

May 9, 2021

Gloria Gray, Chairwoman
 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

OTHER REPRESENTATIVE

County of San Diego

RE: Board Memo 7-2 – Approve and authorize the distribution of Appendix A for use in the issuance and remarketing of Metropolitan’s Bonds - OPPOSE

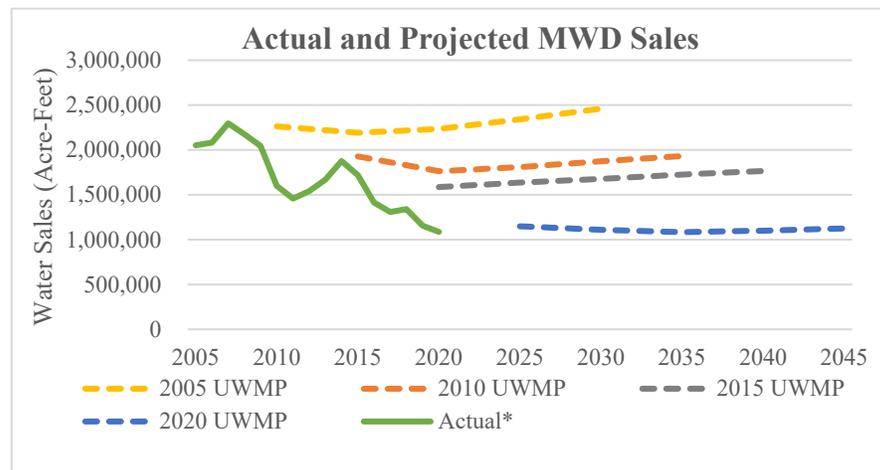
Dear Chairwoman Gray and Board Members:

This letter provides you with our principal concerns and other comments on the 04/27/21 redline draft Appendix A.

Principal Concerns

Our overarching concern remains, that Appendix A as drafted and taken as a whole, does not fairly describe the factors driving the reduced demand for MWD water or the near- and long-term financial impacts on MWD.

Since our last letter of January 10, 2021,¹ MWD has itself confirmed in its 2020 Urban Water Management Plan (UWMP) the substantially reduced water sales we have commented on with increasing concern over the last several years. Even though the 2020 Integrated Resources Plan (IRP) has not yet been completed, reliance on the outdated 2015 IRP and its “targets” in this Appendix A is inappropriate at best, given the availability of current data including MWD’s own UWMP. We’ve included the below chart to illustrate MWD’s declining demands²



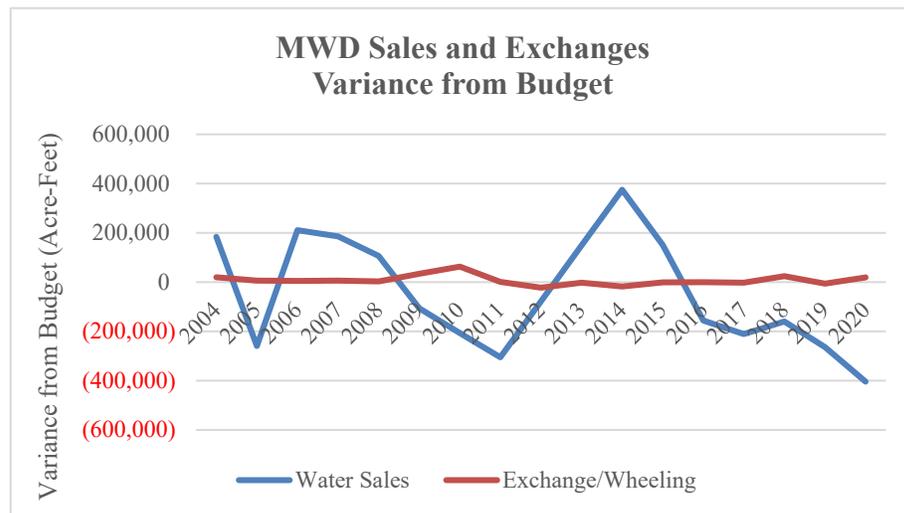
Our concerns regarding the near-and long-term implications of reduced water sales are intensified by the lack of progress on the 2020 IRP update and, thus far, the narrow focus of the rate review process on

¹ Copies of our January 10, 2021 letter on the draft Appendix A have previously been provided and are incorporated by reference, including comments on each and every issue not previously addressed.

² Actual and projected MWD sales data from WINS reports by fiscal year; UWMP data under normal hydrology.

recovery of demand management costs (which account for only 3% of our fiscal year 2021 budget). Further, MWD’s 10-year rate forecast, which staff continues to say serves as MWD’s long-range financial plan, does not include the costs of the two major projects—the Delta Tunnel and Regional Recycled Water Program—MWD is counting on for long-term water supply reliability.

MWD’s practice of melding MWD water sales and wheeling revenues (combined and reported as “transactions”) obscures the financial and resource planning implications of MWD’s reduced water sales trend. We noted several examples in our January 10, 2021, letter which have not been addressed and are instead repeated in the current draft Appendix A. It would be helpful for the MWD Board and public to understand the materially different features of these two revenue streams, demonstrated below.³



Our additional principal concerns with the draft Appendix A are as follows⁴:

- A-11. *Current Water Conditions*. The description of MWD’s 2021 Colorado River supply is incorrectly stated as 1,008,700 acre-feet, by including the Water Authority’s independent Colorado River water and San Luis Rey Water Transfer as “MWD’s supplies.” By contrast, MWD’s Water Surplus and Drought Management (WSDM) Report dated May 11, 2021 properly accounts for the Water Authority’s Colorado River supplies and San Luis Rey Water Transfer at 283,000 acre-feet and 16,000 acre-feet, respectively, for 2021. In addition to correcting this error, we also suggest that Appendix A be updated to match the supply conditions described in the May 2021 WSDM report.
- A-13 and A-49. *Local Water Supplies*. This section relies on outdated 2015 IRP data rather than referencing the updated local supply forecast included in MWD’s 2020 UWMP. Among other things, the 2020 UWMP forecasts that in 2040 there will be up to 172,000 acre-feet (or almost 7%, depending on hydrology), more in local supply production than included in MWD’s 2015 forecasts. Also, MWD is contractually bound under Section 4.1 of its Exchange Agreement with the Water Authority to report the Water Authority’s QSA exchange water as a local supply.⁵

³ Note: 2012 data is based on revised budget of 1,800,000 acre-feet of sales and exchanges, compared to the original 2,000,000 acre-foot budget.

⁴ All page references are to the redline copy of Attachment 2.

⁵ See letter from Mark Hattam, Water Authority’s General Counsel, dated April 11, 2021 RE Exchange Agreement Section § 4.1/Demand to Cease and Desist, a copy of which has previously been provided.

- A-13. *2020 IRP*. As noted above, continued reference to the outdated 2015 IRP rather than to current, available information is of concern. This is especially the case considering delayed progress of the 2020 IRP, still underway (with much remaining to be done) after more than 15-months in process.
- A-17. *State Water Project*. The language added to the last full paragraph on page A-17 appears inconsistent with other parts of the same paragraph regarding the status of the Delta Conveyance Agreement in Principle (AIP) and proposed amendments regarding the allocation of project costs. If negotiations with DWR for the Delta Conveyance AIP are now completed (we do not recall this being reported to the MWD Board of Directors, so please advise), the paragraph should describe what the process will be if public agency boards do not subscribe to 100% of the project, especially given that the MWD board has authorized its participation in the planning phase only.
- A-24. *Colorado River Water Apportionment and Seven-Party Agreement*. MWD's net Colorado River diversions are reported incorrectly by including the Water Authority's independent Colorado River supplies and San Luis Rey transfer water as MWD supplies. See above discussion of *Current Water Conditions*.

Other Comments and Questions

- A-25. *Quantification Settlement Agreement*. Please correct to describe the project completion dates for the All-American and Coachella canal lining projects as 2010 and 2007, respectively, and that the total conserved water amount is 77,700 acre-feet annually for 110 years, plus any unused environmental mitigation water for the Coachella Canal Lining Project up to 4,850 acre-feet.
- A-43. *Metropolitan's Water Storage Capacity and Water In Storage*. Lake Mead's storage capacity is reported here as 1,739,000 while the May 2021 WSDM report states the storage capacity as 1,657,000. Please confirm and include the correct number
- A-68. *Tier 1 and Tier 2 Water Supply Rates*. At a minimum, the draft should be amended to include reference to the fact that no Tier 2 water rates have ever been collected by MWD and are highly unlikely to be collected in the future given reduced demand for MWD water. Given this fact, there is no logical support for the statement that "*the Tier 2 Supply Rate encourages the member agencies and their customers to maintain existing local supplies and develop cost-effective local supply resources and conservation.*" MWD is currently purchasing water transfers from north of the Delta even though no Tier 2 revenue has ever been collected. See Appendix A language added at A-10: "*On April 13, 2021, the Board authorized the General Manager to secure up to 65,000 acre-feet of additional water pursuant to one-year water transfers from water districts located north of the Sacramento-San Joaquin River Delta.*"
- A-68-69. *Water Stewardship Rate*. As per our prior comments, we do not agree with the characterization of the Court of Appeal's ruling on the Water Stewardship Rate, which clearly states that demand management costs are supply costs not transportation costs and therefore must be allocated accordingly. The Court of Appeal also expressly rejected MWD's reliance on "avoided costs" as a basis for rate-setting. At a minimum, this section should add a disclosure that MWD is seeking by its most recently filed appeal to eliminate or revise language in the judgment and writ of mandate entered by the Court which it contends is inconsistent with the disclosures contained in Appendix A.
- A-69-70. *Member Agency Purchase Orders*. We incorporate by reference our comments in prior letters stating why reference to MWD "Purchase Orders" in Appendix A is misleading, including but not limited to the fact that no Tier 2 revenue has ever been collected and is

unlikely to ever be collected by MWD. See above discussion of Tier 1 and Tier 2 water supply rates.

- A-78 – A-84. *Litigation Challenging Rate Structure*. The Water Authority disagrees with many of the characterizations in the draft Appendix A of the litigation, but limits its responses here to specific statements:
 - A-80: Final sentence of third paragraph says, “Metropolitan may raise this issue [set-off from SDCWA’s damages] again on any later appeal from the cases’ final judgment.” This is not accurate because MWD has filed its appeal *but did not challenge the damages award. For this reason, the trial court’s ruling on the amount of the Water Authority’s damages is final.*
 - A-80-A-81: In the paragraph describing MWD’s 998 offer, the Water Authority disagrees that MWD’s offer met the statutory criteria (additional information previously provided by the Water Authority is available if MWD has not made this information available to bond counsel).
 - A-81 (fifth full paragraph): The Water Authority filed its responding brief on appeal on May 7, 2021.
 - A-82 (third full paragraph): The stipulation and order on the amount of the Water Authority’s recoverable fees provides that SDCWA is entitled to recover post-judgment interest on the amount at 7 percent per annum.
 - A-82-A-83: The offsetting benefits theory in the 2014/2016 cases is not an “added claim.” To the contrary, *as Judge Massullo has already concluded*, the Water Authority’s “original complaint alleged that Met’s rates violate the Wheeling Statutes and are invalid because the rates Metropolitan charges for transportation . . . exceed fair compensation for use of Metropolitan’s facilities,” including the offsetting benefits requirement. (See September 9, 2020 Order Re Motion to Correct at page 2, internal quotations omitted.) The Water Authority’s amended complaint merely “reiterates Met’s alleged failure to comply with its statutory obligation, in greater detail.” (*Ibid.*)
 - A-83 (second full paragraph): The Water Authority’s answers to MWD’s cross-complaint also contain affirmative defenses.

We appreciate your consideration of our comments.

Sincerely,



Jerry Butkiewicz
Director



S. Gail Goldberg
Director



Michael T. Hogan
Director



Tim Smith
Director

CC: Jeffrey Kightlinger, MWD General Manager
Water Authority Board of Directors