



San Diego County Water Authority

4677 Overland Avenue • San Diego, California 92123-1233
(858) 522-6600 FAX (858) 522-6568 www.sdcwa.org

November 9, 2015

Randy Record and
Members of the Board
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

MEMBER AGENCIES

Carlsbad
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook
Public Utility District

Helix Water District

Lakeside Water District

Olivenhain
Municipal Water District

Otay Water District

Padre Dam
Municipal Water District

Camp Pendleton
Marine Corps Base

Rainbow
Municipal Water District

Ramona
Municipal Water District

Rincon del Diablo
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center
Municipal Water District

Vista Irrigation District

Yuima
Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

RE: Board Memo 8-3: Appropriate \$15 million; and authorize: 1) agreement with County Sanitation District No. 2 of Los Angeles County for development of a potential regional recycled water supply program; and (2) design of a demonstration-scale recycled water treatment plant – **OPPOSE**;

**NOTICE OF NONLIABILITY AND DISCLAIMER OF FINANCIAL OR CONTRACT
RESPONSIBILITY ASSOCIATED WITH BOARD MEMO 8-3; RESERVATION OF RIGHTS; AND
NOTICE OF INTENT TO SEEK RECOVERY OF ILLEGAL RATES AND FURTHER AWARD OF
PREJUDGMENT INTEREST**

Chair Record and Members of the Board:

The Water Authority supports the development of recycled water and other local water supply projects, but OPPOSES Board Memo 8-3 because MWD has failed to conduct a cost of service study to support MWD's allocation of the costs of the regional recycled water supply program and demonstration project described in Board Memo 8-3. It is apparent from the Board Memo that any water supply developed from the Board Memo 8-3 program will benefit the Sanitation Districts of Los Angeles County and their member agency customers within the Sanitation District Joint Outfall service area; groundwater basins that may be replenished by water produced by the Board Memo 8-3 program (which may or may not be MWD member agencies); and potentially, some mix of MWD member agencies. However, based on the information provided in the Board Memo, it does not appear that the San Diego County Water Authority is among the agency customers where a direct or indirect benefit may be demonstrated in relation to the costs that will be incurred to implement this program. The bald statement in Board Memo 8-3 that these supplies will "augment regional supplies for MWD's service area" is not sufficient to support the allocation of these costs to all MWD member agencies. Accordingly, the Water Authority:

1. OPPOSES Board Memo 8-3;
2. Hereby gives MWD and all persons NOTICE OF ITS NONLIABILITY AND DISCLAIMER OF ANY FINANCIAL OR CONTRACT RESPONSIBILITY ASSOCIATED WITH BOARD MEMO 8-3;

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3. RESERVES ALL RIGHTS TO CHALLENGE THE BOARD ACTION AND EXPENDITURES PURSUANT TO BOARD MEMO 8-3; and
4. Gives MWD, its member agencies and all persons NOTICE OF ITS INTENT TO SEEK RECOVERY OF ILLEGAL RATES AND FURTHER AWARD OF PREJUDGMENT INTEREST.

MWD has claimed in the Water Authority's rate cases that every MWD board member has a fiduciary duty to expressly inform MWD of its objections to MWD board actions and expenditures at the time of the board action, or be found later to have waived their agency's right to object. Without accepting MWD's waiver argument (we do not), we do wish to be very clear with MWD, the Sanitation Districts and their respective member agencies, that the Water Authority will seek recovery of any all rates and charges imposed upon it by MWD in connection with the Board Memo 8-3 program, and an award of prejudgment interest. At this point, MWD is well aware of its legal obligations to set rates according to cost of service and respective benefits from the costs MWD is incurring and will incur, but simply continues to refuse to do so.

As noted at the beginning of this letter, the Water Authority supports the many recycled water plans that have already been developed and are developing within the MWD service area. However, we have many serious concerns about Board Memo 8-3. In addition to the illegal cost allocation to MWD member agencies, MWD is assuming an unprecedented share of project costs along with a host of regulatory, environmental and legal obligations that may be expected, in the hundreds of millions and potentially billions of dollars. We raised a number of other issues in our September 20, 2015 letter on Board Memo 9-1; however, MWD did not provide any response to our questions and concerns and they are not addressed in Board Memo 8-3.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director

Attachment: September 20, 2015 Water Authority Delegates letter on Board Memo 9-1

cc: Water Authority Board of Directors
Los Angeles Sanitation District and member agencies
MWD Member Agency Governing Boards



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**OTHER
 REPRESENTATIVE**

County of San Diego

RE: Board Memo 9-1: Potential Regional Recycled Water Supply Program

Chair Record and Members of the Board:

The staff recommendation set forth in Board Memo 9-1, to create a new recycled water supply program, is premature because the MWD board has not yet completed – indeed, it has hardly begun – the process of updating MWD's Integrated Resources Plan (IRP). Without current information and an analysis of available supplies and demand, the board cannot know whether this water supply is needed by MWD or whether it is preferred to other available water supplies.

MWD and its member agencies are also currently updating their respective urban water management plans. These plans will provide vital information regarding water supply and demand forecasts necessary to evaluate the need for MWD to incur costs to develop additional water supplies. Among many other changed circumstances that must be evaluated, it is likely that the demand for MWD water will be less than in the last IRP. This is to be expected given the most recent updated population projections by the Southern California Association of Governments and San Diego Association of Governments, and all of the long-term water conservation measures that have been implemented in response to the drought. New MWD projects of any kind should follow, not precede, these planning processes and be evaluated in the context of all alternatives.

Later, or as part of the IRP planning process, we request that staff analyze and bring back to the board the following issues and information.

Proposed Regional Recycled Water Supply Program

Recycled water supply and reuse projects already exist throughout the MWD service area – with more on the drawing board. These projects, including the Orange County project noted in the board memo, have been created through the formation of joint powers authorities

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and paid for by local ratepayers who benefit from the development of local water supplies. The Water Authority supports local water supply development and believes that it will continue to grow as a percentage of the Southern California water supply portfolio even if no subsidies are provided by MWD. Indeed, local agencies developing these projects often cite the current and anticipated future cost of MWD water as a principal motivation to develop local water supplies including recycled water projects.

We do not understand -- and the Board Memo does not explain -- why MWD believes a new recycled water program is necessary or why MWD believes it should become a "partner" in projects that involve multiple local agencies and parties and legal and financial risks that MWD is in no position to control or manage.

In fact, Board Memo 9-1 does not describe a new MWD "program;" rather, it describes a specific potential project with specific parties. If staff intends to recommend the creation of a new MWD water supply "program," then it should outline the need for the program, how it will be consistent with the updated IRP (once that process is concluded) and how it would differ from the current Local Resources Program - which provides funding but does not involve MWD becoming a "partner" in local water supply projects. Staff should also identify a source of funding other than the existing rates that have been declared illegal by the San Francisco Superior Court.

We request that a cost of service analysis be conducted to identify which agencies will benefit in order to determine how the costs of this project should be allocated before it is presented to the MWD board for approval. It is abundantly clear from numerous recent cases that the mere declaration of regional benefit is insufficient to justify the imposition of regional water rate increases to pay for a project that will benefit some but not all member agencies.

Partnership with Los Angeles County Sanitation District

For the reasons described above, we do not believe that the "form" of the operating entity – here, a proposed "partnership", changes the responsibility MWD has in setting rates and charges for the services it provides.

In order to evaluate the proposed project – either as a stand-alone or in the context of the IRP, we ask that staff provide a written analysis addressing the following questions:

- 1) What are the projected capital and operating costs over the project life?
- 2) What is the marginal cost per acre-foot and how does that compare to other projects that could be developed to meet MWD resource targets?
- 3) What service category will the costs be allocated to? And how will MWD price the water?

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- 4) Who are the project beneficiaries?
- 5) What benefits have been identified for each of the parties (for example, avoided cost of additional outfall capacity).
- 6) How does the project rank in relationship to other water resource alternatives MWD has with respect to cost, reliability, and environmental and legal risks?
- 7) What groundwater basins would be recharged by the project water?
- 8) Are the relevant groundwater basins adjudicated? If so, will the judgments be amended to allow MWD to have the right to store and withdraw water?
- 9) What is the plan for how the water would be made available or stored in normal, dry, and wet years? Will MWD control that decision?
- 10) What are the other legal constraints associated with the groundwater basins that must be addressed to ensure MWD has the ability to withdraw the water?
- 11) Who will own the project? Who will own the project water?
- 12) What rate increases are anticipated over the project life to pay for and operate the project?
- 13) How many agencies, cities and third parties have existing water rights in the groundwater basins?
- 14) Who will bear the cost of any environmental challenges?
- 15) Who will bear the cost of any rate challenges?

Finally, similar to several other memos, Board Memo 9-1 was not available with the regular board mailing. MWD's consistent late delivery of a majority of the board reports makes it extremely difficult for our staff to provide the technical support necessary for our deliberation of MWD staff recommendations. We renew past requests that board memoranda be distributed at least seven days in advance of MWD board meetings.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director



Yen C. Tu
Director