD are from $1,480 per acre-foot up to $2,960 per acre-foot. Staff anticipates receiving the Water Authority’s initial allocation figure from MWD by the beginning of May 2015.

The MWD allocation amount will be combined with the Water Authority’s long-term Colorado River transfers and Carlsbad Desalination Plant supplies, which are expected to be available in fall 2015, to determine wholesale supplies available to the member agencies. Based on the supplies available and the allocation methodology contained in the Water Authority’s Water Shortage and Drought Response Plan, staff will develop recommended member agency municipal and industrial allocations for Board consideration. The allocations under the Transitional Special Agricultural Water Rate program will be based on the MWD cutback level of 15%.

**State Water Board Draft Emergency Water Conservation Regulation**

One of the directives in the Governor’s April 1, 2015 executive order is for the State Water Board to impose restrictions to achieve a statewide 25% reduction in potable urban water usage through February 28, 2016. These restrictions will require urban water suppliers to reduce usage as compared to the amount used in 2013.
The State Water Board released a draft regulation on April 18, 2015, based on the executive order and comments received on the April 7, 2015 regulatory framework. The draft regulation determines an urban water suppliers’ conservation standard or savings target through February 28, 2016. The target can vary between 4% and 36%. The proposed urban water supplier conservation standard for the member agencies is shown in Table 1. Yuima MWD and the City of Del Mar are considered small urban suppliers and must implement either 2-day per week watering restriction or other measure(s) that achieves a 25% reduction.

| Table 1: State Water Board Proposed Conservation Standards for Urban Suppliers |
| April 18, 2015 Draft Emergency Conservation Regulation |
| Carlsbad M.W.D. | 32% | Rainbow M.W.D. | 36% |
| Escondido, City of | 20% | Ramona M.W.D. | 28% |
| Fallbrook P.U.D. | 36% | Rincon Del Diablo M.W.D. | 32% |
| Helix W.D. | 20% | San Diego, City of | 16% |
| Lakeside W.D. | 24% | San Dieguito W.D. | 28% |
| Oceanside, City of | 20% | Santa Fe I.D. | 36% |
| Olivenhain M.W.D. | 36% | Sweetwater Authority | 12% |
| Otay W.D. | 16% | Vallecitos W.D. | 24% |
| Padre Dam M.W.D. | 28% | Valley Center M.W.D. | 36% |
| Poway, City of | 32% | Vista I.D. | 24% |

*Conservation standard currently under review

Member agencies will be required to reduce their potable urban demands by the percentage reduction during the months of June 2015 through February 2016 compared to the same months in 2013. Each month, the agencies will report their potable usage and it will be compared to the same month in 2013 to determine whether they are on track to achieve the necessary savings.

The State Water Board did address some of staff’s comments on the proposed framework in the draft regulation. Staff’s recommendations and how it’s addressed in the draft regulation is discussed below.

Exempt all agricultural deliveries from mandatory 25% reduction in urban water use. The draft regulation proposes that an urban water supplier that delivers 20 percent or more of its supplies for commercial agricultural may subtract the amount of water supplied for commercial agricultural use from its water production total. Agricultural customers will be treated similarly to those farmers in the Central Valley and not be subject to the urban conservation standard. Agricultural customers within the Water Authority service area that are part of the Water Authority’s Transitional Special Agricultural Water Rate (TSAWR) will be subject to cutbacks consistent with the program.

Agencies should be provided adequate time to enforce water use reductions and enforcement penalties should consider agencies’ compliance efforts. The draft regulation states that the State Water Board will be measuring compliance monthly, but assessing on a cumulative basis. If an agency isn’t meeting their conservation standard, the State Water Board is proposing that a conservation order be issued, which would include actions to correct non-compliance. Staff is
analyzing the new proposed requirements to determine if additional clarification and refinements are needed in the area of enforcement.

Do not use a single month to determine an agency’s conservation standard. The State Water Board is now proposing that a three-month average residential per capita usage (July through September 2014) be used to determine an agency’s conservation standard, instead of a single month.

The State Water Board did not address staff’s last two concerns which are discussed below.

Include development of drought-proof supplies as a means for agencies to achieve compliance. To be equitable, the State Water Board emergency regulation must acknowledge the investments water agencies have made in reliable drought-proof supplies. Making these investments is consistent with the Governor’s California Water Action Plan that encourages agencies to increase self-reliance, manage and prepare for dry periods and reduce dependence on the Bay-Delta. Following the drought of the 1990s and continuing today, the San Diego region has been investing to diversify our water supply and reduce dependence on imported supplies from MWD. These supply diversification actions were taken to ensure that the San Diego region’s economy is protected during supply shortages due to droughts. The State Water Board’s draft regulation does not account for these reliability investments coming on-line, which results in the San Diego region ratepayers not getting the supply benefit they should be receiving during the current drought. Consequently, gaining public support for future local supply reliability projects will be a challenge if ratepayers do not observe any benefit.

Focus reduction in the commercial, industrial and institutional (CII) sectors on discretionary landscape uses, not CII uses needed to support the economy. The State Water Board draft regulations do not acknowledge the potential wide-spread economic damage that would result if CII is forced to reduce water usage beyond discretionary applications to meet the conservation standards. The possible reduction in productivity will depress job growth, slow innovation, and ripple through the entire state economy.

Staff will again submit comments to the State Water Board by April 22, 2015 that will include these two topics along with other recommendations related to the draft regulation. The State Water Board plans to adopt the regulation on May 5 or 6, 2015.

Water Authority Drought Response Actions - Next Steps
At a May 14, 2015 Special Board Meeting, staff will return with recommended Water Authority drought response actions for consideration by the Board. The recommendations will take into account MWD’s supply cutback starting July 1, 2015, and the State Water Board’s final emergency regulation that establishes savings targets for each member agency.

Prepared by: Dana L. Friehauf, Acting Water Resources Manager
Reviewed by: Maureen A. Stapleton, General Manager

Attachment
April 13, 2015

Felicia Marcus, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Sent via email to: jessica.bean@waterboards.ca.gov

Dear Chair Marcus,

With California experiencing a fourth consecutive year of drought and the possibility that it could continue into 2016 and beyond, the San Diego County Water Authority supports the Governor’s call for increased water conservation and has called upon residents across the region to significantly increase their conservation efforts. The Water Authority does have serious concerns regarding the State Water Board’s proposed regulatory framework to achieve the additional conservation savings. The proposed framework would deter development of future local water supplies, unnecessarily threaten state and regional economies and doesn’t take into account the climatic variable found in California. This comment letter provides recommendations on how the State Water Board can address these issues and achieve the increased savings called for in the Governor’s April 1, 2015 Executive Order.

The recommendations we provide are based on the Water Authority’s leadership and experience in preparing and planning for water shortages due to drought. Through our 2006 Water Shortage and Drought Response Plan, we have established a comprehensive and orderly approach to managing droughts that reduces the impacts of supply shortages to our region. During shortages, the plan also includes a fair and equitable means to allocate available supplies to our member agencies. The Water Authority worked closely with its member agencies in 2008 to also develop a model drought response ordinance to provide consistent drought response actions throughout the region. The water-use restrictions in the model focus on reducing discretionary water use to avoid economic impacts and protect health and safety. All of our 24 member agencies have updated their ordinances based on the model and enacted them in a unified manner consistent with the State Water Board’s existing emergency regulations. The Water Authority’s model ordinance is included in the Governor’s Office of Planning and Research March 2014 drought toolkit as a model to be used by agencies throughout the state.

The Water Authority and its member agencies have also long supported water conservation as a foundational action to improve supply reliability for the San Diego region. Since 1991, the Water Authority’s water use efficiency programs and initiatives cumulatively have conserved more than 930,000 acre-feet of water. These savings have been achieved through measures ranging from incentives on water-efficient devices, to legislative efforts, to outreach campaigns and programs. The San Diego residents and businesses have responded to these efforts, with potable per capita water use in San Diego County having declined 31 percent since 1990 and 24 percent from 2007. The region has already met the state’s 2009 mandate to reduce per capita water use 20 percent by 2020.
Below are our key concerns regarding the proposed regulatory framework with Attachment A containing our recommendations for the draft emergency regulations.

**Key Concerns:**

1. **The proposed framework is contrary to State policy to reduce dependence on the Bay Delta by discouraging investment in local water supplies.**

   The Governor’s California Water Action Plan encourages agencies to increase self-reliance, manage and prepare for dry periods and reduce dependence on the Bay-Delta. Following the drought of the 1990s and continuing today, the San Diego Region has been investing to diversify our water supply and reduce dependence on imported supplies from the Metropolitan Water District. This has been done at a substantial cost through a historic water conservation and transfer agreement for independent Colorado River supplies and construction of the Carlsbad Desalination Project. The diversification strategy has received strong support from the public and our business community on the basis that it would reduce impacts to customers during water shortages and drought periods. The $1 billion Carlsbad Desalination Project is the largest in the western hemisphere, will produce up to 56,000 acre-feet of water annually when it begins production in fall 2015 and is funded by local ratepayers. Water suppliers in the region will continue to ask ratepayers to support drought proof supplies, such as potable reuse or desalination, and need to explain the benefits of local supply reliability. State action to eliminate those benefits creates an impediment to development of drought proof supplies when customers must reduce water even though the supplies they invested in may be available.

2. **The proposed framework fails to consider the economic impacts of targeting the commercial, institutional and industrial (CII) sector.**

   California’s $2 trillion economy cannot survive without a reliable water supply for its business and industry. A water supply cut of 25 percent across the board to Californian’s commercial and industrial customers would have a devastating impact on the State’s economy. Many, if not a majority, of California businesses have already increased efficiency in their processes and save water. Further cuts to these customers will gravely impact their ability to provide services and products, and may encourage them to leave the State. The Governor’s Executive Order requires CII properties, such as campuses, golf courses and cemeteries, to reduce water use by 25%. While the Governor appears to be focused on discretionary outdoor use in the CII sector, the State Board is focused on reducing all CII use, which would include process water and other essential water use necessary to support business in this State. Manufacturing, the largest contributor to San Diego County’s $206 billion economy, will be seriously harmed by these proposed reductions.

3. **The proposed framework will have a devastating impact on agricultural production in areas served by urban water suppliers, which have already suffered significant reductions.**

   The Governor has publicly stated that the current mandatory reduction program is not aimed at California agriculture. In 2013, San Diego County had the most small farms, and was the 19th largest agricultural economy of any county in the United States, with a value totaling $1.9 billion. San Diego County produces the highest dollar value per acre crop of any county in California. Some of these farms may be served by residential meters, driving up the residential per capita use numbers. Under the proposed framework, these micro-farms would be restricted just like
residential ornamental landscape. Since 2007, agricultural deliveries have fallen 50% in San Diego County because farmers have been hit hard by the economic recession and drought. Including San Diego County agricultural in the mandated 25% reduction in potable urban water use is inconsistent with the Governor’s Executive Order and ignores the fact that agriculture is a major economic driver in our region. If left unchanged, local agriculture would be devastated under the proposed framework.

4. The proposed framework incorrectly assumes that higher per capita water use is always due to inefficient and inappropriate water use and fails to consider climate and weather.

Water use is significantly impacted by weather, economy and local land uses. Under the tiered water reduction approach, coastal communities with naturally lower water use are being rewarded, while inland rural communities are being penalized. In addition to inappropriately penalizing inland communities, the proposed framework fails to consider average differences in temperature and rainfall, local land uses, such as agriculture, residential ownership of livestock and other urban and rural land uses. The proposed regulation requires one third of the State’s water suppliers to require their customers to reduce water use by 35%. This is inappropriately based on a single month of use in September 2014. Although weather is the largest short-term driver of water use during a single month, the proposed criteria fails to consider this when determining compliance.

As it is currently written, the approach taken in the proposed mandatory conservation framework creates policy that does not promote safe, sustainable and integrated water management. During these times of critical water supply shortages, the State Water Board’s actions will have a significant impact on future water supply reliability. Similar to our model drought response ordinance, we recommend that the framework focus on reducing discretionary water use in order to preserve water to protect public health and safety, and to support the $2 trillion California economy.

With the rapid time frame for developing criteria, we appreciate that State Board releasing a conceptual regulatory framework to the public for comment before drafting actual regulations. Attachment A includes the Water Authority’s specific recommendations for changes to the Mandatory Conservation Framework. We hope these recommendations will help guide the State Board’s development of emergency regulations that can preserve the State’s water supply, encourage local water supply development, and be reasonably implementable by water suppliers.

Sincerely,

Maureen A. Stapleton
General Manager

Attachment A

cc: State Water Resources Control Board Members
A. **Include Development of Drought-Proof Supplies as a Means for Agencies to Demonstrate Compliance.**

- One of the ultimate goals in managing California’s drought is to decrease reliance on Bay-Delta supplies severely impacted by four consecutive dry years. Reducing an agency’s demand on these supplies can be accomplished in two ways: (1) conservation savings; and (2) development of local drought proof supplies. The Governor’s Executive Order highlights the importance of developing local water supply projects by requiring state agencies to prioritize permitting of water infrastructure projects and programs that increase local supplies.
- Increasing regional self-reliance through the development of local supplies is a key action included in the Governor’s California Water Action Plan to ensure water security at the local level.
- The proposed regulatory framework must take into account investments being made in local drought-proof supplies; otherwise agencies will have no incentive to continue developing these supplies.

*Recommendation:* The emergency regulations should exclude from the June 2015 through February 2016 monthly water production reporting any local or regional drought-proof supplies, such as desalination or potable reuse projects that begin production after 2013. Communities should be able to reach their identified tier cutback target through any combination of demand reduction or demand displacement through creation of new drought-proof supplies.

B. **Focus reductions in the Commercial, Industrial and Institutional (CII) sectors on discretionary landscape uses, not CII uses needed to support the economy. Encourage State leadership in institutional sector.**

- The Governor’s Executive Order asked for a 25% reduction in CII uses, such as campuses, golf courses, and cemeteries. The Executive Order is focused on discretionary uses and not critical uses, such as process water, required to support economic output.
The proposed regulatory framework targets CII water uses that are critical to maintaining the livelihood of businesses and our economy. If implemented as regulations, the framework could hamper economic recovery in San Diego and statewide.

Most institutions, such as state universities, community colleges, schools, and prisons are State funded, putting the State in a better position than local agencies to encourage or mandate conservation activities.

**Recommendations:**

1. The CII water use reductions goals should be focused on discretionary outdoor irrigation use as measured by dedicated landscape meters and reported to the State. Other reporting of CII water use should not be mandated.

2. The State should take a leadership role on obtaining compliance for reductions for institutional customers subject to State funding.

C. **Exempt All Agricultural Deliveries from Mandatory 25% Reduction in Urban Water Use.**

- The Governor’s Executive Order clearly excludes agricultural water usage from the directive requiring a 25% statewide reduction in potable urban water use.
- San Diego County has a $1.9 billion agriculture economy and is the 19th largest agricultural county in the United States.
- “Urban water suppliers” within San Diego’s North County provide the water necessary to sustain this agricultural production.
- There are urban water suppliers and small water suppliers within the county whose agricultural demands account for the majority of their water deliveries.
- In San Diego County, supply shortages from Metropolitan Water District will occur in 2015 and agricultural customers will experience supply cutbacks equal to or greater than municipal and industrial customers.
- Under the proposed framework, San Diego County farmers supplied by urban water agencies would experience economic hardship greater than other farms in California.

**Recommendations:**

1. The emergency regulations must clearly exempt California agriculture across the state from the mandated 25% statewide reduction in urban water use.

2. Urban water suppliers that exclude their agricultural deliveries must have adopted 2010 urban water management plans that identify their agricultural demands and contain a water shortage contingency plan.
D. Agencies should be provided adequate time to enforce water use reduction and enforcement penalties should consider agencies’ compliance efforts; penalties should be used to support local drought response.

- Water suppliers understand the seriousness of the drought and the important and urgent need to reduce demands.
- Water suppliers need to have time to educate customers on the water reduction requirements and provide customers with due process.
- A phased-in approach to reaching the goals will be most effective to create both short-term and permanent long-term water use reductions.
- Compliance determinations should be based on results of actions taken by water suppliers and their customers, not short-term fluctuations based on weather.
- An industry-accepted scientific approach to model monthly weather normalization has already been developed by Department of Water Resources and could be used by the State Board.
- Water supplier penalties should be reduced if they are aggressively pursuing actions to comply with the goals.

Recommendations:

The emergency regulations should contain the following approach regarding assessing compliance and enforcement:

1. Reaching the conservation standard should be progressive in the following 90 day increments:

<table>
<thead>
<tr>
<th>Time frame</th>
<th>Average water use reduction(a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First 90 days</td>
<td>15% (if applicable)</td>
</tr>
<tr>
<td>Second 90 days</td>
<td>25% (if applicable)</td>
</tr>
<tr>
<td>Third 90 days</td>
<td>35% (if applicable)</td>
</tr>
</tbody>
</table>

(a) Average of monthly weather normalized data during 90 day period, as compared to average of monthly 2013 water use data during same time period.

2. The water suppliers should report monthly on water use, and the actions and approach they are taking to reduce water use.

3. If an agency is not meeting their targets as described in the above table, water suppliers should be ordered to prepare a “corrective action plan” identifying measures to be implemented to come into compliance.

4. Failure to achieve required water use reductions should be finally determined only at the end of the 270-day duration of the emergency regulation and water production data should be weather-normalized to accurately reflect water reductions obtained through a water supplier’s actions to require conservation and their customer response.

5. Penalties should be reduced on a sliding scale based on amount conserved. This will encourage all agencies to take immediate action toward achieving their goals.
Any penalties collected for violations should be allowed to remain with the local or regional agency where the violation occurred for use in local conservation programs or development of local drought proof water supplies.

E. **The State Board should not use a single month to determine an agency’s conservation standard.**

- The Governor’s Executive Order established a baseline year of 2013.
- Utilizing September 2014 residential per capita water use to establish an agency’s conservation standard is not an accurate measure of an agency’s overall water usage and unfairly targets areas of the state with warmer climates.
- Agencies will be measured over the course of nine months, so therefore an average per capita water use would be more appropriate for determining their conservation target.

*Recommendation:* Instead of a single month, the emergency regulations should use a 12-month average of water use during the baseline year of 2013, to establish the rankings for the required percent reduction of per capita use for each water agency.
Date: April 22, 2015
To: San Diego County Water Authority Board Members
From: Ken Carpi, Washington Representative
Subject: Federal Legislative Update

The House and Senate returned to work on April 14 after a two-week recess. The Senate will be in session until leaving for a weeklong Memorial Day recess. The House will take off the week of May 4, but will otherwise be in until the Memorial Day recess. During this period, Congressional leaders will try to approve a budget plan for FY2016 while also beginning formal consideration of individual appropriations bills.

**House Subcommittee Passes FY16 Energy & Water Appropriations**

The House Subcommittee on Energy and Water Appropriations approved its version of the FY 2016 spending bill by voice vote. The full committee will take up the bill, including amendments, on April 22. Total funding in the bill amounts to $35.4 billion, a $1.2 billion boost above the FY2015 enacted level and $633 million below the President’s request.

The bill provides $1.1 billion for the Bureau of Reclamation, a $35 million cut from last year and $1 million below the President’s request. Of this amount, $37 million is for the California Bay-Delta Restoration and $49.5 million for the Central Valley Project, which is provided out of the Central Valley Project Restoration Fund. Additional programmatic details, including funding for the Title XVI program, will be considered as part of full committee consideration of the bill.

The bill provides $5.6 billion for the Army Corps of Engineers, an increase of $142 million above FY2015 and $865 million above the President’s budget request. In an attempt to block the pending “Waters of the United States” rule (see more below), the bill would prohibit any changes to federal jurisdiction under the Clean Water Act and restricts the application of the CWA areas that include farm ponds and irrigation ditches.
Committee Approves Bill to Block ‘WOTUS’ Rule as Agencies Move Forward

During the annual “Water Week” on Capitol Hill, the House Committee on Transportation & Infrastructure passed the Regulatory Integrity Protection Act (H.R. 1732), a bill to block the implementation of the proposed “Waters of the United States” (WOTUS) rule. The full House is expected to pass it during April. Even if passed by the Senate, which is possible with the help of agriculture state Democrats, the votes do not exist in Congress to overturn a certain veto by President Obama.

The legislation requires the withdrawal of the proposed rule. It also requires U.S. EPA and the Corps of Engineers to meet with stakeholders, hold a federalism consultation with states and local governments, consult with and solicit recommendations from other affected stakeholders, and consider all public comments before putting forward a new proposed rule.

Meanwhile, the EPA and the Army Corps submitted their final WOTUS draft rule to the Office of Management and Budget (OMB) for review. EPA Administrator Gina McCarthy has indicated the final version will address many shareholders’ concerns, without saying specifically what those changes might be. The agencies hope to see a final rule issued by the end of April or early May, but that date could slip into early summer. A final release could be pushed back even further if OMB sends the proposed rule back to agencies for additional revision.