



San Diego County Water Authority

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

August 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 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: Finance and Insurance Committee and Board Meeting Agenda Item 8-1: Adopt CEQA determination and resolution establishing the tax rate for fiscal year 2017/18 - **OPPOSE**

Chairman Record and Board Members,

The Water Authority opposes adoption of Agenda Item 8-1 for reasons expressed many times regarding MWD's suspension of the tax limitation when it has 1) not provided any facts demonstrating its need to do so; or 2) provided any explanation or analysis why it cannot use available alternative sources of fixed revenue in lieu of ad valorem taxes, as it is legally required to do under the MWD Act.

The MWD Board voted at its April 12, 2016, meeting to adopt a resolution finding that continuing the ad valorem tax rate at the rate levied for fiscal year 2015/16 is "essential" to MWD's fiscal integrity. The Water Authority's Delegates voted against that Board action for the reasons described then and in their August 15, 2016 letter, a copy of which is attached (without its attachments). The Delegates' August 15 letter and all of its attachments are in the possession of MWD and are incorporated herein by reference.

It is again quite clear, on the face of Board Memo 8-1 and from the committee presentation, that MWD in fact has alternative sources of revenue available that it could use in lieu of ad valorem taxes, including water rates, standby or readiness-to-serve charges and benefit assessments. Contrary to the bare recitals contained in Resolution 9230, no evidence has been presented and there is no factual basis for the Board's finding that continuation of property taxes is essential to MWD's fiscal integrity; the Board's own conclusory declarations as set forth in Resolution 9230 are insufficient to overcome the actual evidence in the record. Finally, MWD's reasoning to support its argument based on "fiscal integrity" is flawed, and its characterization of the relevant legislative history (SB 1445), is false; we have described that history in prior letters and will not repeat it here but incorporate it by reference.

In our August 15, 2016, letter, the Water Authority noted that the attached Resolution 9210 misstated the requirements of MWD Act Section 134, by reciting that the Board "has fixed such

OTHER REPRESENTATIVE

County of San Diego

August 14, 2017

Chairman Record and Members of the Board of Directors

Page 2

rates and charges as will result in revenue which will pay the District's operating expenses" and other costs as described (emphasis added). That language does not accurately state the requirements of Section 134. Section 134 requires that the Board, "so far as practicable, shall fix such rate or rates for water as will result in revenue, together with revenue from any water standby or availability charge or assessment" sufficient to pay the District's operating and other costs as described (emphasis added). Resolution 9230 and the Board's action under Board Memo 8-1 yet again violate Section 134 of the MWD Act, which the MWD Board of Directors has no authority to change.

Sincerely,

/s/ Mark J. Hattam

Mark J. Hattam

Attachment: Water Authority's August 15, 2016 letter RE Finance and Insurance Committee and Board Meeting Agenda Item 5E-2: Adopt CEQA determination and the resolution establishing the tax rate for fiscal year 2016/17 - OPPOSE

cc:

Water Authority Board of Directors

Jeff Kightlinger, MWD General Manager

Marcia Scully, MWD General Counsel



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Fallbrook
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Otay Water District

Padre Dam
Municipal Water District

Camp Pendleton
Marine Corps Base

Rainbow
Municipal Water District

Ramona
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Rincon del Diablo
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

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Metropolitan Water District of Southern California

P.O. Box 54153

Los Angeles, CA 90054-0153

RE: Finance and Insurance Committee and Board Meeting Agenda Item 5E-2:
Adopt CEQA determination and the resolution establishing the tax rate for fiscal year
2016/17 - **OPPOSE**

Chairman Record and Board Members,

We have procedural and substantive objections to Board Memo 5E-2, described below, and for these reasons, we **OPPOSE** adoption of Agenda Item 5E-2. We have a standing objection to MWD's suspension of the property tax limitation when it has not provided any facts demonstrating its need to do so, and MWD, has not provided any analysis why it cannot use available sources of fixed revenue, which the legislature in 1984 expressly gave MWD authorization to collect as an alternative to ad valorem taxes.

First, although the committee and board meeting agendas said the board memo on this subject would be "mailed separately," it was not received until 2:48 PM on Friday afternoon, by email (following an inquiry and request by one of our Delegates for this information). We believe establishing MWD's tax rate is an important Board responsibility that warrants receipt of information well in advance of the meeting at which it is scheduled to be voted on, not late on the Friday afternoon before Monday's 9:30 AM committee meeting.

We also raise a concern about how MWD has categorized this issue in current and prior committee and board meeting agendas, i.e., not under Board Action items, *even when as this month action is clearly proposed to be taken*, but under "Other Matters." This is very confusing to members of the public who may believe (quite reasonably) that all matters the Board will be voting on are listed either under the Consent Agenda or Board Action Items. And of course, this month, members of the public would have to be checking MWD's web site continuously until late Friday afternoon hoping to obtain any information at all about what is being voted on Monday morning and at Tuesday's Board meeting. We request you correct this process to provide timely information and transparency on future board agendas of issues related to the tax rate limitation suspension and California WaterFix costs which MWD identifies as

Chairman Record and Members of the Board

August 15, 2016

Page 2

justification for these property tax increases.

We are aware that the Board already voted at its April 12, 2016 meeting to adopt a resolution finding that continuing the ad valorem tax rate at the rate levied for fiscal year 2015/16 is "essential" to MWD's fiscal integrity. We opposed that board action for the reasons described in our March 6, 2016 letter, a copy of which is attached (without attachments). The April 12, 2016 Board meeting Memo 8-1 ("April Board Memo") did not contain any facts or analysis establishing why suspension of the tax rate limitation was necessary, let alone, "essential;" in fact, the April Board Memo is clear on its face that MWD could have raised water rates or used other readily available sources of fixed revenue as an alternative to suspension of the tax rate limitation.

Board Memo 5E-2 does not provide any new facts or analysis to justify the tax rate limitation suspension or imposition of the tax rate as described; instead, it relies upon a series of conclusory "recitals" taken from the April Board Memo. These self-serving declarations by MWD are not evidence or a substitute for a substantive analysis supporting a conclusion that suspension of the tax limitation is essential to MWD's fiscal integrity. In fact, these recitals are in stark contrast to the facts, including the following:

MWD has sufficient revenue available to pay all of its costs without a tax rate limitation suspension. At the time of the April 2016 board meeting, MWD had collected almost \$850 million more than needed to pay its costs over the preceding four years. MWD chose to spend all of that money outside of its budget and rate-setting process rather than using those ratepayer dollars to avoid any purported need to suspend the tax rate limitation. Board Memo 5E-2 clearly states that the Board could have raised water rates to pay MWD's costs for fiscal year 2016/17, but chose not to do so; staff then goes on to reach the faulty conclusion that since the Board chose not to raise water rates, a tax rate suspension is therefore "essential." This turns the substance and intent of SB 1445 on its head.

MWD has alternative sources of fixed revenue available that could be used in lieu of ad valorem property taxes. The April Board Memo states:

SB 1445 also authorized alternative sources of fixed revenue, including standby or readiness-to-serve charges and benefit assessments. It was not until 1992/93, when standby charges were initially adopted, that Metropolitan had any fixed revenue other than property tax. Now, however, those fixed-revenue alternatives are likely governed by additional legal requirements not in place or contemplated when the Legislature enacted SB 1445. Further, the precise scope of those requirements is uncertain, meaning that uncertainty and potential risk will accompany reliance on any new fixed revenue alternative authorized by SB 1445. (April Board Memo at page 10.)

Based on this mere recital, not accompanied by any further explanation or analysis of the purported "uncertainty" or "risk" associated with using the tools the Legislature expressly provided for MWD to use *in lieu of ad valorem property taxes*, MWD staff declares that ad valorem property taxes are "essential." We request that staff provide a detailed report at the September Board meeting of the "additional legal requirements" to which reference is made,

Chairman Record and Members of the Board

August 15, 2016

Page 3

the analysis by which it has concluded that use of the fixed revenue alternatives is too "uncertain" or creates "risk," and the nature and extent of the risk it has identified.

MWD's reasoning is flawed and its characterization of history, including the legislative history of SB 1445, is false. We have described that history in prior letters to this Board and so will not repeat it here; instead, we incorporate our prior letters (and attachments), listed at the end of this letter, by reference.

Resolution 9210 violates the requirements of MWD Act Section 134. Resolution 9210 states that the Board "has fixed such rates and charges as will result in revenue which will pay the District's operating expenses" and other costs as described (emphasis added). However, that is not what Section 134 requires; rather, it provides that the Board, "so far as practicable, shall fix such rate or rates for water as will result in revenue, together with revenue from any water standby or availability charge or assessment" to pay the Districts' operating and other costs as described (emphasis added). Resolution 9210 does not comply with Section 134 of the MWD Act.

It is premature to justify the need for a property tax limitation suspension on costs of the State Water Project or California WaterFix. The evidence before the Board is clear that MWD has more than ample revenues and fixed cost recovery alternatives to pay for current State Water Project costs, without the necessity of a tax rate limitation suspension. The Board has not been provided with any cost estimates associated with the California WaterFix, neither Board Memo 5E-2 nor Resolution 9210 identifies or describes any such costs, and the Board has not yet voted on the project. Unless and until these things happen, the State Water Project costs do not justify the tax rate limitation suspension.

Sincerely,



Michael T. Hogan
Director



Keith Lewinger
Director



Fern Steiner
Director

Attachments:

1. March 6, 2016 letter RE March 7 Finance and Insurance Committee/Budget and Rates Workshop Agenda Item 9-2 (Proposed revenue requirements) and 8d (Presentation) and March 8 Board Meeting Agenda Item 4 Public Hearing RE suspension of tax rate limitation and proposed water rates and charges for calendar years 2017 and 2018
2. MWD April 30, 1984 Memo Re: Proposed Legislation Amending Metropolitan Water District Act and Revisions to Metropolitan Water District Administrative Code Relating to Taxation and Water Pricing
3. MWD March 1984 Report to the California Legislature in Response to AB 322

Chairman Record and Members of the Board

August 15, 2016

Page 4

Prior letters written RE suspension of tax limitation:

1. Letter from Water Authority to John Foley and the MWD Board of Directors dated May 14, 2013 Re: Board Memo 8-1 – Set public hearing to consider suspending Section 124.5 of the Metropolitan Water District Act to maintain the current ad valorem tax rate
2. Letter from Metropolitan to California State Senate dated May 29, 2013 Re: public hearing scheduled pursuant to section 124.5 of the MWD Act on the suspension of ad valorem tax rate limitations
3. Letter from Water Authority to John Foley and Members of the Board of Directors dated June 5, 2013, Re: Board Memo 8-1 – Mid-cycle Biennial Budget Review and Recommendation for Use of Reserves over Target Water Rate Increases – OPPOSE AND REQUEST FOR REFUND TO RATEPAYERS OF EXCESS RESERVES, and Board Memo 8-2 – Suspend the tax rate limitations in Section 124.5 of the MWD Act to maintain the ad valorem tax rate for fiscal year 2013/14 – OPPOSE
4. Letter from Water Authority to Darrell Steinberg and The California State Senate dated March 7, 2014 Re: MWD Public Hearing on Suspension of Tax Rate Limitation
5. Letter from Water Authority to Randy Record and Members of the Board of Directors dated August 15, 2015 Re: Board Memo 5G-2 – Adopt (1) the resolution finding that continuing an ad valorem tax rate at the rate levied for fiscal year 2013/14 is essential to MWD's fiscal integrity; and (2) the resolution establishing the tax rate for fiscal year 2014/15 – OPPOSE OPTION 1
6. Letter from Water Authority to Randy Record and Members of the Board of Directors dated March 6, 2016 Re: March 7 Finance and Insurance Committee/Budget and Rates Workshop #3 Items 9-2

cc: San Diego County Water Authority Board of Directors