



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

VIA E-MAIL

April 6, 2017

Director Michael T. Hogan
Director Keith Lewinger
Director Elsa Saxod
Director Fern Steiner
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123

Re: March 14, 2017 Letter re March 2017 Board Memo 8-3

Dear Directors Hogan, Lewinger, Saxod, and Steiner:

Chairman Record asked us to respond to your above-referenced letter (attached), which was provided via e-mail to Metropolitan Directors and four Metropolitan staff during the Board's March 14, 2017 meeting, at which this item was approved by the Board.

Board Letter 8-3 explained the nature of the proposed contract with EGIA to administer Metropolitan's conservation incentive programs and includes a chart of EGIA's cost proposal providing the maximum unit cost by service provided. The contract was also discussed at length at the March 13, 2017 Water Planning and Stewardship Committee meeting. As explained, the amounts that will be paid as fees to EGIA for its services will be in accordance with unit costs and the total will be based on the level of funding the Board authorizes for consumer incentive programs over the five year contract term. If expenditures for consumer incentives are less than the Board authorizes, as has happened in previous years, then payments to EGIA will be lower given the reduced activity levels. The description in Board Letter 8-3 is more accurate, informative, and transparent than the amount listed on the prior month's agenda, as that was based on assumptions regarding future Board funding decisions.

As to your questions, the conservation incentives are for end-use consumers (residential, commercial, industrial, and public agencies), so consumers is a helpful descriptive term. We are unaware of any "consumer protection" issues raised by the use of the term. There is no intent to "limit the availability of information to the public about how its ratepayer dollars are being spent." Metropolitan will continue its transparent disclosure of information. As to your statement that availability of information to the public was "previously a problem with the turf removal program," as you are aware, Metropolitan successfully advocated for the release of turf

SDCWA Directors

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removal program data as constituting a public record, in response to legal challenges to the release and the Superior Court's temporary restraining order enjoining the release.

Sincerely,



Marcia Scully
General Counsel



Deven Upadhyay
Group Manager, Water Resource Management

cc: Metropolitan Board of Directors

Attachment



San Diego County Water Authority

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March 14, 2017

Randy Record and
Members of the Board of Directors
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 Diego Water District
- Santa Fe Irrigation District
- South Bay Irrigation District
- Vailocitos Water District
- Valley Center Municipal Water District
- Vista Irrigation District
- Yuma Municipal Water District

RE: Board Memo 8-3: Adopt CEQA determination and authorize a five-year agreement with Electric & Gas Industries Association to administer Metropolitan’s consumer incentive programs - REQUEST TO DEFER ACTION PENDING AVAILABILITY OF CONTRACT, OR IN THE ALTERNATIVE, OPPOSE

Chair Record and Members of the Board:

Even though there is no dollar amount associated with the action recommended by staff in Board Memo 8-3, the discussion at yesterday’s Water Planning and Stewardship (WP&S) Committee was premised on the fact that the board action is for a very "substantial" contract to manage a large program.¹ As we all know, this same contract was on the WP&S Committee agenda last month as a \$420,000,000 item. While we understand staff’s explanation that this is not the total amount to be paid to EGIA but rather, is an assumption about the amount of money to be spent on the specified conservation projects over the next five years, based on the staff report and prior estimates, fees to be paid under this contract could be as high as \$27,720,000 or more.

We are not comfortable being asked to approve a contract without knowing the amount of the contract (even if calculated based on stated assumptions) and key terms. We also have questions about contract terms and administrative actions staff has described generally but has not presented in detail, how problems with the turf removal program identified in a recent audit have been corrected with respect to future contract administration. This isn’t a standard form contract for services, like painting a house, it is a very large contract -- in the tens of millions of dollars -- for services to be provided in a context where MWD’s own auditor has found material problems in the recent past with this same contractor.

OTHER REPRESENTATIVE

- County of San Diego

We want to acknowledge and thank Chairman Record for his commitment that there will be full transparency under the EGIA contract, when and if it should be approved by the Board of Directors, including the public availability of data for each program for all member agencies. We note that staff has begun to characterize these programs as "consumer incentive" programs rather than as "incentive" programs, as it has in the past, and we are concerned the new language may be misconstrued with respect to consumer protection laws. We would like to

A public agency providing a safe and reliable water supply to the San Diego region

have assurances from the General Counsel that neither this EGIA contract nor any MWD agreement with any member agency or incentive recipient agreement will contain provisions intended to limit the availability of information to the public about how its ratepayer dollars are being spent. This was a previously a problem with the turf removal program and we expect counsel to help us avoid a similar problem in the future.ⁱⁱ

Since the current EGIA contract does not expire until June 30, and staff has indicated there is no reason why we must act at this month's board meeting, we strongly recommend that the board defer action for one month, so that staff can complete its negotiations with EGIA and bring back answers to questions that were asked at yesterday's Committee meeting. If for no other reason, this is important for public perception since the contract is essentially being presented to the board as a sole source contract, following on the heels of the auditor's report on the turf removal program.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Elsa Saxod
Director



Fern Steiner
Director

ⁱ Comments by staff at yesterday's Committee meeting were unclear and inconsistent about the anticipated level of activity under the contract, ranging from saying that the Board could choose to "zero out" the program, to saying that a 60% increase in Water Resource Management staff would be needed to staff the program internally, and that a five-year term is necessary in order to allow EGIA to "recoup" its investment.

ⁱⁱ We ask that the General Counsel confirm that all MWD subsidy or incentive contracts will protect the public interest in transparency and full disclosure when it comes to how MWD ratepayer dollars are spent.