



THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

*Office of the General Manager*

May 4, 2012

Maureen A. Stapleton  
General Manager  
San Diego County Water Authority  
4677 Overland Avenue  
San Diego, CA 92123-1233

April 26, 2012 SDCWA Letter re Request for Negotiation under Paragraph 11.1 of the Amended and Restated Agreement between the Metropolitan Water District of Southern California and the San Diego County Water Authority for the Exchange of Water dated October 10, 2003 ("Exchange Agreement")

Dear Ms. Stapleton:

This letter responds to your letter of April 26, 2012 requesting a negotiation meeting under Paragraph 11.1 of the Exchange Agreement.

First, as is apparent from the Water Authority's pending litigation against Metropolitan, the Authority's dispute with respect to the Exchange Agreement and Metropolitan's rates solely concerns Metropolitan's rate structure that was approved by its Board of Directors in 2001 and took effect in 2003. The rates for 2013 and 2014 that the Board adopted in April 2012 are based on this rate structure. Pursuant to California law, the Board's rate-setting decisions are legislative acts that the Board determined by a majority vote in a publicly noticed, open session. The Board engaged in a months-long process, in which the Water Authority and many others fully participated, to set the 2013 and 2014 rates based on the existing rate structure. Indeed, your letter acknowledges:

"The Water Authority presented oral testimony and documents for inclusion in the record of the March 12 and 13 and April 9 and 10, 2012 meetings of the Finance and Insurance Committee and Board of Directors, which testimony and documents stated the basis for the Water Authority's objections to these rates. The Water Authority has exhausted all administrative opportunities available to it pursuant to Metropolitan's public board process."

There is no "meeting between our respective staff and board leadership," as you have requested, which could reverse the Board's majority vote.

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Second, as you know, the parties have already engaged in and completed dispute resolution under Paragraph 11.1. The Water Authority sent a nearly identical letter to Metropolitan on May 3, 2010, before the Water Authority filed its litigation. Metropolitan accepted the Water Authority's offer to engage in negotiations, and the Water Authority responded in a June 7, 2010 letter that "[t]he Water Authority team looks forward to beginning negotiations and hopes that we will be able to come to an agreement without the need for protracted litigation."

Representatives of Metropolitan and the Water Authority met and engaged in negotiations on June 23, 2010, despite the fact that the Water Authority had proceeded with filing a lawsuit on June 11, 2010. As the Water Authority subsequently stated in a June 30, 2010 letter: "the Water Authority and Metropolitan have satisfied the requirement of paragraph 11.1 of the 2003 exchange agreement to use reasonable best efforts to resolve all disputes, including Price Disputes, arising under the agreement by negotiation before resorting to legal or equitable remedies." The Water Authority also stated its opinion that "further negotiations [sic] would not be productive . . . ." Thereafter, in February 2011, the Water Authority requested and Metropolitan agreed to place the Authority's payments under the Exchange Agreement in a separate interest-bearing account.

Metropolitan is not aware of any areas of negotiation between the Water Authority and Metropolitan that were not already exhausted, and that are not legislative decisions that under California law only Metropolitan's Board can make through majority vote. However, if the Water Authority believes there are any areas of further negotiation that would be productive, please let us know.

Separately, your letter asks Metropolitan to confirm that there is not "any further requirement or administrative opportunity available to [the Water Authority] pursuant to Metropolitan's public board process to contest whether the action taken by Metropolitan's Board of Directors is lawful." You are correct that the Water Authority has fully engaged in Metropolitan's public Board process concerning its adoption of its 2013 and 2014 rates.

Accordingly, we see no need for a further meeting at this time pursuant to Paragraph 11.1 of our agreement, but feel free to contact us if you believe there are items that we could fruitfully discuss.

Very truly yours,

  
Jeffrey Kightlinger  
General Manager

cc: Marcia Scully, General Counsel, Metropolitan Water District of Southern California