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[EXEMPT FROM FILING FEE
GOVT CODE SEC. 6103]

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12 EASTERN MUNICIPAL WATER DISTRICT,
13 WESTERN MUNICIPAL WATER DISTRICT

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SAN FRANCISCO**

16 SAN DIEGO COUNTY WATER
17 AUTHORITY,

18 Petitioner Plaintiff,

19 vs.

20 METROPOLITAN WATER DISTRICT OF
21 SOUTHERN CALIFORNIA; ALL PERSONS
22 INTERESTED IN THE VALIDITY OF THE
23 RATES ADOPTED BY THE
24 METROPOLITAN WATER DISTRICT OF
25 SOUTHERN CALIFORNIA ON APRIL 10,
26 2012 TO BE EFFECTIVE JANUARY 1, 2013
27 AND JANUARY 1, 2014; and DOES 1-10,

28 Respondents and Defendants.

) **CASE NO. CPF-12-512466**
) **CASE NO. CPF-10-510830**

) [Assigned to Hon. Judge Curtis E.A. Karnow]

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF MOTION FOR**
) **NEW TRIAL OF LAS VIRGENES MUNICIPAL**
) **WATER DISTRICT, WEST BASIN MUNICIPAL**
) **WATER DISTRICT, FOOTHILL MUNICIPAL**
) **WATER DISTRICT, EASTERN MUNICIPAL**
) **WATER DISTRICT, AND WESTERN**
) **MUNICIPAL WATER DISTRICT**

) **DATE: DECEMBER 17, 2015**
) **TIME: 2:00 P.M.**
) **DEPT.: 304**

) [Notice of Motion and Motion for New Trial, Notice
) of Lodging, Request for Judicial Notice, Memorandum
) of Points and Authorities in Support of Request for
) Judicial Notice Submitted Herewith]

) Actions Filed: June 11, 2010; June 8, 2012
) Trial Date: Completed

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion for new trial as to the Phase I judgment is filed on behalf of five of the member
4 agencies who answered the validation-related causes of action only. These agencies are West Basin
5 Municipal Water District, Eastern Municipal Water District, Western Municipal Water District, Las
6 Virgenes Municipal Water District and Foothill Municipal Water District. Moving parties are member
7 agencies who vote on and pay the rates of Metropolitan Water District of Southern California
8 (“MWD”). The Phase I decision materially affects substantial rights of the moving parties.
9

10 After a bench trial, the Court has broad powers to change its statements of decision or modify
11 the judgment based on the existing record, as well as to order a new trial on some or all of the issues in
12 the case. (CCP §§ 662, 657.) The judgment in this case fits squarely within the grounds for new trial,
13 as it contains an erroneous application of the law. (CCP § 657, subs. (1), (6), (7).)

14 The court erred in finding Proposition 26 (“Prop. 26”) applies to MWD’s rates at issue in the
15 2012 case, and that the rate-setting violated Prop. 26. Prop. 26 does not apply to MWD’s rates.
16 However, even if, *arguendo*, Prop. 26 were to apply, the rates were approved by a two-thirds vote of
17 MWD’s Board, which is the relevant electorate given MWD’s role as a wholesale water agency and
18 the State law requirement that the representatives on MWD’s Board vote to set MWD’s rates. (MWD
19 Act § 133; see also MWD Act §§ 50-54, 57). The Board is made up of the representatives of the 26
20 member agencies, appointed by those member agencies. The only reasonable/logical electorate in the
21 MWD context is the MWD Board. Prop. 26 could never have been intended by the voters to apply to
22 this intra-agency voluntary relationship. The Court should consider the member agencies’ perspective,
23 as opposed to only San Diego County Water Authority’s (“SDCWA’s”) perspective, because SDCWA
24 is only one of 26 member agencies.
25

26 The member agencies are filing this Motion because the Phase I Decision does not contain any
27 analysis regarding these issues. A motion for new trial is proper where “... the findings [we]re so
28 inconsistent, ambiguous, and uncertain that they [we]re incapable of being reconciled and it is

1 impossible to tell how a material issue [wa]s determined" (*Schmetzer v. Gregory* (1968) 266
2 Cal.App.2d 420, 423.)

3 **II. STATEMENT OF FACTS**

4 **A. THE MOVING MEMBER AGENCIES**

5 **1. Eastern Municipal Water District**

6 Eastern Municipal Water District ("EMWD") is a Metropolitan member agency that supplies
7 water on a wholesale and retail basis. The District serves water to a population of 758,000 people in a
8 555-square mile region in Riverside County. The District is a retail supplier to customers located in
9 the cities of Moreno Valley, Menifee, Murrieta, and Temecula, and to unincorporated areas of
10 Riverside County. The District is also a wholesale supplier to a number of water companies and water
11 districts, maintains a recycled water system that receives between 45 and 50 millions of gallons
12 (MGD) of treated wastewater from four (4) regional treatment plants.

13 **2. Western Municipal Water District**

14 Western Municipal Water District ("WMWD") supplies water on a wholesale and retail basis
15 to a population of 888,000 in a 527 square-mile region of western Riverside County. WMWD
16 wholesales supplemental water to the cities of Corona, Norco, and Riverside, and several water
17 agencies, and serves customers directly in several cities, unincorporated areas of Riverside County,
18 and the March Air Reserve Base. WMWD operates the Western Water Recycling Facility, which
19 treats up to 3 MGD of wastewater.

20 **3. Las Virgenes Municipal Water District**

21 Las Virgenes Municipal Water District ("LVMWD") supplies potable and recycled water on a
22 retail basis to a population of 66,000 residents in a 116-square mile area in Western Los Angeles
23 County. LVMWD's service area covers several cities and unincorporated areas of western Los
24 Angeles County. LVMWD also operates a recycled water facility, treating an average of 9.5 MGD of
25 wastewater.

1 **4. West Basin Municipal Water District**

2 West Basin Municipal Water District (“WBMWD”) supplies potable and recycled water on a
3 wholesale basis to approximately 900,000 residents in a 167-square mile area of southwest Los
4 Angeles County. The District’s service area includes Carson, El Segundo, Gardena, Hawthorne,
5 Inglewood, Lawndale, Lomita, Malibu, West Hollywood, and certain unincorporated areas of Los
6 Angeles County. The District operates a reclamation and reuse facility and a recycling facility, which
7 produces 46 MGD. (43 U.S.C.A. §390h-11.)

8 **5. Foothill Municipal Water District**

9 Foothill Municipal Water District (“FMWD”) supplies potable and recycled water on a
10 wholesale basis to a population of 86,000 in a 22-square mile area. The District’s service area includes
11 Altadena, La Crescenta-Montrose, and La Cañada Flintridge.

12 **B. THE RULINGS AT ISSUE**

13 Moving parties ask the Court to vacate the judgment and issue a new Phase I Statement of
14 Decision correcting the analysis of Prop. 26 to the extent it found (1) that Prop. 26 applied to the rates
15 at issue in the 2012 case, and (2) that such rates violate Prop. 26.

16 **III. ARGUMENT**

17 **A. THE COURT HAS BROAD DISCRETION TO CHANGE ITS PHASE 1**
18 **STATEMENT OF DECISION, MODIFY ITS JUDGMENT OR GRANT A NEW**
19 **TRIAL**

20 Under CCP Section 657, a “decision may be modified or vacated, in whole or in part, and a
21 new or further trial granted on all or part of the issues....” (CCP § 657.) The court’s power to grant a
22 new trial is very broad, and extends to an error in law. (*Jiminez v. Sears, Roebuck & Co.* (1971) 4
23 Cal.3d 379, 387; *Lane v. Hughes Aircraft Co.*, (2000) 22 Cal. 4th 405, 411; *Diel v. Sec. Title Ins. Co.*
24 (1956) 142 Cal.App.2d 808, 811; CCP § 657.) Following a bench trial, a court need not order a
25 complete new trial. As Section 656 explains, a “new trial is a reexamination of an issue or fact,”
26 which the court may do through changing or adding to the statement of decision, modifying the
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1 judgment, vacating the judgment, granting a new trial on some of the issues, or vacating and setting
2 aside the statement of decision and judgment and reopening the case for further proceedings. (CCP §
3 662; *Lala v. Maiorana* (1959) 166 Cal.App.2d 724, 734.)

4 **B. THE COURT’S PROPOSITION 26 ANALYSIS WAS NOT SUPPORTED BY**
5 **THE PLAIN LANGUAGE OF THE CONSTITUTION**

6 Prop. 26 defines a special tax as “any tax *imposed* for specific purposes . . . which is placed
7 into a general fund.” (Cal. Const., Art. XIII C, § 1, subd. (d) [emphasis added].) It creates exceptions
8 for “legitimate [government] fees” that are not “taxes.”

9 **1. MWD’s Transportation Rates Are Not Taxes Under Prop. 26 Because**
10 **MWD’s Rates Are Not *Imposed*.**

11 MWD’s rates are not “imposed” on MWD’s member agencies, and therefore the rates are not
12 “taxes” under section 1(e) of Article XIII C of the California Constitution. A fee is not imposed
13 absent some element of force or authority. (See *Ponderosa Homes, Inc. v. City of San Ramon* (1994)
14 23 Cal.App.4th 1761, 1770 [construing “imposed” as used in Govt. Code §§66000-66008].) The
15 phrase “to impose” is generally defined to mean “to establish or apply by authority or force, as in `to
16 impose a tax.’” (Webster’s Third New Internat. Dict. (1970) p. 1136.)

17 MWD “is a voluntary cooperative of member public agencies created for the purpose of
18 developing, storing and distributing water.” (DTX-029 at AR2012-003848; AR2010-
19 003848.) An agency cannot join MWD unless its governing body approves membership
20 following that agency’s independent evaluation of the costs and benefits of becoming a member
21 agency, and then only after a majority of the voters within that agency’s service area vote to
22 become a member agency. (See MWD Act §§ 350-356.) The Government Code recognizes that
23 a public agency’s role as a “member district” of a metropolitan water district is that of a *voluntary*
24 purchaser of a particular government service or commodity. (See Government Code § 56055
25 [defining “member districts” as “any district which is included in . . . a metropolitan water district
26 . . . [and is] entitled, under the provisions of the principal act of the second-mentioned district or
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1 entity, to receive or be furnished with any governmental or proprietary service or commodity"].)

2 MWD's member agencies govern MWD through their representatives on MWD's Board of
3 Directors. (See MWD Act §§ 50, 51, 55.) Each member agency has proportional representation
4 on the Board of Directors, and is entitled to at least one seat on the Board, plus an additional seat
5 for every full 3% of the total assessed value of the property within the member agency's service
6 area that is taxable for district purposes. (See *id.* at §§ 51-52.) Currently, the Board is made up of
7 37 directors and, although 23 of the agencies have no more than two directors, three agencies –
8 SDCWA, LADWP, and the Municipal Water District of Orange County ("MWDOC") – each
9 have four.¹ (See e.g., DTX-111 at AR2012-016995-017013; AR2012-016429 at 016440.) Each
10 director is guaranteed at least one vote, which may be weighted more heavily depending on the
11 property valuation in his or her service area. (See MWD Act § 55.)

12
13 Thus, the moving parties and other member agencies each appoint or elect one or more
14 representatives to the MWD Board of Directors. That representative has authority to vote for or
15 against MWD's rates. It is a simple democratic process where majority rule governs. Treating the
16 rate-setting process as an "imposition" circumvents this democratic process. (MWD Act §§ 50-54,
17 133.) Here, the rates at issue passed with 75% approval. (AR2012-016997-017003.)

18 The moving parties are directly affected by the Court's ruling. They voted pursuant to the
19 Metropolitan Water District Act ["MWD Act"] §§ 50-54, 133, Water Code App. § 109, to set MWD's
20 rates. There was no "imposition" as required by Prop. 26; the rates were selected by the MWD Board.

21 **2. The Rates Were Approved By a Two-Thirds Vote of the Member Agencies.**

22 Even assuming, *arguendo*, that MWD's rates qualified as taxes subject to Article XIII C,
23 which they do not, SDCWA did not establish a violation of Article XIII C. Taxes subject to Article
24 XIII C do not violate that Article if two-thirds of the electorate approve them. (Cal. Const., Art. XIII
25

26
27 ¹ Recently, based on an increase in the City of Los Angeles' assessed property valuation, the City of
28 Los Angeles obtained a fifth director position on MWD's Board, but it has not yet filled the position.
Once the City of Los Angeles does so, MWD's Board will have 38 directors.

1 C, § 2, subd. (d).) Here, the rates were considered and approved by more than two-thirds of the
2 relevant electorate, which is the member agencies through their representatives on MWD’s Board.

3 In regard to special taxes by local governments, Article XIII C provides: “No local government
4 may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate
5 and approved by a two-thirds vote.” (Cal. Const., Art. XIII C, § 2, subd. (d).)

6 Under MWD’s enabling act, the Legislature requires MWD to submit its rates to a vote of the
7 representatives of its member agencies that comprise the Board of Directors. (MWD Act § 57.)
8 MWD is required by this long-standing State law to adopt rates that pass by a majority vote. (*Ibid.*)
9 SDCWA conceded the Board was made up of representatives appointed by each of the 26 member
10 agencies, and that the Board has the authority to set rates. (Petition/Complaint ¶¶ 22-23; see also
11 MWD Act §§ 51-52, 133.)

12 On April 10, 2012, after public comment and votes on three other options (including a 3%
13 increase option proposed by SDCWA), the proposed rates were submitted to the Board and the
14 members voted. This is clear from the Minutes of the Regular Meeting of MWD Board of Directors
15 (Apr. 10, 2012) at item 49026. (DTX-111 at AR2012-016997-017001; AR2012-016997-017003; see
16 also Petition/Complaint ¶¶ 5, 48.) The rates were approved by more than a two-thirds vote. (*Ibid.*)

17 The court ruled that the representatives of the member agencies that comprise the MWD Board
18 are not the “electorate.” “Electorate” is not defined in Article XIII C and it has not been interpreted by
19 an appellate court. However, the dictionary definition of the word, coupled with the MWD Act, make
20 clear the representatives on the Board are the only applicable electorate.

21 Webster’s Dictionary defines “electorate” as a “body of people entitled to vote.” (Webster’s
22 New Collegiate Dict. 371 (10th ed. 1996).) The American Heritage Dictionary similarly defines the
23 word as a “body of qualified voters.” (American Heritage Dict. 881 (4th ed. 2000).) Pursuant to the
24 mandate of existing State law, the only body of people entitled to vote, or qualified to vote, on
25 MWD’s rates are the member agencies’ representatives on the Board. (MWD Act § 57.) This makes
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1 sense because MWD is a wholesaler and its member agencies are the only ones who pay MWD's
2 rates. (MWD Act §§ 130, 133.)

3 **3. The Legislative History of Props. 218 and 26 Supports the Conclusion the**
4 **Electorate Consists of Those Who Directly Pay the Charge.**

5 The legislative history of Prop. 218 and Prop. 26 support the conclusion that the electorate
6 consists of those who directly pay the charge. Prop. 218's "Findings and Declarations" states that the
7 "measure protects taxpayers by limiting the methods by which local governments exact revenue from
8 taxpayers without their consent." (RJN, Ex. A, Ballot Pamp., General Elec. (November 5, 1996), at
9 108.) Similarly, Section 5, "Liberal Construction" describes the purpose of Prop. 218 as "limiting
10 local government revenue and enhancing taxpayer consent." (RJN, Ex. A, at 109.) The description of
11 Prop. 26's purposes uses similar terms. The findings in Section 1 of the measure complain about "new
12 taxes to be paid by drivers, shoppers, and anyone who earns an income." (RJN, Ex. B, at 114; see also
13 Cal. Const., Art. XIII D, § 4, subds. (e), (g) [limiting voting on assessments to the record owners of
14 each parcel to be assessed, with weighted voting based on the proportion of total financial obligation,
15 and prohibiting voting by "electors residing within the district who do not own property"].)

16 Furthermore, interpreting the electorate as anything other than MWD's Board would
17 effectively mean that Article XIII C repealed MWD Act § 57 by implication. Under the rules of
18 statutory construction, a subsequent law will not be found to have impliedly repealed a pre-existing,
19 more specific law, absent legislative intent to do so. (See, e.g., *People v. Super. Ct. (Cooper)* (2003)
20 114 Cal.App.4th 713, 720 ["In recognition of the courts' constitutional role to construe, not write,
21 statutes, all presumptions are against a repeal by implication." (internal quotation marks omitted)];
22 *MWD v. Dorff* (1979) 98 Cal.App.3d 109, 114 ["The implied repeal of a statute by a later
23 constitutional provision is not favored; in fact the presumption is against [implied] repeal, especially
24 where the prior statute has been generally understood and acted upon."].)

1 Thus, nothing in Prop. 26's language or legislative history suggests it was intended to require
2 the end result of this Court's logic - a vote of the entire 19 million southern California electorate each
3 time water rates are set.

4 **4. If the Court's Ruling Stands, This Would Result in Duplicative Voting.**

5 The fact that the relevant electorate cannot logically be all voters among the 19 million
6 residents in MWD's service area, and instead can only logically be MWD's customers (its member
7 agencies), is further supported by a comparison of the requirements of Props. 218 and 26. SDCWA's
8 argument would create an unreasonable, duplicative process where individual consumers would
9 weigh in up to three times on whether they support or oppose rates. Prop. 218, adopted by the voters
10 in 1996, established procedures for voter approval of local taxes in general (Cal. Const., Art. XIII C),
11 as well as assessments and fees imposed on property owners or charged for a property-related
12 government service (Cal. Const., Art. XIII D). Fees for serving water to a property (along with
13 fees for sewer and refuse collection service for property) were specifically exempted from voter
14 approval requirements that apply to other property-related fees. (Cal. Const., Art. XIII D, § 6, subd.
15 (c); *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 426-427; *Griffith v. Pajaro*
16 *Valley Water Mgmt. Agency* (2013) 220 Cal.App.4th 586, 594-596.) Instead, the rates charged by a
17 public agency for water service to a property are subject to a procedure by which the agency provides
18 notice and an opportunity to be heard to each property owner receiving water service. (Cal. Const.,
19 Art. XIII D, § 6, subd. (a); *Richmond*, 32 Cal.4th at 427; *Griffith*, 220 Cal.App.4th at 596.) The rate
20 for delivering water to properties may be adopted unless a majority of property owners submit a
21 protest. (Cal. Const., Art. XIII D, § 6, subd. (a)(2).)

22 Prop. 26 was passed in November 2010 to address the perceived problem of government
23 agencies skirting the voting requirements of Prop. 218 by "disguis[ing] new taxes as 'fees' in
24 order to extract even more revenue from California taxpayers without having to abide by these
25 [Proposition 218] constitutional voting requirements." (Prop. 26, § 1, subd. (e); RJN, Ex. B.)
26 However, nothing in Prop. 26 amended the existing constitutional provisions that exempt from
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28

1 voter approval water rates which were never subject to Prop. 218. Instead, Prop. 26 re-affirmed
2 that "property-related fees," which includes retail water rates, are not taxes that are subject to
3 voter approval. (Cal. Const., Art. XIII C, § 1, subd. (e)(7).) They are—instead—fees, subject to
4 the notice and protest process. (Cal. Const., Art. XIII D, § 6, subd. (a).) Because Prop. 26
5 retained the existing procedures governing the setting of water service rates at the retail level, it
6 would not make sense to interpret the proposition as imposing new and different procedures for
7 setting water rates at the wholesale level.

8
9 MWD provides water and water services to its member agencies, not to property owners,
10 so its rates are not property-related fees that are subject to the notice and protest requirements of
11 Article XIII D of the California Constitution. There is no dispute about that. MWD is not a
12 retail agency and does not sell water to end-users: the 19 million individual homeowners,
13 business owners, and other consumers who receive water from a tap or those within
14 Metropolitan's service area. (*MWD v. Imperial Irrigation Dist.* ["IID"] (2000) 80 Cal.App.4th
15 1403, 1416, 1426-27; AR2012-014096 at 014166.) Instead, MWD is a wholesale agency that
16 sells water and provides water transportation services if requested, to its 26 member agencies,
17 each of which is either a water wholesaler itself or a water retailer. (AR2012-014096 at 014165;
18 *id.* at 014215-16.) There is no dispute about that either. The governing bodies of these member
19 agencies then choose whether or not, and the extent to which, they will pass on MWD's rates
20 to their customers, which are either water retailers or individual retail consumers. As to the
21 retail subagencies, their governing bodies then choose whether or not, and the extent to which,
22 they will pass on the member agency's rates to their individual retail customers. (AR2012:
23 014096, 014166.)
24

25 For example, like MWD, SDCWA is a wholesale water agency; and similar to MWD, it has 24
26 member agencies to which it provides water or water services. (*Rincon del Diablo Muni. Water Dist.*
27 *v. San Diego County Water Authority* (2004) 121 Cal.App.4th 813, 816; AR2012-013255 at 013255
28 [see letterhead for 24 subagencies].) Those 24 subagencies, through their governing bodies, are the

1 only entities that determine what rates will be charged to individual homeowners, business owners,
2 and other consumers who receive water from a tap or hose. The water retailers must provide notice
3 and an opportunity to be heard to each property owner receiving water service, pursuant to Article
4 XIII D, and those consumers can reject, by a majority protest, a rate that they are proposed to pay.
5 There is no dispute about this. Yet, SDCWA nonetheless argued the individual homeowners,
6 business owners, and other consumers who receive water from a tap or hose – who are not charged
7 MWD's water rates – have a constitutional right to vote on MWD's rates, even though they have
8 no such right to vote on the rates charged by the actual government agency that delivers water to
9 their property. This would result in an illogical process, and it is an unreasonable interpretation of
10 Prop. 26. Even if MWD's rates were passed through to individual consumers in the same manner by
11 each of MWD's member agencies and, where applicable, their subagencies—which they are not—
12 the practical result of having these consumers vote on MWD's rates would be nonsensical. These
13 same consumers would weigh in on whether they support or oppose the rates twice under Prop. 26
14 (since, if Prop. 26 applies to MWD's rate-setting, it would also apply to the member agency's rate-
15 setting), and then again under Proposition 218, creating a duplicative series of events with potential
16 for conflicting results. Conversely, if the reality is recognized –that the governing bodies of
17 MWD's member agencies and their subagencies each make an independent decision about the rates
18 they will charge to their customers –it would be equally nonsensical for the individual consumers
19 to vote on MWD's rates. This is because the individual consumers never pay MWD's rates.
20 (AR2012-014096 at 014207; AR2012-010196 at 010202; AR2012-016854 at 016863; AR2012-
21 12003 at 012004.)
22

23
24 Individual members of the public pay only the retail provider's rates. The retail rates charged
25 to the public necessarily include many other costs incurred by the member agencies and their
26 subagencies for each entity's own water supplies and systems, none of which relate to MWD's
27 rates nor are subject to voter approval. (Cal. Const., Art. XIII D, § 6, subd. (c); AR2012-014096 at
28 014192.) For example, a member agency or subagency might decide to undertake a considerable

1 capital expenditure, and this cost would be unrelated to MWD's rates; or it might decide to forego or
2 defer a capital project, which too is unrelated to MWD's rates. (AR2012- 016854 at 016865 [Padre
3 Dam Municipal Water District cuts costs by deferring 13 capital improvement projects].)

4 The member agencies also make their own budgeting and rate-setting decisions about whether
5 to absorb particular rate increases, and the subagencies do the same with respect to whether to absorb
6 the member agency's increases. (*Rincon del Diablo Muni. Water Dist. v. San Diego County Water*
7 *Authority* (2004) 121 Cal. App. 4th 813, 817; AR2012-014096 at 014207.) In addition, the retail
8 rates paid by individual consumers served by different member agencies and subagencies would be
9 affected differently by changes in MWD's wholesale rates based on the amount of water and
10 water service each member agency purchases from MWD and the availability of alternative
11 supplies at differing costs, as well as the amount of water each member agency's subagency
12 purchases from the member agency and the availability of alternative supplies to that provider at
13 differing costs. Given these realities, it would be illogical for individual consumers to vote on rates
14 that are not applicable to them. Instead, under Prop. 218 they may protest the rates that are actually
15 applicable to them: those that their retailer proposes they pay to cover the retailer's costs, which
16 includes to a greater or lesser extent for each retailer, amounts attributable to MWD's rates.

17
18 It is illogical to apply Prop. 26 to require voter approval of the wholesale water rates MWD
19 charges its member agencies when Prop. 218 exempts those same member agencies that are retailers
20 and the retail subagencies from obtaining voter approval of their water rates, and instead provides
21 for the protest process. If MWD were a retail water supplier rather than a wholesaler, its charges for
22 water would be a property-related fee, not subject to voter approval pursuant to Prop. 218 and
23 instead would be subject to the protest process. (Cal. Const., Art. XIII D § 6, subd. (c).) Ironically,
24 SDCWA's position that millions of voters in MWD's service area must vote on MWD's water rates
25 would impose more burdensome voter approval requirements on MWD as a wholesale supplier
26 than are imposed on MWD's member agencies and their subagencies that provide retail water
27 service directly to the public. For all of these reasons, it would be incongruous and nonsensical to
28

1 require a vote by retail consumers on wholesale water rates that they do not pay, that may have no
2 effect on the member agencies' or subagencies' additional costs or other budget considerations that
3 determine the retail water rates the consumer actually does pay, and that is not required even at the
4 retail level.

5 Of course, the constitutional provisions applicable to water rates set by public agencies do not
6 leave the public without recourse. As explained, public water agencies cannot charge rates that are
7 protested by a majority of the property owners that pay the proposed rates following a notice and
8 hearing process. That process applies to both the retail member agencies that purchase water from
9 MWD and the retail subagencies of MWD's wholesale member agencies. All of MWD's member
10 agencies comprise and are represented on MWD's Board, and so the customers of these entities can
11 make themselves heard in the MWD Board process through the members of the Board. (MWD Act §
12 51; see also AR2012-014096 at 014203.)

14 Moreover, the customers can make themselves heard in the process directly, since all members
15 of the public may participate. MWD's multi-month budgeting and rate-setting process occurs
16 transparently, in public meetings at which members of the public may speak and submit statements
17 and other materials. (Gov. Code § 54953; see, e.g., AR2010-009389 at 009452; AR2010-009389 at
18 009452, AR2012-015328 at 015328-017097 [letters and emails of protest from Oceanside
19 customers].) Consumers within MWD's service area can and do participate and voice their opinions
20 on MWD's proposed rates within MWD's ratemaking process. (*Ibid.*) And in the event of a successful
21 majority protest on retail water rates under the Prop. 218 process, a member agency (or its subagency)
22 may either seek wholesale rate relief through MWD's (or the member agency's) budgeting and rate-
23 setting process, or it may revise its own costs, including through the use or development of
24 alternative sources of water, to achieve a rate that is not protested by a majority of its ratepayers.
25 Finally, the voters have the constitutional right to use the initiative power to reduce or repeal any local
26 taxes, assessments, fees, and charges. (Cal. Const., Art. XIII C, § 3.) Thus, the public may ultimately
27 exercise the right to vote on MWD's rates by initiative. (See *Bighorn-Desert View Water Agency v.*
28

1 *Verjil* (2006) 39 Cal.4th 205, 217-218.)

2 A conclusion that "electorate" under Prop. 26 means "all voters among the 19 million
3 residents within Metropolitan's service area," or any group other than MWD's own customers,
4 would be illogical and lead to duplicative, unreasonable results. Even if Prop. 26 applied to
5 MWD's rates—which, as explained, it does not – MWD nonetheless satisfied Prop. 26 because its
6 Board adopted the 2013-2014 rates by the requisite two-thirds vote.

7
8 **IV. CONCLUSION**

9 For the foregoing reasons, moving parties respectfully request that the Court vacate its
10 judgment and issue a new Phase I Statement of Decision correcting the analysis of Prop. 26.

11
12 DATED: November 16, 2015

LEMIEUX & O'NEILL

13 By:


14 _____
CHRISTINE CARSON

15 Attorneys for Respondent Real Parties In Interest
16 LVMWD, WBMWD, EMWD, WMWD, FMWD
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA,)
3) ss.
4 COUNTY OF VENTURA)

5 I am employed in the County of Ventura, State of California. I am over the age of 18 and
6 not a party to the within action. My business address is 4165 E. Thousand Oaks Blvd., Suite 350
7 Westlake Village, CA 91362.

8 On **November 16, 2015**, the following document was posted:

9 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
10 **NEW TRIAL OF LAS VIRGENES MUNICIPAL WATER DISTRICT, WEST BASIN**
11 **MUNICIPAL WATER DISTRICT, FOOTHILL MUNICIPAL WATER DISTRICT,**
12 **EASTERN MUNICIPAL WATER DISTRICT, AND WESTERN MUNICIPAL WATER**
13 **DISTRICT**

14 to the website <https://fileandservexpress.com>, a dedicated link to the *San Diego County Water*
15 *Authority v. Metropolitan Water District of Southern California, et al.* matter, and upon which the
16 parties have agreed this posting constitutes service.

17 By electronically serving with LexisNexis Courtlink addressed to all parties appearing on
18 the LexisNexis Courtlink electronic service list, the file transmission was reported as complete and
19 a copy of the LexisNexis Courtlink Filing Receipt will be maintained with a copy of the document
20 in our office.

21 I am readily familiar with the business practice for collection and processing of pleadings
22 and discovery for electronic service with LexisNexis, and that the pleadings and discovery shall be
23 electronically served this same day in the ordinary course of business.

24 I declare under penalty of perjury under the laws of the State of California that the above is
25 true and correct.

26 Executed November 16, 2015, in Westlake Village, California.

27 
28 Kathi Miers