



San Diego County Water Authority

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December 9, 2016

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

RE: Board Memo 7-6 - Adopt CEQA determination and authorize entering into a Local Resources Program agreement with the Municipal Water District of Orange County and the El Toro Water District for the El Toro Recycled Water System Expansion Phase II Project – **OPPOSE**

NOTICE OF NON-LIABILITY AND DISCLAIMER OF FINANCIAL OR CONTRACT RESPONSIBILITY ASSOCIATED WITH THE BOARD MEMO 7-6; RESERVATION OF RIGHTS; AND NOTICE OF INTENT TO SEEK RECOVERY OF ILLEGAL RATES, FURTHER AWARD OF PREJUDGMENT INTEREST AND OTHER RELIEF

Dear Chairman Record and MWD Board Members,

We have reviewed Board Memo 7-6 and OPPOSE the Board action for the reasons stated in this and many prior letters on the subject of MWD’s illegal rates and subsidy programs (and other subjects such as the IRP), all of which are incorporated herein by reference, including but not limited to the following:

- Under California law, including Proposition 26, MWD is required to set rates that do not exceed the reasonable costs of providing the service for which the particular rate is being charged. MWD must show that the manner in which its costs are allocated and rates charged among member agencies bears a reasonable relationship to the respective burdens and benefits those customers receive from MWD. MWD is required to make these determinations on a factual record. However, MWD has failed to do so by not providing any cost-of-service analysis, in Board Memo 7-7 or otherwise.
- While Board Memo 7-6 includes a declaration that the Local Resources Program (“LRP”) “benefits[s] all member agencies regardless of project location,” MWD offers no evidence of such a regional benefit. To the contrary, the Board memo identifies the specific member agency and third-party non-member agency that will benefit from these payments, namely the Municipal Water District of Orange County and

OTHER REPRESENTATIVE

County of San Diego

the El Toro Water District, the latter of which will own, operate, and receive the water supply benefits of the project.

- MWD has judicially admitted that its LRP benefits only the local, individual member agencies receiving subsidy payments, and has expressly denied that there are any regional water supply benefits.ⁱ
- There is no demonstration that this project is needed in order to reduce demand for MWD imported water supplies.ⁱⁱ In arbitrarily relying on the 174,000 AFY LRP goal set nearly 10 years ago, in 2007, upon which the October 2014 Board authorization is purportedly based, MWD is intentionally choosing to ignore changed circumstances and rely on outdated data. In its own planning projections, MWD reduced the 2035 demand for MWD water from 1,931,000 AF in its 2010 Regional Urban Water Management Plan (“RUWMP”) to 1,726,000 AF in its 2015 RUWMP. This reduction alone would completely eliminate any need for this project by MWD, even if the payment source was not illegal, which it is.
- MWD has not demonstrated any need to “free up conveyance capacity to the benefit of all system users,” and none can be demonstrated as a matter of fact. Due to the reduced demand for MWD water, now and in the future, MWD has excess capacity and no constraints that this project will “free up” to the benefit of any, let alone all, users of MWD transportation facilities.
- MWD does not have any “legislative mandates”ⁱⁱⁱ that requires it to subsidize local water supply development for the customers of the Municipal Water District of Orange County and the El Toro Water District. On the other hand, MWD does have a common law, statutory and constitutional mandate to assign the costs it incurs proportionally according to benefits received by its customers. The costs of this water supply must be assigned to the project beneficiary, the El Toro Water District.
- The Water Stewardship Rate has already been determined by the superior court to be an illegal tax, and MWD is on notice that the Water Authority will seek recovery of all Water Stewardship Rates paid if the trial court’s judgement is upheld on appeal. The Water Authority also puts MWD and the Municipal Water District of Orange County on notice that it objects to being charged the WSR or having any financial responsibility now or in the future for any costs of LRP contracts entered into by MWD. In addition to the reasons stated above, Water Authority ratepayers have been barred by the MWD board’s June 2011 action from receiving any WSR benefits.

While we strongly support the kind of local water supply development represented by this project, MWD is knowingly funding this project with illegal rates, with the knowledge that these water supplies are not needed by and will not benefit MWD’s regional customers as

MWD now claims. As a result, this contract is void or voidable. The Water Authority expressly disclaims any direct or indirect financial or contractual responsibility for this project or future subsidies to be paid by MWD. The Water Authority hereby gives MWD, its member agencies, rating agencies, and all interested persons NOTICE OF ITS INTENT TO SEEK RECOVERY OF ILLEGAL RATES, FURTHER AWARD OF PREJUDGMENT INTEREST AND OTHER RELIEF.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Elsa Saxod
Director



Fern Steiner
Director

ⁱ For example, MWD stated that, “supplies’... refers to the local member agencies’ water supplies, not to a supply related cost or benefit for Metropolitan. Conserving and developing the local member agencies’ water supplies has nothing to do with Metropolitan’s water supplies, which are imported from outside its service area. The superior court erred in confusing the two.” Appellants’ Opening Brief at pages 80-81.

ⁱⁱ See January 10, 2016 letter Re Board Memo 8-3: Adopt the 2015 Integrated Water Resources Plan Update – REQUEST TO DEFER BOARD ACTION ADOPTING 2015 IRP UPDATE, OR IN THE ALTERNATIVE, OPPOSE.

ⁱⁱⁱ SB 60 (Hayden) was signed into law in 1999, to prohibit MWD from engaging in certain deceptive political practices and requiring it to establish an Office of Ethics. SB 60 requires MWD to place increased emphasis on planning for more sustainable, environmentally sound, and cost-effective water supply including conservation, recycling, and groundwater storage and replenishment measures. Contrary to MWD’s arguments on appeal and at trial, SB 60 does not address, let alone require, MWD to pay for some of its member agencies’ local projects.