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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE PETITION)	
OF METROPOLITAN WATER)	
DISTRICT OF SALT LAKE & SANDY)	
REQUESTING AN INVESTIGATION)	PETITION AND REQUEST FOR
INTO PUBLIC UTILITY)	AGENCY ACTION
CONDEMNATION PRACTICES AND)	
INITIATION OF A FORMAL)	Docket No.
RULEMAKING PROCEEDING.)	
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STATEMENT OF THE CASE

The Metropolitan Water District of Salt Lake & Sandy (MWDSLS or the District) is requesting that the Commission investigate certain practices of Questar Gas Company (Questar) which, if unremediated by a Commission Order and Administrative Rule, may jeopardize MWDSLS's ability to meet its water service obligations to its member cities, Salt Lake City and

Sandy City, to the impairment of the drinking water supplies relied upon by hundreds of thousands of Salt Lake Valley residents.

MWDSLS is a local district. It is a political subdivision of the state. It is governed by a seven member Board of Trustees. Five Trustees are appointed by the Salt Lake City Council, and two Trustees are appointed by the Sandy City Council.

MWDSLS owns and operates two drinking water treatment plants, and holds a minority interest in a third. It owns and operates, or has an interest in, a number of large aqueducts, including the two large aqueducts that are at issue here.

MWDSLS member cities provide water outside their city limits. For example, Salt Lake City Public Utilities Department is the largest retail water provider in the state, serving not only Salt Lake City residents, but also something on the order of 100,000 residents outside of Salt Lake City limits. Salt Lake City Public Utilities Department serves most of the east side of the valley between Salt Lake City limits and Sandy City limits. MWDSLS provides on average approximately a third of the water supply for Salt Lake City Public Utilities Department, and approximately half of the water supply for Sandy City Public Utilities Department. In times of drought, like this year, MWDSLS provides a higher proportion of city water supplies because of its right to water from Deer Creek and Jordanelle Reservoirs. The two aqueducts at issue here are essential to meeting these public water demands. The importance of MWDSLS water to the health, safety, and welfare of residents of the Salt Lake Valley would be very difficult to overstate.

As a political subdivision of the state, MWDSLS is granted, by statute, broad regulatory authority. MWDSLS has promulgated regulations regarding the licensing of non-District uses of

the Salt Lake Aqueduct (SLA) and Point of the Mountain Aqueduct (POMA) corridors. The first section of these regulations describes the intent of the regulations as follows:

The intent of this chapter is to provide guidelines and authorization to staff for the licensing of uses of District Aqueduct Corridors. License Agreements should reasonably accommodate other uses of Aqueduct Corridors so long as it is clear that such uses will not materially interfere with the District's interests in the use, operation, maintenance, repair and replacement of District facilities. The District desires to:

- a) maintain its ability to have necessary, proper, and timely access to the Aqueduct Corridors as well as the pipes and any related structures;
- b) minimize the costs to the public by providing for reasonable constructability for future repair and replacement projects;
- c) minimize costs to the public by avoiding litigation;
- d) minimize the exposure to liability claims;
- e) provide adequate security;
- f) enter into written agreements with Affected Property Owners to outline the obligations of the District and the Affected Property Owners; and
- g) fulfill the District's fiduciary responsibilities to protect District assets for the benefit of the District's member cities and the water users served by those member cities.

In this regard MWDSL is not unlike other political subdivisions of the state, or departments of the state. Entities like cities, counties, UDOT, and UTA have their own ordinances, regulations, practices and procedures for licensing utility crossings of their corridors in a uniform fashion. For example, UTA, also a local district, has a standard rail corridor license agreement that is strikingly similar to MWDSL's in substance. Questar appears to have no problem with anyone's licensing program, except MWDSL's. Questar appears to have no problem complying with federal regulatory requirements for utility crossings involving federal

lands. For example, the SLA was, until October, 2006, a United States Bureau of Reclamation (Reclamation) facility. Title to the SLA and SLA Corridor were transferred to MWDSLS pursuant to an act of Congress. Questar and its predecessor in interest Mountain Fuel executed a number of SLA license agreements with Reclamation, consistent with Reclamation regulations, which are not unlike MWDSLS regulations.

MWDSLS now finds itself in a unique position with Questar because that utility is the only utility that does not recognize MWDSLS's regulatory authority to maintain control over aqueduct corridors for the purpose of protecting critical public infrastructure and public interests. Questar apparently contends that its status as a public utility, responsible only to the authority of the Public Service Commission, makes it immune from District regulations. In fact, Questar asserts it may acquire by condemnation a right to use MWDSLS fee SLA Corridor lands that is superior to—dominant over—MWDSLS's continued use of those lands for SLA purposes.

While MWDSLS does not see its regulatory authority as infringing in any way upon this Commission's regulatory jurisdiction, the position taken by Questar raises serious issues of comity, which MWDSLS believes require Commission intervention in the interest of the health, safety, and welfare of the present and future members of the public served by both enterprises.

The Commission's special expertise in the operations, characteristics and requirements of water and gas providers makes it the most appropriate forum, more so even than a court, for determining a wise and acceptable public process for allowing MWDSLS and Questar to resolve aqueduct corridor usage and protection issues through a forward-looking process that is fair and efficient, and which reasonably protects the interests of the public served by both entities.

The first resort to eminent domain proceedings by a regulated, for-profit public utility against a public entity is not in the public interest. This Commission should establish a regulatory regime that guides a more thoughtful and informed resort to eminent domain by a regulated utility against public water providers.

While MWDSLS is not regulated by the Commission, it is requesting that the Commission exercise its jurisdiction over Questar to protect MWDSLS, and those who rely on MWDSLS water, from what can best be described as unreasonable and irresponsible predation by a utility the Commission regulates.

While Questar has not been willing to detail to MWDSLS's Board of Trustees for its consideration Questar's concerns with the MWDSLS corridor regulations, MWDSLS form of agreement, or an appeal avenue provided for in the MWDSLS regulations, Questar may be willing to be more forthcoming and direct in its discussions of these issues before a body whose authority Questar deems to recognize.

JURISDICTION

1. This Petition is brought under the authority of [Utah Code § 54-4-1](#), granting the Public Service Commission jurisdiction to “supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in the state.” Petitioner is seeking an order of the Public Service Commission requiring Questar Gas Company to comply with Petitioner's Regulations for Non-District Use of Salt Lake Aqueduct and Point of the Mountain Aqueduct Corridors, promulgated by the Petitioner's Board of Trustees under the authority of [Utah Code § 17B-1-301\(2\)\(i\)](#). As more fully explained in Counts II and III,

Petitioner also request that the Commission initiate a formal administrative rulemaking proceeding under [Utah Code § 63G-3-601](#) for the purpose of:

a. requiring by rule that regulated public utilities adhere to the regulatory processes and requirements established by metropolitan water districts;

b. requiring by rule that regulated public utilities seeking to condemn property of metropolitan water districts be required to exhaust available administrative remedies provided by that metropolitan water district; and

c. requiring by rule that a hearing as to the necessity of condemnation be held, before the Public Service Commission, if requested by the condemnee metropolitan water district, before condemnation may proceed.

2. In addition to the general jurisdiction of the Commission, the following sections of the public utility code establish the Commission’s specific jurisdiction and authority to consider and grant the relief requested by the Petitioner:

a. [Utah Code § 54-4-2](#), which grants the Commission authority to conduct an investigation when such investigation “is in the *public interest*” as to “*any act or omission to act, or of anything accomplished or proposed . . . of any public utility*”;

b. [Utah Code § 54-4-7](#), which grants the Commission the authority to investigate the practices of a public utility and determine whether they are “unjust, *unreasonable, unsafe, improper, inadequate or insufficient,*” and to fix the same by order, rule, or regulation;

c. [Utah Code § 54-4-14](#), which grants the Commission the authority to require “by general or special order, rules or regulations or otherwise . . . every public utility to

construct, maintain and operate its line, plant, system, equipment, apparatus, tracks and premises *in such manner as to promote and safeguard the health and safety of . . . the public*”; and

d. [Utah Code § 54-4-18](#), which grants the Commission authority to “fix just and reasonable . . . practices” and other conditions pertaining to the supply of regulated utilities’ product.

3. This Petition is filed under [Utah Code § 54-7-9\(1\)\(b\)](#) and is a request for agency action under the provisions of [Utah Code § 63G-4-201](#).

THE PETITIONER

4. Petitioner MWDSLS is a Metropolitan Water District, a particular type of Utah Local District, governed by [Utah Code Ann., Title 17B](#), Chapters 1 and 2a. As such, MWDSLS is an independent political subdivision of the State of Utah with its offices located in Salt Lake County. MWDSLS is governed by a seven member Board of Trustees. Five Trustees are appointed by the Salt Lake City Council and two are appointed by the Sandy City Council.

5. MWDSLS provides an on-demand, supplemental, wholesale, treated drinking water supply to its member cities, Salt Lake City and Sandy City, and others. The respective Public Utilities Departments of MWDSLS’s member cities provide retail public water service to areas both inside and outside their respective city boundaries. For example, the Salt Lake City Public Utilities Department serves something like 100,000 residents of the Valley outside Salt Lake City limits. MWDSLS also shares certain facilities with the other large water wholesaler in the Valley, Jordan Valley Water Conservancy District.

6. The two aqueducts that are at issue here are critical and major pieces of public water infrastructure in the Salt Lake Valley: the Salt Lake Aqueduct (SLA) and the Point of the Mountain Aqueduct (POMA).

7. The SLA was designed and constructed between 1939 and 1951 by the United States, Department of the Interior, Bureau of Reclamation as a division of the Provo River Project.

8. The SLA is a mostly 84-inch outside diameter, mostly steel reinforced concrete pipe, with a capacity of approximately 175 cubic feet per second. This equates to nearly 79,000 gallons per minute, and approximately 113 million gallons per day. During the peak demand of summer, the SLA typically runs at its maximum capacity.

9. The SLA extends more than 42 miles from the toe of the Deer Creek Dam at the head of Provo Canyon, to finished water storage facilities, including those near the mouth of Parleys Canyon. The SLA also seasonally serves untreated water to the Jordan Valley Water Conservancy District Southeast Regional Water Treatment Plant in Draper on a space available basis.

10. The SLA carries untreated Provo River System water to the Little Cottonwood Water Treatment Plant (LCWTP) near the mouth of Little Cottonwood Canyon. LCWTP treats Little Cottonwood Creek and Bell Canyon Creek water in addition to water from the Provo River System. From LCWTP, the SLA carries this treated (finished) water to a wide variety of places in the Salt Lake Valley, including carrying water south and to the west side of the Valley, via POMA and large aqueducts shared with Jordan Valley Water Conservancy District.

11. In 1938, MWDSLS contracted with Reclamation to repay to the United States all of the costs of constructing the SLA. Under that 1938 Repayment Contract, MWDSLS was also obligated to operate, maintain, repair and replace the SLA. In return, MWDSLS received the use of the SLA.

12. The 2004 Provo River Project Transfer Act, [Pub. Law 108-382](#), authorized and directed the Secretary of the Interior to transfer the SLA to MWDSLS. As a result, MWDSLS now owns the SLA and SLA Corridor.

13. The SLA is located within the SLA Corridor throughout its course. The SLA Corridor consists of easement and fee lands now held by MWDSLS.

14. While the SLA is mostly 60+ years old, it is in good condition. However, MWDSLS is making preliminary preparations for major rehabilitation work on the SLA in the next decades. In addition, the need for emergency repairs is expected to accelerate to some degree due to aging gaskets between sections of pipe.

15. The SLA is “open flow,” which is to say most of the SLA was not designed for high pressures. Thus it can be shut off only at its intake at the toe of the Deer Creek Dam.

16. Construction of POMA took place from approximately 2004 through 2007.

17. POMA is located within the POMA Corridor throughout its course. The POMA Corridor consists of easement and licenses via agreements with Sandy City and Draper City.

CIRCUMSTANCES REQUIRING COMMISSION INVESTIGATION

18. This Petition arises out of three disputes between MWDSLS and Questar involving Questar’s use or proposed use of the SLA and POMA Corridors.

19. Under [Utah Code Ann. §§ 17B-1-103 and 17B-1-301](#) and related implied powers, the MWDSLS Board of Trustees has promulgated regulations regarding the use of aqueduct corridors. (MWDSLS Regulations for Non-District Use of Salt Lake Aqueduct and Point of the Mountain Aqueduct Corridors, attached as Exhibit 1.)

20. These Regulations are designed to protect the SLA and POMA, and ensure MWDSLS's unencumbered access to the Corridors for emergency repairs, which is critical to the interests of the public. Specifically, they are designed to provide guidelines and authorization to staff for licensing uses of the Corridors, ensuring careful engineering review of non-District uses. They are further designed to provide an administrative appeal process for those applicants who disagree with the decision of the General Manager. And, finally, they are designed to ensure that issues regarding non-District uses of the Corridors are well vetted and focused before reaching the Board of Trustees—which meets only once a month, ten months out of the year, and regularly has a full agenda.

21. Under MWDSLS's regulations, a license agreement is required for any construction work on the Corridors. (Regulations at 16-6, ¶ 16-4(1)(b)).

22. With regard to utility crossings, the Regulations provide:

Utility crossings of Aqueduct Corridors require a License Agreement on an individual basis. All applicable state, city, and county regulations shall be adhered to in the construction of utilities. Where utilities will be constructed by or for a developer, but dedicated to a municipality or other local governmental entity or regulated public utility, the District will require the License Agreement to be signed by both the developer and the municipality or other local governmental entity or regulated public utility. Parallel utilities are not allowed within Aqueduct Corridors. Metal pipes which are in close proximity to and may affect District pipelines shall implement corrosion protection measures that provide adequate protection of the District's pipelines.

(*Id.* at 16-10 to 16-11, ¶ 16-7(7).)

23. These regulations are similar to, and consistent with, those imposed by Reclamation for federally-owned Reclamation project land, as required by statute. This included the SLA Corridor, which was in Reclamation ownership for more than half a century prior to title transfer in 2006.

24. [43 U.S.C. § 387](#) grants the Secretary of the Interior the authority to, “in his discretion, . . . grant leases and licenses for periods not to exceed fifty years, and easements or rights-of-way with or without limitation as to period of time affecting lands or interest in lands withdrawn or acquired and being administered under the Federal reclamation laws in connection with the construction or operation and maintenance of any project.” [43 U.S.C. § 387\(b\)](#).

25. However, “[s]uch permits or grants shall be made only when, in the judgment of the Secretary, their exercise will not be incompatible with the purposes for which the lands or interests in lands are being administered, and shall be on such terms and conditions as in his judgment will adequately protect the interests of the United States and the project for which said lands or interest in lands are being administered.” *Id.*

26. Consistent with these requirements, federal regulations require anyone, including the underlying landowner, interested in using a Reclamation-owned easement to submit an application for the proposed use. [43 C.F.R. § 429.7\(a\), \(c\)](#).

27. If Reclamation “determines that [the] requested use would not unreasonably interfere with Reclamation’s easement, a consent document will be issued.” [43 C.F.R. § 429.7\(a\)](#). “The consent document will contain the conditions with which [the requesting party] must comply to ensure that [the] use will not unreasonably interfere with Reclamation’s use of its easement.” *Id.*

28. Reclamation's Directives and Standards establish that these conditions must be sufficient to, among other things, protect all structures, facilities, and resources from damage; ensure the ability to operate and maintain the facility, including access, is not diminished; prevent an unreasonable burden of liability; and hold Reclamation harmless. (LND 08-01, ¶ 5, available at <http://www.usbr.gov/recman/DandS.html>.)

29. Reclamation has further issued Engineering and O&M Guidelines for Crossings, setting forth general guidelines for Reclamation to following when reviewing the engineering and operations and maintenance factors in evaluating requests for authorization to cross Reclamation project lands. These Guidelines are publically available at http://www.usbr.gov/mp/cao/rec_land_use_forum/docs/Guidelines_for_Canals_2008.pdf.

30. Under these statutes and regulations, Reclamation routinely entered into license or encroachment agreements for use of the SLA Corridor held in fee as well as easement.

31. MWDSLS's regulations provide an administrative procedure whereby an applicant may appeal any decision of the General Manager regarding use of the Corridors. (Regulations at 16-11, ¶ 16-8.)

ON THREE RECENT OCCASIONS, QUESTAR HAS REFUSED TO COMPLY WITH MWDSLS'S REGULATIONS IN ITS USE OR PROPOSED USE OF THE SLA AND POMA CORRIDORS.

High Pressure Line within the SLA, Formerly Pursuant to Expired 1956 Agreement

32. On December 5, 1956, Mountain Fuel Supply Company, Questar's predecessor, entered into a License Agreement with Reclamation.

33. Under the 1956 License Agreement, Mountain Fuel installed a two-inch diameter intermediate high pressure line within the SLA Corridor. The two-inch IHP line runs within the

SLA Corridor for approximately 4,307 feet underneath Westview Drive from Brockbank Drive south to Fortuna Drive. The IHP line crosses the SLA in four locations along this distance.

34. As part of the 2006 title transfer of the SLA, MWDSLs succeeded to all of the rights and obligations of the United States under all valid contracts relating to the SLA, including the 1956 License Agreement.

35. Paragraph 3 of the 1956 License Agreement provides for a fifty year term and allowed Mountain Fuel to construct, operate, and maintain high pressure gas facilities between centerline stations 2050+30 and 2091+90 of the SLA in the SE1/4 of Section 2 and the NE1/4 of Section 11, Township 2 South, Range 1 East, Salt Lake Base and Meridian. Implicit in the fact that there was a term to the agreement was also the agreement of the parties that the gas pipeline would exist in the SLA Corridor only by agreement with Reclamation.

36. Paragraph 5 of the 1956 License Agreement details that Mountain Fuel's license in the SLA corridor is expressly subject to the United States' *and its successors'* rights to operate and maintain the SLA without any obligation whatsoever to Mountain Fuel. It reads:

The Company agrees that the license hereby granted shall be held and exercised subject to the right of the United States, *its successors and assigns*, to use or cross the land covered by the license for the construction, operation and maintenance of ditches, canals, reservoirs, telephone or electric transmission lines, and for all other purposes whatsoever in connection with or incidental to the construction, operation or maintenance of the Salt Lake Aqueduct, and other works or facilities of the Provo River Project, or other reclamation projects, without any obligation whatsoever to the Company.

37. Paragraph 6 of the 1956 License Agreement details that Mountain Fuel's use of the SLA corridor shall come at no cost to the United States *and its assigns* and shall cause no interference with the operation and maintenance of the SLA. It reads:

The Company agrees that said pipeline will be constructed, operated, and maintained without cost to the United States *or its assigns*, and in such a manner and at such times as to cause no interference with the operation or maintenance of the Salt Lake Aqueduct or other works or facilities of the Provo River Project.

38. Paragraph 7 of the 1956 License Agreement details that Mountain Fuel released and held the United States *and its assigns* harmless for any damage to the gas line in connection with the operation and maintenance of the SLA. It reads:

The Company agrees to hold the United States harmless against all claims of every character arising out of or in connection with the construction, operation or maintenance of the said gas pipeline, and agrees to release the United States from all claims for damage to the gas pipeline which may hereafter result from the construction, operation or maintenance of any works or facilities of the Provo River Project or any other reclamation project.

39. Paragraph 8 of the 1956 Mountain Fuel License Agreement provides that the term of the license expires by limitation at the end of the fifty years from the date it was entered. Implicit in this language is the agreement of Mountain Fuel that a new license agreement would be required for continuation of use of the SLA Corridor.

40. The License Agreement expired on December 5, 2006 and was never renewed.

41. Given the expiration of the 1956 License Agreement, in 2007, MWDSLS offered Questar its standard Cooperation Agreement for Non-District Use of District Lands and Interests in Lands in order to allow Questar to renew its license for continued lawful occupation of the SLA corridor. The MWDSLS Proposed Cooperation Agreement contains terms required to protect the interests of the SLA and the public similar to those found in the 1956 License Agreement.

42. After much correspondence with MWDSLS staff and counsel and many meetings over the course of years to negotiate Questar's requested revisions to the MWDSLS Proposed

Cooperation Agreement, Questar appealed to MWDSLS's General Manager to change certain terms including those regarding insurance and MWDSLS self help to affect or "correct" the Questar gas line in the event of Questar's default in doing so as required by the agreement. Questar won that appeal.

43. Despite Questar winning its appeal, Questar refused to sign the modified Proposed Cooperation Agreement, taking the position that it is not subject to MWDSLS's regulations. Questar apparently did not negotiate or appeal in good faith.

44. Despite this position, Questar has routinely entered into substantially identical agreements with Utah Transit Authority for use of UTA's Rail Line Corridors. Two such agreements are attached as Exhibit 2. A comparison of those agreements with the post-appeal version of MWDSLS's Proposed Cooperation Agreement, attached as Exhibit 3, reveals that Questar has previously accepted strikingly similar terms and conditions as part of a license to use another government entity's corridor.

45. To date, Questar's gas line remains in the SLA Corridor without any agreement between MWDSLS and Questar.

46. Given Questar's refusal to enter into an agreement with MWDSLS, MWDSLS filed suit seeking, among other things, a declaration confirming its statutorily conferred regulatory authority. This case is styled *Metropolitan Water District of Salt Lake & Sandy v. Questar Gas Corporation*, Third District Court No. 120905379.

47. In that case, MWDSLS filed a Motion for Summary Judgment, again seeking to confirm its regulatory authority.

48. In response, Questar argued that as a Salt Lake County franchise holder, it is not required to comply with MWDSLS regulations and may use its franchise in any manner that does not unreasonably interfere with MWDSLS's use and enjoyment of its easement. Specifically, Questar argued, "Nothing in [Utah Code Ann. §§ 17B-1-103\(2\)](#) or -302(2), and nothing in Metro Water's regulations can grant Metro Water unilateral authority to modify or interfere with the County's right to grant a franchise to Questar Gas, or to Questar Gas's independent right to occupy Westview Drive pursuant to that franchise."

49. The district court denied MWDSLS's Motion for Summary Judgment and entered an order dismissing the case. In doing so, the court adopted Questar's proposed order, which provides, "nothing contained in the Utah Code, or Metro Water's regulations, grant Metro Water unilateral authority to modify or interfere with Salt Lake County's right to grant a franchise."

50. MWDSLS has appealed this decision, maintaining that the Utah Legislature has expressly conferred regulatory authority to MWDSLS's Board of Trustees through [Utah Code §§ 17B-1-103](#) and -301.

51. Notably, MWDSLS has never attempted to interfere with the county's right to grant a franchise. MWDSLS's interest in the Corridor was a matter of record predating the county's interest in a road there. MWDSLS has sought to enforce its Regulations governing non-District use of the aqueduct corridors, which apply to any person seeking to use MWDSLS's Corridor property, whether held in fee or easement.

52. MWDSLS only recently filed its opening brief with the Utah Court of Appeals.

Gas Main located in the POMA Corridor in the South Forks Subdivision

53. MWDSLS acquired certain areas of the POMA Corridor across the Draper area through condemnation proceedings in its capacity as a public entity. One such proceeding awarded MWDSLS a perpetual easement through what is commonly referred to by MWDSLS as Tract 82, the tract designation for POMA across the South Fork Estates subdivision (Tract 82 Easement). The Order of Condemnation resulting in MWDSLS's Tract 82 Easement was signed by Judge Joseph C. Fratto of the Third District Court on April 18, 2005, and recorded with the Salt Lake County Recorder on April 19, 2005, as Entry No. 9352827 in Book 9119, Pages 8512-8522.

54. The Order of Condemnation set specific terms and conditions of MWDSLS's easement, which includes, among other things:

a. "In allowing other uses of the Easement Property, [the developer] shall comply with such safety and encroachment specifications as are standard practice for large culinary pipelines, or as may be required by applicable laws and regulations"; and

b. "[The developer] shall notify District of any additional easements, licenses or rights-of-way granted within the Easement Property and shall require the holders of such easements, licenses or rights-of-way to consult and cooperate with District in the location, maintenance and operation of their facilities."

55. On July 22, 2005, interested parties filed a plat for recording with Salt Lake County with regard to the "South Fork Estates" subdivision located off of 300 East at approximately 14200 South in Draper. The July 22, 2005, Plat depicts the Tract 82 Easement,

including the Book and Page references of that easement's recording. At the time of the Plat's filing, the MWDSLS easement crossed what was then reflected as "Lot 19," a large 2.36 acre lot.

56. As an interested public entity, MWDSLS signed this plat, approving its form, with a specific reservation of MWDSLS's rights in the Tract 82 Easement:

The signature of the Metropolitan Water District of Salt Lake & Sandy on this plat shall not alter or affect the District's rights under the right-of-way and easement granted pursuant to the Final Order of Condemnation in case no. 050904549, Third District Court, Salt Lake County, State of Utah, entered on April 18, 2005 and recorded with the Salt Lake County Recorder on April 19, 2005, at Book 9119, Page 8512 as Entry Number 9352827, nor shall its signature alter or affect the relative priority of such rights.

57. Questar, likewise, signed the Plat, indicating:

Questar hereby approves this plat solely for the purpose of confirming that the plat contains public utility easements. Questar may require additional easements in order to serve the development. This approval does not constitute abrogation or waiver of any other existing rights, obligations or liabilities, including prescriptive rights or other rights, obligations or liabilities provided by law or in equity. This approval does not constitute acceptance, approval, or acknowledgement of any terms contained in the plat, including those set forth in the owners dedication and the notes, and does not constitute a guarantee of particular terms of conditions or service.

58. Approximately six months later, on January 19, 2006, South Fork Estates developers recorded the "Final Plat" for "South Fork Estates, Amended and Extended." This Final Plat is also signed by both MWDSLS and Questar with the same specific language set out above, and reflects the large Lot 19 now subdivided into Lots 19 through 26. In addition, this amended and extended plat extends the length of the subdivision into a more triangular shape.

59. The third page of the Final Plat depicts the respective easements of multiple entities, including communications, waterlines, and pipelines. MWDSLS's easement is clearly

depicted on page 3, along with the same citation to the recording data of the original Order of Condemnation granting MWDSLS's easement.

60. By Questar's signature on both the Plat and the Final Plat, and through MWDSLS's proper recording of its Order of Condemnation, Questar knew or should have known of the existence of MWDSLS's easement across the area of the South Fork Estates subdivision.

61. Despite this, Questar has not applied for a license agreement for its use of MWDSLS's easement or otherwise consulted with MWDSLS about its location of the gas main within MWDSLS's easement.

62. As a result of this failure, MWDSLS filed suit again seeking, among other things, confirmation of its statutorily conferred authority to regulate the Corridors. This case is styled *Metropolitan Water District of Salt Lake & Sandy v. Questar Gas Company*, Third District Court No. 140900286.

63. In defense, Questar has asserted that "Metro Water's regulations are limited in scope by statute and are not applicable to Questar Gas, that Questar Gas does not occupy the South Fork Estates PUE subject to Metro Water's regulations, that Metro Water's Non-Exclusive Easement grants Metro Water no authority to impose regulations in the South Fork Estates PUE, and that Questar Gas is regulated by the Public Service Commission."

64. Questar has further asserted that because MWDSLS responded to Questar's Blue Stakes notice, MWDSLS somehow tacitly approved Questar's presence in the POMA Corridor without adherence to MWDSLS's regulations.

65. This case is in its early stages.

Questar's Proposed Condemnation of MWDSLS Fee SLA Corridor Property

66. On April 29, 2014, Questar sent MWDSLS a letter regarding Questar's plans to replace an existing high-pressure gas pipeline in the Corner Canyon area in Draper.

67. The letter stated Questar's intent to initiate condemnation proceedings to acquire a dominant perpetual easement across MWDSLS SLA Corridor and non-Corridor property, both held in fee, if MWDSLS did not agree to a voluntary sale of the easement.

68. The letter further provided that Questar had not previously contacted MWDSLS about this project because MWDSLS had "suspended all contact with Questar or its consultants with regard to [Metro Water] property or right-of-way."

69. Counsel for MWDSLS contacted counsel for Questar, clarifying that this "suspension" of contact was intended to be communicated as a request that all future communication regarding Questar's use or proposed use of MWDSLS property be directed through counsel.

70. Prior to the April 29 letter, Questar had not applied with MWDSLS for a license to use MWDSLS's SLA Corridor property. It likewise had not engaged in the administrative review process provided in MWDSLS's Regulations.

71. When counsel for MWDSLS pointed out this fact, Questar responded that it "is not seeking to obtain an encroachment license. Instead, . . . [it] is offering to purchase a perpetual easement for [its] pipeline."

72. The form of the easement Questar seeks to condemn would subordinate MWDSLS of its own property. Questar seeks the dominant estate.

73. However, until Questar has exhausted its administrative remedies and been denied the right to use MWDSL's SLA Corridor property, there can be no showing that "the taking is necessary for the use," a condition precedent to the exercise of eminent domain under [Utah Code § 78B-6-504\(1\)](#).

74. Questar has further made no effort to negotiate for the purchase of MWDSL's SLA Corridor and non-Corridor property. (*See* correspondence with J.D. Kessler, attached as Exhibit 4.)

75. Although this dispute only recently came to light, it appears to stem from Questar's position that it has the ability to condemn around MWDSL's Regulations such that its construction of the gas line in the Corner Canyon would not be subject to those Regulations.

COUNT I

76. MWDSL incorporates paragraphs 1 through 75 above as though separately pled herein.

77. Questar's recently-adopted tactic of ignoring the regulatory authority of a metropolitan water district to protect its aqueduct corridors and facilities injects an unnecessary and antagonistic dynamic into the comity of legislatively divided regulatory authority between the Commission and MWDSL, especially so since both the regulated utility and MWDSL provide vital utility services to the most populous of Utah's counties.

78. MWDSL requests that the Commission specifically investigate the matters set forth in the preceding paragraphs and whether Questar's practice of refusing to acknowledge and comply with MWDSL's Regulations is unjust and unsafe, and whether the interests of public health and safety require that Questar comply with MWDSL's Regulations.

79. Although Questar obtained a favorable ruling from the district court in the SLA case, Third District Case No. 120905379, that ruling did not specifically address MWDSLS's regulatory authority to regulate non-District uses of the aqueduct Corridors. Rather, the district court merely concluded that MWDSLS does not have the authority to modify or interfere with Salt Lake County's right to grant a franchise—authority MWDSLS does not argue it has, nor has MWDSLS ever attempted to do so.

80. Furthermore, the district court's order is currently on appeal. There simply has been no final decision in that case, or any other, establishing that MWDSLS lacks the authority to promulgate its Regulations, or that Questar is somehow not subject to those regulations.

81. Unless such an order is entered, MWDSLS's Regulations remain in effect, and there is nothing to excuse Questar's refusal to comply with them, thereby putting critical public infrastructure in danger.

COUNT II

82. MWDSLS incorporates paragraphs 1 through 81 above as though separately pled herein.

83. MWDSLS requests the Commission engage in a formal administrative rulemaking proceeding under [Utah Code § 63G-3-601](#) for the purpose of requiring by rule that all regulated public utilities adhere to the regulatory process and requirements established by MWDSLS.

84. This rule, requested by MWDSLS, respects the express authority granted to MWDSLS by the Legislature, to issue and enforce rules and regulations necessary to this political subdivision's purposes.

85. It further promotes equity by ensuring that all regulated utilities are subject to uniform treatment when dealing with a particular metropolitan water district. For example, such a rule would ensure that any regulated public utility seeking to use MWDSL's Corridor property is subject to the same requirements and restrictions, namely those set forth in MWDSL's Regulations. No regulated public utility would have greater rights or fewer restrictions than another by virtue of its failure to comply with the metropolitan water district's regulations.

COUNT III

86. MWDSL incorporates paragraphs 1 through 85 above as though separately pled herein.

87. MWDSL requests the Commission engage in a formal administrative rulemaking proceeding under [Utah Code § 63G-3-601](#) for the purpose of requiring by rule that all regulated public utilities seeking to condemn property owned by a metropolitan water district be required to exhaust administrative remedies provided by that metropolitan water district, and to require notice and an opportunity to be heard in front of the Public Service Commission regarding necessity of the terms of easement proposed to be taken, similar to the procedure required of political subdivisions under [Utah Code § 78B-6-504\(2\)](#).

88. Under [Utah Code § 78B-6-504\(2\)\(c\)](#), a political subdivision seeking to condemn property must "provide written notice to each owner of property to be taken of each public meeting of the political subdivision's governing body at which a vote on the proposed taking is expected to occur and allow the property owner the opportunity to be heard on the proposed taking." The governing body of the political subdivision must then approve the taking before

the political subdivision can initiate condemnation proceedings. [Utah Code Ann. § 78B-6-504\(2\)\(b\), \(c\)](#).

89. A similar procedure would provide metropolitan water districts with an opportunity to be heard on a proposed taking by a regulated public utility.

90. The procedure outlined in [Utah Code § 78B-6-504\(2\)\(c\)](#) could be tailored to address the primary concerns when a regulated public utility seeks to condemn property of a metropolitan water district. These include, by way of example:

a. Requiring an opportunity to be heard on the issue of necessity of the condemnation of the property and property interest at issue only when, after having been provided notice by the regulated public utility, requested by the metropolitan water district; and

b. Requiring notice and an opportunity to be heard only when the property is currently put to public use and the metropolitan water district claims the proposed property interest to be taken by the regulated public utility would impair that district use. For such an impairment to take place, the regulated public utility must establish that its proposed use is “a more necessary public use than that to which it has already been appropriated.”

RELIEF REQUESTED

91. With regard to Count I, MWDSLs requests that the Commission investigate and determine whether Questar’s practice of refusing to acknowledge and comply with MWDSLs’s Regulations, which apply to all users of MWDSLs’s aqueduct corridors, is unjust, unreasonable, unsafe, inimical to public health, or not in the public interest.

92. With regard to Count I, MWDSLS requests that the Commission issue an Order requiring Questar to comply with MWDSLS's Regulations unless there is a final decision of an appellate court holding those Regulations to be invalid.

93. With regard to Counts II and III, MWDSLS requests that the Commission engage in a formal administrative rulemaking proceeding for the purpose of requiring by rule:

- a. That all regulated public utilities adhere to the rules and regulations of metropolitan water district (Count II);
- b. That any regulated public utility seeking to condemn property of a metropolitan water district be required to:
 - i. exhaust available administrative remedies provided by that metropolitan water district before initiating condemnation proceedings; and
 - ii. provide for a hearing before the Public Service Commission if requested by the condemnee metropolitan water district as to the necessity of condemnation before condemnation may proceed (Count III).

94. With regard to Counts II and III, MWDSLS further requests that the Commission adopt these requested rules based upon a finding that the administrative rules MWDSLS is requesting are just and reasonable to require of regulated public utilities and will deconflict aqueduct corridor access issues between Questar and MWDSLS, protect critical public infrastructure, and ensure that the respective interests of these important utility enterprises are balanced through processes that operate in the broad public interest.

95. MWDSLS additionally requests that it be afforded such other relief as may be

reasonable and just.

DATED this 19th day of February, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2014, I mailed, via regular U.S. Mail, a true and correct copy of the attached **PETITION AND REQUEST FOR AGENCY ACTION** upon the parties listed below to:

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