



MEMORANDUM

DATE: May 1, 2026

TO: Chair Becker and Commissioners

FROM: Priscilla Mumpower, Assistant Executive Officer
 Patrick Bouteller, LAFCO Consultant

SUBJECT: **Comment Letter from Metropolitan Water District and Staff Responses | Draft Wholesale Water Service Agencies Municipal Service Review – Part One: San Diego County Water Authority**

This memorandum summarizes the principal written comments received from the Metropolitan Water District of Southern California (MWD) on the draft Municipal Service Review (MSR) for the San Diego County Water Authority (CWA), and identifies corresponding staff responses. The draft report was released ahead of the scheduled May 4, 2026 hearing on April 16, 2026, with a formal public review pending Commission authorization.

MWD submitted a comment letter dated April 30, 2026, and indicates its comments are preliminary, with additional feedback to potentially follow after further internal review. Overall, the comments focus on technical accuracy, legal characterization of agreements, and clarification of terminology and factual descriptions within the draft report. No revisions appear warranted at this time that would alter the report’s central conclusions, recommendations, or written determinations.

MWD’s comment letter is provided as Attachment One.

<p>Administration Keene Simonds, Executive Officer 2550 Fifth Avenue, Suite 725 San Diego, California 92103 T 619.321.3380 E lafco@sdcounty.ca.gov www.sdlafo.org</p>	<p>Paloma Aguirre County of San Diego</p> <p>Joel Anderson County of San Diego</p> <p>Monica M. Steppe, Alt. County of San Diego</p>	<p>Chair Kristi Becker City of Solana Beach</p> <p>Dane White City of Escondido</p> <p>John McCann Alt. City of Chula Vista</p>	<p>Stephen Whitburn City of San Diego</p> <p>Marni von Wilpert, Alt. City of San Diego</p>	<p>Vice Chair Barry Willis Alpine Fire Protection</p> <p>Jo MacKenzie Vista Irrigation</p> <p>David Drake, Alt. Rincon del Diablo</p>	<p>Brigitte Browning General Public</p> <p>Eileen Delaney, Alt. General Public</p>
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1. Technical Corrections and Clarifications

MWD identifies items where the draft report contains factual or descriptive inaccuracies.

Staff Response: Agrees.

Staff will revise the final report to address the following items:

a) Hydroelectric Function

The draft report characterizes MWD as providing hydroelectric and electric services as a municipal function. MWD clarifies its authority under the Metropolitan Water District Act is limited to activities incidental to water delivery, not as a standalone retail or municipal service. The report will be revised accordingly.

b) 2021 Payment Characterization

The draft report references a “\$90 million settlement.” MWD clarifies this was not a settlement, but rather a return of disputed Water Stewardship Rate-related payments from prior litigation. Staff will clarify this reference.

c) Service Area Map

Map ES-1 currently identifies Fallbrook Public Utility District and Rainbow Municipal Water District as “MWD Only.” MWD notes that Eastern Municipal Water District also provides service to these territories. The map will be revised to reflect both providers.

2. Use of “Allocation” Terminology

MWD objects to references indicating it “allocates” water to member agencies outside of shortage conditions, noting it operates as a voluntary cooperative and generally meets member demand absent drought conditions.

Staff Response: Agrees in part.

Staff will refine terminology in the body of the MSR to characterize MWD as a voluntary cooperative serving member demand. The reference appears in the Hanemann appendix, which will remain as authored by the consulting economist.

3. Characterization of the SDCWA–Metropolitan Relationship and Agreements

MWD comments on how the draft report characterizes its relationship with CWA, particularly with respect to terminology used to describe water transactions and governing agreements. Key issues raised include:

- a) Distinction between canal-lining and Imperial Irrigation District (IID) water
- b) Use of the term “wheeling” versus “exchange”
- c) Description of provisions within the 2025 Second Amended and Restated Exchange Agreement, including rights of refusal

Staff Response: Agrees in part.

Staff agrees that certain refinements are appropriate to improve technical accuracy and consistency, particularly where terminology may create confusion or conflict with established legal interpretations. Accordingly, staff will revise terminology, clarify distinctions, and refine descriptions where appropriate.

At the same time, staff notes the MSR's analysis is anchored to a defined Fiscal Year 2009–2023 reporting period. As such, revisions will be made to improve clarity, while keeping the analysis anchored to its reporting period.

Attachment:

- 1) MWD Written Comment Letter Dated April 30, 2026 with Margin Markings

San Diego LAFCO

May 1, 2026

Memorandum: Summary of MWD Comment Letter on Draft MSR on Wholesale Water Agencies: Part I (CWA)

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THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

April 30, 2026

Via Electronic Mail Only

Mr. Keene Simonds, Executive Officer
San Diego Local Agency Formation Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123
keene.simonds@sdcounty.ca.gov

Draft Report Municipal Service Review on Wholesale Water Providers, Part One: San Diego County Water Authority

Dear Mr. Simonds:

The Metropolitan Water District of Southern California (Metropolitan) appreciates the opportunity to review and to provide comments on the San Diego Local Agency Formation Commission's (SDLAFCO) *Draft Report of Municipal Service Review: Wholesale Water Providers, Part One: San Diego County Water Authority*, received April 17, 2026 (Draft Report). We also appreciate the coordination by SDLAFCO staff and consultants with Metropolitan over the past year.

Metropolitan did not have the opportunity to provide redline edits and comments to the SDCWA Draft Report. Accordingly, we outline Metropolitan's preliminary comments here and reference the page of the Draft Report for your convenience. Staff continues its in-depth review of the Draft Report and will send any additional comments identified as soon as possible.

Metropolitan Comments:

No. 1a

1) Metropolitan does not provide municipal hydroelectric or electric service to third parties

The Draft Report indicates that Metropolitan provides municipal hydroelectric and electric power services. It is unclear what is meant by "municipal power" and "electric power services". Pursuant to the Metropolitan Water District Act (MWD Act), Metropolitan may "provide, generate, and deliver electric power within or without the state for the purpose of developing, storing, and distributing water." See MWD Act §§ 25, 50 (underline added), attached. More specifically, Metropolitan has authority to buy and sell power at the wholesale

level, and to construct and operate power infrastructure as necessary for its purpose to develop, store, and convey wholesale water supplies to Southern California. However, Metropolitan is not a retail power provider and lacks the legal authority under the MWD Act to provide electric service to third parties. We appreciate if you could clarify this point throughout the Draft Report and specifically at:

- Page 17 - section describing “Extent of Municipal Services Covered” states that “Both agencies also provide hydroelectric power generation through their water conveyance systems” and states that the function is omitted from the review. This is an incorrect description of Metropolitan’s statutorily authorized services. See MWD Act, §§ 25, 50.
- Page 64 – section 5.0 describes SDCWA’s service as including hydroelectric power, gas, and electric generation. That should be verified, if the SDCWA Act is written same as Metropolitan’s Act.

No. 3a

2) **Canal-Lining Water is not accurately described**

It is important that the water SDCWA exchanges with Metropolitan for Metropolitan water deliveries be accurately described. As you know, the agreement, the description of the arrangement, and the financial terms have been the subject of costly and lengthy litigation. Accordingly, we ask that the Draft Report be accurate in describing all parts of the arrangement, including the conserved canal-lining water that is part of that arrangement. We appreciate if you could clarify this point throughout the Draft Report and specifically at:

- Page 87 – section 7.3 (a)(2) and (3) groups the canal-lining water with IID water. That is incorrect. See April 25, 2023 Statement of Decision in *SDCWA v. MWD*, Case No. CPF-14-514004 (“SOD”), page 5:16-21, attached. Metropolitan assigned the canal-lining water to SDCWA as part of the consideration for the amended 2003 Exchange Agreement. Canal-Lining water is governed by the Allocation Agreement that was part of the 2003 QSA—not part of the SDCWA-IID Transfer Agreement.
- Page 88 – section 7.3 (e)(4)(B) is unclear as to whether the “QSA water costs” include the Exchange Agreement price. The canal-lining water was part of the consideration exchanged for the 2003 amendment of the Exchange Agreement. Therefore, the water costs are tied to the exchange price as well. See SOD, p. 5:14-22, attached.
- Page 1 of Appendix – incorrectly describes canal-lining water as IID water. See SOD, p. 5:14-22.

No. 3b

3) **The SDCWA-Metropolitan Exchange Agreement is incorrectly stated as a “wheeling agreement”**

The SDCWA-Metropolitan Exchange Agreement involves SDCWA making available to Metropolitan at Lake Havasu certain Colorado River water (conserved IID water pursuant to the IID-SDCWA Transfer Agreement and conserved canal-lining water it obtained from Metropolitan under a 110-year arrangement) in exchange for Metropolitan delivering an equal

amount of Metropolitan water to SDCWA in Metropolitan’s service area, which is typically a blend of Metropolitan’s SWP water and Colorado River water.

The Exchange Agreement is not a wheeling agreement, as the court made clear in litigation between the parties. See April 25, 2023, Statement of Decision, *SDCWA v. Metropolitan*, Case No. CPF-14-514004 (“SOD”), pp. 12-15 ruling the Exchange Agreement is not a wheeling agreement. A copy of the SOD is attached. Moreover, to help avoid any mischaracterizations, when the parties amended and restated the Exchange Agreement in 2025, they expressly specified in the agreement the fact that Metropolitan owns the Colorado River water at the point and time that it is made available to Metropolitan at Lake Havasu, before it moves through Metropolitan’s Colorado River Aqueduct. Wheeling involves transporting a third party’s water through the owner’s facilities. It is factually and legally impossible for Metropolitan to “wheel” its own water through its Colorado River Aqueduct.

The characterization of wheeling versus an exchange has important factual and legal ramifications and it is imperative that the correct terminology is used. As evidenced by the SOD, the mischaracterization of the Agreement as a “wheeling” agreement created unnecessary and protracted litigation between the parties. That confusion and mischaracterization should not continue in a SDLAFCO Report, upon which the public relies. We appreciate if you could clarify this point throughout the Draft Report and specifically at:

- Page 109 – reference to “transport fees” should be changed to “exchange price”. See SOD pp. 12-15, ruling the Exchange Agreement is not a wheeling agreement.
- Page 11 of Appendix – incorrectly references a “wheeling charge.” See SOD, pp. 12-15, ruling the exchange agreement is not a wheeling agreement.
- Page 12 of Appendix – incorrectly references a “wheeling charge.” See SOD, pp. 12-15, ruling the exchange agreement is not a wheeling agreement.
- Page 22 of Appendix – incorrectly describes a transportation and conveyance agreement.

No. 3c **4) Provisions of the 2025 Second Amended and Restated Exchange Agreement (entered into pursuant to the parties’ settlement) are not accurately described**

The Draft Report incorrectly describes the first and second rights of refusal that SDCWA may offer to Metropolitan member agencies and Metropolitan under the amended 2025 Second Amended and Restated Exchange Agreement, Section 3.2(d).

Under the first right of refusal, SDCWA may sell to other Metropolitan member agencies the exchange water deliveries (“Exchange Water” in the agreement) it is entitled to receive from Metropolitan. As explained above, the exchange water deliveries are Metropolitan water (typically a blend of Metropolitan’s SWP water and Colorado River water) that is simply being delivered to another member agency’s service connection rather than to SDCWA. That is because, as explained above, SDCWA *exchanges* IID water and canal-lining water that it makes available to Metropolitan at Lake Havasu and becomes Metropolitan’s water at that location, for Metropolitan water deliveries SDCWA receives at its own connections in San Diego. For the

same reasons it is factually and legally impossible for the exchange water deliveries to be wheeled water to SDCWA, it is impossible for it to be wheeling water to the member agencies who have purchased those deliveries.

By comparison, under the second right of refusal, SDCWA may sell the Colorado River water (IID and canal-lining water) to Metropolitan at Lake Havasu because that is where it transfers that water to Metropolitan under the Exchange Agreement, becoming Metropolitan water at that point and time. Rather than exchange it for Metropolitan water deliveries, SDCWA offers to sell the Colorado River water to Metropolitan at Lake Havasu. See 2025 Second Amended and Restated Exchange Agreement, Section 3.2 (d), attached. We appreciate if you could clarify this point throughout the Draft Report and specifically at:

- Page 95 – section 7.5(f) states Metropolitan can sell “QSA water” to other member agencies. That is incorrect.
- Page 109 – reference to “transport fees” should be changed to, “exchange price and a fixed baseline payment.” The settlement compensation provisions involve more than the unit price.
- Page 22 of Appendix – incorrectly describes SDCWA as being able to sell “QSA water” to other Metropolitan member agencies.

No. 1b

5) There is no “\$90 million settlement” between the parties

The Draft Report references a \$90 million settlement, but there was no such settlement. Metropolitan paid damages in 2017 for the Water Stewardship Rate (WSR)-related amounts paid by SDCWA in exchange contract payments from 2010 through 2013. Then, on September 30, 2021, Metropolitan returned to SDCWA money paid for WSR-related amounts from 2014 through 2017. No WSR-related amounts were included in SDCWA’s exchange payments as of January 1, 2018. None of the payments were made in relation to a settlement. We appreciate if you could clarify this point throughout the Draft Report and specifically at:

- Page 108 – reference here to a \$90 million settlement in 2021.

No. 2

6) There are incorrect references to “SDCWA’s allocation of MWD water”

Metropolitan is a voluntary cooperative of member agencies and strives to serve to its member agencies the water they demand. However, Metropolitan does not do so by allocating water to each agency, absent shortage or other drought situations. Therefore, the reference to “SDCWA’s allocation of MWD water” is incorrect without any further explanation. We appreciate if you could clarify this point throughout the Draft Report and specifically at:

- Page 21 of Appendix - makes this reference, but MWD does not allocate water to its member agencies.

No. 1c

7) Both Eastern Municipal Water District and Metropolitan serve the area of Fallbrook Public Utility District and Rainbow Municipal Water District

As noted in the Draft Report, Fallbrook Public Utility District and Rainbow Municipal Water District are now served by Eastern Municipal Water District (EMWD) so Map No. ES-1

Mr. Keene Simonds

April 30, 2026

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on page 20 should note that both EMWD and Metropolitan serve their area, not “MWD Only.” Please make this correction to the final report.

We would be happy to provide any additional information desired. Please feel free to contact me if you have any questions or would like anything further.

Sincerely,

Marcia L. Scully

General Counsel



Catherine M. Stites

Principal Deputy General Counsel

Attachments: Relevant excerpts of Metropolitan’s Act
2025 Second Amended and Restated Exchange Agreement
April 25, 2023, Statement of Decision, *SDCWA v. Metropolitan*, Case No. CPF-
14-514004

cc: [Via electronic mail only w/attachments]

Dan Denham, General Manager, SDCWA, ddenham@sdcwa.org

Adam Wilson, Wilson Consulting, adam@awilson-consulting.com

Relevant Excerpts of Metropolitan's Act

Sec. 25. [Purposes]

Metropolitan water districts may be organized for the purpose of developing, storing, and distributing water for domestic and municipal purposes and may provide, generate, and deliver electric power within or without the state for the purpose of developing, storing, and distributing water for such district.

Amended by Stats. 1978, ch. 548

Sec. 50. [Powers]

All powers, privileges and duties vested in or imposed upon any district shall be exercised and performed by and through a board of directors.

**SECOND AMENDED AND RESTATED AGREEMENT BETWEEN THE
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA AND
THE SAN DIEGO COUNTY WATER AUTHORITY FOR THE EXCHANGE OF
WATER**

THIS SECOND AMENDED AND RESTATED AGREEMENT FOR THE EXCHANGE OF WATER (“Agreement”) is made and entered into as of June 2, 2025 between The Metropolitan Water District of Southern California (hereinafter “Metropolitan”) and the San Diego County Water Authority (hereinafter “SDCWA”) (the “2025 Exchange Agreement” or “Agreement”). Metropolitan and SDCWA are sometimes referred to as the “Parties”.

RECITALS

A. SDCWA is a county water authority incorporated under the California County Water Authority Act, Stats. 1943, c.545 as amended, codified at Section 45-1 *et seq.* of the Appendix to the California Water Code, for the purpose of providing its member agencies in San Diego County with a safe, reliable, and sufficient supply of imported water.

B. Metropolitan is a metropolitan water district incorporated under the Metropolitan Water District Act, Stats. 1969, ch. 209, as amended, codified at Section 109.1 *et seq.* of the Appendix to the California Water Code, engaged in developing, transporting, storing and distributing water for the benefit of its service area in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura, within the State of California.

C. SDCWA is a member agency of Metropolitan.

D. On April 29, 1998, SDCWA and the Imperial Irrigation District (“IID”) entered into an Agreement for Transfer of Conserved Water, as amended by the Revised Fifth Amendment dated as of December, 21, 2009, between SDCWA and IID (as thereby amended, the “Transfer Agreement”).

E. On November 10, 1998, SDCWA and Metropolitan executed a Contract for the Exchange of Water to be acquired by SDCWA under the Transfer Agreement.

F. In 2003, SDCWA, Metropolitan, and other agencies, including IID, MWD and Coachella Valley Water District (“CVWD”) executed and delivered several agreements, including the Amended and Restated Agreement Between the Metropolitan Water District of Southern California and the San Diego County Water Authority for the Exchange of Water (“2003 Exchange Agreement”), pursuant to the Quantification Settlement Agreement among IID, MWD and CVWD dated as of October 10, 2003 (the “QSA”), which settled a variety of long-standing disputes regarding the priority, use, and transfer of Colorado River water and established the terms for the further distribution of Colorado River water among these entities for up to seventy-five (75) years based upon the water budgets set forth therein.

G. Also, on October 10, 2003, as contemplated by the QSA, SDCWA entered into the Allocation Agreement with the United States of America, IID, CVWD, MWD and other parties named therein (the “Allocation Agreement”) pertaining to the allocation and distribution of water to be conserved from the All-American Canal Lining Project and the Coachella Canal Lining Project (as such terms are defined therein), which, among other things, allocated water to

SDCWA in consideration for amendments by MWD and SDCWA to the price term of the 2003 Exchange Agreement.

H. On June 2, 2025, following litigation, trials, and appeals in cases filed by SDCWA against Metropolitan in 2010 (Case No. CPF-10-510830), 2012 (Case No. CPF-12-512466), 2014 (Case No. CPF-14-514004), 2016 (CPF-16-515282), 2017 (Case No. CGC-17-563350), and 2018 (CPF-18-516389) (all filed in Los Angeles Superior Court and subsequently transferred to San Francisco Superior Court), and Metropolitan's Cross-Complaints in the same cases filed in 2014, 2016, and 2018, the parties reached a settlement fully and finally resolving all disputes among and between them relating to the claims and cross-claims (i) remaining in the cases filed in 2014, 2016, and 2018 (the "Pending Cases"), (ii) that were asserted in the Pending Cases and in the case filed in 2017 that were subsequently dismissed or removed without prejudice, and (iii) that could have been asserted in any of the cases relating to the subject matter of those cases (the "2025 Settlement Agreement"), and agreed to amend the 2003 Exchange Agreement as reflected in the 2025 Settlement Agreement and incorporated in this 2025 Exchange Agreement.

I. This 2025 Exchange Agreement amends and restates the 2003 Exchange Agreement in its entirety.

AGREEMENT

NOW THEREFORE, the Parties in consideration of the foregoing recitals and the representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby

acknowledge, Metropolitan and SDCWA agree to the following terms and conditions of this Agreement:

I.

DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. As used in this Agreement these terms, including any grammatical variations thereof, have the following meanings:

(a) “Administrative Code” means the Metropolitan Water District Administrative Code adopted on April 8, 2025, as amended from time to time thereafter, and as in existence on the date of this Agreement, subject to modification to the extent provided in Paragraph 13.12 of this Agreement.

(b) “Allocation Agreement” is as defined in Recital G, subject to modification for purposes of this Agreement after the date hereof to the extent provided in Paragraph 13.13 of this Agreement.

(c) “Alternative Facilities” means facilities other than facilities owned and operated by Metropolitan.

(d) “Bureau” means the Bureau of Reclamation of the United States Department of the Interior.

(e) “California Plan” means the draft plan dated May 11, 2000, to ensure that California can live within the state’s apportionment of Colorado River water; provided, however, if any final California Plan is approved by the Colorado River Board of California and all the public agencies represented on the Colorado River Board of

California, “California Plan” means such final California Plan.

(f) “Canal Lining Water” means the quantity of Colorado River water allocated each Year to SDCWA in accordance with the Allocation Agreement.

(g) “Colorado River Aqueduct” means the aqueduct system owned and operated by Metropolitan and transporting water from Lake Havasu on the Colorado River to Lake Mathews in Riverside County, California.

(h) “Conserved Water” means Conserved Water as such term is defined in Section 1.1 of the QSA.

(i) “Drought Management Plan” means any plan for the allocation and management of water resources of Metropolitan during a water shortage, as adopted by Metropolitan and in effect at pertinent times during the term of this Agreement.

(j) “Effective Date” means the date upon which all parties execute this Agreement.

(k) “Exchange Unit Price” means the applicable amount to be paid per acre-foot of Exchange Water delivered by Metropolitan at the Metropolitan Point(s) of Delivery under this Agreement pursuant to Paragraph 5.2. In Years that SDCWA Makes Available to Metropolitan 227,000 acre-feet or less for exchange, SDCWA will pay to Metropolitan the total Baseline Exchange Payment set forth in Paragraph 5.1.

(l) “Exchange Water” means, for each Year, water that is delivered by Metropolitan to SDCWA or as directed by SDCWA at the Metropolitan Point(s) of Delivery in a like quantity as the quantity of water that SDCWA has Made Available to Metropolitan under the Transfer Agreement and/or the Allocation Agreement and this

Agreement for the same Year. The Exchange Water may be from whatever source or sources and shall be delivered using such facilities as may be determined by Metropolitan, provided that the Exchange Water delivered in each Year is of like quality to the Conserved Water and/or the Canal Lining Water which is Made Available to Metropolitan at the SDCWA Point of Transfer in such Year.

(m) “IID” is as defined in Recital D.

(n) “Implementation Agreement” is as defined in Section 1.1 of the QSA.

(o) “Local Water” means water supplies not served by Metropolitan. Such Local Water includes, for example, ground water, surface water production, recycled water, desalinated water and other water acquired, owned or produced by any of Metropolitan’s member agencies, water retailers or other local agencies within Metropolitan’s service area (including supplies from projects participating in Metropolitan’s Local Projects Program).

(p) “Made Available,” “Make Available” or “Making Available.” As used herein, Conserved Water and Canal Lining Water will be deemed to have been Made Available to Metropolitan when (1) such water has been transferred to SDCWA pursuant to the Transfer Agreement and/or allocated to SDCWA pursuant to the Allocation Agreement, (2) valid and continuing authorization has been given by the Bureau legally entitling Metropolitan to divert, for the Year in question, Conserved Water and/or Canal Lining Water at the SDCWA Point of Transfer, in addition to the water that Metropolitan is otherwise authorized to divert from the Colorado River, (3) all other necessary legal rights, entitlements, approvals and permissions, under the laws of the United States

and the State of California for diversions from the Colorado River by Metropolitan, if any, have been obtained and are in full force and effect, and (4) SDCWA has designated that water for exchange or transfer under this Agreement. Metropolitan owns the Conserved Water and Canal Lining Water once it has been Made Available to Metropolitan as defined herein. The transfer of ownership does not change the decision in *San Diego County Water Authority v. Metropolitan Water District of Southern California*, 12 Cal. App. 5th 1124 (2017) (“*SDCWA I*”) holding that “[t]he exchange agreement cannot fairly be construed to constitute a purchase of water from Metropolitan within the meaning of the preferential rights statute,” and therefore, concluding the Water Authority’s “payments under the exchange agreement must be included in the preferential rights calculation.” “Make Available” and “Making Available” are grammatical variations of “Made Available.”

(q) “Metropolitan Point(s) of Delivery” is as defined in Paragraph 3.5(b).

(r) “SDCWA Point of Transfer” is as defined in Paragraph 3.5(a).

(s) “Secretary” means the United States Secretary of the Interior.

(t) “Termination Date” means the termination date determined under Paragraph 7.1, subject to the provisions of Paragraph 7.2.

(u) “Transfer Agreement” is as defined in Recital D, subject to modification to the extent provided in Paragraph 13.13 hereof.

(v) “Treated Exchange Water” means Exchange Water that has been treated by filtration and disinfection at a Metropolitan water filtration facility for delivery to SDCWA.

(w) “Year” means the period commencing on the Effective Date and ending on the immediately following December 31 (the first (1st) Year), and each consecutive calendar year thereafter during the term of this Agreement.

1.2 Rules of Construction

(a) Unless the context clearly requires otherwise:

- (i) The plural and singular forms include the other;
- (ii) “Shall,” “will,” “must,” and “agrees” are each mandatory;
- (iii) “May” is permissive;
- (iv) “Or” is not exclusive;
- (v) “Includes” and “including” are not limiting; and
- (vi) “Between” includes the ends of the identified range.

(b) Headings at the beginning of paragraphs and subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement and shall not be used in construing it.

(c) The masculine gender shall include the feminine and neutral genders and vice versa.

(d) The word “person” shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, water district and other entity of whatever nature, except either Metropolitan or SDCWA or an officer or employee thereof.

(e) Reference to any agreement (including this Agreement), document, or instrument means such agreement, document, instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

(f) Except as specifically provided herein, reference to any law, statute, ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including any rules and regulations promulgated thereunder.

II.

REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Metropolitan. As a material inducement to SDCWA to enter into this Agreement, Metropolitan represents and warrants as follows:

(a) Metropolitan is a metropolitan water district, duly organized, validly existing and in good standing under the laws of the State of California', Metropolitan has all necessary power and authority to perform its obligations hereunder on the terms set forth in this Agreement, and the execution and delivery hereof by Metropolitan and the performance by Metropolitan of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which Metropolitan is a party or by which Metropolitan is bound.

(b) The Parties entered into the 2003 Exchange Agreement subject to the execution and delivery of the QSA and the Related Agreements (as defined in Section 1.1 of the QSA).

The QSA and the Related Agreements were executed and delivered in 2003 and therefore this Agreement is not subject to the execution and delivery of those agreements. This Agreement is entered concurrently with the 2025 Settlement Agreement and is a valid and binding obligation of Metropolitan, enforceable in accordance with its terms, subject to the requirements of applicable law.

2.2 Representations and Warranties of SDCWA. As a material inducement to Metropolitan to enter into this Agreement, SDCWA represents and warrants as follows:

(a) SDCWA is a county water authority, duly organized, validly existing and in good standing under the laws of the State of California, SDCWA has all necessary power and authority to perform its obligations hereunder on the terms set forth in this Agreement, and the execution and delivery hereof by SDCWA and the performance by SDCWA of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which SDCWA is a party or by which SDCWA is bound.

(b) The Parties entered into the 2003 Exchange Agreement subject to the execution and delivery of the QSA and the Related Agreements (as defined in Section 1.1 of the QSA). The QSA and the Related Agreements were executed and delivered in 2003 and therefore this Agreement is not subject to the execution and delivery of those agreements. This Agreement is entered concurrently with the 2025 Settlement Agreement and is a valid and binding obligation of SDCWA enforceable in accordance with its terms, subject to the requirements of applicable law.

(c) SDCWA will have obtained such approvals and permissions as may be necessary, under applicable laws of the United States and the State of California, to Make Available to Metropolitan Conserved Water and Canal Lining Water pursuant to this Agreement.

III.

QUANTITY, DELIVERY AND SCHEDULING

3.1 Conserved Water and Canal Lining Water.

(a) SDCWA will Make Available up to 277,700 acre-feet of Conserved Water and/or the Canal Lining Water to Metropolitan at the SDCWA Point of Transfer each Year. Metropolitan owns the Conserved Water and Canal Lining Water once it has been Made Available to Metropolitan as defined herein. The transfer of ownership does not change the *SDCWA I* decision holding that “[t]he exchange agreement cannot fairly be construed to constitute a purchase of water from Metropolitan within the meaning of the preferential rights statute,” and therefore, concluding SDCWA’s “payments under the exchange agreement must be included in the preferential rights calculation.” The Conserved Water and/or the Canal Lining Water Made Available in each Year shall be deemed to have been Made Available to Metropolitan in the month that it is delivered to Metropolitan at the SDCWA Point of Transfer.

(b) SDCWA will provide to Metropolitan annual written notice by November 1st each Year (or, in the case of the first Year, reasonable advance written notice) of the quantity of Conserved Water to be transferred to SDCWA in accordance with the Transfer

Agreement, and of the quantity of Canal Lining Water to be allocated to SDCWA in accordance with the Allocation Agreement, and in each case to be Made Available to Metropolitan at the SDCWA Point of Transfer during the immediately following Year. The Conserved Water and/or the Canal Lining Water will be Made Available to Metropolitan by SDCWA in a manner consistent with the Bureau's operations schedule and will be measured as provided in Paragraph 3.4.

3.2 Exchange Water.

(a) Provided that the Conserved Water and/or the Canal Lining Water has been Made Available to Metropolitan at the SDCWA Point of Transfer pursuant to Paragraph 3.1, Metropolitan shall deliver Exchange Water to SDCWA at the Metropolitan Point(s) of Delivery, in compliance with this Agreement, and in the manner and to the extent set forth below. In any Year, Metropolitan will not be required to deliver an amount of Exchange Water that is greater than the aggregate amount of Conserved Water and Canal Lining Water Made Available to Metropolitan in that Year pursuant to Paragraph 3.1, minus any amount sold to Metropolitan, subject to the provisions of subparagraphs (b) and (c) of Paragraph 7.2.

(b) Metropolitan's delivery of Exchange Water at the Metropolitan Point(s) of Delivery shall be governed by its rules and regulations for delivery of water set forth in Chapter 5 of Division IV of the Administrative Code, as amended over time, in the same manner as other water delivered by Metropolitan, except as may otherwise be provided in this Agreement.

(c) The Exchange Water to be delivered in any Year shall be delivered at the times, locations, and in the amounts as SDCWA requests, subject to the Parties' operational constraints, in the same manner Metropolitan delivers full-service water purchases. The cumulative total Exchange Water Metropolitan delivers at the end of the Year at the Metropolitan Point(s) of Delivery shall be equal to the aggregate quantity of Conserved Water and Canal Lining Water SDCWA Makes Available to Metropolitan at the SDCWA Point of Transfer for that Year, minus any water Metropolitan purchases from SDCWA.

(d) In addition to 3.2(a) through (c), SDCWA may elect to make offers in the manner set forth in this Paragraph. First, SDCWA will offer to a Metropolitan member agency or agencies the right to receive a specified amount of Exchange Water deliveries. If accepted by a Metropolitan member agency, nothing in this Exchange Agreement changes other than the Metropolitan Point(s) of Delivery designated by SDCWA. If no member agency accepts SDCWA's offer, SDCWA will offer to Metropolitan the right to purchase a specified amount of Conserved Water and/or Canal Lining Water. The offers and agreements must be made in the manner set forth herein.

- i. First Right of Refusal to a Metropolitan Member Agency or Agencies. SDCWA will offer to a Metropolitan member agency or agencies the right to receive Exchange Water deliveries and shall notify Metropolitan of any offer by November 1st prior to the Year the Conserved Water and/or Canal Lining Water will be Made Available to Metropolitan by SDCWA for exchange under this Agreement (the "Purchase Year"). SDCWA must notify Metropolitan by December 30th of the Year prior to the Purchase

Year of any agreement with a member agency or agencies to acquire the right to receive Exchange Water deliveries pursuant to this Paragraph. The terms of the right to receive Exchange Water deliveries will be determined by SDCWA and the Metropolitan member agency or agencies acquiring the right (the "Contracting Member Agency or Agencies") subject to subparagraphs A through C below.

- A. The agreement between SDCWA and the Contracting Member Agency or Agencies transfers the right to receive the Exchange Water deliveries from Metropolitan so long as SDCWA Makes Available to Metropolitan an equivalent amount of Conserved Water and/or Canal Lining Water to allow for the exchange between SDCWA and the Contracting Member Agency or Agencies.
- B. Metropolitan will deliver to the Contracting Member Agency or Agencies Exchange Water at the designated Metropolitan Point(s) of Delivery. Exchange Water deliveries to the Contracting Member Agency or Agencies are subject to Metropolitan's operational constraints, in the same manner Metropolitan delivers full-service water purchases. The Contracting Member Agency or Agencies takes ownership of the water at the service connection in the same manner as full-service water deliveries.
- C. Metropolitan will bill SDCWA for all Exchange Water deliveries to the Contracting Member Agency or Agencies in the same manner as Exchange Water deliveries to SDCWA. However, for purposes of any Metropolitan rate

or charge measured by deliveries to a specific service connection, the delivery of Exchange Water to the Contracting Member Agency or Agencies will be attributed to the service connection where the delivery was made. As of the effective date of this Agreement, that includes Metropolitan’s Capacity Charge.

ii. Second Right of Refusal to Metropolitan. If SDCWA does not enter into an agreement with any Metropolitan member agency pursuant to Paragraph 3.2(d)(i) by December 30th, SDCWA will notify Metropolitan by the next day, December 31st, that it will offer Conserved and/or Canal Lining Water for purchase by Metropolitan during the Purchase Year. The terms of the purchase will be subject to subparagraphs A through C below.

A. Metropolitan has the right to purchase the Conserved Water and/or Canal Lining Water at the unit price in Table 1. Unit Sale Price (Flow Weighted Average Price).

Table 1. Unit Sale Price (Flow Weighted Average Price)

The Unit Price for Water Sale by SDCWA to Metropolitan is equal to the total annual IID Transfer Agreement actual costs to SDCWA, as documented by SDCWA (Conserved Water Costs) in the prior Year plus the total annual Canal Lining actual costs to SDCWA, as documented by SDCWA (Canal Lining Water Costs) in the prior Year, divided by the total Conserved Water available for transfer to SDCWA from IID and total Canal Lining Water allocated to SDCWA in the same Year.

Flow Weighted Average Price Formula	Price \$ per Acre-Foot
(Conserved Water Costs + Canal Lining Water Costs)/ Total Conserved Water available for transfer to SDCWA from IID and total Canal Lining Water allocated to SDCWA in the same Year	\$/acre-foot

- B. Metropolitan shall have the exclusive right of refusal for sixty (60) days from the date SDCWA provides notice of the offer.
- C. Metropolitan will reconcile all deliveries to SDCWA at the end of the Purchase Year with the December Metropolitan billing to SDCWA. Under no circumstances will Metropolitan purchase water from SDCWA in the same Year that SDCWA purchases water from Metropolitan even if Metropolitan has exercised its right to purchase pursuant to this Paragraph. Payment for any Metropolitan purchase of Conserved Water and/or Canal Lining Water pursuant to this Paragraph will be due after the Purchase Year at the same time as SDCWA's payment is due to Metropolitan for Metropolitan's December bill.

iii. Notwithstanding the timing obligations for the first right and second right of refusals in Paragraphs 3.2(b)(i) and (ii) above, the parties may agree to different time periods for notice or for exercising/not exercising a right of refusal upon mutual written agreement of the SDCWA General Manager and Metropolitan General Manager.

iv. This Exchange Agreement is not applicable to SDCWA, Metropolitan, or any other party's rights or obligations with respect to any water transaction, including the right to sell, exchange, transfer, or trade any water, except as provided specifically in this Agreement between SDCWA and Metropolitan.

3.3 Temporary Shutdown of Metropolitan Facilities. Metropolitan's General Manager shall have the right to control, curtail, interrupt or suspend the delivery of Exchange Water to

SDCWA in accordance with the Administrative Code. SDCWA understands that any number of factors, including emergencies, inspection, maintenance or repair of Metropolitan facilities or the State Water Project facilities, may result in a temporary and incidental modification of the delivery schedule contemplated in Paragraph 3.2. Metropolitan shall notify SDCWA of any control, curtailment, interruption or suspension of delivery of Exchange Water in accordance with and to the extent set forth in the Administrative Code, as if the Exchange Water were water served by Metropolitan. Metropolitan agrees that delivery of Exchange Water shall be resumed as soon as possible following any such curtailment, interruption or suspension of delivery. Unless Metropolitan is otherwise relieved of its obligations under the provisions of this Agreement, a curtailment, interruption or suspension of the delivery of Exchange Water pursuant to this Paragraph 3.3 shall not change the amount of Exchange Water Metropolitan is obligated to deliver during any Year.

3.4 Measurement of Deliveries. The quantity of Exchange Water delivered in each Year by Metropolitan at the applicable Metropolitan Point(s) of Delivery, which amount will be metered at such Point(s) of Delivery as provided in the Administrative Code, shall be equal to the aggregate quantity of Conserved Water and Canal Lining Water Made Available to Metropolitan in such Year at the SDCWA Point of Transfer, minus any water sold to Metropolitan. The Parties agree that they will be bound by such meter readings.

3.5. Points of Transfer or Delivery.

(a) The SDCWA Point of Transfer. As used herein, the "SDCWA Point of Transfer" shall be Metropolitan's intake at Lake Havasu.

(b) The Metropolitan Point(s) of Delivery. As used herein, the "Metropolitan

Point(s) of Delivery” shall be any or all Metropolitan existing connections to SDCWA , or another Metropolitan connection to another Metropolitan member agency as designated by SDCWA pursuant to Section 3.2(d)(i).

3.6. Quality of Exchange Water. Metropolitan in its sole discretion shall have the right to deliver Exchange Water of a quality which exceeds the quality of the Conserved Water and/or Canal Lining Water that Metropolitan receives, and such Exchange Water shall fully satisfy Metropolitan’s obligation to deliver Exchange Water of like quality to such Conserved Water and Canal Lining Water. In such event, Metropolitan’s election shall not operate as or be construed to be a commitment to deliver Exchange Water of better quality in the future, and in no event shall SDCWA be deemed to have any right to receive Exchange Water of better quality than the Conserved Water and/or Canal Lining Water.

3.7. Alternative Facilities. SDCWA may determine, in its sole discretion, permanently to reduce the aggregate quantity of Conserved Water and Canal Lining Water to be Made Available to Metropolitan under this Agreement to the extent SDCWA decides continually and regularly to transport Conserved Water and/or Canal Lining Water in an amount equal to such reduction in quantity to San Diego County through Alternative Facilities; provided, however, that SDCWA shall furnish to Metropolitan a minimum of five (5) years’ advance written notice of such determination. The written notice shall confirm the quantity of Conserved Water and/or Canal Lining Water (if any) which SDCWA will continue to Make Available to Metropolitan. If SDCWA exercises its right under this Paragraph 3.7, Metropolitan’s obligation to deliver Exchange Water shall be limited to that specified quantity of Conserved Water and/or Canal Lining Water that SDCWA continues to Make

Available to Metropolitan pursuant to this Agreement.

IV.

CHARACTERIZATION OF EXCHANGE WATER

4.1 Exchange Water as an Independent Local Supply. The Exchange Water shall be characterized for the purposes of all of Metropolitan's ordinances, plans, programs, rules and regulations, including any then-effective Drought Management Plan, and for calculation of any Readiness-to-Serve Charge share, in the same manner as the Local Water of other Metropolitan member agencies.

V.

PRICING AND PAYMENTS

5.1 Payments. As of January 1, 2026, SDCWA shall pay to Metropolitan the Baseline Exchange Payment, equal to the Exchange Unit Price for each Year multiplied by 227,000 acre-feet, even if SDCWA Makes Available to Metropolitan less than 227,000 acre-feet for exchange and without regard to what month water is Made Available to Metropolitan. SDCWA shall pay the Baseline Exchange Payment in 12 equal monthly installments. If SDCWA Makes Available more than 227,000 acre-feet to Metropolitan for exchange, SDCWA shall pay to Metropolitan the Exchange Unit Price for each additional acre-foot above 227,000 of Exchange Water delivered by Metropolitan at the Metropolitan Point(s) of Delivery. Payments due for Exchange Water deliveries above 227,000 acre-feet will be billed in the month following the delivery by Metropolitan to SDCWA at the Metropolitan Point(s) of Delivery.

5.2 The Exchange Unit Price. The price per acre-foot for deliveries of Exchange Water (the “Exchange Unit Price”) shall be as follows for purposes of calculation of the Baseline Exchange Payment and for each additional acre-foot of Exchange Water deliveries above 227,000 acre-feet:

- (a) Year 2026: The Exchange Unit Price in Year 2026 shall be \$671.
- (b) Years 2027 through 2034: The Exchange Unit Price for Years 2027 through

2034 shall be as reflected in Table 2.

Table 2. Exchange Unit Price Calendar Years 2027 - 2034

Effective Date of Exchange Unit Price	Exchange Unit Price per Acre-Foot
January 1, 2027	\$671
January 1, 2028	\$703
January 1, 2029	\$737
January 1, 2030	\$772
January 1, 2031	\$809
January 1, 2032	\$848
January 1, 2033	\$888
January 1, 2034	\$930

(c) The Exchange Unit Price for 2026 through 2034 reflects a bargained-for amount between the Parties and is not subject to or related to the validity of Metropolitan’s rates, charges, rate structure, or costs. The Parties mutually agreed to the fixed dollar amount in this Agreement for the Exchange Unit Price with the intent of separating the price term from Metropolitan’s rate structure, rate-setting process, and budget. The Exchange Unit Price from 2026 through 2034 and subsequent increases are not intended and shall not be interpreted to be subject to or related to Metropolitan’s rates, charges, rate structure, costs, or budgets.

(d) Years 2035 Through Remainder of Term: The Exchange Unit Price every Year as of January 1, 2035, shall be equal to the prior Year's Exchange Unit Price increased by a percentage equal to the Consumer Price Index for All Urban Consumers (CPI-U) for water and sewerage, as published by the U.S. Bureau of Labor Statistics, measured from October of two years prior to October of the prior year. For example, as of January 1, 2035, the Exchange Unit Price shall be \$930 (from 2034), increased by the CPI-U for water and sewerage, measured from October 2033 to October 2034.

i. The applicable index, series, and item are:

Index: Consumer Price Index for All Urban Consumers (CPI-U)

Series ID: CUUR0000SEHG01

Series Title: Water and sewerage maintenance in U.S. city average, all urban consumers, not seasonally adjusted

Area: U.S. city average

Item: Water and sewerage maintenance

Base Period: 1982-84 = 100

ii. In the event the CPI-U for water and sewerage is no longer published, the Exchange Unit Price will increase on a yearly basis based on the average annual percentage of the index over the ten years prior to the date it is no longer published.

(e) Prevailing Party in Dispute. In the event that SDCWA contests the Baseline Exchange Payment or Exchange Unit Price, the prevailing Party shall be entitled to

recovery of all reasonable costs, including non-statutory costs directly associated with litigating the dispute, and attorneys' fees incurred in prosecuting or defending against such contest.

5.3 Billing and Payments. Metropolitan shall mail monthly invoices to SDCWA in accordance with the Metropolitan Administrative Code, and SDCWA shall make monthly payments of amounts due pursuant to Paragraphs 5.1 and 5.2 in accordance with the Metropolitan Administrative Code.

5.4 Treatment Surcharge. SDCWA may choose to receive treated water as part of its Exchange Water deliveries. Such deliveries of treated water shall be subject to an additional charge for Metropolitan's treated water service, which is Metropolitan's Treatment Surcharge (or successor rate or charge for treated water service) in effect as of the date of delivery of the Treated Exchange Water. Metropolitan's treated water service and billing for that service will be provided to SDCWA outside of the obligations of this Agreement in the same manner as is provided to all member agencies for full-service deliveries. This Agreement does not create a contractual right for SDCWA to challenge any of Metropolitan's rates and/or charges or the validity of this Agreement based upon the charge for treated water service.

VI.

ADDITIONAL NOTIFICATIONS

6.1 Confirmation of Water Conservation. SDCWA will provide a written report to Metropolitan, prior to March 31 of each Year, describing the method by which any Conserved Water

that was Made Available to Metropolitan in the prior Year was conserved by IID, including a description of conservation projects resulting in the Conserved Water and the quantity of Conserved Water conserved by each project.

6.2 Notice of Developments.

(a) After the execution of this Agreement, SDCWA agrees to give prompt notice to Metropolitan if it discovers that any of its own representations and warranties herein were untrue when made or determines that any of its own representations and warranties will be untrue as of any date during the term of this Agreement.

(b) After the execution of this Agreement, Metropolitan agrees to give prompt notice to SDCWA if it discovers that any of its own representations and warranties herein were untrue when made or determines that any of its own representations and warranties will be untrue as of any date during the term of this Agreement.

VII.

TERM

7.1 Commencement and Expiration. This Agreement shall become effective on the Effective Date and shall expire on the Termination Date, which shall be the later of the dates determined pursuant to subparagraph (a) and (b) below.

(a) Metropolitan and SDCWA's rights and obligations under this Agreement pertaining to Conserved Water Made Available to Metropolitan pursuant to the Transfer Agreement and this Agreement shall expire on December 31, 2047. In the event that SDCWA and IID extend the term of their Transfer Agreement to December 31, 2077 or

earlier, and the terms of the Transfer Agreement in the extension period do not change except as to duration and if applicable, price, and any reduction in the amount to be transferred each year is not greater than 50,000 acre-feet, upon SDCWA providing notice to Metropolitan within three days of SDCWA and IID's agreement to the Transfer Agreement extension described herein, the obligation under this Agreement pertaining to Conserved Water will be deemed to match the new Transfer Agreement termination date but not later than December 31, 2077, with all other terms of this Agreement remaining unchanged. Any other amendment to the term of this Agreement requires approval by each party's Board of Directors. If the amount to be transferred in each year under the extended Transfer Agreement is reduced by more than 50,000 acre-feet, the extension will require the approval of Metropolitan's Board.

(b) Metropolitan's and SDCWA's rights and obligations under this Agreement pertaining to the Canal Lining Water shall expire and shall thereupon terminate on December 31 of the same Year in which the Allocation Agreement terminates, or shall terminate as otherwise provided in Paragraph 7.2.

(c) Check-in Meetings of the Parties. The Parties agree to meet every five years during the term of this Agreement to discuss the ongoing implementation of this Agreement. This provision does not create and shall not be interpreted to create a unilateral right of either party to an amendment or modification of this Agreement in any way.

7.2 Force Majeure.

(a) If the performance, in whole or in part, of the obligations of the respective Parties, or either of them, to Make Available Conserved Water or Canal Lining Water or to

deliver Exchange Water (as the case may be) under this Agreement is prevented: by acts or failure to act of any agency, court or other government authority, or any other person; by natural disaster (such as earthquake, fire, drought or flood), contamination or outbreak of a water borne disease, war, strikes, lockouts, act of God, or acts of civil or military authority; by the operation of applicable law; or by any other cause beyond the control of the affected Party or Parties, whether similar to the causes specified herein or not, then, in any such circumstance, the obligation of the affected Party or Parties to cause the delivery of the Conserved Water or Canal Lining Water or to deliver the Exchange Water (as the case may be) under this Agreement shall be suspended from the time and to the extent that the performance thereof is prevented, but reasonable diligence shall be observed by the affected Party or Parties, so far as it lies in their power, in performing such respective obligations in whole or in part under this Agreement. In the event such performance of either of the Parties under this Agreement is prevented as described above, then during the period of such prevention, performance by the non-affected Party under this Agreement shall be excused until such prevention ceases, at which time both the Parties shall become obligated to resume and continue performance of their respective obligations hereunder during the term of this Agreement. Notwithstanding the foregoing, no such prevention shall suspend or otherwise affect any payment obligations for Exchange Water actually delivered or any obligation of either Party to indemnify the other pursuant to Paragraph 13.10, or shall extend the term of this Agreement beyond the Termination Date, except as provided in Paragraph 7.2(c) below.

(b) In the event the performance by Metropolitan or SDCWA is prevented as

described above, the Parties agree actively to cooperate and use their reasonable best efforts, without diminution of any storage or other rights Metropolitan or SDCWA may have, to support a request to the Bureau for emergency storage in Lake Mead or Lake Havasu for the Conserved Water and/or the Canal Lining Water, if it would avoid the waste or loss of the Conserved Water and/or the Canal Lining Water.

(c) In the event the delivery of Exchange Water by Metropolitan is prevented as described in Paragraph 7.2(a) above, and in the event Conserved Water and/or the Canal Lining Water has been stored as contemplated by Paragraph 7.2(b) above, and such stored Conserved Water and/or the Canal Lining Water is Made Available to Metropolitan, the term of this Agreement shall be extended, for a period not to exceed five (5) Years, without the necessity for further action by either Party, if and to the extent necessary to permit Metropolitan to complete the delivery of Exchange Water in a quantity equal to such stored Conserved Water and/or the Canal Lining Water.

7.3 Survival. Notwithstanding the foregoing or anything to the contrary in this Agreement, any remaining payment obligation of SDCWA under Article V, and the provisions in Paragraphs 12.5, 13.2, 13.3, 13.8, 13.10 and 13.15 and Articles X and XI, shall survive the termination of this Agreement.

VIII.

RELATED AGREEMENTS

8.1 QSA and the Related Agreements. Metropolitan's obligations under the 2003 Exchange Agreement were subject to the execution and delivery of the QSA and the Related

Agreements (as defined in Section 1.1 of the QSA), which were executed and delivered in 2003. References to those agreements in this Agreement are to the fully executed versions.

IX.

COMPLIANCE WITH APPLICABLE LAWS

9.1 Applicable Laws. This Agreement and the activities described herein are contingent upon and subject to compliance with all applicable laws.

X.

ADDITIONAL COVENANTS

10.1 Impact on Transfer Agreement. Nothing in this Agreement shall be construed to amend the Transfer Agreement.

10.2 Covenants of Good Faith. This Agreement is subject to reciprocal obligations of good faith and fair dealing.

10.3 SDCWA Consent and Waiver. Notwithstanding any limitations set forth in the Transfer Agreement otherwise restricting IID's right to transfer water to Metropolitan, SDCWA hereby consents to IID's transfer of water to Metropolitan as provided in Articles 5 and 6 of the IID/MWD Acquisition Agreement (as defined in Section 1.1 of the QSA) and waives any right to object thereto. SDCWA shall provide to IID, and shall be bound by, a written acknowledgement of its consent and waiver set forth in the preceding sentence above in such form and to such effect as Metropolitan may reasonably request.

10.4 Allocation Agreement Responsibilities. SDCWA shall indemnify Metropolitan

and defend and hold it harmless at SDCWA's sole cost and expense from and against any obligation, liability or responsibility of any kind assigned to SDCWA under and pursuant to the Allocation Agreement and any claim by any person that MWD has any continuing obligation, liability or responsibility of any kind with respect to the matters assigned to SDCWA under the Allocation Agreement.

XI.

DISPUTE RESOLUTION

11.1 Reasonable Best Efforts to Resolve by Negotiation. The Parties shall exercise reasonable best efforts to resolve all disputes, including price disputes, arising under this Agreement through negotiation". In the event negotiation is unsuccessful, then the Parties reserve their respective rights to all legal and equitable remedies.

XII.

EVENTS OF DEFAULT; REMEDIES

12.1 Events of Default by SDCWA. Each of the following constitutes an "Event of Default" by SDCWA under this Agreement if not cured within 30 days of receiving written notice from Metropolitan of such matter:

- (a) Subject to Paragraphs 7.2 and 9.1, SDCWA fails to Make Available to Metropolitan Conserved Water or Canal Lining Water, as required under this Agreement.
- (b) SDCWA fails to perform or observe any other term, covenant or undertaking that it is to perform or observe under this Agreement.

(c) Any representation, warranty or statement made by or on behalf of the SDCWA and contained in this Agreement or in any exhibit, certificate or other document furnished pursuant to this Agreement is on the date made or later proves to be false, misleading or untrue in any material respect.

12.2 Events of Default by Metropolitan. Each of the following constitutes an “Event of Default” by Metropolitan under this Agreement if not cured within 30 days of receiving written notice from SDCWA of such matter:

(a) Subject to Paragraphs 7.2 and 9.1, Metropolitan fails to deliver the Exchange Water as required under this Agreement.

(b) Metropolitan fails to perform or observe any other term, covenant or undertaking that it is to perform or observe under this Agreement.

(c) Any representation, warranty or statement made by or on behalf of Metropolitan and contained in this Agreement or in any exhibit, certificate or other document furnished pursuant to this Agreement is on the date made or later proves to be false, misleading or untrue in any material respect.

12.3 Remedies Generally. If an Event of Default occurs, the non-breaching Party will have all rights and remedies provided at law or in equity against the breaching Party.

12.4 Enforcement of Transfer and Exchange Obligations.

(a) Any Event of Default as defined in Paragraph 12.1(a) or 12.2(a) may be remedied by an order of specific performance.

(b) So long as no Event of Default as defined in Paragraph 12.1(a) has occurred

and is continuing, and so long as SDCWA tenders to Metropolitan full payment of the Payments when due, Metropolitan shall not suspend or delay, in whole or in part, delivery of Exchange Water as required under this Agreement on account of any breach, or alleged breach, by SDCWA unless first authorized to do so by a final judgment. So long as no Event of Default as defined in Paragraph 12.2(a) has occurred and is continuing, SDCWA shall not suspend or delay, in whole or in part, Making Available Conserved Water and/or Canal Lining Water as required under this Agreement on account of any breach, or alleged breach, by Metropolitan unless first authorized to do so by a final judgment. A violation of the provisions of this subparagraph (b) may be remedied by an order of specific performance.

(c) In the event of a dispute over the Baseline Exchange Payment or Exchange Unit Price, SDCWA shall pay when due the full amount claimed by Metropolitan until final resolution of the dispute through litigation or otherwise, whether the dispute concerns the Baseline Exchange Payment and/or payment for deliveries over 227,000 acre-feet. Metropolitan may treat and use the funds from the disputed payments in the same manner as non-disputed payments.

12.5 Cumulative Rights and Remedies. The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any such right or remedy, the non-breaching Party does not thereby waive that right or remedy. In addition, no single or partial exercise of any right, power, or privilege precludes any other or further exercise of a right, power, or privilege granted by this Agreement or otherwise.

12.6. Action or Proceeding Between the Parties. Each Party acknowledges that it is a “local agency” within the meaning of § 394(c) of the California Code of Civil Procedure (“CCP”). Each Party further acknowledges that any action or proceeding commenced by one Party against the other would, under § 394(a) of the CCP, as a matter of law be subject to

- (a) being transferred to a “Neutral County,” or instead
- (b) having a disinterested judge from a Neutral County assigned by the

Chairman of the Judicial Council to hear the action or proceeding.

(c) A “Neutral County” is any county other than Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego or Ventura. In the event an action is filed by either party against the other to enforce this Agreement and to obtain damages for its alleged breach, each Party hereby:

- (i) Stipulates to the action or proceeding being transferred to a Neutral County or to having a disinterested judge from a Neutral County assigned to hear the action;
- (ii) Waives the usual notice required under the law-and-motion provisions of Rule 317 of the California Rules of Court;
- (iii) Consents to having any motion under § 394(c) heard with notice as an ex parte matter under Rule 379 of the California Rules of Court; and
- (iv) Acknowledges that this Agreement, and in particular this section, may be submitted to the court as part of the moving papers.

(d) Nothing in this Paragraph 12.6, however, impairs or limits the ability of a Party to contest the suitability of any particular county to serve as a Neutral County, or operates to waive any other rights.

XIII.

GENERAL PROVISIONS

13.1 No Third-Party Rights. This Agreement is made solely for the benefit of the Parties and their respective permitted successors and assigns (if any). Except for such a permitted successor or assign, no other person or entity may have or acquire any right by virtue of this Agreement.

13.2 Ambiguities. Each Party and its counsel have participated fully in the drafting, review and revision of this Agreement. A rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in interpreting this Agreement, including any amendments or modifications.

13.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of laws provisions; provided, however, that federal law shall be applied as appropriate to the extent it bears on the resolution of any claim or issue relating to the permissibility of the transfers or the Making Available of Colorado River water, as contemplated herein.

13.4 Binding Effect; Termination Upon Dissolution; No Assignment. This Agreement is and will be binding upon and will inure to the exclusive benefit of the Parties. Any change in law, regulation, rule, or any legal or administrative action or any other event or occurrence that results in dissolution of either Party shall result in termination of this Agreement and render this Agreement

void. Further, neither Party may assign any of its rights or delegate any of its duties under this Agreement. Any assignment or delegation made in violation of this Agreement is void and of no force or effect.

13.5 Notices. All notices, requests, demands, or other communications under this Agreement must be in writing, and sent to both addresses of each Party. Notice will be sufficiently given for all purposes as follows:

- *Personal Delivery.* When personally delivered to the recipient.

Notice is effective on delivery.

- *First-Class Mail.* When mailed first-class, postage prepaid, to the last address of the recipient known to the Party giving notice. Notice is effective five mail delivery days after it is postmarked by the United States Postal Service office or authorized device.

- *Certified Mail.* When mailed certified mail, return receipt requested.

Notice is effective on receipt, if a return receipt confirms delivery.

- *Overnight Delivery.* When delivered by an overnight delivery service such as Federal Express, charges prepaid or charged to the sender's account. Notice is effective on delivery, if delivery is confirmed by the delivery service.

Addresses for purpose of giving notice are as follows:

To Metropolitan:

Metropolitan Water District of Southern California

Attn: General Manager

Address for U.S. mail:

P.O. Box 54153

Los Angeles, CA 90054-0153

Address for personal or overnight delivery:

700 North Alameda Street

Los Angeles, CA 90012-2944

Telephone: 213-217-6000

Fax: 213-217-6950

With a copy delivered by the same means and at the same address to:

Metropolitan Water District of Southern California

Attn: General Counsel

To SDWCA:

San Diego County Water Authority

Attn.: General Manager

4677 Overland Avenue

San Diego, California 92123-1233

Telephone: 858-522-6780

Fax: 858-522-6262

With a copy to:

San Diego County Water Authority

Attn.: General Counsel

4677 Overland Avenue

San Diego, California 92123-1233

Telephone: 858-522-6790

Fax: 858-522-6566

(a) A correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission by the Party to be notified will be deemed effective as of the first date that notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

(b) A Party may change its address by giving the other Party notice of the change in any manner permitted by this Agreement.

13.6 Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the Agreement between the Parties pertaining to its subject matter and supersedes all prior and contemporaneous understandings or agreements of the Parties. Neither Party has been induced to enter into this Agreement by, nor is either Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

13.7 Time of the Essence. If the day on which performance of any act or the occurrence of any event hereunder (except the delivery of Exchange Water) is due is not a business day, the time when such performance or occurrence shall be due shall be the first business day (which excludes a

Saturday, Sunday, or a federal or state holiday) occurring after the day on which performance or occurrence would otherwise be due hereunder. All times provided in this Agreement for the performance of any act will be strictly construed, time being of the essence of this Agreement.

13.8 Modification. This Agreement may be supplemented, amended, or modified only by the written agreement of the Parties. No supplement, amendment, or modification will be binding unless it is in writing and signed by both Parties.

13.9 Waiver. No waiver of a breach, failure of condition, or any right or remedy contained in or granted by the provisions of this Agreement is effective unless it is in writing and signed by the Party waiving the breach, failure, right, or remedy. No waiver of a breach, failure of condition, or right or remedy is or may be deemed a waiver of any other breach, failure, right or remedy, whether similar or not. In addition, no waiver will constitute a continuing waiver unless the writing so specifies.

13.10 Indemnification.

(a) SDCWA shall indemnify Metropolitan pursuant to Section 4502 of the Administrative Code, as may be amended over time, against liability in connection with acts of SDCWA after Metropolitan's delivery of the Exchange Water, to the same extent as is required with respect to full-service water deliveries. Such indemnification shall be in addition to any indemnification rights available under applicable law and to any other remedy provided under this Agreement.

(b) Metropolitan shall indemnify SDCWA pursuant to Section 4502 of the Administrative Code, as may be amended over time, against liability in connection with

Metropolitan's delivery of the Exchange Water to the same extent as is required with respect to full-service water deliveries. Such indemnification shall be in addition to any indemnification rights available under applicable law and to any other remedy provided under this Agreement.

(c) Notwithstanding anything in this Agreement to the contrary, each Party agrees to proceed with reasonable diligence and use reasonable good faith efforts to jointly defend any lawsuit or administrative proceeding by any person other than the Parties challenging the legality, validity, or enforceability of this Agreement.

13.11 Authority of the Legislature. Nothing in this Agreement will limit any authority of the Legislature of the State of California to allocate or reallocate water.

13.12 Right to Amend the Administrative Code. Metropolitan's obligations under this Agreement are contractual obligations contained herein. Accordingly, notwithstanding anything to the contrary in this Agreement, express or implied, Metropolitan has the right to amend the Administrative Code at its sole discretion, except that, for the purposes of this Agreement, no such amendment shall have the effect of changing or modifying the obligation of Metropolitan to deliver Exchange Water as provided in this Agreement.

13.13 Right to Amend Transfer Agreement and Allocation Agreement. Notwithstanding anything to the contrary in this Agreement, express or implied, SDCWA shall have the right to amend the Transfer Agreement and/or the Allocation Agreement at its sole discretion, except that, for purposes of this Agreement, no such amendment shall have the effect of changing or modifying the obligation of SDCWA to Make Available Conserved Water and/or Canal Lining Water

hereunder, or the Price payable by SDCWA with respect to any Exchange Water, or be binding on Metropolitan, unless such effect is first approved by the Board of Directors of Metropolitan.

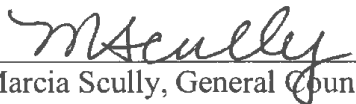
13.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

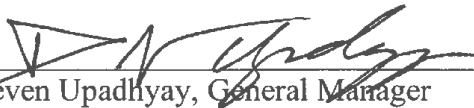
13.15 Audit. Each Party shall be responsible for assuring the accuracy of its books, records and accounts of billings, payments, metering of water, and other records (whether on hard copy or in electronic or other format) evidencing the performance of its obligations pursuant to this Agreement and shall maintain all such records for not less than three years. Each Party will have the right to audit the other Party's books and records relating to this Agreement for purposes of determining compliance with this Agreement during the term hereof and for a period of three years following termination of this Agreement. Upon reasonable notice, each Party shall cooperate fully with any such audit and shall permit access to its books, records and accounts as may be necessary to conduct such audit.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Approved as to Form:

The Metropolitan Water District of Southern California

By: 
Marcia Scully, General Counsel

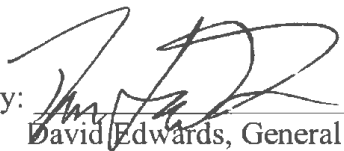
By: 
Deven Upadhyay, General Manager


Date: 6/2/2025

Date: 6/2/25

Approved as to Form:

The San Diego County Water Authority

By: 
David Edwards, General Counsel

By: 
Dan Denham, General Manager

Date: 6-2-2025

Date: 6-2-25



FILED
San Francisco County Superior Court

APR 25 2023

CLERK OF THE COURT
BY: Christina Eiler
Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 306

IN RE:

SAN DIEGO COUNTY WATER AUTHORITY

Lead Case No. CPF-14-514004
Consolidated with Case Nos. CPF-16-515282
and CPF-18-516389

STATEMENT OF DECISION

INTRODUCTION

Petitioner San Diego County Water Authority (“San Diego”) filed three actions against Respondent Metropolitan Water District of Southern California (“Metropolitan”), which were consolidated for all purposes.¹ These cases follow more than two decades of litigation, including two consolidated cases tried before this Court (Hon. Curtis E.A. Karnow) from 2013 to 2015, and three appellate opinions.²

The Court held a bench trial on May 16, 2022 through May 20, 2022, May 24, 2022 through May 25, 2022, June 3, 2022, June 24, 2022, and July 1, 2022, the Honorable Anne-Christine Massullo

¹ “San Diego” is also referred to as “SDCWA” or the “Water Authority.” San Diego is distinct from the City and County of San Diego. “Metropolitan” is also referred to as “MWD.”
² *San Diego County Water Authority v. Metropolitan Water District of Southern California* (2017) 12 Cal.App.5th 1124, 1131 (“SDCWA I”); *San Diego County Water Authority v. Metropolitan Water District of Southern California* (Cal. Ct. App. Sept. 21, 2021) 2021 WL 4272331 (“SDCWA II”); *San Diego County Water Authority v. Metropolitan Water District of Southern California* (Cal. Ct. App. Mar. 17, 2022) 2022 WL 806429 (“SDCWA III”).

1 presiding. On August 19, 2022, the parties filed post-trial briefs. On September 27, 2022, the Court held
2 closing arguments. On December 16, 2022, the parties submitted proposed statements of decision and the
3 Court took this matter under submission. On March 14, 2023, the Court issued its tentative statement of
4 decision. On March 29, 2023, San Diego filed objections to the tentative statement of decision.³ The
5 following is this Court’s statement of decision.

6 BACKGROUND

7 The 1,450 mile-long Colorado River provides water that sustains cities, businesses, and
8 agricultural resources of the southwestern United States as well as northern Mexico. Seven states share in
9 the water flows of the Colorado River: Colorado, New Mexico, Utah, Wyoming, Arizona, Nevada, and
10 California.

11 San Diego and Metropolitan are wholesale water agencies that provide similar services to their
12 public member agencies. (Reporter’s Transcript (“RT”) 1151:3-27, 1161:24-1162:26.) Metropolitan is a
13 voluntary cooperative of 26 member agencies, including San Diego, with a service area extending
14 throughout six counties in Southern California. (*Id.* at 1161:24-1162:26, 1163:6-25.) San Diego, in turn,
15 is made up of 24 member agencies with a service area in a portion of Metropolitan’s service area: the San
16 Diego region. (*Id.* at 88:12-22.)

17 Metropolitan delivers wholesale water to San Diego and its other member agencies from two
18 principal sources: the Colorado River via the Colorado River Aqueduct (“CRA”) and the State Water
19 Project (“SWP”) via the California Aqueduct. (*SDCWA I*, 12 Cal.App.5th at 1131; RT 1151:3-27.)
20 Metropolitan is one of a few California entities with rights to Colorado River water. (RT 1167:9-21.)
21 “Metropolitan built the [CRA] to take delivery of its Colorado River water at Arizona’s Lake Havasu and
22 transport it to Southern California.” (*Id.* at 1133.) The Imperial Irrigation District (“IID”) also has rights
23 to Colorado River water and is permitted “to sell its excess water to other agencies, such as Metropolitan
24 and the Water Authority.” (*SDCWA I*, 12 Cal.App.5th at 1134.)

25
26 ³ The Court considered San Diego’s objections to the tentative statement of decision. However, San
27 Diego’s objections were, for the most part, an attempt to re-argue the merits. “The main purpose of an
28 objection to a proposed statement of decision is not to reargue the merits, but to bring to the court’s
attention inconsistencies between the court’s ruling and the document that is supposed to embody and
explain that ruling.” (*Heaps v. Heaps* (2004) 124 Cal.App.4th 286, 292, quoting *In re Marriage of*
Arceneaux (1990) 51 Cal.3d 1130, 1133.)

1 Metropolitan enters into water exchange agreements with member agencies and third parties. (See
2 *SDCWA I*, 12 Cal.App.5th at 1135.) Metropolitan is required by statute to establish rates for its wholesale
3 water service at amounts sufficient to generate revenue to pay all of Metropolitan's costs, after applying
4 property taxes and other sources of revenue under the Metropolitan Water District Act, Water Code Appx.
5 §§ 109-134. (RT 1521:14-22.) Metropolitan's Board of Directors sets rates every two years. In each rate
6 setting year, the Board approves rates for the following two calendar years. (*Id.* at 1174:10-1175:6,
7 1494:25-1495:20.)

8 San Diego serves various cities and water districts within San Diego County, including the city of
9 San Diego, with water imported from outside of San Diego County and water developed locally in San
10 Diego County. San Diego has acquired two independent sources of Colorado River water. First, San
11 Diego entered into an agreement with IID, where IID agreed to transfer approximately 200,000 acre-feet
12 of water per year in exchange for specified payments to IID that help fund conservation initiatives with
13 Imperial Valley farmers (the "Transfer Agreement"). (RT 94:4-21.) Second, San Diego receives water
14 from the Coachella Canal and All-American Canal. (*Id.* at 1276:12-18.)

15 In *Arizona v. California* (1963) 373 U.S. 546, 550-562 ("*Arizona*"), the Supreme Court limited
16 California's basic allotment of Colorado River water to 4.4 million acre-feet annually based on federal
17 legislation that authorized the Hoover Dam and All-American Canal. That legislation went into effect in
18 1929 after California accepted the 4.4 million acre-feet limitation, as the legislation required. For decades
19 after *Arizona*, Nevada and Arizona were not fully using their allotment, therefore the Colorado River was
20 in "surplus." (RT 286:3-16.) As a result, California took more than its 4.4 million acre-feet allotment.
21 (*Id.*) By 1986, Arizona began to claim its full allotment. This created California's "single most pressing
22 water problem" of how to replace Metropolitan's former Colorado River supplies. (PTX 1071 at
23 LH00109.) One solution was for southern California cities and water agencies to "purchase conserved
24 waters" from agricultural districts like IID. (*Id.* at LH 00151.) The desire to facilitate and encourage
25 water transfers inspired the California Legislature to enact the Wheeling Statutes the same year. (See *id.*)
26 The Wheeling Statutes, Water Code section 1810 *et seq.*, set forth the rules for third-party conveyance of
27 water in California.
28

1 After a devastating drought from 1987 to 1992 led Metropolitan to reduce San Diego's supplies of
2 Metropolitan water by more than 30% (RT 89:24-90:11), San Diego began negotiating an agreement with
3 IID for an agricultural-to-urban water transfer to diversify its supply to become less dependent on
4 Metropolitan. (*Quantification Settlement Cases* (2011) 201 Cal.App.4th 758, 788 (“*QSA Cases*”); RT
5 92:9-93:17.) Under the Transfer Agreement, San Diego would pay IID to fund conservation programs
6 with Imperial Valley farmers in exchange for the right to use 200,000 acre-feet per year of Colorado River
7 water conserved (“conserved Colorado River water”). (See, e.g., RT 889:5-12; PTX1065 at 48.) San
8 Diego's desire to use Metropolitan's facilities to convey water it would purchase from IID spurred
9 Metropolitan to develop a set of “wheeling principles.” (RT 313:8-318:7, 1538:7-22, 1538:7-1542:11.)

10 In January 1997, Metropolitan's Board of Directors adopted Resolution 8520 and the pre-set
11 wheeling rate (former Admin. Code § 4405) applicable only to short-term transactions of one-year or less
12 with member agencies (former Admin. Code § 4119), effective January 10, 1997. (DTX 23; see also
13 *SDCWA I*, 12 Cal.App.5th at 1138, n.7.) Under Resolution 8520, section 10, Metropolitan's member
14 agencies agreed to reduce the pre-set wheeling rate on a transaction-by-transaction basis to account for
15 regional supply benefits, if they were determined to exist:

16 The wheeling rates shall be reduced to reflect the regional water supply benefits provided to
17 Metropolitan's service area, if any, on a case-by-case basis in response to a particular wheeling
18 transaction. The regional benefits, if any, shall be calculated by Metropolitan in the same manner
as such benefits are calculated for use in the Local Projects and Groundwater Recovery Program.

19 (DTX 23.)

20 San Diego “has no means of transporting Colorado River water other than over Metropolitan's
21 aqueduct.” (*SDCWA I*, 12 Cal.App.5th at 1135.) To facilitate the Transfer Agreement, San Diego and
22 Metropolitan initially discussed a wheeling agreement before negotiating an exchange agreement. (RT
23 1518:7-1519:19, 1559:2-27; see *id.* at 1564:19-21, 1569:8-12; see also *SDCWA I*, 12 Cal.App.5th at
24 1135.) The parties entered into a 30-year exchange agreement under which Metropolitan delivers water to
25 San Diego in a like quality and quantity of the water that Metropolitan accepts at Lake Havasu. (*SDCWA*
26 *I*, 12 Cal.App.5th at 1136.) Under the 1998 Exchange Agreement (“1998 Agreement”), San Diego agreed
27 to pay Metropolitan \$90 per acre-foot with annual increases. The 1998 Agreement was conditioned on
28 the state legislature's appropriation of \$235 million to Metropolitan for projects, including to line the

1 earthen All-American and Coachella Canals to conserve a water supply that would otherwise be lost
2 through seepage (“canal lining water”). (DTX28.) However, the 1998 Agreement could not take effect
3 until various conditions precedent had been satisfied, including a quantification (i.e., specific division) of
4 the 3,850,000 acre-feet allotted to California agricultural agencies, from California’s 4.4 million acre-feet
5 allotment of Colorado River water. (PTX 31 ¶ 8.1(c); RT 525:3-526:17.) Therefore, no exchanges
6 occurred under the 1998 Agreement because Colorado River water rights first needed to be quantified,
7 which was a process involving many stakeholders in the Colorado River. (RT 422:10-14.)

8 In 2003, various California water agencies negotiated agreements collectively referred to as the
9 “Quantification Settlement Agreements” (“QSA”). The QSA are comprised of dozens of interrelated
10 agreements addressing a variety of long-standing disputes regarding the priority, use, and transfer of
11 Colorado River water in California. (See PTX65, Recital F.) Those agreements include an amended
12 Transfer Agreement between San Diego and IID, and the operative exchange agreement. (See *id.*) The
13 full set of QSA Agreements were executed on October 10, 2003.

14 The exchange agreement, between San Diego and Metropolitan, was negotiated over a span of
15 seven years from 1996 to 2003, as part of a multi-year negotiation amongst California’s water agencies
16 that culminated in the QSA. (See *QSA Cases*, 201 Cal.App.4th 773, 778-779.) On October 10, 2003,
17 Metropolitan and San Diego entered into the 2003 Exchange Agreement (“Exchange Agreement”), which
18 amended and restated the 1998 Agreement, and an Allocation Agreement. (PTX65; PTX67.) The
19 consideration package is set forth across the two documents: the Exchange Agreement set forth the price,
20 and the Allocation Agreement set forth Metropolitan’s assignment to San Diego of its \$235 million
21 appropriation and the canal lining water for 110 years. (RT 584:24-585:16; see PTX65, MWD2010-
22 00190699-00190700.)

23 Section 5.2, the Price term, of the Exchange Agreement, states:

24 The Price on the date of Execution of this Agreement shall be [\$253.00]. Thereafter, the Price
25 shall be equal to the charge or charges set by Metropolitan’s Board of Directors pursuant to
26 applicable law and regulation and generally applicable to the conveyance of water by Metropolitan
on behalf of its member agencies.

27 (PTX65 ¶ 5.2.)

28 Under the Exchange Agreement, San Diego makes IID and canal lining water available to

1 Metropolitan at Lake Havasu, where it becomes Metropolitan's water. (RT 1272:1-4, 1272:6-9, 1272:22-
2 26, 1535:3-18, 1861:23-1862:6, 1992:3-8.) In return, Metropolitan delivers a like quantity of water from
3 any source(s) to San Diego, in equal monthly intervals. (RT 1450:4-1451:6.) The contract does not
4 provide for the transportation of San Diego water. Instead, it calls for the exchange of separate supplies
5 of water: the IID and canal lining water that becomes Metropolitan water at Lake Havasu, before it enters
6 Metropolitan's system, is exchanged for Metropolitan water from source(s) that is delivered in San
7 Diego's service area. (RT 1450:4-1451:6.)

8 In 2010 and 2012, San Diego sued Metropolitan for breach of the Exchange Agreement and to
9 challenge two aspects of Metropolitan's transportation rates and pre-set wheeling rate for the years 2011
10 to 2014: (1) allocation of Metropolitan's SWP transportation costs to transportation rates and to the pre-
11 set wheeling rate; and (2) allocation of the Water Stewardship Rate ("WSR") (recovering demand
12 management program costs) to transportation rates and to the pre-set wheeling rate. San Diego prevailed
13 on both issues at trial and both parties appealed various aspects of the judgment. The Court of Appeal
14 held that Metropolitan properly allocated SWP costs to its transportation rates, but that it could not
15 allocate demand management costs to its transportation rates charged under the Exchange Agreement or
16 to its pre-set wheeling rate through the WSR, finding that those costs were supply-related rather than
17 transportation-related. (*SDCWA I*, 12 Cal.App.5th at 1147-1152, n. 16.) The Court of Appeal also held
18 Metropolitan breached the Exchange Agreement by including the WSR in its price. (*Id.* at 1154-1155.)
19 The Court of Appeal remanded with instructions for the trial court to recalculate damages based only on
20 the WSR charged under the Exchange Agreement from 2011 to 2014.

21 On April 18, 2014 and April 12, 2016, Metropolitan set rates for 2015 to 2016 and 2017 to 2018,
22 respectively. (2014 AR89, 94; 2016 AR75, 81.) The "Full Service Exchange Cost," consists of
23 Metropolitan's System Access Rate, System Power Rate, and WSR. (2014 AR89, 94.) San Diego
24 objected to the rates, asserting "the same objections presented in the recent trial before Judge Karnow,"
25 including "Metropolitan's failure to credit offsetting benefits." (PTX892 at 2 (cleaned up), PTX886,
26 PTX915, PTX1140.)

27 On March 11, 2018, following the Court of Appeal's decision in *SDCWA I*, San Diego sent a letter
28

1 to Metropolitan raising various concerns with Metropolitan's Rates. (PTX925.) In that letter, San Diego
2 requested Metropolitan "calculate the offsetting benefits of the Water Authority's Exchange Agreement
3 water" and include those credits within "the Water Authority's price under the Exchange Agreement."
4 (*Id.* at 5-6.) Metropolitan refused. (PTX926, 7.) On April 27, 2018, after Metropolitan adopted rates for
5 2019 and 2020, San Diego objected and "specifically referenced the 'objections presented in the extensive
6 pending rate litigation between the Water Authority and MWD.'" (Feb. 22, 2022 San Diego MSA, Ex.
7 35, 1.)

8 On August 18, 2020, the Metropolitan Board of Directors repealed Resolution 8520, leaving all
9 wheeling arrangements subject to negotiated terms. (DTX2529; RT 1387:16-1388:25.)

10 San Diego's operative complaint in the 2014 case includes five causes of action. The first three
11 causes of action seek a writ of mandate, declaratory relief, and invalidation of Metropolitan's 2015 and
12 2016 wheeling and transportation rates charged under the Exchange Agreement, including the Full
13 Service Exchange Cost. (2014 FAC ¶¶ 61-85.) San Diego alleges these rates are unlawful for two
14 reasons: 1) because they included the WSR, which the Court of Appeal has held they cannot; and 2)
15 because they failed to account for offsetting benefits, at least as applied to the Exchange Agreement. (*Id.*)
16 San Diego's fourth cause of action alleges Metropolitan breached the Exchange Agreement by charging a
17 Price that included the WSR and that did not include any credit for offsetting benefits. (*Id.* ¶¶ 86-91.)
18 The fifth cause of action seeks declaratory relief that Metropolitan is obligated to comply with Proposition
19 26, Article XIII, Section 1, subd. (e), of the California Constitution. (*Id.* ¶¶ 92-98.)

20 Metropolitan's cross-complaint in the 2014 case includes causes of action for declaratory relief
21 and reformation. Specifically, Metropolitan seeks declaratory relief that: (1) Metropolitan's 2015 and
22 2016 pre-set wheeling rate and transportation rates as charged under the Exchange Agreement/Full
23 Service Exchange Cost lawfully include the WSR; (2) Metropolitan's 2015 and 2016 pre-set wheeling
24 rate and transportation rates as charged under the Exchange Agreement/Full Service Exchange Cost are
25 lawful with respect to offsetting benefits; (3) Proposition 26 is inapplicable; (4) Government Code §
26 54999.7(a) is inapplicable; (5) cost causation is consistent with Metropolitan's existing legal
27 requirements; (6) the Exchange Agreement neither incorporates nor is subject to fair compensation
28

1 provisions; (7) San Diego is judicially estopped from claiming the Exchange Agreement is a wheeling
2 transaction and subject to the Wheeling Statutes; (8) as a conveyance facility owner, Metropolitan
3 determines any offsetting benefits; and (9) Metropolitan's rights and duties under the Exchange
4 Agreement. (2014 XC ¶¶ 54-117, 124-129.) Metropolitan also seeks reformation of the Price term of the
5 Exchange Agreement and reformation of the Exchange Agreement to reflect its rights and duties under
6 the Wheeling Statutes. (*Id.* ¶¶ 118-123, 130-135.)

7 San Diego's operative complaint in the 2016 case includes five causes of action. The first three
8 causes of action seek a writ of mandate, declaratory relief, and invalidation of Metropolitan's 2017 and
9 2018 wheeling and transportation rates. San Diego alleges these rates are unlawful for the same reasons
10 alleged in the 2014 case. (See 2016 SAC ¶¶ 35-40, 53-77.) San Diego's fourth cause of action alleges
11 Metropolitan breached the Exchange Agreement by charging a Price that included the WSR (in 2017
12 only) and did not include any credit for offsetting benefits (in either year). (*Id.* ¶¶ 41-45, 78-83.) The
13 fifth cause of action seeks declaratory relief that, in satisfying damages, Metropolitan may not charge San
14 Diego for any portion of those damages, or any related interest or attorneys' fees. (*Id.* ¶¶ 46-49, 84-88.)

15 Metropolitan's cross-complaint in the 2016 case includes the same causes of action for declaratory
16 relief and reformation as in the 2014 case, except as applied to its 2017 and 2018 pre-set wheeling rate
17 and transportation rates. (See 2016 XC ¶¶ 54-135.)

18 San Diego's operative complaint in the 2018 case includes four causes of action. The first three
19 causes of action seek a writ of mandate, declaratory relief, and invalidation of Metropolitan's 2019 and
20 2020 wheeling and transportation rates. (2018 SAC ¶¶ 60-85.) San Diego alleges these rates are unlawful
21 for the same reasons alleged in the 2014 case. (*Id.* ¶¶ 39-46, 60-85.) San Diego's fourth cause of action
22 alleges Metropolitan breached the Exchange Agreement by charging a Price that did not include any
23 credit for offsetting benefits. (*Id.* ¶¶ 50-56, 86-91.)

24 Metropolitan's cross-complaint in the 2018 case alleges thirteen causes of action for declaratory
25 relief and reformation. In particular, Metropolitan seeks declaratory relief that: (1) Metropolitan's 2019
26 and 2020 pre-set wheeling rate and transportation rates as charged under the Exchange Agreement/Full
27 Service Exchange Cost lawfully include the WSR; (2) Metropolitan has completed all needed actions to
28

1 establish that it will not seek to recover the WSR for 2019 and 2020; (3) Metropolitan's 2019 and 2020
2 pre-set wheeling rate and transportation rates as charged under the Exchange Agreement lawfully include
3 California WaterFix costs;⁴ (4) Metropolitan's 2019 and 2020 pre-set wheeling rate and transportation
4 rates as charged under the Exchange Agreement are lawful with respect to offsetting benefits; (5)
5 Proposition 26 is inapplicable; (6) Government Code § 54999.7(a) is inapplicable; (7) cost causation is
6 consistent with Metropolitan's existing legal requirements; (8) the Exchange Agreement neither
7 incorporates nor is subject to fair compensation provisions; (9) San Diego is judicially estopped from
8 claiming the Exchange Agreement is a wheeling transaction and subject to the Wheeling Statutes; (10) as
9 the conveyance facility owner, Metropolitan determines any offsetting benefits; and (11) Metropolitan's
10 rights and duties under the Exchange Agreement. (2018 XC ¶¶ 59-139, 146-151.) Metropolitan also
11 seeks reformation of the Price term of the Exchange Agreement and reformation of the Exchange
12 Agreement to reflect its rights and duties under the Wheeling Statutes. (*Id.* ¶¶ 140-145, 152-157.)

13 On May 4, 2022, the Court granted Metropolitan's Motion for Summary Adjudication as to the
14 eighth cause of action in the 2014 and 2016 Cross-Complaints and the tenth cause of action in the 2018
15 Cross-Complaint for declaratory relief that, as the conveyance facility owner, Metropolitan determines
16 any offsetting benefits. (May 4, 2022 Order, 1-2, 13-17.)

17 On May 11, 2022, the Court granted San Diego's Motion for Summary Adjudication as to the
18 following causes of action: (1) Metropolitan's first cause of action for declaratory relief on the ground of
19 issue preclusion in the 2018 Cross-Complaint; (2) Metropolitan's second, sixth, seventh, eighth, and tenth
20 causes of action for declaratory relief in the 2014 and 2016 Cross-Complaints and Metropolitan's fourth,
21 eighth, ninth, tenth, and twelfth causes of action for declaratory relief in the 2018 Cross-Complaint
22 regarding Metropolitan's duty to charge no more than fair compensation, which includes a reasonable
23 credit for any offsetting benefits pursuant to Water Code section 1811(c); (3) Metropolitan's fourth cause
24 of action in the 2014 and 2016 Cross-Complaints and Metropolitan's sixth cause of action in the 2018
25 Cross-Complaint for declaratory relief that Government Code section 54999.7(a) is inapplicable to
26 Metropolitan's rates; (4) San Diego's fifth cause of action for declaratory relief that Metropolitan must

27 _____
28 ⁴ On April 12, 2022, the parties stipulated to voluntarily dismiss their respective claims relating to
Metropolitan's allocation of WaterFix costs for 2019 and 2020. (See generally, April 12, 2022 Order.)

1 comply with Proposition 26 in setting its rates and charges in the 2014 action; and (5) Metropolitan's third
2 cause of action in the 2014 and 2016 Cross-Complaints and fifth cause of action in the 2018 Cross-
3 Complaint for declaratory relief regarding Proposition 26. (May 11, 2022 Order, 2, 6-7, 21-25.)

4 The Court also granted San Diego's Motion for Summary Adjudication as to the following
5 affirmative defenses raised by Metropolitan: (1) eighth (governmental immunity), ninth (separation of
6 powers), tenth (mootness), twelfth (res judicata and collateral estoppel), thirteenth (preclusion), fourteenth
7 (judicial estoppel), twenty-fourth (lack of standing), and twenty-ninth (improper remedy) affirmative
8 defenses in the 2014, 2016, and 2018 actions; (2) third (statute of limitations) and sixth (laches)
9 affirmative defenses in the 2014, 2016, and 2018 actions; (3) fourth affirmative defense for failure to
10 comply with the Government Claims Act in the 2014, 2016, and 2018 actions; (4) fifth affirmative
11 defense for failure to comply with Section 11.1 of the Exchange Agreement in the 2018 action; (5)
12 twenty-fifth affirmative defense for declaratory relief that Government Code section 54999.7(a) is
13 inapplicable to Metropolitan's rates in the 2014, 2016, and 2018 actions; and (6) twenty-sixth affirmative
14 defense for declaratory relief that Proposition 26 is inapplicable to Metropolitan's rates and charges in the
15 2014, 2016, and 2018 actions. (*Id.* at 2, 8-13, 17-18, 21-25.)

16 On September 14, 2022, the Court granted San Diego's Motion for Partial Judgment as to
17 Metropolitan's fifth affirmative defense under the dispute resolution provision in the 2014 and 2016
18 actions, Metropolitan's eleventh affirmative defense of waiver, and Metropolitan's seventeenth
19 affirmative defense of consent. (Sept. 14, 2022 Order, 1, 3-5.)⁵

20 On December 27, 2022, the Court ordered:

21 The following claims regarding the inclusion of the Water Stewardship Rate in the pre-set
22 wheeling rate and in the transportation rates as charged under the Parties' 2003 Amended and
23 Restated Exchange agreement ("Exchange Agreement") are resolved in the Water Authority's
24 favor: the First, Second, and Third Causes of Action in the Water Authority's 2014, 2016, and
25 2018 complaints; the Fourth Cause of Action in the Water Authority's 2014 and 2016 complaints;
and the First Cause of Action in Metropolitan's 2014, 2016, and 2018 cross-complaints.

(Dec. 27, 2022 Order, 4.) Additionally, Metropolitan withdrew its second cause of action in the 2018

26 ⁵ The Court deferred ruling on Metropolitan's fifth cross-claim in the 2014 and 2016 actions and
27 Metropolitan's seventh cross-claim in the 2018 action for declaratory relief regarding cost causation. (See
28 Sept. 14, 2022 Order.) On March 14, 2023, the Court granted San Diego's Motion for Partial Judgment
as to Metropolitan's fifth cross-claim in the 2014 and 2016 actions and Metropolitan's seventh cross-
claim in the 2018 action for declaratory relief regarding cost causation.

1 Cross-Complaint. (*Id.*)

2 **DISCUSSION**

3 **I. Breach of Contract**

4 “The elements of a cause of action for breach of contract are (1) the existence of the contract, (2)
5 plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the resulting
6 damages to the plaintiff.” (*Marina Pacific Hotel and Suites, LLC v. Fireman’s Fund Insurance Company*
7 (2022) 81 Cal.App.5th 96, 108, quoting *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821
8 (cleaned up).) Only breach and damages are at issue. (See RT 23:11-13 [“There’s no dispute here, the
9 exchange agreement is a valid agreement and that the Water Authority has performed.”], 950:20-24,
10 1526:13-16 [parties executed the Exchange Agreement].)

11 San Diego alleges Metropolitan breached the Price term of the Exchange Agreement. In
12 particular, San Diego asserts that the price charged under the Exchange Agreement does not comply with
13 “applicable law and regulation,” namely, the Wheeling Statutes and Resolution 8520, because it fails to
14 provide a reasonable credit for “offsetting benefits.” (See 2014 FAC ¶¶ 44, 86-91; 2016 SAC ¶¶ 44, 78-
15 83; 2018 SAC ¶¶ 53-54, 86-91.)

16 **A. Metropolitan Did Not Breach The Agreement By Failing To Provide A Reasonable
17 Credit For Any Offsetting Benefits.**

18 “A contract must be interpreted as to give effect to the mutual intention of the parties as it existed
19 at the time of contracting, so far as the same is ascertainable and lawful.” (Civ. Code § 1636.) To
20 interpret the meaning of a contract, the Court first considers the four corners of the contract itself. (See
21 Civ. Code § 1638 [“The language of a contract is to govern its interpretation, if the language is clear and
22 explicit, and does not involve an absurdity.”]; *Linton v. County of Contra Costa* (2019) 31 Cal.App.5th
23 628, 636 [“Courts first look to the plain meaning of the agreement’s language.”].)

24 “California law mandates that the owner or operator of a water conveyance facility allow others to
25 use up to 70 percent of the facility’s unused capacity to transport water upon payment of ‘fair
26 compensation.’” (*SDCWA I*, 12 Cal.App.5th at 1135, citing Water Code, §§ 1810, 1814; *QSA Cases*, 201
27 Cal.App.4th at 840-841.) “Fair compensation” is defined as “the reasonable charges incurred by the
28 owner of the conveyance system, including capital, operation, maintenance, and replacement costs,

1 increased costs from any necessitated purchase of supplemental power, and including reasonable credit
2 for any offsetting benefits for use of the conveyance system.” (Water Code § 1811(c).) San Diego “has
3 no means of transporting Colorado River water other than over Metropolitan’s aqueduct and thus opened
4 negotiations with Metropolitan to transport, or ‘wheel,’ Imperial Water. ‘Wheeling’ is an industry term
5 for ‘the use of a water conveyance facility by someone other than the owner or operator to transport
6 water.’” (SDCWA I, 12 Cal.App.5th at 1135, quoting *Metropolitan Water Dist. v. Imperial Irrigation*
7 *Dist.* (2000) 80 Cal.App.4th 1403, 1407 (cleaned up).)

8 **1. The Price Term Of The Exchange Agreement.**

9 The Price term of the Exchange Agreement states:

10 The Price on the date of the Execution of this Agreement shall be Two Hundred Fifty Three
11 Dollars (\$253.00). Thereafter, the Price shall be equal to the charge or charges set by
12 Metropolitan’s Board of Directors pursuant to applicable law and regulation and generally
applicable to the conveyance of water by Metropolitan on behalf of its member agencies.

13 (PTX65 ¶ 5.2.)

14 It is undisputed Metropolitan did not provide a reasonable credit for offsetting benefits. Rather,
15 the core issue in this case centers on the meaning and interpretation of “pursuant to applicable law and
16 regulation” as stated in the Price term. Specifically, whether the Price term provides for a reasonable
17 credit for offsetting benefits. If, as San Diego claims, applicable law and regulation required Metropolitan
18 to provide such a credit, neither side disputes that there would be a resulting breach by Metropolitan of
19 the Exchange Agreement. If, however, applicable law and regulation did not require Metropolitan to
20 provide a credit for offsetting benefits, there would be no breach.

21 **a) The Exchange Agreement Is Not A Wheeling Agreement.**

22 The introductory paragraph to the Exchange Agreement states it is an “AMENDED AND
23 RESTATED AGREEMENT FOR THE EXCHANGE OF WATER.” (PTX65, 1.) By definition, an
24 exchange agreement is distinct from a wheeling agreement. As the Court of Appeal explained,

25 While functionally related, wheeling and exchange agreements are not the same. A wheeling
26 agreement calls for the transportation of water when there is available capacity in the water
27 conveyance system. An exchange agreement promises the delivery of a specified quantity of
28 water. Water is not wheeled unless available, but an exchange agreement requires delivery of an
agreed-upon quantity of water every month. Recipients under a wheeling agreement receive less
than the transfer amount due to evaporation and other transit losses, but the conveyance system

1 operator bears transit losses under an exchange agreement. As the trial testimony presented in the
2 present case established, the parties here preferred an exchange agreement to a wheeling
3 agreement. The Water Authority wanted guaranteed delivery and Metropolitan wanted the greater
operational flexibility of an exchange agreement that permits the use of available facilities and
supply sources.

4 (*SDCWA I*, 12 Cal.App.5th at 1136; see RT 296:17-20 [“Metropolitan preferred to do an exchange
5 agreement because it gave them more flexibility in being able to provide a consistent transfer to the Water
6 Authority.”].)

7 The Exchange Agreement solely addresses the delivery of a specified quantity of water rather than
8 transportation of water when there is available capacity in the water conveyance system. (See
9 RT:1560:27-1561:8 [“Q. . . . in many wheeling agreements, then, they might depend on a system owner
10 having unused capacity; you testified about that? A. Yeah. Q. Okay. And in an exchange, the capacity
11 issue doesn’t matter because the system owner can provide water from any of their sources; correct? A.
12 Just in this case. In this case, that’s correct.”] (Thomas); *id.* at 1562:10-11 [“no longer dependent on that
13 capacity being available.”].) In particular, Section III of the Exchange Agreement, titled “QUANTITY,
14 DELIVERY, AND SCHEDULING” sets forth the parties’ duties regarding Conserved Water, Canal
15 Lining Water, Early Transfer Water, and Exchange Water. As to Conserved Water and Canal Lining
16 Water,

17 The quantity of Conserved Water and/or Canal Lining Water Made Available to Metropolitan by
18 SDCWA at the SDCWA Point of Transfer each Year shall be the lesser of: (1) the sum of the
19 quantity of water which IID transfers to SDCWA under the Transfer Agreement in such Year and
20 the quantity of Canal Lining Water allocated to SDCWA under the Allocation Agreement in such
21 Year; or (2) 277,700 acre feet. The Conserved Water and/or the Canal Lining Water Made
22 Available in each Year shall be deemed to have been Made Available to Metropolitan in monthly
installments, with one-twelfth (1/12) of such water deemed to have Made Available in each
calendar month of such Year (provided that, in the first Year, the quantity of such water deemed to
have been Made Available in each month shall be determined by dividing the total quantity for
that Year by the number of calendar months or portions thereof in that Year).

23 (PTX65 ¶ 3.1(a).) As to Early Transfer Water,⁶ “SDCWA will also Make Available to Metropolitan . . .
24 the Early Transfer Water, in three annual installments.” (*Id.* ¶ 3.1(b) [2,500 acre-feet in 2020, 5,000 acre-
25 feet in 2021, and 2,500 acre-feet in 2022].) The Exchange Agreement also requires San Diego to provide

27 ⁶ “Early Transfer Water” is defined as “the aggregate ten thousand (10,000) acre-feet of Conserved Water
28 to be transferred to SDCWA by IID in accordance with Section 3.5 of the Transfer Agreement.” (PTX65
¶ 1.1(k).)

1 Metropolitan with an annual written notice regarding:

2 the quantity of Conserved Water (including Early Transfer Water, if applicable) to be transferred
3 to SDCWA in accordance with the Transfer Agreement, and of the quantity of Canal Lining Water
4 to be allocated to SDCWA in accordance with the Allocation Agreement, and in each case to be
5 Made Available to Metropolitan at the SDCWA Point of Transfer during the immediately
6 following Year.

7 (*Id.* ¶ 3.1(c).)

8 As to Exchange Water:

9 Provided that the Conserved Water (including Early Transfer Water, if applicable) and/or the
10 Canal Lining Water has been Made Available to Metropolitan at the SDCWA Point of Transfer
11 pursuant to Paragraph 3.1, Metropolitan shall deliver Exchange Water (including Early Exchange
12 Water, if applicable) to SDCWA at the Metropolitan Point(s) of Delivery, in compliance with this
13 Agreement, and in the manner and to the extent set forth below . . . [¶] Metropolitan's delivery of
14 Exchange Water at the Metropolitan Point(s) of Delivery shall be governed by its rules and
15 regulation for delivery of water set forth in Chapter 5 of Division IV of the Administrative Code⁷
16 in the same manner as other water delivered by Metropolitan, except as may otherwise be
17 provided in this Agreement.

18 (*Id.* ¶ 3.2(a).) Furthermore,

19 Exchange Water to be delivered in any Year shall be delivered in approximately equal monthly
20 installments over the Year so that at the end of the twelfth month the aggregate quantity of
21 Exchange Water delivered by Metropolitan will be equal to the aggregate quantity of Conserved
22 Water (including Early Transfer Water, if applicable) and Canal Lining Water Made Available to
23 Metropolitan at the SDCWA Point of Transfer for that Year, or at the times and in the amounts as
24 the Parties may otherwise agree.

25 (*Id.* ¶ 3.1(c).)

26 Not only do these express terms unambiguously set out the rights and obligations of the parties
27 regarding the transfer of water, nowhere in the Exchange Agreement did the parties address the
28 transportation of water when there is available capacity in the water conveyance system. Including those
terms would indicate that the Exchange Agreement is in fact a wheeling agreement. Excluding those
terms indicates the contrary. Moreover, in a wheeling transaction, evaporation and related losses are
borne by the wheeler rather than the conveyance facility owner. (RT 211:8-12.) Under an exchange
agreement, the conveyance facility owner bears the loss or is responsible for losses resulting from

⁷ Metropolitan "shall bill the member public agency for all water delivered through the service connection, and the member public agency shall pay [Metropolitan] for all water so delivered at the rate or rates and within the period from time to time fixed by the Board." (Admin. Code § 4501(a) [DTX 2718].)

1 evaporation. (*Id.* at 211:16-19.) San Diego’s former General Manager, Maureen Stapleton, testified that
2 under the Exchange Agreement, it is Metropolitan, not San Diego, that assumes evaporation and related
3 losses. This uncontradicted testimony further supports the conclusion that the Exchange Agreement is not
4 a wheeling agreement.

5 **b) Metropolitan Wheels Its Own Water.**

6 Pursuant to the Exchange Agreement, “Exchange Water delivered to SDCWA shall be
7 characterized as Metropolitan water and not as Local Water only for the limited purposes of Paragraph 5.2
8 [the Price] and the Interim Agricultural Water Program.” (PTX65 ¶ 4.2.)⁸ “Exchange Water” is defined
9 as:

10 water that is delivered to SDCWA by Metropolitan at the Metropolitan Point(s) of Delivery in a
11 like quantity as the quality of water that SDCWA has Made Available to Metropolitan under the
12 Transfer Agreement and/or Allocation Agreement and this Agreement for the same Year. The
13 Exchange Water may be from whatever source or sources and shall be delivered using such
14 facilities as may be determined by Metropolitan, provided that the Exchange Water delivered in
15 each Year is of like quality to the Conserved Water and/or the Canal Lining Water which is Made
16 Available to Metropolitan at the SDCWA Point of Transfer in such Year.

17 (*Id.* ¶ 1.1(m).) The SDCWA Point of Transfer is “Metropolitan’s intake at Lake Havasu.” (*Id.* ¶ 3.5(a).)

18 By the express terms of the Exchange Agreement, Metropolitan conveyed its own water to San
19 Diego. In particular, Metropolitan had the discretion to choose the source or sources of water to be
20 delivered to San Diego so long as it was “of like quality to the Conserved Water and/or Canal Lining
21 Water.” (PTX65 ¶ 1.1(m).) This is further supported by witness testimony. (RT 185:9-13 [“Q. . . . If the
22 owner of the conveyance facility is moving its own water through its conveyance facility, that’s not
23 wheeling . . . A. I would not refer to that as wheeling.”], 452:12-14 [“Wheeling is the conveyance of
24 water not owned or controlled by the utility through the utility’s facilities for delivery to a customer or
25 other party.”], 614, 1535:8-9 [Under the Exchange Agreement, “[f]or purposes of setting the price, it’s
26 Metropolitan water.”].)⁹

25 ⁸ The Court acknowledges that under the Exchange Agreement, San Diego is not purchasing
26 Metropolitan water. (See *SDCWA I*, 12 Cal.App.5th at 1156 [“In agreeing to pay rates equal to the
27 Metropolitan-supplied water rates, the Water Authority did not agree it was purchasing Metropolitan
28 water.”].) However, for purposes of interpreting the Price term, within the context of the Exchange
29 Agreement, Exchange Water is “characterized as Metropolitan water.” (PTX65 ¶ 4.2.) This
30 characterization does not result in a finding that Metropolitan may treat San Diego differently than other
31 member agencies or that Metropolitan has a competitive advantage.

⁹ In reaching its conclusion that payments under the Exchange Agreement must be credited in the

1 Metropolitan and Chief Financial Officer for San Diego, testified that the offsetting benefits credit was a
2 “fundamental” term of the Exchange Agreement. (RT 280-281, 402:22-25; see 402:4-5 [“Applicable law
3 was to incorporate and embody the fair compensation definition of 1811(c)”].) Mr. Campbell also
4 testified his understanding of Metropolitan’s position was that “wheeling would be synonymous with
5 essentially an exchange agreement” and that “if Metropolitan was going to include systemwide charges in
6 their wheeling rate, then they should also provide an offsetting credit for systemwide benefits.” (*Id.* at
7 314:15-19, 315:6-9.) Scott Slater, San Diego’s co-lead negotiator, testified he viewed “applicable law” as
8 referring to the Wheeling Statutes during negotiations. (*Id.* at 545:5-12; see *id.* at 584:3-8.) Mr. Slater
9 also testified that “applicable law and regulation” refers to “all laws in the state of California. So there’s a
10 process to set a charge here which is bounded by applicable law, which would include the Wheeling
11 Statutes, fair compensation, and the laundry list of components.” (*Id.* at 543:25-544:6; see *id.* at 545:5-12
12 [Mr. Slater told Metropolitan negotiators that “[a]pplicable law referred to the Wheeling Statutes.”],
13 737:25-738:15 [Ms. Stapleton told Metropolitan during negotiations her understanding was that
14 ‘applicable law and regulation’ certainly included the Wheeling Statutes.”]; but see RT 1367:23-1368:2
15 [Ms. Stapleton “never prepared any writing that memorialized” her alleged conversation with Mr.
16 Underwood that San Diego was concerned the Price term was not consistent with the Wheeling Statutes
17 or that “applicable law” included the Wheeling Statutes].)

18 San Diego’s testimony reveals that offsetting benefits were important to it during negotiations, but
19 the subjective intent of San Diego’s negotiators does not control. “Although the intent of the parties
20 determines the meaning of the contract, the relevant intent is objective—that is, the objective intent as
21 evidenced by the words of the instrument, not a party’s subjective intent.” (*Badie v. Bank of America*
22 (1998) 67 Cal.App.4th 779, 802, n. 9, quoting *Shaw v. Regents of University of California* (1997) 58
23 Cal.App.4th 44, 54-55 (internal citation and quotations omitted).) Here, the overall evidentiary record,
24 including documentary evidence made at the time of the negotiations, undermines San Diego’s current
25 position that “applicable law and regulation” includes a credit for offsetting benefits.

26 It is undisputed that no exchanges occurred under the 1998 Agreement because Colorado River
27 water rights first needed to be quantified—a process involving many stakeholders in the Colorado River.
28

1 (RT 421:6-10.) Although the 1998 Agreement’s price term did not need to change for quantification to
2 take place, it was San Diego that sought to change it by proposing two options. (DTX221, 14; DTX837;
3 DTX856; RT 1369:15-19, 1371:2-5, 1527:9-13; see RT 1371:3-4 [Metropolitan “let San Diego choose
4 between [San Diego’s] proposed Option 1 or proposed Option 2.”].) Under Option 1, San Diego would
5 continue to pay the same price negotiated in the 1998 Agreement. (DTX837; DTX856, 2; RT 1369:15-
6 28, 1527:9-1528:10; see RT 485:7-10 [under option one, offsetting benefits were “embedded in the fixed
7 price schedule.”].) Under Option 2, Metropolitan would assign to San Diego its right to approximately
8 77,000 acre-feet of conserved canal lining water annually for 110 years, as well as Metropolitan’s \$235
9 million legislative appropriation for canal lining and other projects; and in return, San Diego would pay a
10 higher contract price based on Metropolitan’s generally applicable unbundled transportation rates.
11 (DTX827; RT 197:9-198:20, 242:7-12, 462:16-463:9, 1369:15-28.) “In consideration for MWD’s
12 assignment of canal lining water rights to SDCWA, SDCWA pays MWD’s lawful wheeling rate in lieu of
13 the Exchange Agreement rates.” (DTX837; see DTX221, 14; DTX856, 2 [“In consideration for MWD’s
14 assignment of All-American and Coachella canal lining water rights to the Authority, the Authority would
15 pay MWD’s lawful wheeling rate in lieu of the Exchange Agreement. The MWD’s current published
16 wheeling rate is \$253 per acre-foot and is comprised of the System Access Charge, Water Stewardship
17 Charge and power cost.”].) San Diego’s Board of Directors chose Option 2. (RT 1371:13-14, 1529:2-4;
18 but see *id.* at 1504:23-1505:21 [Mr. Kightlinger would have recommended rejecting Option 2 if San
19 Diego requested offsetting benefits in addition to the Price term].)

20 Notably, when San Diego – a public agency – contemplated Option 2, it made no mention of
21 offsetting benefits in formal communications with its Board of Directors. Nor did it include estimations
22 or analyses of offsetting benefits when considering its financial risk. (See generally, DTX837, DTX856;
23 see, e.g., DTX221, 21 [“Risk: - Exposure to MWD Wheeling Rate . . . MWD Wheeling Rate inflation
24 sensitivity needs to be considered.”]; DTX837, 2 [“While Option 2 provides exposure to potentially
25 higher MWD wheeling costs over the initial term of the SDCWA/IID transfer, it offers an additional new
26 water supply of 77,700 acre feet (8.5 MAF total) for 110 years at a cost that is lower than other long-term
27 water supply options.”]; see also DTX221, 23-26; DTX856, 9 [“there is far greater definition over costs
28

1 associated with Option 2 than those that would be encountered in an effort to secure as-yet unidentified
2 supplies to meet future demands.”].) Instead, when conducting a financial risk analysis for Option 2, San
3 Diego used Metropolitan’s generally applicable wheeling rate as an assumption. (DTX221, 22.) In
4 particular, San Diego assumed a wheeling rate of \$253 per acre-foot. (*Id.*) The assumed wheeling rate
5 included the “System Access Rate, Water Stewardship Rate and Power.” (*Id.*; see also DTX837
6 [“Currently the MWD wheeling rate is set at \$253/af including the System Access and Water Stewardship
7 Rates and power cost.”]; DTX856, 8 [“While choosing Option 2 exposes the Authority to higher wheeling
8 costs (comprised of MWD rate components System Access Charge, Stewardship Charge and fluctuations
9 in power costs), it protects the Authority from even greater exposure associated with securing an
10 alternative imported supply.”]; RT 1368:14-28.)

11 In sum, the record of formal communications with San Diego’s Board of Directors and all
12 contemporaneous financial analyses at the time are silent as to any form of credit or offsetting benefit.
13 Given the magnitude of the Exchange Agreement and its importance ultimately to the ratepayers to whom
14 the San Diego’s Board of Directors had a duty, it is unreasonable to conclude that San Diego would have
15 completely omitted any discussions of offsetting benefits in addressing the budgetary and financial
16 impacts of the proposed options if credits for offsetting benefits applied. (See, e.g., RT 462:9-13 [San
17 Diego wanted to provide the board with a “full and complete” financial analysis of the two options.])

18 Moreover, the record reflects the parties agreed the Price term of the Exchange Agreement
19 consists of Metropolitan’s wheeling rate, a *generally applicable rate*, which included only the system
20 access rate, system power rate, and WSR. (DTX221, 30 [staff recommendation to “Approve the
21 assignments of MWD’s canal lining project water rights in consideration for the Water Authority paying
22 MWD’s lawful wheeling rate”]; DTX837; DTX856, 2; RT 789:17-790:6; see RT 1373:27-1374:3
23 [offsetting benefits “do not apply to rate setting. They apply to a wheeling transaction.”]; see, e.g.,
24 *SDCWA I*, 12 Cal.App.5th at 1138-1139 [“Under the exchange agreement as amended in 2003, the Water
25 Authority agreed to pay charges ‘generally applicable to the conveyance of water by Metropolitan on
26 behalf of its member agencies’ which, the parties agree are the system access rate, water stewardship rate
27 and . . . the system power rate.”].)

1 A “system access rate” is designed to recover the capital, operating, and maintenance costs
2 associated with transportation facilities, including “conveyance” facilities that transport water
3 from the State Water Project and Colorado River Aqueduct and “distribution” facilities that
4 transport water within Metropolitan’s service area. (Admin. Code, § 4123) A “system power
5 rate” recovers the cost of pumping water through the State Water Project and Colorado River
6 Aqueduct to Southern California. (Admin. Code, § 4125.) A “water stewardship rate” is designed
7 to recover the costs of conservation programs and other water management programs that reduce
8 and defer system capacity expansion costs. (See Admin. Code, § 4124.)

9 (SDCWA I, 12 Cal.App.5th at 1138.)

10 “[O]ffsetting benefits may arise where power is developed by the water being transferred,”
11 however, offsetting benefits are determined on a *case-by-case basis*. (*Metropolitan Water Dist. of*
12 *Southern California*, 80 Cal.App.4th at 1410 n. 6, 1420.) The Price term does not provide for any
13 adjustment of Metropolitan’s generally applicable rates to provide a reasonable credit for offsetting
14 benefits. During the Exchange Agreement negotiations, San Diego drafted a proposed agreement that
15 included a section titled, “Extension of Term and Establishment of New Contract Price.” (DTX3237 §
16 4A.2(b).) That section states the parties would negotiate in good faith at the end of the twenty-fifth year
17 regarding the contract price commencing after the thirtieth year based on relevant factors including “any
18 offsetting benefits received by MWD for the use of the conveyance system, payments received from
19 SDCWA or the State of California, and the transfer and Exchange of Conserved Water pursuant to the
20 QSA.” (*Id.*) However, it was not included in the final Exchange Agreement, which contains an
21 integration clause. (See PTX65 § 13.6 [“This Agreement constitutes the final, complete, and exclusive
22 statement of the terms of the Agreement between the Parties pertaining to its subject matter and
23 supersedes all prior and contemporaneous understandings or agreements of the Parties. Neither Party . . .
24 is relying on, any representation or warranty outside those expressly set forth in this Agreement.”] .)

25 Finally, there is no evidence that San Diego made any requests to Metropolitan to include
26 offsetting benefits from the time it proposed Option 2 and execution of the Exchange Agreement. (RT
27 258:1-10; see *id.* at 792:25-793:3 [Ms. Stapleton had no recollection of a specific presentation to
28 Metropolitan that mentioned offsetting benefits]; see also RT 1369:1-14 [during discussions with San
Diego’s negotiating team, Metropolitan did not discuss the Price in the context of the Wheeling Statutes
and San Diego never raised “fair compensation” or “offsetting benefits.”].)

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1 transactions.” (RT 1388:12-16; see DTX2529.) There is no evidence in the record that the Exchange
2 Agreement was one of the few or “one-off” wheeling transactions where Resolution 8520 applied.

3 Furthermore, Resolution 8520 applied to “[s]hort one-year wheeling transactions.” (RT 1503:19-
4 23.) Under Administrative Code section 4119, “Wheeling Service” was defined as “the use of
5 Metropolitan’s facilities, including its rights to use State Water Project facilities, to transport water not
6 owned or controlled by Metropolitan to its member public agencies, in transactions entered into by
7 Metropolitan for a period of up to one year.” (DTX2718 § 4119; see RT 1504:20-22 [Resolution 8520
8 and Administrative Code sections 4119 and 4405 “were only applicable to short one-year-or-less
9 transactions with member agencies and had not come up in some time.”].)

10 Therefore, Resolution 8520 does not apply to the Price term such that Metropolitan was required
11 to provide San Diego with a reasonable credit for any offsetting benefits.

12 (3) 1998 Agreement.

13 Under the 1998 Agreement, the “Contract Price” was: “ For the first 20 Contract Years . . . \$90 per
14 acre-foot of Exchange Water increased by 1.55% for every calendar year after 1998. For Contract Years
15 21 through 30, the Contract Price shall be \$80 per acre-foot increased by 1.44% for every calendar year
16 after 1998.” (DTX28 ¶ 5.2.) The Contract Price term in the 1998 Agreement is materially different than
17 the Price term in the Exchange Agreement. (Compare DTX28 ¶ 5.2 with PTX65 ¶ 5.2.) In addition, the
18 1998 Agreement does not contain similar language to provide context when interpreting “applicable law
19 and regulation” in the Price term of the Exchange Agreement. Furthermore, negotiations for the 1998
20 Agreement do not support a finding that the parties intended for offsetting benefits to apply to the
21 Exchange Agreement’s Price term.

22 The earlier stages of negotiations included frameworks that provided for “regional benefits.”
23 Metropolitan’s 1996 framework for negotiations included fixed cost coverage and wheeling rates as well
24 as regional benefits. (PTX751, 1914; see PTX752, 1577; PTX 20 [San Diego’s April 1996 proposal]; see
25 also PTX768 [September 13, 1996 draft discussion paper].) Similarly, Metropolitan’s March 11, 1997
26 Summary of Terms included a fixed payment, water rate, transportation rate, and regional benefits.
27 (PTX24, 264558-264559.) Notably, the “Water Rate would be reduced proportionately to reflect the
28

1 fixed payments []. Remaining costs, including power, [SWP] obligations, operating and maintenance,
2 transfers and other variable costs would continue to be collected through the water rate.” (*Id.* at 264558.)
3 Transportation rates would be fixed (but not exceed the annual firm wheeling rate), revised to reflect
4 annual costs in the future, and reduced proportionately to reflect fixed payments. (*Id.* at 264559.)
5 Moreover, regional benefits “[b]etween 50-75% of the Market Value of Water Transfers would be paid to
6 SDCWA in recognition of the reduction in costs the remaining member agencies would realize as a result
7 of the SDCWA/IID transfer.” (*Id.*) Additionally, San Diego’s December 4, 1997 proposal, included a
8 “Base Wheeling Rate,” which included “[a]ctual incremental power costs, including a reasonable credit
9 for any offsetting benefits.” (PTX26 at MWD2010-00264776.)

10 During negotiations, the parties did not dispute whether offsetting benefits applied. (RT 538:14-
11 16.) Rather, the parties reached an impasse regarding the value of offsetting benefits. (*Id.* at 540:18-19.)
12 The key turning point occurred on January 5, 1998, when David Kennedy, Director of the Department of
13 Water Resources, drafted a letter to San Diego and Metropolitan with proposed wheeling rates. (See
14 PTX481.) Table 1 of Mr. Kennedy’s letter is an analytical framework of two conditions: (A) no available
15 space in the aqueduct for IID/SD; and (B) available space in the aqueduct for IID/SD. (*Id.* at 264719.)
16 Under “Condition A” where space is not available, Mr. Kennedy proposed a \$350 payment by San Diego
17 to Metropolitan “per MWD rate schedule” as well as a \$220 credit to San Diego “for regional benefit -
18 i.e., investment MWD did not have to make.” (*Id.*; see RT 291:11-15 [this was an offsetting benefits
19 credit under Water Code § 1811(c) that San Diego (Mr. Campbell) was advocating for since November of
20 1995], 390:20-24 [the \$220 figure is a credit for offsetting benefits, which is also reflected in the wheeling
21 rate], 391:20-24.) Mr. Kennedy’s notes state that the

22 proposed credit to SD by MWD is based on the assumption that MWD would have had to do a
23 comparable IID conservation/transfer agreement as a component of the 4.4 Plan, if San Diego had
24 not. Also, by SD arranging for this block of water to meet its needs, MWD does not have to
develop this amount of new supply in its overall water supply program.

25 (PTX481, 264720.) Under “Condition B” where space is available, Mr. Kennedy proposed San Diego
26 pay \$80 to Metropolitan “for wheeling.”¹⁰ (*Id.* at 264719; see RT 394:1-15 [the \$80 wheeling rate

27
28 ¹⁰ In a handwritten note, “\$80” is circled and underneath “\$80” it states “\$50 for wheeling.” (PTX481,
264719; see RT 396:1-3 [identity of handwriting unknown].)

1 included a credit for offsetting benefits]; see also 537:1-538:1.) Metropolitan wanted a \$208 credit and
2 San Diego wanted a \$250 credit. (RT 392:22-393:5.) Mr. Kennedy's proposal was a compromise, which
3 the parties ultimately adopted in the 1998 Agreement. (*Id.* at 393:6-9, 395:18-23, 397:23-398:3 [price
4 under 1998 Agreement was based on Mr. Kennedy's findings], 1590:9-18; see *id.* at 538:23-539:1 [the
5 parties adopted Mr. Kennedy's proposed wheeling rate of \$80 when space is available].)

6 Mr. Campbell testified the price under the 1998 Agreement included a reasonable credit for
7 offsetting benefits, which "were subtracted from the MWD wheeling price to reach a net contract price."
8 (RT 398:4-10; see *id.* at 539:17-23.) "[T]he credit was based on the avoided cost to Metropolitan of the
9 investment that San Diego was making on the on-farm conservation programs in the Imperial Valley."
10 (*Id.* at 398:13-16.) Under the price term, the first years were based on a \$90 per acre-foot price and
11 thereafter the price reverted to \$80 per acre-foot with an escalator. (*Id.* at 1591:8-14.) The \$80 per acre-
12 foot price was the same number Mr. Kennedy proposed. (*Id.* at 1590:15-17.)

13 The 1998 Agreement negotiations reveal offsetting benefits applied to the price term of the 1998
14 Agreement. San Diego's proposed Option 1 during Exchange Agreement negotiations would have
15 maintained the status quo in terms of price by applying the 1998 Agreement's price term to the Exchange
16 Agreement. However, San Diego did not choose Option 1, which would have provided offsetting
17 benefits. Instead, San Diego proposed and chose Option 2.

18 (4) Course Of Dealing.

19 The evidentiary record includes instances where San Diego specifically requested wheeling or
20 entered into a wheeling agreement. On December 1, 2008, Maureen Stapleton, San Diego's General
21 Manager, wrote to Metropolitan to request "wheeling service during 2009 to transport up to 10,000 acre-
22 feet of water not owned or controlled by Metropolitan, subject to [Metropolitan's] available system
23 capacity." (DTX75.) Ms. Stapleton made the request "pursuant to applicable law and Sections 4119 and
24 4405 of Metropolitan's Administrative Code." (*Id.*) Additionally, when Metropolitan moved to repeal
25 Resolution 8520, Metropolitan noted that "[t]wo agreements exist with [SDCWA] that incorporate the
26 Section 4405 wheeling rate as the contractual price term. However, now that the Water Stewardship Rate
27 will no longer be in place, rendering the Section 4405 wheeling rate inoperative, the price term for those
28

1 two agreements must be renegotiated.” (DTX2529.) Those two agreements were the SDCWA-
2 Semitropic and SDCWA-Fallbrook agreements. (RT 62-64, 217-220; DTX177, DTX698.)

3 Under former Administrative Code section 4405, wheeling service rates included “the System
4 Access Rate, Water Stewardship Rate and, for treated water, the Treatment Surcharge In addition,
5 wheeling parties [paid] for their own cost for power . . . or pa[id] the District for the actual cost (not
6 system average) of power service utilized for delivery of the wheeled water.” (DTX2718 § 4405(b).)
7 Furthermore, wheeling parties were required to pay “an administration fee of not less than \$5,000 per
8 transaction.” (*Id.*)

9 San Diego’s course of conduct outside the Exchange Agreement demonstrates its wheeling
10 requests and agreements included a reasonable credit for offsetting benefits under the Wheeling Statutes
11 because San Diego either requested short-term wheeling service (i.e., less than one year) or incorporated
12 Administrative Code section 4405’s wheeling rate into the contract price (for the SDCWA-Semitropic and
13 SDCWA-Fallbrook agreements) such that the agreements needed to be renegotiated after Metropolitan
14 repealed Resolution 8520. Although not dispositive, San Diego’s course of conduct outside the Exchange
15 Agreement provides further support that the Price term of the Exchange Agreement does not include a
16 reasonable credit for offsetting benefits as the Exchange Agreement does not contemplate a short-term
17 wheeling transaction and does not incorporate Administrative Code section 4405’s wheeling rate into the
18 Price term.

19 **2. Metropolitan’s Duty To Include A Reasonable Credit For Offsetting Benefits**
20 **Did Not Arise.**

21 The Court ruled on San Diego’s motion for summary adjudication that “Metropolitan has a duty to
22 charge no more than fair compensation, which includes reasonable credit for any offsetting benefits
23 pursuant to Water Code section 1811(c).” (May 11, 2022 Order, 13; see *Metropolitan Water Dist. of*
24 *Southern California*, 80 Cal.App.4th at 1428 [“The water conveyance facility owner, in this case the
25 Metropolitan Water District, is specifically authorized to determine what is ‘fair compensation’ provided
26 the determination is made in a timely and reasonable manner ‘consistent with the requirements of law to
27 facilitate the voluntary sale, lease, or exchange of water.’”], quoting Water Code § 1813; *SDCWA II*, 2021
28 WL 4272331, *8 [“the writ properly compels Metropolitan to perform its clear and present legal

1 obligation, pursuant to Water Code sections 1810 and 1812, requiring the owner of a conveyance facility
2 to timely determine fair compensation for use of its water conveyance services for the benefit of the
3 Water Authority, which is an entity entitled to use the facilities upon the payment of fair
4 compensation.”].) However, “[w]hether that duty arose and whether Metropolitan breached that duty are
5 issues to be resolved at trial.” (*Id.*) The duty to include a reasonable credit for any offsetting benefits
6 pursuant to Water Code section 1811(c), did not arise. Accordingly, Metropolitan did not breach the
7 Exchange Agreement by not providing San Diego with a reasonable credit for any offsetting benefits.

8 The Price term of the Exchange Agreement states that “the Price shall be equal to the charge or
9 charges set by Metropolitan’s Board of Directors pursuant to applicable law and regulation and generally
10 applicable to the conveyance of water by Metropolitan on behalf of its member agencies.” (PTX65 ¶ 5.2.)
11 “[A]n ambiguity cannot be created by parsing out words outside their context.” (*Alameda County Flood*
12 *Control & Water Conservation Dist. v. Dept. of Water Resources* (2013) 213 Cal.App.4th 1163, 1179.)
13 Rather, the contract language “must be construed in the context of that instrument as a whole, and in the
14 circumstances of that case, and cannot be found to be ambiguous in the abstract.” (*Id.*, quoting *Bay Cities*
15 *Paving & Grading, Inc. v. Lawyers’ Mutual Ins. Co.* (1993) 5 Cal.4th 854, 867 (cleaned up).) As a
16 whole, the Exchange Agreement is not a wheeling agreement. Therefore, there is no “unused capacity”
17 which San Diego uses under the Exchange Agreement because the Exchange Agreement sets forth
18 specific and regular allocations of water. (See Water Code §§ 1810 [fair compensation to be paid for “use
19 of a water conveyance facility which has unused capacity.”], 1811(e) [“Unused capacity” is defined as
20 “space that is available within the operational limits of the conveyance system and that the owner is not
21 using during the period for which the transfer is proposed and which space is sufficient to convey the
22 quantity of water proposed to be transferred.”].) The evidence presented at trial does not indicate
23 Metropolitan had unused capacity that San Diego was using or seeking to use under the Exchange
24 Agreement for the rate years at issue.

25 Moreover, offsetting benefits are determined on a *case-by-case basis*. (*Metropolitan Water Dist.*
26 *of Southern California*, 80 Cal.App.4th at 1420.) However, the Exchange Agreement’s Price term is
27 premised on Metropolitan’s generally applicable rates, that is, rates not applicable individually to San
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1 Diego or on a transaction-by-transaction basis. In addition, extrinsic evidence demonstrates the parties
2 did not negotiate an exception to Metropolitan's generally applicable rates that would provide San Diego
3 with a reasonable credit for offsetting benefits in the context of the Price term.

4 Therefore, the Court finds Metropolitan did not breach the Exchange Agreement by failing to
5 calculate a reasonable credit for any offsetting benefits. As the Court finds Metropolitan did not breach
6 the Exchange Agreement, the Court need not address damages.

7 **II. Reformation Of The Price Term.**

8 Metropolitan's ninth cross-claim in the 2014 and 2016 actions and eleventh cross-claim in the
9 2018 action conditionally seek reformation of the Exchange Agreement's Price term if the Court
10 determines that the Price term requires an offsetting benefits determination. As the Court finds
11 Metropolitan did not breach the Exchange Agreement by failing to determine offsetting benefits,
12 Metropolitan's ninth cross-claim in the 2014 and 2016 actions and eleventh cross-claim in the 2018 action
13 are moot. (See RT 73:20-74:7.)

14 **III. Reformation Of The Exchange Agreement And Declaration Of Metropolitan's Rights And
15 Duties Under The Wheeling Statutes.**

16 Metropolitan's eleventh cross-claim in the 2014 and 2016 actions and thirteenth cross-claim in the
17 2018 action seek reformation of the Exchange Agreement to "properly state" Metropolitan's rights and
18 duties under the Wheeling Statutes if the Court determines that the Wheeling Statutes apply to the
19 Exchange Agreement. (2014 XC ¶ 135; 2016 XC ¶ 135; 2018 XC ¶ 157.) Metropolitan's tenth cross-
20 claim in the 2014 and 2016 actions and twelfth cross-claim in the 2018 action seek a "complete"
21 declaration stating Metropolitan's full rights and duties under the Wheeling Statutes if the Court finds the
22 Wheeling Statutes apply to the Exchange Agreement. (2014 XC ¶ 127 & p. 34 [Prayer for Relief]; 2016
23 XC ¶ 127 & p. 34 [Prayer for Relief]; 2018 XC ¶ 149 & pp. 40-41 [Prayer for Relief].)

24 In the operative pleadings, Metropolitan alleges:

25 Before and at the time of execution of the 2003 Exchange Agreement, San Diego represented that
26 the Exchange Agreement was not subject to the Wheeling Statutes. If the Court accepts San
27 Diego's new position that the Wheeling Statutes apply, then Metropolitan's execution of the 2003
28 Exchange Agreement was based on a mistaken belief that was known to San Diego.

(2014 XC ¶ 133; 2016 XC ¶ 133; 2018 XC ¶ 155.) Metropolitan also alleges that had San Diego

1 disclosed the Exchange Agreement was subject to the Wheeling Statutes either before or at the time of
2 execution of the Exchange Agreement, then “Metropolitan would have required that the agreement
3 provisions state its applicable rights and duties.” (2014 XC ¶ 134; 2016 XC ¶ 134; 2018 XC ¶ 156.)

4 When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other
5 at the time knew or suspected, a written contract does not truly express the intention of the parties,
6 it may be revised on the application of a party aggrieved, so as to express that intention, so far as it
can be done without prejudice to rights acquired by third persons, in good faith and for value.

7 (Civ. Code § 3399.) “The essential purpose of reformation is to reflect the intent of the parties.” (*Jones v.*
8 *First American Title Ins. Co.* (2003) 107 Cal.App.4th 381, 389.) “The ‘intention of the parties,’ as stated
9 in Civil Code section 3399, refers to a ‘single intention which is entertained by both parties.’” (*Jolley v.*
10 *Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 908, quoting *Shupe v. Nelson* (1967) 254
11 Cal.App.2d 693, 700.) “[T]he mistake of one party is a sufficient basis for reformation only when the
12 mistake is known or suspected by the other party and, as a result, the writing does not truly express the
13 intention of the parties.” (*La Mancha Dev. Corp. v. Sheegog* (1978) 78 Cal.App.3d 9, 16; see *Lemoge*
14 *Elec. v. San Mateo County* (1956) 46 Cal.2d 659, 641 [a contract may be reformed based on unilateral
15 mistake “to express a single intention entertained by both parties.”]; *Appalachian Ins. Co. v. McDonnell*
16 *Douglas Corp.* (1989) 214 Cal.App.3d 1, 19 [“mistake may be . . . the oversight of one party which the
17 other knew or suspected at the time of entering the agreement.”].) “In reforming the written agreement, a
18 court may transpose, reject, or supply words, but has no power to make new contracts for the parties.”
19 (*Komorsky v. Farmers Ins. Exchange* (2019) 33 Cal.App.5th 960, 974, quoting *Hess v. Ford Motor Co.*
20 (2002) 27 Cal.4th 516, 524 (cleaned up).)

21 The issue presented in this case is whether “applicable law and regulation” in the Price term
22 includes a reasonable credit for offsetting benefits under Water Code § 1811(c), the fair compensation
23 provision of the Wheeling Statutes. Although the Court finds a reasonable credit for offsetting benefits
24 under Water Code § 1811(c) does not apply to the Price term of the Exchange Agreement, this does not
25 result in a finding that the Wheeling Statutes do not apply to the Exchange Agreement. The Court has
26 made no express finding whether the Wheeling Statutes apply. Therefore, Metropolitan’s reformation and
27 declaratory relief claims are moot.

28 However, even if the Court found the Wheeling Statutes apply to the Exchange Agreement,

1 Metropolitan cannot prevail on its reformation claims. In particular, stating Metropolitan’s rights and
2 duties under the Wheeling Statutes is not merely supplying words to the Exchange Agreement. Rather, it
3 is making a contract for the parties and the effects of making such a contract would not be limited to the
4 Exchange Agreement. (See, e.g., San Diego Post-Trial Brief, 19-20 [discussing QSA contracts].)

5 Moreover, “inasmuch as the relief sought in reforming a written instrument is to make it conform
6 to the real agreement or intention of the parties, a definite intention or agreement on which the minds of
7 the parties had met must have pre-existed the instrument in question.” (*Bailard v. Marden* (1951) 36
8 Cal.2d 703, 708 (cleaned up).) Here, the evidentiary record does not support a finding there was a
9 meeting of the minds or that both parties intended for the Wheeling Statutes to apply to the Exchange
10 Agreement. (See RT 135:12-136:4, 263-264, 266-267, 543-545, 562:12-17, 728-729, 736-739, 1369:1-9,
11 1372:10-15, 1525:27-1526:8, 1533-1534; see also RT 1309:26-1310:22, 1378-1380.) Courts cannot
12 “reform an instrument according to the terms in which one of the parties understood it, unless it appears
13 that the other party also had the same understanding.” (*Bailard*, 36 Cal.2d at 708; see *Lemoge Elec.*, 46
14 Cal.2d at 640; *Getty v. Getty* (1986) 187 Cal.App.3d 1159, 1178-1180.) The evidentiary record suggests
15 the parties acknowledged there was a dispute regarding the applicability of the Wheeling Statutes,
16 therefore, they negotiated a five-year litigation bar to “put off” the dispute. (RT 136:21-137:13; see RT
17 137-141, 485-486, 709:14-16.) As the parties did not have a single or mutual intention regarding the
18 applicability of the Wheeling Statutes to the Exchange Agreement, reformation is improper.

19 **IV. Writ of Mandate, Declaratory Relief, and Determination of Invalidity.**

20 San Diego’s first three causes of action in the 2014, 2016, and 2018 actions seek a writ of
21 mandate, declaratory relief, and a determination of invalidity regarding Metropolitan’s wheeling and
22 transportation rates charged under the Exchange Agreement for calendar years 2015 to 2020. (2014 FAC
23 ¶¶ 61-91; 2016 SAC ¶¶ 53-77; 2018 SAC ¶¶ 60-85.) San Diego alleges two distinct theories to support its
24 claims. First, San Diego asserts Metropolitan unlawfully included the WSR in its wheeling and
25 transportation rates charged under the Exchange Agreement. (2014 FAC ¶¶ 35-37; 2016 SAC ¶¶ 36-37;
26 2018 SAC ¶¶ 40-42.) Second, San Diego alleges Metropolitan’s wheeling and transportation rates
27 charged under the Exchange Agreement unlawfully disregard Metropolitan’s statutory obligation to
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1 provide "reasonable credit for any offsetting benefits for the use of [Metropolitan's] conveyance system."
2 (Water Code § 1811(c); see 2014 FAC ¶¶ 38-40; 2016 SAC ¶¶ 38-40; 2018 SAC ¶¶ 43-46.) Furthermore,
3 San Diego's fifth cause of action in the 2016 action seeks a declaration that Metropolitan cannot force San
4 Diego, directly or indirectly, to pay any portion of the contract damages award, or any award of fees and
5 costs that the Court determines Metropolitan must pay to San Diego. (See 2016 SAC ¶¶ 6, 46-49, 84-88.)

6 On December 27, 2022, the parties resolved San Diego's first three cause of action as to the WSR
7 in San Diego's favor. (Dec. 27, 2022 Order, 4.) As the Court finds that Metropolitan did not breach the
8 Exchange Agreement by failing to determine offsetting benefits, San Diego cannot prevail on its first,
9 second, and third causes of action as to offsetting benefits in each of the three actions, which also renders
10 San Diego's fifth cause of action in the 2016 action moot.

11 IT IS SO ORDERED.

12 Dated: April 25, 2023



13 Anne-Christine Massullo
14 Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, Felicia Green, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On April 25, 2023, I electronically served STATEMENT OF DECISION via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **APR 25 2023**

Mark Culkins, Interim Chief Executive Officer

By: 

Felicia Green, Deputy Clerk