

April 11, 2021

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Municipal Water District

Vista Irrigation District

Yuima
Municipal Water District

OTHER
REPRESENTATIVE

County of San Diego

Marcia Scully, General Counsel
Metropolitan Water District of Southern California
700 N. Alameda Street
Los Angeles, CA 90012

RE: Exchange Agreement Section § 4.1/Demand to Cease and Desist

Dear Ms. Scully:

This letter is to make formal demand that Metropolitan Water District of Southern California (MWD) immediately cease and desist from further publication in its Urban Water Management Plan (UWMP) or in any other context, publication, proceeding or social media, that the Water Authority's QSA water is an MWD water supply and not a local supply of the San Diego County Water Authority.

The Draft 2020 Urban Water Management Plan (UWMP) changes how MWD characterizes the Water Authority's QSA water (exchange water) so that it is no longer reported as an independent local supply of the Water Authority, and is instead reported as "Colorado River water made available to Metropolitan." MWD admits in footnote 1 at page 1-22 of its draft UWMP that this is a departure from prior reporting.

These changes do not comply with Section 4.1 of the Exchange Agreement, which expressly requires that the exchange water be characterized in all of MWD's plans as a local supply. Accordingly, we ask that MWD modify its draft 2020 UWMP to continue its prior and correct practice of describing the exchange water as a local supply of the San Diego County Water Authority (including but not limited to portions of the UWMP Executive Summary; Sections 1.4, 2.2, 2.3 and 3.1; Appendix 2; and Sections A.3.1 and A.4.3.)

Aside from the confusion the new reporting practice may cause in assessing MWD's water supply reliability, MWD is also contractually bound to characterize the Water Authority's exchange water as a local water supply. Section 4.1 of our agencies' Exchange Agreement is titled "*Exchange Water as an Independent Local Supply*," and could not be clearer that MWD's UWMP is required to comply with the contract:

"The Exchange Water shall be characterized for the purposes of *all* of Metropolitan's ordinances, *plans*, programs, rules and regulations . . . in the same manner as the Local Supply of other Metropolitan member agencies, except as provided in Paragraphs 4.2 and 5.2 [which are pricing sections unrelated to the UWMP]." (Emphasis added.)

The Water Authority, not MWD, has paid to conserve its QSA water supply through the lining of the All-American and Coachella Canals, and via our water conservation agreement with the Imperial Irrigation District. As the trial court and Court of Appeal have already determined, the

Water Authority is not purchasing this water from MWD, and MWD has no legal right, ownership or entitlement to this water independent of the provisions contained in the Exchange Agreement.

MWD's UWMP is clearly included in the contractual requirement relating to MWD's characterization of the Water Authority's QSA supplies as a local supply in "all" of its plans. Accordingly, MWD will be in breach of the Exchange Agreement if it fails to properly characterize the Exchange Agreement water as a local supply of the Water Authority.

It should also be noted that MWD's mischaracterization of the exchange water in the draft UWMP violates not only the parties' contract, but also the clear holding of the Court of Appeal, which states on page 1155 of its decision that the trial court was correct in finding that the Exchange Agreement was a conveyance of the Water Authority's water, not a contract for the purchase of MWD water as advocated by MWD (emphasis added):

The trial court found "the Exchange Agreement was not an agreement pursuant to which [the Water Authority] obtained water from [Metropolitan], but instead an agreement pursuant to which [Metropolitan] in effect conveyed water on behalf of [the Water Authority]." Thus, the Water Authority's "payments under the exchange agreement must be included in the preferential rights calculation." *We agree with this conclusion.*

To the extent that MWD staff is engaged in the distribution or publication of inaccurate information regarding the Exchange Agreement water via social media or otherwise in San Diego County or elsewhere, this is also a demand that MWD immediately cease and desist from such activity.

The Water Authority's board officers and General Manager have asked me to convey to the MWD Board of Directors and member agencies that we deeply regret the continued need for communications such as this, and that we look forward to a more productive working relationship in the near future.

Sincerely,

/s/

Mark Hattam
General Counsel

cc: Water Authority MWD Delegates Hogan, Butkiewicz, Smith and Goldberg
Water Authority Board Officers and Directors
Sandy Kerl, General Manager
Metropolitan Board of Directors
Jeff Kightlinger, General Manager