

1 MANATT, PHELPS & PHILLIPS, LLP  
Phillip R. Kaplan (SBN 76949)  
2 Barry W. Lee (SBN 88685)  
One Embarcadero Center, 30th Floor  
3 San Francisco, California 94111  
Telephone: (415) 291-7450  
4 Facsimile: (415) 291-7474  
Email: pkaplan@manatt.com  
5 Email: bwlee@manatt.com

*Exempt from filing fee pursuant to  
Government Code § 6103*

6 MORGAN, LEWIS & BOCKIUS LLP  
Colin C. West (SBN 184095)  
7 One Market, Spear Street Tower  
San Francisco, California 94105-1596  
8 Telephone: (415) 422-1000  
Facsimile: (415) 422-1101  
9 Email: colin.west@morganlewis.com

10 THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
Marcia Scully (SBN 80648)  
11 Heather C. Beatty (SBN 161907)  
Patricia J. Quilizapa (SBN 233745)  
12 700 North Alameda Street  
Los Angeles, CA 90012-2944  
13 Telephone: (213) 217-6834  
Facsimile: (213) 217-6890  
14 Email: pquilizapa@mwdh2o.com

15 *Attorneys for Respondent and Defendant*  
16 THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 FOR THE COUNTY OF SAN FRANCISCO

19 SAN DIEGO COUNTY WATER  
AUTHORITY,  
20  
Petitioner and Plaintiff,

21 v.

22 METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA; ALL PERSONS  
23 INTERESTED IN THE VALIDITY OF THE  
RATES ADOPTED BY THE  
24 METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA ON APRIL 13,  
25 2010 TO BE EFFECTIVE JANUARY 1, 2011;  
and DOES 1-10,

26 Respondents and Defendants.  
27

Lead Case No. CPF-10-510830  
Consolidated With Case No. CPF-12-  
512466

Assigned for all purposes to the  
Hon. Ann-Christine Massullo, Dept. 304

**METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA'S  
OFFER TO COMPROMISE AND  
NOTICE OF ACCEPTANCE UNDER  
CODE OF CIVIL PROCEDURE  
SECTION 998**

1 TO PLAINTIFF AND PETITIONER SAN DIEGO COUNTY WATER AUTHORITY,  
2 AND ITS COUNSEL OF RECORD, KEKER, VAN NEST & PETERS LLP:

3 Pursuant to Code of Civil Procedure Section 998, Defendant and Respondent  
4 Metropolitan Water District of Southern California (Metropolitan) offers to compromise the  
5 following pending actions:

- 6 1. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
7 *California*, San Francisco Superior Court Case No. CPF-10-510830 (the “2010  
8 Case”);
- 9 2. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
10 *California*, San Francisco Superior Court Case No. CPF-12-512466 (the “2012  
11 Case”);
- 12 3. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
13 *California*, San Francisco Superior Court Case No. CPF-14-514004 (the “2014  
14 Case”);
- 15 4. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
16 *California*, San Francisco Superior Court Case No. CPF-16-515282 (the “2016  
17 Case”);
- 18 5. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
19 *California*, San Francisco Superior Court Case No. CGC-17-563350 (the “2017  
20 Case”); and
- 21 6. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
22 *California*, San Francisco Superior Court Case No. CPF-18-516389 (the “2018  
23 Case”).

24 Metropolitan makes this Offer of Compromise on the terms set forth below:

- 25 1. Metropolitan agrees to pay SDCWA \$72,096,671.32 upon execution of this Offer  
26 to Compromise. This represents payment of the Water Stewardship Rate on transportation in the  
27 Exchange Agreement price for calendar years 2011-2017, with interest for calendar years 2011-  
28 2014 applying SDCWA’s calculation, and with no interest for the non-litigated calendar years of

1 2015-2017.

2 2. The Exchange Agreement shall be amended to change the price term at Section 5.2  
3 as follows. The price shall be \$450 per acre-foot commencing with the first monthly payment  
4 following execution of this Offer to Compromise, if this Offer to Compromise is executed prior to  
5 the December 2019 monthly payment. On January 1, 2020, the \$450 per acre-foot price shall be  
6 increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as  
7 published in Engineering News Record. On January 1 of every subsequent year, the price shall be  
8 increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as  
9 published in Engineering News Record. The costs of a Delta conveyance project on the State  
10 Water Project attributable to transportation as determined by a cost of service study will be added  
11 to the price. The price will not be based upon or connected to Metropolitan's rates. No Water  
12 Stewardship Rate, demand management costs, or conveyance costs incurred by Metropolitan for  
13 improvement or repair of the Colorado River Aqueduct, local distribution system, or State Water  
14 Project other than a Delta conveyance project will be added to the price. SDCWA will  
15 permanently waive and forgo any claim of illegality of the Exchange Agreement price term,  
16 including but not limited to any claim for offsetting benefits under Water Code 1810, *et seq.*

17 3. Metropolitan will work with SDCWA staff to schedule delivery of exchange water  
18 on a more flexible basis than current deliveries within a calendar year at no cost to SDCWA. The  
19 Exchange Agreement shall be amended to address the delivery flexibility within the calendar  
20 year.

21 4. The parties shall enter into a stipulated judgment in the 2010-2012 Cases and  
22 stipulated judgments/dismissals with prejudice in all remaining pending litigation within 30 days  
23 of acceptance of this Offer to Compromise. The stipulated judgment in the 2010-2012 Cases shall  
24 include the Court of Appeal's decision (which includes rulings in favor of both Metropolitan and  
25 SDCWA), trial court dispositions of claims that were not appealed (*e.g.*, breach of fiduciary duty  
26 and breach of the implied covenant of good faith and fair dealing), Judge Mary E. Wiss' decision  
27 as to contract damages for 2011-2014 plus interest, Judge Wiss' decision as to offsetting benefits,  
28 and the entry of declaratory relief on the Rate Structure Integrity provision only as to a

1 declaration that the provision is invalid and unenforceable. The parties shall affirm in the  
2 judgments that they are intended to have preclusive effect under Code of Civil Procedure Section  
3 870 and collateral estoppel effect.

4 5. SDCWA shall execute a full and complete general release of Metropolitan, related  
5 persons, and the Metropolitan member agencies participating as parties in the 2010-2018 Cases,  
6 from any and all claims related to Metropolitan's acts, omissions, and practices through the date  
7 of execution of this Offer to Compromise, including claims for prospective or retroactive  
8 payments of any kind. SDCWA shall also execute a Civil Code Section 1542 waiver. SDCWA  
9 shall expressly and permanently waive and forgo any claim to demand management funding by  
10 Metropolitan (via the Local Resources Program, Seawater Desalination Program, or other  
11 Metropolitan demand management program) for the Carlsbad Desalination Project and/or the  
12 Carlsbad Desalination Plant, any related project of any of SDCWA's sub-agencies, and any other  
13 project that SDCWA may claim was affected by Metropolitan's use of the Rate Structure  
14 Integrity provision.

15 6. SDCWA shall represent and agree that as of the date of execution of this Offer to  
16 Compromise, it is not aware of any unlawful act, omission, or practice by Metropolitan that it has  
17 not already pled in a lawsuit petition/complaint and it does not contend there is any such act,  
18 omission, or practice. SDCWA shall represent and agree that it does not contend that it is  
19 unlawful for Metropolitan to engage in and pay for demand management programs through its  
20 rates and charges.

21 7. Each party bears its own attorneys' fees and costs incurred in connection with all  
22 2010-2018 Cases.

23 8. SDCWA represents and agrees that it will not directly or indirectly seek  
24 Metropolitan's financial planning model, including in future rate setting cycles, or assert that  
25 failure to provide the model to SDCWA is illegal for any reason.

26 ///

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1 If you accept this Offer of Compromise, please date and sign below in the places provided  
2 and file and serve this executed Offer of Compromise and Notice of Acceptance in the above-  
3 entitled actions within 30 days after the offer is made or else the offer will be deemed withdrawn.  
4

5 Dated: November 15, 2019

6 By: Marcia Scully  
Metropolitan Water District of Southern California  
By its General Counsel, Marcia Scully

7  
8 By: Barry W. Lee  
Manatt, Phelps, & Phillips, LLP  
By Barry W. Lee  
Attorneys for Respondent and Defendant  
Metropolitan Water District of Southern California

11  
12 **Acceptance by San Diego County Water Authority**

13 Notice is hereby given that Plaintiff and Petitioner San Diego County Water Authority  
14 accepts the above Offer of Compromise on the terms set forth above.  
15

16 Dated: November \_\_, 2019

17 By: \_\_\_\_\_  
San Diego County Water Authority  
By its \_\_\_\_\_

18  
19 By: \_\_\_\_\_  
Keker, Van Nest & Peters, LLP  
By \_\_\_\_\_  
Attorneys for Plaintiff and Petitioner  
San Diego County Water Authority

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**PROOF OF SERVICE**  
**Lead Case No. CPF-10-510830**  
**Consolidated With Case No. CPF-12-512466**

I, Dawn J. Runchey, declare as follows:

I am employed in San Francisco County, San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On **November 15, 2019**, I served the within:

- **METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA'S OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER CODE OF CIVIL PROCEDURE SECTION 998**

on the interested parties in this action addressed as follows:

John Keker, Esq,  
Daniel Purcell, Esq.  
Dan Jackson, Esq.  
Warren A. Braunig, Esq.  
**KEKER, VAN NEST & PETERS, LLP**  
633 Battery Street  
San Francisco, CA 94111-1809  
Telephone: (415) 391-5400  
Facsimile: (415) 397-7188  
Email: [jkeker@keker.com](mailto:jkeker@keker.com)  
Email: [dpurcell@keker.com](mailto:dpurcell@keker.com)  
Email: [djackson@keker.com](mailto:djackson@keker.com)  
Email: [wbraunig@keker.com](mailto:wbraunig@keker.com)

**Attorneys For Petitioner and Plaintiff**  
**SAN DIEGO COUNTY WATER AUTHORITY**

**(BY HAND-DELIVERY)** By causing such envelope(s) to be delivered by hand to the office of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **November 15, 2019** at San Francisco, California.

  
Dawn J. Runchey

325429501.1

1 MANATT, PHELPS & PHILLIPS, LLP  
Phillip R. Kaplan (SBN 76949)  
2 Barry W. Lee (SBN 88685)  
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15 *Attorneys for Respondent and Defendant*

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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 FOR THE COUNTY OF SAN FRANCISCO

19 SAN DIEGO COUNTY WATER  
AUTHORITY,

20 Petitioner and Plaintiff,

21 v.

22 THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA, ALL  
23 PERSONS INTERESTED IN THE VALIDITY  
OF THE RATES ADOPTED BY THE  
24 METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA ON APRIL 8,  
25 2014 TO BE EFFECTIVE JANUARY 1, 2016;  
and DOES 1-10,

26 Respondents and Defendants.  
27

Case No. CPF-14-514004

Assigned for all purposes to the  
Hon. Ann-Christine Massullo, Dept. 304

**METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA'S  
OFFER TO COMPROMISE AND  
NOTICE OF ACCEPTANCE UNDER  
CODE OF CIVIL PROCEDURE  
SECTION 998**

1 TO PLAINTIFF AND PETITIONER SAN DIEGO COUNTY WATER AUTHORITY,  
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27 Exchange Agreement price for calendar years 2011-2017, with interest for calendar years 2011-  
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1 2015-2017.

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3 as follows. The price shall be \$450 per acre-foot commencing with the first monthly payment  
4 following execution of this Offer to Compromise, if this Offer to Compromise is executed prior to  
5 the December 2019 monthly payment. On January 1, 2020, the \$450 per acre-foot price shall be  
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10 Water Project attributable to transportation as determined by a cost of service study will be added  
11 to the price. The price will not be based upon or connected to Metropolitan's rates. No Water  
12 Stewardship Rate, demand management costs, or conveyance costs incurred by Metropolitan for  
13 improvement or repair of the Colorado River Aqueduct, local distribution system, or State Water  
14 Project other than a Delta conveyance project will be added to the price. SDCWA will  
15 permanently waive and forgo any claim of illegality of the Exchange Agreement price term,  
16 including but not limited to any claim for offsetting benefits under Water Code 1810, *et seq.*

17 3. Metropolitan will work with SDCWA staff to schedule delivery of exchange water  
18 on a more flexible basis than current deliveries within a calendar year at no cost to SDCWA. The  
19 Exchange Agreement shall be amended to address the delivery flexibility within the calendar  
20 year.

21 4. The parties shall enter into a stipulated judgment in the 2010-2012 Cases and  
22 stipulated judgments/dismissals with prejudice in all remaining pending litigation within 30 days  
23 of acceptance of this Offer to Compromise. The stipulated judgment in the 2010-2012 Cases shall  
24 include the Court of Appeal's decision (which includes rulings in favor of both Metropolitan and  
25 SDCWA), trial court dispositions of claims that were not appealed (*e.g.*, breach of fiduciary duty  
26 and breach of the implied covenant of good faith and fair dealing), Judge Mary E. Wiss' decision  
27 as to contract damages for 2011-2014 plus interest, Judge Wiss' decision as to offsetting benefits,  
28 and the entry of declaratory relief on the Rate Structure Integrity provision only as to a

1 declaration that the provision is invalid and unenforceable. The parties shall affirm in the  
2 judgments that they are intended to have preclusive effect under Code of Civil Procedure Section  
3 870 and collateral estoppel effect.

4 5. SDCWA shall execute a full and complete general release of Metropolitan, related  
5 persons, and the Metropolitan member agencies participating as parties in the 2010-2018 Cases,  
6 from any and all claims related to Metropolitan's acts, omissions, and practices through the date  
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9 shall expressly and permanently waive and forgo any claim to demand management funding by  
10 Metropolitan (via the Local Resources Program, Seawater Desalination Program, or other  
11 Metropolitan demand management program) for the Carlsbad Desalination Project and/or the  
12 Carlsbad Desalination Plant, any related project of any of SDCWA's sub-agencies, and any other  
13 project that SDCWA may claim was affected by Metropolitan's use of the Rate Structure  
14 Integrity provision.

15 6. SDCWA shall represent and agree that as of the date of execution of this Offer to  
16 Compromise, it is not aware of any unlawful act, omission, or practice by Metropolitan that it has  
17 not already pled in a lawsuit petition/complaint and it does not contend there is any such act,  
18 omission, or practice. SDCWA shall represent and agree that it does not contend that it is  
19 unlawful for Metropolitan to engage in and pay for demand management programs through its  
20 rates and charges.

21 7. Each party bears its own attorneys' fees and costs incurred in connection with all  
22 2010-2018 Cases.

23 8. SDCWA represents and agrees that it will not directly or indirectly seek  
24 Metropolitan's financial planning model, including in future rate setting cycles, or assert that  
25 failure to provide the model to SDCWA is illegal for any reason.

26 ///

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1 If you accept this Offer of Compromise, please date and sign below in the places provided  
2 and file and serve this executed Offer of Compromise and Notice of Acceptance in the above-  
3 entitled actions within 30 days after the offer is made or else the offer will be deemed withdrawn.  
4

5 Dated: November 15, 2019

6 By: Marcia Scully  
Metropolitan Water District of Southern California  
By its General Counsel, Marcia Scully

7  
8 By: Barry Lee  
Manatt, Phelps, & Phillips, LLP  
By Barry W. Lee  
Attorneys for Respondent and Defendant  
Metropolitan Water District of Southern California

11  
12 **Acceptance by San Diego County Water Authority**

13 Notice is hereby given that Plaintiff and Petitioner San Diego County Water Authority  
14 accepts the above Offer of Compromise on the terms set forth above.  
15

16 Dated: November , 2019

17 By: \_\_\_\_\_  
San Diego County Water Authority  
By its \_\_\_\_\_,

18  
19 By: \_\_\_\_\_  
Keker, Van Nest & Peters, LLP  
By \_\_\_\_\_  
Attorneys for Plaintiff and Petitioner  
San Diego County Water Authority

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23  
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**PROOF OF SERVICE**  
**Case No. CPF-14-514004**

I, Dawn J. Runchey, declare as follows:

I am employed in San Francisco County, San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On **November 15, 2019**, I served the within:

- **METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA'S OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER CODE OF CIVIL PROCEDURE SECTION 998**

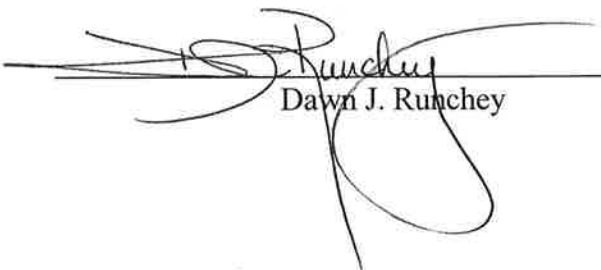
on the interested parties in this action addressed as follows:

John Keker, Esq,  
Daniel Purcell, Esq.  
Dan Jackson, Esq.  
Warren A. Braunig, Esq.  
**KEKER, VAN NEST & PETERS, LLP**  
633 Battery Street  
San Francisco, CA 94111-1809  
Telephone: (415) 391-5400  
Facsimile: (415) 397-7188  
Email: [jkeker@keker.com](mailto:jkeker@keker.com)  
Email: [dpurcell@keker.com](mailto:dpurcell@keker.com)  
Email: [djackson@keker.com](mailto:djackson@keker.com)  
Email: [wbraunig@keker.com](mailto:wbraunig@keker.com)

**Attorneys For Petitioner and Plaintiff**  
**SAN DIEGO COUNTY WATER AUTHORITY**

**(BY HAND-DELIVERY)** By causing such envelope(s) to be delivered by hand to the office of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **November 15, 2019** at San Francisco, California.

  
\_\_\_\_\_  
Dawn J. Runchey

325429523.1

1 MANATT, PHELPS & PHILLIPS, LLP  
Phillip R. Kaplan (SBN 76949)  
2 Barry W. Lee (SBN 88685)  
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5 Email: bwlee@manatt.com

*Exempt from filing fee pursuant to  
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15 *Attorneys for Respondent and Defendant*  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

16  
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 FOR THE COUNTY OF SAN FRANCISCO

19 SAN DIEGO COUNTY WATER  
AUTHORITY,

20 Petitioner and Plaintiff,

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22 METROPOLITAN WATER DISTRICT OF  
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23 INTERESTED IN THE VALIDITY OF THE  
RATES ADOPTED BY THE  
24 METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA ON APRIL 12,  
25 2016 TO BE EFFECTIVE JANUARY 1, 2017  
AND JANUARY 1, 2018; and DOES 1-10,

26 Respondents and Defendants.  
27  
28

Case No. CPF-16-515282

Assigned for all purposes to the  
Hon. Ann-Christine Massullo, Dept. 304

**METROPOLITAN WATER DISTRICT  
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NOTICE OF ACCEPTANCE UNDER  
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15 permanently waive and forgo any claim of illegality of the Exchange Agreement price term,  
16 including but not limited to any claim for offsetting benefits under Water Code 1810, *et seq.*

17 3. Metropolitan will work with SDCWA staff to schedule delivery of exchange water  
18 on a more flexible basis than current deliveries within a calendar year at no cost to SDCWA. The  
19 Exchange Agreement shall be amended to address the delivery flexibility within the calendar  
20 year.

21 4. The parties shall enter into a stipulated judgment in the 2010-2012 Cases and  
22 stipulated judgments/dismissals with prejudice in all remaining pending litigation within 30 days  
23 of acceptance of this Offer to Compromise. The stipulated judgment in the 2010-2012 Cases shall  
24 include the Court of Appeal's decision (which includes rulings in favor of both Metropolitan and  
25 SDCWA), trial court dispositions of claims that were not appealed (*e.g.*, breach of fiduciary duty  
26 and breach of the implied covenant of good faith and fair dealing), Judge Mary E. Wiss' decision  
27 as to contract damages for 2011-2014 plus interest, Judge Wiss' decision as to offsetting benefits,  
28 and the entry of declaratory relief on the Rate Structure Integrity provision only as to a

1 declaration that the provision is invalid and unenforceable. The parties shall affirm in the  
2 judgments that they are intended to have preclusive effect under Code of Civil Procedure Section  
3 870 and collateral estoppel effect.

4 5. SDCWA shall execute a full and complete general release of Metropolitan, related  
5 persons, and the Metropolitan member agencies participating as parties in the 2010-2018 Cases,  
6 from any and all claims related to Metropolitan's acts, omissions, and practices through the date  
7 of execution of this Offer to Compromise, including claims for prospective or retroactive  
8 payments of any kind. SDCWA shall also execute a Civil Code Section 1542 waiver. SDCWA  
9 shall expressly and permanently waive and forgo any claim to demand management funding by  
10 Metropolitan (via the Local Resources Program, Seawater Desalination Program, or other  
11 Metropolitan demand management program) for the Carlsbad Desalination Project and/or the  
12 Carlsbad Desalination Plant, any related project of any of SDCWA's sub-agencies, and any other  
13 project that SDCWA may claim was affected by Metropolitan's use of the Rate Structure  
14 Integrity provision.

15 6. SDCWA shall represent and agree that as of the date of execution of this Offer to  
16 Compromise, it is not aware of any unlawful act, omission, or practice by Metropolitan that it has  
17 not already pled in a lawsuit petition/complaint and it does not contend there is any such act,  
18 omission, or practice. SDCWA shall represent and agree that it does not contend that it is  
19 unlawful for Metropolitan to engage in and pay for demand management programs through its  
20 rates and charges.

21 7. Each party bears its own attorneys' fees and costs incurred in connection with all  
22 2010-2018 Cases.

23 8. SDCWA represents and agrees that it will not directly or indirectly seek  
24 Metropolitan's financial planning model, including in future rate setting cycles, or assert that  
25 failure to provide the model to SDCWA is illegal for any reason.

26 ///

27 ///

28 ///



1 If you accept this Offer of Compromise, please date and sign below in the places provided  
2 and file and serve this executed Offer of Compromise and Notice of Acceptance in the above-  
3 entitled actions within 30 days after the offer is made or else the offer will be deemed withdrawn.  
4

5 Dated: November 15, 2019

6 By: Marcia Scully  
Metropolitan Water District of Southern California  
By its General Counsel, Marcia Scully

7  
8 By: Barry W. Lee  
Manatt, Phelps, & Phillips, LLP  
By Barry W. Lee  
Attorneys for Respondent and Defendant  
Metropolitan Water District of Southern California

11  
12 **Acceptance by San Diego County Water Authority**

13 Notice is hereby given that Plaintiff and Petitioner San Diego County Water Authority  
14 accepts the above Offer of Compromise on the terms set forth above.  
15

16 Dated: November , 2019

17 By: \_\_\_\_\_  
San Diego County Water Authority  
By its \_\_\_\_\_

18  
19 By: \_\_\_\_\_  
Keker, Van Nest & Peters, LLP  
By \_\_\_\_\_  
Attorneys for Plaintiff and Petitioner  
San Diego County Water Authority

20  
21  
22 325460797.1  
23  
24  
25  
26  
27  
28

1 **PROOF OF SERVICE**  
2 **Case No. CPF-16-515282**

3 I, Dawn J. Runchey, declare as follows:

4 I am employed in San Francisco County, San Francisco, California. I am over the  
5 age of eighteen years and not a party to this action. My business address is MANATT, PHELPS  
6 & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On  
7 **November 15, 2019**, I served the within:

- 8 • **METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA'S**  
9 **OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER**  
10 **CODE OF CIVIL PROCEDURE SECTION 998**

11 on the interested parties in this action addressed as follows:


12 John Keker, Esq,  
13 Daniel Purcell, Esq.  
14 Dan Jackson, Esq.  
15 Warren A. Braunig, Esq.  
16 **KEKER, VAN NEST & PETERS, LLP**  
17 633 Battery Street  
18 San Francisco, CA 94111-1809  
19 Telephone: (415) 391-5400  
20 Facsimile: (415) 397-7188  
21 Email: [jkeker@keker.com](mailto:jkeker@keker.com)  
22 Email: [dpurcell@keker.com](mailto:dpurcell@keker.com)  
23 Email: [djackson@keker.com](mailto:djackson@keker.com)  
24 Email: [wbraunig@keker.com](mailto:wbraunig@keker.com)

25 **Attorneys For Petitioner and Plaintiff**  
26 **SAN DIEGO COUNTY WATER AUTHORITY**

27  **(BY HAND-DELIVERY)** By causing such envelope(s) to be delivered by hand to  
28 the office of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that  
the foregoing is true and correct and that this declaration was executed on **November 15, 2019** at  
San Francisco, California.

325429526.1

  
Dawn J. Runchey

1 MANATT, PHELPS & PHILLIPS, LLP  
Phillip R. Kaplan (SBN 76949)  
2 Barry W. Lee (SBN 88685)  
One Embarcadero Center, 30th Floor  
3 San Francisco, California 94111  
Telephone: (415) 291-7450  
4 Facsimile: (415) 291-7474  
Email: pkaplan@manatt.com  
5 Email: bwlee@manatt.com

*Exempt from filing fee pursuant to  
Government Code § 6103*

6 MORGAN, LEWIS & BOCKIUS LLP  
Colin C. West (SBN 184095)  
7 One Market, Spear Street Tower  
San Francisco, California 94105-1596  
8 Telephone: (415) 422-1000  
Facsimile: (415) 422-1101  
9 Email: colin.west@morganlewis.com

10 THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
Marcia Scully (SBN 80648)  
11 Heather C. Beatty (SBN 161907)  
Patricia J. Quilizapa (SBN 233745)  
12 700 North Alameda Street  
Los Angeles, CA 90012-2944  
13 Telephone: (213) 217-6834  
Facsimile: (213) 217-6890  
14 Email: pquilizapa@mwdh2o.com

15 *Attorneys for Respondent and Defendant*  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

16  
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 FOR THE COUNTY OF SAN FRANCISCO

19 SAN DIEGO COUNTY WATER  
AUTHORITY,

20 Petitioner and Plaintiff,

21 v.

22 METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA; ALL PERSONS  
23 INTERESTED IN THE VALIDITY OF THE  
RATES ADOPTED BY THE  
24 METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA ON APRIL 11,  
25 2017 TO BE EFFECTIVE JANUARY 1, 2018;  
and DOES 1-10,

26 Respondents and Defendants.  
27

Case No. CGC-17-563350

Assigned for all purposes to the  
Hon. Ann-Christine Massullo, Dept. 304

**METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA'S  
OFFER TO COMPROMISE AND  
NOTICE OF ACCEPTANCE UNDER  
CODE OF CIVIL PROCEDURE  
SECTION 998**

1 TO PLAINTIFF AND PETITIONER SAN DIEGO COUNTY WATER AUTHORITY,  
2 AND ITS COUNSEL OF RECORD, KEKER, VAN NEST & PETERS LLP:

3 Pursuant to Code of Civil Procedure Section 998, Defendant and Respondent  
4 Metropolitan Water District of Southern California (Metropolitan) offers to compromise the  
5 following pending actions:

- 6 1. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
7 *California*, San Francisco Superior Court Case No. CPF-10-510830 (the “2010  
8 Case”);
- 9 2. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
10 *California*, San Francisco Superior Court Case No. CPF-12-512466 (the “2012  
11 Case”);
- 12 3. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
13 *California*, San Francisco Superior Court Case No. CPF-14-514004 (the “2014  
14 Case”);
- 15 4. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
16 *California*, San Francisco Superior Court Case No. CPF-16-515282 (the “2016  
17 Case”);
- 18 5. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
19 *California*, San Francisco Superior Court Case No. CGC-17-563350 (the “2017  
20 Case”); and
- 21 6. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
22 *California*, San Francisco Superior Court Case No. CPF-18-516389 (the “2018  
23 Case”).

24 Metropolitan makes this Offer of Compromise on the terms set forth below:

- 25 1. Metropolitan agrees to pay SDCWA \$72,096,671.32 upon execution of this Offer  
26 to Compromise. This represents payment of the Water Stewardship Rate on transportation in the  
27 Exchange Agreement price for calendar years 2011-2017, with interest for calendar years 2011-  
28 2014 applying SDCWA’s calculation, and with no interest for the non-litigated calendar years of

1 2015-2017.

2           2. The Exchange Agreement shall be amended to change the price term at Section 5.2  
3 as follows. The price shall be \$450 per acre-foot commencing with the first monthly payment  
4 following execution of this Offer to Compromise, if this Offer to Compromise is executed prior to  
5 the December 2019 monthly payment. On January 1, 2020, the \$450 per acre-foot price shall be  
6 increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as  
7 published in Engineering News Record. On January 1 of every subsequent year, the price shall be  
8 increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as  
9 published in Engineering News Record. The costs of a Delta conveyance project on the State  
10 Water Project attributable to transportation as determined by a cost of service study will be added  
11 to the price. The price will not be based upon or connected to Metropolitan's rates. No Water  
12 Stewardship Rate, demand management costs, or conveyance costs incurred by Metropolitan for  
13 improvement or repair of the Colorado River Aqueduct, local distribution system, or State Water  
14 Project other than a Delta conveyance project will be added to the price. SDCWA will  
15 permanently waive and forgo any claim of illegality of the Exchange Agreement price term,  
16 including but not limited to any claim for offsetting benefits under Water Code 1810, *et seq.*

17           3. Metropolitan will work with SDCWA staff to schedule delivery of exchange water  
18 on a more flexible basis than current deliveries within a calendar year at no cost to SDCWA. The  
19 Exchange Agreement shall be amended to address the delivery flexibility within the calendar  
20 year.

21           4. The parties shall enter into a stipulated judgment in the 2010-2012 Cases and  
22 stipulated judgments/dismissals with prejudice in all remaining pending litigation within 30 days  
23 of acceptance of this Offer to Compromise. The stipulated judgment in the 2010-2012 Cases shall  
24 include the Court of Appeal's decision (which includes rulings in favor of both Metropolitan and  
25 SDCWA), trial court dispositions of claims that were not appealed (*e.g.*, breach of fiduciary duty  
26 and breach of the implied covenant of good faith and fair dealing), Judge Mary E. Wiss' decision  
27 as to contract damages for 2011-2014 plus interest, Judge Wiss' decision as to offsetting benefits,  
28 and the entry of declaratory relief on the Rate Structure Integrity provision only as to a

1 declaration that the provision is invalid and unenforceable. The parties shall affirm in the  
2 judgments that they are intended to have preclusive effect under Code of Civil Procedure Section  
3 870 and collateral estoppel effect.

4 5. SDCWA shall execute a full and complete general release of Metropolitan, related  
5 persons, and the Metropolitan member agencies participating as parties in the 2010-2018 Cases,  
6 from any and all claims related to Metropolitan's acts, omissions, and practices through the date  
7 of execution of this Offer to Compromise, including claims for prospective or retroactive  
8 payments of any kind. SDCWA shall also execute a Civil Code Section 1542 waiver. SDCWA  
9 shall expressly and permanently waive and forgo any claim to demand management funding by  
10 Metropolitan (via the Local Resources Program, Seawater Desalination Program, or other  
11 Metropolitan demand management program) for the Carlsbad Desalination Project and/or the  
12 Carlsbad Desalination Plant, any related project of any of SDCWA's sub-agencies, and any other  
13 project that SDCWA may claim was affected by Metropolitan's use of the Rate Structure  
14 Integrity provision.

15 6. SDCWA shall represent and agree that as of the date of execution of this Offer to  
16 Compromise, it is not aware of any unlawful act, omission, or practice by Metropolitan that it has  
17 not already pled in a lawsuit petition/complaint and it does not contend there is any such act,  
18 omission, or practice. SDCWA shall represent and agree that it does not contend that it is  
19 unlawful for Metropolitan to engage in and pay for demand management programs through its  
20 rates and charges.

21 7. Each party bears its own attorneys' fees and costs incurred in connection with all  
22 2010-2018 Cases.

23 8. SDCWA represents and agrees that it will not directly or indirectly seek  
24 Metropolitan's financial planning model, including in future rate setting cycles, or assert that  
25 failure to provide the model to SDCWA is illegal for any reason.

26 ///

27 ///

28 ///

1 If you accept this Offer of Compromise, please date and sign below in the places provided  
2 and file and serve this executed Offer of Compromise and Notice of Acceptance in the above-  
3 entitled actions within 30 days after the offer is made or else the offer will be deemed withdrawn.  
4

5 Dated: November 15, 2019

6 By: Marcia Scully  
7 Metropolitan Water District of Southern California  
8 By its General Counsel, Marcia Scully

9 By: Barry W. Lee  
10 Manatt, Phelps, & Phillips, LLP  
11 By Barry W. Lee  
12 Attorneys for Respondent and Defendant  
13 Metropolitan Water District of Southern California

14 **Acceptance by San Diego County Water Authority**

15 Notice is hereby given that Plaintiff and Petitioner San Diego County Water Authority  
16 accepts the above Offer of Compromise on the terms set forth above.  
17

18 Dated: November \_\_, 2019

19 By: \_\_\_\_\_  
20 San Diego County Water Authority  
21 By its \_\_\_\_\_

22 By: \_\_\_\_\_  
23 Kecker, Van Nest & Peters, LLP  
24 By \_\_\_\_\_  
25 Attorneys for Plaintiff and Petitioner  
26 San Diego County Water Authority

27 325460703.1

28

**PROOF OF SERVICE**  
**Case No. CGC-17-563350**

I, Dawn J. Runchey, declare as follows:

I am employed in San Francisco County, San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On **November 15, 2019**, I served the within:

- **METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA'S OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER CODE OF CIVIL PROCEDURE SECTION 998**

on the interested parties in this action addressed as follows:

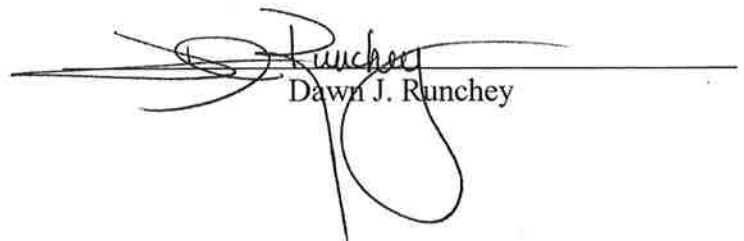
John Keker, Esq,  
Daniel Purcell, Esq.  
Dan Jackson, Esq.  
Warren A. Braunig, Esq.  
**KEKER, VAN NEST & PETERS, LLP**  
633 Battery Street  
San Francisco, CA 94111-1809  
Telephone: (415) 391-5400  
Facsimile: (415) 397-7188  
Email: [jkeker@keker.com](mailto:jkeker@keker.com)  
Email: [dpurcell@keker.com](mailto:dpurcell@keker.com)  
Email: [djackson@keker.com](mailto:djackson@keker.com)  
Email: [wbraunig@keker.com](mailto:wbraunig@keker.com)

**Attorneys For Petitioner and Plaintiff**  
**SAN DIEGO COUNTY WATER AUTHORITY**



**(BY HAND-DELIVERY)** By causing such envelope(s) to be delivered by hand to the office of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **November 15, 2019** at San Francisco, California.

  
Dawn J. Runchey

325429539.1



1 MANATT, PHELPS & PHILLIPS, LLP  
Phillip R. Kaplan (SBN 76949)  
2 Barry W. Lee (SBN 88685)  
One Embarcadero Center, 30th Floor  
3 San Francisco, California 94111  
Telephone: (415) 291-7450  
4 Facsimile: (415) 291-7474  
Email: pkaplan@manatt.com  
5 Email: bwlee@manatt.com

*Exempt from filing fee pursuant to  
Government Code § 6103*

6 MORGAN, LEWIS & BOCKIUS LLP  
Colin C. West (SBN 184095)  
7 One Market, Spear Street Tower  
San Francisco, California 94105-1596  
8 Telephone: (415) 422-1000  
Facsimile: (415) 422-1101  
9 Email: colin.west@morganlewis.com

10 THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
Marcia Scully (SBN 80648)  
11 Heather C. Beatty (SBN 161907)  
Patricia J. Quilizapa (SBN 233745)  
12 700 North Alameda Street  
Los Angeles, CA 90012-2944  
13 Telephone: (213) 217-6834  
Facsimile: (213) 217-6890  
14 Email: pquilizapa@mwdh2o.com

15 *Attorneys for Respondent and Defendant*

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

16  
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 FOR THE COUNTY OF SAN FRANCISCO

19 SAN DIEGO COUNTY WATER  
AUTHORITY,

Case No. CPF-18-516389

20 Petitioner and Plaintiff,

21 v.

22 METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA; ALL PERSONS  
23 INTERESTED IN THE VALIDITY OF THE  
RATES ADOPTED BY THE  
24 METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA ON APRIL 10,  
25 2018 TO BE EFFECTIVE JANUARY 1, 2019  
AND JANUARY 1, 2020; and DOES 1-10,

**METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA'S  
OFFER TO COMPROMISE AND  
NOTICE OF ACCEPTANCE UNDER  
CODE OF CIVIL PROCEDURE  
SECTION 998**

26 Respondents and Defendants.  
27

28

1 TO PLAINTIFF AND PETITIONER SAN DIEGO COUNTY WATER AUTHORITY,  
2 AND ITS COUNSEL OF RECORD, KEKER, VAN NEST & PETERS LLP:

3 Pursuant to Code of Civil Procedure Section 998, Defendant and Respondent  
4 Metropolitan Water District of Southern California (Metropolitan) offers to compromise the  
5 following pending actions:

- 6 1. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
7 *California*, San Francisco Superior Court Case No. CPF-10-510830 (the “2010  
8 Case”);
- 9 2. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
10 *California*, San Francisco Superior Court Case No. CPF-12-512466 (the “2012  
11 Case”);
- 12 3. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
13 *California*, San Francisco Superior Court Case No. CPF-14-514004 (the “2014  
14 Case”);
- 15 4. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
16 *California*, San Francisco Superior Court Case No. CPF-16-515282 (the “2016  
17 Case”);
- 18 5. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
19 *California*, San Francisco Superior Court Case No. CGC-17-563350 (the “2017  
20 Case”); and
- 21 6. *San Diego County Water Authority v. Metropolitan Water District of Southern*  
22 *California*, San Francisco Superior Court Case No. CPF-18-516389 (the “2018  
23 Case”).

24 Metropolitan makes this Offer of Compromise on the terms set forth below:

- 25 1. Metropolitan agrees to pay SDCWA \$72,096,671.32 upon execution of this Offer  
26 to Compromise. This represents payment of the Water Stewardship Rate on transportation in the  
27 Exchange Agreement price for calendar years 2011-2017, with interest for calendar years 2011-  
28 2014 applying SDCWA’s calculation, and with no interest for the non-litigated calendar years of

1 2015-2017.

2 2. The Exchange Agreement shall be amended to change the price term at Section 5.2  
3 as follows. The price shall be \$450 per acre-foot commencing with the first monthly payment  
4 following execution of this Offer to Compromise, if this Offer to Compromise is executed prior to  
5 the December 2019 monthly payment. On January 1, 2020, the \$450 per acre-foot price shall be  
6 increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as  
7 published in Engineering News Record. On January 1 of every subsequent year, the price shall be  
8 increased by an amount equal to the escalation of the Construction Cost Index (20 Cities) as  
9 published in Engineering News Record. The costs of a Delta conveyance project on the State  
10 Water Project attributable to transportation as determined by a cost of service study will be added  
11 to the price. The price will not be based upon or connected to Metropolitan's rates. No Water  
12 Stewardship Rate, demand management costs, or conveyance costs incurred by Metropolitan for  
13 improvement or repair of the Colorado River Aqueduct, local distribution system, or State Water  
14 Project other than a Delta conveyance project will be added to the price. SDCWA will  
15 permanently waive and forgo any claim of illegality of the Exchange Agreement price term,  
16 including but not limited to any claim for offsetting benefits under Water Code 1810, *et seq.*

17 3. Metropolitan will work with SDCWA staff to schedule delivery of exchange water  
18 on a more flexible basis than current deliveries within a calendar year at no cost to SDCWA. The  
19 Exchange Agreement shall be amended to address the delivery flexibility within the calendar  
20 year.

21 4. The parties shall enter into a stipulated judgment in the 2010-2012 Cases and  
22 stipulated judgments/dismissals with prejudice in all remaining pending litigation within 30 days  
23 of acceptance of this Offer to Compromise. The stipulated judgment in the 2010-2012 Cases shall  
24 include the Court of Appeal's decision (which includes rulings in favor of both Metropolitan and  
25 SDCWA), trial court dispositions of claims that were not appealed (*e.g.*, breach of fiduciary duty  
26 and breach of the implied covenant of good faith and fair dealing), Judge Mary E. Wiss' decision  
27 as to contract damages for 2011-2014 plus interest, Judge Wiss' decision as to offsetting benefits,  
28 and the entry of declaratory relief on the Rate Structure Integrity provision only as to a

1 declaration that the provision is invalid and unenforceable. The parties shall affirm in the  
2 judgments that they are intended to have preclusive effect under Code of Civil Procedure Section  
3 870 and collateral estoppel effect.

4           5. SDCWA shall execute a full and complete general release of Metropolitan, related  
5 persons, and the Metropolitan member agencies participating as parties in the 2010-2018 Cases,  
6 from any and all claims related to Metropolitan's acts, omissions, and practices through the date  
7 of execution of this Offer to Compromise, including claims for prospective or retroactive  
8 payments of any kind. SDCWA shall also execute a Civil Code Section 1542 waiver. SDCWA  
9 shall expressly and permanently waive and forgo any claim to demand management funding by  
10 Metropolitan (via the Local Resources Program, Seawater Desalination Program, or other  
11 Metropolitan demand management program) for the Carlsbad Desalination Project and/or the  
12 Carlsbad Desalination Plant, any related project of any of SDCWA's sub-agencies, and any other  
13 project that SDCWA may claim was affected by Metropolitan's use of the Rate Structure  
14 Integrity provision.

15           6. SDCWA shall represent and agree that as of the date of execution of this Offer to  
16 Compromise, it is not aware of any unlawful act, omission, or practice by Metropolitan that it has  
17 not already pled in a lawsuit petition/complaint and it does not contend there is any such act,  
18 omission, or practice. SDCWA shall represent and agree that it does not contend that it is  
19 unlawful for Metropolitan to engage in and pay for demand management programs through its  
20 rates and charges.

21           7. Each party bears its own attorneys' fees and costs incurred in connection with all  
22 2010-2018 Cases.

23           8. SDCWA represents and agrees that it will not directly or indirectly seek  
24 Metropolitan's financial planning model, including in future rate setting cycles, or assert that  
25 failure to provide the model to SDCWA is illegal for any reason.

26 ///  
27 ///  
28 ///

1 If you accept this Offer of Compromise, please date and sign below in the places provided  
2 and file and serve this executed Offer of Compromise and Notice of Acceptance in the above-  
3 entitled actions within 30 days after the offer is made or else the offer will be deemed withdrawn.  
4

5 Dated: November 15, 2019

6 By: Marcia Scully (AW)  
Metropolitan Water District of Southern California  
By its General Counsel, Marcia Scully

7  
8 By: Barry W. Lee  
Manatt, Phelps & Phillips, LLP  
By Barry W. Lee  
Attorneys for Respondent and Defendant  
Metropolitan Water District of Southern California

11  
12 **Acceptance by San Diego County Water Authority**

13 Notice is hereby given that Plaintiff and Petitioner San Diego County Water Authority  
14 accepts the above Offer of Compromise on the terms set forth above.  
15

16 Dated: November , 2019

17 By: \_\_\_\_\_  
San Diego County Water Authority  
By its \_\_\_\_\_,

18  
19 By: \_\_\_\_\_  
Keker, Van Nest & Peters, LLP  
By \_\_\_\_\_  
Attorneys for Plaintiff and Petitioner  
San Diego County Water Authority

22 325460660.1

23  
24  
25  
26  
27  
28

1 **PROOF OF SERVICE**  
2 **Case No. CPF-18-516389**

3 I, Dawn J. Runchey, declare as follows:

4 I am employed in San Francisco County, San Francisco, California. I am over the  
5 age of eighteen years and not a party to this action. My business address is MANATT, PHELPS  
6 & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On  
7 **November 15, 2019**, I served the within:

- 8 • **METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA'S**  
9 **OFFER TO COMPROMISE AND NOTICE OF ACCEPTANCE UNDER**  
10 **CODE OF CIVIL PROCEDURE SECTION 998**

11 on the interested parties in this action addressed as follows:

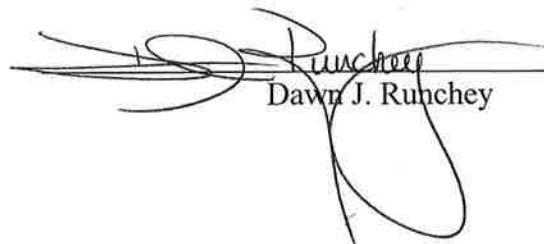
12 John Keker, Esq,  
13 Daniel Purcell, Esq.  
14 Dan Jackson, Esq.  
15 Warren A. Braunig, Esq.  
16 **KEKER, VAN NEST & PETERS, LLP**  
17 633 Battery Street  
18 San Francisco, CA 94111-1809  
19 Telephone: (415) 391-5400  
20 Facsimile: (415) 397-7188  
21 Email: [jkeker@keker.com](mailto:jkeker@keker.com)  
22 Email: [dpurcell@keker.com](mailto:dpurcell@keker.com)  
23 Email: [djackson@keker.com](mailto:djackson@keker.com)  
24 Email: [wbraunig@keker.com](mailto:wbraunig@keker.com)

25 **Attorneys For Petitioner and Plaintiff**  
26 **SAN DIEGO COUNTY WATER AUTHORITY**

27  **(BY HAND-DELIVERY)** By causing such envelope(s) to be delivered by hand to  
28 the office of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that  
the foregoing is true and correct and that this declaration was executed on **November 15, 2019** at  
San Francisco, California.

325429571.1

  
Dawn J. Runchey