

1 KEKER & VAN NEST LLP
JOHN W. KEKER - # 49092
2 jkeker@kvn.com
DANIEL PURCELL - # 191424
3 dpurcell@kvn.com
DAN JACKSON - # 216091
4 djackson@kvn.com
WARREN A. BRAUNIG - # 243884
5 wbraunig@kvn.com
633 Battery Street
6 San Francisco, CA 94111-1809
Telephone: 415 391 5400
7 Facsimile: 415 397 7188

8 Attorneys for Petitioner and Plaintiff
SAN DIEGO COUNTY WATER AUTHORITY

EXEMPT FROM FILING FEES
[GOVERNMENT CODE § 6103]

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN FRANCISCO

12 SAN DIEGO COUNTY WATER
13 AUTHORITY,

14 Petitioner and Plaintiff,

15 v.

16 METROPOLITAN WATER DISTRICT OF
17 SOUTHERN CALIFORNIA; ALL
PERSONS INTERESTED IN THE
18 VALIDITY OF THE RATES ADOPTED
BY THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA
19 ON APRIL 13, 2010 TO BE EFFECTIVE
JANUARY 2011; and DOES 1-10,

20 Respondents and Defendants.
21

Case No. CPF-10-510830

**SAN DIEGO COUNTY WATER
AUTHORITY'S SEPARATE
STATEMENT IN SUPPORT OF ITS
MOTION TO COMPEL DISCOVERY
RESPONSES**

Date: April 23, 2013
Time: 9:00 a.m.
Dept.: 304
Judge: Hon. Curtis E.A. Karnow

Date Filed: June 11, 2010

Trial Date: Not Set

1 **FIRST SET OF REQUESTS FOR ADMISSIONS TO METROPOLITAN**
2 **WATER DISTRICT OF SOUTHERN CALIFORNIA**

3 **REQUEST FOR ADMISSION NO. 17:**

4 Admit that MWD does not provide MWD member agencies funds for existing and future
5 investments in local water supply projects, seawater desalination projects, and conservation
6 programs in an amount proportional to each member agency’s contribution of revenue through
7 the Water Stewardship Rate.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

9 MWD incorporates herein by reference each of its general objections and reservations set
10 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
11 the Court has not ordered that RFAs may be propounded, and no response to this request is
12 necessary because the Court has not ordered that a response to this RFA is required. The Court
13 ruled that, although discovery may be propounded, responses to discovery are not required unless
14 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
15 discovery is limited to document production at this time, that other forms of discovery may not be
16 required, and the consideration of other forms of discovery should wait until document discovery
17 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

18 MWD further objects to this request on the grounds that it is burdensome and oppressive,
19 and responses are not feasible, at this time given pending document requests in this action and in
20 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
21 *Action*.

22 MWD further objects to this request on the grounds that it seeks a response that is neither
23 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
24 of admissible evidence. MWD further objects to this request on the grounds that the
25 administrative record regarding the water rates challenged in this action has already been
26 produced. MWD further objects to this request on the grounds that any challenge to MWD’s
27 water rates in this action must be determined solely on the administrative record and any
28 information sought by this request beyond the administrative record is neither relevant nor

1 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
2 this request to the extent it seeks information regarding any alleged bias, motive, or mental
3 processes of members of MWD’s Board of Directors on the grounds that such information is not
4 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
5 discovery of admissible evidence. MWD further objects that this request is compound and
6 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
7 further objects to this request to the extent it seeks information protected from disclosure by the
8 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
9 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
10 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
11 privilege and/or protective doctrine. .

12 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

13 MWD violates California constitutional and statutory law in the way it collects and
14 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
15 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
16 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
17 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
18 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
19 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
20 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
21 impose the WSR on wheeling transactions, which by definition involve only transportation
22 services—because there has been and can be no showing that projects funded by the WSR enable
23 (or have anything to do with) water transportation service.

24 Moreover, MWD’s disbursement to its member agencies of the money collected through
25 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
26 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
27 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
28

1 burdens on, or benefits received from” the conservation and development projects funded by the
2 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
3 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
4 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
5 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
6 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

7 Because MWD must concede that SDCWA has received no direct benefit from the more
8 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
9 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
10 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
11 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
12 invest in development of additional expensive water delivery infrastructure, and provides
13 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
14 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
15 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
16 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
17 claims that the projects it funds using WSR proceeds provide a generalized regional
18 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
19 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
20 proportionate to the charges it imposes.

21 This discovery request targets these issues precisely. For this reason, the Court should
22 compel a response.

23 **REQUEST FOR ADMISSION NO. 18:**

24 Admit that, for calendar year 2011, MWD did not provide MWD member agencies funds
25 for existing and future investments in local water supply projects, seawater desalination projects,
26 and conservation programs in an amount proportional to each member agency’s contribution of
27 revenue through the Water Stewardship Rate.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

2 MWD incorporates herein by reference each of its general objections and reservations set
3 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
4 the Court has not ordered that RFAs may be propounded, and no response to this request is
5 necessary because the Court has not ordered that a response to this RFA is required. The Court
6 ruled that, although discovery may be propounded, responses to discovery are not required unless
7 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
8 discovery is limited to document production at this time, that other forms of discovery may not be
9 required, and the consideration of other forms of discovery should wait until document discovery
10 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

11 MWD further objects to this request on the grounds that it is burdensome and oppressive,
12 and responses are not feasible, at this time given pending document requests in this action and in
13 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
14 *Action*.

15 MWD further objects to this request on the grounds that it seeks a response that is neither
16 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
17 of admissible evidence. MWD further objects to this request on the grounds that the
18 administrative record regarding the water rates challenged in this action has already been
19 produced. MWD further objects to this request on the grounds that any challenge to MWD's
20 water rates in this action must be determined solely on the administrative record and any
21 information sought by this request beyond the administrative record is neither relevant nor
22 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
23 this request to the extent it seeks information regarding any alleged bias, motive, or mental
24 processes of members of MWD's Board of Directors on the grounds that such information is not
25 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
26 discovery of admissible evidence. MWD further objects that this request is compound and
27 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
28

1 further objects to this request to the extent it seeks information protected from disclosure by the
2 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
3 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
4 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
5 privilege and/or protective doctrine.

6 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

7 MWD violates California constitutional and statutory law in the way it collects and
8 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
9 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
10 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
11 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
12 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
13 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
14 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
15 impose the WSR on wheeling transactions, which by definition involve only transportation
16 services—because there has been and can be no showing that projects funded by the WSR enable
17 (or have anything to do with) water transportation service.

18 Moreover, MWD’s disbursement to its member agencies of the money collected through
19 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
20 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
21 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
22 burdens on, or benefits received from” the conservation and development projects funded by the
23 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
24 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
25 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
26 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
27 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

1 Because MWD must concede that SDCWA has received no direct benefit from the more
2 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
3 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
4 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
5 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
6 invest in development of additional expensive water delivery infrastructure, and provides
7 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
8 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
9 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
10 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
11 claims that the projects it funds using WSR proceeds provide a generalized regional
12 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
13 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
14 proportionate to the charges it imposes.

15 This discovery request targets these issues precisely. For this reason, the Court should
16 compel a response.

17 **REQUEST FOR ADMISSION NO. 19:**

18 Admit that, for calendar year 2012, MWD did not provide MWD member agencies funds
19 for existing and future investments in local water supply projects, seawater desalination projects,
20 and conservation programs in an amount proportional to each member agency’s contribution of
21 revenue through the Water Stewardship Rate.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

23 MWD incorporates herein by reference each of its general objections and reservations set
24 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
25 the Court has not ordered that RFAs may be propounded, and no response to this request is
26 necessary because the Court has not ordered that a response to this RFA is required. The Court
27 ruled that, although discovery may be propounded, responses to discovery are not required unless
28

1 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
2 discovery is limited to document production at this time, that other forms of discovery may not be
3 required, and the consideration of other forms of discovery should wait until document discovery
4 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

5 MWD further objects to this request on the grounds that it is burdensome and oppressive,
6 and responses are not feasible, at this time given pending document requests in this action and in
7 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
8 *Action*.

9 MWD further objects to this request on the grounds that it seeks a response that is neither
10 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
11 of admissible evidence. MWD further objects to this request on the grounds that the
12 administrative record regarding the water rates challenged in this action has already been
13 produced. MWD further objects to this request on the grounds that any challenge to MWD's
14 water rates in this action must be determined solely on the administrative record and any
15 information sought by this request beyond the administrative record is neither relevant nor
16 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
17 this request to the extent it seeks information regarding any alleged bias, motive, or mental
18 processes of members of MWD's Board of Directors on the grounds that such information is not
19 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
20 discovery of admissible evidence. MWD further objects that this request is compound and
21 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
22 further objects to this request to the extent it seeks information protected from disclosure by the
23 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
24 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
25 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
26 privilege and/or protective doctrine.

1 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

2 MWD violates California constitutional and statutory law in the way it collects and
3 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
4 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
5 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
6 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
7 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
8 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
9 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
10 impose the WSR on wheeling transactions, which by definition involve only transportation
11 services—because there has been and can be no showing that projects funded by the WSR enable
12 (or have anything to do with) water transportation service.

13 Moreover, MWD’s disbursement to its member agencies of the money collected through
14 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
15 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
16 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
17 burdens on, or benefits received from” the conservation and development projects funded by the
18 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
19 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
20 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
21 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
22 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

23 Because MWD must concede that SDCWA has received no direct benefit from the more
24 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
25 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
26 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
27 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
28

1 invest in development of additional expensive water delivery infrastructure, and provides
2 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
3 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
4 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
5 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
6 claims that the projects it funds using WSR proceeds provide a generalized regional
7 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
8 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
9 proportionate to the charges it imposes.

10 This discovery request targets these issues precisely. For this reason, the Court should
11 compel a response.

12 **REQUEST FOR ADMISSION NO. 20:**

13 Admit that MWD does not calculate the proportional benefit to each of its member
14 agencies from each individual local water supply project, seawater desalination project, or
15 conservation program funded or subsidized with revenue collected through the Water
16 Stewardship Rate.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

18 MWD incorporates herein by reference each of its general objections and reservations set
19 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
20 the Court has not ordered that RFAs may be propounded, and no response to this request is
21 necessary because the Court has not ordered that a response to this RFA is required. The Court
22 ruled that, although discovery may be propounded, responses to discovery are not required unless
23 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
24 discovery is limited to document production at this time, that other forms of discovery may not be
25 required, and the consideration of other forms of discovery should wait until document discovery
26 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

27 MWD further objects to this request on the grounds that it is burdensome and oppressive,
28

1 and responses are not feasible, at this time given pending document requests in this action and in
2 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
3 *Action*.

4 MWD further objects to this request on the grounds that it seeks a response that is neither
5 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
6 of admissible evidence. MWD further objects to this request on the grounds that the
7 administrative record regarding the water rates challenged in this action has already been
8 produced. MWD further objects to this request on the grounds that any challenge to MWD's
9 water rates in this action must be determined solely on the administrative record and any
10 information sought by this request beyond the administrative record is neither relevant nor
11 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
12 this request to the extent it seeks information regarding any alleged bias, motive, or mental
13 processes of members of MWD's Board of Directors on the grounds that such information is not
14 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
15 discovery of admissible evidence. MWD further objects that this request is compound and
16 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
17 further objects to this request to the extent it seeks information protected from disclosure by the
18 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
19 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
20 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
21 privilege and/or protective doctrine.

22 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

23 MWD violates California constitutional and statutory law in the way it collects and
24 disburses its so-called "Water Stewardship Rate," which MWD uses to fund local water supply
25 and conservation projects. For starters, MWD treats the Water Stewardship Rate ("WSR") as a
26 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
27 SDCWA under the parties' Exchange Agreement. But the WSR has nothing to do with enabling
28

1 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
2 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
3 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
4 impose the WSR on wheeling transactions, which by definition involve only transportation
5 services—because there has been and can be no showing that projects funded by the WSR enable
6 (or have anything to do with) water transportation service.

7 Moreover, MWD’s disbursement to its member agencies of the money collected through
8 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
9 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
10 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
11 burdens on, or benefits received from” the conservation and development projects funded by the
12 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
13 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
14 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
15 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
16 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

17 Because MWD must concede that SDCWA has received no direct benefit from the more
18 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
19 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
20 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
21 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
22 invest in development of additional expensive water delivery infrastructure, and provides
23 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
24 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
25 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
26 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
27 claims that the projects it funds using WSR proceeds provide a generalized regional
28

1 **transportation** benefit across the whole of MWD's service area, including to SDCWA, and that
2 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
3 proportionate to the charges it imposes.

4 This discovery request targets these issues precisely. For this reason, the Court should
5 compel a response.

6 **REQUEST FOR ADMISSION NO. 21:**

7 Admit that MWD calculates the proportional benefit to each of its member agencies from
8 each individual local water supply project, seawater desalination project, or conservation program
9 funded or subsidized with revenue collected through the Water Stewardship Rate.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

11 MWD incorporates herein by reference each of its general objections and reservations set
12 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
13 the Court has not ordered that RFAs may be propounded, and no response to this request is
14 necessary because the Court has not ordered that a response to this RFA is required. The Court
15 ruled that, although discovery may be propounded, responses to discovery are not required unless
16 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
17 discovery is limited to document production at this time, that other forms of discovery may not be
18 required, and the consideration of other forms of discovery should wait until document discovery
19 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

20 MWD further objects to this request on the grounds that it is burdensome and oppressive,
21 and responses are not feasible, at this time given pending document requests in this action and in
22 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
23 *Action*.

24 MWD further objects to this request on the grounds that it seeks a response that is neither
25 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
26 of admissible evidence. MWD further objects to this request on the grounds that the
27 administrative record regarding the water rates challenged in this action has already been
28

1 produced. MWD further objects to this request on the grounds that any challenge to MWD’s
2 water rates in this action must be determined solely on the administrative record and any
3 information sought by this request beyond the administrative record is neither relevant nor
4 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
5 this request to the extent it seeks information regarding any alleged bias, motive, or mental
6 processes of members of MWD’s Board of Directors on the grounds that such information is not
7 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
8 discovery of admissible evidence. MWD further objects that this request is compound and
9 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
10 further objects to this request to the extent it seeks information protected from disclosure by the
11 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
12 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
13 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
14 privilege and/or protective doctrine.

15 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

16 MWD violates California constitutional and statutory law in the way it collects and
17 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
18 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
19 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
20 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
21 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
22 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
23 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
24 impose the WSR on wheeling transactions, which by definition involve only transportation
25 services—because there has been and can be no showing that projects funded by the WSR enable
26 (or have anything to do with) water transportation service.

27 Moreover, MWD’s disbursement to its member agencies of the money collected through
28

1 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
2 As set forth more fully in SDCWA's Complaint, MWD must show that the WSR rates imposed
3 by MWD on its member agencies "bear a fair or reasonable relationship to [the agencies']
4 burdens on, or benefits received from" the conservation and development projects funded by the
5 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
6 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
7 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
8 receiving any benefits from WSR funding, expressly in retaliation for SDCWA's filing of this
9 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

10 Because MWD must concede that SDCWA has received no direct benefit from the more
11 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
12 a different basis. In its answer to SDCWA's Second Amended Complaint, MWD alleged that
13 "[a]ll member agencies benefit from each acre-foot of water developed through these programs,
14 because it frees up capacity to convey water through Metropolitan's system, reducing the need to
15 invest in development of additional expensive water delivery infrastructure, and provides
16 additional water supplies to meet the region's demands." Purcell Decl. Ex. 29 at General
17 Allegation No. 8. MWD also alleged that "SDCWA will continue to receive the benefits of
18 Metropolitan's conservation and local resources programs regardless of whether the contracts to
19 which it is a direct party continue." *Id.* at General Allegation No. 13. In other words, MWD
20 claims that the projects it funds using WSR proceeds provide a generalized regional
21 **transportation** benefit across the whole of MWD's service area, including to SDCWA, and that
22 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
23 proportionate to the charges it imposes.

24 This discovery request targets these issues precisely. For this reason, the Court should
25 compel a response.

26 **REQUEST FOR ADMISSION NO. 22:**

27 Admit that MWD has not calculated the proportional benefit to each of its member
28

1 agencies from each individual local water supply project, seawater desalination project, or
2 conservation program funded or subsidized with revenue collected through the Water
3 Stewardship Rate in calendar year 2011.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

5 MWD incorporates herein by reference each of its general objections and reservations set
6 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
7 the Court has not ordered that RFAs may be propounded, and no response to this request is
8 necessary because the Court has not ordered that a response to this RFA is required. The Court
9 ruled that, although discovery may be propounded, responses to discovery are not required unless
10 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
11 discovery is limited to document production at this time, that other forms of discovery may not be
12 required, and the consideration of other forms of discovery should wait until document discovery
13 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

14 MWD further objects to this request on the grounds that it is burdensome and oppressive,
15 and responses are not feasible, at this time given pending document requests in this action and in
16 the 2012 *Action* ordered by the Court and the preparation of the administrative record in the 2012
17 *Action*.

18 MWD further objects to this request on the grounds that it seeks a response that is neither
19 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
20 of admissible evidence. MWD further objects to this request on the grounds that the
21 administrative record regarding the water rates challenged in this action has already been
22 produced. MWD further objects to this request on the grounds that any challenge to MWD's
23 water rates in this action must be determined solely on the administrative record and any
24 information sought by this request beyond the administrative record is neither relevant nor
25 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
26 this request to the extent it seeks information regarding any alleged bias, motive, or mental
27 processes of members of MWD's Board of Directors on the grounds that such information is not
28

1 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
2 discovery of admissible evidence. MWD further objects that this request is compound and
3 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
4 further objects to this request to the extent it seeks information protected from disclosure by the
5 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
6 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
7 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
8 privilege and/or protective doctrine.

9 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

10 MWD violates California constitutional and statutory law in the way it collects and
11 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
12 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
13 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
14 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
15 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
16 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
17 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
18 impose the WSR on wheeling transactions, which by definition involve only transportation
19 services—because there has been and can be no showing that projects funded by the WSR enable
20 (or have anything to do with) water transportation service.

21 Moreover, MWD’s disbursement to its member agencies of the money collected through
22 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
23 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
24 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
25 burdens on, or benefits received from” the conservation and development projects funded by the
26 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
27 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD

1 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
2 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
3 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

4 Because MWD must concede that SDCWA has received no direct benefit from the more
5 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
6 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
7 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
8 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
9 invest in development of additional expensive water delivery infrastructure, and provides
10 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
11 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
12 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
13 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
14 claims that the projects it funds using WSR proceeds provide a generalized regional
15 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
16 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
17 proportionate to the charges it imposes.

18 This discovery request targets these issues precisely. For this reason, the Court should
19 compel a response.

20 **REQUEST FOR ADMISSION NO. 23:**

21 Admit that MWD has calculated the proportional benefit to each of its member agencies
22 from each individual local water supply project, seawater desalination project, or conservation
23 program funded or subsidized with revenue collected through the Water Stewardship Rate in
24 calendar year 2011.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

26 MWD incorporates herein by reference each of its general objections and reservations set
27 forth above. MWD further objects to this RFA on the grounds that it is not authorized because

1 the Court has not ordered that RFAs may be propounded, and no response to this request is
2 necessary because the Court has not ordered that a response to this RFA is required. The Court
3 ruled that, although discovery may be propounded, responses to discovery are not required unless
4 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
5 discovery is limited to document production at this time, that other forms of discovery may not be
6 required, and the consideration of other forms of discovery should wait until document discovery
7 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

8 MWD further objects to this request on the grounds that it is burdensome and oppressive,
9 and responses are not feasible, at this time given pending document requests in this action and in
10 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
11 *Action*.

12 MWD further objects to this request on the grounds that it seeks a response that is neither
13 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
14 of admissible evidence. MWD further objects to this request on the grounds that the
15 administrative record regarding the water rates challenged in this action has already been
16 produced. MWD further objects to this request on the grounds that any challenge to MWD's
17 water rates in this action must be determined solely on the administrative record and any
18 information sought by this request beyond the administrative record is neither relevant nor
19 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
20 this request to the extent it seeks information regarding any alleged bias, motive, or mental
21 processes of members of MWD's Board of Directors on the grounds that such information is not
22 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
23 discovery of admissible evidence. MWD further objects that this request is compound and
24 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
25 further objects to this request to the extent it seeks information protected from disclosure by the
26 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
27 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
28

1 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
2 privilege and/or protective doctrine.

3 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

4 MWD violates California constitutional and statutory law in the way it collects and
5 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
6 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
7 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
8 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
9 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
10 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
11 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
12 impose the WSR on wheeling transactions, which by definition involve only transportation
13 services—because there has been and can be no showing that projects funded by the WSR enable
14 (or have anything to do with) water transportation service.

15 Moreover, MWD’s disbursement to its member agencies of the money collected through
16 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
17 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
18 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
19 burdens on, or benefits received from” the conservation and development projects funded by the
20 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
21 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
22 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
23 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
24 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

25 Because MWD must concede that SDCWA has received no direct benefit from the more
26 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
27 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
28

1 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
2 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
3 invest in development of additional expensive water delivery infrastructure, and provides
4 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
5 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
6 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
7 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
8 claims that the projects it funds using WSR proceeds provide a generalized regional
9 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
10 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
11 proportionate to the charges it imposes.

12 This discovery request targets these issues precisely. For this reason, the Court should
13 compel a response.

14 **REQUEST FOR ADMISSION NO. 24:**

15 Admit that MWD has not calculated the proportional benefit to each of its member
16 agencies from each individual local water supply project, seawater desalination project, or
17 conservation program funded or subsidized with revenue collected through the Water
18 Stewardship Rate in calendar year 2012.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

20 MWD incorporates herein by reference each of its general objections and reservations set
21 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
22 the Court has not ordered that RFAs may be propounded, and no response to this request is
23 necessary because the Court has not ordered that a response to this RFA is required. The Court
24 ruled that, although discovery may be propounded, responses to discovery are not required unless
25 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
26 discovery is limited to document production at this time, that other forms of discovery may not be
27 required, and the consideration of other forms of discovery should wait until document discovery
28

1 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

2 MWD further objects to this request on the grounds that it is burdensome and oppressive,
3 and responses are not feasible, at this time given pending document requests in this action and in
4 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
5 *Action*.

6 MWD further objects to this request on the grounds that it seeks a response that is neither
7 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
8 of admissible evidence. MWD further objects to this request on the grounds that the
9 administrative record regarding the water rates challenged in this action has already been
10 produced. MWD further objects to this request on the grounds that any challenge to MWD's
11 water rates in this action must be determined solely on the administrative record and any
12 information sought by this request beyond the administrative record is neither relevant nor
13 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
14 this request to the extent it seeks information regarding any alleged bias, motive, or mental
15 processes of members of MWD's Board of Directors on the grounds that such information is not
16 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
17 discovery of admissible evidence. MWD further objects that this request is compound and
18 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
19 further objects to this request to the extent it seeks information protected from disclosure by the
20 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
21 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
22 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
23 privilege and/or protective doctrine.

24 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

25 MWD violates California constitutional and statutory law in the way it collects and
26 disburses its so-called "Water Stewardship Rate," which MWD uses to fund local water supply
27 and conservation projects. For starters, MWD treats the Water Stewardship Rate ("WSR") as a
28

1 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
2 SDCWA under the parties' Exchange Agreement. But the WSR has nothing to do with enabling
3 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
4 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
5 part of MWD's supply rate. Common law and the Wheeling Statute also require that MWD not
6 impose the WSR on wheeling transactions, which by definition involve only transportation
7 services—because there has been and can be no showing that projects funded by the WSR enable
8 (or have anything to do with) water transportation service.

9 Moreover, MWD's disbursement to its member agencies of the money collected through
10 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
11 As set forth more fully in SDCWA's Complaint, MWD must show that the WSR rates imposed
12 by MWD on its member agencies "bear a fair or reasonable relationship to [the agencies']
13 burdens on, or benefits received from" the conservation and development projects funded by the
14 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
15 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
16 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
17 receiving any benefits from WSR funding, expressly in retaliation for SDCWA's filing of this
18 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

19 Because MWD must concede that SDCWA has received no direct benefit from the more
20 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
21 a different basis. In its answer to SDCWA's Second Amended Complaint, MWD alleged that
22 "[a]ll member agencies benefit from each acre-foot of water developed through these programs,
23 because it frees up capacity to convey water through Metropolitan's system, reducing the need to
24 invest in development of additional expensive water delivery infrastructure, and provides
25 additional water supplies to meet the region's demands." Purcell Decl. Ex. 29 at General
26 Allegation No. 8. MWD also alleged that "SDCWA will continue to receive the benefits of
27 Metropolitan's conservation and local resources programs regardless of whether the contracts to
28

1 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
2 claims that the projects it funds using WSR proceeds provide a generalized regional
3 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
4 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
5 proportionate to the charges it imposes.

6 This discovery request targets these issues precisely. For this reason, the Court should
7 compel a response.

8 **REQUEST FOR ADMISSION NO. 25:**

9 Admit that MWD has calculated the proportional benefit to each of its member agencies
10 from each individual local water supply project, seawater desalination project, or conservation
11 program funded or subsidized with revenue collected through the Water Stewardship Rate in
12 calendar year 2012.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

14 MWD incorporates herein by reference each of its general objections and reservations set
15 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
16 the Court has not ordered that RFAs may be propounded, and no response to this request is
17 necessary because the Court has not ordered that a response to this RFA is required. The Court
18 ruled that, although discovery may be propounded, responses to discovery are not required unless
19 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
20 discovery is limited to document production at this time, that other forms of discovery may not be
21 required, and the consideration of other forms of discovery should wait until document discovery
22 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

23 MWD further objects to this request on the grounds that it is burdensome and oppressive,
24 and responses are not feasible, at this time given pending document requests in this action and in
25 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
26 *Action*.

27 MWD further objects to this request on the grounds that it seeks a response that is neither
28

1 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
2 of admissible evidence. MWD further objects to this request on the grounds that the
3 administrative record regarding the water rates challenged in this action has already been
4 produced. MWD further objects to this request on the grounds that any challenge to MWD's
5 water rates in this action must be determined solely on the administrative record and any
6 information sought by this request beyond the administrative record is neither relevant nor
7 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
8 this request to the extent it seeks information regarding any alleged bias, motive, or mental
9 processes of members of MWD's Board of Directors on the grounds that such information is not
10 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
11 discovery of admissible evidence. MWD further objects that this request is compound and
12 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
13 further objects to this request to the extent it seeks information protected from disclosure by the
14 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
15 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
16 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
17 privilege and/or protective doctrine.

18 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

19 MWD violates California constitutional and statutory law in the way it collects and
20 disburses its so-called "Water Stewardship Rate," which MWD uses to fund local water supply
21 and conservation projects. For starters, MWD treats the Water Stewardship Rate ("WSR") as a
22 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
23 SDCWA under the parties' Exchange Agreement. But the WSR has nothing to do with enabling
24 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
25 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
26 part of MWD's supply rate. Common law and the Wheeling Statute also require that MWD not
27 impose the WSR on wheeling transactions, which by definition involve only transportation
28

1 services—because there has been and can be no showing that projects funded by the WSR enable
2 (or have anything to do with) water transportation service.

3 Moreover, MWD’s disbursement to its member agencies of the money collected through
4 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
5 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
6 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
7 burdens on, or benefits received from” the conservation and development projects funded by the
8 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
9 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
10 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
11 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
12 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

13 Because MWD must concede that SDCWA has received no direct benefit from the more
14 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
15 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
16 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
17 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
18 invest in development of additional expensive water delivery infrastructure, and provides
19 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
20 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
21 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
22 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
23 claims that the projects it funds using WSR proceeds provide a generalized regional
24 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
25 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
26 proportionate to the charges it imposes.

27 This discovery request targets these issues precisely. For this reason, the Court should

1 compel a response.

2 **REQUEST FOR ADMISSION NO. 26:**

3 Admit that MWD does not calculate the regional benefit to MWD from each individual
4 local water supply project, seawater desalination project, or conservation program funded or
5 subsidized with revenue collected through the Water Stewardship Rate, including but not limited
6 to any additional transportation or conveyance capacity or water supply created by any such
7 projects or programs.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

9 MWD incorporates herein by reference each of its general objections and reservations set
10 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
11 the Court has not ordered that RFAs may be propounded, and no response to this request is
12 necessary because the Court has not ordered that a response to this RFA is required. The Court
13 ruled that, although discovery may be propounded, responses to discovery are not required unless
14 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
15 discovery is limited to document production at this time, that other forms of discovery may not be
16 required, and the consideration of other forms of discovery should wait until document discovery
17 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

18 MWD further objects to this request on the grounds that it is burdensome and oppressive,
19 and responses are not feasible, at this time given pending document requests in this action and in
20 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
21 *Action*.

22 MWD further objects to this request on the grounds that it seeks a response that is neither
23 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
24 of admissible evidence. MWD further objects to this request on the grounds that the
25 administrative record regarding the water rates challenged in this action has already been
26 produced. MWD further objects to this request on the grounds that any challenge to MWD's
27 water rates in this action must be determined solely on the administrative record and any

1 information sought by this request beyond the administrative record is neither relevant nor
2 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
3 this request to the extent it seeks information regarding any alleged bias, motive, or mental
4 processes of members of MWD’s Board of Directors on the grounds that such information is not
5 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
6 discovery of admissible evidence. MWD further objects that this request is compound and
7 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
8 further objects to this request to the extent it seeks information protected from disclosure by the
9 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
10 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
11 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
12 privilege and/or protective doctrine.

13 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

14 MWD violates California constitutional and statutory law in the way it collects and
15 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
16 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
17 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
18 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
19 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
20 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
21 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
22 impose the WSR on wheeling transactions, which by definition involve only transportation
23 services—because there has been and can be no showing that projects funded by the WSR enable
24 (or have anything to do with) water transportation service.

25 Moreover, MWD’s disbursement to its member agencies of the money collected through
26 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
27 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
28

1 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
2 burdens on, or benefits received from” the conservation and development projects funded by the
3 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
4 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
5 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
6 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
7 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

8 Because MWD must concede that SDCWA has received no direct benefit from the more
9 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
10 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
11 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
12 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
13 invest in development of additional expensive water delivery infrastructure, and provides
14 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
15 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
16 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
17 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
18 claims that the projects it funds using WSR proceeds provide a generalized regional
19 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
20 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
21 proportionate to the charges it imposes.

22 This discovery request targets these issues precisely. For this reason, the Court should
23 compel a response.

24 **REQUEST FOR ADMISSION NO. 27:**

25 Admit that MWD calculates the regional benefit to MWD from each individual local
26 water supply project, seawater desalination project, or conservation program funded or subsidized
27 with revenue collected through the Water Stewardship Rate, including but not limited to any

1 additional transportation or conveyance capacity or water supply created by any such projects or
2 programs.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

4 MWD incorporates herein by reference each of its general objections and reservations set
5 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
6 the Court has not ordered that RFAs may be propounded, and no response to this request is
7 necessary because the Court has not ordered that a response to this RFA is required. The Court
8 ruled that, although discovery may be propounded, responses to discovery are not required unless
9 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
10 discovery is limited to document production at this time, that other forms of discovery may not be
11 required, and the consideration of other forms of discovery should wait until document discovery
12 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

13 MWD further objects to this request on the grounds that it is burdensome and oppressive,
14 and responses are not feasible, at this time given pending document requests in this action and in
15 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
16 *Action*.

17 MWD further objects to this request on the grounds that it seeks a response that is neither
18 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
19 of admissible evidence. MWD further objects to this request on the grounds that the
20 administrative record regarding the water rates challenged in this action has already been
21 produced. MWD further objects to this request on the grounds that any challenge to MWD's
22 water rates in this action must be determined solely on the administrative record and any
23 information sought by this request beyond the administrative record is neither relevant nor
24 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
25 this request to the extent it seeks information regarding any alleged bias, motive, or mental
26 processes of members of MWD's Board of Directors on the grounds that such information is not
27 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
28

1 discovery of admissible evidence. MWD further objects that this request is compound and
2 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
3 further objects to this request to the extent it seeks information protected from disclosure by the
4 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
5 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
6 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
7 privilege and/or protective doctrine.

8 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

9 MWD violates California constitutional and statutory law in the way it collects and
10 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
11 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
12 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
13 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
14 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
15 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
16 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
17 impose the WSR on wheeling transactions, which by definition involve only transportation
18 services—because there has been and can be no showing that projects funded by the WSR enable
19 (or have anything to do with) water transportation service.

20 Moreover, MWD’s disbursement to its member agencies of the money collected through
21 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
22 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
23 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
24 burdens on, or benefits received from” the conservation and development projects funded by the
25 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
26 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
27 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
28

1 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
2 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

3 Because MWD must concede that SDCWA has received no direct benefit from the more
4 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
5 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
6 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
7 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
8 invest in development of additional expensive water delivery infrastructure, and provides
9 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
10 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
11 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
12 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
13 claims that the projects it funds using WSR proceeds provide a generalized regional
14 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
15 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
16 proportionate to the charges it imposes.

17 This discovery request targets these issues precisely. For this reason, the Court should
18 compel a response.

19 **REQUEST FOR ADMISSION NO. 28:**

20 Admit that MWD has not calculated the regional benefit to MWD from each individual
21 local water supply project, seawater desalination project, or conservation program funded or
22 subsidized with revenue collected through the calendar year 2011 Water Stewardship Rate,
23 including but not limited to any additional transportation or conveyance capacity or water supply
24 created by any such projects or programs.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

26 MWD incorporates herein by reference each of its general objections and reservations set
27 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
28

1 the Court has not ordered that RFAs may be propounded, and no response to this request is
2 necessary because the Court has not ordered that a response to this RFA is required. The Court
3 ruled that, although discovery may be propounded, responses to discovery are not required unless
4 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
5 discovery is limited to document production at this time, that other forms of discovery may not be
6 required, and the consideration of other forms of discovery should wait until document discovery
7 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

8 MWD further objects to this request on the grounds that it is burdensome and oppressive,
9 and responses are not feasible, at this time given pending document requests in this action and in
10 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
11 *Action*.

12 MWD further objects to this request on the grounds that it seeks a response that is neither
13 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
14 of admissible evidence. MWD further objects to this request on the grounds that the
15 administrative record regarding the water rates challenged in this action has already been
16 produced. MWD further objects to this request on the grounds that any challenge to MWD's
17 water rates in this action must be determined solely on the administrative record and any
18 information sought by this request beyond the administrative record is neither relevant nor
19 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
20 this request to the extent it seeks information regarding any alleged bias, motive, or mental
21 processes of members of MWD's Board of Directors on the grounds that such information is not
22 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
23 discovery of admissible evidence. MWD further objects that this request is compound and
24 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
25 further objects to this request to the extent it seeks information protected from disclosure by the
26 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
27 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
28

1 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
2 privilege and/or protective doctrine.

3 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

4 MWD violates California constitutional and statutory law in the way it collects and
5 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
6 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
7 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
8 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
9 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
10 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
11 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
12 impose the WSR on wheeling transactions, which by definition involve only transportation
13 services—because there has been and can be no showing that projects funded by the WSR enable
14 (or have anything to do with) water transportation service.

15 Moreover, MWD’s disbursement to its member agencies of the money collected through
16 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
17 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
18 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
19 burdens on, or benefits received from” the conservation and development projects funded by the
20 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
21 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
22 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
23 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
24 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

25 Because MWD must concede that SDCWA has received no direct benefit from the more
26 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
27 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
28

1 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
2 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
3 invest in development of additional expensive water delivery infrastructure, and provides
4 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
5 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
6 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
7 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
8 claims that the projects it funds using WSR proceeds provide a generalized regional
9 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
10 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
11 proportionate to the charges it imposes.

12 This discovery request targets these issues precisely. For this reason, the Court should
13 compel a response.

14 **REQUEST FOR ADMISSION NO. 29:**

15 Admit that MWD has calculated the regional benefit to MWD from each individual local
16 water supply project, seawater desalination project, or conservation program funded or subsidized
17 with revenue collected through the calendar year 2011 Water Stewardship Rate, including but not
18 limited to any additional transportation or conveyance capacity or water supply created by any
19 such projects or programs.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

21 MWD incorporates herein by reference each of its general objections and reservations set
22 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
23 the Court has not ordered that RFAs may be propounded, and no response to this request is
24 necessary because the Court has not ordered that a response to this RFA is required. The Court
25 ruled that, although discovery may be propounded, responses to discovery are not required unless
26 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
27 discovery is limited to document production at this time, that other forms of discovery may not be
28

1 required, and the consideration of other forms of discovery should wait until document discovery
2 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

3 MWD further objects to this request on the grounds that it is burdensome and oppressive,
4 and responses are not feasible, at this time given pending document requests in this action and in
5 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
6 *Action*.

7 MWD further objects to this request on the grounds that it seeks a response that is neither
8 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
9 of admissible evidence. MWD further objects to this request on the grounds that the
10 administrative record regarding the water rates challenged in this action has already been
11 produced. MWD further objects to this request on the grounds that any challenge to MWD's
12 water rates in this action must be determined solely on the administrative record and any
13 information sought by this request beyond the administrative record is neither relevant nor
14 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
15 this request to the extent it seeks information regarding any alleged bias, motive, or mental
16 processes of members of MWD's Board of Directors on the grounds that such information is not
17 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
18 discovery of admissible evidence. MWD further objects that this request is compound and
19 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
20 further objects to this request to the extent it seeks information protected from disclosure by the
21 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
22 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
23 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
24 privilege and/or protective doctrine.

25 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

26 MWD violates California constitutional and statutory law in the way it collects and
27 disburses its so-called "Water Stewardship Rate," which MWD uses to fund local water supply

1 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
2 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
3 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
4 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
5 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
6 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
7 impose the WSR on wheeling transactions, which by definition involve only transportation
8 services—because there has been and can be no showing that projects funded by the WSR enable
9 (or have anything to do with) water transportation service.

10 Moreover, MWD’s disbursement to its member agencies of the money collected through
11 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
12 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
13 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
14 burdens on, or benefits received from” the conservation and development projects funded by the
15 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
16 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
17 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
18 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
19 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

20 Because MWD must concede that SDCWA has received no direct benefit from the more
21 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
22 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
23 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
24 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
25 invest in development of additional expensive water delivery infrastructure, and provides
26 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
27 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
28

1 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
2 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
3 claims that the projects it funds using WSR proceeds provide a generalized regional
4 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
5 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
6 proportionate to the charges it imposes.

7 This discovery request targets these issues precisely. For this reason, the Court should
8 compel a response.

9 **REQUEST FOR ADMISSION NO. 30:**

10 Admit that MWD has not calculated the regional benefit to MWD from each individual
11 local water supply project, seawater desalination project, or conservation program funded or
12 subsidized with revenue collected through the calendar year 2012 Water Stewardship Rate,
13 including but not limited to any additional transportation or conveyance capacity or water supply
14 created by any such projects or programs.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 30:**

16 MWD incorporates herein by reference each of its general objections and reservations set
17 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
18 the Court has not ordered that RFAs may be propounded, and no response to this request is
19 necessary because the Court has not ordered that a response to this RFA is required. The Court
20 ruled that, although discovery may be propounded, responses to discovery are not required unless
21 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
22 discovery is limited to document production at this time, that other forms of discovery may not be
23 required, and the consideration of other forms of discovery should wait until document discovery
24 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

25 MWD further objects to this request on the grounds that it is burdensome and oppressive,
26 and responses are not feasible, at this time given pending document requests in this action and in
27 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
28

1 *Action.*

2 MWD further objects to this request on the grounds that it seeks a response that is neither
3 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
4 of admissible evidence. MWD further objects to this request on the grounds that the
5 administrative record regarding the water rates challenged in this action has already been
6 produced. MWD further objects to this request on the grounds that any challenge to MWD's
7 water rates in this action must be determined solely on the administrative record and any
8 information sought by this request beyond the administrative record is neither relevant nor
9 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
10 this request to the extent it seeks information regarding any alleged bias, motive, or mental
11 processes of members of MWD's Board of Directors on the grounds that such information is not
12 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
13 discovery of admissible evidence. MWD further objects that this request is compound and
14 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
15 further objects to this request to the extent it seeks information protected from disclosure by the
16 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
17 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
18 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
19 privilege and/or protective doctrine.

20 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

21 MWD violates California constitutional and statutory law in the way it collects and
22 disburses its so-called "Water Stewardship Rate," which MWD uses to fund local water supply
23 and conservation projects. For starters, MWD treats the Water Stewardship Rate ("WSR") as a
24 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
25 SDCWA under the parties' Exchange Agreement. But the WSR has nothing to do with enabling
26 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
27 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
28

1 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
2 impose the WSR on wheeling transactions, which by definition involve only transportation
3 services—because there has been and can be no showing that projects funded by the WSR enable
4 (or have anything to do with) water transportation service.

5 Moreover, MWD’s disbursement to its member agencies of the money collected through
6 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
7 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
8 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
9 burdens on, or benefits received from” the conservation and development projects funded by the
10 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
11 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
12 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
13 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
14 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

15 Because MWD must concede that SDCWA has received no direct benefit from the more
16 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
17 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
18 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
19 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
20 invest in development of additional expensive water delivery infrastructure, and provides
21 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
22 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
23 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
24 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
25 claims that the projects it funds using WSR proceeds provide a generalized regional
26 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
27 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
28

1 proportionate to the charges it imposes.

2 This discovery request targets these issues precisely. For this reason, the Court should
3 compel a response.

4 **REQUEST FOR ADMISSION NO. 31:**

5 Admit that MWD has calculated the regional benefit to MWD from each individual local
6 water supply project, seawater desalination project, or conservation program funded or subsidized
7 with revenue collected through the calendar year 2012 Water Stewardship Rate, including but not
8 limited to any additional transportation or conveyance capacity or water supply created by any
9 such projects or programs.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 31:**

11 MWD incorporates herein by reference each of its general objections and reservations set
12 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
13 the Court has not ordered that RFAs may be propounded, and no response to this request is
14 necessary because the Court has not ordered that a response to this RFA is required. The Court
15 ruled that, although discovery may be propounded, responses to discovery are not required unless
16 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
17 discovery is limited to document production at this time, that other forms of discovery may not be
18 required, and the consideration of other forms of discovery should wait until document discovery
19 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

20 MWD further objects to this request on the grounds that it is burdensome and oppressive,
21 and responses are not feasible, at this time given pending document requests in this action and in
22 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
23 *Action*.

24 MWD further objects to this request on the grounds that it seeks a response that is neither
25 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
26 of admissible evidence. MWD further objects to this request on the grounds that the
27 administrative record regarding the water rates challenged in this action has already been
28

1 produced. MWD further objects to this request on the grounds that any challenge to MWD’s
2 water rates in this action must be determined solely on the administrative record and any
3 information sought by this request beyond the administrative record is neither relevant nor
4 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
5 this request to the extent it seeks information regarding any alleged bias, motive, or mental
6 processes of members of MWD’s Board of Directors on the grounds that such information is not
7 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
8 discovery of admissible evidence. MWD further objects that this request is compound and
9 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
10 further objects to this request to the extent it seeks information protected from disclosure by the
11 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
12 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
13 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
14 privilege and/or protective doctrine.

15 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

16 MWD violates California constitutional and statutory law in the way it collects and
17 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
18 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
19 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
20 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
21 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
22 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
23 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
24 impose the WSR on wheeling transactions, which by definition involve only transportation
25 services—because there has been and can be no showing that projects funded by the WSR enable
26 (or have anything to do with) water transportation service.

27 Moreover, MWD’s disbursement to its member agencies of the money collected through
28

1 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
2 As set forth more fully in SDCWA's Complaint, MWD must show that the WSR rates imposed
3 by MWD on its member agencies "bear a fair or reasonable relationship to [the agencies']
4 burdens on, or benefits received from" the conservation and development projects funded by the
5 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
6 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
7 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
8 receiving any benefits from WSR funding, expressly in retaliation for SDCWA's filing of this
9 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

10 Because MWD must concede that SDCWA has received no direct benefit from the more
11 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
12 a different basis. In its answer to SDCWA's Second Amended Complaint, MWD alleged that
13 "[a]ll member agencies benefit from each acre-foot of water developed through these programs,
14 because it frees up capacity to convey water through Metropolitan's system, reducing the need to
15 invest in development of additional expensive water delivery infrastructure, and provides
16 additional water supplies to meet the region's demands." Purcell Decl. Ex. 29 at General
17 Allegation No. 8. MWD also alleged that "SDCWA will continue to receive the benefits of
18 Metropolitan's conservation and local resources programs regardless of whether the contracts to
19 which it is a direct party continue." *Id.* at General Allegation No. 13. In other words, MWD
20 claims that the projects it funds using WSR proceeds provide a generalized regional
21 **transportation** benefit across the whole of MWD's service area, including to SDCWA, and that
22 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
23 proportionate to the charges it imposes.

24 This discovery request targets these issues precisely. For this reason, the Court should
25 compel a response.

26 **REQUEST FOR ADMISSION NO. 32:**

27 Admit that MWD has never calculated the proportional benefit to each of its member
28

1 agencies from the aggregate group of local water supply projects, seawater desalination projects,
2 or conservation programs funded or subsidized with revenue collected through the Water
3 Stewardship Rate in a particular calendar year.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 32:**

5 MWD incorporates herein by reference each of its general objections and reservations set
6 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
7 the Court has not ordered that RFAs may be propounded, and no response to this request is
8 necessary because the Court has not ordered that a response to this RFA is required. The Court
9 ruled that, although discovery may be propounded, responses to discovery are not required unless
10 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
11 discovery is limited to document production at this time, that other forms of discovery may not be
12 required, and the consideration of other forms of discovery should wait until document discovery
13 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

14 MWD further objects to this request on the grounds that it is burdensome and oppressive,
15 and responses are not feasible, at this time given pending document requests in this action and in
16 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
17 *Action*.

18 MWD further objects to this request on the grounds that it seeks a response that is neither
19 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
20 of admissible evidence. MWD further objects to this request on the grounds that the
21 administrative record regarding the water rates challenged in this action has already been
22 produced. MWD further objects to this request on the grounds that any challenge to MWD's
23 water rates in this action must be determined solely on the administrative record and any
24 information sought by this request beyond the administrative record is neither relevant nor
25 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
26 this request to the extent it seeks information regarding any alleged bias, motive, or mental
27 processes of members of MWD's Board of Directors on the grounds that such information is not
28

1 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
2 discovery of admissible evidence. MWD further objects that this request is compound and
3 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
4 further objects to this request to the extent it seeks information protected from disclosure by the
5 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
6 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
7 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
8 privilege and/or protective doctrine.

9 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

10 MWD violates California constitutional and statutory law in the way it collects and
11 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
12 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
13 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
14 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
15 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
16 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
17 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
18 impose the WSR on wheeling transactions, which by definition involve only transportation
19 services—because there has been and can be no showing that projects funded by the WSR enable
20 (or have anything to do with) water transportation service.

21 Moreover, MWD’s disbursement to its member agencies of the money collected through
22 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
23 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
24 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
25 burdens on, or benefits received from” the conservation and development projects funded by the
26 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
27 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD

1 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
2 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
3 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

4 Because MWD must concede that SDCWA has received no direct benefit from the more
5 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
6 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
7 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
8 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
9 invest in development of additional expensive water delivery infrastructure, and provides
10 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
11 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
12 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
13 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
14 claims that the projects it funds using WSR proceeds provide a generalized regional
15 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
16 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
17 proportionate to the charges it imposes.

18 This discovery request targets these issues precisely. For this reason, the Court should
19 compel a response.

20 **REQUEST FOR ADMISSION NO. 33:**

21 Admit that MWD has calculated the proportional benefit to each of its member agencies
22 from the aggregate group of local water supply projects, seawater desalination projects, or
23 conservation programs funded or subsidized with revenue collected through the Water
24 Stewardship Rate in particular calendar years.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 33:**

26 MWD incorporates herein by reference each of its general objections and reservations set
27 forth above. MWD further objects to this RFA on the grounds that it is not authorized because

1 the Court has not ordered that RFAs may be propounded, and no response to this request is
2 necessary because the Court has not ordered that a response to this RFA is required. The Court
3 ruled that, although discovery may be propounded, responses to discovery are not required unless
4 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
5 discovery is limited to document production at this time, that other forms of discovery may not be
6 required, and the consideration of other forms of discovery should wait until document discovery
7 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

8 MWD further objects to this request on the grounds that it is burdensome and oppressive,
9 and responses are not feasible, at this time given pending document requests in this action and in
10 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
11 *Action*.

12 MWD further objects to this request on the grounds that it seeks a response that is neither
13 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
14 of admissible evidence. MWD further objects to this request on the grounds that the
15 administrative record regarding the water rates challenged in this action has already been
16 produced. MWD further objects to this request on the grounds that any challenge to MWD's
17 water rates in this action must be determined solely on the administrative record and any
18 information sought by this request beyond the administrative record is neither relevant nor
19 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
20 this request to the extent it seeks information regarding any alleged bias, motive, or mental
21 processes of members of MWD's Board of Directors on the grounds that such information is not
22 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
23 discovery of admissible evidence. MWD further objects that this request is compound and
24 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
25 further objects to this request to the extent it seeks information protected from disclosure by the
26 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
27 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,

1 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
2 privilege and/or protective doctrine.

3 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

4 MWD violates California constitutional and statutory law in the way it collects and
5 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
6 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
7 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
8 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
9 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
10 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
11 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
12 impose the WSR on wheeling transactions, which by definition involve only transportation
13 services—because there has been and can be no showing that projects funded by the WSR enable
14 (or have anything to do with) water transportation service.

15 Moreover, MWD’s disbursement to its member agencies of the money collected through
16 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
17 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
18 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
19 burdens on, or benefits received from” the conservation and development projects funded by the
20 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
21 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
22 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
23 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
24 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

25 Because MWD must concede that SDCWA has received no direct benefit from the more
26 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
27 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
28

1 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
2 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
3 invest in development of additional expensive water delivery infrastructure, and provides
4 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
5 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
6 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
7 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
8 claims that the projects it funds using WSR proceeds provide a generalized regional
9 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
10 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
11 proportionate to the charges it imposes.

12 This discovery request targets these issues precisely. For this reason, the Court should
13 compel a response.

14 **REQUEST FOR ADMISSION NO. 34:**

15 Admit that MWD has not calculated the proportional benefit to each of its member
16 agencies from the aggregate group of local water supply projects, seawater desalination projects,
17 or conservation programs funded or subsidized with revenue collected through the Water
18 Stewardship Rate in calendar year 2011.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 34:**

20 MWD incorporates herein by reference each of its general objections and reservations set
21 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
22 the Court has not ordered that RFAs may be propounded, and no response to this request is
23 necessary because the Court has not ordered that a response to this RFA is required. The Court
24 ruled that, although discovery may be propounded, responses to discovery are not required unless
25 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
26 discovery is limited to document production at this time, that other forms of discovery may not be
27 required, and the consideration of other forms of discovery should wait until document discovery
28

1 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

2 MWD further objects to this request on the grounds that it is burdensome and oppressive,
3 and responses are not feasible, at this time given pending document requests in this action and in
4 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
5 *Action*.

6 MWD further objects to this request on the grounds that it seeks a response that is neither
7 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
8 of admissible evidence. MWD further objects to this request on the grounds that the
9 administrative record regarding the water rates challenged in this action has already been
10 produced. MWD further objects to this request on the grounds that any challenge to MWD's
11 water rates in this action must be determined solely on the administrative record and any
12 information sought by this request beyond the administrative record is neither relevant nor
13 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
14 this request to the extent it seeks information regarding any alleged bias, motive, or mental
15 processes of members of MWD's Board of Directors on the grounds that such information is not
16 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
17 discovery of admissible evidence. MWD further objects that this request is compound and
18 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
19 further objects to this request to the extent it seeks information protected from disclosure by the
20 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
21 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
22 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
23 privilege and/or protective doctrine.

24 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

25 MWD violates California constitutional and statutory law in the way it collects and
26 disburses its so-called "Water Stewardship Rate," which MWD uses to fund local water supply
27 and conservation projects. For starters, MWD treats the Water Stewardship Rate ("WSR") as a
28

1 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
2 SDCWA under the parties' Exchange Agreement. But the WSR has nothing to do with enabling
3 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
4 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
5 part of MWD's supply rate. Common law and the Wheeling Statute also require that MWD not
6 impose the WSR on wheeling transactions, which by definition involve only transportation
7 services—because there has been and can be no showing that projects funded by the WSR enable
8 (or have anything to do with) water transportation service.

9 Moreover, MWD's disbursement to its member agencies of the money collected through
10 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
11 As set forth more fully in SDCWA's Complaint, MWD must show that the WSR rates imposed
12 by MWD on its member agencies "bear a fair or reasonable relationship to [the agencies']
13 burdens on, or benefits received from" the conservation and development projects funded by the
14 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
15 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
16 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
17 receiving any benefits from WSR funding, expressly in retaliation for SDCWA's filing of this
18 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

19 Because MWD must concede that SDCWA has received no direct benefit from the more
20 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
21 a different basis. In its answer to SDCWA's Second Amended Complaint, MWD alleged that
22 "[a]ll member agencies benefit from each acre-foot of water developed through these programs,
23 because it frees up capacity to convey water through Metropolitan's system, reducing the need to
24 invest in development of additional expensive water delivery infrastructure, and provides
25 additional water supplies to meet the region's demands." Purcell Decl. Ex. 29 at General
26 Allegation No. 8. MWD also alleged that "SDCWA will continue to receive the benefits of
27 Metropolitan's conservation and local resources programs regardless of whether the contracts to
28

1 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
2 claims that the projects it funds using WSR proceeds provide a generalized regional
3 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
4 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
5 proportionate to the charges it imposes.

6 This discovery request targets these issues precisely. For this reason, the Court should
7 compel a response.

8 **REQUEST FOR ADMISSION NO. 35:**

9 Admit that MWD has calculated the proportional benefit to each of its member agencies
10 from the aggregate group of local water supply projects, seawater desalination projects, or
11 conservation programs funded or subsidized with revenue collected through the Water
12 Stewardship Rate in calendar year 2011.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 35:**

14 MWD incorporates herein by reference each of its general objections and reservations set
15 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
16 the Court has not ordered that RFAs may be propounded, and no response to this request is
17 necessary because the Court has not ordered that a response to this RFA is required. The Court
18 ruled that, although discovery may be propounded, responses to discovery are not required unless
19 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
20 discovery is limited to document production at this time, that other forms of discovery may not be
21 required, and the consideration of other forms of discovery should wait until document discovery
22 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

23 MWD further objects to this request on the grounds that it is burdensome and oppressive,
24 and responses are not feasible, at this time given pending document requests in this action and in
25 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
26 *Action*.

27 MWD further objects to this request on the grounds that it seeks a response that is neither
28

1 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
2 of admissible evidence. MWD further objects to this request on the grounds that the
3 administrative record regarding the water rates challenged in this action has already been
4 produced. MWD further objects to this request on the grounds that any challenge to MWD's
5 water rates in this action must be determined solely on the administrative record and any
6 information sought by this request beyond the administrative record is neither relevant nor
7 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
8 this request to the extent it seeks information regarding any alleged bias, motive, or mental
9 processes of members of MWD's Board of Directors on the grounds that such information is not
10 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
11 discovery of admissible evidence. MWD further objects that this request is compound and
12 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
13 further objects to this request to the extent it seeks information protected from disclosure by the
14 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
15 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
16 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
17 privilege and/or protective doctrine.

18 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

19 MWD violates California constitutional and statutory law in the way it collects and
20 disburses its so-called "Water Stewardship Rate," which MWD uses to fund local water supply
21 and conservation projects. For starters, MWD treats the Water Stewardship Rate ("WSR") as a
22 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
23 SDCWA under the parties' Exchange Agreement. But the WSR has nothing to do with enabling
24 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
25 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
26 part of MWD's supply rate. Common law and the Wheeling Statute also require that MWD not
27 impose the WSR on wheeling transactions, which by definition involve only transportation
28

1 services—because there has been and can be no showing that projects funded by the WSR enable
2 (or have anything to do with) water transportation service.

3 Moreover, MWD’s disbursement to its member agencies of the money collected through
4 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
5 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
6 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
7 burdens on, or benefits received from” the conservation and development projects funded by the
8 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
9 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
10 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
11 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
12 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

13 Because MWD must concede that SDCWA has received no direct benefit from the more
14 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
15 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
16 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
17 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
18 invest in development of additional expensive water delivery infrastructure, and provides
19 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
20 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
21 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
22 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
23 claims that the projects it funds using WSR proceeds provide a generalized regional
24 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
25 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
26 proportionate to the charges it imposes.

27 This discovery request targets these issues precisely. For this reason, the Court should
28

1 compel a response.

2 **REQUEST FOR ADMISSION NO. 36:**

3 Admit that MWD has not calculated the proportional benefit to each of its member
4 agencies from the aggregate group of local water supply projects, seawater desalination projects,
5 or conservation programs funded or subsidized with revenue collected through the Water
6 Stewardship Rate in calendar year 2012.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 36:**

8 MWD incorporates herein by reference each of its general objections and reservations set
9 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
10 the Court has not ordered that RFAs may be propounded, and no response to this request is
11 necessary because the Court has not ordered that a response to this RFA is required. The Court
12 ruled that, although discovery may be propounded, responses to discovery are not required unless
13 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
14 discovery is limited to document production at this time, that other forms of discovery may not be
15 required, and the consideration of other forms of discovery should wait until document discovery
16 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

17 MWD further objects to this request on the grounds that it is burdensome and oppressive,
18 and responses are not feasible, at this time given pending document requests in this action and in
19 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
20 *Action*.

21 MWD further objects to this request on the grounds that it seeks a response that is neither
22 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
23 of admissible evidence. MWD further objects to this request on the grounds that the
24 administrative record regarding the water rates challenged in this action has already been
25 produced. MWD further objects to this request on the grounds that any challenge to MWD's
26 water rates in this action must be determined solely on the administrative record and any
27 information sought by this request beyond the administrative record is neither relevant nor
28

1 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
2 this request to the extent it seeks information regarding any alleged bias, motive, or mental
3 processes of members of MWD’s Board of Directors on the grounds that such information is not
4 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
5 discovery of admissible evidence. MWD further objects that this request is compound and
6 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
7 further objects to this request to the extent it seeks information protected from disclosure by the
8 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
9 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
10 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
11 privilege and/or protective doctrine.

12 MWD further objects to this request on the ground that it violates Code of Civil Procedure
13 § 2033.030 because the number of RFAs exceed the number of RFAs permitted by statute.

14 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

15 MWD violates California constitutional and statutory law in the way it collects and
16 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
17 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
18 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
19 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
20 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
21 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
22 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
23 impose the WSR on wheeling transactions, which by definition involve only transportation
24 services—because there has been and can be no showing that projects funded by the WSR enable
25 (or have anything to do with) water transportation service.

26 Moreover, MWD’s disbursement to its member agencies of the money collected through
27 the WSR does not bear any relationship to the contributions of each member agency to the WSR.

1 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
2 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
3 burdens on, or benefits received from” the conservation and development projects funded by the
4 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
5 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
6 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
7 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
8 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

9 Because MWD must concede that SDCWA has received no direct benefit from the more
10 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
11 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
12 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
13 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
14 invest in development of additional expensive water delivery infrastructure, and provides
15 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
16 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
17 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
18 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
19 claims that the projects it funds using WSR proceeds provide a generalized regional
20 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
21 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
22 proportionate to the charges it imposes.

23 This discovery request targets these issues precisely. For this reason, the Court should
24 compel a response.

25 **REQUEST FOR ADMISSION NO. 37:**

26 Admit that MWD has calculated the proportional benefit to each of its member agencies
27 from the aggregate group of local water supply projects, seawater desalination projects, or
28

1 conservation programs funded or subsidized with revenue collected through the Water
2 Stewardship Rate in calendar year 2012.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 37:**

4 MWD incorporates herein by reference each of its general objections and reservations set
5 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
6 the Court has not ordered that RFAs may be propounded, and no response to this request is
7 necessary because the Court has not ordered that a response to this RFA is required. The Court
8 ruled that, although discovery may be propounded, responses to discovery are not required unless
9 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
10 discovery is limited to document production at this time, that other forms of discovery may not be
11 required, and the consideration of other forms of discovery should wait until document discovery
12 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

13 MWD further objects to this request on the grounds that it is burdensome and oppressive,
14 and responses are not feasible, at this time given pending document requests in this action and in
15 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
16 *Action*.

17 MWD further objects to this request on the grounds that it seeks a response that is neither
18 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
19 of admissible evidence. MWD further objects to this request on the grounds that the
20 administrative record regarding the water rates challenged in this action has already been
21 produced. MWD further objects to this request on the grounds that any challenge to MWD's
22 water rates in this action must be determined solely on the administrative record and any
23 information sought by this request beyond the administrative record is neither relevant nor
24 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
25 this request to the extent it seeks information regarding any alleged bias, motive, or mental
26 processes of members of MWD's Board of Directors on the grounds that such information is not
27 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
28

1 discovery of admissible evidence. MWD further objects that this request is compound and
2 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
3 further objects to this request to the extent it seeks information protected from disclosure by the
4 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
5 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
6 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
7 privilege and/or protective doctrine.

8 MWD further objects to this request on the ground that it violates Code of Civil Procedure
9 § 2033.030 because the number of RFAs exceed the number of RFAs permitted by statute.

10 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

11 MWD violates California constitutional and statutory law in the way it collects and
12 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
13 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
14 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
15 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
16 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
17 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
18 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
19 impose the WSR on wheeling transactions, which by definition involve only transportation
20 services—because there has been and can be no showing that projects funded by the WSR enable
21 (or have anything to do with) water transportation service.

22 Moreover, MWD’s disbursement to its member agencies of the money collected through
23 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
24 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
25 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
26 burdens on, or benefits received from” the conservation and development projects funded by the
27 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
28

1 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
2 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
3 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
4 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

5 Because MWD must concede that SDCWA has received no direct benefit from the more
6 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
7 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
8 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
9 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
10 invest in development of additional expensive water delivery infrastructure, and provides
11 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
12 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
13 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
14 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
15 claims that the projects it funds using WSR proceeds provide a generalized regional
16 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
17 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
18 proportionate to the charges it imposes.

19 This discovery request targets these issues precisely. For this reason, the Court should
20 compel a response.

21 **REQUEST FOR ADMISSION NO. 38:**

22 Admit that MWD has never calculated the regional benefit to MWD created by the
23 aggregate group of local water supply projects, seawater desalination projects, or conservation
24 programs funded or subsidized with revenue collected through the Water Stewardship Rate in a
25 given calendar year.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 38:**

27 MWD incorporates herein by reference each of its general objections and reservations set
28

1 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
2 the Court has not ordered that RFAs may be propounded, and no response to this request is
3 necessary because the Court has not ordered that a response to this RFA is required. The Court
4 ruled that, although discovery may be propounded, responses to discovery are not required unless
5 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
6 discovery is limited to document production at this time, that other forms of discovery may not be
7 required, and the consideration of other forms of discovery should wait until document discovery
8 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

9 MWD further objects to this request on the grounds that it is burdensome and oppressive,
10 and responses are not feasible, at this time given pending document requests in this action and in
11 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
12 *Action*.

13 MWD further objects to this request on the grounds that it seeks a response that is neither
14 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
15 of admissible evidence. MWD further objects to this request on the grounds that the
16 administrative record regarding the water rates challenged in this action has already been
17 produced. MWD further objects to this request on the grounds that any challenge to MWD's
18 water rates in this action must be determined solely on the administrative record and any
19 information sought by this request beyond the administrative record is neither relevant nor
20 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
21 this request to the extent it seeks information regarding any alleged bias, motive, or mental
22 processes of members of MWD's Board of Directors on the grounds that such information is not
23 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
24 discovery of admissible evidence. MWD further objects that this request is compound and
25 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
26 further objects to this request to the extent it seeks information protected from disclosure by the
27 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
28

1 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
2 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
3 privilege and/or protective doctrine.

4 MWD further objects to this request on the ground that it violates Code of Civil Procedure
5 § 2033.030 because the number of RFAs exceed the number of RFAs permitted by statute.

6 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

7 MWD violates California constitutional and statutory law in the way it collects and
8 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
9 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
10 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
11 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
12 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
13 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
14 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
15 impose the WSR on wheeling transactions, which by definition involve only transportation
16 services—because there has been and can be no showing that projects funded by the WSR enable
17 (or have anything to do with) water transportation service.

18 Moreover, MWD’s disbursement to its member agencies of the money collected through
19 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
20 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
21 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
22 burdens on, or benefits received from” the conservation and development projects funded by the
23 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
24 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
25 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
26 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
27 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

1 Because MWD must concede that SDCWA has received no direct benefit from the more
2 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
3 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
4 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
5 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
6 invest in development of additional expensive water delivery infrastructure, and provides
7 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
8 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
9 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
10 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
11 claims that the projects it funds using WSR proceeds provide a generalized regional
12 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
13 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
14 proportionate to the charges it imposes.

15 This discovery request targets these issues precisely. For this reason, the Court should
16 compel a response.

17 **REQUEST FOR ADMISSION NO. 39:**

18 Admit that MWD has calculated the regional benefit to MWD created by the aggregate
19 group of local water supply projects, seawater desalination projects, or conservation programs
20 funded or subsidized with revenue collected through the Water Stewardship Rate in particular
21 calendar years.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 39:**

23 MWD incorporates herein by reference each of its general objections and reservations set
24 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
25 the Court has not ordered that RFAs may be propounded, and no response to this request is
26 necessary because the Court has not ordered that a response to this RFA is required. The Court
27 ruled that, although discovery may be propounded, responses to discovery are not required unless
28

1 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
2 discovery is limited to document production at this time, that other forms of discovery may not be
3 required, and the consideration of other forms of discovery should wait until document discovery
4 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

5 MWD further objects to this request on the grounds that it is burdensome and oppressive,
6 and responses are not feasible, at this time given pending document requests in this action and in
7 the 2012 *Action* ordered by the Court and the preparation of the administrative record in the 2012
8 *Action*.

9 MWD further objects to this request on the grounds that it seeks a response that is neither
10 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
11 of admissible evidence. MWD further objects to this request on the grounds that the
12 administrative record regarding the water rates challenged in this action has already been
13 produced. MWD further objects to this request on the grounds that any challenge to MWD's
14 water rates in this action must be determined solely on the administrative record and any
15 information sought by this request beyond the administrative record is neither relevant nor
16 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
17 this request to the extent it seeks information regarding any alleged bias, motive, or mental
18 processes of members of MWD's Board of Directors on the grounds that such information is not
19 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
20 discovery of admissible evidence. MWD further objects that this request is compound and
21 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
22 further objects to this request to the extent it seeks information protected from disclosure by the
23 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
24 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
25 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
26 privilege and/or protective doctrine.

27 MWD further objects to this request on the ground that it violates Code of Civil Procedure
28

1 § 2033.030 because the number of RFAs exceed the number of RFAs permitted by statute.

2 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

3 MWD violates California constitutional and statutory law in the way it collects and
4 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
5 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
6 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
7 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
8 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
9 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
10 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
11 impose the WSR on wheeling transactions, which by definition involve only transportation
12 services—because there has been and can be no showing that projects funded by the WSR enable
13 (or have anything to do with) water transportation service.

14 Moreover, MWD’s disbursement to its member agencies of the money collected through
15 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
16 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
17 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
18 burdens on, or benefits received from” the conservation and development projects funded by the
19 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
20 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
21 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
22 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
23 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

24 Because MWD must concede that SDCWA has received no direct benefit from the more
25 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
26 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
27 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
28

1 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
2 invest in development of additional expensive water delivery infrastructure, and provides
3 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
4 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
5 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
6 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
7 claims that the projects it funds using WSR proceeds provide a generalized regional
8 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
9 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
10 proportionate to the charges it imposes.

11 This discovery request targets these issues precisely. For this reason, the Court should
12 compel a response.

13 **REQUEST FOR ADMISSION NO. 40:**

14 Admit that MWD has not calculated the regional benefit to MWD, including but not
15 limited to any additional transportation or conveyance capacity or additional water supply,
16 created by the aggregate group of local water supply projects, seawater desalination projects, or
17 conservation programs funded or subsidized with revenue collected through the Water
18 Stewardship Rate in calendar year 2011.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 40:**

20 MWD incorporates herein by reference each of its general objections and reservations set
21 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
22 the Court has not ordered that RFAs may be propounded, and no response to this request is
23 necessary because the Court has not ordered that a response to this RFA is required. The Court
24 ruled that, although discovery may be propounded, responses to discovery are not required unless
25 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
26 discovery is limited to document production at this time, that other forms of discovery may not be
27 required, and the consideration of other forms of discovery should wait until document discovery
28

1 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

2 MWD further objects to this request on the grounds that it is burdensome and oppressive,
3 and responses are not feasible, at this time given pending document requests in this action and in
4 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
5 *Action*.

6 MWD further objects to this request on the grounds that it seeks a response that is neither
7 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
8 of admissible evidence. MWD further objects to this request on the grounds that the
9 administrative record regarding the water rates challenged in this action has already been
10 produced. MWD further objects to this request on the grounds that any challenge to MWD's
11 water rates in this action must be determined solely on the administrative record and any
12 information sought by this request beyond the administrative record is neither relevant nor
13 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
14 this request to the extent it seeks information regarding any alleged bias, motive, or mental
15 processes of members of MWD's Board of Directors on the grounds that such information is not
16 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
17 discovery of admissible evidence. MWD further objects that this request is compound and
18 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
19 further objects to this request to the extent it seeks information protected from disclosure by the
20 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
21 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
22 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
23 privilege and/or protective doctrine.

24 MWD further objects to this request on the ground that it violates Code of Civil Procedure
25 § 2033.030 because the number of RFAs exceed the number of RFAs permitted by statute.

26 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

27 MWD violates California constitutional and statutory law in the way it collects and
28

1 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
2 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
3 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
4 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
5 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
6 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
7 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
8 impose the WSR on wheeling transactions, which by definition involve only transportation
9 services—because there has been and can be no showing that projects funded by the WSR enable
10 (or have anything to do with) water transportation service.

11 Moreover, MWD’s disbursement to its member agencies of the money collected through
12 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
13 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
14 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
15 burdens on, or benefits received from” the conservation and development projects funded by the
16 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
17 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
18 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
19 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
20 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

21 Because MWD must concede that SDCWA has received no direct benefit from the more
22 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
23 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
24 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
25 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
26 invest in development of additional expensive water delivery infrastructure, and provides
27 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General

1 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
2 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
3 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
4 claims that the projects it funds using WSR proceeds provide a generalized regional
5 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
6 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
7 proportionate to the charges it imposes.

8 This discovery request targets these issues precisely. For this reason, the Court should
9 compel a response.

10 **REQUEST FOR ADMISSION NO. 41:**

11 Admit that MWD has calculated the regional benefit to MWD, including but not limited to
12 any additional transportation or conveyance capacity or additional water supply, created by the
13 aggregate group of local water supply projects, seawater desalination projects, or conservation
14 programs funded or subsidized with revenue collected through the Water Stewardship Rate in
15 calendar year 2011.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 41:**

17 MWD incorporates herein by reference each of its general objections and reservations set
18 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
19 the Court has not ordered that RFAs may be propounded, and no response to this request is
20 necessary because the Court has not ordered that a response to this RFA is required. The Court
21 ruled that, although discovery may be propounded, responses to discovery are not required unless
22 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
23 discovery is limited to document production at this time, that other forms of discovery may not be
24 required, and the consideration of other forms of discovery should wait until document discovery
25 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

26 MWD further objects to this request on the grounds that it is burdensome and oppressive,
27 and responses are not feasible, at this time given pending document requests in this action and in
28

1 the 2012 Action ordered by the Court and the preparation of the administrative record in the 2012
2 Action.

3 MWD further objects to this request on the grounds that it seeks a response that is neither
4 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
5 of admissible evidence. MWD further objects to this request on the grounds that the
6 administrative record regarding the water rates challenged in this action has already been
7 produced. MWD further objects to this request on the grounds that any challenge to MWD's
8 water rates in this action must be determined solely on the administrative record and any
9 information sought by this request beyond the administrative record is neither relevant nor
10 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
11 this request to the extent it seeks information regarding any alleged bias, motive, or mental
12 processes of members of MWD's Board of Directors on the grounds that such information is not
13 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
14 discovery of admissible evidence. MWD further objects that this request is compound and
15 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
16 further objects to this request to the extent it seeks information protected from disclosure by the
17 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
18 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
19 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
20 privilege and/or protective doctrine.

21 MWD further objects to this request on the ground that it violates Code of Civil Procedure
22 § 2033.030 because the number of RFAs exceed the number of RFAs permitted by statute.

23 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

24 MWD violates California constitutional and statutory law in the way it collects and
25 disburses its so-called "Water Stewardship Rate," which MWD uses to fund local water supply
26 and conservation projects. For starters, MWD treats the Water Stewardship Rate ("WSR") as a
27 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
28

1 SDCWA under the parties' Exchange Agreement. But the WSR has nothing to do with enabling
2 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
3 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
4 part of MWD's supply rate. Common law and the Wheeling Statute also require that MWD not
5 impose the WSR on wheeling transactions, which by definition involve only transportation
6 services—because there has been and can be no showing that projects funded by the WSR enable
7 (or have anything to do with) water transportation service.

8 Moreover, MWD's disbursement to its member agencies of the money collected through
9 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
10 As set forth more fully in SDCWA's Complaint, MWD must show that the WSR rates imposed
11 by MWD on its member agencies "bear a fair or reasonable relationship to [the agencies']
12 burdens on, or benefits received from" the conservation and development projects funded by the
13 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
14 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
15 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
16 receiving any benefits from WSR funding, expressly in retaliation for SDCWA's filing of this
17 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

18 Because MWD must concede that SDCWA has received no direct benefit from the more
19 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
20 a different basis. In its answer to SDCWA's Second Amended Complaint, MWD alleged that
21 "[a]ll member agencies benefit from each acre-foot of water developed through these programs,
22 because it frees up capacity to convey water through Metropolitan's system, reducing the need to
23 invest in development of additional expensive water delivery infrastructure, and provides
24 additional water supplies to meet the region's demands." Purcell Decl. Ex. 29 at General
25 Allegation No. 8. MWD also alleged that "SDCWA will continue to receive the benefits of
26 Metropolitan's conservation and local resources programs regardless of whether the contracts to
27 which it is a direct party continue." *Id.* at General Allegation No. 13. In other words, MWD
28

1 claims that the projects it funds using WSR proceeds provide a generalized regional
2 **transportation** benefit across the whole of MWD's service area, including to SDCWA, and that
3 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
4 proportionate to the charges it imposes.

5 This discovery request targets these issues precisely. For this reason, the Court should
6 compel a response.

7 **REQUEST FOR ADMISSION NO. 42:**

8 Admit that MWD has not calculated the regional benefit to MWD, including but not
9 limited to any additional transportation or conveyance capacity or additional water supply,
10 created by the aggregate group of local water supply projects, seawater desalination projects, or
11 conservation programs funded or subsidized with revenue collected through the Water
12 Stewardship Rate in calendar year 2012.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 42:**

14 MWD incorporates herein by reference each of its general objections and reservations set
15 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
16 the Court has not ordered that RFAs may be propounded, and no response to this request is
17 necessary because the Court has not ordered that a response to this RFA is required. The Court
18 ruled that, although discovery may be propounded, responses to discovery are not required unless
19 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
20 discovery is limited to document production at this time, that other forms of discovery may not be
21 required, and the consideration of other forms of discovery should wait until document discovery
22 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

23 MWD further objects to this request on the grounds that it is burdensome and oppressive,
24 and responses are not feasible, at this time given pending document requests in this action and in
25 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
26 *Action*.

27 MWD further objects to this request on the grounds that it seeks a response that is neither
28

1 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
2 of admissible evidence. MWD further objects to this request on the grounds that the
3 administrative record regarding the water rates challenged in this action has already been
4 produced. MWD further objects to this request on the grounds that any challenge to MWD's
5 water rates in this action must be determined solely on the administrative record and any
6 information sought by this request beyond the administrative record is neither relevant nor
7 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
8 this request to the extent it seeks information regarding any alleged bias, motive, or mental
9 processes of members of MWD's Board of Directors on the grounds that such information is not
10 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
11 discovery of admissible evidence. MWD further objects that this request is compound and
12 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
13 further objects to this request to the extent it seeks information protected from disclosure by the
14 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
15 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
16 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
17 privilege and/or protective doctrine.

18 MWD further objects to this request on the ground that it violates Code of Civil Procedure
19 § 2033.030 because the number of RFAs exceed the number of RFAs permitted by statute.

20 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

21 MWD violates California constitutional and statutory law in the way it collects and
22 disburses its so-called "Water Stewardship Rate," which MWD uses to fund local water supply
23 and conservation projects. For starters, MWD treats the Water Stewardship Rate ("WSR") as a
24 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
25 SDCWA under the parties' Exchange Agreement. But the WSR has nothing to do with enabling
26 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
27 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
28

1 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
2 impose the WSR on wheeling transactions, which by definition involve only transportation
3 services—because there has been and can be no showing that projects funded by the WSR enable
4 (or have anything to do with) water transportation service.

5 Moreover, MWD’s disbursement to its member agencies of the money collected through
6 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
7 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
8 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
9 burdens on, or benefits received from” the conservation and development projects funded by the
10 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
11 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
12 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
13 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
14 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

15 Because MWD must concede that SDCWA has received no direct benefit from the more
16 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
17 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
18 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
19 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
20 invest in development of additional expensive water delivery infrastructure, and provides
21 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
22 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
23 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
24 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
25 claims that the projects it funds using WSR proceeds provide a generalized regional
26 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
27 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
28

1 proportionate to the charges it imposes.

2 This discovery request targets these issues precisely. For this reason, the Court should
3 compel a response.

4 **REQUEST FOR ADMISSION NO. 43:**

5 Admit that MWD has calculated the regional benefit to MWD, including but not limited to
6 any additional transportation or conveyance capacity or additional water supply, created by the
7 aggregate group of local water supply projects, seawater desalination projects, or conservation
8 programs funded or subsidized with revenue collected through the Water Stewardship Rate in
9 calendar year 2012.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 43:**

11 MWD incorporates herein by reference each of its general objections and reservations set
12 forth above. MWD further objects to this RFA on the grounds that it is not authorized because
13 the Court has not ordered that RFAs may be propounded, and no response to this request is
14 necessary because the Court has not ordered that a response to this RFA is required. The Court
15 ruled that, although discovery may be propounded, responses to discovery are not required unless
16 ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court has also ruled that
17 discovery is limited to document production at this time, that other forms of discovery may not be
18 required, and the consideration of other forms of discovery should wait until document discovery
19 is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

20 MWD further objects to this request on the grounds that it is burdensome and oppressive,
21 and responses are not feasible, at this time given pending document requests in this action and in
22 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
23 *Action*.

24 MWD further objects to this request on the grounds that it seeks a response that is neither
25 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
26 of admissible evidence. MWD further objects to this request on the grounds that the
27 administrative record regarding the water rates challenged in this action has already been
28

1 produced. MWD further objects to this request on the grounds that any challenge to MWD’s
2 water rates in this action must be determined solely on the administrative record and any
3 information sought by this request beyond the administrative record is neither relevant nor
4 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
5 this request to the extent it seeks information regarding any alleged bias, motive, or mental
6 processes of members of MWD’s Board of Directors on the grounds that such information is not
7 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
8 discovery of admissible evidence. MWD further objects that this request is compound and
9 complex. MWD further objects to this request to the extent it is vague and ambiguous. MWD
10 further objects to this request to the extent it seeks information protected from disclosure by the
11 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
12 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
13 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
14 privilege and/or protective doctrine.

15 MWD further objects to this request on the ground that it violates Code of Civil Procedure
16 § 2033.030 because the number of RFAs exceed the number of RFAs permitted by statute.

17 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

18 MWD violates California constitutional and statutory law in the way it collects and
19 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
20 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
21 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
22 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
23 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
24 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
25 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
26 impose the WSR on wheeling transactions, which by definition involve only transportation
27 services—because there has been and can be no showing that projects funded by the WSR enable
28

1 (or have anything to do with) water transportation service.

2 Moreover, MWD’s disbursement to its member agencies of the money collected through
3 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
4 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
5 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
6 burdens on, or benefits received from” the conservation and development projects funded by the
7 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
8 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
9 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
10 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
11 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

12 Because MWD must concede that SDCWA has received no direct benefit from the more
13 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
14 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
15 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
16 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
17 invest in development of additional expensive water delivery infrastructure, and provides
18 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
19 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
20 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
21 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
22 claims that the projects it funds using WSR proceeds provide a generalized regional
23 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
24 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
25 proportionate to the charges it imposes.

26 This discovery request targets these issues precisely. For this reason, the Court should
27 compel a response.

1
2 **FIRST SET OF SPECIAL INTERROGATORIES TO METROPOLITAN WATER**
3 **DISTRICT OF SOUTHERN CALIFORNIA**

4 **INTERROGATORY NO. 1:**

5 Separately for each MWD RATE COMPONENT,¹ IDENTIFY² the estimated costs or
6 expenditures, and estimated sales volumes, used by MWD in setting the per-acre-foot amount for
7 that MWD RATE COMPONENT for calendar years 2011 and 2012.

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

9 MWD incorporates herein by reference each of its general objections and reservations set
10 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
11 because the Court has not ordered that interrogatories may be propounded, and no response to this
12 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
13 is required. The Court ruled that, although discovery may be propounded, responses to discovery
14 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
15 has also ruled that discovery is limited to document production at this time, that other forms of
16 discovery may not be required, and the consideration of other forms of discovery should wait
17 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
18 13.)

19 MWD further objects to this interrogatory on the grounds that it is burdensome and
20 oppressive, and responses are not feasible, at this time given pending document requests in this
21 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
22 record in the *2012 Action*.

23
24 ¹ “MWD RATE COMPONENT” as used in these Interrogatories shall mean and refer to the
25 individual rates adopted by MWD by which MWD collects its costs of service, including but not
26 limited to the Tier 1 Supply Rate, the Tier 2 Supply Rate, the System Access Rate, the System
27 Power Rate, the Water Stewardship Rate, the Treatment Rate, and the Replenishment Rate.

28 ² IDENTIFY as used in this Interrogatory and Interrogatories No. 2 means to list: 1) each line-
item cost or expenditure and each aggregate group of expenditures or both, however the
information exists; 2) the dollar amount attributed to that cost, expenditure or group of costs or
expenditures; and 3) the aggregate sum of those expenditures.

1 MWD further objects to this interrogatory on the grounds that it seeks a response that is
2 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
3 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
4 the administrative record regarding the water rates challenged in this action has already been
5 produced. MWD further objects to this interrogatory on the grounds that any challenge to
6 MWD's water rates in this action must be determined solely on the administrative record and any
7 information sought by this interrogatory beyond the administrative record is neither relevant nor
8 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
9 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
10 processes of members of MWD's Board of Directors on the grounds that such information is not
11 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
12 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
13 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
14 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
15 MWD further objects to this interrogatory to the extent it seeks information protected from
16 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
17 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
18 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
19 and/or any other privilege and/or protective doctrine.

20 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

21 This request involves a single issue, which Judge Warren described as “the crux of what is
22 being asserted” and Judge Kramer reiterated was “what this case is all about.” Purcell Decl.
23 Ex.18 at 37:16-23; Ex. 20 at 56:4-7. That issue is whether MWD's particular rates, like the
24 System Access Rate (“SAR”), the System Power Rate (“SPR”), and the Water Stewardship Rate
25 (“WSR”), recover more than the costs of providing the services for which they are nominally
26 collected. This is the fundamental basis underlying SDCWA's claims in this case—that MWD,
27 as a public agency and government-authorized monopolist, is barred from charging its ratepayers
28

1 more than its costs of service. Although MWD recently denied, for the first time, that it must
2 impose rates consistent with its costs, numerous provisions of California law clearly impose that
3 limitation:

- 4 • Government Code 54999.7(a) requires that a public agency’s rates “shall not
5 exceed the reasonable cost of providing the public utility service.” Cal. Govt.
6 Code § 54999.7(a).
- 7 • The Wheeling Statute, likewise, requires that MWD not charge more than “fair
8 compensation” for wheeling, defined in the law as the “reasonable charges
9 incurred by the owner of the conveyance system” to accomplish the wheeling
10 transaction. Cal. Water Code § 1811.
- 11 • The California Constitution, as amended by Proposition 13 and Proposition 26,
12 defines MWD’s rates as taxes, which must be passed by a two-thirds majority
13 popular vote, unless MWD can establish that its rates are set at an amount “no
14 more than necessary to cover the reasonable costs of the government activity.”
15 Cal. Const., art 13A § 4; art 13C, § 1.
- 16 • California common law likewise has always limited utilities to imposing rates that
17 recover no more than the utility’s costs.

18 Moreover, as noted above, before last week, MWD has *always* recognized, like every other rate-
19 setting body in California, that it is barred from charging its customers more than its actual and
20 proportionate costs of service. *See Purcell Decl. Ex. 24 at 24.*

21 This request seeks information that demonstrates, or would allow, a comparison between
22 MWD’s specific costs for providing services—such as the maintenance, power, and infrastructure
23 costs to transport water, or water supply, storage and facility costs needed to meet peak
24 demands—with the revenue from specific rates like the SAR and SPR. Obtaining information
25 about MWD’s actual costs and revenues, including the information that comprises MWD’s “rate
26 model,” is also critical for calculating SDCWA’s damages pursuant to its breach of contract
27 claim. For this reason, the Court should compel a response.

28 **INTERROGATORY NO. 2:**

Separately for each MWD RATE COMPONENT, IDENTIFY the full accrual actual costs
for every cost or expenditure that MWD³ recovered through that MWD RATE COMPONENT in

³ “MWD,” “MWD’S,” “YOU,” and “YOUR” as used in these Interrogatories shall mean and include the Metropolitan Water District of Southern California, and/or any and all of its present or former agents, employees, staff members, independent contractors, consultants, or representatives, but not directors of the MWD Board.

1 calendar years 2011 and 2012.

2 **RESPONSE TO INTERROGATORY NO. 2:**

3 MWD incorporates herein by reference each of its general objections and reservations set
4 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
5 because the Court has not ordered that interrogatories may be propounded, and no response to this
6 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
7 is required. The Court ruled that, although discovery may be propounded, responses to discovery
8 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
9 has also ruled that discovery is limited to document production at this time, that other forms of
10 discovery may not be required, and the consideration of other forms of discovery should wait
11 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
12 13.)

13 MWD further objects to this interrogatory on the grounds that it is burdensome and
14 oppressive, and responses are not feasible, at this time given pending document requests in this
15 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
16 record in the *2012 Action*.

17 MWD further objects to this interrogatory on the grounds that it seeks a response that is
18 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
19 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
20 the administrative record regarding the water rates challenged in this action has already been
21 produced. MWD further objects to this interrogatory on the grounds that any challenge to
22 MWD's water rates in this action must be determined solely on the administrative record and any
23 information sought by this interrogatory beyond the administrative record is neither relevant nor
24 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
25 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
26 processes of members of MWD's Board of Directors on the grounds that such information is not
27 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
28

1 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
2 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
3 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
4 MWD further objects to this interrogatory to the extent it seeks information protected from
5 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
6 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
7 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
8 and/or any other privilege and/or protective doctrine.

9 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

10 This request involves a single issue, which Judge Warren described as “the crux of what is
11 being asserted” and Judge Kramer reiterated was “what this case is all about.” Purcell Decl.
12 Ex.18 at 37:16-23; Ex. 20 at 56:4-7. That issue is whether MWD’s particular rates, like the
13 System Access Rate (“SAR”), the System Power Rate (“SPR”), and the Water Stewardship Rate
14 (“WSR”), recover more than the costs of providing the services for which they are nominally
15 collected. This is the fundamental basis underlying SDCWA’s claims in this case—that MWD,
16 as a public agency and government-authorized monopolist, is barred from charging its ratepayers
17 more than its costs of service. Although MWD recently denied, for the first time, that it must
18 impose rates consistent with its costs, numerous provisions of California law clearly impose that
19 limitation:

- 20 • Government Code 54999.7(a) requires that a public agency’s rates “shall not
21 exceed the reasonable cost of providing the public utility service.” Cal. Govt.
22 Code § 54999.7(a).
- 23 • The Wheeling Statute, likewise, requires that MWD not charge more than “fair
24 compensation” for wheeling, defined in the law as the “reasonable charges
25 incurred by the owner of the conveyance system” to accomplish the wheeling
26 transaction. Cal. Water Code § 1811.
- 27 • The California Constitution, as amended by Proposition 13 and Proposition 26,
28 defines MWD’s rates as taxes, which must be passed by a two-thirds majority
popular vote, unless MWD can establish that its rates are set at an amount “no
more than necessary to cover the reasonable costs of the government activity.”
Cal. Const., art 13A § 4; art 13C, § 1.
- California common law likewise has always limited utilities to imposing rates that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

recover no more than the utility’s costs.

Moreover, as noted above, before last week, MWD has *always* recognized, like every other rate-setting body in California, that it is barred from charging its customers more than its actual and proportionate costs of service. *See Purcell Decl. Ex. 24 at 24.*

This request seeks information that demonstrates, or would allow, a comparison between MWD’s specific costs for providing services—such as the maintenance, power, and infrastructure costs to transport water, or water supply, storage and facility costs needed to meet peak demands—with the revenue from specific rates like the SAR and SPR. Obtaining information about MWD’s actual costs and revenues, including the information that comprises MWD’s “rate model,” is also critical for calculating SDCWA’s damages pursuant to its breach of contract claim. For this reason, the Court should compel a response.

INTERROGATORY NO. 3:

Separately for each MWD RATE COMPONENT, IDENTIFY⁴ all DOCUMENTS,⁵ data, calculations, analyses, studies, or other information used by MWD to set the per-acre-foot amount for that MWD RATE COMPONENT for calendar years 2011 and 2012.

RESPONSE TO INTERROGATORY NO. 3:

MWD incorporates herein by reference each of its general objections and reservations set forth above. MWD further objects to this interrogatory on the grounds that it is not authorized because the Court has not ordered that interrogatories may be propounded, and no response to this

⁴ “IDENTIFY” as used in this Interrogatory and in Interrogatory Nos. 4-5, 8 and 12-22 means, with respect to DOCUMENTS, (a) to describe the DOCUMENT by its title, file name, or other description sufficient to describe its identity and to distinguish it from other DOCUMENTS, (b) to state the physical location(s) at MWD in which such document currently resides is known to have resided at any time from January 2008 to the present (*e.g.*, MWD’s shared-drive entitled “Water Costs,” or Brandon Goshi’s computer, the file on Jeff Kightlinger’s desk entitled “Cost-of-Service Studies), (c) to state the date of production by MWD to SDCWA of such DOCUMENT, if already produced, or the date of intended production if not already produced by MWD to SDCWA, (d) to state the Bates Number (already assigned or to be assigned) to such DOCUMENT, (e) to identify by name the individual or entity who created the document; and, with respect to facts or information IDENTIFY means to state and describe all facts known to MWD regarding the matter as to which inquiry is made and the name of all persons having knowledge of those facts.

⁵ “DOCUMENT” or “DOCUMENTS” shall mean and refer to a “writing,” as defined by California Evidence Code 250.

1 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
2 is required. The Court ruled that, although discovery may be propounded, responses to discovery
3 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
4 has also ruled that discovery is limited to document production at this time, that other forms of
5 discovery may not be required, and the consideration of other forms of discovery should wait
6 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
7 13.)

8 MWD further objects to this interrogatory on the grounds that it is burdensome and
9 oppressive, and responses are not feasible, at this time given pending document requests in this
10 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
11 record in the *2012 Action*.

12 MWD further objects to this interrogatory on the grounds that it seeks a response that is
13 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
14 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
15 the administrative record regarding the water rates challenged in this action has already been
16 produced. MWD further objects to this interrogatory on the grounds that any challenge to
17 MWD's water rates in this action must be determined solely on the administrative record and any
18 information sought by this interrogatory beyond the administrative record is neither relevant nor
19 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
20 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
21 processes of members of MWD's Board of Directors on the grounds that such information is not
22 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
23 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
24 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
25 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
26 MWD further objects to this interrogatory to the extent it seeks information protected from
27 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
28

1 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
2 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
3 and/or any other privilege and/or protective doctrine.

4 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

5 This request involves a single issue, which Judge Warren described as “the crux of what is
6 being asserted” and Judge Kramer reiterated was “what this case is all about.” Purcell Decl.
7 Ex.18 at 37:16-23; Ex. 20 at 56:4-7. That issue is whether MWD’s particular rates, like the
8 System Access Rate (“SAR”), the System Power Rate (“SPR”), and the Water Stewardship Rate
9 (“WSR”), recover more than the costs of providing the services for which they are nominally
10 collected. This is the fundamental basis underlying SDCWA’s claims in this case—that MWD,
11 as a public agency and government-authorized monopolist, is barred from charging its ratepayers
12 more than its costs of service. Although MWD recently denied, for the first time, that it must
13 impose rates consistent with its costs, numerous provisions of California law clearly impose that
14 limitation:

- 15 • Government Code 54999.7(a) requires that a public agency’s rates “shall not
16 exceed the reasonable cost of providing the public utility service.” Cal. Govt.
Code § 54999.7(a).
- 17 • The Wheeling Statute, likewise, requires that MWD not charge more than “fair
18 compensation” for wheeling, defined in the law as the “reasonable charges
19 incurred by the owner of the conveyance system” to accomplish the wheeling
transaction. Cal. Water Code § 1811.
- 20 • The California Constitution, as amended by Proposition 13 and Proposition 26,
21 defines MWD’s rates as taxes, which must be passed by a two-thirds majority
popular vote, unless MWD can establish that its rates are set at an amount “no
22 more than necessary to cover the reasonable costs of the government activity.”
Cal. Const., art 13A § 4; art 13C, § 1.
- 23 • California common law likewise has always limited utilities to imposing rates that
recover no more than the utility’s costs.

24 Moreover, as noted above, before last week, MWD has *always* recognized, like every other rate-
25 setting body in California, that it is barred from charging its customers more than its actual and
26 proportionate costs of service. See Purcell Decl. Ex. 24 at 24.

27 This request seeks information that demonstrates, or would allow, a comparison between
28

1 MWD’s specific costs for providing services—such as the maintenance, power, and infrastructure
2 costs to transport water, or water supply, storage and facility costs needed to meet peak
3 demands—with the revenue from specific rates like the SAR and SPR. Obtaining information
4 about MWD’s actual costs and revenues, including the information that comprises MWD’s “rate
5 model,” is also critical for calculating SDCWA’s damages pursuant to its breach of contract
6 claim. For this reason, the Court should compel a response.

7 **INTERROGATORY NO. 4:**

8 Separately for each MWD RATE COMPONENT, IDENTIFY DOCUMENTS, data,
9 calculations, analyses, studies, or other information that constitute, or enable, a reconciliation of
10 the revenue collected through each MWD RATE COMPONENT in each of calendar years 2011
11 and 2012 with the particular full accrual actual costs or expenditures MWD sought to recover
12 through that MWD RATE COMPONENT for each of calendar years 2011 and 2012.

13 **RESPONSE TO INTERROGATORY NO. 4:**

14 MWD incorporates herein by reference each of its general objections and reservations set
15 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
16 because the Court has not ordered that interrogatories may be propounded, and no response to this
17 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
18 is required. The Court ruled that, although discovery may be propounded, responses to discovery
19 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
20 has also ruled that discovery is limited to document production at this time, that other forms of
21 discovery may not be required, and the consideration of other forms of discovery should wait
22 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
23 13.)

24 MWD further objects to this interrogatory on the grounds that it is burdensome and
25 oppressive, and responses are not feasible, at this time given pending document requests in this
26 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
27 record in the *2012 Action*.

1 MWD further objects to this interrogatory on the grounds that it seeks a response that is
2 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
3 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
4 the administrative record regarding the water rates challenged in this action has already been
5 produced. MWD further objects to this interrogatory on the grounds that any challenge to
6 MWD's water rates in this action must be determined solely on the administrative record and any
7 information sought by this interrogatory beyond the administrative record is neither relevant nor
8 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
9 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
10 processes of members of MWD's Board of Directors on the grounds that such information is not
11 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
12 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
13 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
14 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
15 MWD further objects to this interrogatory to the extent it seeks information protected from
16 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
17 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
18 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
19 and/or any other privilege and/or protective doctrine.

20 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

21 This request involves a single issue, which Judge Warren described as “the crux of what is
22 being asserted” and Judge Kramer reiterated was “what this case is all about.” Purcell Decl.
23 Ex.18 at 37:16-23; Ex. 20 at 56:4-7. That issue is whether MWD's particular rates, like the
24 System Access Rate (“SAR”), the System Power Rate (“SPR”), and the Water Stewardship Rate
25 (“WSR”), recover more than the costs of providing the services for which they are nominally
26 collected. This is the fundamental basis underlying SDCWA's claims in this case—that MWD,
27 as a public agency and government-authorized monopolist, is barred from charging its ratepayers
28

1 more than its costs of service. Although MWD recently denied, for the first time, that it must
2 impose rates consistent with its costs, numerous provisions of California law clearly impose that
3 limitation:

- 4 • Government Code 54999.7(a) requires that a public agency’s rates “shall not
5 exceed the reasonable cost of providing the public utility service.” Cal. Govt.
6 Code § 54999.7(a).
- 7 • The Wheeling Statute, likewise, requires that MWD not charge more than “fair
8 compensation” for wheeling, defined in the law as the “reasonable charges
9 incurred by the owner of the conveyance system” to accomplish the wheeling
10 transaction. Cal. Water Code § 1811.
- 11 • The California Constitution, as amended by Proposition 13 and Proposition 26,
12 defines MWD’s rates as taxes, which must be passed by a two-thirds majority
13 popular vote, unless MWD can establish that its rates are set at an amount “no
14 more than necessary to cover the reasonable costs of the government activity.”
15 Cal. Const., art 13A § 4; art 13C, § 1.
- 16 • California common law likewise has always limited utilities to imposing rates that
17 recover no more than the utility’s costs.

18 Moreover, as noted above, before last week, MWD has *always* recognized, like every other rate-
19 setting body in California, that it is barred from charging its customers more than its actual and
20 proportionate costs of service. *See* Purcell Decl. Ex. 24 at 24.

21 This request seeks information that demonstrates, or would allow, a comparison between
22 MWD’s specific costs for providing services—such as the maintenance, power, and infrastructure
23 costs to transport water, or water supply, storage and facility costs needed to meet peak
24 demands—with the revenue from specific rates like the SAR and SPR. Obtaining information
25 about MWD’s actual costs and revenues, including the information that comprises MWD’s “rate
26 model,” is also critical for calculating SDCWA’s damages pursuant to its breach of contract
27 claim. For this reason, the Court should compel a response.

28 **INTERROGATORY NO. 5:**

IDENTIFY all DOCUMENTS, data, analyses, calculations, studies or other information
that existed as of April 13, 2010, that constituted, or enabled, a reconciliation of the revenue
collected through each MWD RATE COMPONENT for calendar years 2008, 2009, and 2010
with the particular full accrual actual costs or expenditures MWD sought to recover through that

1 MWD RATE COMPONENT in calendar years 2008, 2009, and 2010.

2 **RESPONSE TO INTERROGATORY NO. 5:**

3 MWD incorporates herein by reference each of its general objections and reservations set
4 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
5 because the Court has not ordered that interrogatories may be propounded, and no response to this
6 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
7 is required. The Court ruled that, although discovery may be propounded, responses to discovery
8 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
9 has also ruled that discovery is limited to document production at this time, that other forms of
10 discovery may not be required, and the consideration of other forms of discovery should wait
11 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
12 13.)

13 MWD further objects to this interrogatory on the grounds that it is burdensome and
14 oppressive, and responses are not feasible, at this time given pending document requests in this
15 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
16 record in the *2012 Action*.

17 MWD further objects to this interrogatory on the grounds that it seeks a response that is
18 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
19 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
20 the administrative record regarding the water rates challenged in this action has already been
21 produced. MWD further objects to this interrogatory on the grounds that any challenge to
22 MWD's water rates in this action must be determined solely on the administrative record and any
23 information sought by this interrogatory beyond the administrative record is neither relevant nor
24 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
25 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
26 processes of members of MWD's Board of Directors on the grounds that such information is not
27 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
28

1 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
2 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
3 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
4 MWD further objects to this interrogatory to the extent it seeks information protected from
5 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
6 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
7 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
8 and/or any other privilege and/or protective doctrine.

9 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

10 This request involves a single issue, which Judge Warren described as “the crux of what is
11 being asserted” and Judge Kramer reiterated was “what this case is all about.” Purcell Decl.
12 Ex.18 at 37:16-23; Ex. 20 at 56:4-7. That issue is whether MWD’s particular rates, like the
13 System Access Rate (“SAR”), the System Power Rate (“SPR”), and the Water Stewardship Rate
14 (“WSR”), recover more than the costs of providing the services for which they are nominally
15 collected. This is the fundamental basis underlying SDCWA’s claims in this case—that MWD,
16 as a public agency and government-authorized monopolist, is barred from charging its ratepayers
17 more than its costs of service. Although MWD recently denied, for the first time, that it must
18 impose rates consistent with its costs, numerous provisions of California law clearly impose that
19 limitation:

- 20 • Government Code 54999.7(a) requires that a public agency’s rates “shall not
21 exceed the reasonable cost of providing the public utility service.” Cal. Govt.
22 Code § 54999.7(a).
- 23 • The Wheeling Statute, likewise, requires that MWD not charge more than “fair
24 compensation” for wheeling, defined in the law as the “reasonable charges
25 incurred by the owner of the conveyance system” to accomplish the wheeling
26 transaction. Cal. Water Code § 1811.
- 27 • The California Constitution, as amended by Proposition 13 and Proposition 26,
28 defines MWD’s rates as taxes, which must be passed by a two-thirds majority
popular vote, unless MWD can establish that its rates are set at an amount “no
more than necessary to cover the reasonable costs of the government activity.”
Cal. Const., art 13A § 4; art 13C, § 1.
- California common law likewise has always limited utilities to imposing rates that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

recover no more than the utility’s costs.

Moreover, as noted above, before last week, MWD has *always* recognized, like every other rate-setting body in California, that it is barred from charging its customers more than its actual and proportionate costs of service. *See Purcell Decl. Ex. 24 at 24.*

This request seeks information that demonstrates, or would allow, a comparison between MWD’s specific costs for providing services—such as the maintenance, power, and infrastructure costs to transport water, or water supply, storage and facility costs needed to meet peak demands—with the revenue from specific rates like the SAR and SPR. Obtaining information about MWD’s actual costs and revenues, including the information that comprises MWD’s “rate model,” is also critical for calculating SDCWA’s damages pursuant to its breach of contract claim. For this reason, the Court should compel a response.

INTERROGATORY NO. 6:

Separately for each MWD RATE COMPONENT, identify the estimated sales volume and revenue that MWD projected to collect from each MWD member agency in calendar years 2011 and 2012.

RESPONSE TO INTERROGATORY NO. 6:

MWD incorporates herein by reference each of its general objections and reservations set forth above. MWD further objects to this interrogatory on the grounds that it is not authorized because the Court has not ordered that interrogatories may be propounded, and no response to this interrogatory is necessary because the Court has not ordered that a response to this interrogatory is required. The Court ruled that, although discovery may be propounded, responses to discovery are not required unless ordered by the Court. (*See 2/17/12 Tr. at 40:20-22; 41:1-14.*) The Court has also ruled that discovery is limited to document production at this time, that other forms of discovery may not be required, and the consideration of other forms of discovery should wait until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-13.)

MWD further objects to this interrogatory on the grounds that it is burdensome and

1 oppressive, and responses are not feasible, at this time given pending document requests in this
2 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
3 record in the *2012 Action*.

4 MWD further objects to this interrogatory on the grounds that it seeks a response that is
5 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
6 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
7 the administrative record regarding the water rates challenged in this action has already been
8 produced. MWD further objects to this interrogatory on the grounds that any challenge to
9 MWD's water rates in this action must be determined solely on the administrative record and any
10 information sought by this interrogatory beyond the administrative record is neither relevant nor
11 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
12 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
13 processes of members of MWD's Board of Directors on the grounds that such information is not
14 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
15 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
16 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
17 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
18 MWD further objects to this interrogatory to the extent it seeks information protected from
19 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
20 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
21 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
22 and/or any other privilege and/or protective doctrine.

23 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

24 This request involves a single issue, which Judge Warren described as "the crux of what is
25 being asserted" and Judge Kramer reiterated was "what this case is all about." Purcell Decl.
26 Ex.18 at 37:16-23; Ex. 20 at 56:4-7. That issue is whether MWD's particular rates, like the
27 System Access Rate ("SAR"), the System Power Rate ("SPR"), and the Water Stewardship Rate
28

1 (“WSR”), recover more than the costs of providing the services for which they are nominally
2 collected. This is the fundamental basis underlying SDCWA’s claims in this case—that MWD,
3 as a public agency and government-authorized monopolist, is barred from charging its ratepayers
4 more than its costs of service. Although MWD recently denied, for the first time, that it must
5 impose rates consistent with its costs, numerous provisions of California law clearly impose that
6 limitation:

- 7 • Government Code 54999.7(a) requires that a public agency’s rates “shall not
8 exceed the reasonable cost of providing the public utility service.” Cal. Govt.
Code § 54999.7(a).
- 9 • The Wheeling Statute, likewise, requires that MWD not charge more than “fair
10 compensation” for wheeling, defined in the law as the “reasonable charges
11 incurred by the owner of the conveyance system” to accomplish the wheeling
transaction. Cal. Water Code § 1811.
- 12 • The California Constitution, as amended by Proposition 13 and Proposition 26,
13 defines MWD’s rates as taxes, which must be passed by a two-thirds majority
popular vote, unless MWD can establish that its rates are set at an amount “no
14 more than necessary to cover the reasonable costs of the government activity.”
Cal. Const., art 13A § 4; art 13C, § 1.
- 15 • California common law likewise has always limited utilities to imposing rates that
recover no more than the utility’s costs.

16 Moreover, as noted above, before last week, MWD has *always* recognized, like every other rate-
17 setting body in California, that it is barred from charging its customers more than its actual and
18 proportionate costs of service. *See* Purcell Decl. Ex. 24 at 24.

19 This request seeks information that demonstrates, or would allow, a comparison between
20 MWD’s specific costs for providing services—such as the maintenance, power, and infrastructure
21 costs to transport water, or water supply, storage and facility costs needed to meet peak
22 demands—with the revenue from specific rates like the SAR and SPR. Obtaining information
23 about MWD’s actual costs and revenues, including the information that comprises MWD’s “rate
24 model,” is also critical for calculating SDCWA’s damages pursuant to its breach of contract
25 claim. For this reason, the Court should compel a response.

26 **INTERROGATORY NO. 7:**

27 Separately for each MWD RATE COMPONENT, identify the amount of full accrual

1 actual revenue collected from each MWD member agency in calendar years 2011 and 2012.

2 **RESPONSE TO INTERROGATORY NO. 7:**

3 MWD incorporates herein by reference each of its general objections and reservations set
4 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
5 because the Court has not ordered that interrogatories may be propounded, and no response to this
6 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
7 is required. The Court ruled that, although discovery may be propounded, responses to discovery
8 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
9 has also ruled that discovery is limited to document production at this time, that other forms of
10 discovery may not be required, and the consideration of other forms of discovery should wait
11 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
12 13.)

13 MWD further objects to this interrogatory on the grounds that it is burdensome and
14 oppressive, and responses are not feasible, at this time given pending document requests in this
15 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
16 record in the *2012 Action*.

17 MWD further objects to this interrogatory on the grounds that it seeks a response that is
18 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
19 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
20 the administrative record regarding the water rates challenged in this action has already been
21 produced. MWD further objects to this interrogatory on the grounds that any challenge to
22 MWD's water rates in this action must be determined solely on the administrative record and any
23 information sought by this interrogatory beyond the administrative record is neither relevant nor
24 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
25 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
26 processes of members of MWD's Board of Directors on the grounds that such information is not
27 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
28

1 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
2 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
3 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
4 MWD further objects to this interrogatory to the extent it seeks information protected from
5 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
6 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
7 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
8 and/or any other privilege and/or protective doctrine.

9 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

10 This request involves a single issue, which Judge Warren described as “the crux of what is
11 being asserted” and Judge Kramer reiterated was “what this case is all about.” Purcell Decl.
12 Ex.18 at 37:16-23; Ex. 20 at 56:4-7. That issue is whether MWD’s particular rates, like the
13 System Access Rate (“SAR”), the System Power Rate (“SPR”), and the Water Stewardship Rate
14 (“WSR”), recover more than the costs of providing the services for which they are nominally
15 collected. This is the fundamental basis underlying SDCWA’s claims in this case—that MWD,
16 as a public agency and government-authorized monopolist, is barred from charging its ratepayers
17 more than its costs of service. Although MWD recently denied, for the first time, that it must
18 impose rates consistent with its costs, numerous provisions of California law clearly impose that
19 limitation:

- 20 • Government Code 54999.7(a) requires that a public agency’s rates “shall not
21 exceed the reasonable cost of providing the public utility service.” Cal. Govt.
22 Code § 54999.7(a).
- 23 • The Wheeling Statute, likewise, requires that MWD not charge more than “fair
24 compensation” for wheeling, defined in the law as the “reasonable charges
25 incurred by the owner of the conveyance system” to accomplish the wheeling
26 transaction. Cal. Water Code § 1811.
- 27 • The California Constitution, as amended by Proposition 13 and Proposition 26,
28 defines MWD’s rates as taxes, which must be passed by a two-thirds majority
popular vote, unless MWD can establish that its rates are set at an amount “no
more than necessary to cover the reasonable costs of the government activity.”
Cal. Const., art 13A § 4; art 13C, § 1.
- California common law likewise has always limited utilities to imposing rates that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

recover no more than the utility’s costs.

Moreover, as noted above, before last week, MWD has *always* recognized, like every other rate-setting body in California, that it is barred from charging its customers more than its actual and proportionate costs of service. *See Purcell Decl. Ex. 24 at 24.*

This request seeks information that demonstrates, or would allow, a comparison between MWD’s specific costs for providing services—such as the maintenance, power, and infrastructure costs to transport water, or water supply, storage and facility costs needed to meet peak demands—with the revenue from specific rates like the SAR and SPR. Obtaining information about MWD’s actual costs and revenues, including the information that comprises MWD’s “rate model,” is also critical for calculating SDCWA’s damages pursuant to its breach of contract claim. For this reason, the Court should compel a response.

INTERROGATORY NO. 8:

IDENTIFY any DOCUMENTS, data, analyses, studies or other information in which MWD breaks out its costs of TRANSPORTING⁶ MWD WATER⁷ from its costs of TRANSPORTING NON-MWD WATER⁸ on behalf of its member agencies, including but not limited to water purchased by SDCWA from IID, for calendar years 2011 and 2012.

RESPONSE TO INTERROGATORY NO. 8:

MWD incorporates herein by reference each of its general objections and reservations set forth above. MWD further objects to this interrogatory on the grounds that it is not authorized because the Court has not ordered that interrogatories may be propounded, and no response to this interrogatory is necessary because the Court has not ordered that a response to this interrogatory is required. The Court ruled that, although discovery may be propounded, responses to discovery

⁶ “TRANSPORTING” as used in this Interrogatory means the costs associated with conveying and distributing water through facilities owned and operated by MWD.

⁷ “MWD WATER” as used in this Interrogatory means water purchased by MWD from the California Department of Water Resources for delivery to MWD through the State Water Project, and the water to which MWD has rights by virtue of the Colorado River Compact and other agreements, statutes, and court decisions comprising the “Law of the River,” and delivered through the Colorado River Aqueduct.

⁸ “NON-MWD WATER” as used in this Interrogatory means all water other than MWD WATER.

1 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
2 has also ruled that discovery is limited to document production at this time, that other forms of
3 discovery may not be required, and the consideration of other forms of discovery should wait
4 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
5 13.)

6 MWD further objects to this interrogatory on the grounds that it is burdensome and
7 oppressive, and responses are not feasible, at this time given pending document requests in this
8 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
9 record in the *2012 Action*.

10 MWD further objects to this interrogatory on the grounds that it seeks a response that is
11 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
12 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
13 the administrative record regarding the water rates challenged in this action has already been
14 produced. MWD further objects to this interrogatory on the grounds that any challenge to
15 MWD's water rates in this action must be determined solely on the administrative record and any
16 information sought by this interrogatory beyond the administrative record is neither relevant nor
17 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
18 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
19 processes of members of MWD's Board of Directors on the grounds that such information is not
20 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
21 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
22 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
23 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
24 MWD further objects to this interrogatory to the extent it seeks information protected from
25 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
26 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
27 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
28

1 and/or any other privilege and/or protective doctrine.

2 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

3 This interrogatory seeks information concerning MWD’s methodology (if any) for
4 allocating its costs into different rate categories. For example, MWD pays the California
5 Department of Water Resources (“DWR”) for a water supply delivered to MWD through the
6 State Water Project (“SWP”). But despite paying DWR for a water supply, MWD assigns the
7 majority of these SWP costs to MWD’s own System Access Rate and System Power Rate, which
8 are transportation rates, not supply rates. The misallocation of these rates to transportation rather
9 than supply inflates the costs to MWD’s only real transportation customer—SDCWA—and
10 reduces the costs of other customers who buy water and other services from MWD. SI No. 10
11 thus asks MWD to explain its basis for allocating SWP costs to its transportation rates. Similarly,
12 MWD includes the WSR in the bundled wheeling rate it charges to purchasers of third-party
13 water, and in the price charged to SDCWA under the Exchange Agreement. But the WSR, which
14 funds conservation and local water supplies, is plainly about increasing supply; by loading that
15 rate onto the wheeling rate, MWD is inflating the wheeling rate and violating the express purpose
16 of the Wheeling Statutes to facilitate third-party water transfers. *See* Cal. Water Code § 1813.
17 This Court already held in its September 17 Order that information about MWD’s cost allocations
18 is reasonably calculated to lead to the discovery of admissible evidence. *See, e.g.*, September 17
19 Order at 3-4, 7-11. The Court should order MWD to respond to this interrogatory.

20 **INTERROGATORY NO. 9:**

21 IDENTIFY⁹ MWD’s basis for incorporating the Water Stewardship Rate into MWD’s
22 wheeling rate, including but not limited to the specific industry standards, accounting principles
23 and definitions on which MWD relied in making such determination.

24
25 ⁹ IDENTIFY as used in this Interrogatory and Interrogatory Nos. 10-11 means to identify 1) the
26 source of the industry standard, accounting principle, or definition; 2) the specific location of the
27 industry standard, accounting principle, or definition exists, including the publication year (e.g.,
28 “AWWA Manual 4th ed. 2010”, or “the NARUC website page...”); 3) the specific number, if
appropriate, of that industry standard, accounting principle or definition (e.g., “AWWA Standard
4.1”), and 4) the content of the specific industry standard, accounting principle, or definition.

1 **RESPONSE TO INTERROGATORY NO. 9:**

2 MWD incorporates herein by reference each of its general objections and reservations set
3 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
4 because the Court has not ordered that interrogatories may be propounded, and no response to this
5 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
6 is required. The Court ruled that, although discovery may be propounded, responses to discovery
7 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
8 has also ruled that discovery is limited to document production at this time, that other forms of
9 discovery may not be required, and the consideration of other forms of discovery should wait
10 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
11 13.)

12 MWD further objects to this interrogatory on the grounds that it is burdensome and
13 oppressive, and responses are not feasible, at this time given pending document requests in this
14 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
15 record in the *2012 Action*.

16 MWD further objects to this interrogatory on the grounds that it seeks a response that is
17 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
18 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
19 the administrative record regarding the water rates challenged in this action has already been
20 produced. MWD further objects to this interrogatory on the grounds that any challenge to
21 MWD's water rates in this action must be determined solely on the administrative record and any
22 information sought by this interrogatory beyond the administrative record is neither relevant nor
23 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
24 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
25 processes of members of MWD's Board of Directors on the grounds that such information is not
26 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
27 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
28

1 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
2 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
3 MWD further objects to this interrogatory to the extent it seeks information protected from
4 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
5 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
6 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
7 and/or any other privilege and/or protective doctrine.

8 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

9 This interrogatory seeks information concerning MWD’s methodology (if any) for
10 allocating its costs into different rate categories. For example, MWD pays the California
11 Department of Water Resources (“DWR”) for a water supply delivered to MWD through the
12 State Water Project (“SWP”). But despite paying DWR for a water supply, MWD assigns the
13 majority of these SWP costs to MWD’s own System Access Rate and System Power Rate, which
14 are transportation rates, not supply rates. The misallocation of these rates to transportation rather
15 than supply inflates the costs to MWD’s only real transportation customer—SDCWA—and
16 reduces the costs of other customers who buy water and other services from MWD. SI No. 10
17 thus asks MWD to explain its basis for allocating SWP costs to its transportation rates. Similarly,
18 MWD includes the WSR in the bundled wheeling rate it charges to purchasers of third-party
19 water, and in the price charged to SDCWA under the Exchange Agreement. But the WSR, which
20 funds conservation and local water supplies, is plainly about increasing supply; by loading that
21 rate onto the wheeling rate, MWD is inflating the wheeling rate and violating the express purpose
22 of the Wheeling Statutes to facilitate third-party water transfers. *See* Cal. Water Code § 1813.
23 This Court already held in its September 17 Order that information about MWD’s cost allocations
24 is reasonably calculated to lead to the discovery of admissible evidence. *See, e.g.*, September 17
25 Order at 3-4, 7-11. The Court should order MWD to respond to this interrogatory.

26 **INTERROGATORY NO. 10:**

27 IDENTIFY MWD’s basis for incorporating costs associated with obtaining water from the
28

1 California Department of Water Resources, via the State Water Project, into MWD's System
2 Access Rate, including but not limited to the specific industry standards, accounting principles
3 and definitions on which MWD relied in making such determination.

4 **RESPONSE TO INTERROGATORY NO. 10:**

5 MWD incorporates herein by reference each of its general objections and reservations set
6 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
7 because the Court has not ordered that interrogatories may be propounded, and no response to this
8 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
9 is required. The Court ruled that, although discovery may be propounded, responses to discovery
10 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
11 has also ruled that discovery is limited to document production at this time, that other forms of
12 discovery may not be required, and the consideration of other forms of discovery should wait
13 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
14 13.)

15 MWD further objects to this interrogatory on the grounds that it is burdensome and
16 oppressive, and responses are not feasible, at this time given pending document requests in this
17 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
18 record in the *2012 Action*.

19 MWD further objects to this interrogatory on the grounds that it seeks a response that is
20 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
21 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
22 the administrative record regarding the water rates challenged in this action has already been
23 produced. MWD further objects to this interrogatory on the grounds that any challenge to
24 MWD's water rates in this action must be determined solely on the administrative record and any
25 information sought by this interrogatory beyond the administrative record is neither relevant nor
26 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
27 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
28

1 processes of members of MWD’s Board of Directors on the grounds that such information is not
2 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
3 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
4 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
5 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
6 MWD further objects to this interrogatory to the extent it seeks information protected from
7 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
8 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
9 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
10 and/or any other privilege and/or protective doctrine.

11 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

12 This interrogatory seeks information concerning MWD’s methodology (if any) for
13 allocating its costs into different rate categories. For example, MWD pays the California
14 Department of Water Resources (“DWR”) for a water supply delivered to MWD through the
15 State Water Project (“SWP”). But despite paying DWR for a water supply, MWD assigns the
16 majority of these SWP costs to MWD’s own System Access Rate and System Power Rate, which
17 are transportation rates, not supply rates. The misallocation of these rates to transportation rather
18 than supply inflates the costs to MWD’s only real transportation customer—SDCWA—and
19 reduces the costs of other customers who buy water and other services from MWD. SI No. 10
20 thus asks MWD to explain its basis for allocating SWP costs to its transportation rates. Similarly,
21 MWD includes the WSR in the bundled wheeling rate it charges to purchasers of third-party
22 water, and in the price charged to SDCWA under the Exchange Agreement. But the WSR, which
23 funds conservation and local water supplies, is plainly about increasing supply; by loading that
24 rate onto the wheeling rate, MWD is inflating the wheeling rate and violating the express purpose
25 of the Wheeling Statutes to facilitate third-party water transfers. *See* Cal. Water Code § 1813.
26 This Court already held in its September 17 Order that information about MWD’s cost allocations
27 is reasonably calculated to lead to the discovery of admissible evidence. *See, e.g.,* September 17
28

1 Order at 3-4, 7-11. The Court should order MWD to respond to this interrogatory.

2 **INTERROGATORY NO. 11:**

3 IDENTIFY MWD's basis for incorporating MWD's Readiness-to-Serve Charge into
4 MWD's wheeling rate, including but not limited to the specific industry standards, accounting
5 principles and definitions on which MWD has relied in making such determination.

6 **RESPONSE TO INTERROGATORY NO. 11:**

7 MWD incorporates herein by reference each of its general objections and reservations set
8 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
9 because the Court has not ordered that interrogatories may be propounded, and no response to this
10 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
11 is required. The Court ruled that, although discovery may be propounded, responses to discovery
12 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
13 has also ruled that discovery is limited to document production at this time, that other forms of
14 discovery may not be required, and the consideration of other forms of discovery should wait
15 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
16 13.)

17 MWD further objects to this interrogatory on the grounds that it is burdensome and
18 oppressive, and responses are not feasible, at this time given pending document requests in this
19 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
20 record in the *2012 Action*.

21 MWD further objects to this interrogatory on the grounds that it seeks a response that is
22 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
23 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
24 the administrative record regarding the water rates challenged in this action has already been
25 produced. MWD further objects to this interrogatory on the grounds that any challenge to
26 MWD's water rates in this action must be determined solely on the administrative record and any
27 information sought by this interrogatory beyond the administrative record is neither relevant nor
28

1 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
2 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
3 processes of members of MWD’s Board of Directors on the grounds that such information is not
4 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
5 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
6 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
7 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
8 MWD further objects to this interrogatory to the extent it seeks information protected from
9 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
10 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
11 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
12 and/or any other privilege and/or protective doctrine.

13 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

14 This interrogatory seeks information concerning MWD’s methodology (if any) for
15 allocating its costs into different rate categories. For example, MWD pays the California
16 Department of Water Resources (“DWR”) for a water supply delivered to MWD through the
17 State Water Project (“SWP”). But despite paying DWR for a water supply, MWD assigns the
18 majority of these SWP costs to MWD’s own System Access Rate and System Power Rate, which
19 are transportation rates, not supply rates. The misallocation of these rates to transportation rather
20 than supply inflates the costs to MWD’s only real transportation customer—SDCWA—and
21 reduces the costs of other customers who buy water and other services from MWD. SI No. 10
22 thus asks MWD to explain its basis for allocating SWP costs to its transportation rates. Similarly,
23 MWD includes the WSR in the bundled wheeling rate it charges to purchasers of third-party
24 water, and in the price charged to SDCWA under the Exchange Agreement. But the WSR, which
25 funds conservation and local water supplies, is plainly about increasing supply; by loading that
26 rate onto the wheeling rate, MWD is inflating the wheeling rate and violating the express purpose
27 of the Wheeling Statutes to facilitate third-party water transfers. *See* Cal. Water Code § 1813.

1 This Court already held in its September 17 Order that information about MWD's cost allocations
2 is reasonably calculated to lead to the discovery of admissible evidence. *See, e.g.*, September 17
3 Order at 3-4, 7-11. The Court should order MWD to respond to this interrogatory.

4 **INTERROGATORY NO. 12:**

5 IDENTIFY all DOCUMENTS, data, analyses, studies or other information, from January
6 1, 2008 to the present, that evaluate, or would enable the evaluation of, the benefit to each of
7 MWD's member agencies from local water supply projects, seawater desalination projects and
8 conservation programs funded from revenues collected through MWD's Water Stewardship Rate,
9 whether as individual projects or in aggregate.

10 **RESPONSE TO INTERROGATORY NO. 12:**

11 MWD incorporates herein by reference each of its general objections and reservations set
12 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
13 because the Court has not ordered that interrogatories may be propounded, and no response to this
14 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
15 is required. The Court ruled that, although discovery may be propounded, responses to discovery
16 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
17 has also ruled that discovery is limited to document production at this time, that other forms of
18 discovery may not be required, and the consideration of other forms of discovery should wait
19 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
20 13.)

21 MWD further objects to this interrogatory on the grounds that it is burdensome and
22 oppressive, and responses are not feasible, at this time given pending document requests in this
23 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
24 record in the *2012 Action*.

25 MWD further objects to this interrogatory on the grounds that it seeks a response that is
26 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
27 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
28

1 the administrative record regarding the water rates challenged in this action has already been
2 produced. MWD further objects to this interrogatory on the grounds that any challenge to
3 MWD's water rates in this action must be determined solely on the administrative record and any
4 information sought by this interrogatory beyond the administrative record is neither relevant nor
5 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
6 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
7 processes of members of MWD's Board of Directors on the grounds that such information is not
8 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
9 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
10 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
11 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
12 MWD further objects to this interrogatory to the extent it seeks information protected from
13 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
14 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
15 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
16 and/or any other privilege and/or protective doctrine.

17 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

18 MWD violates California constitutional and statutory law in the way it collects and
19 disburses its so-called "Water Stewardship Rate," which MWD uses to fund local water supply
20 and conservation projects. For starters, MWD treats the Water Stewardship Rate ("WSR") as a
21 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
22 SDCWA under the parties' Exchange Agreement. But the WSR has nothing to do with enabling
23 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
24 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
25 part of MWD's supply rate. Common law and the Wheeling Statute also require that MWD not
26 impose the WSR on wheeling transactions, which by definition involve only transportation
27 services—because there has been and can be no showing that projects funded by the WSR enable
28

1 (or have anything to do with) water transportation service.

2 Moreover, MWD's disbursement to its member agencies of the money collected through
3 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
4 As set forth more fully in SDCWA's Complaint, MWD must show that the WSR rates imposed
5 by MWD on its member agencies "bear a fair or reasonable relationship to [the agencies']
6 burdens on, or benefits received from" the conservation and development projects funded by the
7 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
8 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
9 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
10 receiving any benefits from WSR funding, expressly in retaliation for SDCWA's filing of this
11 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

12 Because MWD must concede that SDCWA has received no direct benefit from the more
13 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
14 a different basis. In its answer to SDCWA's Second Amended Complaint, MWD alleged that
15 "[a]ll member agencies benefit from each acre-foot of water developed through these programs,
16 because it frees up capacity to convey water through Metropolitan's system, reducing the need to
17 invest in development of additional expensive water delivery infrastructure, and provides
18 additional water supplies to meet the region's demands." Purcell Decl. Ex. 29 at General
19 Allegation No. 8. MWD also alleged that "SDCWA will continue to receive the benefits of
20 Metropolitan's conservation and local resources programs regardless of whether the contracts to
21 which it is a direct party continue." *Id.* at General Allegation No. 13. In other words, MWD
22 claims that the projects it funds using WSR proceeds provide a generalized regional
23 **transportation** benefit across the whole of MWD's service area, including to SDCWA, and that
24 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
25 proportionate to the charges it imposes.

26 This discovery request targets these issues precisely. For this reason, the Court should
27 compel a response.

1 **INTERROGATORY NO. 13:**

2 IDENTIFY all facts, DOCUMENTS, data, analyses, calculations, studies or other
3 information, between January 1, 2008 and the present, that YOU contend demonstrate the
4 regional benefits to MWD from local water supply projects, seawater desalination projects and
5 conservation programs funded from revenues collected through MWD's Water Stewardship Rate,
6 whether as individual projects or in aggregate, including but not limited to any additional
7 transportation or conveyance capacity or water supply created by any such projects or programs.

8 **RESPONSE TO INTERROGATORY NO. 13:**

9 MWD incorporates herein by reference each of its general objections and reservations set
10 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
11 because the Court has not ordered that interrogatories may be propounded, and no response to this
12 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
13 is required. The Court ruled that, although discovery may be propounded, responses to discovery
14 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
15 has also ruled that discovery is limited to document production at this time, that other forms of
16 discovery may not be required, and the consideration of other forms of discovery should wait
17 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
18 13.)

19 MWD further objects to this interrogatory on the grounds that it is burdensome and
20 oppressive, and responses are not feasible, at this time given pending document requests in this
21 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
22 record in the *2012 Action*.

23 MWD further objects to this interrogatory on the grounds that it seeks a response that is
24 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
25 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
26 the administrative record regarding the water rates challenged in this action has already been
27 produced. MWD further objects to this interrogatory on the grounds that any challenge to
28

1 MWD’s water rates in this action must be determined solely on the administrative record and any
2 information sought by this interrogatory beyond the administrative record is neither relevant nor
3 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
4 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
5 processes of members of MWD’s Board of Directors on the grounds that such information is not
6 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
7 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
8 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
9 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
10 MWD further objects to this interrogatory to the extent it seeks information protected from
11 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
12 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
13 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
14 and/or any other privilege and/or protective doctrine.

15 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

16 MWD violates California constitutional and statutory law in the way it collects and
17 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
18 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
19 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
20 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
21 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
22 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
23 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
24 impose the WSR on wheeling transactions, which by definition involve only transportation
25 services—because there has been and can be no showing that projects funded by the WSR enable
26 (or have anything to do with) water transportation service.

27 Moreover, MWD’s disbursement to its member agencies of the money collected through
28

1 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
2 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
3 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
4 burdens on, or benefits received from” the conservation and development projects funded by the
5 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
6 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
7 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
8 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
9 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

10 Because MWD must concede that SDCWA has received no direct benefit from the more
11 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
12 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
13 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
14 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
15 invest in development of additional expensive water delivery infrastructure, and provides
16 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
17 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
18 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
19 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
20 claims that the projects it funds using WSR proceeds provide a generalized regional
21 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
22 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
23 proportionate to the charges it imposes.

24 This discovery request targets these issues precisely. For this reason, the Court should
25 compel a response.

26 **INTERROGATORY NO. 14:**

27 IDENTIFY all facts, DOCUMENTS, data, analyses, calculations, studies or other
28

1 information, from January 1, 2008, to the present, that YOU contend demonstrate the amount and
2 nature of each benefit to SDCWA¹⁰ from local water supply projects, seawater desalination
3 projects and conservation programs funded from revenues collected through MWD's Water
4 Stewardship Rate, including but not limited to any additional transportation or conveyance
5 capacity or water supply created by any such projects or programs.

6 **RESPONSE TO INTERROGATORY NO. 14:**

7 MWD incorporates herein by reference each of its general objections and reservations set
8 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
9 because the Court has not ordered that interrogatories may be propounded, and no response to this
10 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
11 is required. The Court ruled that, although discovery may be propounded, responses to discovery
12 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
13 has also ruled that discovery is limited to document production at this time, that other forms of
14 discovery may not be required, and the consideration of other forms of discovery should wait
15 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
16 13.)

17 MWD further objects to this interrogatory on the grounds that it is burdensome and
18 oppressive, and responses are not feasible, at this time given pending document requests in this
19 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
20 record in the *2012 Action*.

21 MWD further objects to this interrogatory on the grounds that it seeks a response that is
22 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
23 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
24 the administrative record regarding the water rates challenged in this action has already been
25 produced. MWD further objects to this interrogatory on the grounds that any challenge to

26 _____
27 ¹⁰ "SDCWA" or "WATER AUTHORITY" as used in these Interrogatories shall mean and refer
28 to the San Diego County Water Authority and/or any and all of its present or former agents,
employees, staff members, independent contractors, or representatives.

1 MWD’s water rates in this action must be determined solely on the administrative record and any
2 information sought by this interrogatory beyond the administrative record is neither relevant nor
3 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
4 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
5 processes of members of MWD’s Board of Directors on the grounds that such information is not
6 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
7 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
8 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
9 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
10 MWD further objects to this interrogatory to the extent it seeks information protected from
11 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
12 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
13 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
14 and/or any other privilege and/or protective doctrine.

15 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

16 MWD violates California constitutional and statutory law in the way it collects and
17 disburses its so-called “Water Stewardship Rate,” which MWD uses to fund local water supply
18 and conservation projects. For starters, MWD treats the Water Stewardship Rate (“WSR”) as a
19 transportation charge, by including the WSR in its Wheeling Rate and in the price charged to
20 SDCWA under the parties’ Exchange Agreement. But the WSR has nothing to do with enabling
21 transportation services. To the contrary, revenue from the WSR is used to fund *water supply*
22 projects for certain favored MWD member agencies. Accordingly, the WSR should be treated as
23 part of MWD’s supply rate. Common law and the Wheeling Statute also require that MWD not
24 impose the WSR on wheeling transactions, which by definition involve only transportation
25 services—because there has been and can be no showing that projects funded by the WSR enable
26 (or have anything to do with) water transportation service.

27 Moreover, MWD’s disbursement to its member agencies of the money collected through
28

1 the WSR does not bear any relationship to the contributions of each member agency to the WSR.
2 As set forth more fully in SDCWA’s Complaint, MWD must show that the WSR rates imposed
3 by MWD on its member agencies “bear a fair or reasonable relationship to [the agencies’]
4 burdens on, or benefits received from” the conservation and development projects funded by the
5 WSR. Cal. Const., art 13C, § 1. MWD cannot make this showing as to any member agency, but
6 it is particularly unable to do so as to SDCWA. In 2011 and 2012, SDCWA paid MWD
7 **\$34,417,000** in WSR charges, in spite of the fact MWD had already blackballed SDCWA from
8 receiving any benefits from WSR funding, expressly in retaliation for SDCWA’s filing of this
9 lawsuit. *See* Purcell Decl. Ex. 28 at ¶ 50.

10 Because MWD must concede that SDCWA has received no direct benefit from the more
11 than \$34.4 million it paid through the WSR in 2011 and 2012, MWD instead defends the WSR on
12 a different basis. In its answer to SDCWA’s Second Amended Complaint, MWD alleged that
13 “[a]ll member agencies benefit from each acre-foot of water developed through these programs,
14 because it frees up capacity to convey water through Metropolitan’s system, reducing the need to
15 invest in development of additional expensive water delivery infrastructure, and provides
16 additional water supplies to meet the region’s demands.” Purcell Decl. Ex. 29 at General
17 Allegation No. 8. MWD also alleged that “SDCWA will continue to receive the benefits of
18 Metropolitan’s conservation and local resources programs regardless of whether the contracts to
19 which it is a direct party continue.” *Id.* at General Allegation No. 13. In other words, MWD
20 claims that the projects it funds using WSR proceeds provide a generalized regional
21 **transportation** benefit across the whole of MWD’s service area, including to SDCWA, and that
22 this supposed regional benefit is enough to satisfy its constitutional obligation to provide benefits
23 proportionate to the charges it imposes.

24 This discovery request targets these issues precisely. For this reason, the Court should
25 compel a response.

26 **INTERROGATORY NO. 15:**

27 IDENTIFY all DOCUMENTS, data, analyses, calculations, studies or other information,
28

1 from January 1, 2008 to the present, used by MWD to calculate the costs associated with
2 maintaining supplies, storage and transportation capacity to accommodate MWD member
3 agencies' dry-year peaking demands.

4 **RESPONSE TO INTERROGATORY NO. 15:**

5 MWD incorporates herein by reference each of its general objections and reservations set
6 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
7 because the Court has not ordered that interrogatories may be propounded, and no response to this
8 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
9 is required. The Court ruled that, although discovery may be propounded, responses to discovery
10 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
11 has also ruled that discovery is limited to document production at this time, that other forms of
12 discovery may not be required, and the consideration of other forms of discovery should wait
13 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
14 13.)

15 MWD further objects to this interrogatory on the grounds that it is burdensome and
16 oppressive, and responses are not feasible, at this time given pending document requests in this
17 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
18 record in the *2012 Action*.

19 MWD further objects to this interrogatory on the grounds that it seeks a response that is
20 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
21 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
22 the administrative record regarding the water rates challenged in this action has already been
23 produced. MWD further objects to this interrogatory on the grounds that any challenge to
24 MWD's water rates in this action must be determined solely on the administrative record and any
25 information sought by this interrogatory beyond the administrative record is neither relevant nor
26 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
27 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
28

1 processes of members of MWD’s Board of Directors on the grounds that such information is not
2 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
3 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
4 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
5 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
6 MWD further objects to this interrogatory to the extent it seeks information protected from
7 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
8 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
9 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
10 and/or any other privilege and/or protective doctrine.

11 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

12 This request involves a single issue, which Judge Warren described as “the crux of what is
13 being asserted” and Judge Kramer reiterated was “what this case is all about.” Purcell Decl.
14 Ex.18 at 37:16-23; Ex. 20 at 56:4-7. That issue is whether MWD’s particular rates, like the
15 System Access Rate (“SAR”), the System Power Rate (“SPR”), and the Water Stewardship Rate
16 (“WSR”), recover more than the costs of providing the services for which they are nominally
17 collected. This is the fundamental basis underlying SDCWA’s claims in this case—that MWD,
18 as a public agency and government-authorized monopolist, is barred from charging its ratepayers
19 more than its costs of service. Although MWD recently denied, for the first time, that it must
20 impose rates consistent with its costs, numerous provisions of California law clearly impose that
21 limitation:

- 22 • Government Code 54999.7(a) requires that a public agency’s rates “shall not
23 exceed the reasonable cost of providing the public utility service.” Cal. Govt.
24 Code § 54999.7(a).
- 25 • The Wheeling Statute, likewise, requires that MWD not charge more than “fair
26 compensation” for wheeling, defined in the law as the “reasonable charges
27 incurred by the owner of the conveyance system” to accomplish the wheeling
28 transaction. Cal. Water Code § 1811.
- The California Constitution, as amended by Proposition 13 and Proposition 26,
defines MWD’s rates as taxes, which must be passed by a two-thirds majority
popular vote, unless MWD can establish that its rates are set at an amount “no

1 more than necessary to cover the reasonable costs of the government activity.”
2 Cal. Const., art 13A § 4; art 13C, § 1.

- 3 • California common law likewise has always limited utilities to imposing rates that
4 recover no more than the utility’s costs.

5 Moreover, as noted above, before last week, MWD has *always* recognized, like every other rate-
6 setting body in California, that it is barred from charging its customers more than its actual and
7 proportionate costs of service. *See Purcell Decl. Ex. 24 at 24.*

8 This request seeks information that demonstrates, or would allow, a comparison between
9 MWD’s specific costs for providing services—such as the maintenance, power, and infrastructure
10 costs to transport water, or water supply, storage and facility costs needed to meet peak
11 demands—with the revenue from specific rates like the SAR and SPR. For this reason, the Court
12 should compel a response. Obtaining information about MWD’s actual costs and revenues,
13 including the information that comprises MWD’s “rate model,” is also critical for calculating
14 SDCWA’s damages pursuant to its breach of contract claim. For this reason, the Court should
15 compel a response.

16 **INTERROGATORY NO. 16:**

17 IDENTIFY all facts, DOCUMENTS, data, analyses, calculations, studies or other
18 information that YOU contend demonstrate that the costs to MWD of maintaining supplies,
19 storage and transportation capacity to accommodate MWD member agencies’ dry-year peaking
20 demands is allocated to each MWD member agency in a manner proportional to the benefit each
21 such MWD member agency receives from the availability of supplies, storage and transportation
22 capacity for dry-year peaking.

23 **RESPONSE TO INTERROGATORY NO. 16:**

24 MWD incorporates herein by reference each of its general objections and reservations set
25 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
26 because the Court has not ordered that interrogatories may be propounded, and no response to this
27 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
28 is required. The Court ruled that, although discovery may be propounded, responses to discovery

1 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
2 has also ruled that discovery is limited to document production at this time, that other forms of
3 discovery may not be required, and the consideration of other forms of discovery should wait
4 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
5 13.)

6 MWD further objects to this interrogatory on the grounds that it is burdensome and
7 oppressive, and responses are not feasible, at this time given pending document requests in this
8 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
9 record in the *2012 Action*.

10 MWD further objects to this interrogatory on the grounds that it seeks a response that is
11 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
12 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
13 the administrative record regarding the water rates challenged in this action has already been
14 produced. MWD further objects to this interrogatory on the grounds that any challenge to
15 MWD's water rates in this action must be determined solely on the administrative record and any
16 information sought by this interrogatory beyond the administrative record is neither relevant nor
17 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
18 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
19 processes of members of MWD's Board of Directors on the grounds that such information is not
20 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
21 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
22 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
23 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
24 MWD further objects to this interrogatory to the extent it seeks information protected from
25 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
26 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
27 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
28

1 and/or any other privilege and/or protective doctrine.

2 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

3 This request involves a single issue, which Judge Warren described as “the crux of what is
4 being asserted” and Judge Kramer reiterated was “what this case is all about.” Purcell Decl.
5 Ex.18 at 37:16-23; Ex. 20 at 56:4-7. That issue is whether MWD’s particular rates, like the
6 System Access Rate (“SAR”), the System Power Rate (“SPR”), and the Water Stewardship Rate
7 (“WSR”), recover more than the costs of providing the services for which they are nominally
8 collected. This is the fundamental basis underlying SDCWA’s claims in this case—that MWD,
9 as a public agency and government-authorized monopolist, is barred from charging its ratepayers
10 more than its costs of service. Although MWD recently denied, for the first time, that it must
11 impose rates consistent with its costs, numerous provisions of California law clearly impose that
12 limitation:

- 13 • Government Code 54999.7(a) requires that a public agency’s rates “shall not
14 exceed the reasonable cost of providing the public utility service.” Cal. Govt.
Code § 54999.7(a).
- 15 • The Wheeling Statute, likewise, requires that MWD not charge more than “fair
16 compensation” for wheeling, defined in the law as the “reasonable charges
17 incurred by the owner of the conveyance system” to accomplish the wheeling
transaction. Cal. Water Code § 1811.
- 18 • The California Constitution, as amended by Proposition 13 and Proposition 26,
19 defines MWD’s rates as taxes, which must be passed by a two-thirds majority
popular vote, unless MWD can establish that its rates are set at an amount “no
20 more than necessary to cover the reasonable costs of the government activity.”
Cal. Const., art 13A § 4; art 13C, § 1.
- 21 • California common law likewise has always limited utilities to imposing rates that
recover no more than the utility’s costs.

22 Moreover, as noted above, before last week, MWD has *always* recognized, like every other rate-
23 setting body in California, that it is barred from charging its customers more than its actual and
24 proportionate costs of service. See Purcell Decl. Ex. 24 at 24.

25 This request seeks information that demonstrates, or would allow, a comparison between
26 MWD’s specific costs for providing services—such as the maintenance, power, and infrastructure
27 costs to transport water, or water supply, storage and facility costs needed to meet peak
28

1 demands—with the revenue from specific rates like the SAR and SPR. Obtaining information
2 about MWD’s actual costs and revenues, including the information that comprises MWD’s “rate
3 model,” is also critical for calculating SDCWA’s damages pursuant to its breach of contract
4 claim. For this reason, the Court should compel a response.

5 **INTERROGATORY NO. 17:**

6 Identify all DOCUMENTS, data, analyses, calculations, studies or other information that
7 constitute, comprise or describe MWD’s rate model.

8 **RESPONSE TO INTERROGATORY NO. 17:**

9 MWD incorporates herein by reference each of its general objections and reservations set
10 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
11 because the Court has not ordered that interrogatories may be propounded, and no response to this
12 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
13 is required. The Court ruled that, although discovery may be propounded, responses to discovery
14 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
15 has also ruled that discovery is limited to document production at this time, that other forms of
16 discovery may not be required, and the consideration of other forms of discovery should wait
17 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
18 13.)

19 MWD further objects to this interrogatory on the grounds that it is burdensome and
20 oppressive, and responses are not feasible, at this time given pending document requests in this
21 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
22 record in the *2012 Action*.

23 MWD further objects to this interrogatory on the grounds that it seeks a response that is
24 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
25 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
26 the administrative record regarding the water rates challenged in this action has already been
27 produced. MWD further objects to this interrogatory on the grounds that any challenge to
28

1 MWD's water rates in this action must be determined solely on the administrative record and any
2 information sought by this interrogatory beyond the administrative record is neither relevant nor
3 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
4 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
5 processes of members of MWD's Board of Directors on the grounds that such information is not
6 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
7 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
8 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
9 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
10 MWD further objects to this interrogatory to the extent it seeks information protected from
11 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
12 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
13 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
14 and/or any other privilege and/or protective doctrine.

15 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

16 This request involves a single issue, which Judge Warren described as "the crux of what is
17 being asserted" and Judge Kramer reiterated was "what this case is all about." Purcell Decl.
18 Ex.18 at 37:16-23; Ex. 20 at 56:4-7. That issue is whether MWD's particular rates, like the
19 System Access Rate ("SAR"), the System Power Rate ("SPR"), and the Water Stewardship Rate
20 ("WSR"), recover more than the costs of providing the services for which they are nominally
21 collected. This is the fundamental basis underlying SDCWA's claims in this case—that MWD,
22 as a public agency and government-authorized monopolist, is barred from charging its ratepayers
23 more than its costs of service. Although MWD recently denied, for the first time, that it must
24 impose rates consistent with its costs, numerous provisions of California law clearly impose that
25 limitation:

- 26 • Government Code 54999.7(a) requires that a public agency's rates "shall not
27 exceed the reasonable cost of providing the public utility service." Cal. Govt.
28 Code § 54999.7(a).

- 1 • The Wheeling Statute, likewise, requires that MWD not charge more than “fair
2 compensation” for wheeling, defined in the law as the “reasonable charges
3 incurred by the owner of the conveyance system” to accomplish the wheeling
4 transaction. Cal. Water Code § 1811.
- 5 • The California Constitution, as amended by Proposition 13 and Proposition 26,
6 defines MWD’s rates as taxes, which must be passed by a two-thirds majority
7 popular vote, unless MWD can establish that its rates are set at an amount “no
8 more than necessary to cover the reasonable costs of the government activity.”
9 Cal. Const., art 13A § 4; art 13C, § 1.
- 10 • California common law likewise has always limited utilities to imposing rates that
11 recover no more than the utility’s costs.

12 Moreover, as noted above, before last week, MWD has *always* recognized, like every other rate-
13 setting body in California, that it is barred from charging its customers more than its actual and
14 proportionate costs of service. *See Purcell Decl. Ex. 24 at 24.*

15 This request seeks information that demonstrates, or would allow, a comparison between
16 MWD’s specific costs for providing services—such as the maintenance, power, and infrastructure
17 costs to transport water, or water supply, storage and facility costs needed to meet peak
18 demands—with the revenue from specific rates like the SAR and SPR. Obtaining information
19 about MWD’s actual costs and revenues, including the information that comprises MWD’s “rate
20 model,” is also critical for calculating SDCWA’s damages pursuant to its breach of contract
21 claim. For this reason, the Court should compel a response.

22 **INTERROGATORY NO. 18:**

23 Identify all facts, DOCUMENTS, data, analyses, calculations, studies or other information
24 that YOU contend support YOUR claim that each of MWD’s calendar year 2011 rates do not
25 exceed the costs of the services for which each is charged.

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

27 MWD incorporates herein by reference each of its general objections and reservations set
28 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
because the Court has not ordered that interrogatories may be propounded, and no response to this
interrogatory is necessary because the Court has not ordered that a response to this interrogatory
is required. The Court ruled that, although discovery may be propounded, responses to discovery

1 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
2 has also ruled that discovery is limited to document production at this time, that other forms of
3 discovery may not be required, and the consideration of other forms of discovery should wait
4 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
5 13.)

6 MWD further objects to this interrogatory on the grounds that it is burdensome and
7 oppressive, and responses are not feasible, at this time given pending document requests in this
8 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
9 record in the *2012 Action*.

10 MWD further objects to this interrogatory on the grounds that it seeks a response that is
11 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
12 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
13 the administrative record regarding the water rates challenged in this action has already been
14 produced. MWD further objects to this interrogatory on the grounds that any challenge to
15 MWD's water rates in this action must be determined solely on the administrative record and any
16 information sought by this interrogatory beyond the administrative record is neither relevant nor
17 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
18 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
19 processes of members of MWD's Board of Directors on the grounds that such information is not
20 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
21 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
22 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
23 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
24 MWD further objects to this interrogatory to the extent it seeks information protected from
25 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
26 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
27 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
28

1 and/or any other privilege and/or protective doctrine.

2 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

3 This request involves a single issue, which Judge Warren described as “the crux of what is
4 being asserted” and Judge Kramer reiterated was “what this case is all about.” Purcell Decl.
5 Ex.18 at 37:16-23; Ex. 20 at 56:4-7. That issue is whether MWD’s particular rates, like the
6 System Access Rate (“SAR”), the System Power Rate (“SPR”), and the Water Stewardship Rate
7 (“WSR”), recover more than the costs of providing the services for which they are nominally
8 collected. This is the fundamental basis underlying SDCWA’s claims in this case—that MWD,
9 as a public agency and government-authorized monopolist, is barred from charging its ratepayers
10 more than its costs of service. Although MWD recently denied, for the first time, that it must
11 impose rates consistent with its costs, numerous provisions of California law clearly impose that
12 limitation:

- 13 • Government Code 54999.7(a) requires that a public agency’s rates “shall not
14 exceed the reasonable cost of providing the public utility service.” Cal. Govt.
Code § 54999.7(a).
- 15 • The Wheeling Statute, likewise, requires that MWD not charge more than “fair
16 compensation” for wheeling, defined in the law as the “reasonable charges
17 incurred by the owner of the conveyance system” to accomplish the wheeling
transaction. Cal. Water Code § 1811.
- 18 • The California Constitution, as amended by Proposition 13 and Proposition 26,
19 defines MWD’s rates as taxes, which must be passed by a two-thirds majority
popular vote, unless MWD can establish that its rates are set at an amount “no
20 more than necessary to cover the reasonable costs of the government activity.”
Cal. Const., art 13A § 4; art 13C, § 1.
- 21 • California common law likewise has always limited utilities to imposing rates that
recover no more than the utility’s costs.

22 Moreover, as noted above, before last week, MWD has *always* recognized, like every other rate-
23 setting body in California, that it is barred from charging its customers more than its actual and
24 proportionate costs of service. *See* Purcell Decl. Ex. 24 at 24.

25 This request seeks information that demonstrates, or would allow, a comparison between
26 MWD’s specific costs for providing services—such as the maintenance, power, and infrastructure
27 costs to transport water, or water supply, storage and facility costs needed to meet peak
28

1 demands—with the revenue from specific rates like the SAR and SPR. Obtaining information
2 about MWD’s actual costs and revenues, including the information that comprises MWD’s “rate
3 model,” is also critical for calculating SDCWA’s damages pursuant to its breach of contract
4 claim. For this reason, the Court should compel a response.

5 **INTERROGATORY NO. 19:**

6 Identify all facts, DOCUMENTS, data, analyses, calculations, studies or other information
7 that YOU contend support YOUR claim that each of MWD’s calendar year 2012 rates do not
8 exceed the costs of the services for which each is charged.

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

10 MWD incorporates herein by reference each of its general objections and reservations set
11 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
12 because the Court has not ordered that interrogatories may be propounded, and no response to this
13 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
14 is required. The Court ruled that, although discovery may be propounded, responses to discovery
15 are not required unless ordered by the Court. (See 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
16 has also ruled that discovery is limited to document production at this time, that other forms of
17 discovery may not be required, and the consideration of other forms of discovery should wait
18 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
19 13.)

20 MWD further objects to this interrogatory on the grounds that it is burdensome and
21 oppressive, and responses are not feasible, at this time given pending document requests in this
22 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
23 record in the *2012 Action*.

24 MWD further objects to this interrogatory on the grounds that it seeks a response that is
25 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
26 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
27 the administrative record regarding the water rates challenged in this action has already been
28

1 produced. MWD further objects to this interrogatory on the grounds that any challenge to
2 MWD's water rates in this action must be determined solely on the administrative record and any
3 information sought by this interrogatory beyond the administrative record is neither relevant nor
4 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
5 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
6 processes of members of MWD's Board of Directors on the grounds that such information is not
7 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
8 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
9 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
10 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
11 MWD further objects to this interrogatory to the extent it seeks information protected from
12 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
13 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
14 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
15 and/or any other privilege and/or protective doctrine.

16 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

17 This request involves a single issue, which Judge Warren described as "the crux of what is
18 being asserted" and Judge Kramer reiterated was "what this case is all about." Purcell Decl.
19 Ex.18 at 37:16-23; Ex. 20 at 56:4-7. That issue is whether MWD's particular rates, like the
20 System Access Rate ("SAR"), the System Power Rate ("SPR"), and the Water Stewardship Rate
21 ("WSR"), recover more than the costs of providing the services for which they are nominally
22 collected. This is the fundamental basis underlying SDCWA's claims in this case—that MWD,
23 as a public agency and government-authorized monopolist, is barred from charging its ratepayers
24 more than its costs of service. Although MWD recently denied, for the first time, that it must
25 impose rates consistent with its costs, numerous provisions of California law clearly impose that
26 limitation:

- 27 • Government Code 54999.7(a) requires that a public agency's rates "shall not
28 exceed the reasonable cost of providing the public utility service." Cal. Govt.

1 Code § 54999.7(a).

- 2 • The Wheeling Statute, likewise, requires that MWD not charge more than “fair
3 compensation” for wheeling, defined in the law as the “reasonable charges
4 incurred by the owner of the conveyance system” to accomplish the wheeling
5 transaction. Cal. Water Code § 1811.
- 6 • The California Constitution, as amended by Proposition 13 and Proposition 26,
7 defines MWD’s rates as taxes, which must be passed by a two-thirds majority
8 popular vote, unless MWD can establish that its rates are set at an amount “no
9 more than necessary to cover the reasonable costs of the government activity.”
10 Cal. Const., art 13A § 4; art 13C, § 1.
- 11 • California common law likewise has always limited utilities to imposing rates that
12 recover no more than the utility’s costs.

13 Moreover, as noted above, before last week, MWD has *always* recognized, like every other rate-
14 setting body in California, that it is barred from charging its customers more than its actual and
15 proportionate costs of service. *See Purcell Decl. Ex. 24 at 24.*

16 This request seeks information that demonstrates, or would allow, a comparison between
17 MWD’s specific costs for providing services—such as the maintenance, power, and infrastructure
18 costs to transport water, or water supply, storage and facility costs needed to meet peak
19 demands—with the revenue from specific rates like the SAR and SPR. Obtaining information
20 about MWD’s actual costs and revenues, including the information that comprises MWD’s “rate
21 model,” is also critical for calculating SDCWA’s damages pursuant to its breach of contract
22 claim. For this reason, the Court should compel a response.

23 **INTERROGATORY NO. 20:**

24 Identify all DOCUMENTS, data, analyses, calculations, studies or other information that
25 detail or evidence MWD’s specific costs of delivering, to SDCWA, SDCWA’s conserved water
26 from IID and canal-lining water supplies, including but not limited to any cost-of-service reports
27 associated with delivering SDCWA’s third-party water, from January 1, 2008 to the present.

28 **RESPONSE TO INTERROGATORY NO. 20:**

MWD incorporates herein by reference each of its general objections and reservations set
forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
because the Court has not ordered that interrogatories may be propounded, and no response to this

1 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
2 is required. The Court ruled that, although discovery may be propounded, responses to discovery
3 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
4 has also ruled that discovery is limited to document production at this time, that other forms of
5 discovery may not be required, and the consideration of other forms of discovery should wait
6 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
7 13.)

8 MWD further objects to this interrogatory on the grounds that it is burdensome and
9 oppressive, and responses are not feasible, at this time given pending document requests in this
10 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
11 record in the *2012 Action*.

12 MWD further objects to this interrogatory on the grounds that it seeks a response that is
13 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
14 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
15 the administrative record regarding the water rates challenged in this action has already been
16 produced. MWD further objects to this interrogatory on the grounds that any challenge to
17 MWD's water rates in this action must be determined solely on the administrative record and any
18 information sought by this interrogatory beyond the administrative record is neither relevant nor
19 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
20 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
21 processes of members of MWD's Board of Directors on the grounds that such information is not
22 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
23 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
24 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
25 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
26 MWD further objects to this interrogatory to the extent it seeks information protected from
27 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
28

1 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
2 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
3 and/or any other privilege and/or protective doctrine.

4 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

5 This interrogatory seeks information concerning MWD’s methodology (if any) for
6 allocating its costs into different rate categories. For example, MWD pays the California
7 Department of Water Resources (“DWR”) for a water supply delivered to MWD through the
8 State Water Project (“SWP”). But despite paying DWR for a water supply, MWD assigns the
9 majority of these SWP costs to MWD’s own System Access Rate and System Power Rate, which
10 are transportation rates, not supply rates. The misallocation of these rates to transportation rather
11 than supply inflates the costs to MWD’s only real transportation customer—SDCWA—and
12 reduces the costs of other customers who buy water and other services from MWD. SI No. 10
13 thus asks MWD to explain its basis for allocating SWP costs to its transportation rates. Similarly,
14 MWD includes the WSR in the bundled wheeling rate it charges to purchasers of third-party
15 water, and in the price charged to SDCWA under the Exchange Agreement. But the WSR, which
16 funds conservation and local water supplies, is plainly about increasing supply; by loading that
17 rate onto the wheeling rate, MWD is inflating the wheeling rate and violating the express purpose
18 of the Wheeling Statutes to facilitate third-party water transfers. *See* Cal. Water Code § 1813.
19 This Court already held in its September 17 Order that information about MWD’s cost allocations
20 is reasonably calculated to lead to the discovery of admissible evidence. *See, e.g.*, September 17
21 Order at 3-4, 7-11. The Court should order MWD to respond to this interrogatory.

22 **INTERROGATORY NO. 21:**

23 Identify all DOCUMENTS, data, analyses, calculations, studies or other information that
24 demonstrate or evidence the amount of revenue collected through each MWD RATE
25 COMPONENT that has been transferred into MWD’s Rate Stabilization Fund, from January 1,
26 2010 to the present.

1 **RESPONSE TO INTERROGATORY NO. 21:**

2 MWD incorporates herein by reference each of its general objections and reservations set
3 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
4 because the Court has not ordered that interrogatories may be propounded, and no response to this
5 interrogatory is necessary because the Court has not ordered that a response to this interrogatory
6 is required. The Court ruled that, although discovery may be propounded, responses to discovery
7 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
8 has also ruled that discovery is limited to document production at this time, that other forms of
9 discovery may not be required, and the consideration of other forms of discovery should wait
10 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
11 13.)

12 MWD further objects to this interrogatory on the grounds that it is burdensome and
13 oppressive, and responses are not feasible, at this time given pending document requests in this
14 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
15 record in the *2012 Action*.

16 MWD further objects to this interrogatory on the grounds that it seeks a response that is
17 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
18 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
19 the administrative record regarding the water rates challenged in this action has already been
20 produced. MWD further objects to this interrogatory on the grounds that any challenge to
21 MWD's water rates in this action must be determined solely on the administrative record and any
22 information sought by this interrogatory beyond the administrative record is neither relevant nor
23 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
24 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
25 processes of members of MWD's Board of Directors on the grounds that such information is not
26 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
27 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
28

1 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
2 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
3 MWD further objects to this interrogatory to the extent it seeks information protected from
4 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
5 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
6 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
7 and/or any other privilege and/or protective doctrine.

8 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

9 SDCWA seeks documents revealing the amount of revenue—collected through any MWD
10 rate—that MWD transfers to its “Rate Stabilization Fund.” As part of its failure to reconcile its
11 revenue with costs incurred from providing the corresponding service, SDCWA believes MWD is
12 over-collecting revenues under some rates, then transferring the excess revenue to a general
13 reserve fund, the “Rate Stabilization Fund.” MWD then uses this Fund to subsidize other
14 services, and by extension, the rates associated with those services. This practice would clearly
15 violate cost-of-service principles requiring that MWD set each of its rates such that it recovers no
16 more than the costs of the service related to that particular rate. Accordingly, SDCWA seeks
17 documents in MWD’s possession reflecting this practice. The Court should compel a response to
18 this request.

19 **INTERROGATORY NO. 22:**

20 Identify all DOCUMENTS, data, analyses, calculations, studies or other information that
21 demonstrate or evidence the distribution or disbursement of monies from MWD’s Rate
22 Stabilization Fund, from January 1, 2010 to the present.

23 **RESPONSE TO INTERROGATORY NO. 22:**

24 MWD incorporates herein by reference each of its general objections and reservations set
25 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized
26 because the Court has not ordered that interrogatories may be propounded, and no response to this
27 interrogatory is necessary because the Court has not ordered that a response to this interrogatory

1 is required. The Court ruled that, although discovery may be propounded, responses to discovery
2 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
3 has also ruled that discovery is limited to document production at this time, that other forms of
4 discovery may not be required, and the consideration of other forms of discovery should wait
5 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
6 13.)

7 MWD further objects to this interrogatory on the grounds that it is burdensome and
8 oppressive, and responses are not feasible, at this time given pending document requests in this
9 action and in the *2012 Action* ordered by the Court and the preparation of the administrative
10 record in the *2012 Action*.

11 MWD further objects to this interrogatory on the grounds that it seeks a response that is
12 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
13 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
14 the administrative record regarding the water rates challenged in this action has already been
15 produced. MWD further objects to this interrogatory on the grounds that any challenge to
16 MWD's water rates in this action must be determined solely on the administrative record and any
17 information sought by this interrogatory beyond the administrative record is neither relevant nor
18 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
19 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
20 processes of members of MWD's Board of Directors on the grounds that such information is not
21 a proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
22 discovery of admissible evidence. MWD further objects that this interrogatory is compound and
23 complex. MWD further objects that this interrogatory is overbroad and unduly burdensome and
24 oppressive. MWD further objects to this interrogatory to the extent it is vague and ambiguous.
25 MWD further objects to this interrogatory to the extent it seeks information protected from
26 disclosure by the attorney-client privilege, the work-product doctrine, the common interest
27 privilege or joint defense privilege, the deliberative process privilege, the legislative privilege, the
28

1 right to privacy, the mediation, confidentiality, and/or settlement communication privileges,
2 and/or any other privilege and/or protective doctrine.

3 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

4 SDCWA seeks documents revealing the amount of revenue—collected through any MWD
5 rate—that MWD transfers to its “Rate Stabilization Fund.” As part of its failure to reconcile its
6 revenue with costs incurred from providing the corresponding service, SDCWA believes MWD is
7 over-collecting revenues under some rates, then transferring the excess revenue to a general
8 reserve fund, the “Rate Stabilization Fund.” MWD then uses this Fund to subsidize other
9 services, and by extension, the rates associated with those services. This practice would clearly
10 violate cost-of-service principles requiring that MWD set each of its rates such that it recovers no
11 more than the costs of the service related to that particular rate. Accordingly, SDCWA seeks
12 documents in MWD’s possession reflecting this practice. The Court should compel a response to
13 this request.

14 **FIRST SET OF FORM INTERROGATORIES TO METROPOLITAN WATER**
15 **DISTRICT OF SOUTHERN CALIFORNIA**

16 **FORM INTERROGATORY NO. 17.1:**

17 Is your response to each request for admission served with these interrogatories an
18 unqualified admission? If not, for each response that is not an unqualified admission:

- 19 (a) state the number of the request;
20 (b) state all facts upon which you based your response;
21 (c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have
22 knowledge of those facts; and
23 (d) identify all DOCUMENTS and other tangible things that support your response and
24 state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT
25 or thing.

26 **RESPONSE TO FORM INTERROGATORY NO. 17.1:**

27 MWD incorporates herein by reference each of its general objections and reservations set
28 forth above. MWD further objects to this interrogatory on the grounds that it is not authorized

1 because the Court has not ordered that interrogatories may be propounded, and no response to this
2 request is necessary because the Court has not ordered that a response to this interrogatory is
3 required. The Court ruled that, although discovery may be propounded, responses to discovery
4 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) The Court
5 has also ruled that discovery is limited to document production at this time, that other forms of
6 discovery may not be required, and the consideration of other forms of discovery should wait
7 until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17, 57:21-23, 59:3-6, 59:11-
8 13.)

9 MWD further objects to this interrogatory on the grounds that it is burdensome and
10 oppressive, and responses are not feasible, at this time given pending document requests ordered
11 by the Court in this action and in the *2012 Action* and the preparation of the administrative record
12 in the *2012 Action*.

13 MWD further objects to this interrogatory on the grounds that it seeks a response that is
14 neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the
15 discovery of admissible evidence. MWD further objects to this interrogatory on the grounds that
16 the administrative record regarding the water rates challenged in this action has already been
17 produced. MWD further objects to this interrogatory on the grounds that any challenge to MWD's
18 water rates in this action must be determined solely on the administrative record and any
19 information sought by this interrogatory beyond the administrative record is neither relevant nor
20 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
21 this interrogatory to the extent it seeks information regarding any alleged bias, motive, or mental
22 processes of members of MWD's Board of Directors on the grounds that such information is not a
23 proper area for judicial inquiry and is neither relevant nor reasonably calculated to lead to the
24 discovery of admissible evidence. MWD further objects that this interrogatory is unduly
25 burdensome and oppressive. MWD further objects to this interrogatory to the extent it seeks
26 information protected from disclosure by the attorney-client privilege, the work-product doctrine,
27 the common interest privilege or joint defense privilege, the deliberative process privilege, the
28

1 legislative privilege, the right to privacy, the mediation, confidentiality, and/or settlement
2 communication privileges, and/or any other privilege and/or protective doctrine.

3 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

4 Form Interrogatory 17.1, which requires a party responding to requests for admission to
5 identify certain information when it does not provide an unqualified admission. Form
6 Interrogatory 17.1 has long been approved for general use in California litigation by the Judicial
7 Council. MWD's claim that Form Interrogatory 17.1 is too burdensome is nothing more than a
8 beef with the Judicial Council's approach. Nor is there anything improper about asking, as
9 SDCWA has done, that MWD produce any documents it identifies in response to interrogatories
10 that it has *not already produced in this litigation*.

11 **SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO**
12 **METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

13 **REQUEST FOR PRODUCTION NO. 1:**

14 All documents identified in MWD's responses to SDCWA's First Set of Special
15 Interrogatories or in response to Form Interrogatory No. 17.1 in this action, both served on
16 February 5, 2013.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

18 MWD incorporates herein by reference each of its general objections and reservations set
19 forth above and set forth in MWD's responses to SDCWA's First Set of Special Interrogatories
20 and SDCWA's First Set of Form Interrogatories, served concurrently herewith.

21 MWD further objects to this request on the grounds that neither this request, nor
22 SDCWA's First Set of Special Interrogatories, nor SDCWA's First Set of Form Interrogatory No.
23 17.1 has been authorized, and the Court has not ordered a response to this request or to any
24 special or form interrogatories. The Court ruled that, although discovery may be propounded,
25 responses to discovery are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22;
26 41:1-14.) The Court has also ruled that discovery is limited to document production at this time,
27 that other forms of discovery may not be required, and the consideration of other forms of
28

1 discovery should wait until document discovery is complete. (8/3/12 Tr. at 9:13-19, 22:11-17,
2 57:21-23, 59:3-6, 59:11-13.)

3 MWD further objects to this request on the grounds that it is burdensome and oppressive,
4 and production is not feasible, at this time given pending document requests in this action and in
5 the *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
6 *Action*.

7 MWD further objects to this request on the grounds that it seeks information that is neither
8 relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery
9 of admissible evidence. MWD further objects to this request on the grounds that the
10 administrative record regarding the water rates challenged in this action has already been
11 produced. MWD further objects to this request on the grounds that any challenge to MWD's
12 water rates in this action must be determined solely on the administrative record and any
13 information sought by this request beyond the administrative record is neither relevant nor
14 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects that
15 this request is overbroad and unduly burdensome and oppressive, including but not limited to
16 because there has been no offer or agreement to limit the required search to applicable central
17 files or primary repositories of MWD and paper and electronic documents of specified
18 custodians. MWD further objects to this request to the extent it seeks information regarding any
19 alleged bias, motive, or mental processes of members of MWD's Board of Directors on the
20 grounds that such information is not a proper area for judicial inquiry and is neither relevant nor
21 reasonably calculated to lead to the discovery of admissible evidence. MWD further objects to
22 this request to the extent it seeks information protected from disclosure by the attorney-client
23 privilege, the work-product doctrine, the common interest privilege or joint defense privilege, the
24 deliberative process privilege, the legislative privilege, the right to privacy, the mediation,
25 confidentiality, and/or settlement communication privileges, and/or any other privilege and/or
26 protective doctrine.

1 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

2 RFP No. 1 was included to avoid the situation where MWD identifies, in response to
3 interrogatories, a host of documents that have not otherwise been requested or produced. If the
4 Court grants SDCWA's motion to compel further interrogatory responses, and MWD identifies
5 particular documents, it follows that the underlying documents are relevant and must be produced
6 as well.

7 **REQUEST FOR PRODUCTION NO. 5:**

8 All documents, from January 1, 2001 to the present, that discuss MWD's calculation of
9 member agencies' preferential rights to water, including but not limited to documents that discuss
10 whether wheeled, transported, or exchanged water should be counted toward a MWD member
11 agency's preferential rights.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

13 MWD incorporates herein by reference each of its general objections and reservations set
14 forth above. MWD further objects on the grounds that this request is premature at this stage of
15 the litigation. MWD further objects to this request on the ground that it has not been authorized
16 by the Court. MWD further objects to this request on the grounds that no response to this request
17 is required. The Court has not approved discovery on issues regarding SDCWA's Sixth Cause of
18 Action regarding preferential rights, and the Court has not ordered that a response to this request
19 is required. The Court ruled that, although discovery may be propounded, responses to discovery
20 are not required unless ordered by the Court. (*See* 2/17/12 Tr. at 40:20-22; 41:1-14.) Further,
21 Judge Warren specifically recommended that discovery with respect to the preferential rights
22 issues not go forward at this time (Discovery Management Recommendation No. 1, at 7 n.11),
23 and SDCWA neither objected to nor sought de novo review of that recommendation. And, the
24 Court has not ordered any discovery on preferential rights issues. (*See* 8/3/12 Tr. at 7:20-9:8 and
25 Order dated September 17, 2012.) No response to discovery seeking documents regarding
26 preferential rights is required until the Court orders such response. (2/17/12 Tr. at 40:20-22.)
27 MWD further objects to this request on the grounds that it is burdensome and oppressive, and
28

1 production is not feasible, at this time given pending document requests in this action and in the
2 *2012 Action* ordered by the Court and the preparation of the administrative record in the *2012*
3 *Action*.

4 MWD further objects to this request to the extent it is vague and ambiguous. MWD
5 further objects to this request to the extent it seeks information protected from disclosure by the
6 attorney-client privilege, the work-product doctrine, the common interest privilege or joint
7 defense privilege, the deliberative process privilege, the legislative privilege, the right to privacy,
8 the mediation, confidentiality, and/or settlement communication privileges, and/or any other
9 privilege and/or protective doctrine. MWD further objects that this request is overbroad and
10 unduly burdensome and oppressive, including but not limited to because there has been no offer
11 or agreement to limit the required search to applicable central files or primary repositories of
12 MWD and paper and electronic documents of specified custodians.

13 **REASON WHY RESPONSE SHOULD BE COMPELLED:**

14 This request, which pertains to SDCWA’s sixth cause of action, for declaratory relief
15 regarding MWD’s calculation of “preferential rights” (the amount of water to which each MWD
16 member agency is legally entitled to take according to a statutory formula). MWD calculates
17 preferential rights based on a member agency’s payments to MWD, excepting payments for the
18 “purchase of water.” For preferential rights purposes, MWD treats payments under SDCWA’s
19 Exchange Agreement, which governs MWD’s transportation of water SDCWA obtains from IID
20 and from the lining of the All-American and Coachella canals, as payments for the “purchase of
21 water”—in other words, as supply charges rather than transportation charges. This is exactly the
22 opposite of how MWD treats SDCWA under the Exchange Agreement, where MWD charges
23 SDCWA a bundled transportation rate, not a supply rate. In other words, MWD categorizes the
24 identical activity—payments by SDCWA for transportation of IID and canal-lining water through
25 MWD’s system—as either “transportation” or “supply,” depending on the day of the week, and
26 according to which definition will harm SDCWA (and benefit MWD’s other member agencies)
27 the most.

1 RFP No. 5 asks MWD to identify documents discussing its preferential rights calculation,
2 including discussions of whether to include wheeled, transported or exchanged water in the
3 calculation of member agencies' preferential rights. MWD has never disputed that SDCWA is
4 entitled to take discovery on this cause of action. During the previous round of discovery last
5 spring, Judge Warren recommended that preferential-rights discovery not be included in the first
6 round of document production. But now that the Court has stated its intent to have a trial on all
7 issues before the end of this year, however, this discovery must proceed. Having offered no
8 meaningful objections other than that the Court "has not authorized discovery regarding
9 preferential rights," an objection the Court can easily remedy, this Court should order MWD to
10 produce the requested documents.

11
12
13 Dated: March 27, 2013

KEKER & VAN NEST LLP

14
15 By: /s/ Daniel Purcell
16 JOHN KEKER
17 DANIEL PURCELL
18 DAN JACKSON
19 WARREN A. BRAUNIG

20
21 Attorneys for Petitioner and Plaintiff
22 SAN DIEGO COUNTY WATER
23 AUTHORITY
24
25
26
27
28