

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

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

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

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

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