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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

SAN DIEGO COUNTY WATER AUTHORITY,

Petitioner and Plaintiff,

v.

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

Respondents and Defendants.

Case No. CPF-10-510830
Case No. CPF-12-512466

JOINT CMC STATEMENT FOR JULY 2, 2014 CASE MANAGEMENT CONFERENCE

Date: July 2, 2014
Time: 10:00 a.m.
Dept.: 304
Judge: Hon. Curtis E.A. Karnow

Date Filed: June 11, 2010
June 8, 2012

Trial Date: December 17, 2013

Petitioner and Plaintiff San Diego County Water Authority ("San Diego"), Respondent and Defendant Metropolitan Water District of Southern California ("MWD"), and Respondents and Defendants City of Torrance, Three Valleys Municipal Water District, West Basin Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, City of Glendale, City of Los Angeles, Eastern Municipal Water District, Western Municipal Water District, and Municipal Water District of Orange County (collectively "Member Agencies") hereby submit the following updates and statements of position in advance of the July 2, 2014 Case Management Conference in the two above-captioned cases.

STATEMENT OF SAN DIEGO COUNTY WATER AUTHORITY

San Diego submits this statement regarding the current status of these coordinated cases and its proposal for further proceedings through trial.

A. Summary of Prior Proceedings

There are now only two causes of action remaining for the Court to decide. The Court resolved the First Three Causes of Action in its April 24, 2014 Statement of Decision. The Court previously granted summary judgment in MWD's favor on the Fifth Cause of Action (Rate Structure Integrity).

Last July, the Court bifurcated San Diego's two claims for breach of contract—COA # 4 in the 2010 case, COA # 4 in the 2012 case—until after the Phase I trial on the legality of MWD's rates. *See* July 22, 2013 Order at 2. The parties later stipulated to the postponement of trial on the Sixth Cause of Action in the 2010 case, in which San Diego challenges MWD's arbitrary exclusion of payments made under the 2003 Exchange Agreement from MWD's calculation of San Diego's preferential rights to water.

While trial on these causes of action was deferred, discovery was not. Document discovery on all causes of action in the two cases was completed in July 2013, and depositions, including Person Most Qualified depositions concerning the Exchange Agreement and preferential rights, were completed by mid-September 2013. Expert discovery took place in October and November 2013, and was completed before trial.

Therefore, the remaining claims should be ready for resolution almost immediately. As

discussed below, San Diego believes there are no more material factual issues in dispute—and the Court can set a briefing schedule and hearing to resolve the remaining legal issues.

B. Breach of Contract Claims

The Court's ruling invalidating MWD's Transportation Rates—the System Access Rate, the System Power Rate, and the Water Stewardship Rate—and MWD's wheeling rate makes the resolution of San Diego's breach of contract claim quite simple. San Diego's contract claim is based solely on MWD's adoption of unlawful rates for the transportation of water. *See* 2010 Cmplt. at ¶ 101; 2012 Cmplt. at ¶ 103. With the Court now having confirmed that Met's 2011 through 2014 transportation and wheeling rates violate California law, the Court has already decided liability as a factual matter. And, because the Exchange Agreement incorporates a contractual mechanism for calculating and awarding damages, no trial is necessary on damages. Therefore, the Court should establish a briefing schedule that will allow the Court to decide these contract issues as a matter of law.

1. Liability has Already Been Determined

In 2003, San Diego and Met entered into an Amended and Restated Agreement for the Exchange of Water ("Exchange Agreement"). *See* Ex. A hereto. The Exchange Agreement set the terms by which San Diego was able to obtain delivery of the water it purchased from the Imperial Irrigation District and obtained through the lining of the All-American and Coachella Canals. In the Exchange Agreement, Met agreed that it would charge San Diego a "Price" that is "***equal to the charge or charges set by Metropolitan's Board of Directors pursuant to applicable law and regulation and generally applicable to the conveyance of water by Metropolitan on behalf of its members***." *Id.* ¶ 5.2 (emphasis added). As Met's Person Most Qualified witness acknowledged, the rates "generally applicable to the conveyance of water" are the same ones the Court recently invalidated:

> Q: Which Met rates are… generally applicable to the conveyance of water?
>
> A: The rates would include the system access rate and the water stewardship rate and then – and for our member agencies, the system power rate.

***

> Q: San Diego was going to pay—under Section 5.2, was going to pay Met's wheeling rate?
>
> A: Section 5.2 says generally applicable to the conveyance of water. [attorney colloquy omitted] The wheeling rate is equal to the rate that Met charges to convey water on behalf of its member agencies.

See Ex. B (Depo. of Brian Thomas) at 75:15-19; 93:18-94; 7. MWD therefore breached Section 5.2 of the Exchange Agreement by setting unlawful 2011-2014 rates for the transportation of water.

The parties agreed at the time that failure to set lawful rates by Met would constitute a breach of the Exchange Agreement. *See id.* at 90:11-91:1. Indeed, Met conceded as much when it sought bifurcation of the Breach of Contract claim last summer, arguing to the Court that San Diego's contract claim is based on the "same grounds SDCWA alleges for challenging the validity of MWD's rates that are at issue in the first, second, and third causes of action." Ex. C (2013 Joint CMC Statement), at 11; *see also* 7/22/13 Case Management Order at 2 ("Metropolitan also notes that since the breach of contract depends on the illegality of the rates, # 3 [contract breach claims] depends on # 1 [rate challenge]."). As part of the Phase I ruling, the Court has already determined all predicate facts supporting San Diego's breach claim. Liability has been conclusively established.

During the parties' meet-and-confer in advance of this CMC, Met for the first time indicated that it would seek leave to amend its answer to assert a defense of mutual mistake to the contract cause of action, apparently based on the notion that both of the parties believed, at the time of signing the Exchange Agreement, that Met's rates were lawful. Of course, Met has never suggested that there was such a "mistake" in the four years of this litigation, did not include any claim of "mistake" in its motion for summary adjudication on the contract cause of action, and now seeks to amend its answer almost a year after discovery closed, when the contract claim is otherwise ready for trial. Nor was there any "mistake" about Section 5.2 of the contract: on the contrary, both parties' negotiators testified that the understanding of the parties was that San Diego could challenge Met's rates as unlawful after the five-year litigation timeout expired.

Met's motion will be heard in early August, on a date to be agreed upon by the parties.

2. Damages are dictated by the express terms of the contract.

Likewise, there are no disputed facts about damages—because the proper quantum of damages is laid out, explicitly and unambiguously, in the Exchange Agreement. Section 12.4(c) states:

> In the event of a dispute over the Price, SDCWA shall pay when due the full amount claimed by Metropolitan; provided, however, that, during the pendency of the dispute, Metropolitan shall deposit the difference between the Price asserted by SDCWA and the Price claimed by Metropolitan in a separate interest bearing account. ***If SDCWA prevails in the dispute, Metropolitan shall forthwith pay the disputed amount, plus all interest earned thereon, to SDCWA.*** If Metropolitan prevails in the dispute, Metropolitan may then transfer the disputed amount, plus all interest earned thereon, into any other fund or account of Metropolitan.

Ex. A, ¶ 12.4(c) (emphasis added). Starting in January 2011, pursuant to Section 12.4(c), San Diego demanded that Metropolitan place into a separate interest-bearing account $236 per acre-foot of water transported under the Exchange Agreement, which was the amount San Diego calculated it was overcharged in 2011 due to Met's improper inclusion of State Water Project costs, and the inclusion of Water Stewardship Rate costs, in the contractual Price.[1] Met has informed San Diego that it has complied with Section 12.4(c) and set aside $236 for every acre-foot transported by Met for San Diego under the Exchange Agreement. Once the Court establishes that San Diego has prevailed in this Price Dispute—which it must, given the finding that Met's various transportation and wheeling rates are unlawful—Met is bound by the terms of the Exchange Agreement to ***forthwith pay the disputed amount.*** *Id.* The plain terms of Section 12.4(c) are clear and unambiguous: therefore, the Court cannot look to parol evidence to second-guess the contract's clear statement that if San Diego wins a Price Dispute, it receives the full disputed amount for any issues on which it prevailed. *See Alling v. Universal Mfg. Corp.*, 5 Cal. App. 4th 1412, 1433-34 ("The parol evidence rule generally prohibits the introduction of any extrinsic evidence, whether oral or written, to vary, alter or add to the terms of an integrated

[1] While San Diego calculated the amount of the overcharge differently from year to year ($232 in 2012, $315 in 2013, $302 in 2014), Met set the contract damages for every year at $236 per acre-foot, and that is how it calculated the amount to be deposited into the interest-bearing account.

written instrument."); *Lonely Maiden Productions, LLC v. GoldenTree Asset Mgmt.*, 201 Cal. App. 4th 368, 376 (2011) (parol evidence may be considered only where the contract language is ambiguous).

Section 12.4(c) is akin to a liquidated damages provision. Under California law, liquidated damages provisions are presumed valid. Civ. Code § 1671(b); *Weber, Lipshie & Co. v. Christian*, 52 Cal. App. 4th 645, 656 (1997). The requirement that Met pay the disputed amount if San Diego prevails accurately reflects the parties' bargained-for recognition that damages from a breach of the Price provision could be difficult to calculate, given the different possible approaches by which Met might have set rates lawfully, had it not chosen to adopt rates based on "rate stability" instead of cost of service requirements. Indeed, Met's designated expert Christopher Woodcock prepared a report in which he opined that "it is impossible to determine" damages because of uncertainty about "what actions the Board may take in response" to an adverse ruling. Ex. D (Woodcock Report) at 25-26. San Diego disagrees that damages would be "impossible" to calculate, but that's just the point: "[O]ne of the very purposes of liquidated damages is to allow "[t]he parties [to] avoid the cost, difficulty, and delay of proving damages."" *Radisson Hotels Int'l, Inc. v. Majestic Towers, Inc.*, 488 F. Supp. 2d 953, 963 (C.D. Cal. 2007) (citing B.E. Witkin, Summary of California Law, § 533 (10th ed. 2005)). The parties' agreement that MWD would pay the "disputed amount, plus all interest"—nothing more or less—reflects a reasonable, *ex ante* endeavor to estimate and resolve the amount of damages should there ever be a Price Dispute, protecting both parties by precluding San Diego from withholding payment during the pendency of the dispute. *See Utility Consumers' Action Network, Inc. v. AT&T Broadband of S. Cal., Inc. (UCAN),* 135 Cal. App. 4th 1023, 1029 (2006).

The Court can easily affirm the validity of Section 12.4(c), as a matter of law. *See Harbor Island Holdings v. Kim*, 107 Cal. App. 4th 790, 794 (whether a provision is a valid liquidated damages provision or an unenforceable penalty is a question of law). There is nothing penalizing or punitive about section 12.4(c); the amount to be paid is based upon a reasonable calculation of the amount of MWD's overcharge, and is intended to make San Diego reasonably whole if it ultimately prevails, as it has. The "entire agreement, its scope, purpose, and subject matter"

reflect the parties' intention to streamline disputes and avoid ongoing ambiguity. *See UCAN*, 135 Cal. App. 4th at 1036. In any event, MWD bears the burden of establishing that "the provision was unreasonable under the circumstances existing at the time the contract was made," Civ. Code § 1671(b), and it cannot do so.

Ignoring the parties' express agreement in Section 12.4(c), during the recent meet-and-confer in advance of this CMC, Met for the first time stated its view that the Court should instead allow Met to present evidence on multiple hypothetical rates it ***could*** have adopted, choose the highest lawful rates Met ***could*** have set, and then measure and award San Diego's damages based on the difference between the Court-determined hypothetical "lawful" rates and Met's actual, unlawful rates. To support this novel and unwarranted approach, Met also wishes to re-open expert discovery, make new expert disclosures, and present expert testimony on the hypothetical alternative rates that (it claims) Met lawfully could have charged if it had engaged in a proper cost-of-service analysis.

Met's position is absurd, and nothing more than another delay tactic. *First*, expert discovery closed last November. If Met wished to present expert testimony on these issues, it should have so declared at that time. No factual matters have changed that warrant the re-opening of expert discovery. *Second*, and more importantly, Met's approach would force the Court and San Diego to engage in a series of mini-trials about the merits of various litigation-driven, hypothetical rates that Met has never actually proposed, considered, or tried to justify in any actual rate-setting process (including the recent April 2014 rate-setting for calendar years 2015 and 2016, in which Met chose to use the same cost of service and rates that the Court has already invalidated). The Court need not and should not engage in such hypothetical rate-setting here, because the parties agreed upon clear contract terms designed to avoid such a process, namely Section 12.4(c). Any rate theories Met's experts may concoct for this litigation should carry no weight whatsoever—Met's 2011-14 rates are already declared unlawful, and Met should pay the disputed amount, as it promised. The Court should not follow Met down the rabbit hole.

Met's motion to re-open expert discovery will be heard in early August, on a date to be agreed by the parties.

3. No trial is needed on Met's affirmative defenses.

Nor is a trial needed on any of Met's meritless affirmative defenses. In its Answer, Met asserted ***thirty*** different defenses to San Diego's breach of contract claims. Ex. E (2012 Answer), at pp. 12 - 22. Most of these, despite being asserted as "applicable to all causes of action," are either boilerplate defenses (# 11 – ripeness; # 14 – justification; #16 – consent; #30 – reservation of right) or wholly inapplicable to San Diego's contract claim (#9 – validation by operation of law; #10 – separation of powers; # 28 – RTS and Capacity Charge are Fees Under Proposition 26). Many of these defenses were either explicitly or implicitly rejected by the Court in either its Phase I Pretrial Rulings or its Phase I Statement of Decision. In particular, Affirmative Defenses # 1, 7, 8, 9, 10, 11, 14, 24, 25, 26, 27, 28 and 29 have all been rejected or mooted.

During the parties' meet-and-confer, San Diego asked Met to identify which of these myriad defenses it actually intends to assert in Phase II, other than its belated and absurd claim of "mutual mistake." Met was not prepared to do so at that time. If Met believes any of these thirty defenses actually apply to the breach of contract claims, Met should be required to declare, at the CMC or within one week thereof, which defenses it intends to litigate, and any facts it believes are disputed concerning those defenses. Because most of Met's defenses are legal in nature, San Diego believes that these too may be resolved with a single round of briefing, and argument at a hearing.

C. Preferential Rights

San Diego's claim for declaratory relief regarding preferential rights also can be resolved on the papers, without a formal trial or live witness testimony. The preferential rights claim turns primarily on the Court's interpretation of the phrase "purchase of water" in the MWD Act.

In determining each member agency's right to water—*i.e.*, the amount of MWD's water to which that member agency is always entitled, upon demand—MWD must calculate each member agency's percentage contribution to MWD's historical revenue (dating back to the beginning of MWD), "excepting purchase of water." The meaning and interpretation of that phrase—"purchase of water"—is the primary dispute between the parties, because MWD arbitrarily excludes from San Diego's preferential rights the payments that San Diego makes to MWD under

the Exchange Agreement for the use of MWD's distribution facilities. Of course, as the Court itself has previously noted, the Exchange Agreement was entered into for the purpose of transporting water that San Diego had *already purchased* from a third party, the Imperial Irrigation District, or obtained from the lining of the All-American and Coachella Canals. *See* 12/4/13 MSA Order, at 7 ("San Diego has already paid *someone else* (a third party such as Imperial) for the 'purchase of water.'" (emphasis added)). Indeed, San Diego acquired this third-party water precisely so that it would not be dependent on *purchasing* so much water from Met.

The Court has twice decided, on demurrer and on motion for summary judgment, that San Diego's preferential rights claim is not controlled by an earlier case about preferential rights, *SDCWA v. MWD*, 117 Cal. App. 4th 13, 17 (2004). In that case, the Court was asked to decide whether, when member agencies *purchase water from Met*, only a portion of their payment—the amount associated with the "cost of water"—should be excluded from the calculation of their preferential rights. The Court held that the phrase "purchase of water" was not so limited in the MWD Act, and that when buying water from MWD, a member agency's entire payment for that water can be excluded from preferential rights. The issue here is completely different: are payments for the transportation, wheeling, or exchange of water *purchased from third parties* somehow transformed into "purchases of water" from Met under the MWD Act when a member agency pays Met for that transportation/wheeling/exchange service? As the Court recognized in its MSA Order, *SDCWA* does not answer that question:

> San Diego contends it doesn't "purchase water," rather, it pays distinguishable transportation charges. . . . And until we know whether or not San Diego "purchases water" from Metropolitan, *SDCWA* is not useful, for *SDCWA* neither tells us that San Diego here *is* "purchasing water" nor does it otherwise inform the analysis here.

Dec. 4, 2013 Order on Summary Adjudication Motions, at 6.

The Court, in this phase of the proceedings, must now determine whether San Diego's payments under the Exchange Agreement constitute payments for transportation service, as should be obvious, or "purchases of water," as Met contends. San Diego is unaware of any factual disputes to be resolved before the Court can make that determination. The question may

be answered based on undisputed facts statutory interpretation of the MWD Act; principles of contract interpretation, as applied to the Exchange Agreement and facts already presented to the Court; and common sense.

Finally, during the parties' recent meet-and-confer, Met indicated that it will argue a ripeness defense against San Diego's preferential-rights claim. Without having seen how Met will frame this issue, San Diego cannot yet determine whether there may be any disputed factual issues relating to this defense—but San Diego is not currently aware of any.

D. Timing and Structure for Phase II Proceedings

As discussed above, San Diego contends that all remaining issues in this case can be decided on the papers, and that a "trial"—at least in terms of opening statements, live witnesses, etc.—is not needed. Given that discovery is completed and the Court's Phase I Statement of Decision definitively has resolved the question of breach in the two contract causes of action, there is nothing more to do than present these issues to the Court, and allow the Court to decide them, so that the parties can move this case on to appeal.

Whether presented as "trial briefs" or competing motions for summary adjudication, the parties should be able to brief their positions within a month or two, allowing the Court to finally resolve this case by the early fall. This could be accomplished by two rounds of simultaneous briefing, and a one-day hearing for argument. Should the Court decide, at the hearing or after receiving the briefs, that it wants or needs to hear live witness testimony on some particular issue, that can be scheduled accordingly.

San Diego proposes the following schedule, subject to the Court's availability:

Opening Trial Briefs (30-page limit)	**August 29, 2014**
Responsive Trial Briefs (20-page limit)	**September 19, 2014**
1 Day Hearing	**October 2014**

While San Diego believes that these issues can be resolved without another full trial, should the Court decide to conduct one, San Diego, of course, reserves its right to call witnesses and present evidence in that context.

E. Separate Order re: Phase I Decision

At the conclusion of the Statement of Decision, the Court wrote: "San Diego has suggested the entry of a separate order along the lines it proposed in its proposed statement of decision at 55-57. The parties should confer on the matter and report their views at the next case management conference." As part of their meet-and-confer, the parties discussed this issue and agreed that no further order is necessary at this time.

San Diego's primary concern has been alleviated by the language the Court added to the Statement of Decision clearly identifying which rates have been invalidated, for which years, on which statutory and constitutional grounds. *See* Statement of Decision at 65. However, the Statement of Decision still leaves three issues open: 1) what steps must Met affirmatively take in light of the Court's order; 2) Met's refund of money it has over-collected from San Diego; and 3) the Court's continuing jurisdiction.

All three of these issues, in San Diego's view, can be resolved as part of an Order of Judgment at the conclusion of Phase II. While Met should be ordered explicitly to go back and set rates lawfully, based on principles of cost-of-service and cost causation, it is apparent that Met will not do anything until the Court of Appeal affirms the Phase I Statement of Decision. The question of what Met must do when all the dust settles is one the Court should address before judgment, but it can be resolved at the conclusion of Phase II. As San Diego acknowledged in its "Objections," the questions relating to San Diego's entitlement to a refund of the money it has been overcharged and continues to be overcharged by Met depend on first resolving the breach of contract claims. San Diego proposes that this issue be addressed as part of the Phase II trial briefs. Finally, the Court's Statement of Decision indicated that issues relating to the need for continuing jurisdiction should be deferred until the end of the case. The parties and the Court should address it at that time.

F. New Case Challenging MWD's 2015-16 Rates

On April 8, 2014 MWD adopted rates for calendar years 2015 and 2016. MWD's "new" rates are based on exactly the same flawed cost-allocation methodologies this Court rejected for the 2011-2014 rates. MWD made no effort to address the problems identified in the Court's then-

tentative Statement of Decision, and developed no new cost-of-service study or other evidence that would in any way justify the treatment of hundreds of millions of dollars of State Water Project costs as "transportation costs," or the allocation of conservation and local resource program costs to transportation. In other words, "same song, third verse."

In order to preserve its legal remedies, San Diego filed a new lawsuit on May 30, 2014, in Los Angeles Superior Court, challenging those rates and asserting another breach of contract claim. San Diego's challenges are identical to those presented in the current cases.[2] San Diego is currently completing the process for publication of summons pursuant to Code of Civil Procedure 861. That will be completed before the end of July.

Once publication is complete and all interested parties have answered, San Diego intends to seek transfer of the 2014 case to this Court, and coordination for case management purposes. The parties discussed this issue earlier this week, and Met has not indicated whether it will stipulate to such transfer and coordination. In any event, San Diego hopes and expects that transfer to this Court will be complete by the end of August. At that time, the parties can meet and confer, and propose to the Court how the 2014 case should be handled, in light of the advanced status of the current cases and the expected appeal. San Diego intends to propose that the parties stipulate to judgment for purposes of allowing the 2014 to go up on appeal with the 2010 and 2012 cases; or, alternatively, that this Court stay, or hold in abeyance, the 2014 case pending resolution of appellate proceedings in the 2010 and 2012 cases.

STATEMENT OF METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Metropolitan Water District of Southern California ("MWD") respectfully submits the following statement of position in the above-captioned cases (the "*2010* and *2012 Actions*") in compliance with the April 24, 2014 Order Setting Case Management Conference ("Case Management Order") and the Court's Standing Order.

[2] For purposes of preserving its argument on appeal, San Diego included in that Complaint a challenge based on dry-year peaking, even though that challenge was not upheld based on the record presented in the 2010 and 2012 cases.

A. Overview

Pursuant to the Court's Case Management Order, the Parties met and conferred on June 25, 2014 regarding the substance and timing of next steps in this litigation and whether further orders should issue based on the Court's April 14, 2014 Statement of Decision on Rate Setting Challenges ("Statement of Decision"). As directed, this Case Management Statement addresses those subjects.

Both subjects are fundamentally affected by two facts: (1) after a final judgment in this Court, the Parties will appeal the rulings in the Statement of Decision, which means that there will not be a final determination on the validity of MWD's rates until the Court of Appeal (and perhaps the California Supreme Court) rules; and (2) only MWD's Board, not a court, may set MWD's rates. As explained below, these facts mean that SDCWA cannot establish breach of contract and the Court should not issue any further orders based on its Statement of Decision.

B. Substance and Timing of Next Steps

There are two remaining claims that have not yet been adjudicated: breach of contract (in the *2010* and *2012 Actions*) and preferential rights (in the *2010 Action*).

1. Breach of Contract Cause of Action – Jurisdictional Limitation

MWD contends that the next phase of the trial will require determinations the Court does not have jurisdiction to make. That is, to determine breach of contract damages the Court would necessarily engage in ratemaking, which the Court of Appeal has held trial courts are not permitted to do. This is especially true given that appellate courts have also recognized that rate-setting, with regard to water pricing, is a vastly complex process. *Brydon v. E. Bay Mun. Util. Dist.*, 24 Cal. App. 4th 178, 201 (1994).

Specifically, the plaintiff must prove the existence and amount of damages as a required element to establish a breach of contract claim. *CDF Firefighters v. Maldonado*, 158 Cal. App. 4th 1226, 1239 (2008). Contract damages serve to put the party in as good a position as it would have been had performance been rendered as promised. *State v. Pac. Indem. Co.*, 63 Cal. App. 4th 1535, 1551 (1998). In this case, that measure of damages means the Court must calculate the difference between the rate that SDCWA paid and the rate that MWD could have lawfully

charged; that is, the highest fair and reasonable rate. In other words, to proceed the Court would have to set a replacement rate. A trial court, however, has no jurisdiction to set rates. In *Durant v. City of Beverly Hills*, 39 Cal. App. 2d 133 (1940), the trial court found that the plaintiff, who resided outside city limits, should have been charged the same water rate as individuals who resided within the city limits. The Court of Appeal reversed on the grounds that plaintiff had not provided sufficient evidence that the City's water rates were unreasonable and had attempted to improperly use the court as a substitute for the City Council to determine the water rate plaintiff should have been charged. *Id.* at 139. Specifically, the Court of Appeal held that "fixing water rates is not judicial":

> "The universal rule is that in these circumstances *the court is not a rate-fixing body, that the matter of fixing water rates is not judicial*, but is legislative in character, and that the limit of its function and jurisdiction is to find, upon a proper showing, that the rates fixed are unreasonable and unfair. [Citations omitted.] If upon such finding it is adjudged that the established rates shall not be collected, *the court is not permitted to fix another and different rate, but this function must be left with the proper rate-fixing body*."

Id. at 139-40 (emphasis added).

Similarly, in *San Luis Coastal Unified Sch. Dist. v. City of Morro Bay*, 81 Cal. App. 4th 1044 (2000), the Court of Appeal, in finding that the City of Morro Bay must comply with Wheeling Statutes, stated that setting rates for fair compensation was not to be determined by the court, but rather by the City Council. The court recognized that "mandate may compel an exercise of discretion, but not control it. Mandate may not order the exercise of discretion in a particular manner unless discretion can be lawfully exercised only one way under the facts." 81 Cal. App. 4th at 1051.

The legally required rate-fixing body in this case is the Board of MWD. MWD Act §§ 50, 133, 134. Moreover, even as a contractual matter, the Exchange Agreement's price term requires MWD's Board, rather than any other body, to set the charges on which the price term is based. Exchange Agreement, § 5.2.

Further, this Court cannot determine one rate without affecting others. If one rate in MWD's rate structure is reduced, others must be increased to recoup the costs. MWD Act § 134 (MWD must, so far as practicable, set rates to recover its costs); *Mission Springs Water Dist. v. Verjil*, 218 Cal. App. 4th 892, 920-21 (2013) (initiative measure that would set rates below the amount necessary to cover district costs is invalid as violating the statutory requirement that the district fix rates to cover its expenses); Woodcock Expert Rep., at p. 25.

And, the Parties' appeals could lead to any number of outcomes and there is no way of predicting the rate structure that would follow from any subsequent public process before the MWD Board. There are numerous different rate structures from which MWD's Board could select, regardless of the appellate court's ruling. The appellate court could uphold this Court's rulings; or it could also find in SDCWA's favor on its dry-year peaking claim; or it could find in SDCWA's favor on only one of its three claims, such as concerning the Water Stewardship Rate only; or it could find in MWD's favor on all claims. Once the appellate court has ruled, it will be known if there is a final decision invalidating any aspect of MWD's rates and the content of that decision. If so, the MWD Board would then engage in the detailed and lengthy process – involving its 26 member agencies, their constituents, and other members of the public – of assessing the various possible replacement rate structures and adopting a new rate structure in accord with the appellate ruling. If applicable, once MWD's Board adopted a new rate structure and established rates under it, only then could a determination be made of whether there are any damages and, if so, the amount.[3]

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[3] SDCWA's person most knowledgeable on Exchange Agreement damages agreed that MWD's Board must set any replacement rates, the Board has a number of lawful rate structures from which it could choose, it is unknown how the Board would re-set rates, and so the effect on SDCWA's contract payments is unknown:

> [T]here are a number of different ways Metropolitan could develop a rate structure and a system of rates that lawfully recover rates . . . Presuming the Water Authority prevails [in the litigation], the judge will invalidate Metropolitan's rates, and Metropolitan will have to go back and set and adopt lawful rates. How Metropolitan goes back and adopts lawful rates and charges is at this point unknown. So how it might affect the Water Authority's payments is unknown.

Deposition of Dennis Cushman at 422:7-10; 443:20-444:2. Mr. Cushman further agreed that it is not known whether SDCWA would be better off under re-set rates , *i.e.* whether there would be damages even if SDCWA prevailed on the rate challenge. *Id*. at 422:14-*19.*

The Court is without authority to determine rates or the contract price term. Accordingly, it cannot determine the existence or measure of damages for the alleged breach of contract. Because SDCWA will not be able to establish a required element of its breach of contract claim without the Court exceeding its jurisdictional authority, the Parties should not proceed to trial on breach of contract and the claim should be dismissed.[4]

2. Preferential Rights Cause of Action

The cause of action for a declaration of SDCWA's preferential rights should be dismissed because no actual controversy exists. A preferential right is a percentage of water a member agency will receive in the event of water shortage based on a statutory calculation as established in MWD Act § 135. No member agency, including SDCWA, has ever invoked its preferential rights. Furthermore, SDCWA will not invoke its rights for the simple reason that SDCWA would receive greater quantities under the existing drought allocation plan (which the member agencies adopted as an alternative to preferential rights) than it would if it were to invoke its preferential rights. Accordingly, no actual controversy exists.

In any event, the declaratory relief cause of action can be resolved as a matter of law, in that by statute preferential rights must exclude all purchases of water (MWD Act § 135), and the Exchange Agreement is, as a matter of law, a contract for the purchase of water. MWD filed a motion for summary adjudication on this ground, and the Court indicated it sought more information. Accordingly, at the preferential rights trial, MWD will present further evidence regarding the nature of the Exchange Agreement and the Parties' performance under it, which MWD submits clearly establishes that SDCWA purchases MWD water provided in SDCWA's service area in exchange for SDCWA providing other water at the Colorado River, as well as further evidence concerning preferential rights.

[4] SDCWA is not without a breach of contract remedy. It just must file the claim after evidence exists that would allow it to establish the fact and amount of damages. SDCWA should not have filed its breach of contract claims as part of these actions and instead should have requested a tolling agreement from MWD for a later filing, if applicable.

3. Supplemental Expert Discovery

The Court's Statement of Decision in Phase I requires supplemental expert discovery for Phase II. In Phase I, the Court left open the possibility that at least some of the payments made to the State could be included in MWD's System Access Rate, System Power Rate, and rate for wheeling service by stating "[a]nd while Met may from time to time use the state's transport capability to move some its water, that does not support the reasonableness of including **all** the state's transportation costs as part of Met's transportation costs." Statement of Decision at p. 53 (internal citations omitted) (emphasis in original).

Similarly, the Court, while finding the Water Stewardship Rate invalid, did not conclude that all costs of the demand management programs would be excluded. The Court stated that "the central problem here is that Met treats the *entirety* of the Water Stewardship Rate as a 'transportation' rate that is then incorporated into the wheeling rate." *Id.* at 60 (emphasis in original).

No Party's experts opined as to what percentage of costs associated with the aforementioned rates could be properly allocated to the conveyance rates to determine which costs and charges are appropriate under each rate in a manner that complies with the Court's ruling. As the Court recognized, "While I cannot fault Met for not providing a transportation benefit number for *each* of the specific demand management programs, the best we can do with this record is to conclude that to some unspecified extent, some portion of the Water Stewardship Rate is causally linked to some avoided transportation costs." *Id.* (emphasis in original). The Court also noted that "[a]side from the Wheeling statute, I have been required to confine my review to the administrative record." *Id.* at 64; *see also* Joint Case Management Conference Statement for July 19, 2013 CMC at 12:10-21. Furthermore, rates are inter-related. If one rate is reduced, others must be increased to recoup MWD's costs. To ensure that costs are recovered, deductions from one rate must be balanced by increases to other rates. *See* MWD Act § 134; *Mission Springs Water Dist.*, 218 Cal. App. 4th at 920-21; Woodcock Expert Rep., at p. 25.

As a result, if the Parties are required to proceed with a breach of contract trial, then MWD seeks to present a full explanation of the MWD Board's rate structure options and charges

that could apply to SDCWA through expert opinion, in light of the Court's Statement of Decision. Accordingly, MWD will move the Court to permit it to augment its list of experts and to allow the Parties to conduct further expert discovery.

4. Motion for Leave to Amend Answers

In light of the Statement of Decision, it is also necessary to amend MWD's answers to include additional affirmative defenses, including mistake of law and illegality of contract, and related requests for relief, rescission of the Exchange Agreement and a judicial declaration that the Exchange Agreement is void, that flow from the Court's decision to invalidate the System Access Rate, System Power Rate, Water Stewardship Rate, and rate for wheeling service. *See Dunzweiler v. Superior Court*, 267 Cal. App. 2d 569, 576 (1968) (superseded on other grounds) (leave to amend pleadings is readily granted to ensure that cases are determined on their merits).

The Exchange Agreement provides for the exchange of water between SDCWA and MWD, for among other consideration a "Price" set in two phases: an agreed initial numeric price and subsequent prices "equal to the charge or charges generally set by Metropolitan's Board of Directors pursuant to applicable law and regulation and generally applicable to the conveyance of water by Metropolitan on behalf of its member agencies." There is evidence that both Parties believed that MWD's rate structure for the conveyance of water was lawful at the time the Exchange Agreement was made. When SDCWA proposed the Exchange Agreement and MWD agreed, SDCWA understood how MWD had set charges for the conveyance of water based on the System Access Rate, System Power Rate, and Water Stewardship Rate. By 2003, Metropolitan had completed and implemented a years-long process of restructuring its rates, and SDCWA, who had participated in that planning, knew the intent was to continue using that rate structure. When the Court invalidated these rates, under this Court's Statement of Decision, a mistake of law had occurred because what the Parties once considered to be lawful rates actually constituted unlawful rates in this Court's determination. *See* Civil Code § 1578 (The defense of mistake of law arises either where both parties to a contract make the same mistake as to the law or one party makes such a mistake and the other party is aware of the mistake and does not rectify it).

Moreover, because the price consideration was a central purpose of the contract (*i.e.* water exchanged for a "Price" based on MWD's existing rate structure), the Court's ruling has in effect determined the contract is illegal. As the Court of Appeal explained in *Templeton Develop. Corp. v. Superior Court*, 144 Cal. App. 4th 1073, 1084 (2006), "If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced." (internal quotations omitted).

In light of these recent developments that alter MWD's defenses and claims for relief, MWD will move the Court to permit it to amend its answers to ensure that this case is determined on its merits.

5. Timeline for Case Management

With the above framework, MWD proposes the following schedule for further proceedings in, and speedy resolution of, this litigation:

- Earliest Mutually Convenient Dates in August: Hearing on Motion for Leave to Amend Answers and Motion to Supplement Expert Discovery.
- Earliest Mutually Convenient Dates in August: Case Management Conference to set additional deadlines based on outcome of Motion for Leave to Amend Answers and Motion to Supplement Expert Discovery.

Alternatively, if the Court wishes to schedule the breach of contract and preferential rights trial at the July 2 Case Management Conference, MWD requests that the Parties be given sufficient time to prepare their cases, including experts, to address the issues as framed by the Court's Statement of Decision.

In scheduling a trial on both claims, MWD estimates seven to ten days for its portion of the trial. MWD anticipates multiple witnesses will be called to establish the factual basis for MWD's contract defenses. In addition, with respect to alleged damages, it will be necessary to compare the price actually charged to the price that could have been permissibly set by Metropolitan's Board and charged, to determine whether SDCWA has suffered any hypothetical (*see* discussion above) damages and the range of any potential damages due to alternative potential rate structures. That will require forensic accountant and rate-setting testimony as to the composition of cost pools consistent with the Court's April 24 decision and alternative,

permissible methodologies for cost recovery and rate-setting. In that there are alternative, permissible methods for setting rates, MWD believes the direct and cross-examination of experts will require multiple days of testimony. In addition, the preferential rights claim remains to be determined, and the Court in declining to decide the issue as a matter of law, has invited the presentation of evidence. This too will likely require multiple days of testimony pertaining to the purpose of the payments under the Exchange Agreement and the types of payments that are included in preferential rights, as well as an explanation of why the issue is not ripe for adjudication and does not present an actual controversy.

6. SDCWA's Position That It Is Not Required to Prove Contract Damages Is Incorrect

SDCWA contends that damages should not be measured under ordinary contract principles but, instead, should be fixed pursuant to § 12.4(c) of the Exchange Agreement. Section 12.4(c) merely provides that in the event of a dispute over Price, SDCWA will pay the full amount MWD claims is due and MWD will deposit the difference between that amount and the amount SDCWA claims is due, i.e. the "disputed amount," in an interest bearing account; then, if SDCWA prevails in the dispute, MWD will pay the disputed amount to SDCWA, but if MWD prevails, MWD will keep the disputed amount. SDCWA asserts that § 12.4(c) is a liquidated damages clause that entitles it to recover the entire disputed amount as damages regardless of the basis for its claim of how much is due and regardless of the specific issue or issues on which it may prevail. But the parties did not intend that § 12.4(c) be a liquidated damages clause and it cannot be construed as such. Among other things, the amount of any liquidated damages must represent a reasonable endeavor to estimate fair compensation for any loss that may be sustained. *See, e.g.*, *Hitz v. First Interstate Bank*, 38 Cal. App. 4th 274, 288 (1995). Here, there is no reasonable relationship between the amount SDCWA unilaterally may claim is due overall and the actual damages resulting from a specific breach of contract.

Damages must consist of an actual overpayment by SDCWA due to a particular breach it establishes, if any. For example, if SDCWA were to dispute $150 million in payments, but only prevail on an issue involving $1 million, it should not be entitled to recover the entire $150

million disputed amount. Moreover, SDCWA's damages expert already agreed that the amount MWD set aside at SDCWA's request as the disputed amount is erroneous even under SDCWA's theories and must be reduced. Furthermore, payment of any amount in excess of actual damages caused by a particular breach of contract would amount to an unlawful forfeiture. *See Freedman v. Rector, Wardens & Vestrymen of St. Mathias Parish*, 37 Cal. 2d 16, 20 (1951) (a payment made without regard to actual damage suffered is a penalty comprising a forfeiture that is unenforceable). In addition, any purported agreement by MWD to pay an amount beyond what was actually due as contract damages would be an unlawful gift of public funds. Cal. Const., Art. XVI, Sec. 6; *see, e.g., County of Riverside v. Idyllwild County Water Dist.*, 84 Cal.App.3d 655, 660 (1978) (county's agreement to pay an invalid charge would amount to a gift of public funds in contravention of article XVI, Sec. 6).

C. Whether Further Orders Should Issue

In its Statement of Decision and Case Management Order, the Court directed the Parties to confer on, and report at the Case Management Conference, their views on SDCWA's request that the Court issue the following separate orders: (1) vacating MWD's 2011-2014 water rates; (2) ordering MWD to set rates consistent with the Statement of Decision and the law; (3) ordering MWD to conduct a "full cost-of-service study" analyzing various listed issues; and (4) ordering MWD to "refund the money it has collected from San Diego in excess of the reasonable costs of the services provided, as it shall determine in light of the Court's rulings," or, alternatively, "to reduce San Diego's fees going forward to return the revenues it collected from San Diego through transportation rates 'in excess of actual cost.'" Statement of Decision at 66; Case Management Order at 1; SDCWA's Proposed Statement of Decision Re: MWD's 2011 and 2012/2013 and 2014 Rates at 55-57.

MWD submits that the Court should reject SDCWA's request for such orders and should issue no further orders, particularly not at this time. As discussed in more detail below, the Court should issue a judgment at the conclusion of the cases that reflects the Court's resolution of all claims, rather than issue piecemeal judgments or orders along the way. As to the rate claims, the

Court's judgment at the conclusion of the litigation should simply embody the ruling in the Statement of Decision.

Any further order now would be premature until a final judgment issues. The very nature of the one final judgment rule is that all the issues are resolved and set forth in the single final judgment. *Morehart v. County of Santa Barbara*,, 7 Cal. 4th 725, 743-44; *see also Water Replen. Dist. of S. Cal. v. City of Cerritos*, 220 Cal. App. 4th 1450, 1455-56 (2013) (noting trial court refused to issue a writ vacating a groundwater charge and ordering water district to comply with Proposition 218 prior to setting any groundwater charge when a bifurcated damages claim was still pending, stating "[n]o writ will issue until there's a judgment"). That procedure permits the Court of Appeal to review the entire case at one time. No final judgment will issue here until after the Phase II trial.

Also, the specific relief SDCWA requests is inappropriate. First, the Court should not order MWD to vacate its rates, and re-set them, as SDCWA requests. Since it is a certainty that the Parties will appeal the Court's rates rulings (with both MWD and SDCWA appealing the adverse aspects of the rulings against each), there will not be a final determination on the validity of MWD's rates until the Court of Appeal (and perhaps the California Supreme Court) rules on the issues. Moreover, if any invalidity is ultimately found, its specific nature will not be known until that final appellate ruling. There are various, significantly different options as to how the appellate court could rule, even with a finding of invalidity. MWD provides water to wholesale and retail water agencies servicing 19 million Californians. MWD's continued operations are absolutely vital, particularly during a drought, and it cannot operate if its rates – its main source of funding – are vacated. As this Court is aware, it took MWD several years to arrive at its current rate structure. *See generally*, Statement of Decision at p. 7. MWD cannot exist with no rates during the lengthy period it might take to arrive at a new rate structure that is acceptable to a majority of MWD's 26 member agencies – who are legally required to vote on any replacement rates and approve them by a majority (MWD Act §§ 50, 57), and whose often competing and complex interests will need to be taken into account. And, if MWD were ordered to engage in

that extensive and difficult effort now, it would be for naught if the appellate court reaches a different conclusion than this Court, even if there is an appellate finding of invalidity.

In addition, the Court's ordering MWD to immediately undertake certain steps – such as vacating its rates, conducting an unclear "full cost-of-service study," and re-setting rates – even before the cases have been litigated to finality in the trial court, and without resolution by the appellate court, would be for all relevant purposes a preliminary injunction order. *Savage v. Trammell Crow Co*., 223 Cal. App. 3d 1562, 1571 (1990) (request by plaintiff for court to require defendant to undertake certain conduct "before a final judgment could be entered" must satisfy standard for preliminary injunction). SDCWA has not attempted to make the showing required for such an order, nor could it. To obtain such an order, SDCWA would need to show, among other things, irreparable injury, which showing must be greater since MWD is a public agency. *Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd*., 23 Cal. App. 4th 1459, 1471 (1994). The only injury SDCWA claims to have suffered in this case is monetary, which is not irreparable injury. *Intel Corp. v. Hamidi*, 30 Cal. 4th 1342, 1352 (2003). And, the required balancing of hardships greatly favors MWD since, as discussed, MWD cannot operate with no water rates during the extended period it would take to arrive at a new rate structure. MWD would also be significantly harmed if it was required to undertake a lengthy, complex rate restructuring now, which then had to be re-done if the appellate court ruling differed.

Also inappropriate is SDCWA's request for a refund of the amounts it supposedly paid above the "reasonable costs of the services provided," or alternatively a reduction in SDCWA's rate payments going forward to return amounts collected "in excess of actual cost." Significantly, in its objections to this Court's Tentative Determination, SDCWA appeared to withdraw this request: "properly-awarded contractual damages should obviate the need for, or limit the amount of, a separate refund." SDCWA's Objections to Tentative Determination and Proposed Statement of Decision at 11:22-12:2). In any event, SDCWA is not entitled to a rates refund or a reduction in future rates payments by virtue of the Statement of Decision. The Statement of Decision would invalidate two aspects of MWD's rate structure, but there were no factual findings that

SDCWA (or any other member agency) was overcharged as a result, and there were certainly no determinations of the amounts of any overcharge.

Specifically, the Court found that it was unreasonable for MWD to allocate 100% of its State Water Project transportation costs and demand management costs to its transportation rates. SDCWA argued the costs should be allocated to supply rates instead. But the allocation of costs between conveyance and supply rates does not matter when a member agency pays MWD's full service rate, because the member agency is simply paying the total of the two. Supply and transportation rates are both charged on every acre-foot of full service water that is sold. If the supply rates are $90 per acre-foot and the transportation rates are $10 per acre-foot, the full service rate that is paid is $100 per acre-foot. If the transportation rates are $90 and the supply rates are $10, the full service rate that is paid is still $100 per acre-foot. SDCWA never argued, and the Statement of Decision did not find, that this total sum was unlawful or that SDCWA was overcharged when it purchased full service water.

Further, although the Statement of Decision would invalidate MWD's rate for wheeling service, the Court did not make any determination that SDCWA or any other member agency actually paid that rate during the 2011-2014 years at issue. SDCWA brought a facial challenge to that rate; it did not challenge, and did not claim to have been injured by, any particular wheeling transaction. Thus, the Statement of Decision's conclusions regarding MWD's rate for wheeling service does not suggest SDCWA is entitled to any sort of refund of rates or rates payment reduction. SDCWA does contend that the price it paid under the Exchange Agreement was unlawful. However, this Court has not yet ruled on SDCWA's breach of contract claim or MWD's defenses; and, even if SDCWA's breach of contract claim were litigated and SDCWA prevailed, that would not entitle SDCWA to a refund of rates or a rates payment reduction. The remedy for a successful breach of contract claim would be, at most, contract damages.

Therefore, there is not a factual basis to order a rates refund or a reduction in future rates payments. MWD is aware of no legal support for the requested relief under similar facts.

In short, the Court should issue no further orders now, and certainly not the relief SDCWA requests.

MWD believes that *after* the Phase II trial's conclusion, the Court should issue a final judgment that resolves the cases. As to the rates claims, the judgment should embody the rulings set forth in its Statement of Decision, namely a declaratory judgment and writ of mandamus invalidating the specific rates enumerated in the Statement of Decision.

SDCWA's requests – including that the Court vacate MWD's rates and order MWD to re-set them – would be inappropriate if embodied in the final judgment, too. As noted, MWD could not operate and provide the public service it by law must provide if it has no rate structure during the period it would take to devise a new one. *Cf. State Bd. of Equalization v. Superior Court*, 39 Cal. 3d 633, 638 (1985) (rule banning injunction preventing collection of taxes exists so "essential public services dependent on the funds are not unnecessarily interrupted.")[5] Also, as explained, since the Parties will appeal the rulings concerning the validity of MWD's rates, there is not a final decision on the rates' validity. The final appellate ruling could validate MWD's rates; or even if invalidity were found, there are different possible results. It would not be productive, and would be harmful to MWD and its member agencies, to order MWD to revise its rate structure or take any of the other requested actions without the benefit of the final appellate ruling.

STATEMENT OF THE MEMBER AGENCY PARTIES

The member agency parties to this litigation – City of Glendale, City of Torrance, City of Los Angeles, Three Valleys Municipal Water District, Municipal Water District of Orange County, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, West Basin Municipal Water District, and Western Municipal Water District – respectfully submit the following statement of position.

SDCWA has argued MWD "will have to set new rates again in light of the Court's Decision once the Decision is finalized," *not following a final judgment on all causes of action and not following an appellate decision*. (SDCWA's Objections to Tentative Determination and

[5] As MWD has stated throughout the cases, MWD does not agree that any of its rates are "taxes," but the reasoning behind the rule prohibiting injunctions barring collection of taxes applies equally here.

Proposed Statement of Decision at 10:11-13). The member agencies oppose this argument and instead support MWD's position that no further orders should issue at this time, that this Court's final judgment concerning rates should embody the rulings in the Statement of Decision, and that there will not be a final decision concerning the validity of MWD's rates until the final appellate decision on the subject. Under the one final judgment rule, because there are remaining claims to be resolved in this case, there has not yet been a final appealable determination of the rights of the parties in the action. *Morehart v. County of Santa Barbara*, 7 Cal. 4th 725, 746-747 (1994). As the Court's decision will ultimately be appealed, it is premature for the Court to issue an interim order at this time, and especially one that will disrupt the Southern California water supply structure at every level of the system.

Moreover, issuance of the writ at this point would be unduly burdensome and costly to the member agencies. The imposition of interim rates on all the member agencies, including those that are parties to this litigation, could have a substantial impact on the member agencies' financing and operations. Any interim changes in the MWD rate structure will have a cascading effect on the water supply chain all the way to the numerous water suppliers collectively serving approximately 19 million people. As this Court knows, rate setting is not a simple process. It implicates Proposition 218 at the retail level, which requires engineering studies and reports to verify cost of service, mailed notice to all retail customers (which in some cases involves hundreds of thousands of customers), and a hearing procedure to approve the rates. Requiring this on an interim basis, with a probability of having to repeat the process after the appellate court decides the case, would be wasteful and inefficient.

In addition, many of the MWD member agencies, which are parties to this action, have used debt financing to fund necessary infrastructure projects. Each financing transaction is premised on revenue projections based in large part on the member agencies' water rates. Cost projections are based on costs of imported MWD water, which costs constitute a majority of member agencies' total cost of operations. Imposing a new set of interim rates could negatively impact the cost scenarios of the member agencies, and create unwanted uncertainty with regards

to the agencies' financing. The uncertainty presented by an interim rate has the potential to jeopardize an agency's ability to meet its debt service, and maintain its credit ratings.

Finally, in a time of extreme drought, it is important that the Court consider the practical effect of any interim remedy following its order. The current rate structure ensures funding of local water projects designed to increase local water availability and decrease dependence upon MWD's imported water and its system. Such projects are even more important now than ever and taking any action that may disrupt such projects is unnecessary in light of the inevitable appeal of this case. Any interim order directing MWD to either identify additional support for its rate structure, or completely restructure its rates, starts a lengthy and complex process that will be stayed following a judgment and appeal of that judgment in this case.

Respectfully submitted,

Dated: June 26, 2014

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PROOF OF SERVICE BY ELECTRONIC TRANSMISSION AND EMAIL VIA PDF FILE

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker & Van Nest LLP, 633 Battery Street, San Francisco, CA 94111-1809.

On June 26, 2014, I served the following documents described as:

JOINT CMC STATEMENT FOR JULY 2, 2014 CASE MANAGEMENT CONFERENCE WITH EXHIBITS A THROUGH E

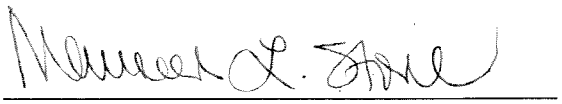
by serving a true copy of the above-described documents in the following manner:

BY LEXIS NEXIS® FILE & SERVE

On the date executed below, I electronically served the documents described above via Lexis Nexis® File & Serve on the recipients designated on the Transaction Receipt located on the via Lexis Nexis® File & Serve website.

Executed on June 26, 2014, at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Maureen L. Stone