

NEW YORK CITY WATER BOARD

NYC Water Board Public Hearing

June 3, 2021

2 [START RECORDING]

3 MR. OMAR NAZEM: Yes, we're good to go.

4 MR. ADAM BOSCH: Great. So thank you to
5 everyone who's joining us this--there we go. So
6 thank you to everyone who is joining us this
7 afternoon to hear the presentation as well as
8 those who are going to be providing testimony,
9 whether that's verbal testimony or written
10 testimony. This of course is a public hearing
11 of the New York City Water Board on wholesale
12 water rates to take effect beginning July 1st of
13 2021. During the COVID-19 pandemic, we've been
14 holding the board's events in a virtual
15 conference call format to facilitate access in
16 light of the pandemic. And we would ask that e
17 everyone place their phone on mute to limit the
18 background noise and make sure that people who
19 are giving presentations can be heard clearly.
20 I have placed several documents into the
21 official record, including a notice that
22 appoints me as the hearing officer, verified
23 copies of the public notices that were placed in
24 the proper newspapers, a copy of the rate
25 consultants' report on the regulated wholesale

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2 rate, and copies of the written testimony
3 received by the board so far. The rate
4 consultants' report is available on the board's
5 website, as is a copy of the presentation that
6 you're going to be hearing today. This meeting
7 is being recorded, and once prepared, an audio
8 recording and transcript of the meeting will be
9 made available on the board's website, which is
10 nyc.gov/nycwaterboard. For members of the
11 public who are having difficulty hearing, there
12 is a real-time text captioning feature available
13 to follow up with the meeting. You need to copy
14 and paste a URL linking to the streamtext.net
15 website. That URL is long, so I'm not going to
16 read it. But you can access it for copy and
17 paste by visiting the Water Board homepage now
18 while we're getting sorted here at the beginning
19 and clicking the meeting materials link, again
20 under the announcement section. So that's on
21 the Water Board webpage, clicking the meeting
22 materials link under the announcement section.
23 You will also find the URL provided on the
24 public announcement posted on the board's
25 website. The agenda for today includes two

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2 sections. So first the Department of
3 Environmental Protection is going to make a
4 presentation. And then members of the public
5 will have an opportunity to make a statement and
6 give their testimony. To get it started, I'm
7 going to hand it over to Joseph Murin.
8 Executive Director Murin, are you ready?

9 MR. JOSEPH MURIN: Yes, thank you, Adam.

10 MR. BOSCH: All right.

11 MR. MURIN: Before I start, I would like to
12 recognize that three of our board members, Adam
13 Freed, Jonathan Goldin, and Arlene Shaw are on
14 the call, and I would offer them the
15 opportunity, if they wish to, make a statement
16 before we start the presentation.

17 MS. EVELYN FERNANDEZ-KETCHAM: Good morning,
18 Joe. This is Evelyn; I'm also here.

19 MR. MURIN: Okay, Evelyn Fernandez-Ketcham,
20 thank you, Evelyn.

21 MS. FERNANDEZ-KETCHAM: Thank you.

22 MR. FREED: This is Adam Freed. I guess
23 I'll just channel our chair who's not here and
24 just to thank any members of the public who are
25 joining us today to provide testimony and remind

2 folks that the rate proposal that was set forth
3 is just that, by DEP staff. It is a proposal,
4 and we come to this with a very open mind and
5 actively and attentively listen to the testimony
6 and pour through anything that's given to us in
7 writing as we consider the proposal before us
8 and consider that fully in any final decision we
9 take at the rate adoption that will come later
10 this month. So just want to thank everyone for
11 participating in what we view as a really
12 critical and important part of this process.

13 MR. MURIN: Great, thank you, Adam. Any
14 other board members wish to add anything?
15 Hearing nothing, I'll start the presentation.
16 So I'm on the PowerPoint that as Omar noted, is
17 on the website. And I'm starting on slide one,
18 which is the purpose of today's presentation.
19 Today's public presentation addresses proposed
20 water rates to be charged effective July 1st,
21 2021 for water sold by the city of New York to
22 communities of water districts located in the
23 counties of Westchester, Putnam, Orange, and
24 Ulster. A public hearing is conducted by the
25 New York City Department of Environmental

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2 Protection and the New York City Water Board in
3 any year in which there is a proposal to raise
4 water rates. The general public has an
5 opportunity to speak today following DEP's
6 presentation. Pre-registered speakers will
7 speak first; then the hearing will be opened up
8 to the public. All members of the public with
9 comments, questions, or concerns should feel
10 free to present testimony or to send questions
11 to the Water Board at (718) 595-3591 or
12 nycwaterboard@DEP.nyc.gov before 4:00 pm on June
13 11th.

14 Moving to slide two, headed DEP strives to
15 be a good wholesale water supply partner, DEP
16 acts as a backstop for communities facing water
17 quality or water contamination issues and makes
18 available the city's water system as an
19 alternative source of water supply to
20 communities experiencing water safety issues.
21 DEP pays more than \$165 million per year on
22 water system real property located outside of
23 the city. The agency is often among the largest
24 taxpayers in the communities where water system
25 assets are located. Due to its size and

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1 relationship with the city of New York, the
2 city's water system can issue debt for capital
3 construction purposes on market-competitive
4 terms providing an efficient way to finance
5 capital construction for the benefit of all rate
6 payers. The Water Board retained a consultant
7 at the expense, added expense for a multi-year
8 engagement to provide detailed suggestions to
9 wholesale water customers on techniques for
10 reducing water consumption and identifying lost
11 revenue. I'd also note that we have at this
12 time \$20 million investment in a new Microsoft
13 Dynamics UMAX billing system launching before
14 the end of 2021, including new billing system
15 that will work for the wholesale customers as
16 well.
17

18 Moving on to slide three, update on DEP's
19 operations in the last year, water supply
20 reliability and water quality north of the city
21 were maintained to high standards during the
22 COVID-19 pandemic. DEP is following CDC
23 guidelines regarding workplace safety protocols.
24 After reaching a peak of 80% of office employees
25 in remote work format, the DEP workforce began

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2 returning to work sites the week of May 3rd. On
3 a typical day at current rate, 70% of DEP's
4 personnel are onsite. Some pandemic measures
5 remain in place, including restrictions and
6 deferrals of certain administrative actions as
7 well as new digital business processes
8 introduced to the agency during the pandemic.
9 Pandemic-related incremental costs to the water
10 supply system have been modest to date, although
11 the outlook may include higher inflation.
12 Moving on to slide number four, DEP is a large
13 construction manager with significant water
14 supply projects. On this slide, you'll see a
15 chart showing the agency's fiscal year 2022
16 through fiscal year 2031 capital budget,
17 totaling \$20.4 billion. Of that, the bulk of
18 those funds are related to wastewater capital
19 programs such as the wastewater treatment plants
20 in city and sewer and replacement extensions in
21 the city as well. There is a significant
22 portion, approximately a third of that, that
23 also goes to water capital programs, many of
24 those being upstate assets. Approximately one-
25 sixth of sale proceeds from issuing bonds is

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1 NYC WATER BOARD PUBLIC HEARING 6/3/21 12PM
2 used for water supply projects north of the
3 city. Major initiatives underway include
4 significant ongoing progress on the Delaware
5 Aqueduct Bypass work, with the final stage
6 scheduled for completion in 2022 to 2023,
7 ongoing investments in the watershed under the
8 filtration avoidance determination across
9 multiple investment channels, and hiring and
10 training of DEP police and watershed security
11 personnel. Moving on to slide five, I'm going
12 to turn this over to Water Board treasurer Omar
13 Nazem.

14 MR. NAZEM: Hello, everyone. So slide five
15 and slide four I think work as a theme together.
16 The idea is to do something we've done in the
17 past but haven't done as much in recent years.
18 Perhaps we have we have - - frequently in recent
19 years. But just to kind of try and explain the
20 role of our upstate customers, our north of the
21 city customers, and wholesale water supply in
22 the context of the overall system, we do it not
23 to try and make the wholesale, this operation
24 seem small, but we do it just to kind of
25 emphasize the sort of scale and the heft of what

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2 DEP does. I think some of that is sometimes
3 invisible for the city, and I think it's just
4 worth emphasizing just to kind of show the
5 engineering and technical skill, the customer
6 service skill, all the different functions we
7 have, which work together to provide I would
8 argue a level of technical engineering talent
9 even on water supply that you wouldn't see in a
10 sort of pure play on water supply only or a
11 smaller organization. It's intangible and hard
12 to measure, but we're really trying to make that
13 point on slides four and five, and that's why
14 we're showing both the capital in its entirety
15 and the revenues and water as a percent of the
16 total.

17 The trend line on slide five is sort of,
18 obviously water has been about the 9-10% level
19 total. It's just a supply for years. The
20 revenue's down to around the 2% plus or minus a
21 few points level. Financially, in broader
22 terms, to repeat myself, it is a relatively
23 modest portion of the total, but it is very
24 important. I think it works both ways in terms
25 of we were able to have a strong, quality water

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1 supply source outside the city and parts of the
2 communities where assets are located. Those
3 communities are seeing the benefit of the
4 financial support of DEP. These are engineering
5 and technical skills on a scale that smaller
6 utilities often don't have. But that's what
7 we're trying to say on Slides 4 and 5. Slide 6
8 is data you've seen before in prior
9 presentations. We tried to just visually make
10 it a little interesting here, a little
11 different. What it shows on the sideways axis
12 is the change in total water consumption charged
13 the regulated rate year over year, and then on
14 the up-and-down axis, the Y-axis, how much we
15 increase rates in the year. It's interesting.
16 The main point I would draw attention to is what
17 the slide is titled. There were some reductions
18 in consumption in FY '18 and '19, definitely
19 '19, substantial reduction in consumption.
20 We're seeing that--not reversible, but because
21 total consumption is still lower, we're seeing a
22 direction to change back toward where we had a
23 level increase in consumption in FY '20 and '21
24 to date. It's interesting because the down

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1 years were prior to the pandemic, and the
2 increase years during the pandemic, which is a
3 little bit in a different direction of what you
4 would guess intuitively, but it is what we're
5 seeing. In terms of sort of additional
6 commentary on this, the conservation is still--
7 we'd like to see more in terms of water
8 efficiencies and water reduction. While there
9 have been gains in terms of water efficiency
10 when you compare today to five years ago, that
11 is true on both the regulated and excess rate,
12 there's more we'd like to do. That was, of
13 course, part of the impetus of why we hired the
14 rate consultant, or the rate advisor alluded to
15 earlier, for its expense to a more consistent
16 issue in the communities. That's really what
17 the slide is talking about on 6. Joe, I'll give
18 it back to you for Slide 7.

19
20 MR. JOE MURIN: Thank you, Omar. So, Slide
21 7, that is background on water rates charged
22 north of the city. There are two rates: the
23 regulated rate-- sometimes referred to as the
24 entitled rate--the regulated rate is the rate
25 charged for quantities of water sold to a

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2 community up to the total amount of water equal
3 to the community's population, multiplied by the
4 rate of per capita water consumption in New York
5 City, using decennial federal census data as the
6 population base. The excess rate, which is the
7 rate applicable to quantities of water not
8 eligible for sale at the regular rate. Since
9 population per capita has come - - both
10 variables, the threshold shifts over time and
11 are different from customer to customer. That
12 being said, we'll go now to slide 8, which is
13 the regulated rate has not changed in four of
14 the five last years. So, this is where we are
15 proposing a rate increase for fiscal year 2022
16 starting July 1st of this year of 8.82%. I want
17 to draw attention to the fact that over the past
18 five years there has only been one increase to
19 the upstate rate; that was 9.2% in 2020. All
20 those other years the upstate rate was held
21 steady, much of that due to being linked as well
22 with our modulating rates within the city. So,
23 there has been, as noted on the slide, the
24 average increase over those years is 1.78%, so
25 there is some degree of catch-up that we are

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1
2 doing with this rate increase for this year.
3 Moving on to Slide 9, proposed rates take effect
4 July 1, 2021. The DEP is recommending to the
5 Water Board an increase for the regulated rate
6 of 8.82%, according to a rate per million
7 gallons of \$2,054.63. An increase of 8.82% to
8 the regulated rate will result in an increase of
9 just under \$1 per month to the water bill of
10 households using 70,000 gallons of water per
11 year, so that's even less than what we've seen
12 for in-city rate increases. Again, I will note
13 that that is the wholesale rate; that doesn't
14 take into consideration what rate may be
15 additionally charged by the provider of the
16 water in those communities, whether it's a
17 private or a municipal water supplier. DEP is
18 also recommending an increase for the excess
19 rate of 2.76%, in line with the proposed in-city
20 rate increase, according to a rate per million
21 gallons of \$5,355.07. Also of note, beginning
22 in 2019, prior to the start of the pandemic, we
23 began to see a limited number of [background
24 noise] customer become delinquent on their water
25 bills. Customers - - delinquency should reach

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2 out to DEP or the Board so we can understand the
3 issues and work through any challenges. In the
4 short term, the cost of delinquencies is
5 absorbed by customers who are current on their
6 bills. Moving on to Slide 10. I've got to turn
7 this back over to Omar to go through this.

8 MR. OMAR NAZEM: This is really a very--
9 really kind of a summary of a single table in
10 the longer report by our rate consultant,
11 Amawalk, which is on the Board's website, as
12 Adam mentioned. But this is really--it shows--I
13 don't know that there's a lot to say about it.
14 It shows the major line items that flow into the
15 calculation of the proposed regulated rate for
16 the coming year. I think the one thing I would
17 draw attention to is the phase, the very bottom
18 line above the black line across the middle, the
19 phase in the prior year expense is previously
20 undercharged. This is an issue with--we have a
21 basket of costs we've yet to recover through
22 revenues from prior year recalculations. These
23 are kind of held in a bay, to use a term, and
24 smoothed in under this fade methodology to
25 adhere to the practice of avoiding rate shock.

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2 We've been doing that for a number of years, and
3 that's consistent with past rate enforcements,
4 and a concept the industry folks on the phone
5 will be familiar with. There's some additional
6 catch-up, I would say, since we've gone for four
7 of five years without a rate increase, so the
8 basket is starting to look like something you
9 might want to--we need to catch--we've been
10 catching up, I think is the message. In terms
11 of the line item and how it works mathematically
12 is no different than the past, it is just the
13 one thing on this page I want to draw your
14 attention to. Joe, I'll give it back to you.

15 MR. MURIN: Thank you, Omar. So, I will
16 note that the Water Board will be meeting, as
17 member Freed pointed out, this is not yet
18 decided. The Board will make a determination
19 based on the input they get from this or any
20 other hearings we're having. The Board meeting
21 is scheduled for Monday, June 14th. The
22 location will be a virtual meeting. The phone
23 number will be (347) 921-5612 with an access
24 code of 323706678, and it's at 9 a.m. on the
25 14th. And again, this information is all

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2 available on the Water Board's website. That
3 being said, I'll turn the proceedings back over
4 to [crosstalk].

5 MR. BOSCH: Thank you. So, now I'm going to
6 begin the public testimony portion of the
7 hearing. I have one pre-registered speaker
8 signed up who I will call on first, and then
9 after that I'll make the hearing available to
10 anyone else who would like to speak. So, the
11 one person who was signed up to speak in advance
12 is Joel Dichter from Dichter Law. Joel, are you
13 there?

14 MR. JOEL DICHTER: I am here. Thank you
15 very much. Can you hear me okay?

16 MR. BOSCH: We can.

17 MR. DICHTER: Because I'm on speaker phone.
18 If you can't hear me, let me know and I'll pick
19 up the handset.

20 MR. BOSCH: You sound good. Go ahead.

21 MR. DICHTER: Great, thank you. I'd like to
22 thank the Water Board for this opportunity. My
23 name is Joel Dichter. I'm with Dichter Law, and
24 I have the privilege of representing a number of
25 state municipalities that are wholesale

2 customers for New York City Water Board, and I
3 drew before you today with regards to the rates
4 charged to customers north of New York City.

5 While we thank you for the opportunity today, we
6 believe an evidentiary proceeding would provide
7 the water board with a more complete record on
8 which to render an informed decision. The
9 upstate community municipalities are dependent
10 upon the city for their supply of water, and
11 entitled to receive a supply of water from the
12 New York City reservoir system pursuant to law
13 and also the terms of the permits issued by DEC
14 for the reservoir [background noise] built upon
15 the land, the wetlands of the upstate community.
16 Specifically, I'm appearing today on behalf of
17 the Village of Scarsdale, the cities of Yonkers,
18 White Plains, the town of Greenberg, SUEZ Water
19 Westchester, which there is a number of
20 municipalities in Westchester County, as well as
21 the Westchester Joint Waterworks, which is
22 portions of Harrison and Mamaroneck as well, and
23 New Rochelle. Over the years the upstate
24 community has experienced tremendous increases
25 in the rates charged by the water board for the

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2 water provided on a wholesale basis. The
3 upstate rate report for fiscal year 2022
4 prepared by the Amawalk Group, proposed an
5 increased in entitlement rate for the first time
6 in excess of \$2,000 to \$2,057.98 per million
7 gallons. The proposal for fiscal year '22, on
8 the heels of a pandemic, where there was a 9%
9 increase above the current rates which, of
10 course, these communities will have to pass on
11 to their already trouble businesses and
12 residents as result of what the impact or the
13 shutdown from the COVID pandemic that they're
14 still trying to bring their way back from.
15 However, there really is, in fact, no cost
16 support for any increase at this time. The city
17 entitlement report prepared by Amawalk concludes
18 that the current rate of \$1,888 exceeds the
19 calculated rate for fiscal year '22, \$1,879,
20 based upon the budgeted cost of operation.
21 Therefore, no rate increase in the entitlement
22 rate is justified based on the cost of ongoing
23 operations to provide water to upstate
24 communities. For the so-called excess rates
25 before the Water Board, unlike the entitlement

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rate established by the Water Board using a cost study, the excess rate is simply equal to in-city retail rates, even though the upstate customers use no portion of the city's in-city distribution system, lost water, and other costs of operating the system within the New York system. This year the proposed excess rate is \$5,355 per million gallons, a 2.8% hike. However, there is no additional cost to the city for providing excess water in addition to entitlement water. In fact, all the costs of operating the system are recovered through the entitlement rate. The excess rate at 2.6 times the entitlement rate has no basis or support and no rationale has been given for doing so. Nor can it be justified as having needed an increased rate on the basis of supply and demand. There's a prolonged period of declining demand both from the city and upstate. Consequentially, the condition applies to meet the needs of the cities in the upstate communities for the foreseeable future. It is not to say that the communities are in any way looking to waste water. They, of course, want

2 to keep their costs down, and they're investing
3 in ways for water conservation, notifying of
4 customers of water conservation, and of course,
5 all have in place drought requirements in case
6 that is ever needed. Excess rate should not
7 become a mechanism just for the city to raise
8 surplus funds at the expense of their fellow New
9 York State residents and businesses, especially
10 at this time. Given that all the costs - -
11 upstate customers north of the city are
12 recovered by the Water Board through the
13 entitlement, it's time for the excess rate to
14 simply be eliminated, and the water provided to
15 the communities from the reservoirs built upon
16 their lands and watersheds provided at the
17 entitlement rate. We've affected over the
18 years, and Board members may be aware, we have
19 penalty for the - - numerous proceedings related
20 to review of this rate at the city retail rate.
21 We've tried to negotiate with the Water Board to
22 date and have been unable to reach an agreement;
23 we still hope to do so. But based on the trend
24 lines that we see, and these creeping demand, -
25 - supply, there really is no more need for the

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2 excess rate to be any more than the entitlement
3 rate. I don't know if I have more time. I'll
4 continue, or I'll stop here. Let me know.
5 Shall I continue?

6 MR. BOSCH: Yeah, continue.

7 MR. DICHTER: Okay. I thought I only had
8 five minutes. I just wanted to make sure. We
9 agree that a cost-based entitlement rate is
10 appropriate and required. The city's own rate
11 report finds the current rate more than covers
12 its forecasted costs for fiscal year 22. Then
13 you may ask why is there a proposed increase.
14 The answer is that the Amawalk report
15 incorporates costs not related to fiscal year
16 '22 that Omar showed out, the reconciliation too
17 for the past four years, fiscal year 2017, 2020,
18 there was approximately \$68 million. Even
19 though it's spread out over four years, it's
20 been building every year, it's become a large
21 amount passed on to customers in the current
22 year. We believe this reconciliation was not
23 proper. In fact, this could have been done in
24 the fiscal years where there was no increases
25 and no budget to refuse, there were still

1 reconciliations put in place. How can you have
2 a reconciliation when there was no increase and
3 no budget to plot it against? To do so is
4 unlawful retroactive rate making and violates
5 the solid rate doc. Cost-based rate making has
6 - - affect rates for future periods and
7 adjustment for prior periods is improper. For
8 most boards the alleged cost in excess of
9 budgeting prior have nothing to do with
10 operating the system whatsoever. Rather, the
11 discretionary use of additional funds not
12 provided in the budget in order to deceive an
13 entire - - . The cost state mandate
14 administrative code prevents the city from using
15 excess revenue for the year to retire debt and
16 pass it back on to customers to the upstate
17 community to a reconciliation in the future.
18 The - - funds not included in the budget, it
19 isn't a reconciliation at all. While there was
20 a prior agreement of the parties as to who was
21 doing the true - - , it was stated that it was
22 beyond the city's control, depends on rising
23 chemical costs. So, it was never intended to
24 permit the city for offsetting future increases
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2 and raised rates in the future based on
3 discretionary spending above the budgeted
4 amount. Further, it's improper to burden
5 today's customers, who pay large sums of cash
6 using - - bonds for construction of the facility
7 that has a service life of 50 years or more.
8 Our analysis shows that from 2011 to 2020 the
9 city spent \$5.86 billion just using bonds. - -
10 2025 projected to be only \$3.76 billion. And it
11 could take decades to recognize the savings, yet
12 current customers are bearing all of the
13 expense. This is not the [crosstalk]--

14 MR. BOSCH: [interposing] Mr. Dichter, I
15 just want to advise, you've got one minute left.
16 Okay?

17 MR. DICHTER: Okay, thank you. This is
18 exactly the proper rate making methodology. The
19 cost should be borne by those who received the
20 benefit. We're not saying the city shouldn't
21 use funds to diffuse bonds, we're just saying
22 that the cost thereof should be spread across
23 all those who enjoy the savings nearby, rather
24 than putting the burden solely on today's
25 customers. Also, a couple other issues raised

1 that I'll get to very quickly in my one minute,
2 is that the city has built a filtration system
3 for the current system within the city's
4 boundary. Upstate customers have no access to
5 that reservoir system. There are no
6 interconnections, and if the filtration plant is
7 within the city bounds, they can't use that
8 water anyway. Nevertheless, there are still
9 costs, supposedly occurred in prior years, that
10 are included in the cost of upstate communities;
11 those costs should be removed. Similarly, there
12 are number of costs related to the Hillview
13 Reservoir that again the upstate communities do
14 use a little of that, but a very small
15 percentage, far less than the 10% of the overall
16 cost assigned to the upstate communities, and we
17 believe that that should be reduced, as well.
18 So, I'll just sum it up and say, if I can one
19 more--30 seconds--that the current rate forecast
20 to cover all the cost of operations for fiscal
21 year '22, supposedly the increase is there for
22 unjustified - - rejected. There's no cost
23 savings rationale for an excess rate, but the
24 entitlement rate. The excess rate must be

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2 limited as well, and all water provided to
3 upstate - - the same as the entitlement rate.
4 Thank you very much.

5 MR. BOSCH: Thank you, Mr. Dichter. Is
6 there anyone else who has called in and would
7 like to have the opportunity to give verbal
8 testimony during the hearing? Okay. Hearing
9 none, obviously there's still the opportunity to
10 give written testimony. I want to thank you,
11 thank all of our speakers. That will conclude
12 today's hearing, and the board will be returning
13 for its next business meeting on Monday, June
14 14th, at 9 a.m. to consider the proposed rates
15 and its budget for next year. So, thanks again
16 to everyone for participating, and we look
17 forward to hearing from you again soon.

18 MALE VOICE: Thank you.

19 [END RECORDING]

C E R T I F I C A T E

I, Gabrielle Atkinson, certify that the foregoing transcript of 12PM_Water_Board_Meeting.mp3 was prepared using standard electronic transcription equipment and is a true and accurate record to the best of my ability. I further certify that I am not connected by blood, marriage, or employment with any of the parties herein nor interested directly or indirectly in the matter transcribed.

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I, Anne Edelmann certify that the foregoing transcript of Wholesale-Rate-Public-Hearing.mp3 was prepared using standard electronic transcription equipment and is a true and accurate record to the best of my ability. I further certify that I am not connected by blood, marriage, or employment with any of the parties herein nor interested directly or indirectly in the matter transcribed.

Signature: 

Date: June 7, 2021