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[GOV. CODE § 6103]

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13 SAN DIEGO COUNTY WATER AUTHORITY

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF LOS ANGELES

16 SAN DIEGO COUNTY WATER
17 AUTHORITY,
18 Petitioner and Plaintiff,
19 v.

20 METROPOLITAN WATER DISTRICT OF
21 SOUTHERN CALIFORNIA; ALL
22 PERSONS INTERESTED IN THE
23 VALIDITY OF THE RATES ADOPTED
24 BY THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA
ON APRIL 10, 2012 TO BE EFFECTIVE
JANUARY 1, 2013 AND JANUARY 1,
2014; and DOES 1-10,

25 Respondents and Defendants.
26
27
28

Case No.

**SAN DIEGO COUNTY WATER
AUTHORITY'S PETITION FOR WRIT
OF MANDATE AND COMPLAINT FOR
DETERMINATION OF INVALIDITY,
DAMAGES AND DECLARATORY
RELIEF**

1 4. Metropolitan is obligated by statute, the California Constitution, and common law
2 to set rates that do not exceed the reasonable costs of providing the particular service for which
3 the rate is charged, and that are equitable, fair and non-discriminatory. The Transportation
4 Agreement separately requires Metropolitan to set a price for the transportation of the Water
5 Authority's purchased IID and Canal Lining Water that is consistent with California law and its
6 contractual obligations. Per the Transportation Agreement, the Water Authority pays a price for
7 the delivery of IID and Canal Lining Water that consists only of Metropolitan's "transportation"
8 rates.

9 5. On April 10, 2012, Metropolitan adopted water rates to be charged for calendar
10 years 2013 and 2014. As used in this complaint, the term "rates" includes all rates and other
11 levies, charges, fees, or exactions for the sale of water or provision of services by Metropolitan to
12 its member public agencies. The rates challenged here violate common law, California statutory
13 law and the California Constitution. Metropolitan also has breached the Transportation
14 Agreement with the Water Authority by setting a price for the transportation of water that is
15 inconsistent with California law and thus violates the express terms of the parties' contract.

16 6. Metropolitan's rates violate California law, and breach the Transportation
17 Agreement, in multiple ways.

18 7. *First*, Metropolitan has allocated the costs of obtaining an imported water supply
19 to the rates it charges for "transportation." Metropolitan purchases about half of the water supply
20 it sells to its member agencies from the California Department of Water Resources ("DWR"),
21 pursuant to a long-term "take-or-pay" supply contract that requires Metropolitan to pay a fixed
22 amount per year regardless of how much water DWR is able to provide to Metropolitan.
23 Metropolitan does not own or operate facilities to transport this water; instead, DWR transports
24 the water to Metropolitan's delivery points and facilities via DWR's state-owned State Water
25 Project facilities. In other words, the money Metropolitan pays to DWR is to obtain a water
26 supply that Metropolitan then furnishes to its customers. Despite this, Metropolitan reallocates
27 most of these supply costs to two of its "transportation" rates, specifically, the System Access
28 Rate and System Power Rate. As a result, the price Metropolitan charges to the Water Authority

1 for delivery of the IID Water and Canal Lining Water—that Metropolitan accomplishes using
2 only Metropolitan-owned pipelines and facilities—includes the completely unrelated costs
3 Metropolitan incurs when it purchases water supply from DWR.

4 8. *Second*, Metropolitan allocates to another of its “transportation” rates, the Water
5 Stewardship Rate, the costs of subsidizing member agencies’ water conservation and local water
6 supply projects. These conservation and local supply development subsidies are payments by
7 Metropolitan to enable member agencies—except the Water Authority, which Metropolitan has
8 barred from the program—to develop or enhance their own local water supplies. Although these
9 subsidies have nothing to do with the transportation of water, Metropolitan improperly
10 characterizes them as part of its “transportation” rate, which is then charged on the Water
11 Authority’s transportation of IID and Canal Lining Water. Accordingly, Metropolitan’s
12 misallocation of these supply costs to its Water Stewardship Rate penalizes the Water Authority
13 and subsidizes all other Metropolitan member agencies in two ways: (1) a direct subsidy from
14 Metropolitan to all member agencies *other than* the Water Authority when Metropolitan writes
15 the member agency a subsidy check; and (2) an indirect subsidy to the other member agencies
16 because treating these costs as “transportation” rather than “supply” artificially raises costs for the
17 Water Authority and artificially lowers costs for all other Metropolitan member agencies.

18 9. *Third*, Metropolitan systematically avoids identifying the true cost of standing
19 ready as a standby, supplemental water supplier for its member agencies whose water demands
20 are highly variable from year to year, depending on the availability of their own local water
21 sources, annual precipitation or other factors. Metropolitan maintains excess capacity available in
22 its Colorado River Aqueduct and other transportation facilities to accommodate this “dry year
23 peaking,” and it also purchases and stores water so that it will be available in dry years. “Standby
24 service” is expensive to provide, because the water supplies, storage and other facilities require
25 high fixed costs to develop yet remain unused in during many years. And the benefits of
26 Metropolitan’s standby service accrue disproportionately—while some member agencies purchase
27 more or less the same volume of water every year, other member agencies’ purchases of
28 Metropolitan Water vary dramatically from one year to the next. For example, the City of Los

1 Angeles, one of the Metropolitan member agencies that benefits the most from from this standby
2 service, has increased its purchase of Metropolitan Water by as much as 200,000 acre-feet in dry
3 years. Yet Metropolitan does not calculate the full costs associated with providing “standby
4 service,” nor does it evaluate the relationship between the costs of these services and the benefit
5 of the services provided. Instead, these costs are hidden in Metropolitan’s other rates. The result,
6 once more, is a subsidy to a handful of member agencies, paid at the expense of steady purchasers
7 like the Water Authority.

8 10. The fact that these various cost allocation decisions consistently work to the
9 detriment of one member agency, the Water Authority, is no accident. Rather, it is the product of
10 concerted action by Metropolitan staff, and a group of member agencies whose appointees
11 constitute a voting majority of the Metropolitan board of directors. These member agencies,
12 working hand-in-glove with top current and former Metropolitan executives, have established a
13 “shadow government” that meets in secret to dictate water rates and other important issues
14 pending before the Metropolitan board. Metropolitan’s adoption of the 2013/2014 water rates
15 was not based on a cost-of-service study, or any lawful or reasonable grounds for allocating the
16 cost of Metropolitan services, but rather, with the purpose and effect of enriching a subset of
17 member agencies at the expense of the Water Authority and the San Diego County citizens it
18 serves. Metropolitan’s coordination with, and effective delegation to, this shadow government
19 further demonstrates that Metropolitan’s decisions vis-a-vis the Water Authority and its
20 constituents are unlawful, discriminatory and invalid.

21 11. Accordingly, the Water Authority brings this action, requesting relief as set forth
22 in the remainder of this Complaint.

23 II. PARTIES

24 12. Petitioner and Plaintiff San Diego County Water Authority is, and at all times
25 mentioned herein was, a county water authority organized under the laws of the State of
26 California and located in the County of San Diego, California.

27 13. Respondent and Defendant Metropolitan is, and at all times mentioned herein was,
28 a public agency of the State of California organized pursuant to the Metropolitan Water District

1 Act [Stats. 1969, ch. 209 as amended; West's California Water Code Append. §§ 109-134
2 (2010)], the principal offices of which are located in Los Angeles, California.

3 14. The true names and capacities of the Respondents and Defendants identified as
4 DOES 1-10 are unknown to Petitioner, and Petitioner will amend this Complaint to insert the true
5 names and capacities of those fictitiously named Respondents when they are ascertained.
6 Petitioner is informed and believes, and on that basis alleges, that at all times relevant to this
7 action, each of the Respondents and Defendants, including those fictitiously named, was the agent
8 or employee of each of the other Respondents and Defendants, and while acting within the course
9 and scope of such employment or agency, took part in either the acts or omissions alleged in this
10 Complaint.

11 III. SERVICE OF PROCESS

12 15. Petitioner will serve Metropolitan and all other defendants/respondents in the
13 manner provided by law for the service of summons in a civil action.

14 16. The Water Authority will publish notice of this action in newspapers of general
15 circulation published in the six counties served by Metropolitan, as this is the method most likely
16 to give notice to the person interested in these proceedings. Those counties are Ventura, Los
17 Angeles, Riverside, San Bernardino, Orange, and San Diego. The Water Authority will seek an
18 order *ex parte* ordering:

19 a. Publication of the summons in newspapers of general circulation in these
20 counties pursuant to Code of Civil Procedure Section 861; and,

21 b. That notice be given by mailing a copy of the summons and complaint to
22 those persons, if any, or their attorneys, who have notified Petitioner's attorneys of record
23 in writing of their interest in the matter not later than the date on which publication of the
24 summons is complete or such other time as the Court may order.

25 17. If Metropolitan agrees, as an alternative to an *ex parte* application, the Water
26 Authority will present the Court with a stipulation and proposed order for publication of the
27 summons as set forth above.

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IV. JURISDICTION AND VENUE

18. This court has jurisdiction over this matter pursuant to Code of Civil Procedure Section 1085, Code of Civil Procedure Section 410.10, and, with respect to the Third Cause of Action, Code of Civil Procedure Sections 860 *et seq.*, and Government Code § 66022.

19. Venue is proper in this court as Respondent is located within the County of Los Angeles and the acts and events giving rise to the claims occurred in part in the County of Los Angeles. This suit, however, is subject to transfer of venue to a neutral county pursuant to Code of Civil Procedure Section 394(a).

V. FACTUAL ALLEGATIONS

A. Metropolitan, its roles, and its duties.

20. Metropolitan is a wholesale water agency that imports, stores, transports and treats water throughout the Southern California counties of Ventura, Los Angeles, Riverside, San Bernardino, Orange, and San Diego. Metropolitan has 26 member agencies, including the Water Authority. These member agencies in turn sell water they obtain from Metropolitan to sub-agencies and utilities or directly to consumers. In addition to obtaining and delivering imported water for sale to its member agencies, Metropolitan has also chosen to subsidize member agencies' conservation and local water supply development projects.

21. Metropolitan obtains water for sale to its member agencies from two principal sources: first, from a water purchase contract with the California DWR; and, second, from Metropolitan's allocation of water from the Colorado River. The State Water Project water is delivered by DWR via State Water Project facilities directly to Metropolitan's distribution facilities located in Southern California, where it is mixed with other sources of Metropolitan Water and distributed to member agencies. Metropolitan transports its Colorado River water via the Metropolitan-owned and operated Colorado River Aqueduct ("CRA"). In this Complaint, water from these two principal sources of imported water will be referred to collectively as "Metropolitan Water," and water acquired from other third-party sources will be referred to generally as "Non-Metropolitan Water."

1 22. Metropolitan's operations are largely paid for by volumetric (per-acre-foot) rates it
2 imposes for purchases of Metropolitan Water; fixed charges imposed on its 26 member agencies;
3 and contractual payments by the Water Authority for its transportation of IID and Canal Lining
4 Water. The MWD Act, which defines the powers and responsibilities of both Metropolitan and
5 its Board, obligates Metropolitan to set rates that "shall be uniform for like classes of service
6 throughout the district." Metropolitan is further obligated by various state statutes, the California
7 Constitution, and common law to set rates that are both consistent with cost-of-service principles
8 (*i.e.*, the rates charged to a member agency must not exceed the cost of providing services to that
9 agency) and non-discriminatory.

10 23. Metropolitan has a board of directors, which includes at least one representative
11 appointed by each member agency. Additional seats on the Board and weighted votes are
12 allocated according to each member agency's percentage share of the total assessed property
13 value within the Metropolitan service area.

14 24. Although Section 50 of the MWD Act requires that Metropolitan act exclusively
15 through its board of directors, as detailed below, a group of self-interested member agencies has
16 come to dominate and control Metropolitan. In recent years and likely earlier, a group of more
17 than fifteen Metropolitan member agencies—led by the Municipal Water District of Orange
18 County, the City of Los Angeles and its Department of Water and Power ("LADWP"), the
19 Western Municipal Water District and the West Basin Municipal Water District—has met in
20 secret, in concert with Metropolitan's senior management, to ensure adoption by the Metropolitan
21 board of water rates and charges, and cost allocation decisions, that further this group's self-
22 interests, while systematically disadvantaging the interests of the Water Authority and its
23 ratepayers. This organized group of member agency managers, described by its own participants
24 as the "Secret Society" and the "anti-San Diego Coalition," meets outside the public view, retains
25 former Metropolitan executives as consultants to further its goals, and engages in wide-ranging
26 *sub rosa* activities to coordinate Metropolitan board votes and outcomes. Their shadow
27 government has captured Metropolitan's governance, with the full knowledge and complicity of
28 Metropolitan's top management and several members of its Board of Directors.

1 **B. The Water Authority is Metropolitan’s largest steady customer.**

2 25. Unlike the other Southern California counties served by Metropolitan, San Diego
3 County has little local groundwater. As a result, the Water Authority historically relied on
4 Metropolitan for a much higher percentage of its total water supply than most other Metropolitan
5 member agencies—in the early 1990s, Metropolitan Water constituted as much as 95% of San
6 Diego County’s water supply.

7 26. Even today, the Water Authority remains Metropolitan’s largest steady purchaser
8 of Metropolitan Water. Between 2006 and 2011, the Water Authority purchased almost 2.6
9 million acre-feet of Metropolitan Water. In addition, during that same period, the Water
10 Authority paid Metropolitan to transport more than 600,000 acre-feet of its purchased IID and
11 Canal Lining Water. As Metropolitan’s largest customer, and the only member agency dependent
12 on Metropolitan’s transportation service to deliver a large volume of third-party water (due to
13 Metropolitan’s effective monopoly on inter-regional water transportation in Southern California),
14 the Water Authority is uniquely vulnerable to abusive conduct by Metropolitan and the self-
15 interested member agencies that control Metropolitan’s board.

16 **C. The Water Authority purchases water from outside of Metropolitan.**

17 27. Historically, because Metropolitan’s imported water was cheap and plentiful, the
18 Water Authority did not need (and thus did not seek out) third-party sources of water like IID.
19 This all changed during the early 1990s, when California experienced a severe drought.
20 Metropolitan cut San Diego’s water supply by more than 30% for 13 months, causing major
21 economic disruptions and forcing San Diego to enact extreme water-use reduction measures. In
22 the wake of that experience, the Water Authority began to look elsewhere for more reliable
23 sources of water supply, to guard against future water supply shortages and rationing by
24 Metropolitan.

25 28. The Water Authority ultimately contracted with IID to purchase up to 200,000
26 acre-feet per year of water from the Colorado River Water for a 45-year period. The Water
27 Authority also obtained the right to water conserved by the lining of the All-American and
28 Coachella Canals. Because the Water Authority does not have its own aqueduct linking the

1 Colorado River to the Water Authority's service area, the Water Authority and Metropolitan
2 negotiated the 2003 Transportation Agreement, for delivery of water to the Water Authority's
3 storage and distribution facilities.

4 29. Pursuant to section 5.2 of the Transportation Agreement, Metropolitan promised
5 that the price for transporting this Non-Metropolitan Water to the Water Authority "shall be equal
6 to the charge or charges set by Metropolitan's Board of Directors pursuant to applicable law and
7 regulation and generally applicable to the conveyance of water by Metropolitan on behalf of its
8 member agencies."

9 30. As part of the negotiations of the Transportation Agreement, Metropolitan also
10 demanded a litigation time-out, during which the Water Authority would not challenge
11 Metropolitan's water rates in any "administrative or judicial forum" for the first five years of the
12 agreement, including contesting whether the price set by Metropolitan pursuant to the
13 Transportation Agreement was "set in accordance with applicable law and regulation." That five-
14 year time-out expired in 2008.

15 **D. Metropolitan's rates and charges.**

16 31. Prior to 2003, Metropolitan charged its member agencies a single "bundled" rate
17 for water, which incorporated all of Metropolitan's costs of supply, transportation, power,
18 treatment, and administration. Metropolitan's bundled water rate was charged on a per-acre-foot,
19 volumetric basis, with water rates set on an annual basis.

20 32. In 1986, the California Legislature passed the Wheeling Statute, Cal. Water Code
21 Section 1810 *et seq.*, which requires Metropolitan and other water agencies to make available any
22 excess capacity in their aqueducts for the transportation of third-party water at a "fair
23 compensation" price. With the Wheeling Statute taking effect, and with an eye toward the
24 impending Water Authority-IID water transfer, in the late 1990's, Metropolitan began the process
25 of unbundling its rates. In October 2001, the Metropolitan board approved an unbundled set of
26 water rate categories, which nominally related to particular services that Metropolitan provides,
27 including water supply, transportation, standby service, power and water treatment. The Water
28

1 Authority opposed approval of this unbundled rate structure, in part because Metropolitan did not
2 disclose at the time how its costs would be allocated among the new rates and charges.

3 33. Metropolitan sets its water rates annually or, more recently, biennially. In doing
4 so, the Metropolitan board votes not only on the dollar amount of the rates, but on an allocation of
5 costs to each unbundled rate component; and Metropolitan affirms that, in its view, that year's
6 allocation of costs to particular rate components is consistent with the cost of the services it
7 provides to its member agencies. In every rate-setting cycle, Metropolitan has discretion to add
8 or change its rates and charges, or the allocation of Metropolitan's costs among its rates and
9 charges and among its member agencies, so long as cost-of-service requirements are met; indeed,
10 Metropolitan has made such changes from time to time. Metropolitan has acknowledged that
11 each year's rate-setting decision is a unique agency action. Thus, each year's rates must meet all
12 legal requirements and each year's rate may be independently challenged in court.

13 34. Metropolitan's current water rates and charges and classes of service include
14 several that are relevant here: two different "Supply" rates (Tier 1 and Tier 2), a "System Access
15 Rate," a "System Power Rate," and a so-called "Water Stewardship Rate." Metropolitan defines
16 these water rates and charges as follows:

17 a. Metropolitan's "Supply" rates purport to recover Metropolitan's cost of
18 obtaining water from various sources, and developing long-term firm supplies.

19 b. Metropolitan's "System Access Rate" is one of Metropolitan's
20 "transportation" rates, and is charged on a per-acre foot basis. The System Access Rate
21 purports to "recover the cost of providing conveyance and distribution capacity to meet
22 average annual demands." This rate therefore recovers a large share of Metropolitan's
23 costs to maintain and operate its distribution system within the Southern California region,
24 along with Metropolitan's Colorado River Aqueduct. As discussed below, in the
25 2013/2014 rates, Metropolitan has also elected to include in its System Access Rate a
26 large share of Metropolitan's costs paid to DWR for water supply from the State Water
27 Project, even though the State Water Project is neither owned nor operated by
28

1 Metropolitan, and it is *DWR*, not Metropolitan, that transports State Water Project water
2 from Northern California to Metropolitan's storage reservoirs and facilities.

3 c. Metropolitan's "System Power Rate" is another of Metropolitan's
4 "transportation" rates, also charged on a per-acre foot basis. The System Power Rate
5 purports to "recover the cost of pumping water to Southern California." In its 2013/2014
6 rates, Metropolitan incorporates into the System Power Rate its costs for powering its own
7 Colorado River Aqueduct and other distribution facilities. In addition, however,
8 Metropolitan includes in that rate pumping and power costs on the State Water Project,
9 even though those power costs are not incurred by, nor are the activities performed by,
10 Metropolitan.

11 d. Metropolitan's "Water Stewardship Rate" is also treated as a
12 "transportation" rate, in Metropolitan's 2013 and 2014 rates, charged on a per-acre foot
13 basis. The Water Stewardship Rate purports to "recover the costs of providing financial
14 incentives for existing and future investments in local resources including conservation
15 and recycled water." Money collected through this rate is used by Metropolitan to
16 subsidize water conservation and local water supply projects by Metropolitan's member
17 agencies.

18 35. Unlike the other Metropolitan rates—*e.g.*, those charged for supply, use of
19 transportation facilities, and power, which (even if calculated improperly) relate to services
20 Metropolitan actually provides to its member agencies—"water stewardship" is a concocted
21 concept that does not describe any service provided by Metropolitan, other than the redistribution
22 of money from some Metropolitan member agencies to others. In any event, the costs of funding
23 local projects—even if it were shown to increase the regional water supply to the benefit of all
24 Metropolitan member agencies (something Metropolitan has failed to demonstrate)—are supply
25 costs, not "transportation" costs. Metropolitan's own rate consultants previously have
26 acknowledged that "water stewardship" costs properly should be categorized as "supply," not
27 "transportation."
28

1 36. When a member agency is purchasing *Metropolitan Water*, the allocation of
2 Metropolitan costs to “supply” versus “transportation” makes no difference, because the
3 purchaser pays all of Metropolitan’s unbundled rates. But when the Water Authority uses
4 Metropolitan’s facilities to transport *Non-Metropolitan Water* purchased from other sources, the
5 rate breakdown is critically important, because it pays only the “transportation” rates. The price
6 Metropolitan charges for “transportation” of IID and Canal Lining Water is comprised of the
7 System Access Rate, the System Power Rate, and the Water Stewardship Rate, even though these
8 rates for 2013 and 2014 include Metropolitan’s costs of obtaining a water supply from the
9 California DWR and the costs of subsidizing local water supply projects.

10 37. Metropolitan has also adopted a “wheeling rate,” which it charges for the
11 transportation of Non-Metropolitan Water. Metropolitan’s Wheeling Rate is an aggregate of the
12 System Access Rate, the Water Stewardship Rate, the Water Treatment Rate (if the water is
13 treated), and the incremental power cost associated with that wheeling of water. It does not
14 include the Supply Rate or other charges. Thus, how costs are allocated between “transportation”
15 and “supply” rates also has a direct effect on the wheeling rate. Neither the wheeling rate nor the
16 price charged to the Water Authority under the Transportation Agreement should lawfully include
17 water supply costs. But because the Water Authority is the only Metropolitan member agency
18 that uses Metropolitan facilities to transport significant quantities of Non-Metropolitan Water, the
19 rest of Metropolitan’s member agencies have a financial incentive to characterize water supply
20 costs as “transportation.” That is precisely what Metropolitan, controlled by the Secret Society of
21 member agency managers, has done.

22 38. Accordingly, Metropolitan’s rates as applied to the Water Authority far exceed the
23 reasonable costs Metropolitan incurs in transporting its IID and Canal Lining Water, or the cost of
24 wheeling water under the Wheeling Statutes. The rates Metropolitan imposes for “transportation”
25 force the Water Authority to bear a disproportionate share of Metropolitan’s supply costs and to
26 subsidize the water supply of other Metropolitan member agencies.

1 **E. A majority group of Metropolitan member agencies forms a shadow**
2 **government to unlawfully discriminate against the Water Authority and its**
3 **ratepayers.**

4 39. Over the past fifteen years, Metropolitan has had a sordid history of back-room
5 dealing aimed at disadvantaging the Water Authority. In the late 1990's, Metropolitan was
6 enmeshed in scandal when a California Senate Select Committee issued a report finding that
7 Metropolitan staff, Board members and member agency managers had secretly been meeting, in
8 circumvention of California's Ralph M. Brown Act, to plot strategies to derail the Water
9 Authority-IID water transfer. Their improper activities included the creation of a front group
10 called the "Partnership for Regional Water Reliability," which undertook "opposition research"
11 against more than 150 state and local elected officials, including Governor Pete Wilson, in an
12 effort to expose conflicts-of-interest that might force those officials to recuse themselves from
13 consideration or approval of the transfer. The Select Committee found "inept and improper
14 political dealings," "extensive violations of the Brown Act," and "serious flaws" in the way
15 Metropolitan and some its member agencies conduct business. The problems with Metropolitan's
16 governance were so severe, pervasive, and well-documented that the Legislature passed a bill
17 (Senate Bill 60 – Hayden, 1999) requiring Metropolitan to create an Office of Ethics and
18 forbidding Metropolitan or any of its member public agencies from using public funds to
19 investigate public officials, or from creating any association that is likely to mislead the public as
20 to the association's true identity, its source of funding or its purpose.

21 40. History has a way of repeating itself. Unbeknownst to the Water Authority at the
22 time, in or about October 2009, a group of Metropolitan member agencies, whose appointed
23 board members control a majority of the voting power on the Metropolitan board, organized a
24 secret group including the general managers or other representatives of those member agencies.
25 Membership in this secret group was on an "invitation only" basis. The Water Authority learned
26 of the purpose and extent of this group's activities through a series of Public Records Act requests
27 sent to Metropolitan and member agencies in late 2011. Documents obtained through those PRA
28 requests demonstrate that, from at least October 2009 to the present, this group—which has been
referred to by its own participants as the "Secret Society" and the "Anti-San Diego Coalition"—

1 has functioned as a shadow government, working to direct and control Metropolitan Board votes
2 on water rates, and other key decisions, for the enrichment of the majority member agencies and
3 to the detriment of the Water Authority.

4 41. From its inception, this shadow government has been squarely focused on ensuring
5 that Metropolitan's rates and cost allocations discriminate against the Water Authority and
6 overcharge for transportation of IID and Canal Lining Water. The agendas, notes and meeting
7 summaries for the early sessions of the Secret Society reflect its participants' intent to make sure
8 that Metropolitan's State Water Project costs were allocated to transportation rather than
9 supply—because properly treating these costs as supply would lower San Diego's rates and
10 increase their own. More recent documents show that the Secret Society's focus on the Water
11 Authority and maintaining a specific allocation of costs between "transportation" and "supply"
12 rates has continued at least through 2011.

13 42. The Secret Society's actions to rig Metropolitan's water rates and cost
14 allocations—for their own benefit and to the Water Authority's detriment—are the product of a
15 well-organized, well-funded effort. The group has retained consultants, including Metropolitan's
16 former General Manager Ron Gastelum, and former Metropolitan Assistant General Manager Ed
17 Means, at a cost of more than \$15,000 per month. The member agency participants assign each
18 other and their consultants detailed action items to ensure that their desired results are
19 implemented, including reporting back on how their agencies' appointed board members will vote
20 and drafting anti-San Diego "policy" proposals that Metropolitan staff members agree to pass off
21 and introduce as their own. Most importantly, with the help of their paid consultants and
22 lobbyists, the Secret Society has conveyed to Metropolitan board members the Secret Society's
23 consensus view that Metropolitan's current, misallocated costs and water rates and charges should
24 be maintained, not because they are consistent with the cost of service or are proportional to
25 benefits received by each of Metropolitan's member agencies (which they are not), but because
26 the unlawful misallocation of water supply costs as transportation rates provides the majority
27 member agencies with an annual windfall estimated to be at least \$50 million a year in 2013 and
28 2014. The votes and actions of Metropolitan's board and staff are consistent with the shadow

1 government's rigged outcomes concerning the allocation of costs and imposition of water rates
2 and charges.

3 43. In addition to operating in secret and hiding its existence, this shadow government
4 has engaged in other questionable public agency activities. To cite but one example, the Secret
5 Society commissioned a \$50,000 "independent" economic study from the Los Angeles County
6 Economic Development Corporation with the express aim of discrediting the Water Authority's
7 purchase of IID and Canal Lining Water and its requests for water rates and charges that more
8 accurately reflect Metropolitan's costs of service. The Secret Society released the economic
9 study in April 2012, trumpeting its findings as "proof" that the Water Authority's rate challenges
10 are merely an effort to shift its costs of purchasing IID water to other member agencies. But
11 public records of Secret Society members reveal that the Secret Society dictated this conclusion
12 to its paid economic consultant, and, indeed, rejected initial findings that indicated the Water
13 Authority's IID transfer agreement was actually a "good deal."

14 44. At every step, this shadow government has both aided, and been aided by,
15 Metropolitan. Metropolitan has hosted Secret Society meetings at its headquarters. Metropolitan
16 staff have regularly attended Secret Society meetings and provided participants with exclusive
17 briefings on matters pending before the Metropolitan board. Metropolitan has coordinated with
18 the secret group to conduct anti-San Diego lobbying and outreach campaigns for Metropolitan
19 board members and state legislators. And Metropolitan's General Manager Jeffrey Kightlinger
20 has personally attended meetings of the shadow government, and met with a select group of its
21 ringleaders, to coordinate strategy and to offer Metropolitan's continuing assistance to the Secret
22 Society. Given that the Water Authority was the principal target of the shadow government, it is
23 little wonder that Metropolitan's 2013-14 rates, and numerous other decisions by the
24 Metropolitan Board, have consistently disfavored the Water Authority and the San Diego region
25 it serves.

26 **F. The 2011/2012 rate lawsuit**

27 45. On June 11, 2010, the Water Authority filed a lawsuit for writ of mandate,
28 declaratory relief, and reverse-validation of Metropolitan's 2011 and 2012 rates, approved in

1 April 2010. Pursuant to Code of Civil Procedure Section 394, that action, styled *San Diego*
2 *County Water Authority v Metropolitan Water District of Southern California et al.*, Case No.
3 CPF-10-510830, was transferred to a neutral venue, San Francisco Superior Court, and is
4 proceeding before the Honorable Richard A. Kramer. The complaint in the 2011/2012 rate
5 challenge has been amended to include a claim for breach of the Transportation Agreement, and
6 two claims for declaratory relief pertaining to related agency actions. Discovery is ongoing in
7 that case, and no trial date has been set.

8 **G. Metropolitan sets unlawful rates for 2013 and 2014.**

9 46. On January 10, 2012, Metropolitan's board set a March 12, 2012 public hearing of
10 its Business & Finance Committee on Metropolitan's proposed rates and charges to become
11 effective January 1, 2013 and January 1, 2014. On March 12, 2012, Metropolitan's Business and
12 Finance Committee held that public hearing, at which the Water Authority provided written and
13 oral testimony. The Water Authority's written testimony included the submission of more than
14 5000 pages of documents, including a detailed report prepared by industry experts FCS Group
15 that demonstrated how Metropolitan's proposed rates and charges violate industry standard cost-
16 of-service principles; a letter to Metropolitan's board from the Water Authority's special counsel
17 detailing why the proposed rates would violate the California Constitution, state statutes, and
18 common law; historical cost-of-service studies and analyses that are relevant to the validity of the
19 2013/2014 rates; and documents detailing the improper activities of the Secret Society with
20 respect to ratemaking and cost-allocation decisions. These documents are all part of the
21 administrative record for the setting of the rates challenged here; the FCS Report and the letter
22 from the Water Authority's special counsel are attached hereto as Exhibit B.

23 47. Two business days prior to the Metropolitan board vote to adopt the 2013 and
24 2014 water rates and charges and cost allocations, on April 5, 2012, Metropolitan's General
25 Manager and General Counsel co-authored a letter to the Water Authority in response to its
26 March board submittals ("Metropolitan's Cost of Service Letter"). In that letter, Metropolitan
27 said that the Water Authority and its expert consultants failed to "appreciate" that Metropolitan is
28 a regional rather than a local water supplier whose "interconnected regional system" is necessary

1 for "regional flexibility" and "regional reliability." Metropolitan also stated that its use of
2 "postage stamp" rates results in "lower costs for all of Metropolitan's member agencies," but
3 offered no data, analysis or expert opinion to support that claim. This document is part of the
4 administrative record for the setting of the rates challenged here.

5 48. Although the timing of Metropolitan's Cost of Service Letter gave the Water
6 Authority only two business days (discounting the Easter Weekend) to respond, on April 9, 2012,
7 the Water Authority submitted additional materials for the board's consideration, including
8 additional public records, a response to Metropolitan's Cost of Service Letter, and additional
9 evidence and analysis offered by the Water Authority's experts and special counsel. These
10 documents are all part of the administrative record for the setting of the rates challenged here. On
11 April 10, 2012, without any discussion of the issues and concerns raised by the Water Authority
12 and its consultants, Metropolitan's board formally voted to adopt the proposed water rates and
13 charges and cost allocations for 2013 and 2014.

14 49. Metropolitan's 2013 and 2014 rates unreasonably and unlawfully allocate supply
15 costs to rates imposed for transportation services. These misallocations of cost by Metropolitan
16 unreasonably and unlawfully discriminate against the Water Authority and result in a wheeling
17 rate, and a price charged for the delivery of IID and Canal Lining Water under the Transportation
18 Agreement, that far exceed the cost of providing those services.

19 50. Metropolitan also allocates to "transportation," through the imposition of its Water
20 Stewardship Rate, costs it incurs to subsidize local water supply projects, such as desalination,
21 groundwater recovery and water conservation, for all member agencies except the Water
22 Authority (which Metropolitan has barred from participating in the subsidy program). Since
23 Metropolitan has failed to make, and cannot make, any showing that these expenditures are
24 necessary to provide transportation capacity in Metropolitan facilities, and assuming that these
25 costs provide a regional benefit (something that Metropolitan has failed to establish to justify
26 collecting revenues from all of Metropolitan's member agencies to pay them), these costs must be
27 allocated to supply.

28

1 51. Finally, Metropolitan's 2013 and 2014 rates fail to account for, and allocate costs
2 to, the "standby service" that Metropolitan provides to its member agencies. In 2013 and 2014,
3 Metropolitan will spend millions of dollars on water supply and facilities to accommodate
4 member agencies who may choose to rely on Metropolitan as a supplemental water source if it is
5 a dry year. While Metropolitan purports to recover some of these standby-related costs through
6 its fixed Readiness to Serve Charge, the Readiness to Serve Charge does not recover all standby
7 costs. Indeed, Metropolitan has never accounted for these standby costs in a cost-of-service
8 study, nor has it developed a rate that accurately reflects those costs and allocates them
9 proportionally according to the benefits they receive from Metropolitan's investments in standby
10 service. Instead, those costs are largely hidden within Metropolitan's Supply Rate and its System
11 Access Rate. As Metropolitan's biggest customer and a steady purchaser of Metropolitan Water,
12 the Water Authority is particularly disadvantaged by Metropolitan's treatment of standby costs.
13 The harm to the Water Authority is increased by the inclusion of some of these hidden costs in
14 the price for transportation of its IID and Canal Lining Water, even though the Water Authority
15 obtains no standby benefit in conjunction with its purchase of these transportation services.
16 Metropolitan's actions create an indirect subsidy for member agencies like the City of Los
17 Angeles that engage in substantial dry-year peaking, paid for by steady purchasers like the Water
18 Authority that receive less benefit from Metropolitan's standby service.

19 52. As a direct result of Metropolitan's unlawful and discriminatory water rates and
20 cost allocations, the Water Authority estimates it will be overcharged by at least \$50 million per
21 year if the 2013 and 2014 rates and charges challenged in this action remain in effect. This
22 annual overcharge will grow larger each year so long as Metropolitan's rates continue to be based
23 on such unlawful cost allocations.

24 53. The Water Authority has exhausted all its administrative remedies, including the
25 dispute resolution provisions of Section 11.1 of the Transportation Agreement. Pursuant to
26 Section 11.1, the Water Authority requested that Metropolitan negotiate resolution of the price
27 dispute by letter dated April 26, 2012. A copy of this letter is attached as Exhibit C. In that letter,
28 the Water Authority also asked Metropolitan to identify any further action that it believed the

1 Water Authority needed to take in order to exhaust its non-litigation remedies. Metropolitan
2 responded on May 4, 2012, declining to participate in negotiations. Metropolitan also confirmed
3 that the Water Authority had fully exhausted its available remedies. A copy of Metropolitan's
4 response letter is attached as Exhibit D.

5 54. On or about April 26, 2012, the Water Authority also presented a claim for breach
6 of the Transportation Agreement pursuant to Metropolitan Administrative Code section 9300 *et*
7 *seq.* and California Government Code section 900 *et seq.* The Water Authority informed
8 Metropolitan that it explicitly reserved its rights to bring suit against Metropolitan relating to the
9 imposition of the 2013 and 2014 rates. A copy of this letter presenting the claim is attached as
10 Exhibit E. To date, Metropolitan has taken no further action on that claim and, therefore, it has
11 been deemed denied by operation of law.

12 **H. Metropolitan's rates are invalid under Proposition 26.**

13 55. On November 2010, California voters approved Proposition 26, a ballot initiative
14 that followed upon Propositions 13 and 218 to further restrict the ability of local governments to
15 raise revenue to fund government services, facilities, and programs without demonstrating a
16 benefit associated with the increased revenue, as defined. Proposition 26 amended provisions of
17 articles XIII A and XIII C of the California Constitution by providing a new definition of the term
18 "tax" applicable to state and local governments, respectively.

19 56. Under the new definition set forth in article XIII C, section 1, subdivision (e)—
20 which applies to "local governments" and "special districts" such as Metropolitan—a "tax"
21 includes any "levy, charge, or exaction of any kind" imposed by the government entity, with
22 seven stated exceptions. A tax imposed by a local government or district to fund a specific
23 service is invalid unless approved by two-thirds of qualified voters in that district. Cal. Const. art.
24 XIII A § 4; *id.* art. XIII C § 2, subdivision (d). As relevant here, a charge imposed for a specific
25 government service is a tax unless "the charge [is] imposed for a specific government service or
26 product provided directly to the payor that is not provided to those not charged, and which does
27 not exceed the reasonable costs to the local government of providing the service or product." Cal.
28 Const., art. XIII C, § 1, subdivision (e)(2). Thus, the rates challenged here require two-thirds

1 voter approval as special taxes unless Metropolitan meets its burden to prove they are: (i) for
2 services provided directly to the Water Authority, (ii) for services not provided to others not
3 charged, and (iii) do not exceed the reasonable costs to Metropolitan to provide those services.
4 As demonstrated above, Metropolitan can prove none of these and its rates are therefore illegal,
5 non-voter-approved special taxes.

6 57. Proposition 26 places the burden on the government entity imposing a charge to
7 prove that it is not a tax and is therefore exempt from voter approval requirements. Specifically,
8 under the final, unnumbered paragraph of Article XIII C, § 1, subdivision (e), the local
9 government “bears the burden of proving by a preponderance of the evidence that a levy, charge,
10 or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable
11 costs of the government activity, and that the manner in which those costs are allocated to a payor
12 bears a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the
13 governmental activity.” Cal. Const., art. XIII C, § 1(e).

14 58. Metropolitan’s 2013 and 2014 water rates and charges impose on the Water
15 Authority rates that are “more than necessary” to cover the cost of the services Metropolitan
16 provides to the Water Authority; and Metropolitan’s water rates and charges are not allocated
17 among its member agencies such that they bear a “fair and reasonable relationship” to the burdens
18 and benefits received. As explained above, Metropolitan misclassifies various supply-related
19 costs as “transportation,” although these charges have no relationship to the service benefits the
20 Water Authority actually receives or the amounts Metropolitan actually spends to transport water.
21 Similarly, Metropolitan has not demonstrated that the so-called “Water Stewardship Rate”
22 imposed on the Water Authority provides a commensurate, or even any, benefit to the Water
23 Authority. On the contrary, the conservation and local water supply projects funded by
24 Metropolitan through the Water Stewardship Rate benefit only the member agencies that receive
25 subsidies from Metropolitan, and do not provide any benefit, let alone a proportional benefit, to
26 the Water Authority. In fact, due to a July 2011 decision by the Metropolitan board—as
27 promoted by the Secret Society—the Water Authority is formally disqualified from receiving
28 most of the benefit from the Water Stewardship Rate as punishment for filing the lawsuit

1 referenced in paragraph 45 above—in spite of the fact that the Water Authority pays more in
2 Water Stewardship rates than any other member agency.

3 59. Metropolitan’s water rates have not been approved in accordance with the
4 requirements of article XIII C of the California Constitution, including the requirement of two-
5 thirds voter approval for imposition of special taxes. They are therefore unlawful and invalid.

6 **I. Metropolitan’s 2013-14 rates unlawfully discriminate against the Water**
7 **Authority.**

8 60. Metropolitan’s calendar year 2013 and 2014 water rates and charges not only
9 violate the California Constitution and numerous California statutes; they also violate the
10 common law principle that a public agency may not set rates that unlawfully discriminate against
11 a single customer or group of customers.

12 61. Under the domination and control of a shadow government led by certain large,
13 self-interested Metropolitan member agencies, Metropolitan has enacted rates that improperly
14 allocate Metropolitan’s costs of purchasing DWR water, and its water supply costs paid for by the
15 Water Stewardship Rate, to its transportation rates. Further, Metropolitan has failed to charge the
16 Water Authority a rate commensurate with the cost of services provided directly to the Water
17 Authority. In addition, Metropolitan has arbitrarily decided not to recover the known and true
18 costs of providing standby service proportionally from the agencies that benefit from that service,
19 instead burying those costs in other rates. Thus, the Water Authority is charged for services that
20 others receive without charge, or at a discounted rate, in violation of Proposition 26.

21 62. As described throughout this Complaint, the Water Authority is uniquely
22 vulnerable to abusive conduct by Metropolitan and its self-interested member agencies, because it
23 is the only Metropolitan member agency that is both a high-volume, steady purchaser of
24 Metropolitan water and also utilizes Metropolitan’s regional facilities to transport a large volume
25 of Non-Metropolitan Water. Metropolitan, and the self-interested member agencies whose
26 appointees wield a majority of the voting power on the Metropolitan board, have taken a series of
27 actions to intentionally ignore cost-of-service standards and shift costs to the Water Authority that
28 they know ought to be borne proportionally by other agencies and ratepayers. The

1 misclassification of supply costs as transportation results in overcharges to the Water Authority of
2 more than \$50 million per year for 2013 and 2014, which the Secret Society's own documents
3 acknowledge will grow over time and amount to nearly \$3 billion in total over the remaining term
4 of the Water Authority-IID Agreement.

5 63. In addition to being arbitrary, unreasonable and unjustified on cost-of-service
6 grounds, Metropolitan's discriminatory rates and cost allocations result directly from the
7 activities of the Secret Society. Upon information and belief, and based on information from
8 public records recently obtained by the Water Authority, a majority voting bloc of more than
9 fifteen Metropolitan member agencies—with Los Angeles, Municipal Water District of Orange
10 County, Western Municipal Water District and West Basin Municipal Water District as its
11 ringleaders—have created a shadow government, working with Metropolitan executives and
12 former Metropolitan executives now acting as the group's paid consultants, to manipulate
13 Metropolitan water rates and other key decisions regarding Metropolitan's cost allocations and
14 other matters. Aware that allocating costs to accord with the proportional benefit of the services
15 provided (as both law and industry practice require) would reduce the total rates paid by the
16 Water Authority—and increase them for their own member agencies—this shadow government
17 was formed to ensure continuation of discriminatory cost allocations. The *sub rosa* existence and
18 actions of the Secret Society has resulted in procedural unfairness, and in biased, unfair and
19 unreasonable water rates and charges that unlawfully discriminate against the Water Authority
20 and the citizens of San Diego.

21 64. While Metropolitan's cost allocations and rates benefit the majority of
22 Metropolitan's other member agencies generally by shifting their water supply costs to the Water
23 Authority's ratepayers, the member agencies who organized and have led the Secret Society
24 receive particular spoils from Metropolitan's rate decisions. First, Metropolitan and its Board,
25 under the influence and control of the Secret Society, have unequally disbursed subsidy contracts
26 to provide many millions of dollars in grants to participants in the Secret Society, even though
27 those grants fail to provide any regional benefit throughout Metropolitan's service area. The
28 agencies that do not receive Metropolitan's subsidies, or do not receive a roughly proportional

1 share of those subsidies, are thus forced to subsidize water supply projects that only benefit other
2 Metropolitan member agencies. To take but one example, Western Municipal Water District
3 (“Western”) has reported to its board that, between the time of Metropolitan’s adoption of its
4 unbundled rates in 2003 through 2010, it paid Metropolitan approximately \$14.8 million in Water
5 Stewardship Rate fees, while receiving \$38.1 million for “water stewardship” (local water supply)
6 projects in return—a “net benefit” of more than \$23 million. Western’s “net benefit” is simply an
7 illicit wealth transfer from the citizens of San Diego County to those of Riverside County. The
8 other ringleaders of the Secret Society, including the Municipal Water District of Orange County
9 and the West Basin Municipal Water District, have reaped similarly large benefits from
10 Metropolitan’s local resources program at the Water Authority’s expense. By contrast, the Water
11 Authority has been formally blackballed from this subsidy program for exercising its
12 constitutional right to bring the suit challenging Metropolitan’s unlawful rates identified in
13 paragraph 45 above. In short, the Water Authority is forced to pay millions of dollars each year
14 to fund water supply programs of other Metropolitan member agencies but will get nothing in
15 return, while a subset of member agencies pays in far less and gets a windfall.

16 65. Second, as discussed above, Metropolitan fails to fully account for the costs of
17 “dry-year peaking,” that is, buying more water from Metropolitan in dry years or when local
18 water supplies are otherwise reduced or not available. The chief beneficiary of Metropolitan’s
19 flawed approach is the City of Los Angeles and its Department of Water & Power (LADWP).
20 LADWP’s water supply purchases from Metropolitan vary widely from year to year—they can
21 increase by as much as 200,000 acre-feet in a year, depending on the water supply conditions in
22 the Owens Valley that serves LADWP’s own Los Angeles Aqueduct. When its own water
23 supplies are short, LADWP can simply pick up the telephone and order more water from
24 Metropolitan—a supply of water Metropolitan holds “on call” for LADWP at little cost to
25 LADWP during years it does not need more water, but at great cost to steady Metropolitan water
26 purchasers like the Water Authority. Metropolitan has not conducted a cost of service study that
27 would allow a proper allocation of the costs of this standby service to the member agencies that
28 receive the benefit of that service. The failure to properly allocate the costs of standby service

1 provides an estimated financial benefit to LADWP, and corresponding annual detriment to the
2 other Metropolitan member agencies, of as much as \$40 million each year. As Metropolitan's
3 largest steady purchaser of water, the Water Authority bears the largest share of Metropolitan's
4 subsidization of LADWP's dry-year water supply.

5 66. Taken together, Metropolitan's actions represent a pattern and practice of
6 discrimination against the Water Authority and its ratepayers, and a naked redistribution of
7 money to the ringleaders of the self-described Anti-San Diego Coalition, both of which the Water
8 Authority is powerless to halt except through litigation.

9 **FIRST CAUSE OF ACTION**

10 **FOR WRIT OF MANDATE RE: ALLOCATION OF COSTS IN 2013/2014 RATES**

11 **(Against Respondent Metropolitan)**

12 67. Petitioner re-alleges paragraphs 1 through 66 as though set forth fully herein.

13 68. Metropolitan is under a clear and present duty, pursuant to Article XIII A, Section
14 4 (adopted by Proposition 13) and Article XIII C, Section 1, subdivision (e) (adopted by
15 Proposition 26) of the California Constitution, and Government Code Section 50076, to set rates
16 and charges no greater than the reasonable cost of providing the service or product for which the
17 fee is charged. Under that duty, Metropolitan's rates and charges must reasonably and fairly
18 allocate its costs among its member agencies in accordance with the benefits and burdens borne
19 by each agency. Otherwise, the rates and charges imposed for these services constitute special
20 taxes, for which Proposition 13 and Proposition 26 require two-thirds voter approval.
21 Metropolitan did not obtain voter approval of the rates and charges challenged here.

22 69. Moreover, under Article XIII C, Section 1 of the California Constitution (adopted
23 by Proposition 26), Metropolitan has the burden to prove that the amounts it charges for its
24 services are "no more than necessary to cover the reasonable costs of the governmental activity,"
25 and that these costs are allocated such that they "bear a fair or reasonable relationship to the
26 payor's burdens on, or benefits received from, the governmental activity." In other words,
27 Metropolitan must prove that it properly and proportionally assigns the costs of providing
28

1 services to its member agencies in accordance with the needs of and benefits provided to each
2 agency.

3 70. Additionally, Metropolitan is under a clear and present duty under the MWD Act
4 to set rates and charges that “shall be uniform for like classes of service throughout the district.”
5 (Stats. 1969, ch. 209 as amended; West’s California Water Code—Append. §§ 109-134 (2010)).
6 Under this duty, Metropolitan’s rates and charges must also apportion costs equitably among its
7 customers.

8 71. Metropolitan is further under a clear and present duty, pursuant to Government
9 Code Section 54999.7(a), to set rates and charges that do “not exceed the reasonable costs of
10 providing the public utility service.”

11 72. Metropolitan is further under a clear and present duty, pursuant to Government
12 Code Section 66013, to set charges that do not “exceed the estimated reasonable cost of providing
13 the service for which the fee or charge is imposed.”

14 73. Metropolitan also is under a clear and present duty, imposed by the Wheeling
15 Statutes (Water Code § 1810 *et seq.*) to charge only “fair compensation” for the conveyance, or
16 “wheeling,” of water through Metropolitan’s facilities. Above and beyond the Transportation
17 Agreement, which requires that Metropolitan transport IID Water and Canal Lining Water at a
18 price equal to Metropolitan’s rates set “pursuant to applicable law and regulation and generally
19 applicable to the conveyance of water by Metropolitan,” the Water Authority has previously
20 engaged, in the past, and intends to engage in the future, in “wheeling” of water from third-party
21 sources through Metropolitan’s facilities.

22 74. Finally, Metropolitan also has a clear and present duty under California common
23 law to set rates and charges that are fair, reasonable, and proportionate to the cost of service.
24 Metropolitan also has a common law duty to make decisions and set rates that do not
25 unreasonably discriminate among its customers.

26 75. Metropolitan has failed to perform these duties. Rates adopted by Metropolitan on
27 or about April 10, 2012, including the System Access Rate, System Power Rate, and Water
28 Stewardship Rate, comprise the price that the Water Authority is charged pursuant to the

1 Transportation Agreement, as well as the “wheeling rate” applicable to the conveyance of Non-
2 Metropolitan Water through Metropolitan’s facilities. As described above, the 2013/2014 water
3 rates include, in the rates for transportation, costs that bear no relationship to the costs
4 Metropolitan incurs to convey water through Metropolitan’s facilities, nor do they properly assign
5 costs among member agencies as required by the California Constitution.

6 76. First, the 2013 and 2014 rates challenged here allocate most of Metropolitan’s cost
7 of obtaining a water supply from the State Water Project to the System Access Rate and System
8 Power Rate, which the Water Authority is required to pay as part of its price for the transportation
9 of IID and Canal Lining Water through Metropolitan’s own facilities (the System Access Rate is
10 also included in Metropolitan’s wheeling rate). The cost the Water Authority is required to pay is
11 not commensurate with the service benefits received by the Water Authority, nor is it
12 commensurate with the cost burden placed on Metropolitan by the Water Authority for
13 transportation of its IID and Canal Lining Water.

14 77. Second, Metropolitan includes the Water Stewardship Rate in its calculation of the
15 price charged to the Water Authority under the Transportation Agreement, and in calculating a
16 rate under the Wheeling Statute, even though the Water Stewardship Rate does not recover costs
17 of transporting water. Instead, revenues from the Water Stewardship Rate subsidize some
18 favored member agencies’ costs of water conservation and local water supply projects. Even had
19 Metropolitan demonstrated a regional benefit from these subsidies (which it has not), these costs
20 are clearly being incurred to increase water supply, not transportation.

21 78. Allocating water supply costs to Metropolitan’s “transportation” rate unlawfully
22 overcharges the Water Authority for water transportation, while artificially undercharging
23 Metropolitan’s member agencies for water supply costs. Metropolitan’s misallocation of these
24 costs violates the duties described above to allocate its costs, and set rates and charges, in a
25 manner that is fair, reasonable, and proportionate to the cost of service to each customer.

26 79. In addition, Metropolitan’s rates fail to account for the full cost of providing
27 standby service, or to charge rates that reflect the varying benefits received by different member
28 agencies for that standby service, in violation of various statutory and constitutional obligations.

1 Metropolitan does not properly assign the costs of standby service to the member agencies that
2 actually benefit from the costs it incurs for standby water supply and facilities.

3 80. The Water Authority estimates that if Metropolitan's misallocation of its State
4 Water Project costs and Water Stewardship Rate costs remains unchanged, the Water Authority
5 will be overcharged by at least \$50 million annually in 2013 and 2014. The Water Authority
6 further estimates that Metropolitan's failure to account for and properly charge the cost of
7 standby service results in the Water Authority being overcharged by additional millions of dollars
8 annually, in a precise amount to be determined according to proof. These annual overcharges will
9 increase each year until a court orders Metropolitan to comply with its duties outlined above.

10 81. The Water Authority has no plain, speedy, and adequate remedy at law, other than
11 the relief sought in this Complaint. The Water Authority is beneficially interested in the issuance
12 of a Writ of Mandate to obtain judicial review of Metropolitan's illegal overcharges.

13 82. Accordingly, the Water Authority is entitled to issuance of a Peremptory Writ of
14 Mandate as specified more fully below.

15 **SECOND CAUSE OF ACTION**

16 **DECLARATORY RELIEF RE: ALLOCATION OF COSTS**
17 **IN 2013/2014 RATES**

18 **(Against Respondent Metropolitan)**

19 83. Petitioner re-alleges paragraphs 1 through 82 as though set forth fully herein.

20 84. An actual and present controversy now exists between the Water Authority, on the
21 one hand, and Metropolitan, on the other. Petitioner contends that the rates and charges
22 Metropolitan adopted over its objections on April 10, 2012 violate state constitutional, statutory,
23 and common law, as set forth in the First Cause of Action. The challenged rates overcharge San
24 Diego residents for water transportation, undercharge Metropolitan's member agencies for water
25 supply, and do not comply with Metropolitan's duty to impose rates and charges that are fair,
26 reasonable, and proportionate to the cost of service to each customer.

27 85. Moreover, Metropolitan's actions violate the common law principle that an agency
28 may not set unduly discriminatory rates by classifying its constituents on an unreasonable basis.

1 Metropolitan has engaged in a pattern and practice of discriminatory and unreasonable rate-
2 setting, including the setting of its 2013 and 2014 rates, which violates the well-established
3 common law prohibition against such discrimination. Through a process that is unfair and
4 corrupted, Metropolitan has deliberately singled out and targeted the Water Authority and,
5 through it, the residents of San Diego by imposing upon them unreasonably high water costs.

6 86. Respondent Metropolitan disagrees with these allegations and asserts that the rates
7 and charges challenged here are lawful in all respects. Metropolitan further contends that the
8 existence and activities of the Secret Society—and Metropolitan’s own actions in working with
9 this shadow government—constitute reasonable and acceptable public agency practices.

10 87. In the absence of declaratory relief, Metropolitan will continue to impose
11 discriminatory rates and charges that are not fair, reasonable, and proportionate to the cost of
12 serving its customers, including the Water Authority. The Water Authority estimates that if
13 Metropolitan’s 2013-2014 rates remain unchanged, the misallocation of Metropolitan’s State
14 Water Project costs and conservation and local supply development costs to the “transportation”
15 rate will result in the Water Authority being overcharged by at least \$50 million annually in 2013
16 and 2014. This overcharge will continue to increase as the amount of Non-Metropolitan Water
17 transported through Metropolitan facilities increases and as Metropolitan continues to execute
18 subsidy contracts.

19 88. In the absence of declaratory relief, Metropolitan also will continue to participate
20 in and encourage the *sub rosa* activities of the Secret Society, which meets in secret to dictate
21 Metropolitan decisions and works with Metropolitan and its board to ensure the enactment of
22 discriminatory rates and other board policies that discriminate against the Water Authority.

23 89. The Water Authority desires and is entitled to a judicial declaration that, because
24 of Metropolitan’s misallocation of its State Water Project, Water Stewardship Rate, and standby
25 costs to its “transportation” rates, and because of their discriminatory effect on the Water
26 Authority, Metropolitan’s rates and charges are contrary to law and violate constitutional,
27 statutory and common law. The Water Authority further desires and is entitled to a judicial
28 declaration that Metropolitan must end its practice of delegating its policymaking authority to,

1 and secretly coordinating with, a shadow government, including for the purpose of discriminating
2 against the Water Authority and San Diego County ratepayers, and that Metropolitan must
3 conduct its business in public view.

4 90. Such declaratory relief is necessary and appropriate now, because the Water
5 Authority anticipates that Metropolitan will continue to impose rates and charges that violate
6 constitutional, statutory and common law; and that Metropolitan will continue its pattern and
7 practice of coordinating with, and relying improperly upon, a shadow government working
8 outside of public view to discriminate against the Water Authority and the people it serves. A
9 declaration is therefore necessary to protect the Water Authority and the San Diego region from
10 these unlawful rates, charges, and practices.

11 91. Therefore, the Water Authority prays for declaratory relief as specified more fully
12 below.

13 **THIRD CAUSE OF ACTION**

14 **DETERMINATION OF INVALIDITY OF RATES ADOPTED BY METROPOLITAN ON**
15 **OR ABOUT APRIL 10, 2012**

16 **(CCP § 860 *et seq.*; Gov't Code § 66022)**

17 **(Against Respondent Metropolitan)**

18 92. Petitioner re-alleges paragraphs 1 through 91 as though set forth fully herein.

19 93. Petitioner is informed and believes, and on that basis alleges, that the rates and
20 charges Metropolitan adopted on or about April 10, 2012 may include capacity charges as defined
21 in Government Code Section 66013. Government Code Section 66022 authorizes the filing of a
22 validation action or reverse-validation action pursuant to Code of Civil Procedure Sections 860 *et*
23 *seq.* to challenge a public agency's adoption of rates that include capacity charges as defined in
24 Government Code Section 66013.

25 94. Assuming that Metropolitan's rates are subject to validation pursuant to this
26 provision, the Water Authority seeks a determination pursuant to Code of Civil Procedure
27 sections 860 and 863 that the rates and charges described below are invalid.
28

1 95. Code of Civil Procedure Section 863 provides that “any interested person may
2 bring an action . . . to determine the validity of the matter” in situations where a public agency
3 could bring a validation action. The Water Authority qualifies as an “interested person” within
4 the meaning of Section 863 because the Water Authority pays Metropolitan’s inflated and
5 improperly allocated rates for the services at issue.

6 96. The rates and charges Metropolitan adopted on or about April 10, 2012 are invalid
7 under Art. XIII A, Section 4 of the California Constitution (adopted by Proposition 13), and
8 Government Code Section 50076, because these rates and charges are not limited to the
9 “reasonable cost of providing the service . . . for which the fee is charged.” (Gov. Code § 50076).
10 The rates and charges Metropolitan adopted on or about April 10, 2012 are also invalid under
11 Article XIII C, Section 1, subdivision (e) of the California Constitution (adopted by Proposition
12 26), because such charges are greater “than necessary to cover the reasonable costs of the
13 governmental activity,” and are not allocated in a manner that “bear[s] a fair or reasonable
14 relationship to the payor’s burdens on, or benefits received from, the governmental activity.” The
15 water rates and charges challenged here violate these provisions for three independent reasons,
16 any one of which alone is sufficient to invalidate the rates:

17 a. The challenged rates, including any capacity charges, recover the bulk of
18 Metropolitan’s costs of water from the State Water Project through the System Access
19 Rate and the System Power Rate imposed on transportation, rather than Metropolitan’s
20 Supply Rate. As a result, the challenged rates overcharge for water transportation and
21 undercharge for water supply. Thus, these rates do not allocate to each customer the
22 actual, reasonable and proportionate cost of serving that customer and instead are
23 unreasonable, arbitrary, capricious, and discriminatory.

24 b. The challenged rates, including any capacity charges, include the Water
25 Stewardship Rate in the rates Metropolitan imposes for water transportation. As a result,
26 the challenged rates overcharge for water transportation and undercharge for water supply.

27 c. The challenged rates and charges, including any capacity charges, include a
28 large portion of Metropolitan’s costs associated with maintaining, storing and delivering

1 standby dry-year water supplies. Metropolitan fails to allocate the costs for this standby
2 service based on the proportional benefit it provides to each member agency. For this
3 reason, too, these rates and charges fail to allocate to each customer the actual, reasonable
4 and proportionate cost of serving that customer and instead are unreasonable, arbitrary,
5 capricious, and discriminatory.

6 97. For these reasons, Metropolitan's rates constitute a tax. Because this tax was
7 not approved by a two-thirds majority of qualified voters, it is invalid under Article XIII A,
8 Section 4 and article XIII C, Section 2, subd. (d) of the California Constitution.

9 98. For the reasons set forth above, the rates and charges adopted by Metropolitan's
10 board on or about April 10, 2012 are also invalid under: (a) Metropolitan's principal act, Stats.
11 1969; ch. 209 as amended; West's California Water Code—Append. §§ 109-134 (2010), which
12 requires Metropolitan to set rates and charges that are "uniform for like classes of services
13 throughout the district"; (b) California's Wheeling Statutes (Water Code Section 1810 *et seq.*),
14 because the rates Metropolitan charges for conveyance to the Water Authority of Non-
15 Metropolitan Water exceed "fair compensation" for use of Metropolitan's facilities; (c)
16 Government Code Section 54999.7(a), which requires that its rates and charges "not exceed the
17 reasonable cost of providing the public utility service;" (d) Government Code Section 66013,
18 which requires that Metropolitan's charges not "exceed the estimated reasonable cost of
19 providing the service for which the fee or charge is imposed;" and (e) California common law,
20 which requires that Metropolitan impose rates and charges that are fair, reasonable, and
21 proportionate to the actual cost of service.

22 99. The Water Authority is entitled to a declaration under the Validation Statutes that
23 the rates and charges Metropolitan adopted on April 10, 2012 are invalid and must be set aside.

24 **FOURTH CAUSE OF ACTION**

25 **BREACH OF CONTRACT**

26 **(Against Respondent Metropolitan)**

27 100. Petitioner re-alleges paragraphs 1 through 99 as though set forth fully herein.
28

1 Water Project to charges for water transportation;

- 2 • Refrain from allocating any costs that does not bear a fair or reasonable
3 relationship to the payor's burdens on, or benefits received from, the
4 governmental activity associated with the Water Authority's transportation
5 of Non-Metropolitan Water through Metropolitan facilities;
- 6 • Refrain from allocating any water conservation or local water supply
7 development costs associated with Metropolitan's Water Stewardship Rate
8 to charges for water transportation;
- 9 • Conduct a cost-of-service study that will allow Metropolitan to allocate the
10 costs for providing various services to member agencies based on the
11 proportional benefit they receive from Metropolitan's provision of that
12 service, including Metropolitan's provision of standby services, before
13 recovering the costs of those services from rates.

14 2. As to the Second Cause of Action, a declaration that (a) the rates and charges
15 adopted by Metropolitan on April 10, 2012 are discriminatory, invalid, and must be set aside; (b)
16 Metropolitan cannot allocate any costs associated with obtaining water supplies from the State
17 Water Project to Metropolitan's charges for water transportation; (c) Metropolitan cannot allocate
18 any water conservation or local water supply development costs associated with its Water
19 Stewardship Rate to Metropolitan's charges for water transportation; (d) Metropolitan must
20 allocate its costs of maintaining and storing a standby supply of water to member agencies based
21 on the proportional benefit they receive from Metropolitan's provision of that service; (e)
22 Metropolitan has engaged in a pattern and practice of unlawful discriminatory rate-setting; and (f)
23 Metropolitan must end its practice of delegating its policymaking authority to and coordinating in
24 secret with a shadow government, including for the purpose of discriminating against the Water
25 Authority and San Diego County ratepayers, and must conduct the business of Metropolitan in
26 public view.

27 3. As to the Third Cause of Action, an order that the rates and charges adopted by
28 Metropolitan on April 10, 2012 are invalid and must be set aside.

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4. As to the Fourth Cause of Action, an award of compensatory and general damages against Metropolitan, in an amount to be determined according to proof, and an order of specific performance of the Transportation Agreement requiring Metropolitan to set the rates charged to the Water Authority under the Transportation Agreement in conformance with applicable laws and regulations. The Water Authority also prays for interest on any amounts paid to Metropolitan pursuant to Metropolitan's invalid and unlawful rates for 2013 and 2014, from the date of the Water Authority's payment of any amounts under those rates to the date of judgment. The Water Authority has a right to such interest both as a matter of general damages principles and as a result of the express term in section 12.4(c) of the Transportation Agreement, which requires Metropolitan, in the event of a rate challenge, to place all disputed amounts in an interest-bearing escrow account. To the Water Authority's knowledge, as of the date of this Petition, Metropolitan has failed to deposit funds in a separate interest-bearing account as it agreed to do in the Transportation Agreement.

5. For reasonable attorneys' fees and costs of suit incurred herein.

6. For such other and further relief as the Court deems proper.

Dated: June 8, 2012

KEKER & VAN NEST LLP

By: John W. Keher / wb
JOHN W. KEKER

Attorneys Petitioner and Plaintiff
SAN DIEGO COUNTY WATER
AUTHORITY