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POLICY STATEMENT
OF JEFFREY KIGHTLINGER, GENERAL COUNSEL
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

My name is Jeffrey Kightlinger, and I am the General Counsel for The Metropolitan Water District of Southern California. I will be providing Metropolitan's policy statement this morning.

I should state at the outset that Metropolitan strongly supports efforts by the State Water Resources Control Board to promote water conservation and to facilitate long-term shifts of surplus agricultural water to beneficial urban uses. California's Colorado River Water Use Plan (California Plan), as promulgated by the Colorado River Board, is intended to reduce California's current use of approximately 5.2 million acre-feet of Colorado River water to 4.4 million acre-feet, the amount of California's basic apportionment. Reaching this goal will require significant investment in a variety of conservation, storage and transfer programs as specified in the California Plan. Metropolitan and the other water agencies implementing the California Plan are prepared to make those investments to reduce California's reliance on the Colorado River. Because these programs will take time to implement, the Department of Interior in cooperation with the other Colorado River basin states, promulgated the Interim Surplus Guidelines to facilitate a "soft-landing" for California. The Interim Surplus Guidelines provide California with fifteen years of more liberal surplus water declarations as long as California makes progress on specified bench-marks. These bench-marks are measured by reductions in agricultural use of Colorado River water. Accordingly, this is why the movement of water from agricultural to urban uses is crucial to keeping the Interim Surplus Guideline in place.

Metropolitan along with the Imperial Irrigation District and the Coachella Valley Water District have all cooperated in drafting the Quantification Settlement Agreement (QSA). The QSA allows the Colorado River water agencies to make temporary changes in the agencies respective rights and priorities without prejudicing the long held Colorado River water rights of any agency. The QSA provides the necessary legal and institutional

framework necessary for implementing the project components of the California Plan, including the IID-SDCWA water transfer that is the subject of this proceeding.

Metropolitan is not participating as a party in this proceeding because to do so would be inconsistent with its legal position regarding the scope of the State Board's jurisdiction over Colorado River matters. As you know, there is significant disagreement between Metropolitan, IID and the San Diego County Water Authority regarding the applicability of California law and the appropriate role and authority of the State Board with respect to the waters of the Colorado River. Metropolitan's position has been, and continues to be, that the federal Law of the River controls the distribution and use the waters of the Colorado River, and that the State Board's role is very narrow in this regard. In order to advance the transcending policy objectives embodied in the QSA, however, Metropolitan has agreed through its Protest Dismissal Agreement that a hearing before this Board should take place for the purpose of carrying out the terms of the QSA and securing the intended benefits of the Interim Surplus Guidelines. The Protest Dismissal Agreement is significant in that it preserves Metropolitan's rights and legal positions, while at the same time allowing this proceeding to advance without opposition from Metropolitan. Metropolitan's support of this important policy objective should in no way be construed to prejudice Metropolitan's legal position regarding the scope of the State Board's legal authority in this proceeding.

Additionally, Metropolitan reminds the State Board that no party is seeking approval of a "transfer" with respect to the possible conservation and acquisition by Metropolitan of up to 100,000 acre feet of water from IID. Pursuant to the terms of the Protest Dismissal Agreement, Metropolitan does not object to IID asking the State Board to review and recognize IID's efforts to conserve water for acquisition by Metropolitan and Coachella. Metropolitan does not believe, however, that the State Board has accurately characterized the conservation and acquisition of water by Metropolitan and Coachella, as set forth in the Acquisition Agreements between the parties and as clearly described in the Protest Dismissal Agreement. To be clear, under the Acquisition Agreements, Metropolitan and/or Coachella will acquire conserved water from IID under

the federal Law of the River, in the same manner that Metropolitan acquires water from IID under the 1988 Agreement with IID. Metropolitan's commitment not to oppose the State Board's characterization of this conserved water acquisition should not be construed as a waiver or admission with respect to Metropolitan's legal position, and should not be construed to prejudice Metropolitan's rights in this regard.

One of the key concepts that brought about the Protest Dismissal Agreement was the expectation that all State Board findings of fact, conclusions of law and orders that result from this proceeding will have no precedential value or effect in any future proceeding before this or any other administrative body, or before any court of law. Because of its unique physical, legal and institutional setting of the Colorado River, the issues to be resolved in this proceeding will have little, if any, precedential value with respect to other water conservation and transfer programs in California. As we have explained in previous correspondence with the State Board, the State Board has ample authority to expressly state that, as a procedural matter, its orders, conclusions and findings in this proceeding will not be considered precedential for any purpose.

The expectation that this proceeding will not result in a precedent decision is embodied in the Protest Dismissal Agreement and is integral to Metropolitan's continued support of this proceeding. Accordingly, Metropolitan respectfully renews its request that the Board's final order in this proceeding expressly state that the order is not, and shall not be relied upon as, a precedent decision under Government Code section 11425.60. We respectfully urge the State Board to make a decision on this critical issue as quickly as possible.

One of the drawbacks of not being a party to this proceeding is that Metropolitan is not in a position to put on evidence and testimony regarding the many key issues before the State Board. For example, the State Board will not have the benefit of Metropolitan's extensive information regarding the economic and environmental impacts of land-fallowing and water use practices in the Imperial Valley. However, Metropolitan

is confident that there is sufficient information available to the State Board from numerous sources to make any required findings.

In conclusion, I would like to reiterate Metropolitan's support of the State Board's efforts to conserve water and to facilitate shifts in surplus agricultural water to urban uses. Metropolitan appreciates the State Board's role in California's efforts to secure the benefits of the California Plan, the QSA and the continued operation of the federal government's Interim Surplus Guidelines. Metropolitan asks that you carefully consider the information and testimony put before you in this proceeding and that you take all actions within your authority to insure that the benefits of the Interim Surplus Guidelines will be realized. Thank you for providing Metropolitan the opportunity to present comments here this morning.