



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

October 2, 2017

Mr. Michael T. Hogan
MWD Board Member
507 Barbara Avenue
Solana Beach, CA 92075

Dear Director Hogan:

This letter is in response to your letter of September 30, 2017.

I appreciate you taking the time to read reports prepared by Santa Clara Valley Water District staff regarding California WaterFix. Most of the issues raised in your letter were covered in Metropolitan's staff White Paper No. 3 (WP3) regarding project financing issues and were discussed at Metropolitan committee meetings and workshops. However, I will further address your comments below:

"Among other things, there is apparently an option for state contractors to receive a proportionate share of project benefits under the existing contract, without participating in the financing authority that will provide funding unless and until DWR bonds are validated."

Correct - as explained in WP3: "For the SWP share, the project would be treated like any other major improvement to the SWP system. Under the California Water Code, DWR is responsible for the construction, maintenance, and operation of the SWP and for securing funding for related costs. The SWP share of California WaterFix costs would be paid by the SWP Contractors in accordance with the long-term DWR State Water Contracts."
(WP3, p. 7)

"It appears from the summary that the only parties who bear the financial risks associated with construction of the project (including the risk it may never be permitted to operate), are the contractors that join the financing JPA."

Incorrect - every SWP Contractor south of the delta is responsible for their share of project costs via existing SWP Contracts. As explained in WP3: "The SWP State Water Contracts include articles that obligate each SWP Contractor to make payments. The contract articles also include language that obligates, and if necessary compels, the SWP

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Contractor to levy taxes or assessments in the event of non-payment. Additionally, the State may suspend water deliveries, within health and safety limits, if the contractor is in default for a significant period.” (WP3, p. 21.)

“There apparently are also terms and provisions relating to DWR’s transfer of ownership of portions of WaterFix facilities, which have also not been discussed at MWD board meetings, presentations or workshops.”

Incorrect - this potential outcome predicated on an adverse decision in DWR’s validation action, which the SDCWA has intervened in, was discussed with the Metropolitan Board and is also addressed in WP3. “If DWR is found not to have the requisite authority, a process would be established leading to potential conveyance of interest in the project to the Finance JPA or designee.” (WP3, Table 8, p. 22.) Note that the provisions for this process will be established in an agreement between DWR and the Finance JPA; not in one of the three agreements that staff is seeking authority for Metropolitan to execute at this time.

Regarding the request that the Board receive full copies of every contract for review prior to direction to staff to enter into such contracts, staff has provided the Board with term sheets that outline the key provisions of such contracts. This has been Metropolitan’s practice to engage the Board at a policy level to provide policy direction but not engage the Board in drafting and reviewing specific documents. All agreements will be consistent with the Board’s action and express provisions of the term sheets. I would note that this is the practice of the SDCWA with complex materials such as the contractual agreements with Poseidon for construction and operation of the Carlsbad desalination facility where the vote to authorize the facility was taken before settling on a financing plan. As you voted favorably for that project presumably you were comfortable with that approach at that time. We have been open to receiving policy direction from you and any other Board member on the proposed terms and conditions of the agreements, and the direction we have received to date has informed our positions on the current proposed terms.

Your concern about other agencies participation in California WaterFix and a potential “funding gap” are addressed by the terms of the proposed Board action to only provide authority for the General Manager to enter into agreements for Metropolitan’s share of 25.9% of project funding. Any change in that participation level will be brought back to the Board for consideration.

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I appreciate that you have been reflecting on this important matter. I am happy to address any further concerns that you might have.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Kightlinger". The signature is stylized with a large initial "J" and a long, sweeping underline.

Jeffrey Kightlinger

cc: Metropolitan Board of Directors
SDCWA Board of Directors