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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF SAN FRANCISCO

18  
19 SAN DIEGO COUNTY WATER  
AUTHORITY,

20 Petitioner and Plaintiff,

21 v.

22 METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA; et al.,

23 Respondents and Defendants.  
24

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

**RESPONDENT/DEFENDANT  
METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA'S CLOSING  
BRIEF**

Date: January 23, 2014

Time: 9:00 a.m.

Dept.: 304

Judge: Hon. Curtis E. A. Karnow

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Trial Date: December 17, 2013

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**I. INTRODUCTION**

In these cases, Plaintiff/Petitioner San Diego County Water Authority (“SDCWA”) asks the Court to overturn water rates that were adopted in an open, thorough, democratic process by Defendant/Respondent Metropolitan Water District’s (“MWD’s”) Board of Directors, representing MWD’s 26 member agencies. Specifically, SDCWA’s first through third causes of action in the *2010* and *2012 Actions* challenge the legality of MWD’s Transportation Rates (the System Access Rate, System Power Rate, and Water Stewardship Rate) and MWD’s rate for wheeling service (which includes the System Access Rate and Water Stewardship Rate), alleging that costs that the System Access Rate, System Power Rate, and Water Stewardship Rate recover are legally required to be allocated to MWD’s Supply Rates. Additionally, SDCWA takes issue with MWD’s alleged failure to recover the so-called costs associated with “dry-year peaking.” Despite the fact that SDCWA admittedly “[doesn’t] know” what “dry-year peaking” costs there are, or what they might be, SDCWA asks the Court to order MWD to “study it.” 12/23/2013 Tr. at 831:11-16; 835:15-16.

As this Court has ruled, its basic inquiry for each of SDCWA’s challenges to MWD’s rates is one of reasonableness. Nov. 5, 2013 Order at 10. There are any number of reasonable and lawful ways to allocate costs and set rates. The inquiry is not the “best” way, or the way any one entity or person might prefer. “That there may be other methods favored by plaintiffs does not render defendant’s method[s] [unlawful]”; courts will not prescribe a particular method, or disturb the defendant’s method of setting rates, as long as the defendant’s method is reasonable. *Griffith v. Pajaro Valley Water Mgmt. Agency*, 220 Cal. App. 4th 586, 601 (2013) (hereinafter “*Griffith II*”); *see also Equilon Enter. v. State Bd. of Equalization*, 189 Cal. App. 4th 865, 882-86 (2010) (given that a reasonableness inquiry requires a flexible assessment, court refused to invalidate defendant’s fee because, while plaintiff’s proposed alternative fee might be reasonable, it was not the “*only* reasonable manner in which [defendant] could have allocated [its] fee”) (emphasis in original); *Brydon v. East Bay Mun. Util. Dist.*, 24 Cal. App. 4th 178, 200 (1994) (rejecting plaintiffs’ arguments for alternative water rates for failing to overcome the

1 presumption that defendant’s rates are reasonable); *Hansen v. City of San Buenaventura*, 42 Cal.  
2 3d 1172, 1181 (1986) (because “[r]easonableness . . . is the beginning and end of the judicial  
3 inquiry,” courts will not overturn a water rate if there is a reasonable basis for its design such as  
4 “the cost of providing service, or some other reasonable basis”). As one of the seminal  
5 guidebooks to water rate-setting explains, “[t]he process of selecting the most appropriate rate  
6 structure for a particular utility is not simple. The selection is complex because there are so  
7 many types of rate structures. No one rate structure meets all utility objectives equally, and not  
8 all objectives are valued the same by the utility or its customers.” DTX-030 at AR2010-003963  
9 (American Water Works Association’s (“AWWA”) Manual M-1, *Principles of Water Rates,*  
10 *Fees, and Charges* (5th Ed.)); JTX-2 at AR2012-003963.<sup>1</sup>

11 For the reasons discussed in this brief, MWD’s challenged rates are reasonable and  
12 lawful, and therefore should be upheld. To guide the Court, this closing brief is organized as  
13 follows: Section II provides a summary of the arguments showing that MWD’s rates and  
14 charges are reasonable and lawful; Section III provides a factual overview of MWD itself and the  
15 design and implementation of its current rate structure (including a description of the rates at  
16 issue in these lawsuits); Section IV sets forth the legal framework for determining whether  
17 MWD’s rates are reasonable and lawful under each of SDCWA’s claims in the first through third  
18 causes of action in the *2010* and *2012 Actions*, and discusses the inapplicability of certain claims;  
19 and Section V provides the factual bases (evidence from the administrative record, final hearing  
20 exhibits, and testimony) supporting the validity of MWD’s rates.

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24 <sup>1</sup> Because there are two administrative records in this case, a 2010 and a 2012 administrative  
25 record (JTX-1 and JTX-2, respectively), where a document appears in both records, MWD cites  
26 to both versions of the document (e.g., a specific exhibit that contains a Bates label for one of the  
27 records and then the analog document in either JTX-1 or JTX-2). Accordingly, when an exhibit  
28 citation is followed by an identical citation to either JTX-1 or JTX-2 that citation is to the same  
document or page within the document, but in the other administrative record. JTX-1 and JTX-2  
are identical to DTX-121 and DTX-122, respectively.



1 **II. SUMMARY OF ARGUMENTS**

2 **A. MWD’s Transportation Rates**

3 SDCWA challenges two aspects of MWD’s Transportation Rates: (1) MWD’s allocation  
4 of State Water Project (“SWP”)<sup>2</sup> transportation costs it must pay under its contract with the  
5 California Department of Water Resources (the “DWR Contract”) to its Transportation Rates  
6 through the System Access Rate and System Power Rate; and (2) MWD’s allocation of the costs  
7 it incurs to fund local water resource development and conservation programs to its  
8 Transportation Rates through the Water Stewardship Rate. However, it is reasonable for MWD  
9 to recover both of these costs through its Transportation Rates for several reasons.

10 **1. MWD’s SWP Transportation Costs Are Properly Allocated To Its**  
11 **Transportation Rates**

12 One of MWD’s primary sources of water is the water that DWR develops and transports  
13 to MWD through the SWP under the DWR Contract. That contract allocates to MWD the costs  
14 of transporting water to it. Specifically, it allocates to MWD the costs of: (1) the facilities—such  
15 as aqueducts—needed to deliver the water to MWD, and maintenance of those facilities, and (2)  
16 the power required to deliver the water to MWD. MWD is obligated to pay these costs. The  
17 contract makes MWD (and the other state water contractors) *solely* responsible for these costs;  
18 DWR is responsible for none of them. And, MWD must pay the bulk of these SWP  
19 transportation costs regardless of the amount of SWP water it receives.

20 MWD collects its SWP transportation facilities and power costs through (1) its System  
21 Access Rate, which is designed to recover the costs of the facilities (*e.g.*, aqueducts), and  
22 maintenance of the facilities, necessary to deliver water to MWD, and (2) its System Power Rate,  
23 which is designed to recover MWD’s costs of the power needed to deliver water to MWD.

24 SDCWA does not take issue with MWD’s setting rates that recover its transportation  
25 costs. Rather, SDCWA argues that none of the costs MWD pays to transport SWP water to its

26 \_\_\_\_\_  
27 <sup>2</sup> At the final hearing, the Court “ask[ed] Metropolitan to express its views [regarding its glossary  
28 of terms] in its post-trial briefing.” 12/19/2013 Tr. at 372:4-16. Accordingly, *see* Appendix A  
for MWD’s Glossary of Key Terms and Acronyms.

1 distribution system are transportation costs, but are instead all supply costs. SDCWA is wrong  
2 for several reasons.

3         *First*, as stated, the DWR Contract explicitly allocates to MWD all Transportation  
4 Charges necessary to deliver water developed by the SWP to MWD, and MWD is separately  
5 billed for those Transportation Charges. Through DWR's bills, MWD is able to disaggregate (1)  
6 the costs MWD incurs to purchase SWP water supplies, from (2) the costs it incurs to pay for  
7 SWP transportation facilities. The costs MWD pays for SWP transportation facilities are largely  
8 fixed costs that MWD must pay regardless of the amount of SWP water it receives. Accordingly,  
9 MWD is able to properly and precisely allocate its SWP supply and transportation costs to its  
10 own water rates.

11         *Second*, by paying its Transportation Charges under the DWR Contract, MWD has the  
12 right to, and does, use SWP transportation facilities for conveyance purposes only. These  
13 transactions have *nothing* to do with SWP water supply. Specifically, MWD uses the SWP  
14 aqueducts to transport water it obtains from sources other than the SWP (*i.e.*, non-project water)  
15 to its service area for delivery to its member agencies. MWD also uses the SWP aqueducts to  
16 transport non-project water it withdraws from storage banks located in the Central Valley.  
17 MWD's right to transport non-project water through the SWP is an important tool that ensures  
18 MWD is able to reliably supply water to its service area. All system users benefit from this  
19 reliability.

20         *Third*, MWD has an integrated, regional water delivery system, and it delivers a blend of  
21 water that includes SWP water.

22         *Fourth*, MWD's collecting its SWP transportation costs through its own transportation  
23 rates is consistent with industry guidelines.  
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1                   **2. MWD’s Costs To Incentivize Conservation And Development Of**  
2                   **Local Water Supplies Are Properly Allocated To Its Transportation**  
3                   **Rates**

4                   MWD’s allocation of the costs it incurs to fund programs that assist member agencies in  
5                   developing local water resources and conserving water (demand management programs) to its  
6                   Transportation Rates by way of the Water Stewardship Rate is reasonable for several reasons.

7                   MWD’s demand management programs provide substantial transportation-related  
8                   benefits. As MWD’s studies on water resource management show, one benefit is that these  
9                   programs allow MWD to avoid or defer incurring costs to build, expand, or repair transportation  
10                  facilities. These avoided or deferred infrastructure costs would otherwise be paid through  
11                  MWD’s Transportation Rates. The demand management programs also free up capacity to  
12                  deliver water to member agencies, including those desiring to engage in wheeling. Decreased  
13                  transportation costs and increased distribution capacity bear a clear and direct relationship to  
14                  MWD’s transportation-related expenses.

15                  Moreover, California law specifically mandates that MWD expand and incentivize the  
16                  development of local water supplies and water conservation within its service area. Allocating  
17                  the Water Stewardship Rate to supply would permit entities that use MWD’s facilities for  
18                  transportation-only transactions to evade the costs associated with this mandate. Because the  
19                  transportation-related benefits of the demand management programs are regional in nature, it is  
20                  reasonable that all system users pay the Water Stewardship Rate regardless of their participation  
21                  in these programs. SDCWA’s claim that it should not pay the Water Stewardship Rate because  
22                  it “get[s] absolutely nothing for it,” not only ignores the regional, transportation-related benefits  
23                  that every system user receives as a result of the demand management programs, but is also  
24                  wrong in a narrower financial sense. 12/17/2013 Tr. at 60:1-7. As recently as 2010, SDCWA  
25                  was the third-highest recipient of demand management program funding. SDCWA is currently  
26                  eligible to receive approximately \$7 million per year in demand management funding.

27                  12/20/2013 Tr. 594:7-13, 597:4-10.

1                   **B.       MWD’s Rate For Wheeling Service**

2                   SDCWA alleges that MWD’s rate for wheeling service fails to charge “fair compensation”  
3 as is required under the Wheeling Statute because it includes MWD’s fixed SWP transportation  
4 costs (the System Access Rate) and the costs MWD incurs to fund demand management  
5 programs (the Water Stewardship Rate). MWD has only one established rate for wheeling  
6 service: a pre-established rate currently set forth in its Administrative Code Sections 4119 and  
7 4405, which applies only to (1) wheeling to a member agency, (2) for up to one year. (MWD  
8 engages in other wheeling transactions—wheeling to a third party, and wheeling to a member  
9 agency for more than one year—but negotiates the charges for these transactions on a case-by-  
10 case basis.) The California Court of Appeal has held that MWD may include system-wide costs  
11 in its “postage stamp” rate for wheeling service as a matter of law. *Metropolitan Water Dist. of*  
12 *Southern California v. Imperial Irrigation District*, 80 Cal. App. 4th 1403, 1427 (2000)  
13 (hereinafter “*MWD v. IID*”). Accordingly, this Court’s inquiry is limited to whether MWD has  
14 reasonably allocated the *particular* system-wide costs at issue to its rate for wheeling service as  
15 defined in its Administrative Code. *See* MWD Admin. Code § 4405 (Exhibit 2 to MWD’s  
16 Request for Judicial Notice for Purposes of the Final Hearing (“MWD’s RJN”).

17                                   **1.       System-Wide Costs Are Reasonably Included In MWD’s Rate For**  
18                                   **Wheeling Service**

19                   MWD’s rate for wheeling service was first adopted in 1997, during which time MWD  
20 made extensive written determinations that its fixed SWP transportation costs and costs  
21 associated with incentivizing development of local water supply and conservation were properly  
22 allocated to its rate for wheeling service. These findings were based in part on the fact that  
23 MWD incurs those costs regardless of whether a member agency purchases MWD water  
24 supplies or simply transports third-party water through MWD’s system. In 1997, MWD  
25 recognized that if it did not charge these costs to wheelers as well as its full-service customers,  
26 then its full-service customers would end up subsidizing the costs of wheeling transactions.  
27 MWD’s policy of avoiding unfair subsidies between its customers was articulated in the “San  
28

1 Pedro principle,” which SDCWA improperly characterizes as MWD’s illegal rate stability  
2 objective. *See, e.g.*, 12/17/2013 Tr. at 38:16-20, 40:4-11. To the contrary, the Court of Appeal  
3 in *MWD v. IID* already recognized that MWD’s policy of avoiding unfair subsidies is a legal and  
4 legitimate objective of the ratemaking body in setting its wheeling rate pursuant to the Wheeling  
5 Statute. *MWD v. IID*, 80 Cal. App. 4<sup>th</sup> at 1432-33 (“the Legislature did not intend that the impact  
6 of the Wheeling Statutes should be to cause . . . subsidiz[ing of] wheeling transfers”); *see also id.*  
7 at 1419-20 (setting out in full and discussing the San Pedro principle).

8  
9 **a. MWD’s SWP Transportation Costs Are Properly Allocated To  
Its Rate For Wheeling Service.**

10 MWD’s fixed SWP transportation costs allocated to the System Access Rate are  
11 reasonably included in MWD’s rate for wheeling service for several reasons.

12 *First*, the plain language of the Wheeling Statute allows MWD to recover “charges  
13 incurred . . . for the use of the conveyance system.” *See* Cal. Water Code § 1811; *see also MWD*  
14 *v. IID*, 80 Cal. App. 4<sup>th</sup> at 1430-31 (“[F]air compensation’ (§ 1810) includes charges the owner,  
15 in this case the Metropolitan Water District, becomes subject to or liable for in using the  
16 ‘conveyance system’ (§ 1811, subd. (c)) to wheel water when it has unused capacity”). Because  
17 the SWP conveyance system is an extension of MWD’s system, and MWD incurs (“becomes  
18 subject to or liable for”, *id.*) fixed SWP costs to provide both full-service *and* wheeling services,  
19 MWD allocated a portion of those costs to its rate for wheeling service.

20 *Second*, MWD uses the SWP conveyance system to wheel water for its member agencies,  
21 including SDCWA. MWD is able to wheel water for its member agencies through the SWP,  
22 without paying an additional facilities fee, because it pays fixed Transportation Charges under  
23 the DWR Contract. Because MWD incurs fixed SWP costs to wheel water, it allocates a portion  
24 of those costs to its rate for wheeling service.

25 **b. MWD’s Costs To Incentivize Conservation And Development  
26 of Local Water Supplies Are Properly Allocated To Its Rate  
For Wheeling Service**

27 As explained, the Water Stewardship Rate recovers the costs of funding programs that  
28

1 free up capacity in MWD’s system. Because portions of MWD’s system have at times operated  
2 at, or near, full capacity, increased capacity provides a transportation-related benefit to all system  
3 users. Wheelers especially benefit from this increased capacity because, under California law,  
4 MWD is only obligated to approve wheeling requests when it has unused transportation capacity  
5 available. Also, as a matter of physics, MWD cannot wheel water absent the capacity to do so.  
6 Given that the programs which the Water Stewardship Rate recovers the costs of funding help  
7 enable wheeling transactions, it is reasonable that MWD includes the Water Stewardship Rate in  
8 its rate for wheeling service.

9 **C. SDCWA’s “Dry-Year Peaking” Claim**

10 SDCWA alleges that MWD currently has no mechanism in place to recover the costs of  
11 meeting its member agencies’ “dry-year peaking” demands. The essence of the claim is that  
12 MWD’s member agencies supposedly have different patterns in their annual water purchases in  
13 wet vs. dry years, and allegedly these differences in annual variations impose differential costs  
14 on MWD, which SDCWA alleges are not allocated to the member agencies in proportion to how  
15 much they cause them. As became clear at the final hearing, SDCWA’s claim holds no weight.  
16 Despite its claims that the Los Angeles Department of Water and Power (“LADWP”) receives  
17 “free drought insurance,” SDCWA has not identified any costs MWD incurs due to differences  
18 between the member agencies’ annual variations in demand, let alone those caused by dry years  
19 (*i.e.*, years with low rainfall or snowfall). 12/17/2013 Tr. at 35:10-16. Indeed, SDCWA admits  
20 that it “[doesn’t] know” what “dry-year peaking” costs there are, or what they might be—the  
21 only thing that SDCWA can do is ask this Court to order MWD to “study it.” 12/23/2013 Tr. at  
22 831:11-16; 835:15-16. That alone is enough to dismiss SDCWA’s dry-year peaking claim.

23 In any event, MWD has several rates and charges that reasonably recover costs associated  
24 with variations in demand that the member agencies place on MWD’s system. As this brief  
25 demonstrates, MWD’s volumetric rates necessarily increase as demand increases; the Tier 2  
26 Supply Rate is paid when a member agency purchases a higher volume of water and is designed  
27 to reflect MWD’s costs of acquiring new supplies; the Readiness-to-Serve Charge recovers  
28

1 MWD's standby and emergency storage costs; and the Capacity Charge recovers the cost of  
2 providing MWD's distribution facilities for peak usage and the cost of providing seasonal peak  
3 storage capacity. These rates and charges ensure that no member agency is able to get a "free  
4 ride" during years or shorter periods of higher than usual demand, whatever the reason.

5 **III. FACTUAL OVERVIEW**

6 **A. The Metropolitan Water District Of Southern California**

7 MWD was "created in 1928 by a vote of the electorate of several southern California  
8 cities. [MWD's] primary purpose was and is to provide a supplemental supply of water for  
9 domestic and municipal uses and purposes at wholesale rates to its member public agencies."  
10 JTX-2 (AR2012-016429) at AR2012-016440. MWD was originally created for the purpose of  
11 constructing the Colorado River Aqueduct, something the original thirteen member agencies that  
12 comprised MWD could not feasibly accomplish individually. PTX-006 at \*SDCWA2010-  
13 2012\_00206390-00206392. Unlike a retail water agency, MWD has "no exclusive right to  
14 serve" its customers. DTX-109 at AR2012-016587.

15 MWD "imports water from two principal sources, the State Water Project in Northern  
16 California, via the California Aqueduct, and the Colorado River, via the Colorado River  
17 Aqueduct." JTX-2 (AR2012-016429) at AR2012-016440. To the degree a member agency has  
18 local resources, develops local resources, implements conservation, or otherwise reduces  
19 demands, that member agency is not required to use MWD water or water services in the way a  
20 consumer would be required to use services from a local retail water agency; the member agency  
21 is free to opt out fully or partially from MWD's services. *Id.*; *see also MWD v. IID*, 80 Cal. App.  
22 4<sup>th</sup> at 1417, ("[Member Agencies] are not required by contract or otherwise to purchase any set  
23 amount of water"); DTX-101 at AR2012-013421 ("No member agency of Metropolitan is  
24 obligated to purchase water from Metropolitan. However, twenty-four of Metropolitan's 26  
25 member agencies have entered into voluntary 10-year water supply purchase orders for water  
26 purchases through December 31, 2012."); DTX-109 at AR2012-016587 (MWD's "member  
27 agencies are free to acquire supplies from other sources," and MWD's "Board has adopted the  
28

1 concept of ‘direct access,’ or customer choice for supplier, to accommodate a water transfer  
2 market”); JTX-2 (AR2012-016429) at 016492 (MWD’s “water is a supplemental supply for its  
3 member agencies, most of whom have other sources of water”).

4 MWD “is a voluntary cooperative of member public agencies created for the purpose of  
5 ‘developing, storing and distributing water.’” DTX-029 at AR2012-003848; JTX-1 at AR2010-  
6 003848. An agency cannot join MWD unless its governing body approves membership  
7 following that agency’s independent evaluation of the costs and benefits of becoming a member  
8 agency, and then only after a majority of the voters within that agency’s service area vote to  
9 become a member agency. *See* MWD Act §§ 350-356 (Exhibit 1 to MWD’s RJN). The  
10 Government Code recognizes that a public agency’s role as a “member district” of a  
11 metropolitan water district is that of a *voluntary* purchaser of a particular government service or  
12 commodity. *See* Government Code § 56055 (defining “member districts” as “any district which  
13 is included in . . . a metropolitan water district . . . [and is] entitled, under the provisions of the  
14 principal act of the second-mentioned district or entity, to receive or be furnished with any  
15 governmental or proprietary service or commodity”). MWD’s member agencies govern MWD  
16 through their representatives on MWD’s Board of Directors. *See* MWD Act §§ 50, 51, 55. Each  
17 member agency has proportional representation on the Board of Directors, and is entitled to at  
18 least one seat on the Board, plus an additional seat for every full 3% of the total assessed value of  
19 the property within the member agency’s service area that is taxable for district purposes. *See id.*  
20 at §§ 51-52.

21 Currently, the Board is made up of 37 directors and, although 23 of the agencies have no  
22 more than two directors, three agencies—SDCWA, LADWP, and the Municipal Water District  
23 of Orange County (“MWDOC”)—each have four. *See e.g.* DTX-111 at AR2012-016995-  
24 017013; JTX-2 (AR2012-016429) at 016440. Each director is guaranteed one vote, which may  
25 be weighted more heavily depending on the property valuation in his or her service area. *See*  
26 MWD Act § 55. Notably, SDCWA controls approximately 18% of the Board’s vote. *See* DTX-  
27 091 at AR2012-011569-0011571; JTX-1 at AR2010-011569-011571; DTX-111 at AR2012-  
28



1 016997-017003.

2 MWD's enabling statute (the MWD Act) mandates that MWD set rates that recover the  
3 revenue necessary to pay its expenses. *See* MWD Act § 134. MWD is required by the  
4 Legislature to adopt rates by a majority vote of its Board of Directors. *See* MWD Act § 57. A  
5 member agency has the ability to lobby the MWD Board (and other member agencies) to  
6 effectuate policy that the member agency prefers. As the administrative records for these cases  
7 demonstrate, member agencies, including SDCWA, frequently exercise these rights by  
8 presenting letters, testimony, and expert reports to the MWD Board in an effort to sway the  
9 Board's decisions in one direction or another.<sup>3</sup> When a vote is called, however, the state-  
10 mandated democratic nature of MWD's rate-setting means it is inevitable that the decisions  
11 made by the majority will often not reflect the will of the minority.

12 The MWD Board votes on multiple matters every month; often the votes are unanimous,  
13 but at times they are not. Every member agency has at times been in the majority and at times in  
14 the minority. *See, e.g.*, DTX-111 at AR2012-016997-017001. SDCWA exercised its right to  
15 vote against the rates recommended by MWD's staff during the years at issue in the *2010* and  
16 *2012 Actions*, but, despite its sizeable voting bloc, the rates were passed by around a 60% and  
17 75% majority, respectively. *See* DTX-091 at AR2012-011569-011571; JTX-1 at AR2010-  
18 011569-011571; DTX-111 at AR2012-016997-017001.

19 **B. The Evolution Of MWD's Current Rate Structure**

20 Until 2003, MWD charged its member agencies a single, bundled water rate without any  
21 separate supply or transportation components. *See* DTX-045 at AR2012-006471, 006496; JTX-1  
22 at AR2010-006471, 006496. In 1998, MWD's Board of Directors began the process of  
23

24 \_\_\_\_\_  
25 <sup>3</sup> SDCWA is an active participant in the rate-setting process, and voted for rates under the  
26 structure it now challenges in numerous years following the unbundling, including 2005, 2006,  
27 2007, 2008, 2009, and 2012. DTX-059 at AR2012-008263-008264; JTX-1 at AR2010-008263-  
28 008264; DTX-062 at AR2012-008681; JTX-1 at AR2010-008681; DTX-066 at AR2012-  
009267-009268; JTX-1 at AR2010-009267-009268; DTX-071 at AR2012-009626-009631; JTX-  
1 at AR2010-009626-009631; DTX-082 at AR2012-010383-010385; JTX-1 at AR2010-010383-  
010385; and DTX-111 at AR2012-016997-017003.

1 designing and implementing unbundled water rates and charges, to reflect the different services  
2 MWD provides in order to more transparently recover its costs. *See* DTX-132 at AR2012-  
3 006462\_01; DTX-034 at AR2012-005545-005546; JTX-1 at AR2010-005545-005546.

4 Throughout this process, the Board, including representatives from SDCWA and the  
5 other member agencies, sought input from numerous stakeholders including business and  
6 community leaders and the public at large. *See* DTX-045 at AR2012-006470; JTX-1 at  
7 AR2010-006470. For over a year, through December 1999, MWD's Board developed policy  
8 considerations that led to the adoption of Strategic Plan Policy Principles. *Id.*; *see also* DTX-029  
9 at AR2012-003847; JTX-1 at AR2010-003847. In April 2000, MWD's Board adopted a  
10 composite rate structure framework, which it worked on developing through December 2000.  
11 *See* DTX-045 at AR2012-006470; JTX-1 at AR2010-006470. In December 2000, MWD's  
12 Board adopted a Rate Structure Action Plan, and it refined its detailed rate design through  
13 September 2001. *Id.* SDCWA and MWD's other member agencies were deeply involved in this  
14 process.

15 On October 16, 2001, MWD's Board of Directors voted to adopt a revised, unbundled  
16 rate structure. *See* DTX-036 at AR2012-005737-005739; JTX-1 at AR2010-005737-005739.  
17 On January 8, 2002, MWD's Board voted to approve Resolution 8796, which initiated adoption  
18 of the first cycle of rates under the new, unbundled rate structure. DTX-040 at AR2012-006234-  
19 006238; JTX-1 at AR2010-006234-006238; *see also* DTX-038 at AR2012-006159-006162;  
20 JTX-1 at AR2010-006159-006162. Beginning in February 2002, once the rate development  
21 process was underway, MWD held public hearings on the recommended rates and charges to be  
22 implemented under the new rate structure. DTX-045 at AR2012-006470; JTX-1 at AR2010-  
23 006470. On March 12, 2002, MWD's Board voted to approve rates and charges under the new  
24 structure, to go into effect January 1, 2003. DTX-042 at AR2012-006439-006441; JTX-1 at  
25 AR2010-006439-006441. MWD's unbundled rate structure and the rates and charges that  
26 comprise it have remained in effect for over a decade. *Compare* DTX-045 at AR2012-006517;  
27 JTX-1 at AR2010-006517 *with* DTX-110 at AR2012-016696.  
28

1           Shortly after the rate structure went into effect in January 2003, SDCWA commended  
2 that structure for “encourage[ing] cost-effective recycling, conservation, and water management,  
3 accommodate[ing] a water transfer market . . . secur[ing] a greater level of financial commitment  
4 from [MWD’s] member agencies” (DTX-049 at AR2012-007122; JTX-1 at AR2010-007122),  
5 and providing “increased transparency and the ability to map costs to services rendered.” *Id.*

6           **C.     The Budget And Rate-Setting Process**

7           As noted, the rate structure at issue in this case has been in effect since January 2003.  
8 Every year, or more recently, every two years, MWD’s Board votes on particular rates adopted  
9 under that rate structure. This is a lengthy, democratic process. In each budget and rate-setting  
10 cycle, MWD looks at the services it expects to provide and estimates the costs it expects to incur  
11 to provide those services. As part of this process, MWD evaluates its budget and the required  
12 rates necessary to support that budget. DTX-090 at AR2010-011443; JTX-2 at AR2012-011443;  
13 DTX-110 at AR2012-016594. During this time, MWD’s Board holds several board workshops  
14 and Business and Finance Committee meetings, and holds a public hearing before the Business  
15 and Finance Committee to discuss the necessary budget for that rate-setting cycle. *Id.* In  
16 addition, MWD staff and the member agencies meet on a number of occasions to discuss options  
17 regarding the overall size of the budget, the average rate increase, and the cost of service  
18 supporting the rates. *Id.*

19           Months in advance of each rate vote, MWD presents each Board member, member  
20 agency, and the public with a detailed letter setting forth MWD’s revenue requirements, the  
21 methodology for establishing MWD’s rates, and the proposed rates and charges. *See, e.g.,* DTX-  
22 039 at AR2012-006166; JTX-1 at AR2010-006166; DTX-076 at AR2012-009962; JTX-1 at  
23 AR2010-009962; and DTX-105 at AR2012-013788. MWD opens these proposed rates for  
24 discussion at public meetings, MWD’s internal meetings, meetings with all member agency  
25 managers, and noticed public hearings. *See* MWD Admin. Code § 2109(c) (requiring that the  
26 Board’s agendas provide for public appearances before matters on which action is taken); *see*  
27 *also* Gov’t Code 54954.3 (requiring opportunity for members of the public to comment on  
28

1 matters within an agency's jurisdiction in public agency meetings). MWD staff provides the  
2 data supporting each proposal and develops additional rate options throughout these discussions.  
3 MWD staff then presents each Board member with a final letter setting forth the details of the  
4 proposed rate options and a staff recommendation. *See, e.g.*, DTX-041 at AR2012-006294; JTX-  
5 1 at AR2010-006294; DTX-090 at AR2010-011443; JTX-2 at AR2012-011443; and DTX-110 at  
6 AR2012-016594. This ensures that Board members, and the member agencies they represent,  
7 are fully informed in advance of the vote and have sufficient time to consider the proposed rates.

8         The member agencies are well aware of the methodology by which MWD sets its rates.  
9 For each rate-setting since the unbundling, MWD has presented each Board member with a final  
10 letter setting forth the details of the proposed rate options and a staff recommendation, as well as  
11 a multi-step cost of service ("COS") analysis demonstrating how MWD assigns certain expenses  
12 to related operation functions. *See* DTX-090 at AR2010-0011443; JTX-2 at AR2012-011443;  
13 DTX-110 at AR2012-016594.<sup>4</sup> MWD's Administrative Code provides for a COS analysis and a  
14 determination of revenue requirements that go above and beyond the requirements in the MWD  
15 Act. *See* MWD Admin. Code § 4304.

16         In Step 1 of COS process, MWD determines its revenue requirements for the given fiscal  
17 year. *See* DTX-090 at AR2010-011467, 011472-011474 (Schedule 1 at AR2010-011474 sets  
18 forth the revenue requirements by budget line item); JTX-2 at AR2012-011467, 011472-011474;  
19 DTX-110 at AR2012-016674, 016679-016680. This is a prospective process that is necessarily  
20 inexact because MWD is looking at the services it plans to provide and then estimating how  
21 much money is necessary to provide those services. *Id.* In these lawsuits, SDCWA does not  
22 challenge any of MWD's revenue requirement determinations, the numeric amount of any rate,  
23 or the percentage by which any rate increased.

24         In Step 2 of the COS process, MWD functionalizes its costs according to the nature of the  
25 service to which the costs correspond. *See* DTX-090 at AR2010-011472, 011474-011482

26 \_\_\_\_\_  
27 <sup>4</sup> The 2010 and 2012 COS studies are used here as examples of MWD's COS process because  
28 these are the years at issue in these lawsuits. However, MWD completes one or two similar COS  
studies every year for which it sets water rates.

1 (Schedule 4 at 011481 sets out the revenue requirements by their service function; JTX-2 at  
2 AR2012-011472, 011474-011482; DTX-110 at AR2012-016679, 016681-016687. MWD’s  
3 relevant service functions consist of supply, transportation (conveyance and aqueduct and  
4 distribution), storage, and demand management. *See* DTX-090 at AR2010-011474-011475;  
5 JTX-2 at AR2012-011474-011475; DTX-110 at AR2012-016681-016682.

6       Transportation-related costs associated with bringing water to MWD’s service area—  
7 mainly costs associated with the Colorado River Aqueduct and the SWP transportation  
8 facilities—are functionalized as conveyance and aqueduct costs. *Id.* Transportation-related  
9 costs associated with MWD’s *internal* distribution system are functionalized as distribution  
10 costs. *Id.* Costs associated with investments in developing local water resources are  
11 functionalized as demand management costs. *Id.*

12       In Step 3 of the COS process, MWD categorizes its functionalized costs based on their  
13 causes and behavioral characteristics, including identifying which costs are incurred to meet  
14 average demands versus peak demands, and which costs are incurred to provide “standby”  
15 service. *See* DTX-090 at AR2010-011472, AR2010-011483-011489; JTX-2 at AR2012-011472,  
16 AR2012-011483-011489; DTX-110 at AR2012-016679, AR2012-016688-016694. The relevant  
17 classification categories include: fixed demand costs, fixed commodity costs, fixed standby  
18 costs, and variable commodity costs.<sup>5</sup> *See* DTX-090 at AR2010-011483 (Schedule 7 at 011488  
19 sets out the service revenue requirements by classification category); JTX-2 at AR2012-011483;  
20 DTX-110 at AR2012-016688. Demand costs are “incurred to meet peak demands” and include  
21 only the “direct capital financing costs” necessary to build additional physical capacity in  
22 MWD’s system. DTX-090 at AR2010-011483, 011488; JTX-2 at AR2012-011483, 011488;  
23 DTX-110 at AR2012-016688, 016693. Commodity costs are generally associated with average  
24 system demands. *Id.* Fixed commodity costs include fixed operations and maintenance and  
25 capital financing costs that are not related to accommodating peak demands or standby service.

26  
27 <sup>5</sup> Between Steps 3 and 4, retail water agencies will sometimes create separate classes for  
28 customers with significantly different demand patterns (*e.g.*, commercial, industrial, residential  
and wholesale). *See* DTX-030 at AR2012-003947; JTX-1 at AR2010-003947.

1 *Id.* Variable commodity costs include costs of chemicals, most power costs, and other cost  
2 components that vary depending on the volume of water supplied. *Id.* Standby service relates to  
3 MWD's ability to ensure system reliabilities during emergencies such as earthquakes or major  
4 facility outages. *Id.* The two principal components of MWD's standby service costs are  
5 emergency storage within its own system and the standby capacity within the SWP conveyance  
6 system. *Id.*

7  
8 In Step 4 of the COS process, MWD breaks its operation functions down into  
9 corresponding rate design elements, which, in MWD's rate structure are volumetric rates (*i.e.*,  
10 rates charged per acre-foot of water MWD delivers to the member agency), and fixed charges  
11 (*i.e.*, charges which do not vary with sales in the current year). *See* DTX-090 at AR2010-  
12 011472, 011490 (Schedule 8 at 011490 sets out MWD's classified service functions by rate  
13 design element)); JTX-2 at AR2012-011472, 011490; DTX-110 at AR2012-016695. Among the  
14 unbundled volumetric rates in MWD's rate structure are the Supply Rates (Tiers 1 and 2) and the  
15 Transportation Rates. *See* DTX-090 at AR2010-011490-011500; JTX-2 at AR2012-011490-  
16 011500; DTX-110 at AR2012-016695-016700. MWD's fixed charges included a Readiness-to-  
17 Serve Charge and a Capacity Charge. *Id.*

18 **D. The Rates Relevant To This Proceeding**

19 In the *2010* and *2012 Actions* SDCWA asks the Court to overturn rates that were the  
20 result of the thorough, democratic process described above. Specifically, SDCWA's first  
21 through third causes of action challenge the legality of the Transportation Rates (the System  
22 Access Rate, System Power Rate, and Water Stewardship Rate) and MWD's rate for wheeling  
23 service (which includes the System Access Rate and Water Stewardship Rate), alleging that the  
24 costs these rates recover are legally required to be allocated to MWD's Supply Rates. *See*  
25 12/17/2013 Tr. at 35:17-22, 151:18-23.

26 SDCWA also takes issue with the alleged failure of MWD's rates to recover the so-called  
27 costs associated with "dry-year peaking," which SDCWA defines as annual variations in  
28 purchases by member agencies that supposedly result from more or less precipitation.

1 12/17/2013 Tr. at 63:9-14. Despite the fact that SDCWA admittedly “[doesn’t] know” what, if  
2 any “dry-year peaking” costs there are, SDCWA asks the Court to order MWD to “study it.”  
3 12/23/2013 Tr. at 831:11-16; 835:15-16.  
4

### 5 **1. MWD’s Supply Rates**

6 MWD’s Supply Rates recover costs incurred to maintain and develop water supplies  
7 needed to meet the member agencies’ demands. *See* DTX-090 at AR2010-011474-011475,  
8 011499-011500; JTX-2 at AR2012-011474-011475, 011499-011500); DTX-110 at AR2012-  
9 016681, 016700). These costs include capital financing, operating, maintenance and overhead  
10 costs for storage in MWD’s reservoirs. *Id.* These costs are generally recovered through the Tier  
11 1 Supply Rate. However, if purchases in a calendar year by a member agency that executed a  
12 purchase order exceed 90% of its base firm demand (an amount based on the member agency’s  
13 past annual firm demands), that member agency must pay a higher Tier 2 Supply Rate. *See*  
14 DTX-045 at AR2012-006535-006536; JTX-1 at AR2010-006535-006536; DTX-090 at AR2010-  
15 011499; JTX-2 at AR2012-011499; DTX-110 at AR2012-016700. If a member agency did not  
16 execute a purchase order, the member agency must pay the higher Tier 2 Supply Rate for any  
17 amount exceeding 60% of its base firm demand. *Id.*

### 18 **2. MWD’s Transportation Rates**

19 MWD’s Transportation Rates consist of the System Access Rate, the System Power Rate,  
20 and the Water Stewardship Rate.

21 **The System Access Rate:** The System Access Rate generates revenues to recover the  
22 capital, operating, maintenance, and overhead costs associated with the transportation facilities  
23 (e.g., aqueducts and pipelines) necessary to deliver water to meet member agencies’ average  
24 annual demands. *See* DTX-045 at AR2012-006518; JTX-1 at AR2010-006518; DTX-090 at  
25 AR2010-011492; JTX-2 at AR2012-011492; DTX-110 at AR2012-016697. Revenues from the  
26 System Access Rate recover the costs of paying for “distribution” facilities (MWD’s facilities  
27 within its service area) and “conveyance” facilities (costs associated with the SWP facilities and  
28 Colorado River Aqueduct). DTX-045 at AR2012-006518; JTX-1 at AR2010-006518. The

1 System Access Rate also includes regulatory storage costs, which are associated with  
2 maintaining additional distribution capacity and help meet peak demands. *See* DTX-090 at  
3 AR2010-011473, 011475, 011484-011485, 011488, 011490-011492; JTX-2 at AR2012-011473,  
4 011475, 011484-011485, 011488, 011490-011492; DTX-110 at AR2012-016680, 016682,  
5 016695-016697.

6 **The System Power Rate:** The System Power Rate generates revenues to recover the  
7 costs of power necessary to pump water through the SWP and Colorado River facilities to  
8 MWD, and through MWD's facilities to the member agencies. *See* DTX-045 at AR2012-  
9 006520; JTX-1 at AR2010-006520; DTX-090 at AR2010-011492; JTX-2 at AR2012-011492;  
10 DTX-110 at AR2012-016697.

11 MWD allocates transportation costs associated with the SWP to the System Access Rate  
12 and the System Power Rate the same way it allocates such costs associated with the Colorado  
13 River Aqueduct. *See* DTX-090 at AR2010-011488, 011490; JTX-2 at AR2012-011488, 011490;  
14 DTX-110 at AR2012-016693, 016695).

15 **The Water Stewardship Rate:** The Water Stewardship Rate recovers the costs of  
16 funding demand management programs (local water resource development programs, water  
17 conservation programs, and seawater desalination programs). *See* DTX-045 at AR2012-006519;  
18 JTX-1 at AR2010-006519; DTX-090 at AR2010-011492; JTX-2 at AR2012-011492; DTX-110  
19 at AR2012-016697. These demand management programs incentivize the development of local  
20 water supplies and the conservation of water which "reduce and defer system capacity expansion  
21 costs . . . and create available capacity to be used to complete water transfers." DTX-045 at  
22 AR2012-006519; JTX-1 at AR2010-006519.

### 23 3. MWD's Rate For Wheeling Service

24 MWD's rate for wheeling service, as defined in its Administrative Code, includes the  
25 System Access Rate and Water Stewardship Rate.<sup>6</sup> MWD Admin. Code § 4405(b). In addition,  
26

27 <sup>6</sup> MWD defines wheeling service for purposes of its established rates as applicable to the  
28 transportation of water not owned or controlled by MWD to its member agencies in transactions  
of one year or less. MWD Admin. Code § 4119. All other wheeling transactions (those with



1 each wheeling party must pay for the actual cost of power utilized for delivery of the wheeled  
2 water.<sup>7</sup> *Id.*

3 MWD's current rate for wheeling service traces back to January 1997 when MWD's  
4 Board of Directors voted to adopt a "postage stamp" wheeling rate, *i.e.*, a wheeling rate that is  
5 the same regardless of how far the water is transported. *See* DTX-026 at AR2012-002497-  
6 002499; JTX-1 at AR2010-002497-002499. Pursuant to the Wheeling Statute, MWD made  
7 written findings that support its determinations that allocating SWP transportation costs, and  
8 costs to incentivize local resource development programs (currently collected through the Water  
9 Stewardship Rate) to its general rate for wheeling service results in a rate that charges fair  
10 compensation. *See* DTX-680 at AR2012-002446-002451; JTX-1 at AR2010-002446-002451.  
11 These findings are embodied in MWD's Resolution 8520. *See generally* DTX-680 at AR2012-  
12 002446-002451; JTX-1 at AR2010-002446-002451.

13 In Section 3 of the Resolution, MWD determined that in order to recover fair  
14 compensation for the use of its conveyance system for wheeling, it was necessary to "adopt  
15 wheeling rates according to the methodology set forth in Attachment 1." DTX-680 at AR2012-  
16 002448 (Attachment 1, which begins at 002452, is MWD's Technical Report on its proposed  
17 wheeling charge); JTX-1 at AR2010-002448. In Section 4 of the Resolution, MWD determined  
18 that: "A uniform rate is appropriate because of the integrated nature of Metropolitan's  
19 conveyance system; because Metropolitan's historic and current rate setting policy has been, and  
20 is, based on the postage stamp concept . . . and because Water Code Section 1811(c) defines 'fair  
21 compensation' to include reasonable charges for the use of the entire conveyance 'system.'"   
22 DTX-680 at AR2012-002448-002449; JTX-1 at AR2010-002448-002449.

23 In Section 5, MWD further determined that:  
24

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25 third parties, and those with member agencies for more than one year) are negotiated.

26 <sup>7</sup> While SDCWA has at times conflated MWD's rate for wheeling service with MWD's  
27 Transportation Rates (*see* 12/17/2013 Tr. at 35:17-22 (SDCWA defining the rate for wheeling  
28 service as the System Access Rate, Water Stewardship Rate and System Power Rate)), the rate  
for wheeling service does not include the System Power Rate. Instead, the actual cost of power  
is charged unless the party supplies its own power. *See* MWD Admin. Code § 4405(b).

1 [T]he allocation of costs as shown in Attachment 1 to  
2 Metropolitan's transmission function accurately reflects the capital,  
3 operation, maintenance and replacement costs incurred by  
4 Metropolitan to convey water to its member agencies, through  
5 Metropolitan's conveyance system, including Metropolitan's rights  
6 in the State Water Project system, and that including those costs in  
7 Metropolitan's wheeling rate is necessary to insure recovery of fair  
8 compensation for the use of that conveyance system.

9 DTX-680 at AR2012-002449; JTX-1 at AR2010-002449.

10 MWD resolved to set the initial rate for wheeling service at a specified amount and  
11 explained that, thereafter, MWD's Board would set the rate for wheeling service annually,  
12 pursuant to the determinations and methodology set forth in the Resolution. *See id.* MWD also  
13 resolved that it would make the determination of whether there is unused capacity in its  
14 conveyance system (as required by the Wheeling Statute) on a "case-by-case basis in response to  
15 particular requests for wheeling [services]." DTX-680 at AR2012-002450; JTX-1 AR2010-  
16 002450.

#### 17 **4. Charges Related To Purchase Variations And Peak Demands**

18 MWD's Readiness-to-Serve Charge recovers, *inter alia*, SWP-related conveyance costs  
19 associated with peak demand (*i.e.*, capital financing costs), as well as emergency storage and  
20 peak-related storage costs (*i.e.*, storage which provides operational flexibility in meeting peak  
21 demands and flow requirements), and costs incurred to stand by and provide services during  
22 times of emergency or outage of facilities. *See* DTX-090 at AR2010-011484-011485, 011488,  
23 011490, and 011494-011495); JTX-2 at AR2012-011484-011485, 011488, 011490, and 011494-  
24 011495); DTX-110 at AR2012-016688-016689, 016693, 016695, and 016698-016699. Each  
25 member agency's Readiness-to-Serve Charge is based on that agency's ten-year rolling average  
26 of past total consumption, *i.e.*, all firm deliveries including water transfers and exchanges that  
27 use MWD capacity. *See* DTX-090 at AR2010-011495; JTX-2 at AR2012-011495; DTX-110 at  
28 AR2012-016699.

The Capacity Charge is intended to pay for the cost of "peaking" capacity on MWD's system, while providing an incentive for local agencies to decrease their use of MWD's system

1 to meet peak day demands. DTX-090 at AR2010-011492-011493; JTX-2 at AR2012-011492-  
2 011493; DTX-110 at AR2012-016697-016698. Each member agency's Capacity Charge is  
3 based on that agency's maximum summer day demand placed on the system between May 1 and  
4 September 30 for a three-calendar year period. See DTX-090 at AR2010-011492; JTX-2 at  
5 AR2012-011492; DTX-110 at AR2012-016697. When MWD's Board first decided a decade  
6 ago to implement the Capacity Charge, SDCWA stated that it believed that the Capacity Charge  
7 would "provide the greatest economic incentive to actively manage system peaking." DTX-049  
8 at AR2012-007123; JTX-1 at AR2010-007123.<sup>8</sup>

9  
10 **E. The Rates At Issue Are Long-Standing And Have Been Independently  
Reviewed**

11 The claims in SDCWA's first through third causes of action in the *2010* and *2012 Actions*  
12 are aimed at features of MWD's rate structure that have been in place for over a decade.  
13 Specifically, in every year since 2003, MWD has (1) included SWP transportation costs in its  
14 Transportation Rates (through the System Access Rate and System Power Rate); (2) charged the  
15 Water Stewardship Rate to all users of the MWD system; and (3) charged the Readiness-to-Serve  
16 and Capacity Charges to recover the costs associated with providing standby service and member  
17 agency peaking. See generally DTX-049 at AR2012-007124-007162; JTX-1 at AR2010-  
18 007124-007162; DTX-052 at AR2012-007538-007579; JTX-1 at AR2010-007538-007579;  
19 DTX-057 at AR2012-007986-008035; JTX-1 at AR2010-007986-008035; DTX-060 at AR2012-  
20 008441-008491; JTX-1 at AR2010-008441-008491; DTX-064 at AR2012-008867-008912; JTX-  
21 1 at AR2010-008867-008912; DTX-068 at AR2012-009399-009445; JTX-1 at AR2010-009399-  
22 009445; DTX-076 at AR2012-009971-010006; JTX-1 at AR2010-009971-010006; DTX-090 at  
23 AR2010-011467-011502; JTX-2 at AR2012-011467-011502; DTX-110 at AR2012-016674-  
24 016702; *id.* at 016703-016731 (FY 2013/2014).

25 In 2010, MWD hired an independent consultant— Raftelis Financial Consulting

26  
27 <sup>8</sup> SDCWA does not challenge MWD's Capacity Charge in these cases, nor does SDCWA claim  
28 that MWD has failed to recover the costs associated with "peak day capacity." 12/18/2013 Tr. at  
214:25-215:5.

1 (“RFC”)—to evaluate its rates, charges, and COS process in order to assess whether changes  
2 would be advisable in future rate-settings. *See* DTX-088 at AR2012-011309-011330; JTX-1 at  
3 AR2010-011309-011330. RFC made four conclusions: (1) that MWD’s COS methodology is  
4 reasonable and consistent with California law; (2) that MWD’s COS and rate methodology is  
5 consistent with industry best practices, including the rate guidelines in the AWWA M1 Manual;  
6 (3) that MWD’s rates are consistent with the Rate Structure Framework MWD adopted in 2001;  
7 and (4) that MWD’s COS is also consistent with the Rate Structure Framework. *See* DTX-088 at  
8 AR2012-011321-011323; JTX-1 at AR2010-011321-011323. These findings are significant  
9 because of the arbitrary and capricious standard of review applicable to quasi-legislative  
10 decisions such as MWD’s rate-setting. *See e.g., Brydon v. East Bay Mun. Util. Dist.*, 24 Cal.  
11 App. 4th 178, 196 (1994). Under an arbitrary and capricious standard of review, an agency has  
12 discretion to rely on a single piece of evidence from a credible source experienced in the  
13 particular subject matter. *See Plastic Pipe and Fittings Ass’n v. California Bldg. Standards*  
14 *Comm’n*, 124 Cal. App. 4th 1390, 1407-08 (2004). As discussed in more depth below, SDCWA  
15 claims that RFC merely “parrots” MWD’s litigation position, but that is untrue, and further, the  
16 weight of the evidence presented at the final hearing and in this brief demonstrates that MWD’s  
17 rate allocations are reasonable.

#### 18 **IV. LEGAL FRAMEWORK AND INAPPLICABILITY OF CERTAIN CLAIMS**

##### 19 **A. The Court’s Ruling On Legal Standards**

20 On November 5, 2013, the Court ruled on the standards of review, burdens of proof, and  
21 evidence that should be considered for each of SDCWA’s claims in the first through third causes  
22 of action in the *2010* and *2012 Actions*. *See* Nov. 5, 2013 Order. As an initial matter, the Court  
23 held that “many of the claims pose essentially the same question (which is, to put it most simply,  
24 whether the rates charged were commensurate with the services provided).” *Id.* at 10. The Court  
25 held that the general principles governing review of a quasi-legislative decision apply to  
26 SDCWA’s first through third causes of action, with a few, limited exceptions. *See id.* at 12.  
27 These default rules include a review of MWD’s rate-setting based on an arbitrary and capricious  
28

1 standard, and a review limited to the administrative record before MWD at the time of its  
2 decision. *Id.* at 10-12. Under an arbitrary and capricious standard of review, MWD’s rates are  
3 presumed reasonable, fair, and lawful, and SDCWA has the burden of proving otherwise. *Id.* at  
4 11.

5 The Court ruled that the limited exceptions to the default rules apply to the Wheeling  
6 Statute claim and the Proposition 13 and 26 claims. With regard to the Wheeling Statute claim,  
7 the Court has ordered that the standard of review is “substantial evidence” for factual issues. *Id.*  
8 at 15-17. The substantial evidence standard is nearly identical to the arbitrary and capricious  
9 standard, in that “both require a reasonable basis for the decision.” *Warmington Old Town*  
10 *Assocs. v. Tustin Unified Sch. Dist.*, 101 Cal. App. 4th 840, 850 (2002). The Wheeling Statute  
11 claim is the only one for which the Court determined it may consider evidence outside the  
12 administrative record. *See* Nov. 5, 2013 Order at 17-18.

13 While the Court has ordered a de novo standard of review under both Proposition 13 and  
14 Proposition 26, the inquiry provided by both provisions is a test of reasonableness. *See, e.g.*,  
15 *Evans v. City of San Jose*, 3 Cal. App. 4th 728, 736-37 (1992) (Proposition 13 “does not embrace  
16 fees . . . that do not exceed the *reasonable* cost of providing services necessary to the activity for  
17 which the fees are charged.”) (emphasis added); *see also* Cal. Const. art. XIII C, § 1(e) (“The  
18 local government bears the burden of proving by a preponderance of the evidence . . . that the  
19 amount is no more than necessary to cover the *reasonable* costs of the governmental activity”)  
20 (emphasis added). MWD bears the burden of proving that MWD’s rates and charges are not  
21 taxes under Proposition 26. *See* Nov. 5, 2013 Order at 13-14. Under Proposition 13, SDCWA  
22 bears the burden of proof at all times, and if SDCWA’s evidence is sufficient, MWD bears the  
23 burden of production to show that the challenged rates bear a fair or reasonable relationship to  
24 the cost of service that MWD provides. *Id.* at 15.<sup>9</sup>

25  
26 <sup>9</sup> The Court noted that its determination of each claim’s standard of review, burden of proof, and  
27 evidence that should be considered are subject to revision by the time of the Court’s statement of  
28 decision. Nov. 5, 2013 Order at 9. Accordingly, while in this closing brief MWD states the  
Court’s ruling as to each claim, MWD also incorporates by this reference its First Pretrial Brief  
and Reply to SDCWA’s First Pretrial Brief, in which MWD set forth its full position on the

1                   **B.       SDCWA’s Claims**

2                                   **1.       MWD Act Section 134**

3                   SDCWA alleges that MWD’s rates violate Section 134 of the MWD Act. *See, e.g.*, TAC  
4 ¶¶ 70, 96; 2012 Complaint ¶¶ 70, 98. Section 134 provides that MWD is to set rates for water  
5 that will result in “revenue which . . . will pay the operating expenses of the district” and states  
6 that rates must be “uniform for like classes of service throughout the district.” MWD Act § 134.

7                   The Court ruled that it should give substantial deference to MWD’s rate design, presume  
8 that MWD’s rates are reasonable, and accord great weight to MWD’s statutory construction  
9 while independently taking ultimate responsibility for construction of the statute. A burden-  
10 shifting applies: (1) SDCWA has the initial burden to establish that rates are different for  
11 different classes of like entities; (2) upon that showing, MWD must make a showing that the  
12 rates were fixed by a lawful rate-fixing body, giving rise to an assumption of fact that the rates  
13 fixed are reasonable, fair, and lawful; and (3) SDCWA has the ultimate burden to show that the  
14 rates fixed are unreasonable. Review is limited to the administrative record. Nov. 5, 2013 Order  
15 at 19-21.

16                   SDCWA has not shown that rates are different for different classes of like entities. All of  
17 MWD’s member agency customers (all of which are public agencies that provide water service  
18 to their own customers (JTX-2 (AR2012-016429) at AR2012-016492-016493)) and other users  
19 of MWD’s system pay the same rates; and all member agencies pay the same charges.

- 20                   • System Access Rate: DTX-090 at AR2010-011492; JTX-2 at AR2012-011492;  
21                   DTX-110 at AR2012-016697 (“All system users (member agency or third party)  
22                   pay the [System Access Rate] to use [MWD’s] conveyance and distribution  
23                   system.”); JTX-2 (AR2012-016429) at AR2012-016540 (“All users (including  
24                   member agencies and third-party entities wheeling or exchanging water . . .) of  
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26 appropriate standards of review, burdens of proof, and evidence. In this closing brief, MWD  
27 also provides explanation of the governing law beyond the Court’s ruling where it is helpful to  
28 the legal analysis.

1 the [MWD] system pay the System Access Rate”).

- 2 • System Power Rate: DTX-045 at AR2012-006475; JTX-1 at AR2010-006475  
3 (The System Power Rate “is applied to all deliveries to member agencies.  
4 Wheeling parties will pay for the actual cost (not system average) of power  
5 needed to move the water”); JTX-2 (AR2012-016429) at AR2012-016540 (“The  
6 System Power Rate is charged for all Metropolitan supplies.”).
- 7 • Water Stewardship Rate: DTX-090 at AR2010-011492; JTX-2 at AR2012-  
8 011492; DTX-110 at AR2012-016697 (“All system users (member agency or  
9 third parties) will pay the same proportional costs for existing and future  
10 conservation and recycling investments.”); JTX-2 (AR2012-016429) at AR2012-  
11 016540 (“The Water Stewardship Rate is charged for every acre-foot of water  
12 conveyed by [MWD]”).
- 13 • Readiness-to-Serve Charge: DTX-090 at AR2010-011495; JTX-2 at AR2012-  
14 011495; DTX-110 at AR2012-016699 (The Readiness-to-Serve Charge is  
15 “allocated to the member agencies based on each agency’s proportional share of  
16 a ten-year rolling average of all firm deliveries (including water transfers and  
17 exchanges that use [MWD] system capacity”); JTX-2 (AR2012-016429) at  
18 AR2012-016544 (“The Readiness-to-Serve Charge . . . is allocated to each  
19 member agency in proportion to the rolling ten-year share of deliveries through  
20 Metropolitan's system.”).
- 21 • Capacity Charge: DTX-090 at AR2010-011492; JTX-2 at AR2012-011492;  
22 DTX-110 at AR2012-016697 (every member agency’s Capacity Charge is  
23 levied by calculating “the maximum summer day demand placed on [MWD’s]  
24 system between May 1 and September 30 for a three-calendar year period”).

25 MWD’s rates and charges were set by the lawful rate-fixing body, its Board of Directors.  
26 MWD Act §§ 57, 134. As explained in Sections III and V, MWD’s rates and charges are  
27 reasonable.  
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**2. Common Law**

The Court ruled that in assessing the common law claim, it will give MWD deference. The same burden-shifting described above pertaining to the MWD Act applies to the common law claim. Review is limited to the administrative record. Nov. 5, 2013 Order at 21-22.

As stated above, all of MWD’s member agencies (all of which are public agencies that provide water service) and other users of MWD’s system pay the same rates; and all member agencies pay the same charges. MWD’s rates and charges were set by a lawful rate-fixing body—MWD’s Board of Directors.

Under California common law, “[r]ates established by [a] lawful rate-fixing body are presumed reasonable, fair, and lawful” and reasonableness “is the beginning and end of the judicial inquiry.” *Hansen v. City of San Buenaventura*, 42 Cal. 3d 1172, 1180-81 (1986). The “fundamental theory of rate making . . . is that there shall be but one rate for a particular service.” *Durant v. Beverly Hills*, 39 Cal. App. 2d 133, 138 (1940) (a charge is unreasonable if it is “made to one patron or consumer different from that made to another, for the same service under like circumstances”). As explained in Sections III and V, MWD’s rates and charges are reasonable.

**3. Government Code Sections 66013 And 54999.7**

The Court ruled that the applicability of Government Code Sections 66013 and 54999.7 is a legal matter, and no deference is afforded to MWD. To the extent SDCWA alleges MWD acted unreasonably by including certain components in its water rates, this may raise factual questions, challenging MWD’s quasi-legislative actions. As to such issues, the Court will afford deference to MWD. SDCWA bears the burden of proof. Review is limited to the administrative record. Nov. 5, 2013 Order at 18-19.

**a. Government Code Section 66013 Does Not Apply**

SDCWA purports to assert a Section 66013 claim only in the 2012 Action.<sup>10</sup> Section

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<sup>10</sup> SDCWA’s 2010 TAC references Section 66013 solely as a means of asserting that the rates are reverse-validable pursuant to Government Code Section 66022. On the other hand, the 2012 Complaint purports to assert a violation of Section 66013. *Compare* TAC ¶¶ 91, 95-96



1 66013 states that “when a local agency imposes fees for water connections or sewer connections,  
2 or imposes capacity charges, those fees or charges shall not exceed the estimated reasonable cost  
3 of providing the service for which the fee or charge is imposed.” Cal. Gov. Code § 66013. This  
4 Section provides a basis for challenging “capacity charges”—not water rates generally.  
5 Explicitly excluded from the definition of a “capacity charge” are “commodity charge[s],” *i.e.*  
6 water rates. *Id.* at § 66013(b)(3); *Rincon Del Diablo Mun. Water Dist. v. San Diego Cnty. Water*  
7 *Auth.*, 121 Cal. App. 4th 813, 819 (2004) (“Under California case law, water rates are considered  
8 user or commodity charges because they are based on the actual consumption of water.”).

9 Under *Rincon*, MWD’s water rates are not subject to Section 66013.<sup>11</sup> Further, even if  
10 the Court determined that Section 66013 were applicable to some portion of SDCWA’s  
11 challenge, MWD’s rates and charges do not exceed the estimated reasonable cost of providing  
12 the service for which they are set, for the reasons explained in Sections III and V.<sup>12</sup> *See Rincon*,  
13 Cal. App. 4th at 819 (“Under the language of the statute, a capacity charge does not violate  
14 section 66013 unless it exceeds the cost of providing the service.”).

15  
16 **b. Government Code Section 54999.7 Does Not Apply**

17 Government Code Section 54999.7 states:

18 Any public agency providing *public utility service* may impose a fee, including a  
19 rate, charge, or surcharge, for any product, commodity, or service provided to a  
20 public agency, and any public agency receiving service from a public agency  
providing public utility service shall pay that fee so imposed. Such a fee for

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21 (identifying Sections 66013 and 66022 as allowing SDCWA to challenge MWD’s rates and  
22 charges through a validation action, and listing each law that MWD’s water rates are alleged to  
23 violate, without reference to either Section 66013 or Section 66022) *with* 2012 Complaint ¶¶ 93,  
98 (explicitly purporting to plead a violation of Section 66013).

24 <sup>11</sup> MWD has a charge titled “Capacity Charge,” but it is not the type of capacity charge that falls  
25 within the definition in Government Code section 66013(b)(3). Regardless, SDCWA is not  
challenging MWD’s Capacity Charge in these cases. *See* 12/18/2013 Tr. at 214:25-215:5.

26 <sup>12</sup> SDCWA’s Section 66013 claim is limited to a challenge to the reasonableness of MWD’s rates  
27 and charges. *See* 2012 Complaint ¶¶ 93, 98. SDCWA does not challenge MWD’s compliance  
28 with Section 66013’s accounting and open-records provisions. *See* Cal. Gov. Code § 66013(d)-  
(f). In any event, the record demonstrates that MWD’s procedures and the resulting rates and  
charges satisfy the requirements. *See* Sections III and V.

1 public utility service, other than electricity or gas, shall not exceed the  
2 reasonable cost of providing the *public utility service*. Cal. Gov. Code §  
3 54999.7(a) (emphasis added).

4 This statute is inapplicable to MWD—and SDCWA agrees. In a letter to MWD’s Board  
5 of Directors concerning the rate dispute at issue, SDCWA admitted that Section 54999 “is a  
6 provision of the San Marcos legislation governing the application of water service and other  
7 public utility rates to schools and other public agencies,” and it “*does not apply to a water*  
8 *wholesaler like [MWD].*” TAC, Ex. D at 7 (emphasis added) (JTX-1 (AR2010-011333) at  
9 011339; JTX-2 (AR2012-011333) at 011339).

10 SDCWA was correct to so admit. Government Code Section 54999 was enacted in  
11 response to the California Supreme Court’s decision in *San Marcos Water Dist. v. San Marcos*  
12 *Unified Sch. Dist.*, 42 Cal. 3d 154 (1986). *San Marcos* involved a sewer capacity right fee that a  
13 retail water district had imposed on its end-user customers, including a school district. *Id.* at 157-  
14 58. The Supreme Court held that the capacity fee amounted to a special assessment or tax under  
15 the California Constitution, and public entities are generally excepted from liability for such  
16 charges absent specific statutory authorization. *Id.* at 168. In response, the California Legislature  
17 passed Government Code section 54999 providing that, under certain circumstances, such  
18 charges are not assessments, but capacity fees that could be levied against public entities. *See*  
19 Cal Gov. Code § 54999(b) (“The Legislature . . . finds that the holding in [*San Marcos*] should be  
20 revised to authorize payment and collection of capital facilities fees . . .”). There is no reasonable  
21 claim that MWD’s rates and charges are special assessments that cannot be levied against other  
22 public entities unless they conform to the requirements set out in the *San Marcos* legislation.

23 The inapplicability of Government Code section 54999.7(a) to MWD’s rates and charges  
24 is made especially clear by subsection 54999.7(c), which states that “[a] public agency providing  
25 public utility service shall complete a cost of service study at least once every 10 years that  
26 addresses the cost of providing public utility service *to public schools.*” (emphasis added).  
27 MWD does not provide any service to school districts and does not levy any charges on school  
28 districts. The *San Marcos* legislation is clearly not directed at MWD’s rate and charges.

1 Second, the statute also cannot apply to MWD because, on its face, it requires that rates  
2 charged to public agencies be the same as those charged to *non-public* agencies. MWD’s 26  
3 customers are all public agencies.

4 Third, the statute cannot apply because MWD’s rates are not imposed (for the same  
5 reasons discussed in Sections IV.B.6.

6 If the Court determines that Section 54999.7 is applicable, MWD’s rates and charges do  
7 not exceed the reasonable cost of providing the service, as explained in Sections III and V.<sup>13</sup>

#### 8 4. The Wheeling Statute

9 The Court ruled that it will review *de novo* whether the Wheeling Statute applies or bars  
10 the inclusion of any component in a rate. But, to the extent that the Court must review MWD’s  
11 factual “fair compensation” determination, the Wheeling Statute requires the Court to do so  
12 under the substantial evidence standard. SDCWA holds the burden of proof. The Court will  
13 consider all relevant evidence. *See* Nov. 5, 2013 Order at 15-18.

14 While the Wheeling Statute contains various substantive requirements, SDCWA has only  
15 ever alleged a violation of the requirement that no “public agency may deny a bona fide  
16 transferor of water the use of a water conveyance facility which has unused capacity, for the  
17 period of time for which that capacity is available, if fair compensation is paid for that use.” *See,*  
18 *e.g.*, TAC ¶¶ 72, 96, 101 (alleging in ¶ 96 that “the rates [MWD] charges for conveyance to  
19 [SDCWA] . . . exceed ‘fair compensation’ for use of [MWD’s] system” in violation of Cal.  
20 Water Code § 1810); 2012 Complaint ¶¶ 73, 98 (alleging same).

21 SDCWA has never alleged that MWD improperly denied a wheeling request, or charged  
22 a price that exceeded fair compensation in a particular wheeling transaction. MWD has only one  
23 rate for wheeling service, which is a pre-established charge applicable to member agencies

24  
25 <sup>13</sup> SDCWA’s Section 54999.7, or San Marcos Legislation, claims are limited to a challenge to  
26 the reasonableness of MWD’s rates and charges. *See* TAC ¶¶ 71, 96; 2012 Complaint ¶¶ 71, 98.  
27 SDCWA does not challenge MWD’s compliance with Section 54999.7’s fair treatment, Cost of  
28 Service study, notice and disclosure requirements. *See* Cal. Gov. Code § 54999.7(b)-(e). In any  
event, the record demonstrates that MWD’s procedures and the resulting rates and charges satisfy  
the requirements. *See* Sections III and V.

1 seeking to wheel for up to one year. MWD Admin. Code §§ 4119, 4405. MWD negotiates the  
2 charge for other wheeling transactions on a case by case basis. SDCWA’s Wheeling Statute  
3 claim is therefore limited to a challenge to MWD’s pre-established Administrative Code rate for  
4 wheeling service, and does not relate to any particular wheeling transaction.

5 “Fair compensation” is defined as “the reasonable charges incurred by the owner of the  
6 conveyance system, including capital, operation, maintenance, and replacement costs, increased  
7 costs from any necessitated purchase of supplemental power . . .” Cal. Water Code § 1811(c).  
8 In making the determinations required by the Wheeling Statute, the “public agency shall . . .  
9 support its determinations by written findings.” *Id.* at § 1813. “[T]he court shall sustain the  
10 determination of the public agency if it finds that the determination is supported by substantial  
11 evidence.” *Id.*

12 SDCWA alleges that MWD’s rate for wheeling service fails to charge fair compensation,  
13 because the inclusion of SWP transportation costs and the Water Stewardship Rate is allegedly  
14 excessive. 12/17/2013 Tr. at 35:17-22. The question of whether system-wide costs may be  
15 included in MWD’s wheeling rate at all was already decided by the California Court of Appeal,  
16 which held that system-wide costs may be included under the Wheeling Statute. *See MWD v.*  
17 *IID*, 80 Cal. App. 4th at 1422-23. The inquiry for this Court is whether inclusion of particular  
18 system-wide costs (*i.e.*, MWD’s fixed SWP costs and the Water Stewardship Rate) in MWD’s  
19 rate for wheeling service charges fair compensation.

20 As discussed in Sections III and V, MWD’s inclusion of SWP transportation costs and  
21 demand management program costs in its rate for wheeling service constitutes fair  
22 compensation, and MWD’s determination is supported by written findings. The determination of  
23 what constitutes “fair compensation” for the use of MWD’s system for wheeling lies within  
24 MWD’s discretion, and MWD’s determination is granted deference. *See* Nov. 5, 2013 Order at  
25 17; *see also San Luis Coastal Unified Sch. Dist. v. City of Morro Bay*, 81 Cal. App. 4th 1044,  
26 1051 (2000) (under the Wheeling Statute, determination of fair compensation constitutes an act  
27 of discretion and “[m]andate may not order the exercise of discretion in a particular manner  
28

1 unless discretion can be lawfully exercised only one way under the facts.”); *MWD v. IID*, 80 Cal.  
2 App. 4th at 1425, 1428 (“The water conveyance facility owner, in this case the Metropolitan  
3 Water District, is specifically authorized to determine what is ‘fair compensation’ provided the  
4 determination is made in a timely and reasonable manner” and “[t]he construction of the  
5 Wheeling Statute by the Metropolitan Water District is entitled to great weight and respect.”)  
6 (citations omitted).

7 During the final hearing, for the first time in the *2010* and *2012 Actions*, SDCWA tried to  
8 broaden the scope of its Wheeling Statute claim with remarks that MWD has adopted a policy of  
9 not facilitating wheeling. *See, e.g.*, 12/17/2013 Tr. at 37:12-14. However, the pleadings delimit  
10 the scope of the proceedings in this case, and parties may not introduce evidence or arguments at  
11 trial that fall outside that scope. *Schweitzer v. Westminster Investments*, 157 Cal.App.4th 1195,  
12 1214 (2007) (“It is axiomatic that ‘[t]he pleadings establish the scope of an action and, absent an  
13 amendment to the pleadings, parties cannot introduce evidence about issues outside the  
14 pleadings.”). Having failed to allege that MWD’s rate for wheeling service fails to facilitate  
15 wheeling in its multiple pleadings over years in the *2010 Action*, and in the *2012 Action*,  
16 SDCWA may not raise this issue during, or after, the final hearing.

17 In any case, SDCWA has presented no evidence that MWD has ever denied a request for  
18 wheeling service. Moreover, the Court of Appeal found no evidence that MWD’s rates fail to  
19 facilitate wheeling, rejecting SDCWA’s assertion otherwise:

20  
21 Contrary to [SDCWA’s] assertion, there is no evidence the Legislature acted out of a  
22 concern that water conveyance facility owners in general, or the Metropolitan Water  
23 District in particular, were blocking wheeling transactions by ‘demanding unreasonable  
24 prices for access.’ Nor is there any support in the legislative history for San Diego  
25 County Water Authority’s claim that ‘the Legislature chose to pursue a market-based  
26 approach that allowed buyers and sellers to determine the price of water and limit the  
27 ability of facility owners to block transfers through barrier pricing.’

28 *MWD v. IID*, 80 Cal. App. 4<sup>th</sup> at 1432-33.

**5. Proposition 13 And Government Code § 50076**

**a. Proposition 13 Does Not Apply**

1 SDCWA alleges that MWD’s rates violate Article XIII A of the California Constitution  
2 and Proposition 13’s implementing statute, Government Code section 50076, because those rates  
3 do not charge the “reasonable cost of providing the service . . . for which the fee is charged” and,  
4 accordingly, are taxes and require a two-thirds vote in order to be enacted. *See, e.g.*, TAC ¶¶ 69,  
5 82, 95; 2012 Complaint ¶¶ 68, 96.

6 The Court ruled that whether a statute imposes a tax or fee for the purposes of  
7 Proposition 13 is a question of law to be decided on an independent review of the facts. A  
8 burden-shifting applies: (1) SDCWA bears the burden of establishing a prima facie case showing  
9 that the fee is invalid; and (2) if SDCWA’s evidence is sufficient, MWD then bears the burden of  
10 production to show that the challenged components of its rates bear a fair or reasonable  
11 relationship to the costs of the service MWD provides. SDCWA bears the burden of proof.  
12 Review is limited to the administrative record. Nov. 5, 2013 Order at 14-15.

13 Proposition 13 added Article XIII A to the Constitution for the purpose of limiting rising  
14 property taxes. Section 4 of Proposition 13 requires a two-thirds vote for “special taxes.” Cal.  
15 Const., art XIII A, § 4. Proposition 13’s implementing statute, Cal. Gov. Code § 50076, clarifies  
16 what falls *outside* the definition of a “special tax” under Section 4: A “special tax’ *shall not*  
17 *include* any fee which does not exceed the reasonable cost of providing the service or regulatory  
18 activity for which the fee is charged . . . .” (emphasis added).

19 As with SDCWA’s Government Code claim, its Proposition 13 claim fails at the outset  
20 because MWD’s water rates fall outside the scope of Proposition 13. *See Brydon*, 24 Cal. App.  
21 4th at 194 (“[I]f the fee is not the type of exaction which article XIII A was designed to reach,  
22 then resort to sections 50075-50077, the enabling legislation for the article, is unnecessary.”).  
23 As two courts have held, water rates fall outside Proposition 13. *See id.* at 194-95; *Rincon*, 121  
24 Cal. App. 4th at 822. Indeed, SDCWA itself successfully argued before the Court of Appeal that  
25 Proposition 13 does not apply to water rates, and obtained a published opinion with that holding  
26 that is now conclusive here. *See Rincon*, 121 Cal. App. 4th at 821-22.<sup>14</sup>

27  
28 <sup>14</sup> Remarkably, in response to this definitive impediment, SDCWA’s counsel previously told this

1 In *Brydon*, the court considered an “inclining block rate structure” that “imposes higher  
2 charges per unit of water as the level of consumption increases” charged by a publicly owned  
3 public utility to end user customers. 24 Cal. App. 4th at 182-84. The court held that “[t]he  
4 inclining block rate structure *bears none of the indicia of taxation* which California Constitution,  
5 article XIII A purported to address.” *Id.* at 194 (emphasis added). “The rates were levied against  
6 water consumers in accordance with patterns of usage, and at no cost to taxpayers generally.” *Id.*  
7 The court noted that the “*prior submission of [water rates] to the voters for approval would be*  
8 *nonsensical.*” *Id.* (citation omitted) (emphasis added). In short, it “[could not] conclude that  
9 California Constitution, article XIII A was intended either by the framers or the electorate to  
10 accomplish the essential destruction of the rate setting structure of public utilities, nor the  
11 evisceration of constitutional mandates compelling water conservation.” *Id.* at 195.  
12 Accordingly, the court “conclude[d] that the rate structure enacted by the District is not a ‘special  
13 tax’ requiring two-thirds voter approval by the local electorate.” *Id.*

14 After *Brydon* came *Rincon*, the decision that is controlling on the question of whether  
15 Proposition 13 applies to MWD’s water rates. *Rincon* dealt with wholesale water sales by  
16 SDCWA to its member districts, 121 Cal. App. 4th at 815-18, and in this respect is directly on  
17 point with respect to the present challenge to MWD’s wholesale rates.<sup>15</sup> Further, in *Rincon*  
18 SDCWA defended against a challenge specifically to its water transportation charges, *see* 121  
19 Cal. App. 4th at 816, the equivalent charges that SDCWA challenges here.

20 The specific question in *Rincon* was whether SDCWA could have a “postage stamp”  
21 transportation rate, like MWD does, *i.e.*, a flat dollar rate for each acre-foot of water transported,  
22

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23 Court merely that it was entitled to take different positions in different cases. *See* Appendix B  
24 7/2/2012 Tr. at 57:3-13 (SDCWA contended that MWD is “wrong” in asserting that by making  
“one argument in the *Rincon* case in 2004 . . . now [SDCWA] can’t make a different argument”).

25 <sup>15</sup> SDCWA is essentially just like MWD: It is a water wholesaler that sells only to its member  
26 public agencies. County Water Authority Act, Deering’s Annot. Water Code, Uncodified Act  
27 200, §§ 3, 5(11). SDCWA has 24 member agencies. SDCWA is governed by a Board of  
28 Directors, comprised of representatives of its member agencies. *Id.* § 6. The SDCWA Board  
votes on matters, including the quasi-legislative decision of the setting of SDCWA’s rates. *Id.*  
§§ 5(13), 6.

1 regardless of distance or which portions of the transportation infrastructure were used. *Id.* at  
2 816-17. In answering this question, the court recognized the traditional distinction between  
3 water rates (which are commodity charges) and special assessments (which are taxes). Under  
4 California case law, “water rates are considered user or commodity charges because they are  
5 based on the actual consumption of water.” *Id.* at 819. The court in *Rincon* explained that  
6 “[u]ser rates are functionally distinct from special assessments, which are compulsory charges  
7 levied against certain properties for public improvements that directly or indirectly benefit the  
8 property owner and are not related to the use of the public improvement.” *Id.* “It also reasoned  
9 that “the power to set water rates comes from the public agency’s proprietary and quasi-public  
10 capacity, while the power to impose special assessments or other capital charges derives from the  
11 taxing power.” *Id.* (citation omitted).

12 The court then addressed Proposition 13 directly. The plaintiff challenging SDCWA’s  
13 transportation rate argued that the rates covering certain capital costs had to be deemed a special  
14 tax rather than a user fee “in order to adhere to the spirit of Proposition 13.” *Id.* at 821. The  
15 court rejected that argument, and held that Proposition 13 does not apply to water rates. *See id.*  
16 at 821-22. The court quoted at length from *Brydon*, and reasoned that “[a]lthough the  
17 transportation rate is a postage stamp rate rather than a block rate . . . we find the analysis in  
18 *Brydon* compelling. *The transportation rate was not designed to replace property tax revenue*  
19 *lost due to Proposition 13 nor is there any indication the Legislature intended to revise the*  
20 *statutory scheme governing water rates.*” *Id.* at 822 (emphasis added).<sup>16</sup>

21 In sum, the outcome in *Rincon* is controlling here because MWD’s water rates are the  
22 same kind of rates at issue in that case. The rates in *Rincon* were wholesale postage stamp water  
23

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24 <sup>16</sup> Like MWD, SDCWA does have the power to tax property. *See* County Water Authority Act,  
25 Water Code Append., ch. 45, §§ 45-5(8), 45-7(j); *see also* MWD Act § 124 (“[MWD] may levy  
26 and collect taxes on all property within the district for the purposes of carrying on the operations  
27 and paying the obligations of the district . . .”). However, the court found that SDCWA was not  
28 exercising its taxation power when it enacted its transportation rate based on the historical  
distinction between “water rates” and “special assessments.” *Rincon*, 121 Cal. App. 4th at 819-  
22.



1 rates. *Id.* at 816. MWD’s water rates are also wholesale postage stamp water rates. Moreover,  
2 SDCWA acknowledges Proposition 13’s inapplicability to wholesale postage stamp water rates,  
3 as it was the party that made that argument to the Court of Appeal in *Rincon* and established that  
4 law. *See* Brief for SDCWA, *Rincon Del Diablo Mun. Water Dist. v. San Diego Cnty. Water*  
5 *Auth.*, 121 Cal. App. 4th 813 (2004) (Exhibit 7 to MWD’s RJN) (SDCWA at \*34 stating “more  
6 to the point, *water rates were not the type of charge Proposition 13 was intended to reach.*”)  
7 (emphasis added)).

8 Even if these authorities did not control here, Proposition 13 is inapplicable because  
9 MWD’s rates are not “imposed,” as explained in Section IV.B.6 below.

10 Further, *Brydon* and *Rincon* show that neither Proposition 13 nor its implementing  
11 statute—both directed at real property taxes and supplemental charges to replace lost real  
12 property tax revenue—was applied to charges, like MWD’s rates, which were established by a  
13 governing Board of Directors made up of representatives of member agencies and charged only  
14 to those member agencies that choose to purchase property, purchase a product, or engage a  
15 service. Nothing suggests that the voters intended Proposition 13 to cover such charges.

16 **b. Proposition 13’s Substantive Requirements**

17 If the Court finds that Proposition 13 applies, SDCWA cannot meet its burden of  
18 establishing a *prima facie* case that MWD’s rates are invalid. Even if it could, as explained in  
19 Sections III and V, MWD has met its burden of production showing that the challenged  
20 components of its rates bear a fair or reasonable relationship to the costs of the service MWD  
21 provides. *See* Nov. 5, 2013 Order at 15. The relevant inquiry is clear: “[P]ermissible fees must  
22 be related to the *overall* cost of the governmental [service].” *Cal. Farm Bureau Fed’n v. State*  
23 *Water Res. Control Bd.*, 51 Cal. 4th 421, 438 (2011) (emphasis added). “They need not be finely  
24 calibrated to the precise benefit each individual fee payor might derive.” *Id.*

25 In determining whether a fee exceeds the reasonable cost of the service, “[t]he question  
26 of proportionality is not measured on an individual basis. Rather, it is measured collectively,  
27 considering *all* rate payors.” *Id.* (emphasis added); *see also Griffith II*, 220 Cal. App. 4th at 601  
28

1 (in the Proposition 218 context,<sup>17</sup> the Court of Appeal stated that “[a]pportionment is not a  
2 determination that lends itself to precise calculation” and a proportionality requirement does not  
3 compel a “parcel-by-parcel proportionality analysis”). In *Griffith II*, the Court held that where,  
4 as here, a proposition prescribes no particular method for apportioning a fee other than that the  
5 amount shall not exceed the proportional cost of the service, grouping similar users together for  
6 the same rate and charging them according to usage is a reasonable way to apportion the cost of  
7 service. See 220 Cal. App. 4th at 601 (“*That there may be other methods favored by plaintiffs*  
8 *does not render defendant’s method unconstitutional.*”) (emphasis added); see also *Equilon*, 189  
9 Cal. App. 4th at 882-86 (given that a reasonableness inquiry requires a “flexible assessment of  
10 proportionality within a broad range of reasonableness,” court refused to overturn defendant’s  
11 fee because, while plaintiff’s proposed alternative fee might be reasonable, it was not the “*only*  
12 *reasonable manner in which [defendant] could have allocated [its] fee.*”) (emphasis in original).

13 Accordingly, whether MWD’s rates bear a fair or reasonable relationship to the costs of  
14 the service MWD provides is viewed in the aggregate, or in other words, measuring all rate  
15 payors together. MWD sets its rates at a level designed to recover its costs, by prospectively  
16 estimating its revenue requirements for the coming fiscal year. See, e.g., DTX-090 at AR2010-  
17 011467, 011472-011482; JTX-2 at AR2012-011467, 011472-011482; DTX-110 at AR2012-  
18 016674, 016679-016687. The prospective nature of MWD’s estimated revenue requirements is  
19 important for the Proposition 13 analysis. MWD does not, like many government entities,  
20 evaluate how much money it will receive through payments such as taxes in order to determine  
21 how much it can spend in a given year. Instead, as is typical for water districts, in each budget  
22 and rate-setting cycle, MWD looks at the services it expects to provide and estimates the costs it  
23 expects to incur to provide those services. *Id.* As part of this process, MWD breaks down its  
24 revenue requirements by budget item. See DTX-090 at AR2010-011474; JTX-2 at AR2012-  
25

26 <sup>17</sup> The court in *Griffith II* noted that Proposition 218 is closely related to Proposition 13, and,  
27 indeed, applied Proposition 13 case law when construing Proposition 218. See 220 Cal. App. 4th  
28 at 593, 601 (citing *Cal. Farm Bureau Fed’n v. State Water Res. Control Bd.*, 51 Cal. 4th 421  
(2011)).

1 011474; DTX-110 at AR2012-016680. All of MWD’s costs fall under the broad categories of  
2 “Departmental Costs” (e.g., costs identified with specific organizational groups within MWD) or  
3 “General District Requirements” (e.g., financing costs associated with the SWP and Colorado  
4 River Aqueduct).<sup>18</sup> DTX-090 at AR2010-011473; JTX-2 at AR2012-011473; DTX-110 at  
5 AR2012-016679-016680.

6         Once MWD determines its expected revenue requirements for the coming fiscal year, it  
7 then allocates those requirements to different operation functions. MWD’s allocation of costs to  
8 operation functions enables MWD’s rates to generate revenue to pay for related expenses. *See*  
9 DTX-090 at AR2010-011474; JTX-2 at AR2012-011474; DTX-110 at AR2012-016681 (MWD  
10 uses functional allocation to “correlate charges for different types of service with the costs of  
11 providing those different types of service”). Then MWD uses these operation functions to assign  
12 costs to various cost classifications, and then to the rate components to which they relate. *See*  
13 DTX-090 at AR2010-011483-011496; JTX-2 at AR2012-011483-011496; DTX-110 at AR2012-  
14 016688-016699. MWD’s rate component allocations are designed to fully recover the cost of  
15 service. *See* DTX-090 at AR2010-011447; JTX-2 at AR2012-011447; DTX-110 at AR2012-  
16 016683.

17         California case law specifically sanctions this approach of prospectively determining  
18 revenue requirements and setting rates based on this estimate. Specifically, in *Griffith II* the  
19 court rejected plaintiff’s argument that defendant “improperly ‘worked backwards’” by  
20 following a prospective revenue-requirement model like the one MWD follows. 220 Cal. App.  
21 4th at 600-01. The court stated that following this approach was recommended by the American  
22 Water Works Association Manual, and does not “offend[]” the proportionality requirement in the  
23 similar context of Proposition 218. *Id.* at 600; *see also Griffith v. City of Santa Cruz*, 207 Cal.  
24 App. 4th 982, 996 (2012) (hereinafter “*Griffith I*”) (holding that revenue requirements can be  
25

26 <sup>18</sup> MWD’s single largest revenue requirement for both 2010 and 2012 was the SWP. *See* DTX-  
27 090 (AR2010-011474) (the SWP comprised 29.3% of all MWD’s expected costs in 2010); JTX-  
28 2 (AR2012-011474); DTX-110 (AR2012-016680) (the SWP comprised 36.7% of all MWD’s  
expected costs in 2012).

1 “estimated” or determined prospectively); *Cal. Farm Bureau Fed’n v. State Water Res. Control*  
2 *Bd.*, 51 Cal. 4th 421, 437-38 (2011) (same); *San Diego Gas & Electric Co. v. San Diego County*  
3 *Air Pollution Control Dist.*, 203 Cal. App.3d 1132, 1145–1146 (1988) (same).

4 **6. Proposition 26**

5 The Court previously dismissed SDCWA’s Proposition 26 claim in the *2010 Action*  
6 because Proposition 26 does not apply retroactively to rates passed before its enactment. Mar.  
7 29, 2013 Order at 6. Therefore, the only Proposition 26 claim before this Court is whether  
8 MWD’s 2013-2014 water rates violate Article XIII C, Section 1 of the California Constitution.  
9 MWD previously moved for judgment on the pleadings on this issue, but the Court denied the  
10 motion on the ground that SDCWA did not allege violation of Proposition 26 as a separate cause  
11 of action and the issue should be decided after the final hearing on the evidence. Sept. 19, 2013  
12 Order at 2. MWD now renews its arguments that Article XIII C (Proposition 26) does not apply  
13 to its wholesale water rates for 2013-2014.

14 The Court ruled that it will review this claim de novo. MWD bears the burden of proving  
15 that its charges are not a tax under any of the seven exceptions. Review is limited to the  
16 administrative record. Nov. 5, 2013 Order at 12-14.

17 As set forth below, MWD has met its burden of proving that its rates are not a tax under  
18 two exceptions in Article XIII C, subsection 1(e), and also that Article XIII C does not apply  
19 because its rates are not “imposed.” Even if the Court finds that MWD has not shown that its  
20 rates are exempt, the rates were approved by a two-thirds vote as the Constitution requires.

21 **a. Proposition 26 Does Not Apply**

22 **(1) MWD’s Rates Are Not Imposed**

23 The word “impose[d]” means “to establish or apply by authority or force.” *Ponderosa*  
24 *Homes, Inc. v. City of San Ramon*, 23 Cal. App. 4th 1761, 1770 (1994) (citing Webster’s Third  
25 New Int’l Dictionary 1136 (1970)). Evidence demonstrates that MWD’s rates and charges are  
26 not imposed for three separate reasons.

27 First, all payors—the member agencies—are voluntary members of MWD and set the  
28

1 rates themselves via their representatives on the MWD Board of Directors, which votes in  
2 accordance with state law mandate. As explained above, MWD “is a voluntary cooperative of  
3 member public agencies created for the purpose of ‘developing, storing and distributing water.’”  
4 DTX-029 at AR2012-003848; JTX-1 at AR2010-003848. An agency cannot join MWD unless  
5 its governing body applies for membership and receives the approval of the qualified electors in  
6 the agency’s service area. *See* MWD Act §§ 350-56. SDCWA’s electorate voted to join MWD  
7 in 1946. PTX-006 at SDCWA2010-2012\_00206422.

8 MWD’s member agencies govern MWD through representatives on MWD’s Board of  
9 Directors. MWD Act §§ 50, 51, 55. Each member agency has proportional representation on the  
10 Board of Directors, and is entitled to at least one seat on the Board, plus an additional seat for  
11 every 3% of the total assessed value of the property within the member agency’s service area that  
12 is taxable for district purposes. *See* MWD Act §§ 51-52. Currently, the Board is made up of 37  
13 directors and, although 23 of the agencies have no more than two directors, three agencies—  
14 SDCWA, MWDOC and LADWP—each have four. *See e.g.*, DTX-111 at AR2012-016995-  
15 017013. The votes of the directors are weighted pursuant to the assessed valuation of property  
16 subject to taxation by MWD, with a guaranteed minimum of one vote. *See* MWD Act § 55.  
17 Notably, SDCWA controls approximately 18% of the vote. *See* DTX-091 at AR2012-011569-  
18 001157; JTX-1 at AR2010-011569-011571; DTX-111 at AR2012-016997-017003. MWD is  
19 required by the Legislature to adopt rates by a majority vote of the members of its Board of  
20 Directors. *See* MWD Act § 57.

21 Second, MWD is a supplemental supplier of water, which means that unlike a retail water  
22 agency, MWD has no exclusive right to serve in its service area. DTX-109 at AR2012-016587;  
23 *see also* MWD Act § 130. To the degree a member agency has local resources, develops local  
24 resources, implements conservation, or otherwise reduces demands, that member agency is not  
25 required to use MWD water or water services in the way it would be required to use services  
26 from a local retail water agency; the member agency is free to opt out fully or partially from  
27 MWD’s services. *See* DTX-109 at AR2012-016587 (MWD’s “member agencies are free to  
28

1 acquire supplies from other sources,” and MWD’s “Board has adopted the concept of ‘direct  
2 access,’ or customer choice for supplier, to accommodate a water transfer market.”); *see also*  
3 DTX-101 at AR2012-013421 (“No member agency of Metropolitan is obligated to purchase  
4 water from Metropolitan. However, twenty-four of Metropolitan’s 26 member agencies have  
5 entered into voluntary 10-year water supply purchase orders for water purchases through  
6 December 31, 2012.”).

7 Third, SDCWA has other choices regarding where it purchases its water, and as SDCWA  
8 itself alleges, it purchases a large share of supplies from third party sources. *See, e.g.*, 2012  
9 Complaint ¶ 3 (SDCWA “purchases conserved Colorado River water from [Imperial Irrigation  
10 District and] . . . has also obtained conserved water from the lining of the All American and  
11 Coachella Canals”); *see generally* DTX-185\* (2009 agreement between MWD and SDCWA for  
12 conveyance of water SDCWA purchased from Placer County Water Agency); DTX-201\* (2008  
13 agreement between MWD and SDCWA for conveyance of water SDCWA purchased from Butte  
14 Water District and Sutter Extension Water District); DTX-177\* (2003 agreement between MWD  
15 and SDCWA for conveyance of water SDCWA purchased from Fallbrook Public Utility  
16 District). SDCWA also has access to local sources of water. *See* JTX-2 (AR2012-016429) at  
17 AR2012-016523 (“Member agencies . . . have [ ] independently funded and developed additional  
18 local supplies [of] water”); 12/20/2013 Tr. at 594:7-596:10 (SDCWA continues to receive  
19 demand management funding through MWD’s Local Resources Program. Approximately 14 of  
20 SDCWA’s Local Resources Programs are currently active, and are eligible to receive around \$7  
21 million a year in funding).

22 Fourth, contrary to its assertions SDCWA does have a choice about involving MWD in  
23 SDCWA’s obtaining water from the Imperial Irrigation District (“IID”) and the lining of the All-  
24 American and Coachella Canal (“IID/Canal Lining Water”). Although it would take planning,  
25 time, and money as all water infrastructure projects do, SDCWA could have constructed, and  
26 still can construct, its own conveyance system to connect to the Colorado River, the All-  
27 American Canal, and/or the Coachella Canal. *See* JTX-2 (AR2012-012589) at AR2012-012594;  
28

1 DTX-109 at AR2012-016584. In fact, SDCWA reserved the right, “in its sole discretion,” to  
2 permanently reduce the amount of IID/Canal Lining Water that it exchanges with MWD “to the  
3 extent SDCWA decides continually and regularly to transport [IID/Canal Lining Water] ...  
4 through Alternative Facilities,” which are defined as facilities that are not “owned and operated  
5 by MWD.” Ex. A to TAC and 2012 Complaint (Arts. 1.1(c) and 3.7). SDCWA may make this  
6 election on five years notice to MWD. SDCWA first entered into its Transfer Agreement with  
7 IID in 1998 after planning and negotiation, and water was not first provided under that  
8 agreement until the end of 2003. *See* DTX-219\*; DTX-028 at \*SDPRA0159081; Ex. A to TAC  
9 and 2012 Complaint (Recitals at E). Thus, more than five years passed between the time  
10 SDCWA entered the Transfer Agreement and the time water was provided thereunder, and now  
11 more than 15 years have passed from the agreement. Ten years have passed since the 2003  
12 Exchange Agreement was executed, reserving SDCWA’s right to use Alternative Facilities to  
13 move its IID/Canal Lining Water. MWD planned and built the Colorado River Aqueduct, and  
14 the state of California planned and built the California Aqueduct, in the same or less time—and  
15 both were far more extensive projects covering significantly more ground than a SDCWA  
16 connection to the Colorado River, the All-American Canal, and/or the Coachella Canal would be.  
17 *See generally* DTX-055 at AR2012-000001-000172; JTX-1 at AR2010-000001-000172; *see also*  
18 DTX-019 at AR2012-001421-001422, 001460; JTX-1 at AR2010-001421-001422, 001460.  
19 Such a SDCWA conveyance system would not run parallel to, be duplicative of, or even be near  
20 MWD’s Colorado River Aqueduct or other conveyance/distribution systems.

21 Because MWD’s rates and charges are not “imposed,” they do not fall within the ambit of  
22 Proposition 26, nor Government Code Sections 66013 or 54999.7, nor Proposition 13.

23  
24 **(2) MWD’s Rates Fall Under Proposition 26’s (e)(2)  
Exception**

25 Article XIII C section 1(e)(2) excludes from Proposition 26’s scope “A charge imposed  
26 for a specific government service or product provided directly to the payor that is not provided to  
27 those not charged, and which does not exceed the reasonable costs to the local government of  
28

1 providing the service or product.” To establish a similar exception, the Court of Appeal stated  
2 the government agency must prove by a preponderance of the evidence that the “fees are  
3 imposed to cover the cost of performing [the service provided].” *Griffith I*, 207 Cal. App. 4th at  
4 997 (discussing similar exception for regulatory fees in Cal. Const. art. XIII C, § 1(e)(3)).

5 In *Griffith I*, a landlord filed a petition for writ of mandate seeking to invalidate an  
6 ordinance enacted by the City of Santa Cruz which established fees on landlords to fund annual  
7 inspections of residential rental properties, arguing, among other things, that the ordinance  
8 imposed a tax in violation of Proposition 26. *Id.* at 987. In evaluating the ordinance under  
9 Proposition 26, the court applied the holdings in *Cal. Farm Bureau Fed’n. v. State Water Res.*  
10 *Control Bd.* (“*Cal. Farm Bureau*”), 51 Cal.4th 421 (2011), which addressed Proposition 13. *Id.*  
11 at 996-97. While *Cal. Farm Bureau* did not concern Proposition 26 directly, the *Griffith I* court  
12 found its analysis controlling in the Proposition 26 context because the court in that case  
13 analyzed the language that originated in case law and was later adopted by the drafters of  
14 Proposition 26. *Id.*

15 The *Griffith I* court therefore held that under Proposition 26, “permissible fees must be  
16 related to the overall cost of the governmental regulation. They need not be finely calibrated to  
17 the precise benefit each individual fee payor might derive.” *Id.* at 997 (quoting *Cal. Farm*  
18 *Bureau*, 51 Cal.4th at 438). Furthermore, a fee does not become a tax simply because the fee  
19 may be disproportionate to the service rendered to individual payors; “[t]he question of  
20 proportionality is not measured on an individual basis. Rather, it is measured collectively,  
21 considering *all* rate payors.” *Id.* (quoting *Cal. Farm Bureau*, 51 Cal.4th at 438) (emphasis  
22 added).

23 California case law “suggest[s] a flexible assessment of proportionality within a broad  
24 range of reasonableness in setting fees.” *Equilon Enters. LLC v. State Bd. of Equalization*, 189  
25 Cal. App. 4th 865, 882 (2010) (citation omitted). It does not matter for purposes of the  
26 apportionment requirement that a challenger can propose an alternative better suited to a fee’s  
27 purposes as long as an agency’s apportionment of costs among payers is reasonable in light of  
28



1 the fee's purpose. *Id.* at 882-86 (Court rejected plaintiff gasoline company's argument that its  
2 allocation of a lead program fee was unreasonable because the majority of childhood lead  
3 poisoning comes from paint, not gasoline, because the fee allocation was directed at addressing  
4 childhood lead exposure, not just poisoning, and thus the fee did not need to be allocated based  
5 on responsibility for lead contamination.); *see also Griffith I*, 207 Cal. App. 4th at 997 (court  
6 found city satisfied the reasonableness requirements of Proposition 26 because fees imposed on  
7 rental property owners pursuant to a new ordinance were equal to or less than the cost of  
8 implementing the ordinance); *Griffith II*, 220 Cal. App. 4th at 601 (court of appeal stated that  
9 "[a]pportionment is not a determination that lends itself to precise calculation" and a  
10 proportionality requirement does not compel a "parcel-by-parcel proportionality analysis.").

11 As with Proposition 13, charges are not "taxes" subject to Proposition 26 when they  
12 cover the cost of performing the service in the aggregate, or in other words, measuring all rate  
13 payors together. As explained in Sections III and V, MWD collects the costs estimated to meet  
14 MWD's revenue requirements, and its rates in aggregate do not exceed the reasonable overall  
15 costs to MWD of providing its services.

16 **(3) MWD's Rates Fall Under Proposition 26's (e)(4)**  
17 **Exception**

18 Article XIII C section 1(e)(4) excludes from Proposition 26's scope "a charge imposed  
19 for . . . use of local government property, or the purchase . . . of local government property."  
20 Notably, this exception—unlike the (e)(2) exception—contains no additional requirement that  
21 the charge "not exceed the reasonable costs." *Compare* Cal. Const. art. XIII C, § 1(e)(4) *with* §  
22 1(e)(2). MWD is a local government agency. Whether the rates at issue are for the use of the  
23 MWD water system (real property) or the purchase of water (personal property), the evidence  
24 demonstrates that MWD's rates fall within this property exception because they are charges for  
25 use or purchase of local government property.

26 MWD's conveyance and distribution infrastructure is local government real property.  
27 *See Robinson v. City of Glendale*, 182 Cal. 211, 213 (1920) ("Where pipes are laid in real estate  
28

1 for the purpose of carrying water to the lands to which they extend, the pipes, while imbedded in  
2 the soil, constitute real property both before the water is carried therein and after the use for that  
3 purpose has ceased.”). MWD’s water rates and charges are charges for use of MWD’s own  
4 distribution and conveyance facilities, as well as MWD’s contractual right to use the SWP. JTX-  
5 2 (AR2012-016429) at AR2012-016492. MWD effectively leases the SWP transportation  
6 facilities because it pays DWR for the costs of using its transportation facilities and it holds a  
7 contractual right to use the facilities for transportation. *See* DTX-055 at AR2012-000074-  
8 000089, 000153 (Arts. 24-26, 55); JTX-1 at AR2010-000074-000089, 000153 (Arts. 24-26, 55).  
9 Charges to use either MWD’s facilities or facilities MWD has a property interest in are for the  
10 “use of local government property” under the (e)(4) exception.

11 Purchases of water also fall under this exception because the water MWD sells to its  
12 member agencies is MWD’s property and thus “local government property.” *See Santa Clarita*  
13 *Water Co. v. Lyons*, 161 Cal. App. 3d 450, 461 (1984) (“When severed from the realty, reduced  
14 to possession and placed in containers, [water] becomes *personal property*.”) (emphasis in  
15 original); *see also Watts Industries, Inc. v. Zurich American Ins., Co.*, 121 Cal. App. 4th 1029,  
16 1043 (2004) (“[c]ontainers” includes “artificial watercourses or conduits through which water  
17 flows.”).

18 **b. Proposition 26’s Voting Requirement**

19 Assuming *arguendo* that MWD’s rates were a tax subject to Proposition 26, Proposition  
20 26 has been satisfied because the rates were approved by two-thirds of the relevant electorate:  
21 the MWD Board of Directors, as explained in Section V.E below. *See* DTX-111 at AR2012-  
22 016997-017001 (the rates and charges at issue in the 2012 Action were passed by around a 75%  
23 majority of MWD’s Board).

1 **V. FACTUAL BASES SUPPORTING THE VALIDITY OF MWD’S RATES**

2 **A. The Evidence Shows That Allocating SWP Transportation Costs To MWD’s**  
3 **Transportation Rates Is Reasonable**

4 One primary source of the water MWD provides its member agencies is SWP water that  
5 MWD obtains under the DWR Contract. JTX-2 (AR2012-016429) at AR2012-016492. MWD  
6 collects those costs it pays for SWP transportation facilities and SWP power costs through (1) its  
7 System Access Rate—which, as discussed, is designed to recover the costs of the facilities  
8 necessary to deliver water to member agencies (including the SWP facilities), and (2) its System  
9 Power Rate—which, discussed, is designed to recover MWD’s costs of the power needed to  
10 deliver water to its member agencies.<sup>19</sup> See DTX-045 at AR2012-006518, 006520; JTX-1 at  
11 AR2010-006518, 006520; DTX-090 at AR2010-011473, 011475, 011490; JTX-2 at AR2012-  
12 011473, 011475, 011490; DTX-110 at AR2012-016680, 016682, 016695; see also MWD Admin.  
13 Code § 4125.

14 SDCWA does not challenge the propriety of MWD’s having rates designed to recover its  
15 transportation costs. Rather, SDCWA argues that none of the costs MWD pays to obtain and  
16 deliver SWP water to its member agencies are transportation costs, but are instead all supply  
17 costs. 12/17/2013 Tr. at 36:4-9. SDCWA is wrong for the following reasons.

18 **1. The SWP Transportation Costs Are MWD’s Transportation Costs**

19 Under the DWR Contract, the costs MWD pays DWR for transportation are MWD’s  
20 transportation costs. While SDCWA has repeatedly relied on the title of the DWR Contract, and  
21 the fact that MWD does not own the SWP facilities,<sup>20</sup> these facts are irrelevant because, as the  
22 evidence below shows, MWD is legally responsible for the transportation costs under the DWR  
23 Contract. It is thus reasonable for MWD to collect those costs through rates designed to recover

24 \_\_\_\_\_  
25 <sup>19</sup> Because the System Power Rate recovers the costs of average system power (as opposed to  
26 actual point-to-point power), SDCWA is arguably the largest beneficiary of this rate component  
because it is farther away from the SWP facilities than any other member agency.

27 <sup>20</sup> See 12/17/2013 Tr. at 47:15-17 (“The State Water Project provides Met with a water supply.  
28 That’s what their contract is called. It’s a contract for a water supply.”); *id.* at 45:23-25 (“Met  
doesn’t own it, Met doesn’t control it.”).

1 MWD's transportation costs.

2 The DWR Contract explicitly distinguishes between costs incurred to supply SWP water  
3 to MWD and costs incurred to deliver SWP water from the source of supply to MWD, and sets  
4 forth different charges for each. *Compare* DTX-055 at AR2012 at AR2012-000065 (Art. 22(a));  
5 JTX-1 at AR2010-000065 (Art. 22(a)) *with id.* at 000071-000072 (Art. 23). Article 22 of the  
6 DWR Contract sets out the terms applicable to MWD's payment for a supply of SWP water,  
7 which the DWR calls the "Delta Water Charge." *Id.* By contrast, Article 23 of the DWR  
8 Contract sets out a "Transportation Charge" which consists of "those costs of all project  
9 transportation facilities necessary to deliver project water to [MWD]." *Id.* It provides that those  
10 costs are "allocated to the contractor"—here, MWD.<sup>21</sup>

11 In its bills DWR disaggregates (1) the costs MWD incurs to purchase SWP water  
12 supplies, and (2) the costs MWD incurs to pay for SWP transportation facilities, both of which  
13 largely are fixed costs that MWD must pay regardless of the amount of SWP water MWD  
14 receives. *See, e.g.,* DTX-137 at \*MWD2010-00007219. Accordingly, MWD is able to properly  
15 and precisely allocate its SWP supply and transportation costs to its own water rates. Thus, it is  
16 reasonable for MWD to consider SWP transportation costs its own transportation costs, and  
17 MWD's Board reasonably determined to collect those costs through its rates designed to recover  
18 transportation costs.

19 MWD is able to further break down its transportation costs based on the DWR Contract  
20 because Articles 24 through 26 break the Transportation Charge into three different components,  
21 each of which provide that the costs the DWR incurs to move water through the SWP facilities to  
22 MWD are "allocated" to MWD. As discussed, MWD recovers its SWP transportation costs in  
23 two ways: (1) SWP facility costs, allocated to its System Access Rate and (2) the costs of power  
24 to deliver water, allocated to its System Power Rate. These costs are derived from the individual  
25 Transportation Charges set out in the DWR Contract.

26  
27 <sup>21</sup> MWD is the "contractor" under the DWR Contract. DTX-055 at AR2012-000011, 000033;  
28 JTX-1 at AR2010-000011, 000033.

1 Specifically, Article 24 recovers the capital costs associated with the aqueducts necessary  
2 to transport water to MWD. This article sets forth the capital cost component of the  
3 Transportation Charge, which “shall return to the State those [ ] costs of the project  
4 transportation facilities necessary to deliver [project] water to [MWD],” which are “allocated” to  
5 MWD. DTX-055 at AR2012-000073 (Art. 24(a)); JTX-1 at AR2010-000073 (Art. 24(a)).

6 Article 25 pays for operation and maintenance of those aqueducts. It sets forth a  
7 minimum charge for the costs of “operation, maintenance, power and replacement” of DWR’s  
8 transportation facilities which costs are also “allocated to [MWD].” DTX-055 at AR2012-  
9 000083 (Art. 25(a)); JTX-1 at AR2010-000083 (Art. 25(a)).

10 Article 26 recovers power costs required to pump water through transportation facilities  
11 to MWD. This article sets forth the variable charge component of the Transportation Charge for  
12 operation, maintenance, power and replacement costs. This charge is dependent upon the  
13 amount of water delivered to MWD and is also “allocated” to MWD. DTX-055 at AR2012-  
14 000087 (Art. 26(a)); JTX-1 at AR2010-000087 (Art. 26(a)).

15 The DWR Contract not only provides that these transportation costs are allocated to  
16 MWD, it also provides that DWR is ultimately *not* responsible for them. Each Article  
17 addressing the Transportation Charge provides that *all* costs DWR might incur in the first  
18 instance to transport water to MWD will be recovered from MWD via the Transportation  
19 Charge. For example, Article 23 provides that the Transportation Charge shall “return to the  
20 state” the costs of delivering water to MWD. DTX-055 at AR2012-000071 (Art. 23); JTX-1 at  
21 AR2010-000071 (Art. 23); *see also id.* at 000073, 000083, 000087 (Arts. 24(a), 25(a), 26(a))  
22 (containing same language). In other words, DWR is ultimately responsible for *none* of the costs  
23 associated with transporting water to its contractors, only the contractors are (*e.g.*, MWD).

24 Also, MWD is responsible for paying the costs necessary to transport SWP water to it  
25 regardless of whether it gets any water. JTX-2 (AR2012-016429) at AR2012-016559 (“under  
26 the State Water Contract, [MWD] is obligated to pay allocable portions of the costs of  
27 construction of the system and ongoing operating and maintenance costs through at least 2035,  
28

1 regardless of quantities of water available from the project”) Only Article 26—the charge that  
2 recovers power costs for pumping water through SWP transportation facilities to MWD—  
3 depends on the amount of water delivered to MWD.  
4

5 Furthermore, when DWR has built out, or needs to build out, reaches of aqueducts or  
6 other SWP conveyance infrastructure, MWD is responsible for those costs. *See, e.g.*, JTX-2  
7 (AR2012-016429) at AR2012-016561. For instance, since the mid-1990s and as recently as this  
8 year, the SWP contractors (including MWD) were engaged in discussions with DWR about  
9 expanding the East Branch aqueduct of the SWP due to concerns about capacity constraints. *See*  
10 *id.* (the “enlargement of the East Branch can be initiated . . . at [MWD’s] request” and if that  
11 enlargement were to occur, it would create “a separate sub-category of the [capital  
12 Transportation Charge which] provides for the payment of costs associated with financing and  
13 operating the East Branch enlargement”). While that expansion has not yet occurred, MWD is  
14 “by far the largest contractor in that reach of the aqueduct and would likely need to pay about  
15 70% of the costs were it to be expanded.” 12/20/2013 Tr. at 576:7-9 (Upadhyay testimony); *id.*  
16 at 576:24-577:10 (MWD has in the past paid the costs associated with expanding the SWP  
17 conveyance facilities). As Deven Upadhyay, the Group Manager of MWD’s Water Resources  
18 Management Group, testified, “generally Metropolitan is the largest contractor and [it is] at the  
19 end of the line in terms of the conveyance system so [it] actually pay[s] the largest portion of the  
20 fixed costs for conveyance on the SWP.” 12/20/2013 Tr. at 577:3-7.

21 Underscoring the transportation-related nature of the Transportation Charge is the fact  
22 that MWD was also required to start paying the capital component of the Transportation Charge  
23 during construction of the SWP facilities, which was years before MWD ever received a supply  
24 of SWP water. DTX-055 at AR2012-000045-000047, 000056-000060, 000095-000097 (Arts. 6,  
25 17, 29); JTX-1 at AR2010-000045-000047, 000056-000060, 000095-000097 (Arts. 6, 17, 29);  
26 DTX-135 at \*98-99.

27 As the DWR Contract and invoices demonstrate, SDCWA’s focus on the title of the  
28 contract ignores the fact that MWD is not only responsible for costs associated with the costs of

1 obtaining a water supply, but it is also responsible for the costs of transporting that water supply  
2 to its service area. SDCWA’s focus on the fact that MWD does not *own* the SWP facilities is  
3 also misplaced. As demonstrated at the final hearing by Brent Yamasaki, MWD’s Section  
4 Manager of Operations and Planning, MWD works with DWR to schedule water deliveries,  
5 coordinate operations, and, at times even “operate[s] portions of the State Water Project.”  
6 12/19/2013 Tr. at 535: 6-10. Indeed, MWD at times literally controls portions of the SWP  
7 transportation facilities:

8 Q. Met doesn't have a switch or anything that it can turn to  
9 move water through the State Water Project system?

10 A. **Occasionally we do.**

11 Q. In emergencies?

12 A. **No, not only in emergencies.**

13 *Id.* at 535: 11-16 (Yamasaki testimony).

14 In sum, it is appropriate for MWD to collect its SWP transportation costs through its  
15 Transportation Rates because the DWR Contract establishes that those costs are MWD’s  
16 transportation costs. In keeping with MWD’s rate design goal of transparently linking each of its  
17 rate elements to the services rendered, MWD’s allocation of transportation-related SWP  
18 expenses to its Transportation Rates is reasonable.<sup>22</sup>

19 **2. MWD Uses The SWP Facilities As An Extension Of Its Own**  
20 **Conveyance System**

21 A second reason why it is reasonable for MWD to collect its SWP transportation costs  
22 through its Transportation Rates is because the SWP facilities at times serve *solely* a  
23 transportation function for MWD.

24 Specifically, during times of shortage or lower than normal SWP supply allocation,

25 \_\_\_\_\_  
26 <sup>22</sup> In contrast with its current challenge, SDCWA previously commended MWD for such  
27 transparency with regard to allocating SWP to its rates. In DTX-049, SDCWA stated that the  
28 System Power Rate is “an excellent example of rate component transparency.” DTX-049 at  
AR2012-007122; JTX-1 at AR2010-007122.

1 MWD uses the SWP facilities to transport “non-project water,” *i.e.*, water it has obtained from  
2 other sources in Northern California, to its service area. DTX-087 at AR2012-011307 (“MWD  
3 uses the SWP to convey Project and Non-Project Water for [MWD]”); JTX-1 at AR2010-  
4 011307; DTX-109 at AR2012-016588 (MWD uses the “SWP transportation and storage  
5 facilities” to “transport and store Project and Non-Project water”); *see also* DTX-102 at  
6 \*SDCWA2010-2012\_00136906. When MWD so procures non-project water, it is by definition  
7 using SWP transportation facilities in transactions that have *nothing to do with* SWP water  
8 supply.

9         The DWR Contract gives MWD the right to use the SWP transportation facilities for this  
10 purpose, *i.e.*, for transporting water that does not come from SWP facilities. *See* DTX-055 at  
11 AR2012-000153 (Art. 55(a)); JTX-1 at AR2010-000153 (Art. 55(a)). The DWR Contract also  
12 gives MWD the right to use SWP facilities for “interim storage” of non-project water, for later  
13 transportation to MWD and its member agencies. *Id.*; *see also* DTX-087 at AR2012-011307;  
14 JTX-1 at AR2010-011307; DTX-109 at AR2012-016588. MWD pays no facilities charge to  
15 transport or store non-project water because MWD already pays for these rights by way of its  
16 Transportation Charge under the DWR Contract. DTX-055 at AR2012-000153 (Art. 55(b)-(c));  
17 JTX-1 at AR2010-000153 (Art. 55(b)-(c)); DTX-087 at AR2012-011307 (“contractor[s] that  
18 participate[] in the repayment for a reach [have] already paid costs of using that reach for  
19 conveyance of water supplies in the Transportation Charge invoice under its Statement of  
20 Charges”); JTX-1 at AR2010-011307; DTX-109 at AR2012-016588 (“This [non-project water]  
21 conveyance service is provided because the state water contractor has paid for the capital and  
22 operations and maintenance costs associated with the capacity in the California Aqueduct that is  
23 used.”); *see also* 12/19/2013 Tr. at 505:23-506:9 (Yamasaki testimony).

24         MWD has used the SWP facilities to transport non-project water on a number of  
25 occasions. For example, in 2009, MWD purchased approximately 80,000 acre-feet of water  
26 from suppliers north of the Delta and transported the water through the SWP facilities to its  
27 service area. JTX-2 (AR2012-016429) at AR2012-016515; (MWD “used the SWP to convey  
28



1 water transfer acquired in 2009 north of the Delta from a non-State Water Contractor for delivery  
2 to Metropolitan’s service area”); DTX-087 at AR2012-011307; JTX-1 at AR2010-011307;  
3 DTX-109 at AR2012-016588; DTX-102 at \*SDCWA2010-2012\_00136910 (describing the  
4 transactions with the north-of-Delta suppliers in transactions entitled “Yuba Accord Transfer  
5 Supply” and “State Water Contractors Buyers Group Transfer Supply”).

6 In 2010, MWD supplemented the relatively low amount of SWP water it was allocated  
7 that year (about one million acre-feet, or a 50% allocation) by purchasing approximately 228,000  
8 acre-feet of non-project water through non-project transfers and exchanges. *See* 12/19/2013 Tr.  
9 at 508:13-510:15 (Mr. Yamasaki explaining that this 228,000 acre-feet of water equaled “about  
10 23 percent over what [MWD] was allocated [from the state]”); JTX-2 (AR2012-016429) at  
11 AR2012-016515; DTX-102 at \*SDCWA2010-2012\_00136910; *see also* 12/19/2013 Tr. at  
12 508:18-509:6 (for example, in 2010 MWD transported approximately 88,000 acre-feet of water  
13 through the SWP facilities to its service area). The administrative record contains several other  
14 examples of MWD supplementing its supplies by transporting non-project water through the  
15 SWP conveyance facilities. *See* JTX-2 (AR2012-016429) at AR2012-016514-016516  
16 (describing numerous non-project water transfers and exchanges); DTX-102 at \*SDCWA2010-  
17 2012\_00136910-0013911, 00136914-0013915, 00136917 (describing numerous non-project  
18 water transfers and exchanges in 2008 through 2010, e.g., State Water Contractors Buyers Group  
19 Transfer Supply (2008 & 2010); Yuba Accord Transfer Supply (2008-2010); San Luis Water  
20 District/Westlands Water District Transfer Supply (2010); Shasta Exchange Supply (2010);  
21 Governor’s Drought Water Supply transaction (2009)).

22 MWD also uses the SWP facilities to transport non-project water in conjunction with its  
23 groundwater storage programs in the Central Valley. Periodically MWD enters into agreements  
24 with agricultural water storage districts in the Central Valley to “store water in surplus times and  
25 withdraw water in dry years.” 12/19/2013 Tr. at 512:4-7 (Yamasaki testimony referencing DTX-  
26 094\*); *see also* JTX-2 (AR2012-016429) at AR2012-016514 (describing MWD’s groundwater  
27 storage programs in the Central Valley with Arvin-Edison Water Storage District, Semitropic  
28

1 Water Storage District, Kern Delta Water District). Pursuant to these agreements, MWD can  
2 store water as it travels down the SWP conveyance facilities and withdraw a like quantity of  
3 water at a later time. 12/19/2013 Tr. at 512:20-25 (Yamasaki testimony). The water that MWD  
4 withdraws from these “banking programs” is “generally groundwater that’s extracted from the  
5 ground in the Central Valley,” *i.e.*, non-project water. 12/19/2013 Tr. at 512:1-514:17 (Mr.  
6 Yamasaki explaining that the parties monitor the quality and composition of the water that is  
7 pumped out of the banking programs and are able to determine that the water is non-project  
8 because it has a “different chemical composition”); *see also, e.g.*, PTX-340A (categorizing  
9 withdrawals from Central Valley banking programs as non-project water); JTX-2 (AR2012-  
10 016429) at AR2012-016514-016515). In order to get this water to its service area, MWD then  
11 transports it through the remainder of the SWP conveyance facilities. 12/19/2013 Tr. at 513:1-7  
12 (Yamasaki testimony); JTX-2 (AR2012-016429) at AR2012-016514 (referencing use of  
13 California Aqueduct, an SWP conveyance facility, for delivering withdrawn water to MWD). In  
14 2011, MWD stored about 297,000 acre-feet in these Central Valley banking programs for  
15 withdrawal in the future when necessary. JTX-2 (AR2012-016429) at AR2012-016516.

16 At the final hearing, SDCWA attempted to characterize MWD’s use of SWP facilities to  
17 convey non-project water as “de minimus.” 12/18/2013 Tr. at 275: 19-20 (claiming that only  
18 1.6% of the water MWD transports through the SWP facilities is non-project). As an initial  
19 matter, this data improperly excludes a whole category of non-project water that MWD  
20 transports through the SWP facilities, *i.e.*, the volume of water MWD withdraws from the  
21 Central Valley banking programs and moves through the SWP facilities. As discussed above,  
22 and as SDCWA’s own exhibits show, this water is non-project water. *See* PTX-328A to PTX-  
23 341A; *see also* 12/19/2013 Tr. at 514:14-17 (Yamasaki testimony). Including this data would  
24 have increased the percentage of non-project water to 4.6% during the period SDCWA chose to  
25 focus on. *See* PTX-328A to PTX-341A. Moreover, SDCWA’s data only calculates transfers of  
26 non-project water through 2009, but the evidence shows that MWD’s non-project water transfers  
27 and exchanges through the SWP were highest in 2010. JTX-2 (AR2012-016429) at AR2012-  
28

1 016515 (volume transferred in Yuba County transaction ranged from 26,430 acre-feet in 2008, to  
2 42,915 acre-feet in 2009, to 67,068 acre-feet in 2010); DTX-102 at \*SDCWA2010-  
3 2012\_00136907 (volume of non-project water transactions that MWD engaged in from 2008 to  
4 2010 ranged from 41,168 acre-feet in 2008, to 61,937 acre-feet in 2009, to 228,977 acre-feet in  
5 2010). Indeed, as Mr. Yamasaki testified, MWD transported around 228,000 acre-feet of non-  
6 project water, which accounted for about 23% over what MWD was allocated from the state that  
7 year. 12/19/2013 Tr. at 507:23-508:17.

8 In any event, focusing solely on the number of acre-feet of non-project water moved  
9 through the SWP facilities ignores MWD's purpose in moving non-project water through the  
10 SWP facilities, and ignores the benefit that all member agencies receive from this capability. As  
11 MWD's Section Manager of Operations and Planning explained at the final hearing, having the  
12 right to move non-project water through the SWP facilities (either as a result of purchases of  
13 non-project water or withdrawals from banking programs) increases MWD's system's  
14 reliability—even during years when MWD's SWP allocation is low. 12/19/2013 Tr. at 510:14-  
15 25 (testifying that this ability is an "important water management tool"). As is further explained  
16 in the administrative record, because the SWP, Colorado River Aqueduct, and MWD's in-basin  
17 distribution system are interconnected (and MWD has "extensive" rights to use the SWP to move  
18 non-project water), MWD is able to "maintain operational flexibility." DTX-109 at AR2012-  
19 016583, 016588. This flexibility contributes to regional system reliability which "all member  
20 agencies benefit from." *Id.* at AR2012-016583.

21 Because MWD can and does use the SWP facilities for transportation-only transactions  
22 as part of its fixed SWP transportation costs, and all system users benefit from this capability, it  
23 is reasonable to allocate MWD's SWP transportation costs to its Transportation Rates.

24 **3. MWD Has An Integrated, Regional System And Delivers A Blend**  
25 **That Includes SWP Water**

26 MWD's water delivery system is flexible, integrated, and regional, with interconnected  
27 portions of the system that provide capacity and flexibility, not a linear system made up of  
28

1 isolated pathways for water transmission. *See MWD v. IID*, 80 Cal. App. 4<sup>th</sup> at 1417. The  
2 integrated, regional water delivery system includes the SWP, and SWP water. *See DTX-680* at  
3 AR2012-002455-002456 (1997 Resolution 8250, stating that because of the integrated nature of  
4 MWD’s system, determining whether water originates from one source “versus the SWP  
5 becomes very difficult, if not impossible”); *JTX-1* at AR2010-002455-002456. MWD’s  
6 interconnected, regional conveyance and distribution system has the ability to deliver water from  
7 the SWP, the CRA, and MWD’s storage portfolio to almost every member agency throughout its  
8 service area. *See DTX-109* at AR2012-016587. The benefit that results from blending SWP  
9 water with other sources “requires an integrated system: without the integration, blending could  
10 not occur.” *See DTX-680* at AR2012-002455-002456; *JTX-1* at AR2010-002455-002456; *see*  
11 *also* Section V.A.2.

12         Indeed, MWD has a legally mandated objective of providing its member agencies with  
13 full service water that consists of a blend that includes SWP water. *See MWD Act* § 136  
14 (requiring MWD to blend to the extent reasonable and practical, with an objective of reaching a  
15 50% SWP blend); *see also* 12/18/2013 Tr. at 192:12-20; 237:24-238:3 (Cushman testimony,  
16 explaining that the MWD Act “requires Metropolitan to provide a blend of State Water Project  
17 water to its customers”); 12/19/2013 Tr. at 528:13-532:14 (Yamasaki testimony, explaining the  
18 blend). Depending on the conditions, sometimes the blend a member agency receives from  
19 MWD can be as much as 90% SWP water. 12/19/2013 Tr. at 533:8-11 (Yamasaki testimony).  
20 Accordingly, it is reasonable that part of the fixed system-wide costs MWD incurs to use the  
21 SWP facilities are allocated to MWD’s Transportation Rates, as well as to its rate for wheeling  
22 service. *See DTX-109* at AR2012-016586 (wheelers “benefit from . . . Metropolitan’s right to  
23 use SWP facilities”). Otherwise, MWD’s full service customers would effectively be  
24 subsidizing those who use MWD’s system just for exchanges or wheeling.

25         SDCWA recognizes the importance of this blend. For instance, SDCWA estimates that  
26 high saline content in water “causes ~\$ 375 million/year in economic damages.” *DTX-116* at  
27 \*2; *see also* 12/18/2013 Tr. at 254:8-17 (Cushman testimony). Because of this, SDCWA has a  
28

1 goal to maintain a salinity level of no greater than 500 parts per million. DTX-116 at \*17; *see*  
2 *also* 12/18/2013 Tr. at 254:18-255:2 (Cushman testimony). One of the ways that SDCWA is  
3 able to achieve this goal is obtaining a blend of SWP and Colorado River water from MWD. *See*  
4 DTX-116 at \*3 (map exhibiting that water coming from the SWP is far lower in saline content  
5 than water coming from the Colorado River); DTX-109 at AR2012-016586 (MWD’s  
6 “integrated, flexible system [means that MWD is able] to blend water from various sources”).  
7 SDCWA has acknowledged that it depends on and benefits substantially from the lower salinity  
8 levels that result from the blend MWD provides to it. *See* DTX-116 at \*17 (SDCWA stating that  
9 reducing this harmful “salinity depends on the mix of SWP and CR [Colorado River] water.”)  
10 (emphasis added); DTX-319B at \*53:44-54:32.

11 MWD actively works to deliver its member agencies the blend that includes SWP water,  
12 and SDCWA has stated that it relies on these efforts to achieve its own salinity goal. *See*  
13 12/19/2013 Tr. at 526:4-9 (MWD’s Section Manager of Operations and Planning explaining that  
14 MWD uses its pipelines to “implement . . . operational strategies, like blending, managing  
15 salinity”); DTX-319B at \*53:44-54:32 (SDCWA stating at its Board meeting that it relies on  
16 MWD to achieve its own salinity goals and MWD is “very careful in the way they mix their  
17 water and control their operations to make sure that the [] salinity level here at the Water  
18 Authority does not exceed 500 parts per million”); DTX-116 at \*17; 12/18/2013 Tr. at 254:18-  
19 255:2 (Cushman testimony); *see also* DTX-109 at AR2012-016586.

20 The only way MWD can provide the SWP-blended water—which SDCWA admits that it  
21 wants and needs—is if MWD pays the costs necessary to transport that SWP water to MWD.

22  
23 **4. Allocating SWP Transportation Costs To The Transportation Rates  
Is Consistent With Industry Guidelines**

24 Repeatedly throughout the mid-nineties to the present, industry guidelines and practices  
25 have supported MWD’s allocation of transportation-related SWP costs to its Transportation  
26 Rates. For example, the *Comprehensive Guide to Water and Wastewater Finance and Pricing*  
27 written by George Raftelis, an expert in water rate-making, endorses differentiating for  
28

1 ratemaking purposes between the costs associated with obtaining a supply of water, and the costs  
2 incurred to transport that water supply to a water utility. *See generally* DTX-134. Specifically,  
3 Mr. Raftelis’ textbook lays out four relevant categories of cost allocations for rate-setting  
4 purposes: (1) Source of Supply—the operating and capital costs associated with the source of  
5 water supply (reservoir construction and maintenance costs, supply development costs, etc.); (2)  
6 Pumping and Conveyance—costs associated with pumping water from the source of supply and  
7 transferring it through a piping network; (3) Transmission—costs associated with transporting  
8 water through a major pipeline to major locations within the service area; and (4) Distribution—  
9 costs associated with the smaller local service distribution mains transporting water within the  
10 service area. DTX-134 at AR2012-016288\_5291-5292; *see also* DTX-011 at \*SDCWA2010-  
11 2012\_00001097. MWD differentiates its cost categories in the way Mr. Raftelis’ textbook  
12 advocates. *See* DTX-090 at AR2010-011472, 011474-011482 (Schedule 4 at 011481 sets out the  
13 revenue requirements by their service function); JTX-2 at AR2012-011472, 011474-011482;  
14 DTX-110 at AR2012-016679, 016681-016687. SDCWA’s reliance on this textbook to assert  
15 that “Raftelis had already conceded—in his textbook on water rates—that costs ‘associated with  
16 the source of water supply,’ including ‘water right purchases,’ should be attributed to supply  
17 rather than transportation,” improperly focuses on one bullet point describing the Source of  
18 Supply category while completely ignoring the separate transportation-related Pumping and  
19 Conveyance, Transmission, and Distribution categories. *See* SDCWA First Pretrial Brief at 16.

20  
21 Similar to Raftelis’ guidance, a Research Management International (“RMI”) study  
22 performed for MWD in October 1995 also endorsed separately allocating MWD’s supply costs  
23 and the costs MWD incurs to convey a water supply to its internal distribution system for  
24 ratemaking purposes. *See* DTX-013 at AR2012-001112 (setting forth separate cost allocations  
25 for three relevant functions: the Supply Function (costs of operating and maintaining water  
26 supply facilities, such as dams and associated reservoirs and costs of purchasing water from  
27 wholesale suppliers), the Transmission Function (costs of operating and maintaining aqueducts  
28 to move water from sources of supply to major centers of demand), and the Pumping Function

1 (costs of operating and maintaining the facilities needed to pump water from the source of supply  
2 to the centers of demand); JTX-1 at AR2010-001112. In its First Pretrial Brief and at the final  
3 hearing, SDCWA erroneously claimed that this report suggests that all SWP costs should be  
4 allocated to supply. *See* SDCWA First Pretrial Brief at 13; 12/17/2013 Tr. at 48:7-16. Here,  
5 SDCWA relies on a list of information that a water agency should assemble and consider *before*  
6 conducting a COS study. DTX-013 at AR2012-001104; JTX-1 at AR2010-001104. This list  
7 includes a category for “Water Supply and Purchases of Water” that include water purchased  
8 from the SWP. *Id.* Nowhere in this list does RMI advocate allocating purchases of water from  
9 the SWP to the supply function for COS purposes. Indeed, this list has *nothing to do with cost*  
10 *allocations*, and does not purport to list the functional categories a water agency would use when  
11 designing water rates (*e.g.*, transportation, treatment etc.). *Id.*

12         Significantly, in the section of the report that addresses COS functionalization for  
13 purposes of rate-setting, RMI included the cost of operating and maintaining the aqueducts  
14 (MWD’s Colorado River Aqueduct and DWR’s California Aqueduct) in the Transmission  
15 Function, not the Supply Function. *See* DTX-013 at AR2012-001112; JTX-1 at AR2010-  
16 001112. While the Supply Function includes the costs of purchasing water from wholesale water  
17 suppliers (*e.g.* DWR), MWD categorizes the costs associated with obtaining a supply of water  
18 from DWR to its supply function through its allocation of the Delta Water Charge to its Supply  
19 Rates. *Id.* This practice is consistent with RMI’s cost of service allocations.

20         Contrary to SDCWA’s assertions at the final hearing, RMI never changed its position  
21 regarding how SWP costs should be allocated. *See, e.g.*, 12/17/2013 Tr. at 53:4-54:4 (SDCWA  
22 contending that the October 1995 RMI report allocated SWP costs entirely to supply, and in its  
23 1996 Cost of Service Study RMI “changed the State Water Project from supply, after consulting  
24 with [MWD] staff, to transportation”). As explained, RMI’s October 1995 report recommended  
25 separately functionalizing SWP supply and transportation-related costs. This is entirely  
26 consistent with RMI’s May 1996 Cost of Service Study.

27         In this 1996 study, RMI continued to suggest separately allocating costs to supply and  
28

1 transportation functions. *See* DTX-133 at AR2012-016288\_1874. RMI’s functional categories  
2 consisted of a Source of Supply Function, Transmission Function (which it combined with a  
3 Distribution Function), and a Pumping Function. *Id.* RMI made clear that SWP costs should be  
4 functionalized to either the Source of Supply Function or the Transmission/Distribution  
5 Function. *Id.* at AR2012-016288\_1876. RMI clarified that “[t]wo categories [of MWD’s SWP  
6 costs] are clearly transmission-related, namely the capital charges for transmission facilities and  
7 the operations and maintenance charges for transmission facilities.” *Id.*; *see also id.* at AR2012-  
8 016288\_1904 (allocating 100% of MWD’s Delta Water Charge under the DWR Contract to the  
9 SWP Source of Supply Function, and 100% of the MWD’s Transportation Charges under the  
10 DWR Contract to the SWP Transmission/Distribution Function). SDCWA’s contention that this  
11 conclusion simply “parrot[s] . . . Met’s litigation position” is nonsensical. *See* 12/23/2013 Tr. at  
12 796:2-7. RMI issued this study over a decade before SDCWA brought these challenges. In  
13 another attempt to discredit RMI’s findings, SDCWA claims that MWD “added this ‘96 RMI  
14 report to the administrative record” simply to bolster its arguments at the final hearing.  
15 12/23/2013 Tr. at 795:19-796:1. In fact, SDCWA itself asked that the 1996 Cost of Service  
16 Study be added to the administrative record. *See* JTX-2 at AR2012-016288\_0543-0544,  
17 016288\_1796-1940 (March 12, 2012 letter from SDCWA General counsel to MWD’s Clerk of  
18 the Board requesting inclusion of, among other things, the 1996 RMI Cost of Service Study in  
19 the 2012 administrative record); 11/21/2013 SDCWA Motion to Correct the 2012 Record (to  
20 include, among other things, RMI’s 1996 Study).

21         The 2010 RFC Report (discussed earlier) further supports MWD’s SWP allocations.  
22 After a thorough evaluation, RFC found that MWD’s rates and COS methodology are reasonable  
23 and consistent with California law as well as industry best practices, including the rate guidelines  
24 in the AWWA M1 Manual. DTX-088 at AR2012-011321-011323; JTX-1 at AR2010-011321-  
25 011323. SDCWA claims that the RFC Report has the same “fatal defect” it found with the 1996  
26 RMI study: namely that it “is simply Met’s litigation position parroted back by a supposedly  
27 independent expert.” 12/23/2013 Tr. at 796:3-6. As a matter of logic, content could not have  
28



1 been included in a 1996 study in order to defend litigation that did not exist until fourteen years  
2 later, about a rate structure that took effect seven years later. Further, SDCWA's claim is based  
3 on a single email from Ms. Skillman, MWD's Manager of the Budget and Financial Planning  
4 Section, to in-house counsel suggesting draft language for Section IV of the RFC Report which  
5 sets out factual background regarding MWD's rate-setting process. *See* PTX-167 at  
6 \*MWD2010-00535413-14. As Ms. Skillman explained at the final hearing, SDCWA took her  
7 email out of context. *See* 12/20/2013 Tr. at 699:19-700:5 (Ms. Skillman explaining that she was  
8 drafting suggested "background information on the State Water Project [because RFC] needed a  
9 little bit more information than what they had at hand."). While "[p]ortions of [her draft]  
10 language ended up in the Raftelis report" in Section IV "which is background information on the  
11 cost of service," "Raftelis did not use [her] language exactly. They reviewed it and used what  
12 they wanted." *Id.* at 701:7-11, 701:22-702:1, 726:12-14. Neither Ms. Skillman, nor anyone at  
13 MWD, drafted any language for Section V of the RFC Report which sets out RFC's findings and  
14 conclusions. *See id.* at 702:8-24.

15         The documents that SDCWA relies on to undermine the reasonableness of MWD's  
16 allocating SWP transportation costs to its Transportation Rates are unpersuasive. Relying on a  
17 1969 study, SDCWA claims that all of MWD's SWP costs have "always been" entirely supply-  
18 related. 12/17/2013 Tr. at 47:18-24. While it is true that this study allocates all SWP costs to  
19 MWD's supply function, this has no bearing on the propriety of MWD's cost allocations under  
20 its current rate structure. *See* JTX-2 at AR2012-016288\_1744, 1746. The 1969 study was  
21 commissioned almost 50 years ago when MWD had not yet unbundled its rates to charge  
22 separately for transportation and supply expenses, and the study did not purport to analyze the  
23 proper allocation of such expenses. *See generally id.* at AR2012-016288\_1723. Indeed, the  
24 study noted that "[t]here are essentially two steps in a cost of service study. The first is  
25 separation of total costs into cost segments. . . . The second step is assignment of these cost  
26 segments to appropriate cost components for rate formulation." *Id.* at AR2012-016288\_1739.  
27 The study separated supply from other costs in step one, but combined "the cost[s] of producing  
28

1 and delivering water” in step two because MWD had a single “commodity component of a water  
2 rate” and not separate supply and transportation rates. *Id.* at AR2012-016288\_1739, 1750.

3 SDCWA also relies on the Uniform System of Accounts for Class A Water Utilities  
4 issued by the National Association of Regulatory Utility Commissioners (“NARUC”) as  
5 “authoritative” for the proposition that all SWP costs “must be accounted for as [supply costs].”  
6 SDCWA First Pretrial Brief at 16; *see also* 12/17/2013 Tr. at 63:3-4 (“They don’t follow  
7 NARUC with respect to classifying supply properly.”). SDCWA is correct that for accounting  
8 purposes NARUC suggests placing costs incurred at the point of delivery of water purchased for  
9 resale in a source of supply expense account. *See* JTX-2 (AR2012-016288\_1754) at 1755-1757.  
10 However, this accounting guidance is not applicable to a public water agency like MWD.  
11 NARUC is aimed at regulated utilities and is meant to act as a tool that “allows regulators to  
12 distinguish capital expenditures from operating and maintenance expenses and to separate utility  
13 activities from nonutility operations.” DTX-012 at \*68-69.

14 Moreover, it is clear from industry guidance that “rates should reflect cost causation and  
15 not be determined by replication of the fixed and variable nature of costs from an accounting or  
16 budgeting perspective.” DTX-056 at \*3; *see also* DTX-030 at AR2010-003904, 003997-3998  
17 (NARUC is “widely used by regulated utilities and *can be* modified for government-owned  
18 utilities. . . Fixed and variable charges for cost recovery in a cost-of-service water rate analysis is  
19 not the same as recovering fixed and variable costs from an accounting standpoint.”) (emphasis  
20 added); JTX-2 at AR2012-003904, 003997-98. Contrary to SDCWA’s contention that the  
21 Raftelis textbook mandates use of NARUC in MWD’s COS (SDCWA First Pretrial Brief at 16),  
22 Raftelis simply suggested that if utilities choose to follow the NARUC chart of accounts, they  
23 could use it to identify costs by functional category. *See* DTX-134 at AR2012-016288\_5292.  
24 Raftelis went on to state that if the utility’s accounting system does not provide the breakdown  
25 offered by NARUC, it may “develop allocations using appropriate bases.” *Id.*

26 SDCWA’s observation that MWD has stated that its functional categories are consistent  
27 with AWWA and NARUC in its COS studies is inconsequential. *See, e.g.*, 12/20/2013 Tr. at  
28

1 733:7-11. MWD’s COS studies do not state that MWD strictly follows NARUC, and they  
2 explain that “because all water utilities are not identical, the rate structure reflects Metropolitan’s  
3 unique physical, financial, and institutional characteristics.” DTX-090 at AR2010-011474; JTX-  
4 2 at AR2012-011474; DTX-110 at AR2012-016681. As Ms. Skillman testified, “[MWD has]  
5 taken the NARUC service functions and adjusted them to meet Metropolitan’s unique  
6 circumstances” because NARUC “doesn't really fit precisely Metropolitan's own circumstances.”  
7 12/20/2013 Tr. at 733:12-18; *see also* PTX-168 at \*MWD2010-00181621 (Ms. Skillman  
8 explaining why NARUC is inapplicable to a water agency such as MWD).

9  
10 **B. The Evidence Shows That Allocating The Water Stewardship Rate To  
MWD’s Transportation Rates Is Reasonable**

11 **1. The Demand Management Programs That The Water Stewardship  
12 Rate Recovers The Costs Of Funding Provide Regional  
13 Transportation-Related Benefits**

14 As explained above, the Water Stewardship Rate recovers the costs of funding demand  
15 management programs. DTX-045 at AR2012-006519; JTX-1 at AR2010-006519; DTX-090 at  
16 AR2010-011492; JTX-2 at AR2012-011492; DTX-110 at AR2012-016697; 12/20/2013 Tr. at  
17 565:7-10. Specifically, MWD’s demand management programs are the Local Resources  
18 Program, which provides incentives for recycled water and groundwater recovery facilities; the  
19 Seawater Desalination Program, which provides incentives for member agencies to develop  
20 facilities to desalinate seawater; and the Conservation Credits Program, through which MWD  
21 incentivizes installing water-efficient devices throughout its service area. *See, e.g.*, DTX-027 at  
22 AR2012-002868-002873; JTX-1 at AR2010-002868-002873; JTX-2 (AR2012-016429) at  
23 AR2012-016496, 016519. While SDCWA argues that it is inappropriate for MWD to allocate  
24 the Water Stewardship Rate to MWD’s Transportation Rates, the evidence below demonstrates  
25 that MWD’s allocation of the Water Stewardship Rate is reasonable because the demand  
26 management programs create significant transportation-related benefits. *See* 12/17/2013 Tr. at  
27 151:18-23, 155:10-12.

28 **a. Costs Recovered Through The Water Stewardship Rate Help  
Avoid Or Defer Transportation-Related Capital Expenses**

1 First, the demand management programs reduce or defer MWD's transportation-related  
2 capital expenditures. *See, e.g.*, DTX-090 at AR2010-011511 ("Investments in demand side  
3 management programs like conservation, water recycling and groundwater recovery . . . help  
4 defer the need for additional conveyance, distribution, and storage facilities."); JTX-2 at  
5 AR2012-011511. SDCWA's contention that this is an empty assertion because MWD has never  
6 evaluated how its demand management programs affect its capital infrastructure requirements is  
7 wrong. 12/17/2013 Tr. at 58:11-17 (SDCWA claiming that MWD has "never calculated the  
8 benefit to its service region generally or to its conveyance system from all of the Water  
9 Stewardship Rate funded projects in the aggregate. It just hasn't looked at it.").

10 MWD's distribution system transports water across a large part of the State, delivers  
11 water in six counties, and serves an area home to 19 million residents. DTX-109 at AR2012-  
12 016583. In order to determine whether to incur capital costs to expand this system, MWD  
13 prospectively evaluates anticipated demand scenarios and whether anticipated demands are likely  
14 to exceed, or come close to exceeding, parts of its system. *See* 12/20/2013 Tr. at 574:12-19  
15 (Upadhyay testimony); *see also* DTX-020 at AR2012-001520-001657; JTX-1 at AR2010-  
16 001520-001657.

17 For example, in 1996, MWD conducted an intensive study to determine its future demand  
18 scenarios and corresponding infrastructure requirements. *See generally* DTX-018\*; DTX-019;  
19 JTX-1 at AR2010-001406-001519; DTX-020; JTX-1 at AR2010-001520-001657. Specifically,  
20 MWD evaluated two scenarios: a "base case," under which no demand management programs  
21 were in place, and a "preferred case," under which demand management program were in place.  
22 *See* DTX-018 at \*MWD2010-00465826-00465828, 00465831-00465836; 12/20/2013 Tr. at  
23 566:13-567:24 (Upadhyay testimony).

24 Under the base case, MWD identified several distribution facilities that it would need to  
25 incur capital costs to create or expand, including the Central Pool Augmentation Project, San  
26 Diego Pipeline No. 6, and the West Valley Interconnection. *See* DTX-018 at \*MWD2010-  
27 00465828; 12/20/2013 Tr. at 568:1-21 (Upadhyay testimony); *see also* DTX-020 at AR2012-  
28

1 001653-001657; JTX-1 at AR2010-001653-001657. MWD compared the base and preferred  
2 cases and determined that demand management programs would decrease demand, thereby  
3 reducing the amount of water needing to travel through MWD's system, and leading to around a  
4 \$2 billion savings in capital infrastructure costs. DTX-018 at \*MWD2010-00465836;  
5 12/20/2013 Tr. at 568:22-569:12 (Upadhyay testimony).

6 MWD also quantified how its anticipated capital expenses relate to demand on MWD's  
7 system in its 1996 Integrated Resources Plan ("IRP"). *See generally* DTX-020; JTX-1 at  
8 AR2010-001520-001657. In the 1996 IRP, MWD performed a sensitivity analysis to assess  
9 whether changes in future demands would impact the need for additional or expanded  
10 distribution facilities. DTX-020 at AR2012-001655-001657; JTX-1 at AR2010-001655-001657;  
11 12/20/2013 Tr. at 571:25-572:10 (Upadhyay testimony). The conclusion was that a 5%  
12 increase/decrease of demand had a correlative effect on when MWD would need to incur capital  
13 infrastructure costs. DTX-020 at AR2012-001655-001657; JTX-1 at AR2010-001655-001657;  
14 12/20/2013 Tr. at 571:25-573:16 (Upadhyay testimony). For example, MWD determined that  
15 with a 5% decrease in demand, it could defer building the San Diego Pipeline No. 6 and the  
16 Central Pool Augmentation Project, both of which are distribution facilities. DTX-020 at  
17 AR2012-001655-001657; JTX-1 at AR2010-001655-001657; 12/20/2013 Tr. at 573:6-16  
18 (Upadhyay testimony). MWD has in fact been able to defer both of these projects because  
19 demand management programs have effectively decreased demand on MWD's system.  
20 12/20/2013 Tr. at 573:17-574:3 (Upadhyay testimony). Since these 1996 studies, MWD has  
21 continued to review projections of demand and compare those projections to the capacity MWD  
22 has in its system to determine if it needs to expand its distribution facilities. 12/20/2013 Tr. at  
23 574:4-11 (Upadhyay testimony).

24 As demonstrated, MWD's ability to defer or avoid capital expenditures is directly related  
25 to reduced demand on MWD's distribution system. MWD's demand management programs,  
26 which the Water Stewardship Rate recovers the costs of funding, are designed to, and do, cause  
27 this reduced demand. *See* DTX-045 at AR2012-006519 ("Investments in conservation and  
28

1 recycling decrease the region’s overall dependence on imported water supplies”); JTX-1 at  
2 AR2010-006519; 12/20/2013 Tr. at 588:24-589:1 (“That’s ultimately what [MWD is] paying for  
3 is for a reduction in demand for imported water from [MWD’s] system.” (Upadhyay testimony));  
4 DTX-027 at AR2012-002870 (the first key goal of MWD’s Local Resources Program is to  
5 “avoid or defer MWD capital expenditures”); JTX-1 at AR2010-002870; 12/20/2013 Tr. at  
6 578:22-580:11 (Upadhyay testimony stating that MWD adopted the Local Resources Program  
7 principles and they remain in effect today); DTX-518 at \*MWD2010-00466049 (Board  
8 identifying regional benefits associated with the Local Resources Program, including reduction  
9 in capital investments due to deferral and downsizing of regional infrastructure and reduction in  
10 operating costs for distribution of imported supplies); 12/20/2013 Tr. at 580:17-581:21  
11 (Upadhyay testimony that MWD adopted the Local Resources Program as described in DTX-  
12 518); DTX-527 at \*MWD2010-00469807 (the first key goal of MWD’s Seawater Desalination  
13 Program is to “avoid or defer MWD capital expenditures”); 12/20/2013 Tr. at 583:16-585:1  
14 (Upadhyay testimony stating that MWD’s Seawater Desalination Program results in similar  
15 benefits to the Local Resources Program, including its key goals, and MWD’s Board adopted the  
16 Program).

17         The reduced demand resulting from these programs is documented. *See* JTX-2 (AR2012-  
18 016429) at 016519 (MWD’s 2010 IRP estimates that 1,037,000 acre-feet of water will be  
19 conserved annually in southern California by 2025 due to MWD’s Conservation Credits  
20 Program). On an annual basis MWD is required to report to the Legislature the effect its demand  
21 management programs have on decreasing demands on MWD’s system. *See, e.g.*, DTX-454\*  
22 (Senate Bill 60 (“SB-60”) Report for fiscal year 2011/12); 12/20/2013 Tr. at 601:5-18  
23 (Upadhyay testimony). These reports quantify the number of acre-feet of water MWD was able  
24 to avoid transporting to its member agencies in a particular year as a result of its demand  
25 management programs. DTX-454 at \*MWD2010-00310322; 12/20/2013 Tr. at 601:19-603:15  
26 (Upadhyay testimony). MWD calculates the effect demand management programs have by  
27 comparing the actual demand in a given year to the amount of reduced demand quantified in its  
28

1 SB-60 Reports. 12/20/2013 Tr. at 601:19-603:15 (Upadhyay testimony). For instance, in fiscal  
2 year 2011/12, MWD would have had to transport over 20% more water through its system  
3 without its demand management programs. *Id.*; *see also id.* at 603:16-605:19 (Upadhyay  
4 testimony explaining that the 20% figure is conservative because the Conservation Credits  
5 Program actually reduces demand more than is reflected in the SB-60 Reports). A 20% decrease  
6 in demand is significant in light of the fact that MWD determined that a 5% decrease in demand  
7 would result in a substantial avoidance of capital expenditures in its 1996 IRP. *See* DTX-020 at  
8 AR2012-001655-001657; JTX-1 at AR2010-001655-001657; 12/20/2013 Tr. at 605:20-606:8  
9 (Upadhyay testimony).

10 As demonstrated, contrary to SDCWA's claims, MWD *has* quantified the amount that its  
11 demand management programs reduce demand on its system, and it has also quantified the effect  
12 reduced demand has on its need to expand its distribution facilities. SDCWA further takes issue  
13 with the fact that MWD does not link every demand management program to a particular  
14 conveyance-related benefit. *See* 12/17/2013 Tr. at 58:8-11. However, as Mr. Upadhyay  
15 explained, this sort of retrospective calculation would be illogical given the prospective nature of  
16 MWD's rate-setting process. *See* 12/20/2013 Tr. at 606:9-607:4 (MWD does not retrospectively  
17 determine the capital facilities it would have had to build in the absence of demand management  
18 programs because its determination whether it needs to build out system capacity is a forward-  
19 looking decision (Upadhyay testimony)); *see also* DTX-020; JTX-1 at AR2010-001520-  
20 0016587.

21 For the same reason, MWD also does not quantify the specific deferred or avoided capital  
22 costs related to each particular demand management program. *Id.* Some such programs reduce  
23 demand by only a few hundred acre-feet and it would be expensive and likely impossible for  
24 MWD to expend the resources to try and link every few hundred acre-feet reduction in demand  
25 to a specific reduction in capital costs. *See, e.g.*, PTX-181 at \*MWD2010-00461607 (request for  
26 Local Resource Program funding from LADWP for proposed recycled water distribution project  
27 which would provide up to 150 acre-feet per year of new recycled water for landscape irrigation  
28

1 and industrial use). The cumulative effect of the demand management programs is what matters,  
2 and MWD quantifies and reports the number of acre-feet of water that has been developed or  
3 conserved. See DTX-442\* through DTX-454\* (MWD’s annual progress reports to the  
4 California Legislature (SB-60 reports) for 2001 through 2013). Moreover, the California Court  
5 of Appeal has held that rate-making does not require a water agency to conduct a “parcel-by-  
6 parcel proportionality analysis.” *Griffith II*, 220 Cal. App. 4th at 601; see also *Cal. Farm*  
7 *Bureau*, 51 Cal.4th at 438.

8           Despite arguing that this Court should order MWD to “go back and . . . do it right by  
9 taking the Water Stewardship Rate out of the transportation cost” because SDCWA claims it is  
10 more appropriately allocated to MWD’s Supply Rates, SDCWA itself has acknowledged the  
11 regional, transportation-related benefits of MWD’s demand management programs. See  
12 12/23/2013 Tr. at 809:21-23. For instance, when SDCWA proposed a seawater desalination  
13 facility to be funded under MWD’s Seawater Desalination Program, it described the benefits of  
14 the proposed project as being regional, and including “deferral of the Authority’s need for  
15 Pipeline 6, thereby reducing or deferring Metropolitan’s capital expenditures.”<sup>23</sup> DTX-704 at  
16 \*17; see also DTX-020 at AR2012-001655-001657 (the 1996 Integrated Resources Plan  
17 identified the San Diego Pipeline No. 6 as a distribution facility that could be deferred as a result  
18 of decreased demand); JTX-1 at AR2010-001655-001657. Later, when seeking approval for the  
19 project in 2010, SDCWA represented to the California Coastal Commission that the project was  
20 “expected to reduce MWD’s and the San Diego County Water Authority’s demand for imported  
21 water in an amount equal to the project’s production. This is similar to the regional benefit from  
22 new recycling projects, groundwater recovery projects and water use efficiency gains developed  
23 under MWD’s and the Water Authority’s longstanding local resource and conservation programs.  
24 [And MWD’s Seawater Desalination Program generally would help avoid] distribution system  
25

26 <sup>23</sup> MWD initially approved SDCWA’s Carlsbad Seawater Desalination Project, but it never went  
27 into effect because SDCWA changed the terms of the contract and did not re-submit it to  
28 MWD’s Board after having triggered the Rate Structure Integrity clause by bringing the *2010*  
*Action*. 12/20/2013 Tr. at 591:9-592:7 (Upadhyay testimony).



1 expansion.” DTX-085 at \*MWD2010-00236446-00236447.

2 **b. Costs Recovered Through the Water Stewardship Rate**  
3 **Increase System Capacity**

4 The second transportation-related benefit from MWD’s demand management programs is  
5 the increased capacity the programs makes available to all system users. As Mr. Upadhyay  
6 explained at the final hearing, even if MWD does not “have to expand the system, the fact that  
7 there is a reduced need to move the water through the system means that there is net capacity to  
8 the system that wouldn’t have been there otherwise.” 12/20/2013 Tr. at 607:17-24; *see also*  
9 DTX-045 at AR2012-006519 (Due to MWD’s demand management programs, “more capacity is  
10 available in existing facilities for a longer period of time. The capacity made available by  
11 conservation and recycling is open to *all system users* and can be used to complete water  
12 transfers.”) (emphasis added); JTX-1 at AR2010-006519; JTX-2 (AR2012-016429) at AR2012-  
13 016519 (“All users of Metropolitan's system benefit from the system capacity made available by  
14 investments in demand management programs. . . .”); *see also* 12/20/2013 Tr. at 589:3-11  
15 (Upadhyay testimony that the “ultimate” benefit MWD receives from demand management  
16 programs is “the reduced need for water to move through [its] system. Whether it is the [MWD]  
17 supply or supply someone else acquires and moves through [MWD’s] system, the benefit that the  
18 system is receiving is reduced capacity.”).

19 SDCWA has argued that the Water Stewardship Rate is inappropriately allocated to  
20 MWD’s Transportations Rates because MWD has not shown that its capacity is constrained, and  
21 therefore any reduced demands from MWD’s demand management programs can only lead to a  
22 supply-related benefit. *See* 12/23/2013 Tr. at 812:18-24. SDCWA is mistaken. As Mr.  
23 Upadhyay testified, despite reduced demand, “portions of [MWD’s] system, even in [the] period  
24 since 2008 [] were operated at capacity for times of the year.” 12/20/2013 Tr. at 649:11-13; *see*  
25 *also* 12/19/2013 Tr. at 526:11-527:6 (Yamasaki testimony giving two examples of capacity  
26 constraints, including the Rialto Feeder which is a pipeline in MWD’s northeast end of its  
27 system, and San Diego Pipeline 3 and 5, which deliver untreated water to SDCWA and the  
28

1 Riverside area). Moreover, as discussed above in Section V.A.1, DWR has been considering  
2 expanding the East Branch of the SWP for over 20 years due to capacity constraints. *See also*  
3 12/20/2013 Tr. at 575:9-577:10 (Upadhyay testimony); *see also* JTX-2 (AR2012-016429) at  
4 AR2012-016561. To date, DWR has not had to expand the East Branch, which MWD attributes  
5 in part to its “demand projections [being] low enough that . . . the Department of Water  
6 Resources can hold off on proceeding with additional design and engineering work for the  
7 expansion.” 12/20/2013 Tr. at 576:15-23 (Upadhyay testimony); *see also* JTX-2 (AR2012-  
8 016429) at AR2012-016561. Despite this, MWD believes DWR and the SWP contractors  
9 should “continue monitoring on an ongoing basis and if conditions change, [they] may need to  
10 move forward.” 12/20/2013 Tr. at 576:17-23. Because MWD is “by far the largest contractor in  
11 that reach of the [East Branch, MWD] would likely need to pay about 70% of the costs were it to  
12 be expanded.” *Id.* at 576:5-9.

13 In sum, it is reasonable for MWD to allocate the Water Stewardship Rate to its  
14 Transportation Rates because it recovers the costs of funding programs that provide extensive  
15 transportation-related benefits to MWD’s system and its users. At the final hearing Mr.  
16 Upadhyay made the distinction between supply-related and transportation-related benefits clear  
17 when he testified that “Supply rates . . . are there to recover the costs of supplies, facilities,  
18 programs that *develop supplies* that [MWD] is then able to move through [its] system and sell to  
19 [its] customers to generate revenue.” *Id.* at 608:3-7 (emphasis added). He further explained that  
20 “demand management programs do not *produce supply* that [MWD] is able to move through its  
21 system. In fact, what [MWD is] paying for is a reduction in demand in [its] imported system.”  
22 *Id.* 608:8-11 (emphasis added). As explained, this reduced demand helps MWD avoid or defer  
23 incurring capital costs to build or expand its distribution facilities. Since the costs MWD is able  
24 to avoid incurring because of demand management programs are transportation-related, then the  
25 rate that recovers the costs of funding those programs (the Water Stewardship Rate) is also  
26 transportation-related. Conversely, had the costs not been avoided—*i.e.*, had MWD not followed  
27 the “preferred case” of instituting demand management programs—then the costs MWD  
28

1 incurred to build, repair, and expand its transportation infrastructure would have been paid  
2 through MWD's Transportation Rates.

3 Finally, SDCWA's focus on a recommendation one of MWD's consultants made nearly  
4 15 years ago that the Water Stewardship Rate could be allocated 50% to supply and 50% to  
5 transportation carries no weight. *See, e.g.*, 12/17/2013 Tr. at 57:4-13 (referencing a 1999 report  
6 from Raftelis to MWD). First, this was simply a recommendation to be considered by MWD's  
7 Board, not a statement that such an allocation was required or that other allocations would be  
8 unreasonable. Second, as established, the demand management programs provide substantial  
9 transportation-related benefits. And third, there is no one "correct" way to develop water rates.  
10 *See* DTX-030 at AR2010-003963 ("The process of selecting the most appropriate rate structure  
11 for a particular utility is not simple. The selection is complex because there are so many types of  
12 rate structures. No one rate structure meets all utility objectives."); JTX-2 at AR2012-003963.  
13 MWD's allocation of the Water Stewardship Rate may be one of several reasonable options.  
14 However, because MWD has demonstrated that the Water Stewardship Rate recovers  
15 transportation-related costs, it is therefore reasonably allocated to MWD's Transportation Rates.

16 **2. The Water Stewardship Rate Properly Collects The Costs Of Funding**  
17 **Demand Management Programs**

18 SDCWA contends that it should not be responsible for the costs associated with MWD's  
19 demand management programs because it does not directly benefit from them. *See* 12/17/2013  
20 Tr. at 60:1-7 (SDCWA stating that it pays the "Water Stewardship Rate each year and get[s]  
21 absolutely nothing for it"). SDCWA either misrepresents or misunderstands how the demand  
22 management programs are designed. "The demand management programs are not designed to  
23 simply take money from the member agencies and provide the exact amount of money back. . .  
24 Our program is designed on a regional basis, and the member agencies and the [MWD] Board  
25 have determined that agencies that may not have a project in their backyard are benefitting from  
26 projects that are occurring in the agencies' service areas, because it frees up capacity in  
27 [MWD's] system and reduces the need for additional supplies that might need to be developed in  
28

1 the future.” 12/20/2013 Tr. at 593:10-594:6 (Upadhyay testimony).

2 MWD is specifically mandated by California law to expand and incentivize the  
3 development of local water supplies and water conservation within its service area. MWD Act §  
4 130.5. The California Legislature also has directed that “The state shall achieve a 20-percent  
5 reduction in urban per capita water use in California on or before December 31, 2020,” and  
6 required wholesale water suppliers (like MWD) to have urban water management plans with  
7 measures, programs, and policies to help achieve this required water use reduction. Cal. Water  
8 Code §§ 10608.16, 10608.36. *See also* DTX-045 at AR2012-006519-006520; JTX-1 at  
9 AR2010-006519-006520; 12/20/2013 Tr. at 564:4-565:4 (Upadhyay testimony). Allocating the  
10 costs the Water Stewardship Rate recovers to supply would permit entities that use MWD’s  
11 facilities only for transportation to evade the costs associated with MWD’s legal mandates.

12 MWD recognizes that “not everyone has the same capability to develop [local  
13 resources],” but it has determined that everyone should still pay the Water Stewardship Rate  
14 because all system users benefit from the demand management programs. *See* 12/20/2013 Tr. at  
15 593:10-594:6 (Upadhyay testimony); DTX-045 at AR2012-006519 (“Investments in [demand  
16 management programs] decrease the region’s overall dependence on imported water supplies . . .  
17 Similar to public benefit charges in the electric industry, the regional and state-wide benefits of  
18 demand management programs are assessed to all users of the [MWD] system.”); JTX-1 at AR-  
19 2010-006519; DTX-109 at AR2012-016590 (“All users . . . benefit from the system capacity  
20 made available by investments in demand management programs. . . These projects and  
21 programs provide regional benefits to improve regional reliability. It is fair and reasonable to  
22 assess the [Water Stewardship Rate] to all users of the [MWD] system.”); 12/20/2013 Tr. at  
23 589:3-11 (Upadhyay testimony that the “ultimate” benefit MWD receives from demand  
24 management programs is “the reduced need for water to move through [its] system. Whether it  
25 is the [MWD] supply or supply someone else acquires and moves through [MWD’s] system, the  
26 benefit that the system is receiving is reduced capacity, the capital deferral, . . . the notion that  
27 [MWD doesn’t] need to necessarily go out and acquire additional supplies. Those are all  
28

1 regional benefits.”).

2 SDCWA has acknowledged the regional, transportation-related benefits from the demand  
3 management programs, at the final hearing and in its own requests to participate in such  
4 programs. *See* 12/23/2013 Tr. at 792:19-21 (SDCWA stating that MWD’s “local resources  
5 programs, conservation, and desalination programs . . . are primarily about creating local supply  
6 and regional benefits”); DTX-704 at \*17; DTX-085 at \*MWD2010-00236446-00236447.

7 Indeed, SDCWA is arguably the largest member agency beneficiary of the capital costs MWD is  
8 able to avoid due to the demand management programs. As explained, if MWD had to incur  
9 additional capital costs to expand its distribution system (which the demand management  
10 programs the Water Stewardship Rate funds help MWD defer or avoid), those costs would be  
11 recovered through the System Access Rate (one of MWD’s volumetric Transportation Rates).  
12 DTX-045 at AR2012-006518; JTX-1 at AR2010-006518; DTX-090 at AR2010-011492; JTX-2  
13 at AR2012-011492; DTX-110 at AR2012-016697; 12/20/2013 Tr. at 607:9-12 (Upadhyay  
14 testimony). Because the System Access Rate is volumetric (*i.e.*, it increases with the amount of  
15 water purchased), and SDCWA is the largest purchaser of MWD water, if MWD was not able to  
16 defer or avoid capital costs, SDCWA would pay the highest percentage of those costs. *See* DTX-  
17 090 at AR2010-011492; JTX-2 at AR2012-011492; DTX-110 at AR2012-016697; 12/18/2013  
18 Tr. at 347:21-22 (Denham testimony).

19 Moreover, any implication that SDCWA is uniquely situated with regard to the Water  
20 Stewardship Rate is disingenuous. First, all member agencies pay the Water Stewardship Rate,  
21 even if they receive no funding for a particular demand management program. *See* 12/20/2013  
22 Tr. at 561:2-9 (Upadhyay testimony referencing at least four member agencies who receive no  
23 Local Resources Program funding but who nevertheless pay the full Water Stewardship Rate).  
24 Second, SDCWA has received, and continues to receive, demand management program  
25 funding.<sup>24</sup> 12/20/2013 Tr. at 594:7-597:10 (Through June of 2013, SDCWA has received around  
26

27 <sup>24</sup> While MWD staff recommended that MWD terminate all demand management programs with  
28 SDCWA that included the Rate Structure Integrity provision, once the Rate Structure Integrity  
provision was triggered, MWD’s Board did not adopt this recommendation. Instead, it decided

1 \$114 million in demand management funding through MWD’s Conservation Credits Program  
2 and Local Resources Program. Approximately 14 of SDCWA’s Local Resources Programs are  
3 currently active, and are eligible to receive around \$7 million a year in funding). Indeed, even  
4 after SDCWA triggered the Rate Structure Integrity clause, SDCWA remained among the  
5 highest recipients of demand management program funding. *See* PTX-214 at \*SDCWA2010-  
6 2012-00033987 (chart SDCWA created from data provided by MWD demonstrating that in 2010  
7 SDCWA was the third highest recipient of demand management program funding); *see also*  
8 12/18/2013 Tr. at 283:19-284:2 (SDCWA explaining the origins of PTX-214).

9 Even if SDCWA received no demand management program funding at all, which as  
10 explained, it does, California law allows for charges that take into consideration system-wide  
11 benefits. *See Griffith II*, 220 Cal. App. 4th at 600-02; *cf. MWD v. IID*, 80 Cal. App. 4th at 1427.  
12 In *Griffith II*, citizens brought action against a regional water management agency to challenge  
13 an ordinance that increased groundwater augmentation charges for the operation of wells. The  
14 citizens argued that the amount they were charged for operation of the wells was  
15 disproportionate under Proposition 218 because they did not use the services the charges were  
16 intended to provide. *Id.* at 600-02. The court rejected the citizens’ arguments that only property  
17 owners actually receiving water from the wells should be charged for their operation because it  
18 determined that operation of the wells was part of an overall system objective of managing water  
19 resources, which provided a benefit to “all water users.” *Id.* In so holding, the court stated that  
20 establishing the charge based on a prospective revenue requirement does not “offend[]”  
21 proportionality. *Id.*

22 SDCWA’s argument that MWD is legally prohibited from tying its rates to conservation  
23 goals is meritless. 12/23/2013 Tr. at 811:6-812:9 (SDCWA citing *City of Palmdale v. Palmdale*  
24 *Water Dist.*, 198 Cal. App. 4th 926, 937-38 (2011)). In *Palmdale*, the court held that the Water  
25 District failed to meet its proportionality burden under Proposition 218 because it imposed

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26  
27 to terminate only two Local Resources Program contracts, and to preserve the Conservation  
28 Credit Programs that provide incentives to residents and businesses in SDCWA’s service area.  
12/20/2013 Tr. at 595:8-20 (Upadhyay testimony).

1 different water rates for different users “without identify[ing] any support in the record for the  
2 inequality” and did not even attempt to provide “any explanation for this disparity.” *Palmdale*,  
3 198 Cal. App. 4th at 936. In contrast, MWD does not have different water rates for different  
4 users; it has uniform rates for all users. Moreover, as demonstrated above, *Palmdale* is  
5 inapposite because MWD has explicitly identified how (1) its demand management programs  
6 reduce demand on its system, (2) how this reduced demand results in the reduction of  
7 transportation-related costs, and (3) how this reduced demand produces transportation-related  
8 benefits that all users of MWD’s system receive, including SDCWA. Contrary to *Palmdale*,  
9 *Griffith II* is directly on point and sanctions MWD allocating the Water Stewardship Rate to all  
10 system users through its Transportation Rates.

11 SDCWA has also argued that the Water Stewardship Rate inappropriately fails to recover  
12 the entire cost of funding demand management programs. 12/18/2013 Tr. at 285:22-287:3  
13 (SDCWA focusing on two instances (documented outside of the administrative record) in which  
14 the Water Stewardship Rate failed to recover the costs of funding the demand management  
15 programs by between \$20 and \$40 million and claiming that the unrecovered costs were “spread  
16 over [MWD’s] other rates.”). However, by the very nature of MWD’s prospective rate-setting  
17 practice, it is “natural” that MWD will “never get the exact water sales that [it] would expect.”  
18 12/20/2013 Tr. at 599:25-600:9 (Upadhyay testimony); *see also* DTX-090 at AR2010-011467,  
19 011472-011482 (explaining MWD’s prospective rate-setting process); JTX-2 at AR2012-  
20 011467, 011472-011482; DTX-110 at AR2012-016674, 016679-016687 (same). And, as Mr.  
21 Upadhyay testified at the final hearing, the years SDCWA pointed to were outliers. 12/20/2013  
22 Tr. at 597:24-599:8 (Upadhyay testimony explaining that the \$20-\$40 million under-collection  
23 was the largest discrepancy that he could recall and was unusual because MWD was  
24 experiencing a significant drought in those years and spent a large amount of money on an  
25 extensive media campaign designed to reduce water use during that time). Mr. Upadhyay  
26 testified that 2010-11, in which there was a \$1.6 million discrepancy, represented a more typical  
27 variance between the costs the Water Stewardship Rate are intended to recover and those it  
28

1 actually does recover. 12/20/2013 Tr. at 599:15-600:14; DTX-702 at \*MWD2010-00181170.

2 Further, Mr. Upadhyay explained that *all* of MWD’s rates at times under-collect the  
3 revenue needed to pay for associated costs because they are set at MWD’s *estimated* costs. *See*  
4 12/20/2013 Tr. at 599:9-14 (Upadhyay testimony). When any rate under-collects the revenue  
5 needed to pay for associated costs, MWD pays for the discrepancy from its existing funds. *Id.* If  
6 MWD under-collects one year, MWD is able to use its existing funds to make up the difference.  
7 *See* 12/20/2013 Tr. at 641:10-16 (Upadhyay testimony).

8 As explained above, California case law specifically sanctions the approach of  
9 prospectively determining revenue requirements and setting rates based on this estimate.  
10 Specifically, in *Griffith II* the court rejected plaintiff’s argument that defendant “improperly  
11 ‘worked backwards’” by following a prospective revenue-requirement model like the one MWD  
12 follows. 220 Cal. App. 4th at 600-01; *see also Griffith I*, 207 Cal. App. 4th at 996 (holding that  
13 revenue requirements can be “estimated” or determined prospectively); *Cal. Farm Bureau*, 51  
14 Cal. 4th 421, 436-38 (2011) (same); *San Diego Gas & Electric Co. v. San Diego County Air*  
15 *Pollution Control Dist.*, 203 Cal. App. 3d 1132, 1145–46 (1988) (same).

16 Finally, to the extent that SDCWA purports to challenge MWD’s Water Stewardship  
17 Rate on any ground other than that it should be allocated to supply, the challenge fails because it  
18 was never pled in the *2010* or *2012 Actions*. This includes SDCWA’s erroneous arguments that  
19 SDCWA’s Water Stewardship Rate payments to MWD must equal MWD’s demand  
20 management payments to SDCWA, and that MWD must calculate the monetary benefit of each  
21 demand management program. *See Schweitzer*, 157 Cal. App. 4th at 1214 (“It is axiomatic that  
22 ‘[t]he pleadings establish the scope of an action and, absent an amendment to the pleadings,  
23 parties cannot introduce evidence about issues outside the pleadings.’”).

24 **C. The Evidence Shows That MWD’s Rate For Wheeling Service Is Reasonable**

25 **1. The Basis For MWD’s Rate For Wheeling Service Is Reasonable.**

26 The basis and methodology for MWD’s current rate for wheeling service that is set forth  
27 in Administrative Code Sections 4119 and 4405 is contained in the 1997 Resolution 8520. As  
28



1 both parties have pointed out, from 1997 through the present, MWD’s rate for wheeling service  
2 has recovered MWD’s SWP transportation costs (minus power costs) and the costs to incentivize  
3 local resource development programs. 12/17/2013 Tr. at 15:4-8, 27:11-31:22, 153:20-25  
4 (SDCWA opening statement); 12/17/2013 Tr. at 129:23-24 (MWD opening statement); DTX-  
5 680 at AR2012-002449; JTX-1 at AR2010-002449. In developing its rate for wheeling service,  
6 MWD disaggregated its costs for the first time in its rate design history. DTX-680 at AR2012-  
7 002461; JTX-1 at AR2010-002461. The methods it used to do so were developed by an  
8 independent consultant,<sup>25</sup> and were reviewed by MWD staff with over 20 years of combined  
9 experience in preparing COS studies and rates, and by outside counsel with extensive experience  
10 in industries well-versed in cost disaggregation. *Id.*

11 When disaggregating its costs, MWD recognized that “[t]hrough its governance structure,  
12 Metropolitan’s member agencies have undertaken substantial financial commitments on behalf  
13 of the entire service area.” DTX-680 at AR2012-002457; JTX-1 at AR2010-002457. These  
14 financial commitments can be categorized as either avoidable or unavoidable. Avoidable costs  
15 are those costs that vary with the volume of water sold, and unavoidable costs are those costs  
16 which do not vary with the volume sold—that is, they are system-wide costs MWD must incur  
17 regardless of the amount of water purchased by member agencies. *Id.* at 002459, 002466.  
18 MWD also recognized that while the majority of its costs were unavoidable (*i.e.*, fixed costs  
19 incurred by providing *both* full service and wheeling service), the majority if its revenues were  
20 collected through volumetric rates (*i.e.*, those that vary depending on the amount of MWD water  
21 purchased and thus are incurred by providing full service *only*). *Id.* at 002457-58.

22 In order to ensure that both full-service users and wheelers are ultimately held  
23 responsible for their respective costs, MWD determined that if a member agency purchasing  
24 MWD water “pays for the fixed, unavoidable costs of the system . . . then member agencies  
25 using that same system for wheeling must contribute to [MWD’s] fixed costs on an equivalent  
26

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27 <sup>25</sup> The methodology used to disaggregate MWD’s costs is set forth in RMI’s 1996 COS study  
28 discussed in Section V.C.1, above.

1 basis.” *Id.* MWD also determined that this principle is consistent with the San Pedro Integrated  
2 Resources Plan Assembly Statement “that wheeling should not result in adverse impacts to the  
3 rates and charges of any member agency.” *Id.* at 002458. In other words, MWD properly  
4 recognized that member agencies that wheel would gain an unfair subsidy if they did not have to  
5 pay for the costs that they caused MWD to incur, or for the benefits they received from MWD’s  
6 system, as a result of MWD’s fixed, unavoidable costs.

7 MWD developed the following steps to design its wheeling rate: (1) determine the  
8 revenues necessary to be recovered through full service sales and wheeling service; (2)  
9 disaggregate costs into the major functions, or services, provided; (3) determine whether the  
10 costs are unavoidable or avoidable; and, (4) calculate the appropriate rate for wheeling service.  
11 *Id.* at 002458. As part of this process, MWD functionalized SWP costs into both supply and  
12 transportation (*i.e.*, Transmission). *Id.* at 002460. MWD categorized as supply the Delta Water  
13 Charge as identified on the DWR’s Statement of Charges. *Id.* at 002463. MWD categorized as  
14 Transmission the transportation expenses as identified on the DWR’s Statement of Charges. *Id.*  
15 at 002464. Because MWD incurred the Transmission costs for transportation-only services,  
16 MWD categorized these as unavoidable. *Id.* In determining what the appropriate wheeling rate  
17 would be, MWD determined that including unavoidable costs in its cost was “appropriate as it  
18 will prevent wheeling by a member agency from financially harming another member agency  
19 who is not part of the transaction.” *Id.* at 002467. MWD went on to explain what financial  
20 harm meant: “To the extent a member agency can avoid its fair share of [MWD’s] unavoidable  
21 costs through wheeling, [MWD] has no alternative other than to shift these costs to [its full  
22 service users].” *Id.* In other words, MWD did not want its full service customers to subsidize  
23 the costs that equitably should be borne by wheelers.

24 One of SDCWA’s major themes at the final hearing was that MWD’s rate for wheeling  
25 service is improper because it is based on the San Pedro principle that wheeling should not result  
26 in financial harm to non-wheelers, which SDCWA claims is illegal. *See, e.g.*, 12/17/2013 Tr. at  
27 16:20-17:3 (SDCWA called the San Pedro principle “the most important constraint on pricing  
28

1 [MWD's] wheeling services"); *id.* at 38:16-20, 40:4-6. Interestingly, this is a theory that  
2 SDCWA never articulated before, not in any of its Petitions/Complaints and not even in its  
3 Pretrial Briefs. SDCWA argued at the final hearing that MWD's objective in designing its rate  
4 for wheeling service was to set that rate high enough to ensure full service rates would not have  
5 to increase. *Id.* at 40:12-14. SDCWA calls this MWD's illegal "rate stability" objective. *See,*  
6 *e.g.,* 12/17/2013 Tr. at 38:16-20, 40:4-11.

7 SDCWA ignores *MWD v. IID*, where the Court of Appeal found nothing wrong with  
8 MWD's objectives to fully recover wheeling costs rather than subsidize wheeling transactions:

9  
10 There is no indication the Legislature ever intended that the water conveyance system  
11 owner should suffer potential or actual financial loss as a result. Rather, the Legislature  
12 took repeated steps to enact compensatory language that would enable water conveyance  
13 system owners to provide the desired wheeling service while recovering their costs. In  
14 short, the Legislature did not intend that the impact of the Wheeling Statutes should be to  
15 cause a water conveyance system owner to lose money or to subsidize wheeling  
16 transfers."

17 *MWD v. IID*, 80 Cal. App. 4th at 1433.

18 At the final hearing, SDCWA cited two cases (*Morro Bay* and *Palmdale*) as support for  
19 its argument that a rate stability objective is illegal. SDCWA said *Morro Bay* (*San Luis Coastal*  
20 *Unified Sch. Dist. v. City of Morro Bay*, 81 Cal. App. 4th 1044 (2000)) is a "case right on point"  
21 (12/17/2013 Tr. at 39:9) for its argument that "when a water agency has a choice between rates  
22 that reflect the actual costs of service and rates that are designed for rate stability, the agency  
23 cannot choose rate stability." *Morro Bay*, 81 Cal. App. 4th at 1050; 12/17/2013 Tr. at 40:8-11.  
24 In *Morro Bay*, the City denied the School District's request to wheel third-party water through  
25 the City's distribution system. It based its denial on the feared loss of the School District as a  
26 customer, one of the City utility's largest customers. *Morro Bay*, 81 Cal. App. 4th at 1047. The  
27 School District challenged the denial arguing that it was improper under the Wheeling Statute,  
28 specifically Water Code section 1810. The Court of Appeal held that an agency may not deny a  
wheeling transaction on the grounds of loss of income: "[W]e do not believe the loss of income  
from a customer is the sort of injury to a legal user of water the Legislature had in mind [under

1 Section 1810].” *Id.* at 1050. The court, however, declined to construe “fair compensation” or  
2 otherwise prejudice the City’s fair compensation determination under section 1812. *See id.* at  
3 1051. The court certainly did not hold that fiscal health and revenue stability cannot be  
4 considered in setting “fair compensation” under the Wheeling Statutes. Nor has any court ever  
5 relied on *Morro Bay* for such a proposition.

6 SDCWA’s reliance on *Morro Bay* underscores its misunderstanding of what the San  
7 Pedro principle was intended to achieve and what MWD intended to achieve in designing its rate  
8 for wheeling service. MWD had, and has, no intention to protect the financial welfare of its full  
9 service customers to the detriment of wheelers. Instead, as stated in the 1997 findings, MWD  
10 only intends to prevent its full service customer from *subsidizing* costs that wheelers should  
11 properly be paying. This is an entirely legitimate goal. The court in *Morro Bay* explicitly  
12 recognized that a water agency has discretion to determine fair compensation under the  
13 Wheeling Statute and a court “may not order the exercise of discretion in a particular manner  
14 unless discretion can be lawfully exercised only one way under the facts” (*i.e.*, unless there is  
15 only one legal option). *Id.* at 1051. MWD’s rate for wheeling service properly recovers the  
16 proportionate share of its overall transportation costs from the wheeling party.

17 Similarly misplaced is SDCWA’s reliance on *Palmdale* for its argument that “you cannot  
18 choose rate stability over cost of service.” 12/17/2013 Tr. at 41:7-9. Contrary to SDCWA’s  
19 assertions, the court in *Palmdale* did not determine that the Water District failed to meet its  
20 burden under Proposition 218 because it chose one cost of service option over another. In  
21 *Palmdale*, the Water District sought to re-structure its rates specifically to provide for revenue  
22 stability. *City of Palmdale v. Palmdale Water Dist.*, 198 Cal. App. 4th 926, 928-29 (2011). The  
23 Court of Appeal in no way criticized this goal; it held only that the District’s tiered-rate method  
24 failed because it imposed different water rates for similar users “without identify[ing] *any*  
25 *support in the record* for the inequality” and did not even attempt to provide “any explanation for  
26 this disparity.” *Id.* at 936-38 (emphasis added). MWD’s rate for wheeling service does not  
27 unfairly discriminate between similar MWD customers, and, in any event, MWD fully justified  
28

1 the rate in its 1997 Resolution and elsewhere in the administrative records. *See generally* DTX-  
2 680 at AR2010-002446-002489; JTX-2 at AR2012-002446-002489; *see also* Sections III.D-E  
3 and V.C.

4 In order to attack MWD's rate for wheeling service, at the final hearing SDCWA  
5 completely misrepresented the rate that MWD actually adopted and that is in place today. First,  
6 SDCWA pointed to a study issued by RMI in December 1995 as evidence that MWD's rate for  
7 wheeling service is excessive and follows the allegedly illegal San Pedro principle. 12/17/2013  
8 Tr. at 15:19-24:18. As an initial matter, in this study RMI proposed and discussed four different  
9 options for wheeling rates that MWD could consider. *See* DTX-136; JTX-1 at AR2010-001222-  
10 001255. MWD did not adopt any of the four options in this study.<sup>26</sup> The option that RMI  
11 recommended was the one that included SWP transportation costs in the rate for wheeling  
12 service because it was the "only rate method examined that would satisfy" the San Pedro  
13 principle. *Id.* at 001254. Even if MWD had adopted this rate, which it did not, as discussed, the  
14 considerations presented in the San Pedro principle are entirely legitimate concerns for a water  
15 agency.

16 Second, SDCWA points to a 1996 memo drafted by former MWD Chief Financial  
17 Officer Brian Thomas as evidence that MWD's rate for wheeling service illegally discourages  
18 wheeling. *See* 12/17/2013 26:15-27:10. ("So what did Met do? It chose, of course, the  
19 equivalent margin method. That's why we're here, which discourage[s] wheeling."). Again,  
20 MWD did not choose the option SDCWA claims is illegal. The equivalent margin method  
21 SDCWA focuses on would place all costs recovered through MWD's volumetric, commodity-  
22 based rates in its rate for wheeling service. *See* AR2012-017126\_0103 at 017126\_0106. As  
23 discussed, when MWD developed its rate for wheeling service, it carefully evaluated the costs  
24

25 <sup>26</sup> While SDCWA stated in its opening that MWD adopted Option 1, this is not true. Under  
26 Option 1, MWD's rate for wheeling service would be based on the differential between MWD's  
27 firm sales rate plus the Readiness-to-Serve Charge, minus the SWP charges for incremental  
28 power and other variable costs. DTX-136 at AR2012-001244-45; JTX-1 at AR2010-001244-45.  
MWD's rate for wheeling service does not, and has never, included the Readiness-to-Serve  
Charge. *See* MWD Admin. Code § 4405.

1 wheelers actually caused, and only included those costs in its rate for wheeling service; MWD  
2 did not simply charge wheelers its full volumetric rates. *See, e.g.*, DTX-680 at AR2012-002452-  
3 002473; JTX-1 at AR2010-002452-002473. Additionally, the equivalent margin method, like  
4 the option SDCWA erroneously claimed MWD adopted from the December 1995 RMI study,  
5 includes the Readiness-to-Serve Charge in its rate for wheeling service. *See* AR2012-  
6 017126\_0103 at 017126\_0106. MWD’s rate for wheeling service does not, and has never,  
7 included the Readiness-to-Serve Charge. *See* MWD Admin. Code § 4405. Accordingly, the fact  
8 that LADWP and MWDOC’s consultant found that the equivalent margin method was “probably  
9 illegal and incorrectable” has no bearing on any of the claims in these actions. *See* 12/17/2013  
10 Tr. at 26:7-11.

11       Whether the equivalent margin method, which MWD never adopted, encourages  
12 wheeling is irrelevant to the Court’s assessment of MWD’s rate for wheeling service. Tellingly,  
13 SDCWA presented no evidence that MWD has ever denied a wheeling request. And, as  
14 explained, because SDCWA never pled that MWD’s rate for wheeling service fails to encourage  
15 wheeling, or is based on an allegedly illegal “hold harmless” rationale, the Court’s inquiry is  
16 limited to whether MWD’s rate for wheeling service charges fair compensation.<sup>27</sup> *See*  
17

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18 <sup>27</sup> In any event, the objectives and policy principles behind MWD’s rate for wheeling services  
19 support a water market, which facilitates wheeling. *See, e.g.*, DTX-109 (AR2012-016587)  
20 (“[M]ember agencies are free to acquire supplies from other sources. Indeed, Metropolitan’s  
21 Board has adopted the concept of ‘direct access’, or customer choice for supplier, to  
22 accommodate a water transfer market [citing to DTX-029 (MWD’s Strategic Plan Policy  
23 Principles)]. Unbundled rates ensure that agencies that use Metropolitan’s system to move non-  
24 Metropolitan water pay a fair and reasonable share of the relevant system costs, including the  
25 cost of facilities, power and conservation programs that help ensure capacity. . . An agency that  
26 transports a third party’s water through Metropolitan’s system (known as ‘wheeling’) pays  
27 transportation costs, but no supply costs.”). What is needed to support the water market, and  
28 what the Legislature intended, was access to excess capacity (*MWD v. IID*, Cal. App. 4th at  
1432), not cut-rate wheeling charges. “Contrary to the assertions of the San Diego County Water  
Authority . . . the Legislature did not enact any language requiring that wheeling transfer be  
accomplished ‘at the lowest possible charge.’” *Id.* at 1431. And as explained, MWD’s  
institution of demand management programs facilitates wheeling by freeing up capacity in the  
transportation infrastructure. Wheeling cannot occur unless there is available capacity.

1 *Schweitzer*, 157 Cal. App. 4th at 1214 (“It is axiomatic that ‘[t]he pleadings establish the scope  
2 of an action and, absent an amendment to the pleadings, parties cannot introduce evidence about  
3 issues outside the pleadings.”).

4 **2. Including MWD’s System-Wide Costs in the Rate for Wheeling  
5 Services Is Reasonable**

6 After adopting its rate for wheeling service in 1997, MWD brought a validation action to  
7 authorize that rate, which action SDCWA opposed. *See generally MWD v. IID*, 80 Cal. App. 4th  
8 1403 (2000). At the trial court level, SDCWA argued that MWD’s rate for wheeling service  
9 should be determined on a case-by-case basis, should not include system-wide costs, and should  
10 be calculated with respect to the point-to-point use of facilities in the particular wheeling  
11 transaction. *Id.* at 1407, 1422-23. The trial court held that the fixed rate violated the Wheeling  
12 Statute as a matter of law. *Id.*

13 The Court of Appeal reversed, holding that “[u]nder the plain terms of the [Wheeling  
14 Statute], [MWD] is authorized (indeed, required) to determine fair compensation,” that the  
15 “wheeling statutes are silent on the question whether a rate may be set in advance of a specific  
16 wheeling proposal,” and that it was therefore within MWD’s power and discretion under the  
17 Wheeling Statute to set a fixed rate. *Id.* at 1434. The Court of Appeal also held that MWD’s  
18 inclusion of system-wide costs was not invalid as a matter of law, stating that “neither the plain  
19 language of the Wheeling Statute[] nor the legislative history supports a conclusion that as a  
20 matter of law that system-wide costs cannot . . . be included in a wheeling rate calculation.” *Id.*  
21 at 1427.

22 In its unbundled rate structure, MWD adopted the same type of rate for wheeling service  
23 as was in place pre-unbundling, but consisting of the applicable new rate components: its System  
24 Access Rate and its Water Stewardship Rate, plus the actual costs of power for the transaction.  
25 Admin. Code § 4405. This fixed rate for wheeling service applies only to a subset of wheeling  
26 transactions: wheeling to a member agency, for up to one year. Admin. Code § 4119. Other  
27 wheeling (to a third party of any duration, or to a member agency for more than one year)  
28

1 transactions are negotiated on a case-by-case basis. *See* Admin. Code § 4119; *see also, e.g.*,  
2 DTX-177\* (at Sections 5 and 7). MWD’s fixed wheeling rate for short-term wheeling  
3 transactions with its member agencies facilitates this wheeling. Member agencies need not  
4 spend any time negotiating with MWD over the transaction price and can simply request and  
5 implement the wheeling immediately, if there is available capacity.

6 In the *2010* and *2012 Actions* SDCWA challenges the exact same system-wide costs that  
7 it challenged in 1997 (*i.e.*, the SWP transportation costs and costs to fund local resource  
8 development programs). Because the Court of Appeal has *already determined* that including  
9 system-wide costs in the rate for wheeling service is not invalid as a matter of law, the only issue  
10 before this Court is the factual one of whether including the System Access Rate and Water  
11 Stewardship Rate in the rate for wheeling service charges “fair compensation” under the  
12 Wheeling Statute. As discussed, MWD determined in 1997 that including such system-wide  
13 costs in its rate for wheeling service charges fair compensation. Further, as the evidence below  
14 demonstrates, this determination of fair compensation still holds true today. This Court has  
15 previously ruled that, pursuant to California precedent, the determination of what constitutes  
16 “fair compensation” for the use of MWD’s system for wheeling lies within MWD’s discretion,  
17 and MWD’s determination is granted deference. *See* Nov. 5, 2013 Order at 17; *see also Morro*  
18 *Bay*, 81 Cal. App. 4th at 1051 (under the Wheeling Statute, determination of fair compensation  
19 constitutes an act of discretion and “[m]andate may not order the exercise of discretion in a  
20 particular manner unless discretion can be lawfully exercised only one way under the facts.”);  
21 *MWD v. IID*, 80 Cal. App. 4th at 1425, 1428 (“The water conveyance facility owner, in this case  
22 the Metropolitan Water District, is specifically authorized to determine what is ‘fair  
23 compensation’ provided the determination is made in a timely and reasonable manner” and  
24 “[t]he construction of the Wheeling Statute by the Metropolitan Water District is entitled to great  
25 weight and respect.”) (citations omitted).

26 **a. SWP Costs In MWD’s Rate For Wheeling Service**

27 MWD’s inclusion of the System Access Rate (which recovers SWP transportation costs)  
28



1 in its rate for wheeling service is appropriate for several reasons.

2  
3 **(1) The Plain Language Of The Wheeling Statute Allows**  
4 **MWD To Charge System-Wide Costs In Its Rate For**  
5 **Wheeling Service**

6 First, the Wheeling Statute itself allows MWD to recover costs associated with its  
7 “conveyance system.” *See* Cal. Water Code § 1811 (defining “fair compensation” to mean the  
8 “reasonable charges” incurred to operate the “conveyance system”). As discussed above, MWD  
9 pays for and utilizes the SWP conveyance facilities as an extension of its own system in order to  
10 achieve operational flexibility (defined above in Section V.A.2). MWD’s “integrated, flexible  
11 system directly benefits all agencies, including the Water Authority, as to all services, including  
12 wheeling.” DTX-109 at AR2012-016586; *see also id.* (Wheeling transactions “benefit from a  
13 robust and flexible system, including Metropolitan’s right to use SWP facilities.”). MWD’s  
14 1997 written determinations explain that because “[MWD’s] delivery system is integrated . . .  
15 members using the system to wheel should pay for the cost of the whole system” including the  
16 SWP facilities. DTX-680 at AR2012-002455; JTX-1 at AR2010-002455. Thus, recovering  
17 costs associated with the SWP conveyance facilities is appropriate under the Wheeling Statute.

18 **(2) The SWP Facilities Are Used For Wheeling**  
19 **Transactions**

20 Second, allocating SWP transportation costs to the rate for wheeling service is reasonable  
21 because MWD uses the SWP conveyance facilities to conduct wheeling transactions. As  
22 explained in Section V.A.2, MWD has the right to and does convey non-project water through  
23 the SWP for its member agencies through Article 55 of the DWR Contract. Indeed, every  
24 wheeling transaction that SDCWA’s Assistant General Manager identified at the final hearing  
25 involved MWD’s use of its Article 55 rights to wheel non-project water through the SWP  
26 facilities on behalf of SDCWA. *See* 12/18/2013 Tr. at 188:19-189:4, 190:1-191:13, 192:7-193:2  
27 (identifying the most recent wheeling agreements SDCWA has with MWD, *i.e.*, Butte and  
28 Sutter, and Placer). Both of these wheeling transactions involved MWD coordinating with DWR  
to transport non-project water through SWP facilities for SDCWA. *See* DTX-185\* (Placer

1 wheeling agreement); DTX-201\* (Butte and Sutter wheeling agreement).

2 SDCWA acknowledges the benefit wheelers like itself receive from MWD’s rights to use  
3 the SWP to wheel non-project water on its member agencies’ behalf. *See, e.g.*, DTX-086 at  
4 \*SDCWA2010-2012\_00082035 (SDCWA stating: “Since [MWD’s] wheeling service includes  
5 the member agency *privilege* to use [MWD’s] rights to State Water Project facilities, [SDCWA]  
6 requests that you provide the necessary coordination to ensure all issues, including delivery  
7 schedules, through-delta conveyance capacity, and any other operational matters are timely  
8 addressed with the [DWR] . . . .”) (emphasis added); DTX-075 at \*MWDPRA044184 (SDCWA  
9 stating “[s]ince [MWD’s] wheeling service includes the right of a member agency to use  
10 [MWD’s] rights to [SWP] facilities, I also ask that you provide the necessary coordination with  
11 DWR . . . to ensure all issues, including . . . operational matters are timely addressed.”); DTX-  
12 072 at \*MWD2010-00007743 (Butte and Sutter); DTX-080 at \*MWDPRA044104-044105  
13 (Placer).

14 MWD’s use of the SWP for wheeling transactions is not limited to agreements with  
15 SDCWA—MWD wheels water for member agencies through SWP facilities upon request. *See,*  
16 *e.g.*, DTX-200\* (Agreement whereby MWD wheeled non-project water through the SWP on  
17 behalf of the Municipal Water District of Orange County, for ultimate delivery to the Santa  
18 Margarita Water District).

19 SDCWA erroneously contends that the only cost MWD incurs to wheel water through the  
20 SWP on behalf of member agencies is an incremental power cost. *See, e.g.*, 12/18/2013 Tr. at  
21 193:7-14. As explained, MWD has the right to use the SWP facilities in this way (*i.e.*, to wheel  
22 water on behalf of its member agencies) without paying a facilities fee because it *has already*  
23 *paid for this service*, by paying the fixed Transportation Charges under the DWR Contract. *See*  
24 DTX-055 at AR2012-000153 (Art. 55(b)-(c)); JTX-1 at AR2010-000153 (Art. 55(b)-(c)); DTX-  
25 087 at AR2012-011307 (MWD does not pay an additional fixed Transportation Charge under the  
26 DWR Contract to wheel water on behalf of member agencies because it “has already paid costs  
27 of using [the SWP facilities] in the Transportation Charge invoiced under its Statement of  
28

1 Charges”); JTX-1 at AR2010-011307; *see also* DTX-109 at AR2012-016588; 12/19/2013 Tr. at  
2 505:23-506:9 (Yamasaki testimony). In other words, MWD does not only pay a power  
3 component to wheel water through the SWP, it also pays fixed Transportation Charges under the  
4 DWR Contract in order to use the SWP to transport non-project water under Article 55. As  
5 SDCWA’s Assistant General Manager stated at the final hearing, SDCWA “believe[s] we ought  
6 to pay the cost of service of actually moving the [non-project] water” through the SWP.  
7 12/18/2013 Tr. at 194:2-8. Because the costs of moving non-project water include MWD’s fixed  
8 SWP costs, all wheeling parties, including SDCWA, should bear a portion of these costs.

9 As demonstrated, MWD’s costs of moving non-project water through the SWP includes  
10 both the fixed Transportation Charges it pays under the DWR contract (which are recovered  
11 through the System Access Rate) as well as the incremental power costs of the transaction  
12 (which is also included in MWD’s rate for wheeling service). *See* MWD Admin. Code § 4405  
13 (setting forth the composition of MWD’s rate for wheeling service). If MWD were not allowed  
14 to charge wheelers any of its fixed Transportation Charges under the DWR Contract, the rest of  
15 MWD’s customers would be unfairly subsidizing those that wheel because wheelers would not  
16 be paying any of the fixed costs MWD incurs to wheel water through the SWP for them.

17  
18 **b. Costs To Incentivize Local Resource Development Programs**  
19 **Funded By The Water Stewardship Rate Are Properly**  
20 **Included In MWD’s Rate For Wheeling Service**

21 As explained above, the text of the Wheeling Statute, as well as California case law,  
22 allows MWD to recover its system-wide costs. *See* Cal. Water Code § 1811 (defining “fair  
23 compensation” to mean the “reasonable charges” incurred to operate the “conveyance system”);  
24 *MWD v. IID*, 80 Cal. App. 4th at 1427 (MWD’s including system-wide costs in its rate for  
25 wheeling service is not invalid as a matter of law). When MWD initially set its rate for wheeling  
26 service in 1997, it determined that the costs for “water conservation projects and financial  
27 assistance for water recycling and groundwater recovery facilities” provided benefits to the  
28 “whole system.” DTX-680 at AR2012-002455; JTX-1 at AR2010-002455. Because these costs  
were deemed unavoidable and benefitted all system users, including wheelers, MWD determined

1 that “members using the system to wheel should pay for the cost of the whole system.” *Id.* at  
2 002455, 002459.

3 Furthermore, as explained in Section V.B.1.a, the demand management programs the  
4 Water Stewardship Rate recovers the costs of funding reduce MWD’s capital costs for its  
5 distribution facilities. If MWD had to incur those costs it is able to avoid due to the demand  
6 management programs, it would recover those costs through the System Access Rate. *See* DTX-  
7 045 at AR2012-006518; JTX-1 at AR2010-006518; DTX-090 at AR2010-011492; JTX-2 at  
8 AR2012-011492; DTX-110 at AR2012-016697; 12/20/2013 Tr. at 607:9-12 (Upadhyay  
9 testimony). Because the rate for wheeling service includes the System Access Rate (*See* MWD  
10 Administrative Code § 4405), wheelers would have to pay a higher rate absent the demand  
11 management programs funded by the Water Stewardship Rate. This is a direct benefit to  
12 wheelers.

13 Also, under California law, MWD is not mandated to wheel water for a customer unless a  
14 certain amount of its system capacity is unused, or free. Cal. Water Code § 1810 (no “public  
15 agency may deny a bona fide transferor of water the use of a water conveyance facility which  
16 has unused capacity, for the period of time for which that capacity is available, if fair  
17 compensation is paid for that use.”); § 1811(e) (“‘Unused capacity’ means space that is available  
18 within the operational limits of the conveyance system and that the owner is not using during the  
19 period for which the transfer is proposed and which space is sufficient to convey the quantity of  
20 water proposed to be transferred”); § 1814 (“This article shall apply to only 70 percent of the  
21 unused capacity”). As discussed at length in Section V.B.1 *supra*, parts of MWD’s system are  
22 capacity constrained, and MWD’s demand management programs free up capacity in MWD’s  
23 system. While all MWD customers benefit from increased capacity, wheelers receive an even  
24 greater benefit because they are dependent on available capacity in order to wheel. *See* DTX-  
25 045 at AR2012-006519 (“The capacity made available by conservation and recycling is open to  
26 all system users and can be used to complete water transfers.”); JTX-1 at AR2010-006519;  
27 DTX-109 at AR2012-016590 (Because conservation measures and local resource investments  
28

1 reduce the overall level of dependence on the imported water system, *more capacity is available*  
2 *in existing facilities for a longer period of time.* The space in the system made available by  
3 conservation and recycling is *open to all system users . . .* regardless of the source of the  
4 imported water supply.) (emphasis added).

5 SDCWA acknowledges the benefits wheelers receive from MWD’s demand management  
6 programs. Indeed, in a letter to the State Lands Commission regarding SDCWA’s proposed  
7 Carlsbad Desalination Project, SDCWA stated that the project would “result in a one-for-one  
8 offset in the use of imported water.” DTX-383 at \*MWD2010-00525693. A one-for-one offset  
9 means that for every acre-foot of water that MWD does not need to transport through its system  
10 because of the Project, “then other agencies would . . . have the access to the capacity in the  
11 system if they wanted to purchase supplies from other sources and move that water through  
12 [MWD’s] system.” 12/20/2013 Tr. at 587:19-588:13 (Upadhyay testimony) (emphasis added).

13 If the Water Stewardship Rate were placed in MWD’s Supply Rates as opposed to its  
14 Transportation Rates, “member agencies could avoid providing revenues to support regional  
15 demand management activities through wheeling while still being able to realize the benefits of  
16 the program to fund local activities.” DTX-109 at AR2012-016590. As explained, when it  
17 initially designed its wheeling service, MWD tried to avoid developing a rate that would lead to  
18 its full service customers unfairly subsidizing wheeling transactions. *See* Section V.C.1, *supra*.  
19 And, because MWD is required by law to incentivize local resource development and  
20 conservation, all users of its system should contribute to this legal mandate in order to avoid  
21 subsidies among MWD’s various customers. *See* Section V.B.2, *supra*.

22 **D. SDCWA’s Dry Year Peaking Claim Fails**

23 SDCWA claims that “nowhere in its rates does Met account for dry year peaking,” which  
24 SDCWA defines as the “benefit” member agencies receive when they primarily use MWD to  
25 supplement their supplies in dry years. 12/17/2013 Tr. at 63:8-14. According to SDCWA,  
26 LADWP is the “most notabl[e]” member agency benefitting from “free drought insurance” by  
27 “depending inordinately on Met in dry years only without paying for that dependence in wet  
28

1 years.” *See* 12/17/2013 Tr. at 35:10-16. However, SDCWA has in fact made no case.

2 In its challenges to the System Access Rate, System Power Rate, Water Stewardship  
3 Rate, and rate for wheeling service, SDCWA has pointed to actual costs that MWD incurs, which  
4 SDCWA alleges are misallocated to particular rate elements. However, for its dry year peaking  
5 claim, SDCWA has not even made an initial showing that MWD does incur (much less fails to  
6 recover), any costs because of differences between the member agencies in their annual variation  
7 in demand.<sup>28</sup> Indeed, SDCWA admits that it “[doesn’t] know” what “dry-year peaking” costs  
8 there are, or what they might be—the only thing that SDCWA can do is ask this Court to order  
9 MWD to “study it.” 12/23/2013 Tr. at 831:11-16; 835:15-16.

#### 10 **1. MWD Recovers Storage-Related Costs**

11 SDCWA has not even made an initial showing that MWD does incur (much less fails to  
12 recover) any costs because of differences between the member agencies in their annual variations  
13 in demand (much less due to dry years only). Indeed, SDCWA admits that it “[doesn’t] know”  
14 what “dry-year peaking” costs there are, or what they might be—the only thing that SDCWA can  
15 do is ask this Court to order MWD to “study it.” 12/23/2013 Tr. at 831:11-16; 835:15-16. The  
16 only potentially relevant costs that SDCWA could point to during the final hearing were the  
17 costs MWD incurs to buy and store water for use during dry years. *See* 12/18/2013 Tr. at 266:9-  
18 15. However, SDCWA never demonstrated that the differences between member agency  
19 demands from year to year *cause* (let alone are the only cause for) those costs.

20 At the final hearing, SDCWA pointed to the 1996 IRP, which states that “storage  
21 provides a means of storing surplus water during normal and wet years for later use during dry  
22 years, when imported supplies are limited.” *See id.* at 266:9-267:8 (citing DTX-019 at AR2012-  
23 001465-001466). MWD is well aware of the need to have storage on hand during dry years as  
24 well as for other reasons, and plans for this need on behalf of all member agencies. Indeed,  
25

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26 <sup>28</sup> While MWD believes that this claim should be limited to the administrative record because it  
27 is unrelated to SDCWA’s Wheeling Statute claim, MWD discusses evidence outside of the  
28 administrative record where necessary to address SDCWA’s extra-record arguments on this  
issue.

1 during its COS process, MWD determines what storage-related costs it anticipates incurring and  
2 separates out those costs into three functions, one of which is *drought storage* that produces  
3 additional supplies during times of shortage. *See* DTX-090 at AR2010-011475; JTX-2 at  
4 AR2012-011475; DTX-110 at AR2012-016653. MWD categorizes drought storage as a supply  
5 cost, and ultimately allocates drought storage to its Supply Rates which every member agency  
6 pays on a volumetric basis. *See* DTX-090 at AR2010-011474-011475, 011484, 011499; JTX-2  
7 at AR2012-011474-011475, 011484, 011499; DTX-110 at AR2012-016681-016682, 016689,  
8 016700. Not only do member agencies pay dollar for dollar for the costs MWD incurs in  
9 obtaining and *storing* the water they receive, but the tiered nature of the Supply Rates also  
10 ensures that if a member agency exceeds its allotted amount of water in a particular year, it pays  
11 a substantially higher Tier 2 Supply Rate for the water it purchased that year. *Id.*; *see also* JTX-2  
12 (AR2012-016429) at AR2012-016540 (“The Tier 2 Supply Rate is designed to reflect [MWD’s]  
13 costs of acquiring new supplies.”); *see also* 12/20/2013 Tr. at 686:3-11 (As of November 2013,  
14 LADWP is one of three member agencies that pay the Tier 2 Supply Rate).

15 As demonstrated, MWD already recovers the costs of storing water for availability in dry  
16 years. At the final hearing, SDCWA ignored the distinction between this drought storage and  
17 MWD’s other types of storage, and argued that because MWD’s overall storage exceeds its  
18 average total sales, there must be some benefit to particular member agencies that MWD is not  
19 charging for through its rates and charges. *See* 12/18/2013 Tr. at 269:22-271:9 (SDCWA  
20 arguing that “there is an awful lot of infrastructure that Met has invested in to maintain those  
21 levels of storage. That’s the significance of peaking.”) (citing and discussing JTX-2 (AR2012-  
22 016429) at AR2012-016518); PTX-244 (at \*A-26, A-46) for that point)).

23 As an initial matter, it makes perfect sense for MWD to maintain a larger storage bank of  
24 supplies than is necessary to fulfill MWD’s deliveries to all member agencies in any given year.  
25 This is both intuitive and a result of the fact that storage is intended in part to provide supplies in  
26 times of great and/or unexpected need on short notice. *See* DTX-090 at AR2010-011475; JTX-2  
27 at AR2012-011475; DTX-110 at AR2012-016623-016624.  
28

1  
2 Furthermore, focusing on MWD's total storage as it compares to total demand is not an  
3 accurate indication of whether MWD provides a special dry-year benefit to any particular  
4 member agency because MWD's total storage is not limited to drought storage. *See* DTX-090 at  
5 AR2010-011474-011475 (During its COS, MWD functionalizes its storage costs in three ways:  
6 (1) emergency storage in the event of an earthquake or some other emergency; (2) drought  
7 storage; and (3) regulatory storage to provide for operational flexibility in meeting peak demands  
8 and flow requirements); JTX-2 at AR2012-011474-011475; DTX-110 at AR2012-016681,  
9 16682. MWD recovers the costs associated with each type of storage through its COS process.  
10 MWD classifies its three storage functions by the type of service provided: Emergency storage  
11 is classified as standby and is recovered entirely through the Readiness-to-Serve Charge; as  
12 discussed, drought storage is recovered through MWD's volumetric Supply Rates; and, because  
13 regulatory storage essentially increases physical distribution capacity, it is recovered through the  
14 Capacity Charge, System Access Rate, and in some years the Readiness-to-Serve Charge. *Id.*  
15 SDCWA has therefore not shown that the disparity between overall storage and MWD's overall  
16 supply needs is correlated to dry years specifically, let alone any one member agency's needs in  
17 a dry year.

## 18 **2. Annual Variation In Demand Is Caused By A Number Of Reasons**

19 Annual variations in member agency demand are inevitable by virtue of, and inherent to,  
20 MWD's role as a supplemental supplier of water. *See, e.g.,* JTX-2 (AR2012-016429) at  
21 AR2012-016473 (“[MWD’s] primary purpose is to provide a supplemental supply of imported  
22 water to its member public agencies. . . The demand for supplemental supplies is dependent on  
23 water use at the retail consumer level and the amount of locally supplied water. Consumer  
24 demand and locally supplied water vary from year to year, resulting in variability in water  
25 sales.”); 12/20/2013 Tr. at 684:11-22 (Skillman testimony explaining that member agency  
26 demand invariably varies because MWD is a supplemental supplier of water to customers  
27 experiencing entirely different circumstances, including their sizes, access to local resources,  
28 participation in demand management programs, retail customer bases etc.). SDCWA has



1 provided no evidence that wet or dry years are principally responsible for annual variations in  
2 demand, nor has it provided evidence that, even if dry years were the driving force behind annual  
3 variations, the differences between annual member agency demands cause MWD to incur  
4 additional costs.

5 As Ms. Skillman testified, while dry years are one reason why a member agency's  
6 demand may be higher from one year to the next, there are many other potential reasons for  
7 annual variations in demand. 12/20/2013 Tr. at 683:8-684:10 (Skillman testimony explaining  
8 that factors such as the economy, operational issues such as construction or leaving a well field,  
9 and local environmental contamination may all cause a member agency to rely on MWD water  
10 supplies more in some years than in others); *see also* JTX-2 (AR2012-016429) at AR2012-  
11 016473 (MWD's 2012 statement to its bond holders stating that the "demand for supplemental  
12 supplies is dependent on water use at the retail consumer level and the amount of locally  
13 supplied water. Consumer demand and locally supplied water vary from year to year, resulting  
14 in variability in water sales. In recent years supplies and demands have been affected by  
15 drought, water use restrictions, economic conditions, weather conditions and environmental  
16 laws, regulations and judicial decisions . . ."). MWD must have supplies on hand to satisfy  
17 each reason a member agency may need water. In any event, the costs that MWD incurs to  
18 provide water from year to year do not change depending on the reason a member agency's  
19 annual demand varies, and therefore the rates and charges that each member agency pays for  
20 MWD's services also do not vary. 12/20/2013 Tr. at 683:4-7 (Skillman testimony).

21 During the final hearing, SDCWA focused on the fact that LADWP at times varies the  
22 amount of water it purchases from MWD due to weather conditions as part of its claim that  
23 MWD provides an alleged special "dry-year" benefit to LA. *See* 12/17/2013 Tr. at 65:19-67:6  
24 (SDCWA opening statement citing PTX-244 at \*A29-A30); 12/18/2013 Tr. at 215:18-218:7  
25 (Cushman testimony citing same); 12/18/2013 Tr. at 266:16-271:12 (SDCWA presentation  
26 discussing DTX-019 (1996 IRP)); *see generally* PTX-244\* (2013 statement to bondholders); and  
27 JTX-2 (AR2012-016429) at AR2012-016432 (2012 statement to bond holders)). SDCWA  
28

1 emphasizes that “the only agency that’s mentioned in [MWD’s 1996] IRP as a peaker is Los  
2 Angeles.” 12/18/2013 Tr. at 267:25-268:1. However the IRP simply discusses the fact that local  
3 supplies can vary due to hydrological conditions, and uses the Los Angeles Aqueduct as one  
4 “example” from almost 20 years ago. *See* DTX-019 at AR2012-001487; JTX-1 at AR2010-  
5 001487. SDCWA also points to a portion of MWD’s statement to its bondholders in 2013 as  
6 MWD admitting that LADWP dramatically increases its water purchases during dry years.  
7 12/17/2013 Tr. at 65:21-67:6 (SDCWA opening statement citing PTX-244 at \*A29-A30);  
8 12/18/2013 Tr. at 215:18-218:7 (Cushman testimony citing same). However, the portion of the  
9 bond statement that SDCWA cites merely describes regional water resources available in  
10 MWD’s service area, including the Los Angeles Aqueduct and other local water supplies. This  
11 section discusses how local water supplies affect MWD’s sales projections and provides  
12 LADWP’s past and projected water purchases from MWD in that context. *See* PTX-244 at  
13 \*A29-A30.

14 In any event, neither of these documents support SDCWA’s claim that member agency  
15 demands invariably increase in dry years. As actual data tracking member agency water  
16 deliveries indicate, in 2010, when California was experiencing “one of the more severe droughts  
17 in [its] history,” roughly 70% of all MWD’s member agencies purchased less water than the  
18 prior year. DTX-102 at \*SDCWA2010-2012\_00136906; DTX-701 at \*1; DTX-691 at \*2; DTX-  
19 697 at \*1. During this same time period, LADWP reduced its MWD water deliveries by over  
20 40% from the previous year. *See* DTX-691 at \*2 (during the drought in 2010, LADWP reduced  
21 its water deliveries by roughly 40%, or nearly 175,000 acre-feet, compared to 2009); DTX-701  
22 at \*); DTX-697 at \*1. As demonstrated, the evidence SDCWA cites fails to show any causal  
23 connection between dry years and LADWP’s purchases. The evidence SDCWA cites also does  
24 not show any causal connection between LADWP’s purchases and the costs MWD incurs to  
25 store water for use in dry years. Indeed, MWD’s storage is open and available to all member  
26 agencies and is not held in any reserve for LADWP specifically. *See* 12/19/2013 Tr. at 521:21-  
27 23 (Yamasaki testimony); DTX-090 at AR2010-011475; (the costs of storage are allocated  
28

1 among all the member agencies); JTX-2 at AR2012-011475; DTX-110 at AR2012-016681-  
2 016682.

3 **3. There Are Only Minor Differences Between Member Agency Annual**  
4 **Variations.**

5 As explained, annual variations are not surprising and are inherent to MWD because  
6 MWD is a *supplemental* supplier of wholesale water that must always stand by, ready to serve  
7 the needs of its member agencies that fall outside their primary sources of supply. DTX-109 at  
8 AR2012-016587. Significantly, the differences between member agency variations from year to  
9 year about which SDCWA complains are overstated. SDCWA's own experts calculated each  
10 member agency's average annual variations in purchases over the last ten years (including the  
11 ratios of highest annual water use to average annual water) and SDCWA submitted this  
12 information to MWD's Board for its consideration during the 2012 rate-setting cycle. DTX-108  
13 at AR2012-016177. SDCWA's experts concluded that MWD's largest customers (*i.e.*, those that  
14 purchase over 100,000 acre-feet of water per year, accounting for more than 70% of MWD's  
15 total water deliveries) all had a ratio between 1.07 and 1.32. *Id.* (SDCWA's ratio was 1.11,  
16 which was the same as Calleguas' ratio, higher than West Basin's ratio (1.07), and lower than  
17 LADWP's ratio of 1.31). SDCWA's experts' conclusions show that LADWP's annual  
18 variations—represented by a ratio of 1.31—fall right in the middle of all member agencies'  
19 annual variations. *Id.* All of MWD's member agencies (except for MWD's smallest customer,  
20 which purchases very little water) had ratios between 1.07 and 1.72.<sup>29</sup> *Id.*

21 At the final hearing, SDCWA offered the testimony of its staff member Dan Denham,  
22 who created a graphic comparing average total MWD sales from 1994 to the present with the  
23 highest sales amount for each member agency over that time-frame. *See* PTX-384 at \*1. Mr.  
24 Denham used a weighted peaking factor and concluded that LADWP had a significantly higher

25 \_\_\_\_\_  
26 <sup>29</sup> The AWWA M1 Manual underscores the immateriality of the differences between the member  
27 agencies' annual variations. When looking at the maximum-day ratios between wholesale  
28 customers, AWWA gave as a standard example a range between 1.2 and 2.5. *See* DTX-030 at  
AR2012-004118; JTX-1 at AR2010-004118).

1 peak to average ratio than SDCWA and the average of all other member agencies. 12/18/2013  
2 Tr. at 315:23-334:6 (Denham testimony). In order to create the appearance of a significant  
3 disparity between LADWP and SDCWA, Mr. Denham incorporated data from the ten years prior  
4 to MWD implementing its current rate structure. See PTX 384 at \*1 (using a baseline of average  
5 sales from 1994 to the present). However, this Court's inquiry is whether MWD's current rate  
6 structure adequately recovers all of MWD's costs associated with any so-called dry-year  
7 peaking. The current rate structure took effect in January 2003. Accordingly, information from  
8 1994-2002, when MWD's Capacity Charge (and during some years the Readiness-to-Serve  
9 Charge) had not even been adopted, is irrelevant. See 12/20/2013 Tr. at 679:6-12, 681:9-14  
10 (Skillman testifying that the Capacity Charge and the Readiness-to-Serve Charge came into  
11 effect in 2003 and 1996, respectively.). Mr. Denham claimed at the final hearing that inclusion  
12 of these years was necessary to "prevent[] selection bias" and to capture an accurate depiction of  
13 "different hydrology." 12/18/2013 Tr. at 320:9-19. Choosing to evaluate the variations in  
14 member agency demand throughout the decade during which MWD's challenged rate structure  
15 has been in effect is not "selection bias," and, in fact, SDCWA has not provided any support for  
16 the propriety of the particular starting point of Mr. Denham's analysis. While Mr. Denham  
17 claimed that an expansive time-frame was necessary to capture different hydrological conditions,  
18 he does not explain why the years from 2003 to 2013, which include at least one major drought  
19 and a period of significant rainfall, do not do so. See DTX-102 at \*SDCWA2010-  
20 2012\_00136906.

21 When looking at differences in annual variations between member agencies during the  
22 relevant time-frame, it becomes clear that LADWP and SDCWA have very similar demand  
23 patterns. When shown a graph that plots annual variations for each member agency from 2003  
24 to present using Mr. Denham's own data based on all sales, including exchanges, Mr. Denham  
25 agreed that it was an accurate depiction of the information. 12/18/2013 Tr. at 335:18-25  
26 (discussing DTX-701 at \*1). Mr. Denham testified that the different slopes between member  
27 agencies are the correct "indicator[s] of peaking." *Id.* at 360:15-20. As can be seen from DTX-  
28

1 701, SDCWA and LADWP's slopes are virtually identical. Ms. Skillman created a graph that  
2 plots annual variations for each member agency from 2003 to present based on all sales,  
3 including exchanges. *See* DTX-697 at \*1; 12/20/2013 Tr. at 687:25-688:23 (Skillman  
4 testimony). This graph is almost identical to the one depicting Mr. Denham's sales information.  
5 *Compare* DTX-697 at \*1 with DTX-701 at \*1. Ms. Skillman also computed the standard  
6 deviation between peak and average deliveries for each member agency. *See* 12/20/2013 Tr. at  
7 691:1-692:7; DTX-697 at \*2-3. While SDCWA claims that "LA's peaking is an order of  
8 magnitude different from other agencies, including San Diego," (12/23/2013 Tr. at 821:11-12),  
9 this graphic shows that in the relevant time-frame, LADWP and SDCWA have virtually identical  
10 standard deviations of peak to average water deliveries, and indeed, it is SDCWA that exhibits  
11 the highest peak deliveries and the highest volume of deliveries from year to year. *See*  
12 12/20/2013 Tr. at 692:8-693:14 (Skillman testimony); DTX-697 at \*2-3; 12/18/2013 Tr. at  
13 347:2-22 (Mr. Denham testifying that "San Diego is the largest purchaser. That's not  
14 surprising.").

15 Further, even if SDCWA had proved that LADWP's annual demand varies significantly  
16 more than other member agencies, this has no bearing on the costs MWD incurs to operate its  
17 system. This is because MWD does not size its system based on annual variation in demand;  
18 rather, MWD designs its system based on peak week demands. *See* 12/19/2013 Tr. at 524:1-3  
19 (Yamasaki testimony); 12/20/2013 675:12-18 (Skillman testimony). MWD designs its system in  
20 this way because its facilities must be able to meet the highest system usage at certain times  
21 within the year. *See* DTX-090 at AR2010-011484-011485, 011488, 011490; JTX-2 at AR2012-  
22 011484-011485, 011488, 011490; DTX-110 at AR2012-016688-016689, 016693, 016695.  
23 These expenses do not relate to annual variations in demand, or whether the peaking occurs  
24 because a particular period of time is "dry" (*i.e.*, less rainfall or snowfall). *Id.*

25 In sum, SDCWA's dry-year peaking claim is hollow because SDCWA has provided no  
26 evidence that wet or dry years are principally responsible for annual variations in demand, and  
27 even if dry years were the driving force behind annual variations, SDCWA has not identified any  
28

1 costs MWD incurs as a result of differences between the member agencies' annual variation in  
2 demand.

3  
4 **4. MWD Has Rates And Charges To Recover The Costs Of Variations  
In Water Purchases From Year To Year**

5 In any event, MWD's rates and charges reasonably account for annual variations in  
6 demand, regardless of the reason. This is more comprehensive an approach than SDCWA's  
7 argument that MWD should take into account variations only for one reason: a dry year.

8 First, MWD recovers the costs of annual variations in demand through its volumetric  
9 rates. As discussed, MWD undertakes a COS study—sometimes many of them—in every rate  
10 setting cycle, which properly allocates MWD's costs to its various rates and charges. These  
11 studies show that MWD recovers nearly all of its costs (88%) through its “volumetric” water  
12 rates—rates that depend on the volume of water member agencies buy. *See* DTX-090 at  
13 AR2010-011491; JTX2 at AR2012-011491; DTX-110 at AR2012-016696. These volumetric  
14 rates mean that if in a particular year a member agency *buys more water* than its usual demand in  
15 typical years, it will *pay more* that year than it does in typical years.

16 Second, as explained earlier, MWD's Supply Rates further ensure that variation in  
17 demand from year to year is captured in MWD's water rates. If purchases in a calendar year by a  
18 member agency that executed a purchase order exceed 90% of its base firm demand (an amount  
19 based on the member agency's past annual firm demands), or if a member agency that did not  
20 execute a purchase order exceeds 60% of its base firm demand, then it must pay a higher Tier 2  
21 Supply Rate. *See* DTX-090 at AR2010-011499); JTX-2 at AR2012-011499); DTX-110 at  
22 AR2012-016700. The Tier 2 Supply Rate is designed to reflect “[MWD's] costs of acquiring  
23 new supplies.” JTX-2 (AR2012-016429) at AR2012-016540. As of November 2013, LADWP  
24 is one of three member agencies that pay the Tier 2 Supply Rate. 12/20/2013 Tr. at 686:3-11  
25 (Skillman testimony).

26 MWD's COS-based rates therefore ensure not only that MWD recovers the higher costs  
27 of additional water supplies, but they also effectively ensure that MWD recovers costs resulting  
28

1 from increased demand on its water supplies and system capacity within a given year from those  
2 member agencies that cause those costs.

3 Third, MWD's rates also account for the costs of variation from year to year through the  
4 Readiness-to-Serve Charge. The Readiness-to-Serve Charge recovers the standby and  
5 emergency storage costs and capital costs for SWP and Colorado River Aqueduct facilities to  
6 meet peak monthly or seasonal demand. See DTX-090 at AR2010-011473, 011483, 011494;  
7 JTX-2 at AR2012-011473, 011483, 011494; DTX-110 at AR2012-016679-016680, 016688,  
8 016698. The way that MWD calculates the Readiness-to-Serve Charge addresses variation in  
9 annual demand. MWD bases a member agency's Readiness-to-Serve Charge each year on a ten-  
10 year rolling average of that member agency's past total consumption, *i.e.*, all firm deliveries  
11 including water transfers and exchanges that use MWD capacity—with the exception of the  
12 Exchange Water SDCWA receives under the 2003 Exchange Agreement.<sup>30</sup> See DTX-090 at  
13 AR2010-011495; JTX-2 at AR2012-011495; DTX-110 at AR2012-016699. Thus, the  
14 Readiness-to-Serve Charge requires member agencies with large annual variations in purchases  
15 to pay more—if a member agency's water use goes up drastically in one year, this variation will  
16 increase what it must pay under the Readiness-to-Serve Charge for the next decade.

17 SDCWA claims that the Readiness-to-Serve Charge “isn't really designed to capture dry  
18 year peaking” and it “doesn't recover anywhere near the costs that are incurred.” 12/18/2013  
19 Tr.at 274:1-4. That argument is misplaced. First, MWD never claimed that its Readiness-to-  
20 Serve Charge recovers all costs associated with annual variations in member agency demand;  
21 MWD simply explains that a portion of the costs MWD incurs to provide varying amounts of  
22 water to its member agencies is recovered by the Readiness-to-Serve Charge. Second,  
23 SDCWA's assertion that the Readiness-to-Serve Charge “doesn't recover anywhere near the  
24

25 <sup>30</sup> While SDCWA argues that some member agencies are receiving certain standby and peaking  
26 services without having to pay for them, it is actually SDCWA that gets the benefit of using  
27 MWD's system to carry out the 2003 Exchange Agreement without having to pay a higher  
28 Readiness-to-Serve Charge. See DTX-108 at AR2012-016164 (MWD's Readiness-to-Serve  
calculation specifically excludes any water delivered to SDCWA under the Exchange  
Agreement). This is a benefit MWD uniquely provided to SDCWA at its request.

1 costs that are incurred” confuses cost causation with benefits received. 12/18/2013 Tr. at 274:1-  
2 4. SDCWA claims that the Readiness-to-Serve Charge is inadequate because it is not set to  
3 recover the “entire potential benefit” that results from the charge. *See* 12/18/2013 Tr. 272:13-  
4 274:17 (SDCWA presentation citing Engineers Reports from MWD’s 2010 COS (DTX-090 at  
5 AR2010-011512; JTX-2 at AR2012-011512) and 2012/13 COS (DTX-110 at AR2012-016807).  
6 SDCWA is mistaken. The Engineer’s Reports reflect the *benefits* of facilities and programs to be  
7 financed in part by the Readiness-to-Serve Charge during the fiscal year for which the  
8 Engineer’s Report is prepared. *See* DTX-090 at AR2010-011509-011538; JTX-2 at AR2012-  
9 011509-011538; DTX-110 at AR2012-016804-016835. MWD does not set its rates based on the  
10 benefits it receives; rather it sets its rates based on its anticipated costs and the corresponding  
11 revenue it needs to pay those costs. *See* DTX-090 at AR2010-011470-011472; JTX-2 at  
12 AR2012-011470-011472; DTX-110 at AR2012- 016619-016621. *Also see* MWD Act § 134.  
13 This process is reflected in MWD’s COS analyses for every rate-setting cycle, which includes  
14 MWD’s anticipated costs recovered by the Readiness-to-Serve Charge. *Id.*

15  
16 **5. MWD Has Charges To Recover The Costs of Variations In Water Purchases Within A Year (“Peaking”)**

17 Further, when it comes to true peaking costs, MWD recovers those through its Capacity  
18 Charge, again regardless of the reason. As noted, MWD does not size its system based on annual  
19 variation in demand; rather, MWD designs its system based on peak week demands. 12/19/2013  
20 Tr. at 526:1-3 (Yamasaki testimony); 12/20/2013 675:12-18 (Skillman testimony). This is  
21 because peaking-related expenses concern the overall need to have facilities capable of handling  
22 peak usage, *i.e.*, peak water demands during a certain time within the year, including peak  
23 seasonal or summer water deliveries. *See* DTX-090 at AR2010-011484-011485, 011488,  
24 011490; JTX-2 at AR2012-011484-011485, 011488, 011490; DTX-110 at AR2012-016688-  
25 016689, 016693, 016695. These expenses do not relate to annual variations in demand, or  
26 whether the peaking occurs because a particular period of time is “dry” (*i.e.*, less rainfall or  
27 snowfall). *Id.* As Ms. Skillman testified, while information regarding long-term variations in  
28



1 member agency usage could be helpful if MWD wanted to analyze the average use of its system,  
2 “when [MWD] want[s] to understand peaking, [it] looks at what’s going on at the member  
3 agency during their highest day.” 12/20/2013 Tr. at 676:7-10 (Skillman testimony).

4 MWD’s Capacity Charge is a fixed charge assessed on each member agency based on its  
5 *maximum* summer day demand. See DTX-090 at AR2010-011492; JTX-2 at AR2012-011492;  
6 DTX-110 at AR2012-016697. The Capacity Charge not only recovers the cost of providing  
7 MWD’s distribution facilities for peak usage, but it also recovers the cost of providing seasonal  
8 peak storage capacity within MWD’s system (which gives MWD the operational flexibility for  
9 meeting peak demands). See DTX-090 at AR2010-011484-011485, 0114880, 011490; JTX-2 at  
10 AR2012-011484-011485, 011488, 011490; DTX-110 at AR2012-016688-016689, 016693,  
11 016695.

12 **6. SDCWA Has No Standing To Assert Its Dry Year Peaking Claim.**

13 Finally, not only does SDCWA’s dry year peaking claim have no merit, but SDCWA also  
14 has no standing to assert it. SDCWA must demonstrate that it is aggrieved by the alleged  
15 absence of a “dry year peaking” rate, and has or will suffer a significant injury. SDCWA has not  
16 done so. See, e.g., *Holmes v. Cal. Nat. Guard*, 90 Cal. App. 4th 297, 314-15 (2001) (“As a  
17 general principle standing to invoke the judicial process requires . . . [that] complainant has a real  
18 interest in the ultimate adjudication because he or she has either suffered or is about to suffer an  
19 injury of significant magnitude.”); *Carsten v. Psychology Examining Comm. Of the Bd. of Med.*  
20 *Quality Assurance*, 27 Cal. 3d 793, 796-97 (1980) (in the context of a writ of mandate, a party  
21 has standing to sue if it is “in fact adversely affected by governmental action”).

22 Indeed, if it were true that a member agency with the greatest variation in annual water  
23 purchases, or the highest annual peaks, imposed disproportionate costs on MWD that were  
24 somehow not reflected appropriately in MWD’s rate structure, SDCWA would tie LADWP for  
25 greatest annual variations and would exceed all other member agencies in annual peaks, for the  
26 years in which MWD’s rate structure has been in effect. See DTX-701 at \*1 (comparing  
27 member agency annual variations and demonstrating that SDCWA and LADWP’s annual  
28

1 variations are nearly identical and SDCWA has the highest annual peak water delivery); DTX-  
2 697 at \*1-3 (demonstrating same and also that in the relevant time-frame, LADWP and SDCWA  
3 have virtually identical standard deviations of peak to average water deliveries).

4 Thus, if MWD re-designed its rate structure in the way contemplated by SDCWA's dry  
5 year peaking claim—*i.e.*, to allocate more costs to member agencies that have greater annual  
6 variations or higher annual peaks—such a rate structure could only mean that SDCWA would be  
7 charged more.

8 **E. The Relevant Electorate Under Proposition 26 Approved MWD's 2013-2014**  
9 **Rates**

10 **1. MWD's Customers—Its Board—Approved The Rates**

11 As explained, Proposition 26 does not apply to MWD's rates. But, even assuming  
12 *arguendo* it did, Proposition 26 requires only that the relevant electorate approve the rates by at  
13 least a two-thirds majority. That occurred here when the MWD Board of Directors considered  
14 and approved MWD's 2013-2014 rates, so MWD has satisfied Proposition 26.

15 As to special taxes by local governments, Article XIII C of the Constitution provides:

16 No local government may impose, extend, or increase any special tax  
17 unless and until that tax is submitted to the electorate and approved by a  
18 two-thirds vote.

19 Cal. Const. art. XIII C, § 2(d).

20 MWD's customers are its 26 member agencies. JTX-2 (AR2012-016429) at AR2012-  
21 016492-016493; DTX-029 at AR2012-003848; JTX-1 at AR2010-003848. MWD's Board of  
22 Directors is comprised solely of representatives of these member agencies, selected by the  
23 member agencies themselves, in accordance with state law. Each member agency is represented  
24 on the Board. MWD Act §§ 51-52. Under MWD's enabling act, the Legislature requires MWD  
25 to submit its rates to a vote of the representatives of its member agencies that comprise the  
26 Board. MWD Act § 57. MWD is required by this long-standing state law to adopt rates that  
27 pass by a majority vote. *Id.* SDCWA concedes that MWD's Board is comprised of  
28 representatives appointed by each of its 26 member agencies, and that the Board has the

1 authority to set the rates. 2012 Complaint ¶¶ 22-23.

2 On April 10, 2012, after public comment and votes on three other options (including a  
3 3% increase option proposed by SDCWA), the proposed rates were submitted to the Board and  
4 the members voted. DTX-111 at AR2012-016997-017001; *see also*, 2012 Complaint, ¶¶ 5, 48.  
5 The rates were approved by a 75% vote. DTX-111 at AR2012-016997-017001.

6 SDCWA argued in opposition to MWD’s motion for judgment on the pleadings that the  
7 representatives of the member agencies that comprise the MWD Board are not the “electorate.”  
8 It instead contends the relevant electorate is all registered voters within MWD’s service area—an  
9 area that serves 19 million residents—even though *none* of these voters are MWD’s customers.  
10 SDCWA’s Opp. to MWD’s Motion for Judgment on the Pleadings at 12-13. As explained  
11 below, SDCWA is wrong.

12 **2. The Ordinary Definition Of “Electorate,” Article XIII C’s Text, And**  
13 **The MWD Act Supports MWD’s Position**

14 “Electorate” is not defined in Article XIII C and it has not been interpreted by a court.  
15 However, the standard dictionary definition of the word, coupled with the MWD Act, make clear  
16 that the representatives on the Board are the only applicable electorate. Webster’s Dictionary  
17 defines “electorate” as “a body of people entitled to vote.” Webster’s New Collegiate Dictionary  
18 371 (10th ed. 1996). The American Heritage Dictionary similarly defines the word as “a body of  
19 qualified voters.” American Heritage Dictionary 881 (4th ed. 2000). Pursuant to the mandate of  
20 existing state law, the only body of people entitled to vote, or qualified to vote, on MWD’s rates  
21 are the member agencies’ representatives on the Board. MWD Act § 57. This makes sense  
22 because MWD is a wholesaler and its member agencies are the only ones who pay MWD’s rates.  
23 MWD Act §§ 130, 133.

24 SDCWA argued in opposition to MWD’s motion for judgment on the pleadings that,  
25 because in other (inapplicable) contexts “electorate” refers to the voters in an area, that meaning  
26 must apply to all uses of the word. But, the drafters of Article XIII C clearly knew how to  
27 provide for elections by the general voting public. For example, section 2(b) provides that a  
28

1 general tax must be put on the ballot at a regularly scheduled general election at which members  
2 of the governing body are also up for election. By contrast, section 2(d), the special tax  
3 provision, contains no similar requirement. Thus, where Proposition 26 does apply, local  
4 agencies may design voting procedures appropriate for the charge. And, the only logical  
5 interpretation of Proposition 26 is that the payors would vote. Here, although Proposition 26  
6 does not apply to MWD, even if it did, MWD satisfied the approval requirement with respect to  
7 its 2013-2014 rates because all entities that pay the rates were given a vote and the rates were  
8 approved by more than two-thirds of that electorate of payors.

9  
10 **3. The Legislative Background Of Propositions 218 And 26 Support  
MWD's Position**

11 The legislative background text of Proposition 218 and Proposition 26 also supports the  
12 necessary conclusion that the electorate consists of those who directly pay the charge.  
13 Proposition 218's "Findings and Declarations" states that the "measure protects taxpayers by  
14 limiting the methods by which local governments exact revenue from taxpayers without their  
15 consent." See July 29, 2013 Request For Judicial Notice In Support of MWD's Motion For  
16 Judgment on the Pleadings ("Proposition 26 RJN") Ex. B (Ballot Pamp., General Elec.  
17 (November 5, 1996)) at 108 (emphasis added). Similarly, Section 5 "Liberal Construction"  
18 describes the purpose of Proposition 218 as "limiting local government revenue and enhancing  
19 taxpayer consent." Proposition 26 RJN Ex. B at 109 (emphasis added). The description of  
20 Proposition 26's purposes use similar terms. The findings in section 1 of the measure complain  
21 about "new taxes to be paid by drivers, shoppers, and anyone who earns an income."  
22 Proposition 26 RJN Ex. A (Ballot Pamp., General Elec. (November 2, 2010)) at 114; *see also*  
23 Cal. Const. art. XIII D, § 4(e) & (g) (limiting voting on assessments to the record owners of each  
24 parcel to be assessed, with weighted voting based on the proportion of total financial obligation,  
25 and prohibiting voting by "electors residing within the district who do not own property").

26 **4. SDCWA's Position Would Impermissibly Repeal MWD Act § 57 By  
27 Implication**

28 Interpreting the electorate as anything other than MWD's Board would effectively mean

1 that Article XIII C repealed MWD Act § 57 by implication. This cannot be the case as it is well  
2 established that a subsequent law will not be found to have impliedly repealed a pre-existing,  
3 more specific law, absent legislative intent to do so. *See, e.g., People v. Super. Ct. (Cooper)*, 114  
4 Cal. App. 4th 713, 720 (2003) (“In recognition of the courts’ constitutional role to construe, not  
5 write, statutes, all presumptions are against a repeal by implication.”) (internal quotation marks  
6 omitted); *Metropolitan Water District v. Dorff*, 98 Cal. App. 3d 109, 114 (1979) (“the  
7 presumption is against [implied] repeal, especially where the prior statute has been generally  
8 understood and acted upon”).

9  
10 **5. A Comparison Of The Requirements of Propositions 218 And 26**  
11 **Shows That SDCWA’s Position Is Illogical And Would Require**  
12 **Duplicative Consumer Votes**

13 The fact that the relevant electorate cannot logically be all voters among the 19 million  
14 residents in MWD’s service area, and instead can only logically be MWD’s customers (its  
15 member agencies), is further supported by a comparison of the requirements of Propositions 218  
16 and 26. SDCWA’s argument would create an unreasonable, duplicative process where  
17 individual consumers would weigh in up to three times on whether they support or oppose what  
18 SDCWA contends is exactly the same rates.

19 Proposition 218, adopted by the voters in 1996, established procedures for voter approval  
20 of local taxes in general (Cal. Const., art. XIII C), as well as assessments and fees imposed on  
21 property owners or charged for a property-related government service (Cal. Const., art. XIII D).  
22 Fees for serving water to a property (along with fees for sewer and refuse collection service for  
23 property), were specifically exempted from voter approval requirements that apply to other  
24 property-related fees. Cal. Const., art. XIII D, §6(c); *Griffith v. Pajaro*, 220 Cal. App. 4th at  
25 595-596; *Richmond v. Shasta Community Svces. Dist.*, 32 Cal. 4th 409, 426-427 (2004). Instead,  
26 the rates charged by a public agency for water service to a property are subject to a procedure by  
27 which the agency provides notice and an opportunity to be heard to each property owner  
28 receiving water service. Cal. Const, art. XIII D, §6(a); *Griffith v. Pajaro*, 220 Cal. App. 4th at  
596; *Richmond v. Shasta Community Svces. Dist.*, 32 Cal. 4th at 427. The rate for delivering

1 water to properties may be adopted unless a majority of property owners submit a protest. Cal.  
2 Const., art. XIII D, §6(a)(2).

3 Proposition 26 was passed in November 2010 to address the perceived problem of  
4 government agencies skirting the voting requirements of Proposition 218 by “disguis[ing] new  
5 taxes as ‘fees’ in order to extract even more revenue from California taxpayers without having to  
6 abide by these [Proposition 218] constitutional voting requirements.” Prop. 26, §1(e). However,  
7 nothing in Proposition 26 amended the existing constitutional provisions that exempt water rates  
8 from voter approval. Instead, Proposition 26 re-affirmed that “property-related fees,” which  
9 includes retail water rates, are not taxes that are subject to voter approval. Cal. Const., art.  
10 XIII C, §1(e)(7). They are instead fees subject to the notice and protest process. Cal. Const., art.  
11 XIII D, §6(a). Because Proposition 26 retained the existing procedures governing the setting of  
12 water service rates at the retail level, it would not make sense to interpret the proposition as  
13 imposing new and different procedures for setting water rates at the wholesale level.

14 MWD provides water and water services to its member agencies, not to property owners,  
15 so its rates are not property-related fees that are subject to the notice and protest requirements of  
16 Article XIII D of the Constitution. There is no dispute about that. MWD is not a retail agency  
17 and does not sell water, or provide water transportation services, to end-users: the 19 million  
18 individual homeowners, business owners, and other consumers who receive water from a tap or  
19 hose within Metropolitan’s service area. *MWD v. IID*, 80 Cal. App. 4<sup>th</sup> at 1416; JTX-2  
20 (AR2012-014096) at 014166. Instead, MWD is a wholesale agency that sells water, and  
21 provides water transportation services if requested, to its 26 member agencies, each of which is  
22 either a water wholesaler itself or a water retailer. JTX-2 (AR2012-014096) at 014165; *id.* at  
23 014215-16. There is no dispute about that either. The governing bodies of these member  
24 agencies then choose whether or not, and the extent to which, they will pass on MWD’s rates to  
25 their customers, which are either water retailers or individual retail consumers. As to the retail  
26 subagencies, their governing bodies then choose whether or not, and the extent to which, they  
27 will pass on the member agency’s rates to their individual retail customers. JTX-2 (AR2012-  
28

1 014096) at 014166. For example, like MWD, SDCWA is a wholesale water agency; and similar  
2 to MWD, it has 24 member agencies to which it provides water or water services. *Rincon*, 121  
3 Cal. App. 4th at 816; JTX-2 (AR2012-013255) at 013255 (*see* letterhead for 24 subagencies).  
4 Those 24 subagencies, through their governing bodies, are the only entities that determine what  
5 rates will be charged to individual homeowners, business owners, and other consumers who  
6 receive water from a tap or hose. There should be no dispute about this. *See* SDCWA's website  
7 <http://www.sdcwa.org/water-rates-charges>. The water retailers must provide notice and an  
8 opportunity to be heard to each property owner receiving water service, pursuant to Article XIII  
9 D, and those consumers can reject by a majority protest a rate that they are proposed to pay.  
10 There is no dispute about this.

11 Yet, SDCWA nonetheless argues that the individual homeowners, business owners, and  
12 other consumers who receive water from a tap or hose – who are not charged MWD's water rates  
13 – have a constitutional right to vote on MWD's rates, even though they have no such right to  
14 vote on the rates charged by the actual government agency that delivers water to their property.  
15 This is based on a false premise. Even if MWD's rates were passed through to individual  
16 consumers in the same manner by each of MWD's member agencies and, where applicable, their  
17 subagencies – which they are not – the practical result of having these consumers vote on  
18 MWD's rates would be nonsensical. SDCWA's argument would have these same consumers  
19 weigh in on whether they support or oppose the rates twice under Proposition 26 (since if  
20 Proposition 26 applies to MWD's rate-setting, it would also apply to the member agency's rate-  
21 setting), and then again under Proposition 218, creating an illogical, duplicative series of events  
22 with potential for conflicting results. Moreover, each agency's customers would also incur an  
23 extraordinary financial cost to fund this duplicative process. And, if SDCWA's required  
24 predicate is accepted – that it is the same set of rates at each stage – the multiple times the same  
25 consumer weighs in on them would be, quite literally, wholly unnecessary.

26 Conversely, if the reality is recognized – that the governing bodies of Metropolitan's  
27 member agencies and their subagencies each make an independent decision about the rates that  
28

1 they will charge to their customers – it would be equally nonsensical for the individual  
2 consumers to vote on Metropolitan’s rates. This is because the individual consumers never pay  
3 Metropolitan’s rates. JTX-2 (AR2012-014096) at 014207; JTX-2 (AR2012-010196) at 010202;  
4 JTX-2 (AR2012-016854) at 016863; JTX-2 (AR2012-12003) at 012004. Individual members of  
5 the public pay only their retail provider’s rates. *Id.* The retail rates charged to the public  
6 necessarily include many other costs incurred by the member agencies and their subagencies for  
7 each entity’s own water supplies and systems, none of which relate to MWD’s rates nor are  
8 subject to voter approval. Cal. Const., art. XIII D, §6(c); JTX-2 (AR2012-014096) at 014192.  
9 For example, a member agency or subagency might decide to undertake a considerable capital  
10 expenditure, and this cost would be unrelated to MWD’s rates; or it might decide to forego or  
11 defer a capital project, which too is unrelated to MWD’s rates. JTX-2 (AR2012- 016854) at  
12 016865 (Padre Dam Municipal Water District cuts costs by deferring 13 capital improvement  
13 projects). The member agencies also make their own budgeting and rate-setting decisions about  
14 whether to absorb particular rate increases MWD adopts and not pass those on to their  
15 subagencies or retail customers, and the subagencies do the same with respect to whether to  
16 absorb and not pass on to their retail customers the member agency’s increases. *Rincon*, 121 Cal.  
17 App. 4th, at 817; JTX-2 (AR2012-014096) at 014207. In addition, the retail rates paid by  
18 individual consumers served by different member agencies and subagencies would be affected  
19 differently by changes in MWD’s wholesale rates based on the amount of water and water  
20 service each member agency purchases from MWD and the availability of alternative supplies at  
21 differing costs, as well as the amount of water each member agency’s subagency purchases from  
22 the member agency and the availability of alternative supplies to that provider at differing costs.

23         Given these realities, it would be illogical for individual consumers to vote on rates that  
24 are not applicable to them. Instead, under Proposition 218 they may protest the rates that are  
25 actually applicable to them: those that their retailer proposes they pay to cover the retailer’s  
26 costs, which includes to a greater or lesser extent for each retailer amounts attributable to  
27 MWD’s rates.  
28



1 Last, it is illogical to apply Proposition 26 to require voter approval of the wholesale  
2 water rates MWD charges its member agencies, when Proposition 218 exempts those same  
3 member agencies that are retailers and the retail subagencies, from obtaining voter approval of  
4 their water rates and instead provides for the protest process. If MWD were a retail water  
5 supplier rather than a wholesaler, its charges for water would be a property-related fee not  
6 subject to voter approval pursuant to Proposition 218 and instead would be subject to the protest  
7 process. Cal. Const. art. XIII D, § 6(c). Ironically, SDCWA's position that millions of voters in  
8 MWD's service area must vote on MWD's water rates would impose more burdensome voter  
9 approval requirements on MWD as a wholesale supplier than are imposed on MWD's member  
10 agencies and their subagencies that provide retail water service directly to the public.

11 For all of these reasons, it would be incongruous and nonsensical to require a vote by  
12 retail consumers on wholesale water rates that they do not pay, that may have no effect on the  
13 member agencies' or subagencies' additional costs or other budget considerations that determine  
14 the retail water rates the consumer actually does pay, and that is not required even at the retail  
15 level.

16 Of course, the Constitutional provisions applicable to water rates set by public agencies  
17 do not leave the public without recourse, as SDCWA would have the Court to believe. As  
18 explained, public water agencies cannot charge rates that are protested by a majority of the  
19 property owners that pay the proposed rates following a notice and hearing process. That  
20 process applies to both the retail member agencies that purchase water from MWD and the retail  
21 subagencies of MWD's wholesale member agencies. All of MWD's member agencies comprise  
22 and are represented on MWD's Board, and so the customers of these entities can make  
23 themselves heard in the MWD Board process through the members of the Board. MWD Act §  
24 51; *see also* JTX-2 (AR2012-014096) at 014203. Moreover, the customers can make themselves  
25 heard in the process directly, since all members of the public may participate: MWD's multi-  
26 month budgeting and rate-setting process occurs transparently, in public meetings at which  
27 members of the public may speak and submit statements and other materials, and with the  
28

1 relevant documentation to be considered by the Board made public in advance of the meetings.  
2 Cal. Gov. Code § 54953; *see, e.g.*, JTX-1 (AR2010-009389) at 009452 (Resolution of the MWD  
3 Board of Directors giving notice of intention to impose Readiness-to-Serve Charge); JTX-2  
4 (AR2010-009389) at 009452, JTX-2 (AR2012-015328) at 015328-017097 (letters and emails of  
5 protest from Oceanside customers). Consumers within MWD’s service area can and do  
6 participate and voice their support of or objections to MWD’s proposed rates within MWD’s  
7 ratemaking process. *Id.* And in the event of a successful majority protest on retail water rates  
8 under the Proposition 218 process, a member agency (or its subagency) may either seek  
9 wholesale rate relief through MWD’s (or the member agency’s) budgeting and rate-setting  
10 process, or it may revise its own costs, including through the use or development of alternative  
11 sources of water, to achieve a rate that is not protested by a majority of its ratepayers. Finally,  
12 the voters have the constitutional right to use the initiative power to reduce or repeal any local  
13 tax, assessment, fees, and charges. Cal. Const., art. XIII C, § 3. Thus, the public may ultimately  
14 exercise the right to vote on MWD’s rates by initiative. *See Bighorn-Desert View Water Agency*  
15 *v. Verjil*, 39 Cal. 4th 205, 217-218 (2006).

16 A conclusion that “electorate” under Proposition 26 means all voters among the 19  
17 million residents within Metropolitan’s service area, or any group other than Metropolitan’s own  
18 customers, would be illogical and lead to duplicative, unreasonable results. Even if Proposition  
19 26 applied to MWD’s rates – which as explained it does not – MWD nonetheless satisfied  
20 Proposition 26 because its Board adopted the 2013-2014 rates by the requisite two-thirds vote.

21 **F. The Exchange Agreement Is Irrelevant To This Proceeding; But Even If**  
22 **Considered, It Does Not Affect The Determination That MWD’s Rates Are**  
23 **Lawful**

24 **1. The Parties Agree The Exchange Agreement Is Irrelevant Here**

25 The parties agree that the Exchange Agreement is not relevant to this rate challenge.  
26 SDCWA stated this repeatedly at the final hearing. This proceeding concerns *only* whether  
27 MWD’s water rates are lawful. The Exchange Agreement cannot answer that question in any  
28 way. The Court should take SDCWA at its word and not consider the Exchange Agreement in

1 this proceeding.

2 **2. SDCWA Nevertheless Relies On The Exchange Transaction, So MWD**  
3 **Must Address It Out of An Abundance Of Caution**

4 Despite SDCWA's agreeing the Exchange Agreement is irrelevant and demanding MWD  
5 not discuss it at the final hearing, SDCWA frequently and inconsistently referred to transactions  
6 occurring under the Exchange Agreement in an effort to prove its claims:

- 7 • SDCWA discussed the water it obtains from IID and the Canal Lining, claimed  
8 that MWD transports that water to SDCWA through MWD's pipes, and argued  
9 that MWD charges too much for that alleged service, to support SDCWA's  
10 contention that MWD's rates are unlawful. *See, e.g.*, 12/17/2013 Tr. at 35:17-22;  
11 77:1-6; 151:18-23; 177:22-179:14. SDCWA is referring to transactions under the  
12 Exchange Agreement, which are the only transactions in which MWD is  
13 involved with water SDCWA has obtained from IID and the Canal Lining.<sup>31</sup>
- 14 • SDCWA made the same argument in its First Pretrial Brief, and also requested  
15 that documents relating to the Exchange Agreement be admitted into evidence,  
16 including SDCWA's Transfer Agreement with IID to purchase IID's water  
17 (which is the reason for the existence of the Exchange Agreement).<sup>32</sup>
- 18 • SDCWA opposed MWD's motion in limine to exclude the Exchange Agreement  
19 topic from the rate challenge proceeding. SDCWA's Opp. to MWD's Motions in  
20 Limine.
- 21 • SDCWA's rate challenge causes of action (the first three causes of action in both  
22 cases) contain several allegations about transactions under the Exchange  
23 Agreement. *See, e.g.*, TAC ¶¶ 27, 29, 74; 2012 Complaint ¶ 37.

24 Consequently, MWD is concerned that despite SDCWA's statements at the final hearing,

25 <sup>31</sup> It appears SDCWA is trying to have it both ways: it wants this Court to consider the  
26 exchange transaction in this proceeding, yet prevent MWD from responding about it.

27 <sup>32</sup> SDCWA successfully opposed document requests concerning the IID/SDCWA Transfer  
28 Agreement—even as to SDCWA's breach of the Exchange Agreement claims—on the ground  
the Transfer Agreement is irrelevant to all claims. May 13, 2013 Order at 3-4.

1 SDCWA will discuss the Exchange Agreements and/or transactions under it in its closing brief  
2 and at closing arguments, as alleged support for its contention that MWD's rates are unlawful.  
3 Out of an abundance of caution, MWD will therefore respond to these potential arguments  
4 below.

### 5 **3. The Exchange Agreement Does Not Involve Wheeling**

6 SDCWA argued in the final hearing that it pays a wheeling rate under the Exchange  
7 Agreement and indicated the Wheeling Statute applies to transactions under that Agreement.  
8 *See, e.g.*, 12/17/2013 Tr. at 13:6-8, 77:1-6, 177:22-179:14. In other proceedings, SDCWA  
9 successfully took the opposite – and correct – position.

10 California law defines wheeling as an agency transporting third-party water to its  
11 customer through its own transportation facilities, when those facilities have a certain amount of  
12 unused capacity available. *See* Cal. Water Code § 1810 *et seq.* The Wheeling Statute only  
13 applies if a wheeling request has been made and denied, or if the parties have agreed to a  
14 wheeling transaction. *See id.* Either MWD is wheeling the IID/Canal Lining Water, and the  
15 Wheeling Statute applies to the transaction, or MWD is not wheeling this water and the  
16 Wheeling Statute does not apply to the transaction.<sup>33</sup> It is clear that, as SDCWA advocated in  
17 other proceedings, MWD does not provide wheeling service under the Exchange Agreement for  
18 several reasons and the Wheeling Statute is inapplicable to it.

19 *First*, the Exchange Agreement involves an exchange of like amounts of water, not a  
20 conveyance of third-party water as the Wheeling Statute concerns. *See* TAC ¶ 2; Ex. A to TAC  
21

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22 <sup>33</sup> To draw an analogy, there are laws that govern gasoline sales. If party A agreed to sell water  
23 at the average nationwide gasoline price, that would not mean laws applying to gasoline sales  
24 applied to party A's water sales because, regardless of the selected price term, they are not  
25 gasoline sales. Here, the parties did not agree that SDCWA would pay MWD's rate for wheeling  
26 service under the Exchange Agreement, but rather MWD's conveyance charges generally  
27 applicable to member agencies. That is a distinction with several differences, including a  
28 different power charge (actual power costs under the rate for wheeling service, versus the lower  
System Power Rate under the generally applicable conveyance charges). But, even if MWD and  
SDCWA agreed that SDCWA would pay the rate for wheeling service, that would not make the  
Exchange Agreement subject to the Wheeling Statute. Regardless of the selected price term, the  
exchange transaction does not involve wheeling.

1 and 2012 Complaint (Recitals at D, Art. 1.1(f), (h), (m), Art. 3.1(a), and Art. 3.2); *see also*  
2 12/20/2013 Tr. at 612:10-613:14 (Upadhyay testimony). SDCWA has opted to obtain a portion  
3 of its MWD water under a negotiated contract – the Exchange Agreement. Under this contract,  
4 in exchange for Colorado River water SDCWA receives through its Transfer Agreement with  
5 IID and an Allocation Agreement under the Quantification Settlement Agreement, MWD sells  
6 SDCWA a blend of SWP and Colorado River water (the “Exchange Water”) pursuant to a  
7 negotiated consideration package. *See* DTX-109 at AR2012-016586; DTX-099 at \*MWD2010-  
8 00184023. At no point is MWD conveying third-party water to SDCWA.

9  
10 Specifically, under the agreement terms, SDCWA makes a certain amount of IID/Canal  
11 Lining Water available to MWD at one location (Lake Havasu), and MWD makes a “like  
12 quantity” of water available at another location (SDCWA’s intakes). *See* TAC ¶ 2; Ex. A to  
13 TAC and 2012 Complaint (Recitals at D, Art. 1.1(f), (h), (m), Art. 3.1(a), and Art. 3.2)); *see also*  
14 12/20/2013 Tr. at 612:10-613:14 (Upadhyay testimony). The Exchange Agreement neither  
15 requires, nor does it even contemplate, MWD’s conveying, or “wheeling” the IID/Canal Lining  
16 Water to SDCWA.

17  
18 *Second*, the agreement does not involve the conveyance of third-party water because  
19 MWD provides the Exchange Water from “*whatever [MWD] source or sources*” it chooses. Ex.  
20 A to TAC and 2012 Complaint (Art. 1.1(m)) (emphasis added). This Exchange Water is a blend  
21 of SWP water, water from the Colorado River, and other sources, meaning it is MWD water that  
22 SDCWA receives, not the IID/Canal Lining Water (third-party water). DTX-109 at AR2012-  
23 016586); DTX-099 at AR2010-00184023; JTX-2 at AR2012-00184023. Indeed, the Exchange  
24 Agreement itself expressly contemplates that MWD will deliver to SDCWA Exchange Water  
25 that includes SWP water. *See* Ex. A to TAC and 2012 Complaint (Art. 3.3) (delivery of  
26 Exchange Water may be interrupted due to maintenance or repair of MWD’s facilities “or the  
27 State Water Project facilities”).

28  
29 *Third*, MWD delivers the Exchange Water to SDCWA regardless of whether SDCWA  
30 has first delivered IID/Canal Lining Water to MWD. It would be impossible for MWD to

1 “wheel” water that has not been provided to it yet. To demonstrate, under the Exchange  
2 Agreement, SDCWA must notify MWD of how much water it expects to make available so that  
3 MWD knows how much Exchange Water to start providing each month. *See* Ex. A to TAC and  
4 2012 Complaint (Art. 3.1(c)); 12/20/2013 Tr. at 613:15-21 (Upadhyay testimony). Later in the  
5 year, SDCWA must confirm with MWD the amount of water that it actually did make available,  
6 and the U.S. Bureau of Reclamation makes the final determination of how much water SDCWA  
7 made available in Decree Accounting Reports. *See* Ex. A to TAC and 2012 Complaint (Art.  
8 6.1); 12/20/2013 Tr. at 614:9-15, 617:18-618:3 (Upadhyay testimony); *see also* DTX-226-DTX-  
9 246 (all notice and confirmation letters from SDCWA to MWD from 2003 to the present) and  
10 DTX-309-318 (U.S. Bureau of Reclamation Decree Accounting Reports from 2003 to present).  
11 Under this schedule, MWD is required to start delivering to SDCWA monthly installments of  
12 Exchange Water before it receives confirmation that SDCWA has in fact made the entire  
13 estimated amount available. In 2011, MWD over-delivered Exchange Water by about 17,000  
14 acre-feet, because SDCWA did not make available to MWD all of the IID water that it said it  
15 would. *See* DTX-256 (MWD’s letter of default to SDCWA); 12/20/2013 Tr. at 621:19-622:8  
16 (Upadhyay testimony). It would be impossible for Exchange Water MWD delivered to SDCWA  
17 to be water SDCWA had made available to MWD, when that did not occur.

18         The 2011 occurrence also underscores the profound inaccuracy of SDCWA’s Assistant  
19 General Manager’s assertion that SDCWA procured (and pays more for) the IID water in order  
20 to obtain a source of water it views as being “more reliable” than MWD’s full service water.  
21 12/18/2013 Tr. at 187:10-13 (Cushman testimony). IID failed to meet its obligations to SDCWA  
22 under their Transfer Agreement and did not provide to SDCWA the water it had promised, and  
23 so SDCWA in turn failed to make the required amount of water available to MWD.  
24 Nonetheless, MWD delivered to SDCWA the full amount of MWD water that SDCWA  
25 requested under the Exchange Agreement. MWD serves as SDCWA’s “insurance policy” for  
26 reliable water, when IID proves unreliable.

27         *Fourth*, MWD is obligated to provide Exchange Water without interruption under the  
28

1 Exchange Agreement regardless of available capacity in MWD’s system. *See* Ex. A to TAC and  
2 2012 Complaint (Arts. 3.2(d), 3.3); DTX-044 at \*p. 438-39. MWD is obligated to exchange  
3 MWD water for the IID/Canal Lining Water SDCWA makes available, regardless of whether  
4 there is available capacity in MWD’s system, MWD’s Colorado River Aqueduct or other  
5 infrastructure has been shut down for maintenance or repairs, or any member agency has an  
6 emergency requiring them to increase demands for MWD water on MWD’s system. *Id.* In  
7 contrast, the Wheeling Statute applies only where there is unused capacity – statutory availability  
8 – in the conveyance system, and wheeling may be interrupted when the pipe does not have  
9 capacity or is not available. Cal. Water Code § 1810.

10 SDCWA is well aware of the difference between water exchanges and water wheeling, as  
11 it has entered into both kinds of transactions with MWD. For example, in 2003 SDCWA was  
12 involved in a wheeling agreement under which MWD transported water from the Fallbrook  
13 Public Utility District, one of SDCWA’s member agencies. *See* DTX-177\* (Fallbrook wheeling  
14 agreement). In this agreement, the parties agreed that MWD would provide wheeling service “so  
15 long as there is capacity in excess of that needed by [MWD] to meet the water supply needs of  
16 its member agencies and its operational requirements.” DTX-177 at \*3.

17 These are the same reasons why SDCWA correctly and successfully advocated that no  
18 wheeling occurs under the Exchange Agreement and the Wheeling Statute does not apply:

- 19 • In 2002, SDCWA and IID jointly petitioned the State Water Resources Control  
20 Board to approve an agreement providing for a long-term transfer of conserved  
21 water from IID to SDCWA. In support of the joint petition, SDCWA’s then and  
22 current General Manager Maureen Stapleton testified in a public hearing that  
23 wheeling does not occur under the Exchange Agreement:

24 The exchange agreement . . . requires that San Diego  
25 basically turn over an amount of water to Metropolitan at  
26 its intake on the Colorado River and then alike amount [sic],  
27 meaning just that same amount in quantity, would be  
28 provided to us at our turnout at the end of the Met pipes in  
San Diego County. ***It is radically different than a  
wheeling agreement*** for a space available in that we have a

1 firm space in the aqueduct for the length of the exchange  
2 agreement.

3 DTX-044 at \*p. 438 (emphasis added). Ms. Stapleton then confirmed that water  
4 purchased under the Exchange Agreement “is different from a Katz Wheeling  
5 Law transfer in two regards. One is it is a trade of one supply of water for  
6 another. And secondly, it is firm capacity as opposed to space available.” DTX-  
7 044 at \*p. 438-39.<sup>34</sup>

- 8 • In 2009, in a Joint Motion for Summary Adjudication of claims brought against  
9 them under the Wheeling Statute in the QSA Litigation,<sup>35</sup> SDCWA and MWD  
10 together argued in the Sacramento Superior Court that “the MWD-SDCWA  
11 Exchange Agreement falls outside the scope of the Wheeling Law and thus the  
12 agreement cannot be invalidated by it, nor can any duties under it be breached . . .  
13 .” DTX-078 at \*p. 20. The Joint Motion explained in detail that:

14 *[t]he Wheeling Law does not apply to the MWD-SDCWA*  
15 *Exchange Agreement . . . . [T]he MWD-SDCWA*  
16 *Exchange Agreement provides SDCWA no right to use*  
17 *unused capacity of particular MWD facilities as would*  
18 *occur under the Wheeling Law, but contractually obligates*  
19 *MWD to exchange SDCWA’s water or provide like*  
20 *quantities of water through whatever facilities it sees fit.*

21 DTX-078 at pp. 21-22 (emphasis added). For that reason, SDCWA and MWD

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22 <sup>34</sup> Ms. Stapleton’s testimony concerned the 1998 Exchange Agreement, which the current  
23 Exchange Agreement amended and restated. *See* Ex. A to TAC and 2012 Complaint (at Recital  
24 E). However, while the 1998 Exchange Agreement had a different price provision than did the  
25 2003 Exchange Agreement, both agreements involved an exchange, rather than transportation, of  
26 water, and neither agreement conditioned MWD’s obligations under it to space being available in  
27 the aqueduct. *See* DTX-028 and Ex. A to TAC and 2012 Complaint.

28 <sup>35</sup> The Quantification Settlement Agreement Litigation (“QSA Litigation”) is a coordinated  
proceeding in the Sacramento Superior Court to determine the validity of agreements that  
provide for the conservation, transfer, and exchange of Colorado River water, which was then  
considered by the Court of Appeal. These agreements quantify the amount of water that IID and  
others are permitted to divert annually from the Colorado River. In the QSA Litigation, Imperial  
County argued that the proposed transfers violated the Wheeling Statute because the County had  
not determined them to be environmentally and economically acceptable. *See In re*  
*Quantification Settlement Agreement Cases*, 201 Cal. App. 4th 758, 839 (2011).



1 contended that “the parties’ actions under the Exchange Agreement are governed  
2 by the contract between the parties *and not limitations under the Wheeling Law.*”  
3 DTX-078 at 22 (emphasis added).

- 4 • In 2011, in a reply brief to the California Court of Appeal in the QSA Litigation,  
5 SDCWA and MWD together argued that “the Exchange Agreement and the  
6 Transfer Agreements are clear on their faces that they do not pertain to the forced  
7 use of unused capacity in the water conveyance system of an agency, and thus do  
8 not trigger application of the Wheeling Statutes.” DTX-655 at \*154.

9 SDCWA is judicially estopped from now arguing the Exchange Agreement involves  
10 wheeling and/or that the Wheeling Statute applies to it. *See Int’l Engine Parts, Inc. v. Feddersen*  
11 *& Co.*, 64 Cal. App. 4th 345, 350 (1998); *Jackson v. County of Los Angeles*, 60 Cal. App. 4th  
12 171, 181-182 (1997) (“[o]ne to whom two inconsistent courses of action are open and who elects  
13 to pursue one of them is afterward precluded from pursuing the other.”).

#### 14 **4. The Consideration Package That SDCWA Proposed And MWD** 15 **Accepted Is Fair And Reasonable**

16 Even assuming *arguendo* that MWD was wheeling water under the Exchange Agreement  
17 and/or the Wheeling Statute applied (which is not the case), the parties’ negotiated consideration  
18 package is “fair compensation” under the Wheeling Statute. The consideration package is also  
19 reasonable if the Court were to consider the matter under the other laws at issue in the rate  
20 challenge.

21 SDCWA had no need or motivation to enter into the 2003 Exchange Agreement unless it  
22 was very good deal. This is because SDCWA already had the favorable 1998 Exchange  
23 Agreement in place for a multi-decade term.

24 The 2003 Exchange Agreement is a restatement of, and an amendment to, the 1998  
25 Exchange Agreement, under which SDCWA agreed to pay a set price—one much lower than  
26 MWD’s rates that are “generally applicable to the conveyance of water.” DTX-028 at  
27 \*SDPRA0159096. Under the 1998 Exchange Agreement, SDCWA agreed to pay a fixed price  
28

1 ranging between roughly \$80 and \$123 per acre-foot of water it received from MWD in  
2 exchange for the IID/Canal Lining Water for a term of thirty years. DTX-028 at \*0159096,  
3 0159108.

4 As SDCWA's Person Most Knowledgeable ("PMK") on the Exchange Agreement  
5 admitted, in 2003 SDCWA *approached MWD* asking to renegotiate the 1998 Exchange  
6 Agreement, seeking a better deal. *See* DTX-709\* (Slater Depo. Tr. at 57:22-58:3). The  
7 renegotiation resulted in two different options for SDCWA. *See id.* at 165:24-166:16; 168:18-  
8 169:23; DTX-130 at \*SDPRAE0003757; DTX-050 at \*SDPRAE0036700.

9 SDCWA's first option, or "Option 1," was to keep the 1998 Exchange Agreement. DTX-  
10 050 at \*SDPRAE0036700. The second option, which SDCWA proposed, was "Option 2." *Id.*  
11 Under Option 2, SDCWA would pay \$253 per acre-foot for the first year, and then would pay  
12 the charges "generally applicable to the conveyance of water" (*i.e.*, MWD's Transportation  
13 Rates—the System Access Rate, the System Power Rate, and the Water Stewardship Rate)  
14 thereafter. Ex. A to TAC and 2012 Complaint (Art. 5.2); *see also* DTX-709 (Slater Depo. Tr. at  
15 65:9-68:19); DTX-050 at \*SDPRAE0036700. In exchange for the negotiated price term under  
16 Option 2, SDCWA would receive 77,700 acre-feet per year of All-American Canal and  
17 Coachella Canal lining water for 110 years, as well as MWD's right to \$235 million for canal  
18 lining and conjunctive use programs. *See* DTX-709 (Slater Depo. Tr. at 30:18-31:1); DTX-130  
19 at \*SDPRAE0003757.

20 SDCWA chose "Option 2" which, as SDCWA's PMK admitted, is reflected in the  
21 current, 2003 Exchange Agreement. DTX-709\* (Slater Depo. Tr. at 31:21-32:13). At the time  
22 SDCWA signed the current Exchange Agreement in October 2003, MWD's Transportation  
23 Rates, *i.e.* the Exchange Price, had been in effect for nearly ten months. *Compare* TAC ¶¶ 24-25  
24 with Ex. A to TAC and 2012 Complaint (at 1); *see also, e.g.*, DTX-138 at \*MWD2010-  
25 00274562. As demonstrated by Section III.B, SDCWA was part of the multi-year process that  
26 culminated in the adoption of the Transportation Rates. If SDCWA wanted to avoid paying the  
27 System Access Rate, System Power Rate, and Water Stewardship Rate under the 2003 Exchange  
28

1 Agreement, all it had to do was retain the 1998 Exchange Agreement, which had a multi-decade  
2 term and did not incorporate any of these rates, or propose a different price term in 2003.

3 However, SDCWA has admitted that it proposed to MWD, and chose, Option 2 *because it*  
4 *“absolutely” saw it as the better deal.* DTX-709\* (Slater Depo. Tr. at 31:21-32:18, 172:1-12).

5 The Court should not re-write the negotiated contract consideration package through this  
6 rate challenge proceeding, especially where MWD merely agreed to what SDCWA proposed.  
7 *See, e.g., Yeng Sue Chow v. Levi Strauss & Co.*, 49 Cal. App. 3d 315, 329-30 (1975).

8 SDCWA received numerous benefits as part of the consideration package, in exchange  
9 for paying MWD’s conveyance charges generally applicable to its member agencies, including:

- 10 • MWD assigned to SDCWA without further charge its rights to 77,700 acre-feet  
11 per year, for 110 years, of All-American Canal and Coachella Canal Lining  
12 water. *See* DTX-709\* (Slater Depo. Tr. at 30:18-31:1); DTX-130 at  
13 \*SDPRAE0003757. At MWD’s 2013 water rates (where the full service rate for  
14 one-acre foot of water is \$608, (DTX-110 at AR2012-016638)), the value of this  
15 water for just 2013 alone was over \$47 million. Given this amount and taking  
16 into account that previous full-service rates were less than the current rate, the  
17 value over 110 years is in the billions.<sup>36</sup>
- 18 • MWD assigned to SDCWA \$235 million in state funding. *See* DTX-709\* (Slater  
19 Depo. Tr. at 30:18-31:1); DTX-130 at \*SDPRAE0003757.
- 20 • The Exchange Water that MWD delivers is a blend of SWP and Colorado River  
21 Water, which at times consists of up to 90% SWP water. *See* 12/19/2013 Tr. at  
22 533:8-11 (Yamasaki testimony). SDCWA benefits from the blend of SWP water,  
23 which is far lower in saline content than the IID/Canal Lining Water. *See* DTX-  
24 109 at AR2012-016586 (MWD’s “integrated, flexible system . . . [means that  
25 MWD is able] to blend water from various sources [which] means that the  
26

27 <sup>36</sup> Interestingly, that value alone far exceeds what SDCWA claims as its supposed overcharge  
28 under MWD’s rate structure. *See* TAC ¶ 43 (alleging an overcharge of \$30 million a year).

1 Exchange Water delivered to the Water Authority is less saline than the  
2 Conserved Water transferred to [MWD] at Lake Havasu”); DTX-116 at \*17  
3 (SDCWA stating that reducing this harmful “salinity depends on the mix of SWP  
4 and [Colorado River] water.”) (emphasis added); DTX-319B (at 53:44-54:32).  
5 The only way MWD can provide this SWP water – which SDCWA admits is a  
6 benefit to it because of the low salinity content – under the Exchange Agreement  
7 is if MWD pays the costs necessary to transport that SWP water to MWD.

- 8 • The Exchange Water is provided consistently, rather than being interruptible as  
9 wheeled water is. *See* Ex. A to TAC and 2012 Complaint (Arts. 3.2(d), 3.3);  
10 DTX-044 at \*438-39.
- 11 • As explained, MWD delivers the Exchange Water to SDCWA even when  
12 SDCWA has not delivered its IID/Canal Lining Water to MWD, serving as  
13 SDCWA’s “insurance policy” when IID proves unreliable.

14  
15 **5. Including The System Access Rate, System Power Rate, And Water  
Stewardship Rate In The Exchange Price Is Fair And Reasonable**

16 Again, considering whether the consideration package, including the Exchange Price, is  
17 fair or reasonable should not be part of this proceeding. This is particularly true given that the  
18 rate allocation decisions SDCWA challenges were made by MWD’s Board in 2001 and  
19 implemented in January 2003, nearly a year before SDCWA approached MWD and asked to pay  
20 MWD’s conveyance charges under an amended Exchange Agreement. SDCWA understood that  
21 this was the System Access Rate, System Power Rate, and Water Stewardship Rate. *Compare*  
22 TAC ¶¶ 24-25 *with* Ex. A to TAC and 2012 Complaint (at 1); *see also, e.g.*, DTX-138 at  
23 \*MWD2010-00274562. The Exchange Agreement cannot have a bearing on rate allocation  
24 decisions that were already made, concerning rates that were already in place. Nonetheless, even  
25 if the particular rates are considered in the context of the Exchange Agreement, they are lawful  
26 for the same reasons discussed in Sections III and V in this brief.

27 Regarding inclusion of MWD’s SWP transportation costs through the System Access  
28

1 Rate and System Power Rate, it is entirely fair and reasonable for the Exchange Price to include  
2 these rates because SDCWA receives SWP water under the Exchange Agreement. As explained,  
3 the Exchange Agreement states that MWD will “determine[]” the facilities it will use to deliver  
4 Exchange Water, which may come from “whatever [MWD] source or sources” it chooses. Ex. A  
5 to TAC and 2012 Complaint (Art. 1.1(m)). In practice, the water MWD conveys to SDCWA  
6 under the Exchange Agreement is physically no different than MWD’s full service water, which  
7 is comprised of a blend of Colorado River and SWP water. Ex. A to TAC and 2012 Complaint  
8 (Art. 1.1(m)); DTX-109 at AR2012-016586); DTX-099 at \*MWD2010-00184023; *see also*  
9 DTX-120 (chart tracking the composition of water delivered to SDCWA through the Skinner  
10 Treatment Plant); 12/19/2013 Tr. at 525:25-531:24 (MWD’s Section Manager of Operations and  
11 Planning explaining that Exchange Water is no different than the full service water MWD  
12 delivers to SDCWA and that it has in the recent past contained up to 90% SWP water). Thus,  
13 SDCWA’s assertion that the IID/Canal Lining Water does not travel through the SWP facilities  
14 (12/17/2013 Tr. at 179:15-17; 12/18/2013 Tr. at 187:7-9 (Cushman testimony)) has no bearing  
15 on whether SDCWA should be paying the System Access Rate and System Power Rate under  
16 the Exchange Agreement.

17 As explained previously, SDCWA has acknowledged that it depends on and benefits  
18 substantially from the lower salinity levels that result from the SWP blend MWD provides to it –  
19 and has acknowledged this specifically in the context of the Exchange Water. DTX-116 (at \*2)  
20 (SDCWA estimates that high saline content in water “causes ~\$ 375 million/year in economic  
21 damages”); *see also* 12/18/2013 Tr. at 254:8-17 (Cushman testimony); DTX-116 (at \*17)  
22 (because of this, SDCWA has a goal to maintain a salinity level of no greater than 500 parts per  
23 million); *see also* 12/18/2013 Tr. at 254:18-255:2 (Cushman testimony); DTX-116 (at \*3) (map  
24 exhibiting that water coming from the SWP is far lower in saline content than water *coming from*  
25 *IID at Lake Havasu*); DTX-109 (AR2012-016586) (MWD’s “integrated, flexible system [means  
26 that MWD is able] to blend water from various sources [*which*] means that the Exchange Water  
27 delivered to the Water Authority is less saline than the Conserved Water transferred to  
28

1 *Metropolitan at Lake Havasu*”) (emphasis added); DTX-116 (at \*17) (SDCWA stating that  
2 reducing this harmful “salinity depends on the mix of SWP and CR [Colorado River] water.”);  
3 DTX-319B (at 53:44-54:32); DTX-319B (at 53:44-54:32) (SDCWA stating at its Board meeting  
4 that it relies on MWD to achieve its own salinity goals *because, under the Exchange Agreement,*  
5 *MWD is “very careful in the way they mix their water and control their operations to make sure*  
6 *that the [] salinity level here at the Water Authority does not exceed 500 parts per million”*)  
7 (emphasis added); DTX-116 (at \*17); 12/18/2013 Tr. at 254:18-255:2 (Cushman testimony); *see*  
8 *also* DTX-109 (AR2012-016586).

9  
10 The only way MWD can provide this SWP water – which SDCWA admits that it wants  
11 and needs for its low salinity content – under the Exchange Agreement is if MWD pays the costs  
12 necessary to transport that SWP water to MWD. It is therefore more than reasonable for the  
13 price SDCWA pays under the 2003 Exchange Agreement to reflect the costs necessary to  
14 transport that water to SDCWA.

15 Inclusion of the Water Stewardship Rate in the Exchange Price is also fair and  
16 reasonable. This is because, as previously explained, all of MWD’s system users receive the  
17 regional benefits of demand management programs, regardless of whether they are a full service,  
18 wheeling, or exchange customer. *See* DTX-109 (AR2012-016590); *see also* Sections V.B.1 and  
19 V.C.2.b, *supra*. If the Water Stewardship Rate were placed in MWD’s Supply Rates as opposed  
20 to its rates “generally applicable to the conveyance of water” (*i.e.*, the Exchange Price, referring  
21 to MWD’s Transportation Rates), then member agencies could avoid providing revenues to  
22 support regional demand management activities through exchanges or other transfers of water  
23 while still being able to realize the benefits of the programs. *Id.* SDCWA receives the regional  
24 benefits of demand management programs, like all of MWD’s system users, including the ability  
25 for MWD to engage in the exchange transaction itself.


## 26 **VI. CONCLUSION**

27 As demonstrated in the final hearing, the evidence, and this closing brief, the rates  
28 SDCWA challenges in the first through third causes of action in the *2010* and *2012 Actions* are

1 legal. Accordingly, MWD's rates should be upheld.

2 DATED: January 17, 2014

BINGHAM MCCUTCHEN LLP

3  
4  
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# Appendix A



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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF SAN FRANCISCO

19 SAN DIEGO COUNTY WATER  
20 AUTHORITY,

21 Petitioner and Plaintiff,

22 v.

23 METROPOLITAN WATER DISTRICT OF  
24 SOUTHERN CALIFORNIA; et al.,

25 Respondents and Defendants.

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

**GLOSSARY OF KEY TERMS AND  
ACRONYMS PREPARED BY  
DEFENDANT AND RESPONDENT  
METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA FOR  
PURPOSES OF THE FINAL HEARING**

Date: December 17, 2013

Time: 10:00 a.m.

Dept.: 304

Judge: Hon. Curtis E. A. Karnow

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

Trial Date: December 17, 2013

1 Metropolitan Water District of Southern California (“Metropolitan” or “MWD”) submits  
2 this Glossary of Key Terms and Acronyms for Purposes of the Final Hearing, as a proposed  
3 reference tool for the Court during the final hearing commencing December 17, 2013.

4 **METROPOLITAN’S KEY RATES AND CHARGES COMPRISING ITS RATE**  
5 **STRUCTURE (TERMS AND ACRONYMS)**  
6

7 1. ***Rates***

8 ***a. Full Service Rate***

9 Collectively, the Supply Rate (Tier 1 or Tier 2), System Access Rate, System Power  
10 Rate, and Water Stewardship Rate, plus the Treatment Surcharge if applicable. (MWD Admin.  
11 Code § 4401.)

12 ***b. Supply Rate***

13 **Supply Rate:** The Tier 1 Supply Rate and the Tier 2 Supply Rate, as applicable to a  
14 particular purchase of water by a Metropolitan member agency. The Tier 1 and Tier 2 Supply  
15 Rate shall be set from time to time by Metropolitan to recover the cost of maintaining existing  
16 supplies and developing additional supplies of water. (MWD Admin. Code § 4121.)

17 **Tier 1 Supply Rate:** The applicable water rate for water purchases by a member agency  
18 which in the aggregate for any calendar year, are less than or equal to 60 percent (or, if the  
19 member agency purchasing the water has executed a Purchase Order, 90 percent) of the member  
20 agency’s 10-year rolling average of purchases (Base Firm Demand). (MWD Admin. Code §§  
21 4401(a)(1), 4122.)

22 **Tier 2 Supply Rate:** The applicable water rate when a member agency’s cumulative total  
23 of full service deliveries for the calendar year exceeds 60 percent of the member agency’s Base  
24 Firm Demand, or 90 percent of Base Firm Demand for a member public agency that executed a  
25 Purchase Order. (MWD Admin. Code § 4401(a)(1).)

26 ///

27 ///

28 ///

1            ***c. Transportation Rates***

2            System Access Rate (SAR): A dollar per acre-foot water rate imposed by Metropolitan  
3 to recover a portion of Metropolitan’s costs associated with the conveyance and distribution  
4 system, including capital, operating and maintenance costs. (MWD Admin. Code § 4123.)

5            System Power Rate (SPR): A dollar per acre-foot water rate imposed by Metropolitan to  
6 recover the melded cost of power necessary to pump water from the State Water Project and  
7 Colorado River through the conveyance and distribution system for Metropolitan’s member  
8 public agencies. (MWD Admin. Code § 4125.)

9            Water Stewardship Rate (WSR): A dollar per acre-foot water rate imposed by  
10 Metropolitan to recover a portion of the costs of Metropolitan’s financial commitment to  
11 conservation, water recycling, groundwater recovery, and other water management programs  
12 approved by the Board. (MWD Admin. Code § 4124.)

13            Transportation (or Conveyance) Rates: Collectively, the SAR, SPR, and WSR.

14            ***d. Treatment Surcharge***

15            A dollar per acre-foot water rate imposed by Metropolitan to recover Metropolitan’s costs  
16 of providing water treatment capacity and operations. (MWD Admin. Code § 4126.)

17            ***e. Rate for Wheeling Service***

18            Wheeling service means the use of Metropolitan’s facilities, including its right to use  
19 State Water Project facilities, to transport water not owned or controlled by Metropolitan to its  
20 member public agencies, in transactions entered into by Metropolitan for a period of up to one  
21 year. (MWD Admin. Code § 4119.)<sup>1</sup>

22            Subject to the General Manager’s determination of available system capacity,  
23 Metropolitan will offer wheeling service. (MWD Admin. Code § 4405(a).) The determination  
24 of whether there is unused capacity in Metropolitan’s conveyance system is made by the General  
25

26  
27 <sup>1</sup> Metropolitan does not have an established rate for other wheeling transactions.  
28 Metropolitan negotiates other wheeling transactions – for wheeling to a member agency of more  
than one year, or for wheeling to a non-member agency of any duration – on a one-to-one basis.

1 Manager on a case-by-case basis in response to particular requests for wheeling. (MWD Admin.  
2 Code § 4405(a).)

3 The rate for wheeling service includes the System Access Rate, the Water Stewardship  
4 Rate, the actual cost (not system average) of power service utilized for delivery of the wheeled  
5 water (unless the wheeling parties provide their own power to Metropolitan), an administration  
6 fee of not less than \$5,000 per transaction, and, for treated water, the Treatment Surcharge.  
7 (MWD Admin. Code § 4405(b).)

8 2. ***Charges***

9 Readiness-to-Serve Charge (RTS): Charge set by the Metropolitan Board from time to  
10 time to recover the costs of emergency system storage and the cost of system conveyance  
11 capacity for peak and standby use not recovered by property tax revenue, and calculated based  
12 on each member agency's proportionate share of average deliveries using a 10-year rolling  
13 average. (MWD Admin. Code § 4402.)

14 Capacity Charge: Charge payable by each member agency for system capacity based on  
15 the maximum summer day demand placed on the system between May 1 and September 30 for  
16 the three-calendar year period ending December 31, 2002, and thereafter for a rolling three-  
17 calendar year period. (MWD Admin. Code § 4403.)

18  
19 **ACRONYMS (OTHER THAN METROPOLITAN'S RATES AND CHARGES)**

20  
21 3. **AWWA**: American Water Works Association

22 4. **COS**: Cost of Service Study

23 5. **CRA**: Colorado River Aqueduct

24 6. **DWR**: California Department of Water Resources

25 7. **IID**: Imperial Irrigation District

26 8. **IRP**: Integrated Water Resources Plan

27 9. **MWD**: Metropolitan Water District of Southern California (also referred to as  
28 Metropolitan or Met)

1 10. **SDCWA:** San Diego County Water Authority (also referred to as San Diego or the  
2 Water Authority)

3 11. **SWP:** State Water Project

4 12. **QSA:** Quantification Settlement Agreement

5  
6 **TERMS (OTHER THAN METROPOLITAN'S RATES AND CHARGES)**

7  
8 13. ***Acre-foot***

9 A volume of water (325,851 gallons); this amount covers one acre, one foot deep. An  
10 acre-foot is the approximate quantity of water used by two average households in one year.

11 14. ***American Water Works Association***

12 An international non-profit, scientific, and educational association founded to improve  
13 water quality and supply; the leading professional group regarding water management and  
14 treatment. AWWA's Rates and Charges Committee authors the AWWA M1 Manual, *Principles*  
15 *of Water Rates, Fees, and Charges*.

16 15. ***AWWA M1 Manual***

17 A manual providing financial managers, water policymakers, and rate analysts with  
18 guidance and advice concerning water rate structures, fees, charges, pricing policies, and other  
19 issues with respect to water rates and charges. (MWDRECORD003865 and  
20 MWDRECORD2012\_003865.)

21 16. ***Blended Water***

22 A mix of water from various Metropolitan sources, primarily the Colorado River  
23 Aqueduct and the State Water Project.

24 17. ***California Aqueduct***

25 A State Water Project facility that conveys water, principally from Northern and Central  
26 California to Southern California.

27 ///

28 ///

1 18. ***Colorado River Aqueduct***

2 The Metropolitan facility that conveys Colorado River water 242 miles from Lake  
3 Havasu to Metropolitan’s service area.

4 19. ***Cost Allocation***

5 Method for allocating costs to rates and charges for the water and services provided.

6 20. ***Cost of Service Study***

7 Documentation of the analysis and process of allocating costs to the rates and charges for  
8 the water and services provided.

9 21. ***Demand Management Programs***

10 Three local water development and local water conservation programs implemented by  
11 Metropolitan: the Local Resources Program (“LRP”), the Conservation Credits Program  
12 (“CCP”), and the Seawater Desalination Program (“SDP”).

13 22. ***Department of Water Resources***

14 California state agency responsible for conserving, developing, and managing much of  
15 California's water supply, including the State Water Project.

16 23. ***DWR Contract***

17 “Contract Between the Metropolitan Water District of Southern California and the State  
18 of California Department of Water Resources For a Water Supply and Selected Related  
19 Agreements.” Contract entered into November 4, 1960, pursuant to which Metropolitan is  
20 entitled to delivery of SWP water supplies and is obligated to pay a water charge for the cost of  
21 conserving the water delivered and a transportation charge for the facilities necessary to deliver  
22 the water. (1960 DWR Contract, MWDRECORD000173 and MWDRECORD2012\_000173;  
23 2005 DWR Contract, MWDRECORD000001 and MWDRECORD2012\_000001.)

24 24. ***Exchange of Water***

25 An agreement between parties to exchange a specified quantity of water in one location  
26 for a specified quantity of water in another location.

27 ///

28 ///

1     **25.     1998 Exchange Agreement**

2             “Agreement Between the Metropolitan Water District of Southern California and the San  
3     Diego County Water Authority for the Exchange of Water.” Agreement entered into November  
4     10, 1998, in which SDCWA makes available water it purchases from the Imperial Irrigation  
5     District to Metropolitan at the intake to Metropolitan’s Colorado River Aqueduct on Lake  
6     Havasu, and Metropolitan, in turn, delivers to SDCWA a like quantity of Exchange Water from  
7     whatever sources Metropolitan may choose. The parties agreed to set the Price for Exchange  
8     Water at \$90 per acre-foot for the first 20 years, inflated at 1.55% per year from 1998; and \$80  
9     per acre-foot for the next 10 years, inflated at 1.44% from 1998. This negotiated Price was lower  
10    than Metropolitan’s firm wheeling rate in 1998 of \$262 per acre-foot. This Exchange Agreement  
11    was contingent on, among other things, the State of California providing \$235 million to fund  
12    canal-lining and groundwater programs, with the water supply generated from these programs to  
13    be made available to Metropolitan. (DTX-028.)

14    **26.     2003 Exchange Agreement**

15             “Amended and Restated Agreement Between the Metropolitan Water District of Southern  
16    California and the San Diego County Water Authority for the Exchange of Water.” Amendment  
17    to the 1998 Exchange Agreement, above, entered into October 10, 2003, in which SDCWA and  
18    Metropolitan agreed that the Price for Exchange Water would be equal to the charge or charges  
19    set by Metropolitan’s Board of Directors, pursuant to applicable law and regulation, and  
20    generally applicable to Metropolitan’s conveyance of water on behalf of its member agencies. In  
21    2003, the Price was \$253 per acre-foot. Metropolitan and SDCWA concurrently agreed in the  
22    Allocation Agreement (described below under “Quantification Settlement Agreement”) that  
23    Metropolitan would assign to SDCWA (1) the \$235 million in State funds and resulting water  
24    supplies made available to satisfy the contingency in the 1998 Exchange Agreement, and (2)  
25    Metropolitan’s rights to 77,700 acre-feet per year of canal lining water for 110 years. (DTX-  
26    051.)

27    ///

28    ///

1 27. ***Exchange Water, as defined in the 2003 Exchange Agreement***

2 Metropolitan water that is delivered to SDCWA by Metropolitan in a like quantity as the  
3 quantity of water that SDCWA has made available to Metropolitan. “Exchange Water” may  
4 come from whatever source or sources available to Metropolitan.

5 28. ***Imperial Irrigation District***

6 Public agency based in Imperial County, California, providing electric power and water  
7 to its service area in the Imperial Valley in southeastern California. IID is not a member agency  
8 of Metropolitan.

9 29. ***Imported Water***

10 Water that is brought into the Metropolitan service area to supplement the local water  
11 supplies of Metropolitan’s member agencies. Metropolitan’s primary sources of imported water  
12 are the Colorado River and the State Water Project.

13 30. ***Integrated Water Resources Plan***

14 Developed in 1996, updated in 2004 and again in 2010, the IRP sets forth Metropolitan’s  
15 long-term plan to protect the region from future water supply shortages, setting water resource  
16 targets to achieve Metropolitan’s water supply reliability goals over the next 25 years.

17 (DTX-019, 1996 IRP Vol. 1; DTX-020, 1996 IRP Vol. 2; DTX-096, 2010 IRP Update.)

18 31. ***Member Agency***

19 A public agency (city, municipal water district, or county water authority), the corporate  
20 area of which, in whole or in part, is included in Metropolitan as a separate unit. (MWD Act §  
21 12.) Metropolitan has 26 member agencies.

22 32. ***Metropolitan Board of Directors***

23 Governing body of Metropolitan, presently consisting of 37 members representing  
24 Metropolitan’s 26 member agencies. Each member agency has at least one representative, and  
25 representation and voting rights are based on the assessed valuation of real property within the  
26 jurisdictional boundary of each member agency. The Board acts by majority vote. (MWD Act  
27 §§ 50, 51, 52, 54, 55, 57.)

28 ///



1 33. ***Nonproject Water***

2 Water that is not conserved by SWP facilities for delivery by DWR to SWP contractors,  
3 but may be transported for delivery using SWP transportation facilities or stored in SWP  
4 facilities.

5 34. ***Peaking***

6 The time during the year when a member agency's demand on Metropolitan's system is  
7 at its highest peak, measured in cubic feet per second of capacity utilized for deliveries to the  
8 member agency (not annual variations in water purchases or annual variations in demands on  
9 Metropolitan's system).

10 35. ***"Postage Stamp" Rate***

11 A rate for the transportation of water based on the volume of water transported,  
12 regardless of the distance the water is transported to reach the member agency. Metropolitan has  
13 "postage stamp" rates.

14 36. ***Price, under the 2003 Exchange Agreement***

15 The applicable amount to be paid per acre-foot of Exchange Water delivered by  
16 Metropolitan to SDCWA at the Metropolitan Point(s) of Delivery, equal to the charge or charges  
17 set by Metropolitan's Board of Directors, pursuant to applicable law and regulation, and  
18 generally applicable to the conveyance of water by Metropolitan on behalf of its member  
19 agencies.

20 37. ***Quantification Settlement Agreement***

21 The QSA and Related Agreements consist of 35 contracts among a number of local, state,  
22 and national public agencies to settle longstanding disputes among California water agencies,  
23 between IID and the United States, and among the Colorado River Basin States, over the use of  
24 Colorado River water and include, among others, the Quantification Settlement Agreement  
25 ("QSA") among Metropolitan, Coachella Valley Water District, IID (QSA); the Federal  
26 Colorado River Water Delivery Agreement among the United States Secretary of the Interior,  
27 Metropolitan, Coachella Valley Water District, IID, and SDCWA; the 2003 Amended and  
28 Restated Agreement between Metropolitan and SDCWA for the Exchange of Water; and the

1 Allocation Agreement among the United States, Metropolitan, Coachella Valley Water District,  
2 IID, SDCWA, the La Jolla, Pala, Pauma, Rincon, and San Pasqual Bands of Mission Indians, the  
3 San Luis Rey River Indian Water Authority, the City of Escondido, and Vista Irrigation District.  
4 (DTX-269; Allocation Agreement at DTX-269, MWD2010-0190114.)

5 38. ***Rate Structure***

6 The combined set of rates and charges adopted by the Metropolitan Board of Directors,  
7 the revenues from which, when combined with ad valorem taxes and other revenue sources, are  
8 sufficient to recover Metropolitan's costs in providing water and services to its member agencies.  
9 MWD's rate structure contains the following water rates: Supply Rate (Tier 1 and Tier 2),  
10 Transportation Rates (System Access Rate, System Power Rate, and Water Stewardship Rate),  
11 and if applicable the Treatment Surcharge; and the following charges: Readiness-to-Serve  
12 Charge and Capacity Charge.

13 39. ***Salinity***

14 The level of salt or dissolved salt content in water, stated in terms of mass per volume  
15 (e.g., milligrams per liter).

16 40. ***State Water Project***

17 The California State Water Project, a water storage and delivery system of reservoirs,  
18 aqueducts, power plants, and pumping plants, which conserves, stores, and distributes water to  
19 Northern California, the San Francisco Bay Area, the San Joaquin Valley, the Central Coast, and  
20 Southern California.

21 41. ***Sub-Agency***

22 An agency that purchases water from a Metropolitan member agency for delivery to its  
23 own sub-agencies or directly to retail customers.

24 42. ***Unbundled Rate Structure***

25 A rate structure in which various component rates and charges are identified, including  
26 Supply and Transportation Rates.

27 ///

28 ///

1 43. *Volumetric Rates*

2 Rates charged per acre-foot volume of water Metropolitan delivers to each member  
3 agency. Metropolitan's volumetric rates are not set based on the distance that water is  
4 transported to the member agency.

5 44. *Wheeling*

6 The conveyance of non-agency water through an agency's system when there is unused  
7 capacity.

8 DATED: December 16, 2013  
9

10 BINGHAM MCCUTCHEN LLP  
11

12 By:           /s/ Thomas S. Hixson            
13 Thomas S. Hixson  
14 Attorneys for Respondent and Defendant  
15 METROPOLITAN WATER DISTRICT  
16 OF SOUTHERN CALIFORNIA  
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3 **PROOF OF SERVICE**

4 I am over eighteen years of age, not a party in this action, and employed in San  
5 Francisco County, California at Three Embarcadero Center, San Francisco, California 94111-  
6 4057. I am readily familiar with the practice of this office for collection and processing of  
7 correspondence for mail/fax/hand delivery/next business day Federal Express delivery, and they  
8 are deposited that same day in the ordinary course of business.

9 On December 16, 2013, I served the attached:

10 **GLOSSARY OF KEY TERMS AND ACRONYMS PREPARED BY**  
11 **DEFENDANT AND RESPONDENT METROPOLITAN WATER**  
12 **DISTRICT OF SOUTHERN CALIFORNIA FOR PURPOSES OF**  
**THE FINAL HEARING**

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

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

17 I declare under penalty of perjury under the laws of the State of California that the  
18 foregoing is true and correct and that this declaration was executed on December 16, 2013, at  
19 San Francisco, California.

20   
21 \_\_\_\_\_  
Kelley A. Garcia

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# Appendix B

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN FRANCISCO  
BEFORE THE HONORABLE RICHARD A. KRAMER, JUDGE  
DEPARTMENT NO. 304

---oOo---

SAN DIEGO WATER AUTHORITY, )  
 )  
Petitioner and Plaintiffs, )  
 ) CASE NO: CPF-10-510830  
vs. )  
 )  
METROPOLITAN WATER DISTRICT OF )  
SOUTHERN CALIFORNIA; ALL PERSONS )  
INTERESTED IN THE VALIDITY OF THE )  
RATES ADOPTED BY THE METROPOLITAN ) Pages 1 - 67  
WATER DISTRICT OF SHOUTHERN )  
CALIFORNIA ON APRIL 13, 2010 TO BE )  
EFFECTIVE JANUARY 2011; )  
And DOES 1-10. )  
 )  
Respondents and Defendants.)  
\_\_\_\_\_)

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
San Francisco Superior  
San Francisco, California  
Monday, July 2, 2012

Reported by:  
LINDA S. FORSTER, CSR No. 13286

-----  
JAN BROWN & ASSOCIATES  
WORLDWIDE DEPOSITION & VIDEOGRAPHY SERVICES  
701 Battery Street, 3rd Floor, San Francisco, CA 94111  
(415) 981-3498 or (800) 522-7096



1 THE COURT: Sometimes I can figure these things  
2 out.

3 MR. PURCELL: Oh, yeah. Mr. Kecker reminds me that  
4 the Prop 13 issue that Mr. Brosnahan had mentioned, judicial  
5 estoppel is their basis for this no a Motion to Strike, and  
6 if they thought that there was no legal basis for the  
7 challenge, they could have brought that in another way.

8 They brought a Motion to Strike, and they said,  
9 basically, that we made one argument in the Rincon case in  
10 2004 and now we can't make a different argument. That's  
11 just wrong. On the law, judicial estoppel does not apply to  
12 legal argument and legal contentions. So we don't think  
13 there's any point in considering that argument any further.

14 THE COURT: Thank you.

15 MR. BROSNAHAN: Briefly if the Court pleases, of  
16 course, that's not our position at all. It's one that makes  
17 Plaintiffs' counsel more comfortable to argue.

18 Our position is that it's astounding they would  
19 bring the same case, the same arguments, and win it, and  
20 then file a case in which they claim they want the law to be  
21 otherwise. Plus, it's backed up by case law, which we have  
22 and they don't.

23 Moving to the question -- I understand your  
24 Honor's thought on the discovery, but I didn't understand  
25 Counsel's articulation of it because it was quite different.  
26 It was kind of let's have discovery and there once were  
27 hippies on the lawn based on a case.

28 Now, I didn't take the time to go through the

1 State of California )  
2 City and County of San Francisco)

3  
4 I, Linda S. Forster, Pro Tem Reporter for Jan  
5 Brown & Associates in the Superior Court of the State of  
6 California, City and County of San Francisco, do hereby  
7 certify:

8 That I was present at the time of the above  
9 proceedings;

10 That I took down in machine shorthand notes of all  
11 proceedings had and testimony given;

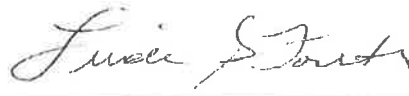
12 That I thereafter transcribed said shorthand notes  
13 with the aid of a computer;

14 That the above and foregoing is a full, true, and  
15 correct transcription of said shorthand notes, and a full,  
16 true, and correct transcript of all proceedings had and  
17 testimony taken;

18 That I am not a party to the action or related to  
19 a party or counsel;

20 That I have no financial or other interest in the  
21 outcome of the action.

22  
23 Dated: July 6, 2012

24  
25  
26 

27 Linda S. Forster, CSR No. 13286

28

3 **PROOF OF SERVICE**

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

9 On January 17, 2014, I served the attached:

10 **RESPONDENT/DEFENDANT METROPOLITAN WATER**  
11 **DISTRICT OF SOUTHERN CALIFORNIA'S CLOSING BRIEF**

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

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

16 I declare under penalty of perjury under the laws of the State of California that the  
17 foregoing is true and correct and that this declaration was executed on January 17, 2014, at San  
18 Francisco, California.

19   
20 \_\_\_\_\_  
21 Linda F. Nelson

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