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14 District of Southern California

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

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

20 v.

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

Case No. CPF-10-510830

**METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA'S RESPONSE TO
SDCWA'S SEPARATE STATEMENT
OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF MWD'S
OPPOSITION TO SDCWA'S
MOTION FOR SUMMARY
ADJUDICATION (FIFTH CAUSE OF
ACTION)**

Date: December 3, 2013

Time: 9:30 a.m.

Dept: 304

Judge: Hon. Curtis E. A. Karnow

Action Filed: June 11, 2010

Trial Date: December 17, 2013

Pursuant to California Code of Civil Procedure Section 437c(b)(3) and Rule 3.1350(e) and (f) of the California Rules of Court, Metropolitan Water District of Southern California (“MWD”) submits its Response to San Diego County Water Authority’s (“SDCWA”) Separate Statement of Undisputed Material Facts in Support of MWD’s Opposition to SDCWA’s Motion for Summary Adjudication (Fifth Cause of Action).

SDCWA’s Undisputed Material Facts and Supporting Evidence	MWD’s Response and Supporting Evidence
<p>1. MWD uses revenues from its “Water Stewardship Rate” to provide incentive payments or subsidies to member agencies for specific water conservation and local resource development programs.</p> <p>MWD’s Answer (“Answer”) to Third Amended Petition and Complaint (“TAC”) (Ex. U) ¶¶ 13, 14; Ex. A (Sept. 13, 2013 Deposition of MWD Person Most Qualified Deven Upadhyay (“Upadhyay Depo.”)) at 85:6-8.</p>	<p>Disputed as characterized. MWD’s Water Stewardship Rate is set to recover costs associated with MWD’s Local Resources Program (“LRP”), Conservation Credits Program (“CCP”), and Seawater Desalination Program (“SDP”), also known as demand management programs.</p> <p>Declaration of Deven Upadhyay in Support of MWD’s Opposition to SDCWA’s Motion for Summary Adjudication (“Upadhyay Decl. ISO MWD’s Opp.”), ¶ 26; Skillman Declaration ISO MWD’s Opposition to SDCWA’s Motion for Summary Adjudication (“Skillman Decl.”), ¶ 5.</p>
<p>2. MWD provides these subsidy benefits as part of MWD’s public mission of providing reliable water supplies to the Southern California region.</p> <p>See Answer ¶ 14; Upadhyay Depo at 44:25- 46:13; Ex. K (Sept. 23, 2004 Gastelum memo).</p>	<p>Disputed in part. MWD implemented its LRP, CCP and SDP programs to meet its long term water supply reliability goals, as set forth in its Integrated Water Resources Plan. They also help satisfy MWD’s statutory mandates imposed by the California Legislature. Under these programs, MWD enters into project contracts, on a discretionary basis, with its member agencies (“MA”), and at times third parties, which require the contracting parties to develop and implement local resource development, conservation and/or desalination projects. Under the LRP and SDP contracts, MWD pays up to \$250 for each acre-foot of water produced, and, under the CCP contracts, MWD pays a specific amount for each acre-foot of water estimated to be conserved.</p> <p>MWD Act § 130.5; Cal. Water Code § 10608.16; Declaration of Deven Upadhyay in Support of MWD’s Motion for Summary Adjudication as to SDCWA’s Fourth, Fifth and Sixth Causes of Action (“Upadhyay Decl. ISO MWD’s MSA”) at ¶ 2-4; Upadhyay Decl. ISO MWD’s Opp., ¶ 10.</p>

SDCWA's Undisputed Material Facts and Supporting Evidence	MWD's Response and Supporting Evidence
<p>3. Since 2004, MWD has included an RSI Clause in all of its conservation, seawater desalination, and local resources program subsidy agreements.</p> <p>Answer ¶ 15; Upadhyay Depo. at 33:25-36:14.</p>	<p>Disputed. In December, 2004 MWD's Board voted to include the RSI provision in all future LRP, CCP and SDP project contracts executed <i>after</i> April 15, 2005. Thus, the RSI provision has only been included in project contracts executed after April 15, 2005.</p> <p>Chatterjee Decl. ISO MWD's Opposition to SDCWA's Motion for Summary Adjudication ("Chatterjee Decl. ISO MWD's Opp."), Ex. 9 (Arakawa Depo. 28:19-29:25; 57:2-58:3) Ex. 10 (Arakawa Depo Ex. 120); Upadhyay Decl. ISO MWD's Opp. at ¶ 15.</p>
<p>4. The RSI Clause is not negotiable, but is a mandatory condition of all MWD subsidy agreements.</p> <p>Upadhyay Depo. at 33:25-36:14; Ex. L (April 20, 2005 email chain between MWD's Lauren Brainard and SDCWA's Dan Hentschke); Ex. M (August 2, 2005 MWD letter to SDCWA).</p>	<p>Disputed in part. It is undisputed that MWD staff does not have authority to make changes to the RSI provision absent approval from MWD's Board of Directors. However, the Board retains discretion to make changes to its policy with regard to the RSI provision on a contract-by-contract basis and otherwise.</p> <p>Chatterjee Decl. ISO MWD's Opp., Ex. 17 (Upadhyay Depo. at 76:22-80:3).</p>
<p>5. In order to receive MWD subsidies for conservation, seawater desalination or local water supply development projects, the RSI Clause requires a Member Agency to agree that "if they file or participate in litigation or support legislation to challenge or modify [Metropolitan's] Existing Rate Structure, including changes in overall rates and charges that are consistent with the current cost-of-service methodology, Metropolitan may initiate termination" of the agreement providing those subsidy payments.</p> <p>Ex. F § 7.2(a) (RSI Clause); Answer ¶ 15; Ex. B (Deposition Transcript of MWD Person Most Qualified Steve</p>	<p>Disputed in part. MWD does not provide "subsidies" to any member agency ("MA") willing to agree that "if they file or participate in litigation or support legislation to challenge or modify [Metropolitan's] Existing Rate Structure, including changes in overall rates and charges that are consistent with the current cost-of-service methodology, Metropolitan may initiate termination" of the subsidy payments. Rather, MAs must apply for CCP, LRP, and SDP project contracts by submitting applications with proposals and plans for potential projects. To be eligible for a particular project contract, the proposal must meet certain criteria. MWD's Board then decides, on a discretionary basis, whether to approve a particular project contract. A project contract is then negotiated with the MA, which includes certain terms, including the RSI provision. If a MA executes a project contract with MWD and then proceeds to violate its terms, MWD's Board has discretion regarding whether to terminate or continue payments under the project contract.</p>

SDCWA's Undisputed Material Facts and Supporting Evidence	MWD's Response and Supporting Evidence
<p>Arakawa ("Arakawa Depo.") at 40:20-42:20.</p>	<p>Upadhyay Decl. ISO MWD's MSA at ¶ 4; Chatterjee Decl. ISO MWD's Opp., Ex. 1 (Cushman Depo. at 164:20-165:6; 175:12-176:20; 180:4-15; 182:12-183:16; 187:2-188:3; 189:15-190:24), Exs. 2-7 (Cushman Depo. Exs. 35, 37-41) and Ex. 9 (Arakawa Depo. at 40:20-42:10).</p>
<p>6. The terms "participate in litigation" and "support legislation" in the mandatory RSI Clause are not defined in the subsidy agreements, and MWD cannot say what specific actions are prohibited by the RSI Clause.</p> <p>Ex. F §§ 7.2(a), 7.4 (RSI Clause); Arakawa Depo. at 50:18-51:9, 52:21-53:6; Upadhyay Depo. 18:18-24:20, 26:1-27:18.</p>	<p>Disputed. The RSI provision explicitly prohibits a MA that enters into a project contract with MWD from "fil[ing] or participat[ing] in litigation or support[ing] legislation to challenge or modify [Metropolitan's] Existing Rate Structure, including changes in overall rates and charges that are consistent with the current cost-of-service methodology[.]" Here, SDCWA filed two separate lawsuits against MWD challenging MWD's "Existing Rate Structure." SDCWA does not dispute that its decision to do so violates the RSI provision.</p> <p>Chatterjee Decl. ISO MWD's Opp., Exs. 2-7 (Cushman Depo. Exs. 35, 37-41) and Ex. 9 (Arakawa Depo. at 53:25-55:25).</p>
<p>7. The RSI Clause is triggered by any legislative or legal challenge to MWD's rates, not merely a challenge to the Water Stewardship Rate, which MWD collects to fund conservation, desalination, and local water supply development projects.</p> <p>Ex. F §§ 7.2(a), 7.4 (RSI Clause); Arakawa Depo. at 93:5-18; Upadhyay Depo. at 29:19- 30:13</p>	<p>Disputed. The RSI Clause is not triggered by "any legislative or legal challenge to MWD's rates." Rather, it is limited to participation in legal and/or legislative actions that seek to "challenge or modify [MWD's]" "Existing Rate Structure," which is the rate structure adopted in October 2001 and in place since January 2003. The RSI provision explicitly allows for challenges to the rate structure without triggering the RSI provision if "there are material changes to Existing Rate Structure or changes in cost-of-service methodology used to set rates by future Metropolitan board action." The RSI provision further allows for challenges to the rate structure without triggering the RSI provision if MWD, "in setting rates under Existing Rate Structure, fail[s] to comply with public notice, open meeting, or other legal requirements associated with the process of setting water rates and related taxes, fees, and charges."</p> <p>Chatterjee Decl. ISO MWD's Opp., Exs. 2-7 (Cushman Depo. Exs. 35, 37-41) and Ex. 9 (Arakawa Depo. at 40:20-42:10; 53:25-55:4).</p>
<p>8. MWD's stated reason for adopting the RSI Clause is the protection of revenues to fulfill MWD's commitments to pay for conservation, desalination, and local</p>	<p>Disputed. MWD's reason for adopting the RSI provision was not simply to protect its revenues; rather, it was to protect the stability of the source of its revenues that are collected to pay for its LRP, CCP and SDP programs—MWD's Existing Rate Structure. The RSI provision was adopted to "assure funding</p>

SDCWA's Undisputed Material Facts and Supporting Evidence	MWD's Response and Supporting Evidence
<p>resources projects.</p> <p>Ex. G (Dec. 2004 Board Memo); Upadhyay Depo. at 80:19-81:17; 88:23-89:12; 100:24- 101:3; Arakawa Depo. at 93:5-18; Ex. H; Ex. J.</p>	<p>for Metropolitan's long-term incentive programs" by protecting MWD's "rate structure," which "was developed in collaboration with the [MAs]" after "extensive public input." Accordingly, as explained in the December 14, 2004 Board Letter, "[t]he established and preferred approach to initiate and implement changes to that rate structure is through Metropolitan's existing board and [MA] process." This is true because "[l]egal and legislative challenges to Metropolitan's rate structure outside the established public board process could have an adverse impact on Metropolitan's ability to sustain project and program funding and are disruptive and costly." Thus, the RSI provision seeks to "mitigate the risk of challenges to a predictable revenue base that supports [MWD's] planned regional and local investments."</p> <p>Purcell Decl., Ex. J (June 18, 2004 Gastelum memo); Upadhyay Decl. ISO MWD's Opp., ¶ 15, 26-29; Chatterjee Decl. ISO MWD's Opp., Ex. 9 (Arakawa Depo. at 23:12-27:7), Ex. 10 (Arakawa Ex. 120).</p>
<p>9. MWD's net revenues will not be affected if SDCWA's rate challenges in this litigation are successful.</p> <p>Ex. Q (Operating Statement) at A-48 ("[T]o the extent that a court invalidates Metropolitan's adopted rates and charges, Metropolitan will be obligated to adopt rates and charges that comply with any mandates imposed by the court. Metropolitan expects that such rates and charges would still recover Metropolitan's cost of service. As such, revenues would not be affected."); Ex. G (Dec. 2004 Board memo) at 2; Ex. H (Dec. 13, 2004 MWD Presentation) at 3-4.</p>	<p>Undisputed as to the statements in Exhibit Q. However, this assertion is vague as to SDCWA's statement regarding "net revenues" and "if SDCWA's rate challenges in this litigation are successful." Further, this assertion is immaterial and a statement regarding future events.</p> <p>Piecemeal legal and/or legislative challenges to MWD's Existing Rate Structure would create a destabilizing effect on MWD's rates and its ability to budget and plan. Piecemeal legal and/or legislative challenges to MWD's rates that threaten to destabilize MWD's Existing Rate Structure also threaten the current funding source for existing LRP, CCP and SDP project contracts and threaten future LRP, CCP, and SDP contracts. Without a stable rate structure, MWD cannot ensure the continued administration of the LRP, CCP and SDP programs.</p> <p>If MWD were required to eliminate its Water Stewardship Rate, MWD would have to make fundamental changes to its Existing Rate Structure. Absent changes in MWD's budgeted costs, MWD would have to increase its other rates to cover the cost of existing LRP, CCP and SDP programs. This kind of unplanned for rate increase would interfere with MWD's and its MAs' ability to properly plan and budget for the future. To</p>

SDCWA's Undisputed Material Facts and Supporting Evidence	MWD's Response and Supporting Evidence
	<p>avoid such disruptive rate increases, MWD's Board would have to consider the possibility of having to decrease or discontinue its future investments in local conservation and resource development projects.</p> <p>Resetting of MWD's rates is exactly the type of destabilization that the RSI provision was intended to prevent. Even if MWD's overall revenues would not be affected by a challenge to MWD's Existing Rate Structure, that does not mean that a challenge to MWD's Existing Rate Structure would not affect the revenues allocated to any particular program or service, including revenues available for MWD's demand management programs.</p> <p>Upadhyay Decl. ISO MWD's Opp., ¶¶ 26-30; Chatterjee Declaration ISO MWD's Opp., Exs. 1 (Cushman Depo. at 443-445:21) and 16 (Woodcock Expert Report) at 24-25).</p>
<p>10. When proposing the RSI Clause, MWD executives asserted that the possibility that SDCWA might sue MWD over its rates was a reason to implement the RSI Clause.</p> <p>Ex. J (June 18, 2004 Gastelum memo); Ex. K (Sept. 23, 2004 Gastelum memo FAQ); Arakawa Depo. at 84:25-85:8, 88:18-24.</p>	<p>Disputed in part and immaterial. MWD executives did not assert that "the possibility that SDCWA might sue MWD over its rates was a reason to implement the RSI Clause." Rather, in his June 18, 2004 memorandum to MA Managers, Ron Gastelum explained the risk posed by "the threat of legal or legislative actions undermining [MWD's] rate structure." Mr. Gastelum stated that "one indication that such concerns are still valid was the [SDCWA's] position in the QSA agreement reserving their right to challenge Metropolitan's uniform wheeling rates after five years from the date of execution of the QSA."</p> <p>The possibility that SDCWA might sue to challenge MWD's rates was a consideration in proposing the RSI provision.</p> <p>Purcell Decl., Ex. J (June 18, 2004 Gastelum memo) and Ex. K (Sept. 23, 2004 Gastelum memo FAQ); Chatterjee Decl. ISO MWD's Opp., Ex. 9 (Arakawa Depo. at 84:25-85:8, 88:18-24).</p>
<p>11. When proposing the RSI Clause, MWD executives asserted that the RSI Clause should be implemented in order to avoid potential reallocation of MWD charges from SDCWA to other member agencies as a result of rate</p>	<p>Disputed. The cited evidence does not state that MWD "asserted that the RSI Clause should be implemented in order to avoid potential reallocation of MWD charges from SDCWA to other [MAs] as a result of rate challenges." Rather, in his September 23, 2004 memorandum to the MWD Board of Directors, Mr. Gastelum explained that he had proposed the RSI provision "in full view of the over \$1 billion in investment planned to support local projects." Mr. Gastelum further stated</p>

SDCWA's Undisputed Material Facts and Supporting Evidence	MWD's Response and Supporting Evidence
<p>challenges.</p> <p>Arakawa Depo. at 68:11-69:6, 73:5-74:11; Ex. K (Sept. 23, 2004 Gastelum memo FAQ); Ex. H (Dec. 13, 2004 MWD Presentation) at 3-4; Ex. J (June 18, 2004 Gastelum memo) at 2-3.</p>	<p>the following: "Over time, we can anticipate that most of our [MAs] will compete for and receive Metropolitan local project incentive payments. It is the new Metropolitan rate structure, developed in close collaboration with the [MAs] that will support these extraordinary investments. At the [MA] level, they too will be relying upon rate stability as they pay for their substantial share of the costs for these projects. The high level of reliability and shared commitment to invest in our region that we enjoy is most threatened by internal cost allocation and rate equity issues, that if not resolved, can delay if not halt necessary regional infrastructure investments. Such issues will always exist in the dynamic economic and political environment in which we operate. However, our strength over many years has been that they are almost invariably resolved through informed and transparent policy deliberations by the [MAs] and Metropolitan's Board of Directors. These issues of internal cost allocation and rate equity should continue to be resolved through this same deliberation, rather than in the courts and unpredictable legislative forums."</p> <p>Further, in his June 18, 2004 memorandum to the MA Managers, Mr. Gastelum noted that "[MAs] and their customers ultimately bear the burden of unfair cost shifts[]." Mr. Gastelum further notes that the RSI provision was intended to "prevent cost shifts among [MAs] and promote regional cooperation in making needed long-term infrastructure and water supply investments."</p> <p>Cost shifting among MAs is a factor that leads to destabilization that could risk MWD carrying out its plans and meeting its objectives.</p> <p>Purcell Decl., Ex. K (Sept. 23, 2004 Gastelum memorandum) and Ex. J (June 18, 2004 Gastelum memorandum); Chatterjee Decl. ISO MWD's Opp., Ex. 9 (Arakawa Depo. at 68:11-69:6, 73:5-74:11); Upadhyay Decl. ISO MWD's Opp. at ¶ 29.</p>
<p>12. After SDCWA filed this lawsuit challenging MWD's rates, MWD invoked the RSI Clause to terminate incentive benefits MWD had previously made available to San Diego.</p> <p>Ex. O (June 23, 2011 MWD</p>	<p>Disputed. In executing six separate project contracts with MWD, SDCWA agreed that if it chose to institute a legal or legislative challenge to MWD's Existing Rate Structure, MWD's Board would have discretion to terminate payments under those contracts. After SDCWA filed this lawsuit in June, 2010, MWD did not immediately terminate SDCWA's project contracts with the RSI provision. The Board first voted to give SDCWA notice of its intent to terminate on August 17,</p>

SDCWA's Undisputed Material Facts and Supporting Evidence	MWD's Response and Supporting Evidence
<p>Termination Letter to SDCWA) (attaching Board Action)]; Ex. N (Aug. 25, 2010 MWD Letter to SDCWA); Ex. P (June 13, 2011 Board Action).</p>	<p>2010. On August 25, 2010, MWD sent SDCWA a 90-day notice of intent to consider terminating SDCWA's project contracts. In response, SDCWA requested mediation, as contemplated by the RSI provision. After an unsuccessful mediation, there were only four ongoing project contracts subject to termination, as the other two had been fully performed according to their terms. On June 14, 2011, MWD's Board voted to terminate two of the remaining four project contracts that contained the RSI provision. The other two contracts were amended to provide payments directly to residents and businesses in SDCWA's service region.</p> <p>Chatterjee Decl. ISO MWD's Opp., Exs. 2-7 (Cushman Depo. Exs. 35, 37-41), Ex. 17 (Upadhyay Depo. at 65:24-66:9); Upadhyay Decl. ISO MWD's Opp., ¶¶ 32-35 and Exs. I-M.</p>
<p>13. The RSI Clause makes no provision for restoring terminated benefits if a court upholds a recipient's challenge to MWD's rates and finds the challenged rates to be illegal.</p> <p>Ex. F § 8 (RSI Clause).</p>	<p>Undisputed.</p>
<p>14. The MWD Board has declared that SDCWA is not allowed to enter into any new subsidy agreements with MWD as a result of its decision to pursue its rate challenges in this litigation, based on the RSI Clause.</p> <p>Upadhyay Depo. 63:8-17, 64:7-65:16; Ex. O (June 23, 2011 MWD Termination Letter to SDCWA); Ex. N (Aug. 25, 2013 MWD Letter to SDCWA); Ex. P (June 13, 2011 Board Action).</p>	<p>Disputed. After SDCWA filed the instant lawsuit, three SDCWA project contracts, which were in various stages of negotiation, were deferred by MWD's Board. However, MWD's Board never "declared that SDCWA is not allowed to enter into any new subsidy agreements with MWD as a result of its decision to pursue its rate challenges in this litigation." Instead, as noted in the June 23, 2011 termination letter, "pending incentive agreements that have been or may be submitted to Metropolitan will not be executed prior to further action and direction from the Metropolitan Board."</p> <p>MWD's Board will make decisions about any future project contracts with SDCWA under MWD's CCP, LRP, or SDP programs.</p> <p>Purcell Decl., Exhibits O (June 23, 2011 MWD Termination Letter to SDCWA) and P (June 13, 2011 Board Action); Chatterjee Decl., ISO MWD's Opp., Ex. 17 (Upadhyay Depo. at 75:15-80:3).</p>

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MWD's Additional Disputed Material Facts and Supporting Evidence	SDCWA's Response and Supporting Evidence
1. MWD funds its LRP, CCP and SDP programs through revenue generated by its integrated rate structure. Upadhyay Decl. ISO MWD's Opp. at ¶ 26; Skillman Decl. at ¶ 5.	
2. Going forward, MWD anticipates spending hundreds of millions of dollars on its LRP, CCP and SDP programs. Upadhyay Decl. ISO MWD's Opp. at ¶ 11.	
3. In 2004, when MWD's Board was initially considering the RSI provision, MWD's IRP identified local resource, conservation and desalination projects expected to cost MWD approximately \$1.9 billion by the year 2025. Chatterjee Decl. ISO MWD's Opp., Ex. 12 (Arakawa Depo., Ex. 123).	
4. MWD currently has approximately 70 open project contracts under its CCP program. MWD is projected to spend about \$20 million per year on these and other conservation projects going forward. Upadhyay Decl. ISO MWD's Opp. at ¶ 12.	
5. MWD currently has approximately 77 open contracts under its LRP program, which provide for 82 ongoing projects. MWD has projected approximately \$527 million in payments under these contracts through 2038, although the actual payments could be hundreds of millions of dollars higher. Upadhyay Decl. ISO MWD's Opp. at ¶ 13.	
6. In addition to the existing project contracts, MWD will need to enter into additional project contracts under its LRP, CCP and SDP programs to meet its current conservation and local resource development goals.	

1	Upadhyay Decl. ISO MWD's Opp. at ¶ 14.	
2	7. MWD's demand management programs and financial	
3	commitments in project contracts are essential to	
4	meeting MWD's long-term water supply reliability	
5	goals.	
6	Upadhyay Decl. ISO MWD's Opp. at ¶ 15.	
7	8. MWD's Board implemented the RSI provision to	
8	ensure funding for its long-term project contracts by	
9	protecting the stability of MWD's integrated rate	
10	structure, which provides the funds necessary to pay	
11	for the LRP, CCP and SDP programs.	
12	Upadhyay Decl. ISO MWD's Opp. at ¶ 15.	
13	9. The RSI provision applies to all MAs that have	
14	entered into project contracts under the LRP, CCP and	
15	SDP programs since April 15, 2005, when the RSI	
16	provision was implemented.	
17	Upadhyay Decl. ISO MWD's Opp. at ¶ 15.	
18	10. All other things being equal, every acre-foot of water	
19	conserved or developed by a MA in connection with	
20	MWD's LRP, CCP and/or SDP programs reduces the	
21	need for future increases in imported water supplies.	
22	Upadhyay Decl. ISO MWD's Opp. at ¶ 16.	
23	11. As a result of every acre-foot of water conserved or	
24	produced locally, MWD is required to convey less	
25	water through its system to be delivered to its MAs	
26	than would have otherwise been necessary. This	
27	reduces the overall demand on MWD's conveyance	
28	system, which decreases and avoids significant	
	operating, capital maintenance and improvement costs.	
	Upadhyay Decl. ISO MWD's Opp. at ¶ 16.	
	12. By decreasing the burden on MWD's conveyance	
	system, MWD avoids costs for repair of water	
	conveyance, distribution, and storage facilities, and	
	power and water storage costs that it would otherwise	
	have to incur.	
	Upadhyay Decl. ISO MWD's Opp. at ¶ 16.	

<p>1 13. Reducing the increased need to convey water to its 2 MAs also makes MWD’s distribution system more 3 effective in moving water to different delivery points 4 throughout MWD’s networked distribution system.</p> <p>Upadhyay Decl. ISO MWD’s Opp. at ¶ 16.</p>	
<p>5 14. Increased reliance by MAs on locally developed water 6 also reduces or avoids the need for construction of 7 additional or expanded water conveyance, distribution, 8 and storage facilities.</p> <p>Upadhyay Decl. ISO MWD’s Opp. at ¶ 19, Ex. F 9 (1996 Study re: “Economic Benefits of Local Water Management Programs”) at 9.</p>	
<p>10 15. Decreased reliance by MAs on imported water from 11 MWD also frees up capacity in MWD’s system to 12 convey both MWD water and water from other non- MWD sources.</p> <p>Upadhyay Decl. ISO MWD’s Opp. at ¶ 17.</p>	
<p>14 16. The development of local resources through the LRP, 15 CCP and SDP programs increases the amount of water 16 available throughout MWD’s service region because 17 water that would have otherwise been purchased by a MA is made available to other MAs that may be facing increased demand.</p> <p>Upadhyay Decl. ISO MWD’s Opp. at ¶ 18.</p>	
<p>19 17. More water available from diverse sources increases 20 water supply reliability throughout MWD’s service region.</p> <p>Upadhyay Decl. ISO MWD’s Opp. at ¶ 18.</p>	
<p>22 18. If MWD’s LRP, CCP and SDP programs did not exist, 23 MWD would be required to develop and pay for 24 alternative water supply sources, to the extent 25 available, and invest significant capital to build and 26 maintain the expanded infrastructure that would be necessary to import more water into Southern California.</p> <p>Upadhyay Decl. ISO MWD’s Opp. at ¶ 19.</p>	

<p>1 19. An in-depth quantitative analysis of the “Economic 2 Benefits of Local Water Management Programs” 3 undertaken by MWD in 1996 demonstrated that by 4 investing in a “preferred mix” of groundwater storage 5 and local resource development projects, MWD could 6 expect to save approximately \$2.27 billion over 25 7 years. MWD avoided certain identified capital costs 8 by investing in its CCP, LRP, and SDP programs.</p> <p>Upadhyay Decl. ISO MWD’s Opp. at ¶¶ 20-21, Ex. F (1996 Study re: “Economic Benefits of Local Water Management Programs”) at 9 and 17.</p>	
<p>9 20. The benefits of the LRP, CCP, and SDP programs are 10 demonstrated by the sheer number of acre-feet of 11 water developed and/or conserved on a yearly basis.</p> <p>Upadhyay Decl. ISO MWD’s Opp. at ¶ 22.</p>	
<p>12 21. In 2011-2012, MWD-assisted conservation programs 13 directly saved approximately 156,000 acre-feet of 14 water. This is enough to provide water for more than 15 750,000 to 1 million people for a full year.</p> <p>Upadhyay Decl. ISO MWD’s Opp. at ¶ 22, Ex. E (2013 SB60 Report) at 6.</p>	
<p>16 22. In 2011-2012, MWD’s LRP programs contributed an 17 additional 171,000 acre-feet of recycled water for non- 18 potable uses and another 40,000 acre-feet of recovered 19 groundwater for municipal use.</p> <p>Upadhyay Decl. ISO MWD’s Opp. at ¶ 22, Ex. E (2013 SB60 Report) at 6.</p>	
<p>21 23. MWD’s demand management programs also create 22 derivative benefits. For example, many of the projects 23 undertaken by MWD’s MAs result in changed 24 consumer behavior and legislative actions that stem 25 from the increased focus on conservation and other 26 water-saving activities. These derivative benefits 27 result in additional water savings and/or production 28 over time.</p> <p>Upadhyay Decl. ISO MWD’s Opp. at ¶ 22, Ex. E (2013 SB60 Report) at 8.</p>	
<p>24. In addition to the water conserved directly through the CCP program, MWD’s region saved approximately</p>	

<p>1 772,000 acre-feet of water in 2011-2012 from code-based and price-based conservation resulting from demand reductions attributable to conservation-oriented plumbing codes and usage reductions.</p> <p>2</p> <p>3</p> <p>4 Upadhyay Decl. ISO MWD's Opp. at ¶ 22, Ex. E (2013 SB60 Report) at 8.</p> <p>5</p>	
<p>6 25. Since 1991, MWD's LRP and CCP programs have collectively produced approximately 4 million acre-feet of water for the residents of Southern California.</p> <p>7</p> <p>8 Upadhyay Decl. ISO MWD's Opp. at ¶ 22, Ex. E (2013 SB60 Report) at 6.</p> <p>9</p>	
<p>10 26. By the year 2035, MWD's conservation programs are targeted to save 2,168,000 acre-feet of water per year.</p> <p>11</p> <p>12 Upadhyay Decl. ISO MWD's Opp. at ¶ 23, Ex. C (2010 IRP Update) at Table 4.2 and Ex. D (2010 IRP Update—Executive Summary) at 4.</p> <p>13</p>	
<p>14 27. MWD's LRP programs also support reaching the IRP target of generating an additional 2,025,000 acre-feet of production through local resources per year by 2035.</p> <p>15</p> <p>16 Upadhyay Decl. ISO MWD's Opp. at ¶ 23, Ex C (2010 IRP Update) at Table 4.2 and Ex. D (2010 IRP Update—Executive Summary) at 4.</p> <p>17</p> <p>18</p>	
<p>19 28. These goals identified in Paragraphs 26 and 27 above are only attainable if MWD continues to invest in its long-term demand management programs.</p> <p>20</p> <p>21 Upadhyay Decl. ISO MWD's Opp. at ¶ 23.</p> <p>22</p>	
<p>23 29. In 1997, SDCWA participated in a committee that signed a November 4, 1997 MWD Board Letter supporting the LRP program. That letter affirmed that the key goals of the LRP program were "to improve regional water supply reliability and avoid or defer MWD capital expenditures" and to meet "IRP local resource targets" and recommended that MWD pay \$250 per acre-foot of water under the project contracts to "reduce future MWD capital expenditures and water supply costs."</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28 Upadhyay Decl. ISO MWD's Opp. at ¶¶ 24-25, Ex. G</p>	

<p>1 at Attachment 1).</p>	
<p>2 30. SDCWA voted to approve MWD’s LRP program and, 3 in doing so, determined that “The regional benefits 4 associated with local resources development include 5 reduction in capital investments due to deferral and 6 downsizing of regional infrastructure, reduction in 7 operating costs for treatment and distribution of 8 imported supplies, and reduction in costs for 9 developing alternative regional supplies. These 10 benefits are realized by all Metropolitan [MAs] 11 through improved regional water supply reliability and 12 reduced rate impacts associated with future growth.” 13 SDCWA further determined that “Locally developed 14 water under these programs improves regional water 15 supply reliability and cost by reducing requirements 16 for future Metropolitan capital improvements and 17 water importation.”</p> <p>18 Upadhyay Decl. ISO MWD’s Opp. at ¶¶ 24-25, Exs. G 19 at 2 and H at 14.</p>	
<p>20 31. In a January 20, 2010 letter to the California Coastal 21 Commission, SDCWA represented that there are 22 “regional benefit[s] from new recycling projects, 23 groundwater recovery projects and water use 24 efficiency gains developed under MWD’s and the 25 Water Authority’s longstanding local resource and 26 conservation programs.” SDCWA acknowledged that 27 MWD’s project contracts are aimed at “avoiding the 28 following costs: Acquisition of new imported supplies such as transfers and exchanges; State Water Project (SWP) energy consumption for pumping imported supplies; treating imported supplies; and MWD distribution system expansions.”</p> <p>Chatterjee Decl., ISO MWD’s Opp., Ex. 1 (Cushman Depo. at 218:14-221:13; 222:2-21; 223:20-224:13), Ex. 8 (SDCWA’s Coastal Commission Letter).</p>	
<p>29 32. SDCWA stated that conservation measures were a 30 reason for greater water security and that, since 2007, 31 per capita water use has dropped about 30% in part 32 due to conservation.</p> <p>Chatterjee Decl. ISO MWD’s Opp., ¶ 16, Ex. 15 (Bloomberg BNA article).</p>	

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<p>33. Since 2010, every two years MWD’s Board establishes a rate for each of its rate components based on MWD’s overall budgeted costs. Each of the rate components in the unbundled rate structure is therefore integrated with and interdependent on the other rates.</p> <p>Skillman Decl. ISO MWD’s Opp. at ¶ 5; Chatterjee Decl. ISO MWD’s Opp., Ex. 16 (Woodcock Expert Report) at 24-25.</p>	
<p>34. For example, while the Water Stewardship Rate is set to recover costs related to MWD’s CCP, LRP, and SDP programs, the Water Stewardship Rate is integrated with the System Access Rate and the System Power Rate, all of which are set to recover MWD’s budgeted costs related to the conveyance of water.</p> <p>Skillman Decl. ISO MWD’s Opp. at ¶ 5; Chatterjee Decl. ISO MWD’s Opp., Ex. 16 (Woodcock Expert Report) at 24-25.</p>	
<p>35. To ensure that MWD’s overall costs are accounted for, if any one of MWD’s rates were adjusted or eliminated, that would necessitate an adjustment to MWD’s other rates. As a result, an attack on any one of MWD’s rates amounts to an attack on the entire rate structure.</p> <p>Skillman Decl. ISO MWD’s Opp. at ¶ 5; Chatterjee Decl. ISO MWD’s Opp., Ex. 16 (Woodcock Expert Report) at 24-25.</p>	
<p>36. Piecemeal legal and/or legislative challenges to MWD’s Existing Rate Structure would create a destabilizing effect on MWD’s rates and its ability to budget and plan.</p> <p>Upadhyay Decl. ISO MWD’s Opp. at ¶ 26-29.</p>	
<p>37. Piecemeal legal and/or legislative challenges to MWD’s rates that threaten to destabilize MWD’s Existing Rate Structure also threaten continued funding for future LRP, CCP and SDP project contracts.</p> <p>Upadhyay Decl. ISO MWD’s Opp. at ¶ 26-29.</p>	

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<p>38. MWD and its MAs rely on a stable MWD budget and rate structure to adequately plan, develop and budget for LRP, CCP and SDP projects.</p> <p>Upadhyay Decl. ISO MWD's Opp. at ¶ 26-29.</p>	
<p>39. Without a stable rate structure, MWD cannot ensure the continued administration of the LRP, CCP and SDP programs.</p> <p>Upadhyay Decl. ISO MWD's Opp. at ¶ 26-29.</p>	
<p>40. If MWD were required to make significant adjustments to its rate structure, the resulting unplanned for rate increases would interfere with MWD and its MAs ability to properly plan and budget for the future.</p> <p>Skillman Decl. ISO MWD's Opp. at ¶ 26-29.</p>	
<p>41. To avoid disruptive rate increases, MWD's Board would have to consider the possibility of having to decrease or discontinue its investment in local conservation and resource development projects.</p> <p>Upadhyay Decl. ISO MWD's Opp. at ¶ 26-29.</p>	
<p>42. The uncertainty caused by challenges that threaten to destabilize MWD's rate structure inhibits MAs from investing in long-term projects that MWD needs to meet its long-term goals set forth in MWD's IRP.</p> <p>Upadhyay Decl. ISO MWD's Opp. at ¶ 26-29.</p>	
<p>43. The RSI provision protects the stability of MWD's Existing Rate Structure by encouraging resolution of rate disputes within the Board process.</p> <p>Upadhyay Decl. ISO MWD's Opp. at ¶ 15, 26-29.</p>	
<p>44. MWD's Board adopted the RSI provision after an extensive period of debate and consideration over the span of ten months, during which SDCWA and other MA's aired their objections to the proposed language and offered several alternatives for the Board's consideration. The MWD Board voted to adopt the current RSI provision, which included significant revisions to the originally proposed language based on the MAs input, and which the Board determined was</p>	

<p>1 2 3 4 5 6</p>	<p>the least restrictive means of adequately protecting MWD’s LRP, CCP and SDP programs and the funding generated by MWD’s integrated rate structure to meet its long-term commitments under those program.</p> <p>Chatterjee Decl. ISO MWD’s Opp., Exs. 9 (Arakawa Depo. at 109:4-110:16; 116:19-120:7; 123:21-124:4), Ex. 10 (Dec. 14, 2004 Bd. Letter).</p>	
<p>7 8 9 10 11 12</p>	<p>45. The RSI provision adopted by MWD’s Board included significant revisions to the originally proposed language based on the MAs input.</p> <p>Chatterjee Decl., Ex. 9 (Arakawa Depo. at 28:23-29:25; 109:4-110:16; 116:19-120:7); Purcell Decl., Ex. J (June 18, 2004 Gastelum memo); Chatterjee Decl. ISO MWD’s Opp., Exs. 2-7 (Cushman Depo. Exs. 35, 37-41).</p>	
<p>13 14 15 16</p>	<p>46. The RSI provision does not prohibit the contracting parties from pursuing legal or legislative challenges to MWD’s rates.</p> <p>Chatterjee Decl., Exs. 2-7 (Cushman Depo. Exs. 35, 37-41).</p>	
<p>17 18 19</p>	<p>47. The RSI provision only applies to those MAs and third parties that voluntarily enter into project contracts that provide LRP, CCP, and SDP funding.</p> <p>Upadhyay Decl., ISO MWD’s Opp., ¶ 15.</p>	
<p>20 21 22</p>	<p>48. The RSI provision only applies to challenges to MWD’s “Existing Rate Structure.”</p> <p>Chatterjee Decl., Exs. 2-7 (Cushman Depo. Exs. 35, 37-41).</p>	
<p>23 24 25 26 27 28</p>	<p>49. The RSI provision allows contracting parties to bring legal and/or legislative challenges to other acts by MWD, including any “material changes to the Existing Rate Structure and/or procedural deficiencies in MWD’s rate adoption process.</p> <p>Chatterjee Decl., Exs. 2-7 (Cushman Depo. Exs. 35, 37-41).</p>	

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50. The RSI provision allows MWD's Board to terminate future payments under the contract; it does not require return of funds already paid under the contracts or impose any other penalties unrelated to the project contract.

Chatterjee Decl., Exs. 2-7 (Cushman Depo. Exs. 35, 37-41).

Dated: November 12, 2013

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