



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

Via E-mail and U.S. Mail

April 11, 2016

Dennis Cushman
Assistant General Manager
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123-1233

Re: Letter dated March 22, 2016

Dear Mr. Cushman:

I have been asked to respond to your March 22, 2016 letter to Metropolitan Water District of Southern California (Metropolitan) Board Chairman Randy Record and Members of the Board of Directors of Metropolitan, re "Final Demand for Financial Planning Model."

Initially, it is important to note that Metropolitan provided the financial planning model to the San Diego County Water Authority (SDCWA) in 2013 for use by SDCWA in the pending litigation between SDCWA and Metropolitan. The financial planning model was provided in accordance with a protective order (attached) issued by Judge Karnow and stipulated to by counsel for SDCWA and Metropolitan.

The financial planning model is not data. It is not a description of the basis or rationale for Metropolitan's proposed rates and charges. The financial planning model is simply a proprietary software program consisting of cells with formulas and code. All of the data output of the financial planning model for the current rate-setting cycle has been provided to SDCWA and is available to the public on Metropolitan's website. Metropolitan has previously provided to SDCWA the model's output for past rate-setting cycles as well. As we have discussed in our prior letters, the California Public Records Act excludes from disclosure computer software, including a computer program, developed by a local agency. Cal. Govt. Code § 6254.9; *Sierra Club v. Superior Court*, 57 Cal.4th 157, 170-171 (2013) (data that is not computer software is disclosable); *Fredericks v. Superior Court*, 233 Cal.App.4th 209, 234-235 (2015) (computer software is not disclosable).

The Court's protective order defines the financial planning model as "a spreadsheet containing Metropolitan's *proprietary* software program concerning its financial planning rate model, which contains active (*i.e.*, programmable) cells, including formulas, and programming code." (Order,

pg. 2 (emphasis added).) The Court's restrictions to protect this proprietary program include: the model could only be used for the litigation; only a limited number of designated persons could have access; each designated person was required to certify that he or she was bound by the order before obtaining access, and to agree that violation of the order may be punishable as contempt of court; the model could not be downloaded, copied, or replicated in any way, or transmitted, removed, or transferred; to prevent such activity, the model was contained on two computers provided by Metropolitan which were required to be maintained in locked-down rooms that prevented such activity and to which only the designated persons had access; and the model and any material or analysis from which any formulas or code could be determined was designated "HIGHLY CONFIDENTIAL." (Order, pgs. 1, 3-7, and Ex. A.)

When SDCWA sought the financial planning model in the *SDCWA v. Metropolitan* litigation, it represented to the Court that SDCWA required the formulas and code in order to litigate the case, stating in particular that this was necessary in order for SDCWA to calculate damages under the parties' Exchange Agreement.

As it turned out, after obtaining it, SDCWA then never used the financial planning model whatsoever in the litigation. Certainly if the model had the importance and uses that you claim in your March 22 letter, SDCWA would have used it in the case.

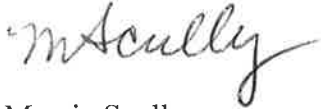
Because the Court's protective order enables SDCWA to retain the financial planning model under these restricted measures during the pendency of the litigation, through the appeal, SDCWA still has the model in its possession. Contrary to SDCWA's assertion that it is legally entitled to use the model for any reason and without restrictions, the Court's order states otherwise. Any use of the model that is not in compliance with the protocol and requirements of the Court order is at the risk of contempt of court.

As to the other statements in your letter, as part of a multi-month public process, Metropolitan staff has provided to the Metropolitan Board and the public extensive relevant material detailing and explaining the proposed budget for 2016/17 and 2017/18 and the proposed rates and charges for 2017 and 2018, including a detailed cost of service report. Metropolitan staff has

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consistently provided more information to its Board and the public about its proposed rates than many agencies, including SDCWA.

Very truly yours,

A handwritten signature in cursive script that reads "M. Scully".

Marcia Scully
General Counsel

Attachment: San Francisco Superior Court's Amended Stipulated Protective Order Regarding Metropolitan Water District of Southern California's Financial Planning Model, filed November 12, 2013.

cc: Metropolitan Board Chairman Randy Record
Metropolitan Board of Directors
SDCWA Board of Directors
Jeff Kightlinger, Metropolitan General Manager
Maureen Stapleton, SDCWA General Manager
Mark Hattam, SDCWA General Counsel