



● **Board of Directors**  
***Finance and Insurance Committee***

6/11/2013 Board Meeting

---

**8-2**

**Subject**

---

Suspend the tax rate limitations in Section 124.5 of the Metropolitan Water District Act to maintain the ad valorem tax rate for fiscal year 2013/14

**Executive Summary**

---

On May 13, 2013, Metropolitan's Board set a public hearing pursuant to Section 124.5 of the Metropolitan Water District Act (MWD Act) for the June board meeting to hear comments and consider whether to suspend the tax rate restriction in Section 124.5. A proposed resolution is included as **Attachment 1**. If adopted by the Board, the resolution formally determines that maintaining Metropolitan's property tax rate at current levels is reasonable and necessary to preserve Metropolitan's overall financial health and thus is essential to the fiscal integrity of Metropolitan, as provided in Section 124.5 of the MWD Act. Adoption of the resolution maintains the tax rate for fiscal year (FY) 2013/14.

**Details**

---

The Metropolitan Water District has assessed ad valorem taxes in its service area since its inception. Metropolitan has constitutional and statutory authority, as well as voter authorization, to collect revenues through ad valorem taxes assessed on real property within its service territory. Generally, Metropolitan may collect ad valorem taxes to cover its general obligation bonds and its State Water Contract (SWC) payments, as described below. Since fiscal year 1990/91, Section 124.5 of the MWD Act has limited property tax collections to the amount necessary to pay the total of annual debt service on Metropolitan's general obligation bonds plus a small portion of its SWC payment obligation, limited to the debt service on state general obligation bonds (Burns Porter bonds) for facilities benefitting Metropolitan as of 1990/91. Under this approach, ad valorem property tax revenue has been decreasing, and will continue to decrease, as the bonds are paid off. In the meantime, Metropolitan's SWC obligations are increasing. For example, the State is expecting substantial costs associated with repair and replacement of the 50-year-old State Water Project (SWP) infrastructure. Further, implementation of the Delta Habitat Conservation and Conveyance Program (DHCCP) and Bay Delta Conservation Plan (BDCCP) would lead to increased SWC payments.

Section 124.5 permits Metropolitan to suspend the restriction discussed above if, following a public hearing, the Board finds that such revenue is essential to the fiscal integrity of the District. At its May 2013 meeting, the Board set a public hearing to occur at its June 11, 2013 meeting. Notice of the public hearing was filed with the offices of the Speaker of the California Assembly and the President pro Tempore of the Senate on May 29, 2013. At the public hearing, the Board will hear information regarding the action under Section 124.5, and thereafter will determine whether to adopt a resolution to maintain the current ad valorem tax rate. Adoption of the resolution will take some pressure off water rates and provide the Board with flexibility as it funds Metropolitan's SWC obligations.

## Historical Revenue Sources

Metropolitan assesses ad valorem taxes pursuant to authority to “levy and collect taxes on all property within the district for the purposes of carrying on the operations and paying the obligations of the district.” (MWD Act, Section 124.) Prior to 1942, Metropolitan was constructing the Colorado River Aqueduct and had no water to sell so all of its revenues came from ad valorem taxes. In FY 1941/42, Metropolitan began to sell water, but the majority of Metropolitan's revenues were still derived from ad valorem taxes. Not until 1974 did 50 percent of Metropolitan's revenues come from water sales, with the remainder derived from ad valorem taxes.

Metropolitan executed its State Water Contract in 1960. The ability to levy property taxes to provide for payments under the SWC is expressly provided for in the contract. (See “State Water Contract Obligations” below.) Indeed, under certain circumstances, upon written notice from the state, Metropolitan *must* levy a property tax sufficient to provide for SWC payments then due or coming due.

In 1984, the Legislature adopted SB 1445, amending the MWD Act to add section 124.5. Section 124.5 sets Metropolitan's annual property tax levy at the amount needed to pay the total of annual debt service on Metropolitan's general obligation bonds and the portion of the SWC payment for debt service on State Burns Porter bonds for facilities benefitting Metropolitan as of FY 1990/91, unless after notice and hearing the Board finds that it should not reduce the tax rate in order to protect the District's fiscal integrity. SB 1445 also authorized alternative sources of fixed revenue, including standby or readiness-to-serve charges and benefit assessments. It was not until FY 1992/93, when standby charges were initially adopted, that Metropolitan had any fixed revenue other than property tax. Due to the formula to decrease tax rates as bonds are paid off, Section 124.5 accelerated the shift to revenue from the sale of water so that today over 80 percent of Metropolitan's revenue is derived from volumetric water sales.

## State Water Contract Obligations

Metropolitan is one of 29 agencies that contract with the State of California for service from the SWP. Metropolitan's SWC was the first contract executed and the prototype for the state water contracts that followed; its terms were validated by the California Supreme Court in *Metropolitan Water Dist. v. Marquardt* (1963) 59 Cal.2d 159.

Under the SWC, Metropolitan is obligated to pay allocable portions of the cost of construction of the system and ongoing operating and maintenance costs. Metropolitan is obligated to pay fixed costs regardless of quantities of water available from the project. Other payments are based on deliveries requested and actual deliveries received, costs of power required for actual deliveries of water, and offsets for credits received. Metropolitan is the largest agency in terms of the number of people it serves, the share of the SWP water that it has contracted to receive, and the percentage of total annual payments made to the Department of Water Resources by agencies with State Water Contracts.

The ability of state water contractors to levy property taxes sufficient to provide for payments under their state water contracts, if they determine to do so, was a foundation of the Burns-Porter Act and a factor relied on by California voters in approving it. *Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900, 905-06; *see also, Alameda County Flood Control v. Department of Water Resources, Antelope Valley-East Kern Water Agency* (2013) 213 Cal. App. 4th 1163. In approving the Burns-Porter Act, California's voters approved “an indebtedness in the amount necessary for building, operating, maintaining, and replacing the [State Water] Project, and they intended that the costs were to be met by payments from local agencies with water contracts. Further, ... the voters necessarily approved the use of local property taxes whenever the boards of directors of the agencies determined such use to be necessary to fund their water contract obligations...” *Goodman*, 140 Cal.App.3d 900, 910. Thus, SWC obligations are voter-approved indebtedness that may be funded by override property taxes (taxes above Article XIII A's one percent general tax limit).

Most of the other state water contractors substantially rely on ad valorem taxes to satisfy their SWC payment obligations. Metropolitan is unique in that it collects only a declining portion of the state general obligation bond debt service (the Burns Porter Bonds)—which is a small portion of its SWC payment obligation—through its ad valorem tax rate.

### **Maintaining the Ad Valorem Tax Rate**

As noted above, Section 124.5 provides Metropolitan's Board with the flexibility to maintain the ad valorem tax rate "...if the board of directors of the district, following a hearing held to consider that issue, finds that a tax in excess of these restrictions is essential to the fiscal integrity of the district..."

SB 1445 did not define "essential" or "fiscal integrity" but the legislative history provides some guidance to their intended meaning. Overall, SB 1445 and Section 124.5 were meant to increase Metropolitan's financial flexibility. Section 124.5 permits the Board to find that it should maintain current tax rates as "essential to the fiscal integrity of the district" if the record demonstrates that such action is reasonably necessary to preserve Metropolitan's overall financial health.

Fundamental to Metropolitan's fiscal health is consideration of current and anticipated SWC payment obligations and a balancing of proper mechanisms for funding the obligations. SWC obligations have steadily increased since Section 124.5 was added to the MWD Act, and they are expected to continue to increase. In FY 2012/13, budgeted SWC costs are \$595 million, and comprise approximately 37 percent of Metropolitan's annual expenditures and are Metropolitan's single largest cost category. SWC obligations are expected to increase to \$625 million by fiscal year 2016/17. If taxes continue to be reduced, in FY 2013/14, the amount of property taxes available to satisfy SWC obligations will be approximately \$40 million and the proportion of SWC obligations that would be covered are approximately 7 percent. The amount of property taxes available to satisfy SWC obligations will continue to decline and by 2016/17, the portion of SWC obligations that would be paid with tax revenues will be less than 4 percent.

Also important to fiscal health is a fair and appropriate balance between fixed costs and fixed revenues (charges, such as property taxes and Metropolitan's standby and readiness-to-serve (RTS) charges and capacity charges, that do not vary directly depending on the amount of water purchased). For fiscal year 2012/13, Metropolitan anticipates that fixed costs will make up 80 percent of total expenditures, whereas fixed revenue sources will provide only 17 percent of revenues. The RTS and capacity charges combined represent about 12 percent of total revenues. The ad valorem tax contributes approximately 5 percent. By fiscal year 2016/17, the RTS and capacity charges will still contribute about 12 percent to Metropolitan's forecasted total revenues, but ad valorem taxes will decline to 3.5 percent. Absent maintenance of the tax rate or other changes, fixed revenues as a percentage of total revenues will decline from 17 percent to 15.5 percent, and this decline will continue.

A diverse portfolio of revenue sources preserves equity across member agencies. Metropolitan ensures a reliable supplemental water supply to a broad service area. Although its member agencies rely on Metropolitan's supplemental supplies to varying degrees, the entire region and its substantial economy benefit from the availability of Metropolitan water. An agency that normally purchases small amounts of Metropolitan water may need to substantially increase its reliance on Metropolitan in the event of a local source interruption or other emergency. A mix of fixed and volumetric revenues balances the burdens so that each member agency bears a fair share of costs.

Ad valorem taxes are an important and unique tool for ensuring that the cost of Metropolitan's services are shared by all residents and businesses within Metropolitan's area, because all benefit from Metropolitan's infrastructure and capacity. Unlike volumetric charges, ad valorem property taxes ensure that those who benefit from the availability of Metropolitan's services bear some costs related to that availability. And unlike charges upon member agencies, charges upon real property within Metropolitan's service area help ensure that all residents and businesses bear a share of the costs for availability of Metropolitan's services.

Holding the ad valorem tax rate at .0035 percent simply would maintain a modest portion of Metropolitan's revenues, about 5 percent, on the tax roll. For example, a house with a \$300,000 assessed valuation in Metropolitan's service area currently pays about \$10 a year in taxes towards Metropolitan's costs. Importantly, maintaining the ad valorem tax revenues helps mitigate future rate hikes that would be needed to make up for the loss of tax revenues. By helping mitigate future rate hikes, this action provides Metropolitan's Board with flexibility as it considers funding for programs such as a potential BDCP solution; ongoing needed repair and replacement work; conservation, recycling and reclamation projects; groundwater clean-up efforts; environmental

mitigation work; and the many other costs associated with ensuring a safe and reliable supply of water for Southern California.

### **Staff Recommendation**

Staff proposes that the Board adopt the attached resolution to suspend the restriction in Section 124.5 of the MWD Act, and maintain the ad valorem tax rate in effect for FY 2012/13 of .0035 percent of assessed valuations. This would maintain tax revenues which are voter-approved indebtedness. Staff recommends that this tax rate remain in effect for FY 2013/14.

### **Policy**

---

MWD Act Section 124.5

Metropolitan Water District Administrative Code Section 4301: Cost of Service and Revenue Requirement

### **California Environmental Quality Act (CEQA)**

---

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not subject to CEQA because it involves other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #2: None required

### **Board Options**

---

#### **Option #1**

Adopt the CEQA determination and the Resolution Finding that Maintaining the Ad Valorem Tax Rate for Fiscal Year 2013/14 is Essential to the Fiscal Integrity of the District.

**Fiscal Impact:** Additional revenue compared to the current forecast, projected to be approximately \$4.4 million in FY 2013/14, if property tax rates are fixed at .0035 percent of assessed valuation

**Business Analysis:** Not applicable

#### **Option #2**

Take no action

**Fiscal Impact:** Ad valorem tax revenues in FY 2013/14 based on Section 124.5

**Business Analysis:** Not applicable

**Staff Recommendation**

---

Option #1

  
\_\_\_\_\_  
Gary Breaux  
Chief Financial Officer

5/31/2013  
Date

  
\_\_\_\_\_  
Jeffrey Rightinger  
General Manager

5/31/2013  
Date

**Attachment 1 – Resolution Finding that Maintaining the Ad Valorem Tax Rate for Fiscal Year 2013/14 is Essential to the Fiscal Integrity of the District**

Ref# cfo12623912

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

RESOLUTION \_\_\_\_\_

---

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA  
FINDING THAT MAINTAINING THE AD VALOREM TAX RATE FOR FISCAL  
YEAR 2013-14 IS ESSENTIAL TO THE FISCAL INTEGRITY OF THE DISTRICT**

---

WHEREAS, The Metropolitan Water District of Southern California (“Metropolitan”), pursuant to Section 124 of the Metropolitan Water District Act (the “Act”), is authorized to levy and collect taxes on all property within the district for the purposes of carrying on the operations and paying the obligations of the district; and

WHEREAS, since its inception Metropolitan has levied and collected property taxes for such purposes; and

WHEREAS, the Board of Directors (“Board”), pursuant to Section 307 of the Act, is authorized to determine the amount of money necessary to be raised by taxation for district purposes each fiscal year, to fix rates of taxation upon the assessed valuation of property taxable by the district and to levy a tax accordingly; and

WHEREAS, before 1942, all revenues to pay for operations, construction of the Colorado River Aqueduct and other facilities and payment of obligations came from *ad valorem* taxes. After deliveries of Metropolitan water began in fiscal year 1941/42, water sales were an additional source of revenues, but not until 1974 did revenues from water sales equal revenues from *ad valorem* taxes; and

WHEREAS, on November 4, 1960, Metropolitan entered into its contract with the California Department of Water Resources (the “State Water Contract”) for water service from the State Water Project. Metropolitan’s was the first contract executed and the prototype for the 28 state water contracts that followed; its terms were validated by the California Supreme Court in *Metropolitan Water Dist. v. Marquardt* (1963) 59 Cal.2d 159; and

WHEREAS, Metropolitan is obligated to pay allocable portions of the cost of construction of the State Water Project system and ongoing operating and maintenance costs, regardless of quantities of water available from the project and regardless of the amounts of water it sells to its member agencies. Approximately 75 percent of Metropolitan’s State Water Project expenditures are fixed, or do not vary with the quantity of water delivered; and

WHEREAS, Metropolitan is authorized to collect property taxes to pay its State Water Contract obligations. Under circumstances provided in the State Water Contract, if other funds are not sufficient, it must levy a tax or assessment sufficient to provide for all payments under the State Water Contract then due and becoming due; and

WHEREAS, Metropolitan currently utilizes tax revenues solely to pay debt service on its general obligation bonds, approved by the voters in 1966 and presently outstanding in the amount of \$196,085,000, and a portion of its State Water Contract obligations; and

WHEREAS, Metropolitan's outstanding general obligation bonds and State Water Contract obligations are indebtedness approved by the California voters before Article XIII A of the California Constitution (Proposition 13) was adopted; and

WHEREAS, the Board and Metropolitan's member agencies periodically have evaluated the appropriate mix of property taxes and water rates and charges to enhance Metropolitan's fiscal stability and ability to ensure the region's long-term water supply while reasonably and fairly allocating the cost of providing service to its member agencies; and

WHEREAS, on May 8, 1984, the Board approved proposed amendments to the Act, set forth in Board Letter 6-2 dated April 30, 1984; and

WHEREAS, such amendments were incorporated into Assembly Bill 1445, which was approved by the Legislature and filed with the California Secretary of State on July 3, 1984, and added to the Act as Section 124.5; and

WHEREAS, in Board Letter 9-9 dated December 20, 1990, General Manager Carl Boronkay transmitted additional information on the water revenues/tax compromise that led to inclusion of Section 124.5 in the Act; and

WHEREAS, commencing with fiscal year 1990/91, Section 124.5 has limited Metropolitan's property tax revenues (and thereby the tax levy rate), to the total of annual debt service on Metropolitan's general obligation bonds and the portion of the State Water Contract payment for debt service on State general obligation bonds for facilities benefitting Metropolitan as of 1990/91; and

WHEREAS, Metropolitan's tax levies have complied and continue to comply with the requirements of Section 124.5; and

WHEREAS, Metropolitan's tax levy rate has declined from .0089% in fiscal year 1999/2000 to .0035% in fiscal year 2012/13; and

WHEREAS, at the time SB 1445 was passed, 33 percent of Metropolitan's revenues were from property taxes, while in fiscal year 2012/13 property taxes account for about only 5 percent of total estimated revenues, with the remainder of Metropolitan's revenues primarily derived from water sales and charges; and

WHEREAS, Metropolitan's State Water Contract costs are projected to increase, because existing facilities of the State Water Project are over 50 years old and in need of repair and replacement, and payments are expected to further increase with the implementation of the Delta Habitat Conservation and Conveyance Program and Bay Delta Conservation Plan; while property tax collections linked to the State Water Contract are decreasing; and

WHEREAS, consideration of current and anticipated State Water Contract payment obligations and a balancing of proper mechanisms for funding the obligations is fundamental to Metropolitan's fiscal health; and

WHEREAS, maintaining the existing ad valorem tax rate for fiscal year 2013/14 will take pressure off Metropolitan's water rates and allow the Board flexibility as it funds Metropolitan's State Water Contract obligations fully and fairly; and

WHEREAS, Section 124.5 affirms the Board's discretion to determine the amount of money necessary to be raised by taxation for district purposes each fiscal year, providing that the restriction contained in such Section do not apply if the Board, following a hearing held to consider that issue, finds that a tax in excess of this restriction is essential to the fiscal integrity of the district, and written notice of the hearing is filed with the offices of the Speaker of the Assembly and the President pro Tempore of the Senate at least 10 days prior to the date of the hearing; and

WHEREAS, on May 13, 2013, the Finance and Insurance Committee of the Board reviewed Board Letter 8-1, executed by the Chief Financial Officer and General Manager on May 3, 2013, and recommended that the Board set a public hearing for the June 2013 Board meeting to consider suspending the tax restriction clause of Section 124.5 to maintain the ad valorem tax at current levels, and instruct the Board Executive Secretary to provide notice of the public hearing, as required by Section 124.5; and

WHEREAS, the Board approved such recommendation on May 14, 2013; and

WHEREAS, notices of the public hearing were filed with the offices of the Speaker of the Assembly and the President pro Tempore of the Senate on May 29, 2013; and

WHEREAS, the Board conducted a public hearing at its regular meeting on June 11, 2013, at which interested parties were given the opportunity to present their views regarding the recommendation to suspend the tax restriction clause of Section 124.5 to maintain the ad valorem tax at current levels; and

WHEREAS, each of the meetings of the Board were conducted in accordance with the Brown Act (commencing at Section 54950 of the Government Code), for which due notice was provided and at which quorums were present and acting throughout;

NOW, THEREFORE, the Board of Directors of The Metropolitan Water District of Southern California, after receiving, considering, and evaluating public comments and evidence and all material factors pertaining thereto, including the financial and operating information

summarized in Board Letter 8-2 executed by the Chief Financial Officer and General Manager on May 31, 2013, hereby finds that a tax rate in excess of the restriction set out in Section 124.5 of the Act is essential to the fiscal integrity of Metropolitan. Therefore, the Board resolves and determines that the tax rate restriction in Section 124.5 of the Act is hereby suspended for fiscal year 2013/14 and the Board in its discretion may levy taxes at the tax rate levied for fiscal year 2012/13 (.0035% of assessed valuation, excluding annexation levies).

I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of a resolution of the Board of Directors of The Metropolitan Water District of Southern California, adopted at its meeting held June 11, 2013.

---

Board Executive Secretary  
The Metropolitan Water District  
of Southern California