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EXEMPT FROM FILING FEES
[GOVERNMENT CODE § 6103]

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN FRANCISCO
17

18 SAN DIEGO COUNTY WATER
AUTHORITY,
19
20 Petitioner and Plaintiff,

21 v.

22 METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA; et al.,
23 Respondents and Defendants.

CASE Nos. CPF-10-510830; CPF-12-512466

**RESPONDENT/DEFENDANT'S MOTION
IN LIMINE NO. 1**

**RESPONDENT/DEFENDANT
METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA'S NOTICE OF
MOTION AND MOTION TO EXCLUDE
EVIDENCE OUTSIDE OF THE
ADMINISTRATIVE RECORD**

Date: November 4, 2013

Time: 9:00 a.m.

Dept.: 304

Judge: Hon. Curtis E. A. Karnow

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

Trial Date: December 17, 2013

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Respondent and Defendant Metropolitan Water District of Southern California (“MWD”)
3 respectfully submits this Motion In Limine to exclude all evidence outside the administrative
4 record when the Court is adjudicating the lawfulness of MWD’s rates, as challenged in the first
5 three causes of action in both the *2010 Action* (Case No. CPF-10-510830) and the *2012 Action*
6 (Case No. CPF-12-512466), in the final hearing/trial in the *2010* and *2012 Actions*.

7 **I. INTRODUCTION, FACTUAL SUMMARY, AND ARGUMENT**

8 The Court’s July 22, 2013 Case Management Order directed the parties to file a pretrial
9 brief for the November 4, 2013 pretrial conference that discusses, among other issues, “on a
10 claim-by-claim basis . . . the evidence the court is required to evaluate, including . . . argument
11 on why the court ought not to consider evidence likely to be offered by opposing parties.” July
12 22 Order at 3. The Court also stated that “[t]he parties may also seek rulings on other *in limine*
13 issues, if this would be more convenient than handling them at the second pretrial hearing,”
14 which is set for December 10, 2013. *Id.*

15 As explained in more detail in MWD’s concurrently filed First Pretrial Brief (“Pretrial
16 Brief”), the decisions that SDCWA challenges in the first three causes of action (the “rate
17 challenges”) in both the *2010* and *2012 Actions* – regarding MWD’s establishment of its rate
18 structure and its setting of its water rates – were quasi-legislative actions, review of which is
19 limited to the administrative record. *See* Pretrial Brief at Sections III.A; III.B.3a. SDCWA has
20 pointed to no legitimate reason to depart from this rule. Accordingly, among the evidence that
21 the Court “ought not to consider” (July 22 Order at 3) in ruling on the legality of MWD’s rates in
22 the first three causes of action is evidence outside the administrative record, both documents and
23 witness testimony.

24 The Court’s narrow order allowing for discovery under the Wheeling Statute did not alter
25 the rule that review of the lawfulness of quasi-legislative actions is limited to the administrative
26 record. *See* Pretrial Brief at Section III.E.3.a. In allowing discovery, the Court explained that
27 *discoverable* evidence was not necessarily *admissible* evidence; a judicial determination would
28 still need to be made regarding the relevancy of extra-record evidence. And, as explained in the

1 Pretrial Brief, extra-record evidence should not be admissible in the rate challenges. *See* Pretrial
2 Brief at Sections III.A; III.B.3.a; III.E.3.a.

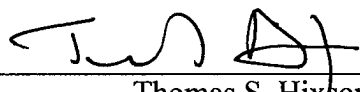
3 In its concurrently filed Pretrial Brief, MWD extensively discusses the case law requiring
4 the Court's review of MWD's rates to be limited to the administrative record. Rather than
5 burden the Court with duplicative briefing in this motion in limine, MWD incorporates by
6 reference this legal argument set forth in its Pretrial Brief.

7 **II. CONCLUSION**

8 For the foregoing reasons, the Court should exclude all evidence outside the
9 administrative record in reviewing the lawfulness of MWD's rates in the first three causes of
10 action in the *2010* and *2012 Actions*.

11 DATED: October 18, 2013

Bingham McCutchen LLP

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13
14 By: 
15 Thomas S. Hixson
16 Attorneys for Respondent and Defendant
17 Metropolitan Water District of Southern
18 California
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1 *San Diego County Water Authority v. Metropolitan Water District of Southern California, et al.,*
2 San Francisco County Superior Court Case Nos. CPF-10-510830 and CPF-12-512466

3 **PROOF OF SERVICE**

4 I am over eighteen years of age, not a party in this action, and employed in San
5 Francisco County, California at Three Embarcadero Center, San Francisco, California 94111-
6 4067. I am readily familiar with the practice of this office for collection and processing of
7 correspondence for mail/fax/hand delivery/next business day Federal Express delivery, and they
8 are deposited that same day in the ordinary course of business.

9 On October 18, 2013, I served the attached:

10 **RESPONDENT/DEFENDANT'S MOTION IN LIMINE NO. 1**

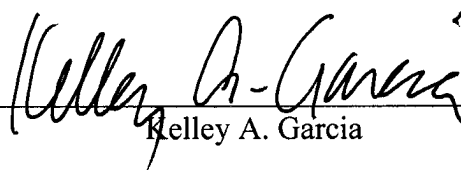
11 **RESPONDENT/DEFENDANT METROPOLITAN WATER DISTRICT OF**
12 **SOUTHERN CALIFORNIA'S NOTICE OF MOTION AND MOTION TO**
13 **EXCLUDE EVIDENCE OUTSIDE OF THE ADMINISTRATIVE**
14 **RECORD**



16 (VIA LEXISNEXIS) by causing a true and correct copy of the document(s) listed
17 above to be sent via electronic transmission through LexisNexis File & Serve to
18 the person(s) at the address(es) set forth below.

19 as indicated on the following **Service List**.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct and that this declaration was executed on October 18, 2013, at San
22 Francisco, California.

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28

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