



THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

Office of the General Counsel

March 9, 2021

Mr. Mark Hattam  
General Counsel  
San Diego County Water Authority  
4677 Overland Avenue  
San Diego, CA 92123-1233

Dear Mr. Hattam:

Response to Letter Dated March 7, 2021

This letter is in response to your letter dated March 7, 2021 concerning The Metropolitan Water District of Southern California's (Metropolitan) Board Letter 7-4. Your letter is attached for reference. Your letter raises concerns related to the proposal in Board Letter 7-4 based on three issues, addressed below.

Metropolitan Water District Act Section 135

Nothing in Board Letter 7-4 affects the rights established under Metropolitan Water District Act Section 135. Section 135 does not convey a right to water, as your letter implies. Section 135 establishes a member agency's preferential right to purchase water supplies from Metropolitan for use within that agency's service area. The action in Board Letter 7-4 in no way changes or limits a member agency's right to purchase a percentage of water served by Metropolitan, as provided by Section 135. Metropolitan staff will review preferential rights with the Board in the coming months.

Wheeling

Your letter incorrectly claims that Metropolitan is not acquiring water for its use through the proposed agreement with San Bernardino Valley Municipal Water District (Valley District). In fact, under the proposed agreement, Metropolitan will purchase water from Valley District at its sole discretion and will use that water to deliver service to its member agencies. The proposed agreement provides that Metropolitan will make available an *amount equivalent to 50 percent* of Metropolitan's Valley District water purchase to qualify as potential extraordinary supply under Metropolitan's Water Supply Allocation Plan (WSAP) for member agencies involved with the Santa Ana River Conservation and Conjunctive Use Program (SARCCUP).

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Under the terms of the proposal, this program will be made available to all member agencies, not just the SARCCUP participants.

There are likely to be years in which no member agency chooses to take delivery of water under this program and there may be other years in which all the water made available is used by member agencies to qualify as extraordinary supply. In every operating scenario, Metropolitan has discretion on whether to purchase the supplies from San Bernardino and can choose how to manage the deliveries. Member agencies that choose to purchase Metropolitan water pursuant to the program will be doing so at Metropolitan's full-service rate, no different than other water purchases from Metropolitan.

You suggested that Metropolitan should enter into a wheeling transaction instead of the current agreement proposed in item 7-4. However, the objective of the agreement is for Metropolitan to purchase the Valley District water at its own discretion while reestablishing a partnership, including mutual aid provisions, that benefit both Metropolitan and Valley District. A wheeling transaction would not accomplish this objective.

#### Extraordinary Supply

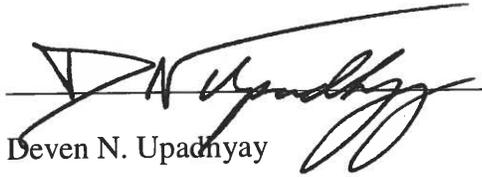
The WSAP contains a provision for the recognition of "extraordinary supply" as part of its method for determining the allocation of Metropolitan's supplies available to the member agencies without the application of an Allocation Surcharge in times of shortage. The purpose of the extraordinary supply determination is to account for water management actions that increase the total regional water supplies available during WSAP allocation years.

Under the WSAP, member agencies' water purchases from Metropolitan do not qualify as an allowable supply source for development of extraordinary supply. That is why in Board Letter 7-4, the Board is being asked to allow member agencies' purchases from Metropolitan in an amount equivalent to Metropolitan's Valley District purchase to be classified as a qualifying supply source for a future extraordinary supply determination. Member agencies would still need to store and manage the water consistent with the WSAP in order to get the benefit of extraordinary supplies in a future allocation year. Without Board approval of item 7-4, the prohibition on using Metropolitan water as a supply source for extraordinary supplies would remain in place.

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Overall, the proposed agreement with Valley District does not affect preferential rights and is not conducive to re-design as a wheeling structure. As proposed, the agreement would reestablish a beneficial transfer and mutual aid partnership between Metropolitan and Valley District. Board Letter 7-4 would also provide access for all member agencies to a potential supply source for developing extraordinary supply should they choose to develop such future storage programs under the WSAP policy.

Sincerely,



Deven N. Upadhyay

Assistant General Manager/ Chief Operating Officer  
The Metropolitan Water District of Southern California



Marcia L. Scully

Marcia L. Scully

General Counsel  
The Metropolitan Water District of Southern California

cc: MWD Board of Directors  
Jeffrey Kightlinger, MWD General Manager

March 7, 2021

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

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Municipal Water District

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Municipal Water District

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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

**Marcia Scully, General Counsel**  
**Metropolitan Water District of Southern California**  
**700 N. Alameda Street**  
**Los Angeles, CA 90012**

**RE: Board Memo 7-4 REVISED Authorize the General Manager to enter into a Coordinated Operating Agreement with San Bernardino Valley Municipal Water District and delegate authority to the General Manager to enter into related future agreements with member agencies and local agencies, as needed, for extraordinary supply consistent with the terms approved by the Board**

**Dear Ms. Scully:**

**I write on behalf of the Water Authority to express the following positions in connection with the above Board memo.**

**Preferential Rights. First, we want to reiterate our position that the MWD Board has no authority to modify or extinguish member agencies' respective preferential rights to water under Section 135 of the MWD Act. Accordingly, while the MWD Board may vote to adopt a Water Supply Allocation Plan, implementation depends on the ongoing voluntary agreement of the member agencies including, importantly, those which hold preferential rights which may entitle them to more water than provided for under the WSAP. Indeed, MWD General Manager Kightlinger recently stated in a letter to San Diego LAFCO that the WSAP does not impair preferential rights: "In 2008, Metropolitan's Board adopted a Water Supply Allocation Plan (WSAP), which does not limit the agencies' preferential rights to purchase water."**

**Neither Board Memo 7-4 nor the WSAP discuss the relationship between the voluntary WSAP and legally enforceable preferential rights. We believe that this discussion is long overdue and hopefully will be part of the ongoing IRP and rate review processes. We do not believe that the Water Authority is the only member agency that would like to see this issue addressed and reconciled with other water resource and financial planning matters by MWD.**

**Preferential rights represent vested water rights granted by the Legislature to MWD member agencies, as they are an actual financial investment by MWD member agencies over time. Member agencies and their ratepayers reasonably expect that these investments will be acknowledged in MWD planning processes. Moreover, all MWD member agencies would benefit from knowing how much water they can actually count on receiving during a shortage.**

**Wheeling. In the past, San Bernardino Valley Municipal Water District ("Valley") water was purchased and sold by MWD in a straightforward manner. The current proposal is quite**

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different, in which MWD is not acquiring any water supplies for its use; rather, the water is planned to be purchased half by four identified MWD member agencies and the other half by other MWD member agencies to be determined. If MWD were simply to consent to the sale of water by Valley to these agencies and wheel the water, MWD revenues would be increased and it would be paid directly for the service it is actually providing here (wheeling) and not for a service it is not providing (sale of water). Such a structure would allow the member agencies to secure the water they wish to purchase in a straightforward manner that is fair to all member agencies.

Extraordinary Supply. It does not appear on the face of Board memo 7-4 that the Valley water proposal qualifies as an Extraordinary Supply under MWD's current WSAP, at least as the transaction is now structured as being the sale of MWD water (which it is not). MWD should further address and clarify this issue.

In closing, the Water Authority does not have opposition to the SARCCUP agencies or any MWD member agency taking steps to improve water supply reliability—to the contrary, we support those efforts. Our concern is the failure to recognize member agency investments in MWD and the disparate treatment often afforded individual member agencies, such as in this case, and in the areas of preferential rights, wheeling and extraordinary supply designation. The Water Authority is hopeful that the MWD member agencies and Board will be successful in the future establishing a clear set of rules that apply equally and fairly to all member agencies. In the meantime, we respectfully reserve all our rights with respect to all issues associated with the Board Memo 7-4 proposal.

Sincerely,

/S/

Mark Hattam  
General Counsel

cc: MWD Board of Directors  
Water Authority Board of Directors  
Jeff Kightlinger, MWD General Manager  
Sandy Kerl, Water Authority General Manager