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

17 SAN DIEGO COUNTY WATER
18 AUTHORITY,
19 Petitioner and Plaintiff,
20 v.
21 METROPOLITAN WATER DISTRICT OF
22 SOUTHERN CALIFORNIA; ALL
23 PERSONS INTERESTED IN THE
24 VALIDITY OF THE RATES ADOPTED
25 BY THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA
ON APRIL 12, 2016 TO BE EFFECTIVE
JANUARY 1, 2017 AND JANUARY 1,
2018; and DOES 1-10,
26 Respondents and Defendants.

Case No.

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

1 Petitioner and Plaintiff San Diego County Water Authority (“Petitioner” or “Water
2 Authority”) brings this Petition for Writ of Mandate, and Complaint for Determination of
3 Invalidity, and Declaratory Relief (“Complaint”), alleging as follows:

4 I. INTRODUCTION

5 1. The Water Authority brings this action for a writ of mandate, declaratory
6 judgment, and determination of invalidity, challenging rates and charges adopted by Respondent
7 and Defendant Metropolitan Water District of Southern California (“Metropolitan”) on April 12,
8 2016, to be effective January 1, 2017 and January 1, 2018.

9 2. In two prior cases challenging Metropolitan’s rates for calendar years 2011-2014
10 (the “2010 and 2012 cases”),¹ the San Francisco Superior Court, the Honorable Curtis E.A.
11 Karnow presiding, entered final judgment and a writ of mandate against Metropolitan,
12 invalidating Metropolitan’s rates for transporting water because they violate cost-of-service
13 requirements imposed by the California Constitution, California statutory law and the common
14 law. The court also found that Metropolitan breached an agreement it entered into with the Water
15 Authority to transport water the Water Authority purchased from third party sources, and awarded
16 the Water Authority \$235 million in damages and prejudgment interest for four years of
17 Metropolitan’s overcharges. Copies of the Judgment, Peremptory Writ of Mandate, and
18 Statements of Decision in the 2010 and 2012 cases are attached hereto as **Exhibits A-D**.

19 3. Despite the rulings of the San Francisco Superior Court, Metropolitan has vowed
20 that it will not change its methodology or unlawful cost allocations unless it is ordered to do so
21 after final appellate review of those cases. True to that vow, Metropolitan has again imposed
22 transportation rates for calendar years 2017 and 2018 using the same improper cost allocations
23 and rates that the court in the 2010 and 2012 cases rejected. In fact, Metropolitan has set *all* of its
24

25 ¹ *San Diego County Water Authority v. Metropolitan Water District of Southern California et al.*,
26 Case No. CPF-10-510830 (the “2010 case”) and *San Diego County Water Authority v.*
27 *Metropolitan Water District of Southern California et al.*, Case No. CPF-12-512466 (the “2012
28 case”) (collectively, the “2010 and 2012 cases”). A third case challenging Metropolitan’s 2015
and 2016 rates, *San Diego County Water Authority v. Metropolitan Water District of Southern
California et al.*, Case No. CPF-14-514004 (the “2014 case”), is currently stayed before Judge
Karnow in San Francisco Superior Court in light of the pending appeals in the 2010 and 2012
cases.

1 2017 and 2018 rates and charges in a manner that does not reflect the actual costs of the services
2 it provides, following instead an admitted strategy, implemented by its Chief Financial Officer
3 Gary Breaux, to arbitrarily collect and spend hundreds of millions of dollars without ever
4 accounting for the actual costs of the services provided by Metropolitan. Having collected this
5 revenue through its various rates and charges, Metropolitan then treats the revenues as a slush
6 fund, used to pay for whatever projects its Board and staff dictate *ex post facto*, without regard to
7 the services those revenues were purportedly collected to fund. Accordingly, the Water Authority
8 brings this action challenging Metropolitan’s 2017 and 2018 rates and charges, for these and other
9 reasons as further set forth below.

10 4. Over the last twenty years, the Water Authority has begun to develop, and will
11 continue to develop, its own water supplies independent of Metropolitan. Nonetheless, the Water
12 Authority remains one of Metropolitan’s largest customers. The Water Authority is also unique
13 among Metropolitan’s 26 member agencies in that it pays Metropolitan to transport more than
14 180,000 acre-feet per year of water that the Water Authority purchases from third party sources,
15 pursuant to the 2003 Amended and Restated Agreement for the Exchange of Water (“Exchange
16 Agreement”), entered into between the Water Authority and Metropolitan. This type of
17 transportation service is generally referred to as “wheeling.” A copy of the Exchange Agreement
18 is attached hereto as **Exhibit E**.

19 5. On April 12, 2016, over the Water Authority’s objection, Metropolitan adopted the
20 following rates and charges for calendar years 2017 and 2018: (a) Tier 1 Supply Rate; (b) Tier 2
21 Supply Rate; (c) System Access Rate; (d) System Power Rate; (e) Water Stewardship Rate; (f)
22 Readiness-to-Serve Charge; (g) Capacity Charge; and (h) Treatment Charge. Metropolitan’s Tier
23 1 and Tier 2 Supply Rates purport to recover Metropolitan’s cost of obtaining water from various
24 sources. The System Access Rate, System Power Rate, and Water Stewardship Rate comprise
25 Metropolitan’s “Transportation Rates,” charged to member agencies conveying water through
26 Metropolitan’s system. Metropolitan’s Readiness-to-Serve Charge ostensibly recovers a portion
27 of Metropolitan’s costs for providing “standby” service. Metropolitan’s Capacity Charge is
28 purportedly designed to pay for the cost of the capacity on Metropolitan’s system to meet peak

1 day demands. Metropolitan’s Treatment Charge is purportedly designed to recover the cost of
2 providing treated water service. Metropolitan’s 2017 and 2018 rates and charges violate the
3 California Constitution, California statutory law, and common law. The Water Authority intends
4 to amend this complaint to include an additional cause of action seeking to redress Metropolitan’s
5 continued breach of the Exchange Agreement, after the Water Authority has presented the claim
6 to Metropolitan and sought to resolve the dispute informally.

7 6. Metropolitan’s 2017 and 2018 rates and charges violate the California
8 Constitution, California statutory law, and common law in multiple ways.

9 7. *First*, Metropolitan’s 2017 and 2018 rates, like its 2011-2014 rates that have been
10 adjudged unlawful by the San Francisco Superior Court, and like its unlawful 2015-2016 rates
11 which are the subject of the Water Authority’s pending challenge in that same court, improperly
12 allocate Metropolitan’s costs of obtaining a purchased water supply to the rates it charges for
13 “transportation” or wheeling. Metropolitan purchases about half of the water supply it sells to its
14 member agencies from the California Department of Water Resources (“DWR”), pursuant to the
15 terms of its water supply contract with DWR. Metropolitan does not own or operate the facilities
16 used to transport this purchased water to Metropolitan; instead DWR transports the water to
17 Metropolitan’s delivery points and facilities via state-owned State Water Project facilities.
18 Metropolitan’s cost-of-service analysis does not demonstrate or quantify any use of the State’s
19 system for Metropolitan’s transportation, nor does it establish that it is necessary for wheeling at
20 all. Despite this, Metropolitan’s 2017 and 2018 rates misallocate most of these water supply costs
21 to two of its Transportation Rates—specifically the System Access Rate and System Power Rate.
22 As a result, the rates Metropolitan charges for transporting water include the completely unrelated
23 supply costs Metropolitan incurs to purchase water from DWR.

24 8. *Second*, Metropolitan has again improperly and illegally allocated 100% of its
25 costs for subsidizing member agency local water supply projects to transportation by recovering
26 them through the Water Stewardship Rate. Metropolitan uses the Water Stewardship Rate
27 funds—which it collects from all of its 26 customer member agencies—to pay for only some
28 member agencies’ local water supply projects. Metropolitan has barred the Water Authority

1 alone from receiving *any* Water Stewardship Rate financial subsidies. As Metropolitan admitted
2 in testimony under oath in the litigation invalidating the 2011-2014 rates, “water stewardship” is
3 an invented concept that does not reflect any service Metropolitan actually provides. Rather, the
4 Water Stewardship Rate is a mechanism for Metropolitan to redistribute money from some
5 member agencies to others, without any cost-of-service basis. Therefore, the Water Stewardship
6 Rate is invalid in its entirety because it is an illegal tax. Furthermore, Metropolitan has failed to
7 establish that the costs it incurs to subsidize local water supply projects are caused by the
8 transportation of third-party water, or are properly allocated to transportation at all. On the
9 contrary, in the 2010 and 2012 cases, the court found that “Met itself knows that the *primary*
10 benefit [of ‘water stewardship’ costs] is not for transportation, but for supply.” Ex. C at 59
11 (emphasis in original). Beyond this, Metropolitan admits that the funding of local water supply
12 development projects benefits specific customer member agencies and does not add any water
13 supply to the quantity that Metropolitan obtains from other sources. Metropolitan has failed to—
14 and cannot—show that the Water Stewardship Rate provides a proportional benefit to the Water
15 Authority, which Metropolitan has declared ineligible to participate in local water supply
16 development programs funded by the Water Stewardship Rate, through the imposition of
17 Metropolitan’s Rate Structure Integrity provision. Because the Water Stewardship Rate is invalid
18 in its entirety as an illegal tax, it is unlawful for Metropolitan to include that rate both in its
19 charges for the Water Authority’s purchase of Metropolitan water and in its charges for
20 transporting the Water Authority’s third-party water.

21 9. *Third*, all of Metropolitan’s 2017 and 2018 rates and charges are unlawful because
22 they are part of a deliberate scheme to over-collect and spend revenues without ever accounting
23 for the cost of service. Metropolitan does not follow generally accepted industry practices to
24 projecting its sales and revenue requirements, choosing instead to set its “revenue requirement”
25 based on an arbitrary estimate of its sales and costs. Metropolitan chooses to set its revenue
26 requirement and rates and charges in such a manner that revenues will substantially exceed
27 Metropolitan’s actual costs of providing services in seven years out of ten. Metropolitan makes
28 no effort to adjust or “true up” its estimates to its actual costs, even after the fact. This intentional

1 over-collection creates a pool of money—in the hundreds of millions of dollars—that
2 Metropolitan treats like a “windfall” that it may use for any purpose. Over the past five years
3 alone, Metropolitan has collected \$847 million more than its actual costs, which Metropolitan has
4 spent on unbudgeted projects approved by the Board outside of Metropolitan’s budget and rate-
5 setting process. Metropolitan’s practice of setting its budget and rates to over-collect revenue
6 violates basic cost-of-service, ratemaking and legal requirements, and converts each of its rates
7 into unlawful taxes on Metropolitan’s 26 member agency customers and the public they serve.

8 10. *Fourth*, like its transportation rates, Metropolitan’s 2017 and 2018 supply-related
9 rates and charges—including its Tier 1 and Tier 2 Supply Rates, Treatment Charge, Readiness-to-
10 Serve (“RTS”) Charge, and Capacity Charge—are not based on Metropolitan’s cost of service.
11 Metropolitan’s supply-related rates and charges are unlawfully cross-subsidized by
12 Metropolitan’s inflated transportation rates because, as discussed above, the supply-related rates
13 and charges do not include the State Water Project supply costs that Metropolitan misallocates to
14 its transportation rates. Metropolitan also misallocates its supply (including storage) costs
15 because it has failed to determine and allocate those costs by customer class—refusing to
16 distinguish or account for the varying service characteristics and demand patterns of its 26
17 member agency customers—or, according to the proportional benefit each member agency
18 receives from Metropolitan water supplies. Instead, Metropolitan has omitted a critical step in the
19 rate-setting process that allocates costs according to customer class by simply declaring, without
20 any factual basis, that it has only one class of customers—its member agencies. Metropolitan
21 denies that it has any legal obligation to determine or allocate its costs according to the
22 proportional benefit its 26 member agency customers receive from the costs Metropolitan incurs
23 in providing services, or that its rates must be based on cost causation, even though Metropolitan
24 admitted during the 2010 and 2012 cases that it is “obligated to set its rates based on principles of
25 cost causation.” Ex. C at 47. Metropolitan has also failed to demonstrate that its Treatment
26 Charge properly recovers the costs Metropolitan incurs for providing treated water, or that those
27 costs have been properly allocated among Metropolitan’s member agency customers. In setting
28 its 2017 and 2018 rates, Metropolitan reallocated costs that historically had been allocated as

1 treatment costs to other service functions, without providing its rate model or any cost-of-service
2 basis to support reallocating these treatment costs. Finally, Metropolitan has arbitrarily reduced
3 its fixed RTS and Capacity Charges for 2017 and 2018, without any factual basis for finding that
4 the costs recovered by those charges have decreased. On the contrary, at the same time
5 Metropolitan has reduced its fixed RTS and Capacity Charges, it is planning to impose property
6 taxes at a level only authorized under the Metropolitan Water District Act as an action necessary
7 to ensure its “fiscal integrity.”

8 11. *Fifth*, Metropolitan’s 2017 and 2018 rates and charges are invalid because
9 Metropolitan’s rate-setting process violated several important procedural and legal requirements
10 intended to protect Metropolitan’s customer member agencies and the ratepayers they serve.
11 Metropolitan withheld from its Board, its member agencies, and the public important information
12 it relied upon in setting its 2017 and 2018 rates and charges, including the financial planning rate
13 model and other data it used to formulate those rates and charges. Metropolitan also refused to
14 timely provide all of the data and proposed methodology supporting its rates and charges,
15 including its cost-of-service analysis. Metropolitan’s failure to perform these basic duties
16 obstructed review of Metropolitan’s 2017 and 2018 rates and charges and prevented Metropolitan
17 from establishing—as it must—that its rates and charges comply with cost-of-service
18 requirements.

19 12. Accordingly, the Water Authority brings this action, requesting relief as set forth
20 in the remainder of this Complaint.

21 II. PARTIES

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

25 14. Respondent and Defendant Metropolitan is, and at all times mentioned herein was,
26 a public agency of the State of California organized pursuant to the Metropolitan Water District
27 Act [Stats. 1969, ch. 209 as amended; West’s California Water Code Append. §§ 109-134
28 (2010)], the principal offices of which are located in Los Angeles, California.

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

9 **III. SERVICE OF PROCESS AND DISPUTE RESOLUTION**

10 16. Petitioner will serve Metropolitan and all other defendants/respondents in the
11 manner provided by law.

12 17. As required by the validation law, the Water Authority will publish notice of this
13 action in newspapers of general circulation published in the six counties served by Metropolitan,
14 and the county where the 2010 and 2012 cases were decided and where the 2014 case is currently
15 pending, as this is the method most likely to give notice to the persons interested in these
16 proceedings. Those counties are Ventura, Los Angeles, Riverside, San Bernardino, Orange, San
17 Diego, and San Francisco. The Water Authority will seek an order, either *ex parte* or by
18 stipulation, authorizing:

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 in
23 writing of their interest in the matter not later than the date on which publication of the summons
24 is complete or such other time as the Court may order.

25 18. The Water Authority intends to amend its complaint to allege additional claims
26 against Metropolitan—including but not limited to a claim for breach of contract under the
27 Exchange Agreement, and to seek damages—after the Water Authority presents those claims to
28 Metropolitan pursuant to Metropolitan Administrative Code Section 9300 *et seq.* and California

1 Government Code Section 900 *et seq.*, and exercises reasonable best efforts to resolve its dispute
2 pursuant to Section 11.1 of the Exchange Agreement. The Water Authority explicitly reserves
3 the right to make such amendments.

4 **IV. JURISDICTION AND VENUE**

5 19. This court has jurisdiction over this matter pursuant to Code of Civil Procedure
6 Section 1085, Code of Civil Procedure Section 410.10, and, with respect to the Fifth Cause of
7 Action, Code of Civil Procedure Sections 860 *et seq.*, and Government Code Section 66022.

8 20. Venue is proper in this court as Metropolitan is located within the County of Los
9 Angeles and the acts and events giving rise to the claims occurred in part in the County of Los
10 Angeles. This suit, however, is then subject to mandatory transfer of venue to a neutral county
11 pursuant to Code of Civil Procedure Section 394(a) and Section 12.6 of the Exchange Agreement;
12 and the Water Authority intends to seek transfer of this action to the San Francisco Superior
13 Court either by motion or stipulation, as it has done with the prior related actions.

14 **V. FACTUAL ALLEGATIONS**

15 **A. Metropolitan, its roles, and its duties**

16 21. Metropolitan is a wholesale water agency that imports, stores, transports and treats
17 water throughout the Southern California counties of Ventura, Los Angeles, Riverside, San
18 Bernardino, Orange, and San Diego. Metropolitan has 26 member agencies, including the Water
19 Authority. These member agencies vary greatly in their size, service area and characteristics, and
20 demand patterns of dependence on Metropolitan water. The amount of water member agencies
21 purchase from Metropolitan ranges from a few hundred acre-feet of water per year for
22 Metropolitan's smallest member agencies to hundreds of thousands of acre-feet of water per year
23 for larger member agencies, such as the Water Authority, City of Los Angeles and the Municipal
24 Water District of Orange County. The customer member agencies purchase water from
25 Metropolitan, and then in turn sell that water to sub-agencies and utilities or directly to
26 consumers. In addition to obtaining and delivering imported water for sale to its member
27 agencies, Metropolitan also subsidizes some member agencies' local water supply development
28 projects.

1 22. Metropolitan obtains water for sale to its member agencies from two principal
2 sources: first, from a water purchase contract with the California DWR; and, second, from
3 Metropolitan’s allocation of water from the Colorado River. The water Metropolitan purchases
4 from DWR is delivered by the DWR via the state-owned and operated State Water Project
5 directly to Metropolitan’s transportation system located in Southern California. Metropolitan
6 does not own or operate the DWR’s State Water Project facilities, but does own and operate its
7 own transportation system in Southern California. Metropolitan transports its Colorado River
8 water via the Metropolitan-owned and operated Colorado River Aqueduct. In this Complaint,
9 water from these two principal sources of imported water will be referred to collectively as
10 “Metropolitan Water,” and water acquired by the Water Authority (and other member agencies)
11 from other third-party sources will be referred to generally as “Non-Metropolitan Water.”

12 23. Metropolitan’s costs are currently paid, in large part, by volumetric (per-acre-foot)
13 rates it imposes for the services it says that it provides to its member agencies, such as
14 transportation, treatment and supply. In addition, Metropolitan collects a limited amount of
15 revenue through the imposition of fixed charges imposed on its 26 customer member agencies,
16 including the RTS and Capacity Charges, as well as property taxes assessed on real property
17 within Metropolitan’s service area. Metropolitan also collects wheeling revenues for the
18 transportation of Non-Metropolitan Water (primarily from the Water Authority under the
19 Exchange Agreement). The California Constitution, various state statutes, and the common law
20 all obligate Metropolitan to set rates that are consistent with cost-of-service requirements: the
21 rates charged to a member agency must not exceed the cost of providing services to that agency.
22 The Metropolitan Water District Act (“MWD Act”), which defines the powers and
23 responsibilities of both Metropolitan and its Board, also obligates Metropolitan to set rates that
24 “shall be uniform for like classes of service throughout the district.” In setting its rates,
25 Metropolitan has failed to properly distribute its costs to customer classes based on service
26 characteristics and demand patterns, despite the fact that even Metropolitan’s own analysis
27 acknowledges that member agencies’ service characteristics and demand patterns vary
28 substantially.

1 24. Metropolitan has a Board of Directors, which includes at least one representative
2 appointed by each member agency. Additional seats on the Board and weighted votes are
3 allocated according to each member agency's percentage share of the total assessed property
4 value within the Metropolitan service area.

5 **B. The Water Authority purchases water from outside of Metropolitan and**
6 **enters into the Exchange Agreement with Metropolitan.**

7 25. Historically, Metropolitan's imported water was cheap and plentiful, before
8 environmental restrictions began limiting flows from the Bay Delta and the other western states
9 began using more of their entitlements of Colorado River water, thus limiting Metropolitan's
10 access to the surplus Colorado River water it had been using to fill its Colorado River Aqueduct.
11 This all started to change during the early 1990s, when California experienced a severe drought.
12 Metropolitan cut San Diego's water supply by more than 30% for 13 months, causing major
13 economic disruptions and forcing San Diego to enact extreme water-use reduction measures. In
14 the wake of that experience, the Water Authority began to look elsewhere for more reliable
15 sources of water supply, to guard against future water supply shortages and rationing by
16 Metropolitan.

17 26. The Water Authority ultimately contracted with the Imperial Irrigation District to
18 purchase up to 200,000 acre-feet per year of Colorado River water for a 45-year period, plus a 30-
19 year extension with mutual consent. The Water Authority also obtained the right to 80,000 acre-
20 feet of water conserved by the lining of the All-American and Coachella Canals. Because
21 Metropolitan owns the only water distribution facilities linking the Colorado River to the Water
22 Authority's service area, the Water Authority and Metropolitan negotiated the 2003 Exchange
23 Agreement for delivery of this Non-Metropolitan Water to the Water Authority's own distribution
24 and water storage facilities.

25 **C. Metropolitan's rates**

26 27. Metropolitan sets its rates annually or, more recently, biennially. In every rate-
27 setting cycle, Metropolitan has discretion to add or change its rates and charges, or the allocation
28 of Metropolitan's costs among its rates and charges and among its member agencies, so long as
cost-of-service requirements are met; indeed, Metropolitan has made such changes from time to

1 time. Metropolitan has acknowledged that each year’s rate-setting decision is a unique agency
2 action. Thus, each year’s rates must meet all legal requirements and each year’s rates may be
3 independently challenged in court.

4 28. As discussed above, Metropolitan adopted the following rates and charges for
5 calendar years 2017 and 2018: (a) Tier 1 Supply Rate; (b) Tier 2 Supply Rate; (c) System Access
6 Rate; (d) System Power Rate; (e) Water Stewardship Rate; (f) Readiness-to-Serve Charge; (g)
7 Capacity Charge; and (h) Treatment Charge. These rates are discussed further in subsections G-I
8 below.

9 **D. Metropolitan’s 2011-2014 Transportation Rates and wheeling rate are**
10 **declared unlawful and Metropolitan is ordered to pay the Water Authority**
11 **\$234.9 million.**

12 29. On June 11, 2010, the Water Authority filed a lawsuit challenging Metropolitan’s
13 transportation rates for calendar years 2011 and 2012 (the “2010 case”). Pursuant to Code of
14 Civil Procedure Section 394, that action was transferred to a neutral venue, San Francisco
15 Superior Court. The Water Authority’s operative Third Amended Petition/Complaint asserted
16 that Metropolitan’s 2011 and 2012 Transportation Rates and wheeling rate violated numerous
17 constitutional and statutory provisions (the “Rate Challenges”), that Metropolitan breached the
18 Exchange Agreement, and that Metropolitan improperly calculated preferential rights under
19 Section 135 of the MWD Act.

20 30. On June 8, 2012, after Metropolitan approved rates for calendar years 2013 and
21 2014 based on the same cost misallocations and methodology as the 2011 and 2012 rates, the
22 Water Authority filed a second lawsuit (the “2012 case”). In the 2012 case, the Water Authority
23 challenged Metropolitan’s 2013 and 2014 Transportation Rates and wheeling rate, and alleged
24 another claim for breach of contract. Specifically, the Water Authority claimed that the 2013 and
25 2014 rates violated the same common law, constitutional and statutory provisions as in the 2010
26 case, plus Article XIII C, § 1 of the California Constitution (Proposition 26). The 2012 case was
27 transferred to San Francisco Superior Court, coordinated with the 2010 case for discovery and
28 trial, and both cases were tried before Judge Karnow in a bifurcated bench trial.

1 31. The first phase of the bifurcated bench trial on the Rate Challenges was held on
2 December 17-23, 2013, with closing argument on January 23, 2014. The court issued a final
3 Statement of Decision on April 24, 2014 (the “Phase I Statement of Decision”). *See* Ex. C. The
4 Phase I Statement of Decision held that Metropolitan’s Transportation Rates and wheeling rate
5 for 2011–2014 were invalid because they violated cost-of-service requirements imposed by the
6 California Constitution, California statutory law and the common law. In particular, the court
7 held:

8 There is no substantial evidence in the record to support Met’s inclusion in
9 its transportation rates, and hence in its wheeling rate, of 100% of (1) the
10 sums it pays to the California Department of Water Resources’ SWP
11 disaggregated by the SWP as for transportation of that purchased water;
12 and (2) the costs for conservation and local water supply development
13 programs recovered through the Water Stewardship Rate. Indeed, the
14 record confirms that these rates over-collect from wheelers, because at
15 least a significant portion of these costs are attributable to supply, not
16 transportation. These rates – the System Access Rate, System Power Rate,
17 Water Stewardship Rate, and Met’s wheeling rate – therefore violate
18 Proposition 26 (2013-14 rates only), the Wheeling statute, Govt. Code §
19 549997(a), and the common law. The Court invalidates each rate for both
20 the 2011-2012 and 2013-2014 rate cycles.

21 Ex. C at 65.

22 32. The second phase of the bench trial on the Water Authority’s breach of contract
23 and preferential rights claims was held on March 30, April 1-2 and April 27-29, 2015, with
24 closing argument on June 5, 2015. The Court issued a final Statement of Decision on August 28,
25 2015 (the “Phase II Statement of Decision”). *See* Ex. D. The court held that Metropolitan
26 breached Section 5.2 of the Exchange Agreement by charging Transportation Rates that “were
27 not consistent with law and regulation.” *Id.* at 10. The court found that the Water Authority
28 “paid more than it agreed to under the Exchange Agreement because Met improperly included all
of the State Water Project costs for the transportation of purchased water to its conveyance rates
and all of the costs for conservation and local water supply development programs to its
conveyance rates.” *Id.* at 13. Accordingly, the court held that the Water Authority was “entitled
to damages in the amount of \$188,295,602 plus interest.” *Id.* at 18. As to the preferential rights
claim, the court held that “San Diego is entitled to a judicial declaration (a) that Met’s current

1 methodology for calculating San Diego’s preferential rights violates § 135 of the Metropolitan
2 Water District Act; and (b) directing Met to include San Diego’s payments for the transportation
3 of water under the Exchange Agreement in Met’s calculation of San Diego’s preferential rights.”
4 *Id.* at 29.

5 33. On November 18, 2015, the San Francisco Superior Court entered final judgment
6 in the 2010 and 2012 cases. *See* Ex. A. The final judgment:

7 a) Declared Metropolitan’s System Access Rate, System Power Rate, Water
8 Stewardship Rate, and Met’s wheeling rate, for calendar years 2011, 2012, 2013 and 2014,
9 unlawful, unconstitutional (2013 and 2014 rates only) and invalid.

10 b) Ordered Metropolitan to pay the Water Authority damages in the amount
11 of \$188,295,602 on the breach of contract claims, plus prejudgment interest in the amount of
12 \$46,637,180 for a total judgment of \$234,932,782.

13 c) Declared that Metropolitan’s methodology for calculating preferential
14 rights violates § 135 of the MWD Act, and ordered Metropolitan to include in its calculation of
15 preferential rights the Water Authority’s payments under the Exchange Agreement.

16 d) Retained continuing jurisdiction over the 2010 and 2012 cases.

17 e) Declared that, as the prevailing party, the Water Authority was entitled to
18 its costs and attorneys’ fees as permitted by statute and/or the Exchange Agreement.

19 34. The court also entered a peremptory writ of mandate commanding Metropolitan
20 “to enact only legal transportation rates in the future, and, specifically, not to do the things [the
21 court] held were illegal and/or unconstitutional in the Court’s April 24, 2014 Statement of
22 Decision.” *See* Ex. B. Specifically, the peremptory writ of mandate requires Metropolitan to do,
23 or not do, the following in setting its future transportation and wheeling rates:

24 a) “[T]o henceforth set its rates based on cost causation—that is, Met must
25 charge for its services based only on what it costs to provide them.”

26 b) “[N]ot to include in its future transportation or wheeling rates costs that are
27 not attributable to Met’s own conveyance system or to its actual costs in conveying water. *See*
28 SOD at 57. Met does not own or operate the State Water Project (SWP) or the SWP

1 transportation facilities, nor does Met transport SWP water from Northern California to the
2 terminal reservoirs at Castaic Lake and Lake Perris. *Id.* at 5, 53. The SWP is not part of Met’s
3 conveyance system, and the SWP conveyance facilities are not a part of Met’s conveyance
4 facilities.”

5 c) “[T]o allocate its costs associated with local water supply development,
6 water reclamation, desalination, and conservation programs to Met’s rates and charges based on
7 cost causation. The costs of such programs may be included in Met’s wheeling rate only to the
8 extent that the costs of transporting wheeled (*i.e.*, non-Met) water are a function of the costs of
9 such programs.”

10 35. On December 23, 2015, the court denied Metropolitan’s motion for a new trial in
11 its entirety. Metropolitan has appealed the final judgment and peremptory writ of mandate. The
12 Water Authority cross-appealed the portions of the judgment and summary adjudication order
13 finding in Metropolitan’s favor on the Fifth Cause of Action in the 2010 case for declaratory
14 relief concerning Metropolitan’s Rate Structure Integrity clause. The appeals are currently
15 pending in the First District Court of Appeal.

16 **E. The Water Authority challenges Metropolitan’s 2015 and 2016 rates.**

17 36. On April 8, 2014, over the Water Authority’s objections, Metropolitan adopted
18 rates for calendar years 2015 and 2016 based on the same unlawful cost misallocations and rate
19 methodologies that the court rejected in the prior 2010 and 2012 cases. Accordingly, on May 30,
20 2014, the Water Authority filed a lawsuit challenging Metropolitan’s 2015 and 2016 rates (the
21 “2014 case”). The 2014 case includes Rate Challenges to Metropolitan’s 2015 and 2016 rates
22 and another claim for breach of contract. The 2014 case was filed in Los Angeles Superior Court,
23 transferred to San Francisco Superior Court pursuant to Code of Civil Procedure Section 394, was
24 assigned to Judge Karnow by stipulation of the parties, and is currently stayed.

25 **F. Metropolitan’s process for setting its 2017 and 2018 rates and charges violates
26 procedural requirements.**

27 37. Metropolitan’s process for setting its 2017 and 2018 rates and charges violated
28 several important procedural requirements designed to ensure that the Board, its customer
member agencies, and the public had a full and fair opportunity to have all of the information

1 needed to review and understand how Metropolitan allocated its costs and set its rates and
2 charges.

- 3 • Critically, Metropolitan refused to disclose the financial planning rate model it
4 used to assign costs and establish its 2017 and 2018 rates and charges, claiming
5 that the model was “proprietary.”
- 6 • Metropolitan refused to release in a timely manner the other data and proposed
7 methodology it relied upon in setting its rates and charges, as required by the
8 Government Code.
- 9 • Metropolitan failed to provide its 2016 cost-of-service analysis and
10 recommendations of rates at its February Board meeting, as required by the
11 Metropolitan Administrative Code, and instead delayed producing its cost-of-
12 service analysis and rate recommendations until *after* its public hearing on its 2017
13 and 2018 rates and less than thirty days before the final Board vote adopting those
14 rates.

15 As a result of Metropolitan’s improper rate-setting process, Metropolitan not only failed to meet
16 the procedures required by law, but also failed to establish—as it must—that its 2017 and 2018
17 rates and charges comply with cost-of-service requirements under applicable law.

18 38. Government Code Section 54999.7, subdivision (e) requires Metropolitan to
19 provide, “[u]pon request of any affected public agency,” the “data and proposed methodology for
20 establishing or increasing” its rates and charges. On February 4, 2016, the Water Authority
21 requested that Metropolitan provide the data and proposed methodology that Metropolitan
22 intended to rely upon for establishing its 2017 and 2018 rates, as required by Government Code §
23 54999.7. A copy of the Water Authority’s February 4, 2016 letter is attached hereto as **Exhibit F**.

24 39. Metropolitan Administrative Code Section 4304 requires Metropolitan’s General
25 Manager to present to the Finance and Insurance Committee of the Board, “not later than at its
26 February meeting,” Metropolitan’s “cost of service analysis” and “[r]ecommendations of rates.”
27 Historically, Metropolitan has complied with this obligation and made its recommendations of
28 rates and cost-of-service analysis available at the same time it released its proposed budget—

1 typically, in January or February of each year. However, in February 2016, when Metropolitan
2 released its proposed budget for fiscal years 2017-2018 and 2018-2019, it failed to provide any
3 2016 cost-of-service analysis. In addition, rather than providing the General Manager’s
4 recommendations of rates for calendar years 2017 and 2018, the Board Memo contained only a
5 table of “estimated” rates.

6 40. On February 6, 2016, the Water Authority submitted a letter commenting on
7 Metropolitan’s proposed budget and “estimated” rates for calendar years 2017 and 2018, noting
8 that Metropolitan had failed to provide any cost-of-service analysis as it had done in past years,
9 and as required by the Administrative Code. As the Water Authority explained, the budget
10 document that Metropolitan provided did not contain sufficient information to understand how
11 Metropolitan proposed that its costs be allocated to its “estimated” rates. A copy of the Water
12 Authority’s February 6, 2016 letter, without attachments, is attached hereto as **Exhibit G**.

13 41. Two days later, on February 8, 2016, Metropolitan’s Chief Financial Officer, Gary
14 Breaux, informed the Metropolitan Board that, unlike previous years and in contravention of the
15 Metropolitan Administrative Code, Metropolitan would not provide its 2016 cost-of-service
16 analysis until after Metropolitan’s March 8, 2016 public hearing on the 2017 and 2018 rates and
17 charges, less than thirty days prior to the April 12, 2016 Board meeting when the Board was
18 scheduled to adopt the rates and charges.

19 42. On February 9, 2016, the Water Authority sent another letter to Metropolitan
20 objecting to Metropolitan’s decision to withhold the 2016 cost-of-service analysis, because such
21 decision was contrary to fundamental principles of due process and inconsistent with Government
22 Code § 54999.7. The Water Authority again requested that Metropolitan release its 2016 cost-of-
23 service analysis at least 30 days prior to the public hearing on Metropolitan’s 2017 and 2018 rates
24 and charges to allow for meaningful review by the Board, all affected public agencies, and
25 members of the public. A copy of the Water Authority’s February 9, 2016 letter, without
26 attachments, is attached hereto as **Exhibit H**.

27 43. On February 18, 2016, after failing to receive the information it requested from
28 Metropolitan, and with the dates for the public hearing and Board vote on the 2017 and 2018 rates

1 and charges quickly approaching, the Water Authority sent Metropolitan a Public Records Act
2 request seeking, among other things, any data, analyses and studies supporting Metropolitan's
3 2017 and 2018 rates and charges, including the financial planning rate model Metropolitan used
4 in formulating those rates and charges. On February 22, 2016, the Water Authority renewed its
5 request that Metropolitan immediately provide more detailed budget information and its 2016
6 cost-of-service analysis. Copies of the Water Authority's February 18, 2016 Public Records Act
7 request and February 22, 2016 letter are attached hereto as **Exhibits I and J**.

8 44. On February 23, 2016, Metropolitan Chief Financial Officer Gary Breaux and
9 General Counsel Marcia Scully responded to the Water Authority's February 4, February 6 and
10 February 9 letters acknowledging the Water Authority's requests under Government Code
11 Section 54999.7, and claiming that, "Metropolitan disputes SDCWA's litigation position that
12 Section 54999.7 applies to Metropolitan's rates." Metropolitan further claimed that the "judgment
13 in the litigation is currently on appeal and, therefore, is not binding on Metropolitan."
14 Metropolitan also reiterated its position that Proposition 26 does not apply to its rates. A copy of
15 Metropolitan's February 23, 2016 letter, without attachments, is attached hereto as **Exhibit K**.

16 45. On February 26, 2016, Metropolitan responded to the Water Authority's February
17 18, 2016 Public Records Act request by claiming that the financial planning rate model it used to
18 develop its 2017 and 2018 rates was a "proprietary software program" and refusing to produce it.
19 Metropolitan also declined to commit to any date certain for providing other documents in
20 response to the Water Authority's requests for information about the budget and 2017 and 2018
21 rates. A copy of Metropolitan's February 26, 2016 letter is attached hereto as **Exhibit L**.

22 46. On March 4 and 6, 2016, the Water Authority sent Metropolitan letters continuing
23 to object to Metropolitan's refusal to provide its 2016 cost-of-service analysis, financial planning
24 rate model and other information it was relying upon to support its cost allocations and rates. The
25 Water Authority noted that the public hearing on Metropolitan's 2017 and 2018 rates was set to
26 take place in just a few days, with Board adoption scheduled for April 12, and therefore, all of the
27 requested information should have been readily available. Copies of the Water Authority's
28 March 4 and 6, 2016 letters, without exhibits, are attached hereto as **Exhibits M and N**.

1 47. On March 8, 2016, Metropolitan held a public hearing on what it described as its
2 “proposed” 2017 and 2018 rates and charges, even though Metropolitan had refused to provide its
3 Board, its member agencies or the public with its recommendations of rates and associated cost-
4 of-service analysis, financial planning rate model, or budget detail. The Water Authority
5 provided written and oral testimony at the public hearing again objecting to Metropolitan’s rate-
6 setting process and estimated rates and charges. The Water Authority also submitted thousands
7 of pages of documents for inclusion in the 2016 administrative record, including the entire
8 administrative records in the 2010 and 2012 cases; documents the Water Authority submitted to
9 Metropolitan in 2014 in connection with Metropolitan’s adoption of its 2015 and 2016 rates and
10 charges; relevant materials from the prior 2010 and 2012 cases, including the court’s final
11 statements of decision; and numerous letters from the Water Authority detailing how and why
12 Metropolitan’s proposed 2017 and 2018 rates and charges violate the California Constitution,
13 state statutes and common law. The Water Authority’s letter submitting these documents to
14 Metropolitan and a master index of those documents is attached hereto as **Exhibit O**.

15 48. On March 16, 2016, eight days *after* its public hearing, Metropolitan finally
16 released its 2016 cost-of-service analysis. With one exception, the analysis contained the same
17 “rate structure” and methodology Metropolitan used in past years and failed to provide any new
18 justification for Metropolitan’s improper cost allocations; instead, Metropolitan just reargued its
19 unsuccessful litigation positions from the 2010 and 2012 cases. The only new rate
20 recommendation was to establish a fixed Treatment Charge based on a report from Metropolitan’s
21 supposedly “independent” consultant, Raftelis Financial Consultants. The newly-proposed
22 Treatment Charge would have had a highly negative financial impact on the Water Authority—
23 charging the Water Authority millions of dollars a year more for treatment services. The Board
24 ultimately rejected the Metropolitan staff-recommended fixed Treatment Charge and instead
25 voted to continue its purely volumetric treatment cost recovery. However, as discussed further
26 below, Metropolitan failed to demonstrate that the adopted Treatment Charge reflects its actual
27 cost of service for providing treated water.

28

1 49. On March 20, 2016, more than six weeks after the Water Authority’s initial
2 request and less than one month before the Board vote on the 2017 and 2018 rates and charges,
3 Metropolitan finally began releasing some of the data and information that it was relying upon to
4 support its 2017 and 2018 rates and charges. However, many of the documents Metropolitan
5 produced were redundant of documents Metropolitan previously had released or were completely
6 irrelevant to Metropolitan’s cost-of-service methodology and rate setting. The information that
7 Metropolitan did produce was insufficient to establish that Metropolitan’s 2017 and 2018 rates
8 and charges complied with governing cost-of-service requirements.

9 50. On March 30, 2016, almost two months later than required by Metropolitan’s
10 Administrative Code, more than three weeks after its public hearing and just thirteen days before
11 its final Board vote, Metropolitan posted on its web site its recommended rates and charges for
12 2017 and 2018.

13 51. On April 7, 2016, just two business days before the April 12 Board vote on the
14 2017 and 2018 rates, Metropolitan provided additional information in response to the Water
15 Authority’s Public Records Act request, and claimed that Metropolitan had now “complete[d]” its
16 “response to the PRA Request.” A copy of Metropolitan’s April 7, 2016 letter is attached hereto
17 as **Exhibit P**.

18 52. On April 7, 2016, Metropolitan’s General Counsel, Marcia Scully, also sent an
19 email to the Metropolitan Board, responding to questions posed at Metropolitan Finance and
20 Insurance Committee meetings and Budget and Rates Workshop meetings, claiming that
21 Metropolitan’s rates need only be reasonable, based on “cost of service or some other reasonable
22 basis.” Metropolitan’s April 7, 2016 email is attached hereto as **Exhibit Q**.

23 53. On April 11 and 12, 2016, the Water Authority provided written and oral
24 testimony opposing Metropolitan’s rate-setting process and proposed rates and charges. The
25 Water Authority also submitted additional documents into the administrative record, including
26 two independent reports from rate and water resource consultants detailing why Metropolitan’s
27 cost-of-service analysis is flawed and its rates and charges failed to comply with cost-of-service
28

1 requirements. A copy of the Water Authority’s letter submitting these documents to Metropolitan,
2 and the consultants’ reports, are attached hereto as **Exhibit R**.

3 54. On April 12, 2016, Metropolitan’s Board formally voted to adopt rates and charges
4 for 2017 and 2018, over the Water Authority’s objection.

5 **G. Metropolitan’s 2017 and 2018 Transportation Rates and wheeling rate exceed**
6 **the reasonable cost of service.**

7 55. Metropolitan charges its member agencies Transportation Rates—the System
8 Access Rate, System Power Rate, and Water Stewardship Rate—for most water conveyed
9 through Metropolitan’s system. Metropolitan also has a wheeling rate, which is comprised of the
10 System Access Rate, Water Stewardship Rate, and a power charge equal to the actual cost of
11 power used to deliver wheeled water. Metropolitan’s 2011-2014 Transportation Rates and
12 wheeling rate were declared unlawful and invalid in the 2010 and 2012 cases because they exceed
13 the reasonable costs Metropolitan incurs in transporting the Water Authority’s IID and Canal
14 Lining Water, or the cost of wheeling water under the Wheeling Statutes. Nevertheless,
15 Metropolitan adopted its Transportation Rates and wheeling rate for 2017 and 2018 based on the
16 same improper methodology and cost allocations that the court in the 2010 and 2012 cases
17 rejected. Metropolitan’s 2017 and 2018 Transportation Rates and wheeling rate are therefore
18 invalid for the same reasons as Metropolitan’s previously invalidated rates, and more.

19 **1. System Access Rate does not reflect the cost of service.**

20 56. The System Access Rate purports to recover “the cost of providing conveyance
21 and distribution capacity to meet average annual demands.” This rate recovers a large share of
22 Metropolitan’s costs to maintain and operate its distribution system within the Southern
23 California region, along with Metropolitan’s Colorado River Aqueduct. In its 2017 and 2018
24 rates, as in previous years, Metropolitan improperly included in its System Access Rate a large
25 share of Metropolitan’s supply costs paid to DWR for the purchase of water from DWR’s State
26 Water Project. In the 2010 and 2012 cases, the court determined that Metropolitan does not own
27 or operate the State Water Project facilities and further, that Metropolitan previously allocated all
28 State Water Project costs to supply, and none to transportation. Despite this, Metropolitan’s 2017

1 and 2018 rates again misallocate most of the State Water Project supply costs to the System
2 Access Rate and System Power Rate.

3 **2. System Power Rate does not reflect the cost of service.**

4 57. The System Power Rate purports to recover “the costs of pumping water to
5 Southern California.” In its 2017 and 2018 rates, Metropolitan incorporates into the System
6 Power Rate its power and pumping costs for its own Colorado River Aqueduct and other
7 distribution facilities. However, as in previous years, Metropolitan once again includes in that
8 rate costs for pumping and power on the State Water Project, even though those power costs are
9 neither incurred by, nor related to any activities performed by, Metropolitan. Accordingly,
10 because it includes State Water Project power costs relating to the purchase of that water supply,
11 Metropolitan’s System Power Rate is unlawful.

12 **3. Water Stewardship Rate is an illegal tax and does not reflect the cost
13 of service.**

14 58. As in previous years, Metropolitan’s 2017 and 2018 rates improperly allocate to
15 transportation, through the imposition of its Water Stewardship Rate, 100% of the costs
16 Metropolitan incurs to subsidize local water supply programs, such as desalination, groundwater
17 recovery and water conservation. All of Metropolitan’s member agencies, except the Water
18 Authority (which Metropolitan has barred from participating), are eligible to receive benefits
19 from Metropolitan’s subsidy program to develop member agencies’ own local water supplies.
20 Unlike Metropolitan’s other costs—such as State Water Project costs, which Metropolitan
21 actually incurs and must recover (but should recover from supply rates, and not from
22 transportation, as discussed above)—“water stewardship” is an invented concept that does not
23 reflect any service Metropolitan provides. Rather, the Water Stewardship Rate is simply a means
24 for Metropolitan to redistribute money from some member agencies to others, without any cost-
25 of-service basis for doing so. Therefore, the Water Stewardship Rate is invalid in its entirety
26 because it is an illegal tax.

27 59. In the 2010 and 2012 cases, the court held that “Met itself knows that the *primary*
28 benefit is not for transportation, but for supply,” and Metropolitan has said so in its Official Bond
Statements, among many other places. Ex. C at 59 (emphasis in original). But, nonetheless,

1 Metropolitan again inappropriately assigns 100% of these local water supply costs to
2 “transportation” by including them in the Water Stewardship Rate, which it charges as one of its
3 Transportation Rates.

4 60. Metropolitan has also failed to make any showing that transportation of Non-
5 Metropolitan Water through Metropolitan’s facilities caused Metropolitan to incur its “water
6 stewardship” subsidy costs, or that these expenditures are necessary to provide transportation
7 capacity in Metropolitan facilities, much less a showing that 100% of these costs should be
8 allocated as transportation costs. As the court explained in the 2010 and 2012 cases, even if
9 Metropolitan’s local water supply programs could theoretically allow Metropolitan to avoid some
10 transportation costs to some unspecified extent, Metropolitan has not shown any “correlation
11 between those avoided costs and water stewardship rates.” Ex. C at 60. Moreover, the “avoided
12 costs” attributable to Metropolitan’s local water supply projects “relate to the transportation needs
13 to provide purchased water”—*i.e.*, “water that Met sells to its member agencies”—not water that
14 the Water Authority owns separately and never purchased from Metropolitan. *Id.* at 61. “This
15 too suggests that the cost of wheeling, while properly a function of system-wide costs associated
16 with transportation as such, should not be a function of system-wide avoided costs of transporting
17 purchased water.” *Id.*

18 61. Furthermore, Metropolitan charges its Water Stewardship tax on every acre-foot of
19 Metropolitan Water it sells to member agencies, as well as Non-Metropolitan Water that it merely
20 conveys. However, Metropolitan has not demonstrated that the so-called “Water Stewardship
21 Rate” imposed on the Water Authority provides a commensurate, or even any, benefit to the
22 Water Authority. On the contrary, local water supply projects funded by Metropolitan through
23 the Water Stewardship Rate benefit only the member agencies that receive the subsidies from
24 Metropolitan and associated water supply produced from the local project, and do not provide any
25 measurable benefit, let alone a proportional benefit, to the Water Authority or other member
26 agencies. In fact, after the Water Authority challenged Metropolitan’s unlawful rates in the 2010
27 case, Metropolitan invoked its so-called “Rate Structure Integrity” or “RSI” Clause in subsidy
28 agreements to disqualify the Water Authority from receiving any further subsidy program

1 contracts and benefits. As a result, the Water Authority continues to pay approximately \$10
2 million every year in unlawful Water Stewardship taxes on its purchases of Metropolitan water,
3 even though Metropolitan has barred the Water Authority from receiving any benefit from these
4 taxes, except a minimal amount still available under contracts approved before the RSI clause
5 invocation.

6 **H. All of Metropolitan’s 2017 and 2018 rates are unlawful because they**
7 **arbitrarily collect revenue that is not based on Metropolitan’s costs of service.**

8 62. In addition to overcharging on its Transportation Rates, Metropolitan has also
9 deliberately set all of its 2017 and 2018 rates in a manner that is not based upon its actual costs of
10 service. Metropolitan does not follow generally accepted industry approaches to establishing its
11 sales and revenue requirements, choosing instead to set its “revenue requirement” based on an
12 arbitrary estimate of its sales and costs, without adjusting or “trueing up” its estimates to its actual
13 costs. This intentional over-collection creates a pool of money that Metropolitan then spends for
14 its own purposes—without regard for (and out of all proportion with) the actual costs of the
15 services that the rates were purportedly collected to fund. This practice, like Metropolitan’s
16 inflated Transportation Rates, violates basic cost-of-service requirements and amounts to an
17 unlawful tax on Metropolitan’s member agencies and their customers.

18 63. Metropolitan sets its rates by working backwards from a prospective estimate of its
19 “revenue requirement” for the upcoming fiscal years—in this case, fiscal years 2016-2017 and
20 2017-2018. Metropolitan’s revenue requirement is supposedly based on an approximation of the
21 costs Metropolitan expects to incur for providing services in future years, and Metropolitan sets
22 rates supposedly designed to recover those estimated costs. Metropolitan itself has acknowledged
23 that this “work-backwards” approach to rate setting is “necessarily inexact” because Metropolitan
24 is “looking at the services it plans to provide and then estimating how much money is necessary
25 to provide those services.” Jan. 17, 2014 MWD Closing Brief at 14.

26 64. Metropolitan’s rates are so inexact—and so deliberately inflated—that they are
27 arbitrary and unlawful even considered in isolation. In addition, it is arbitrary and unlawful for
28 Metropolitan to set its rates repeatedly, year after year, without regard to the actual costs incurred
in previous years, and ignoring its actual track record of failing to reasonably align its costs with

1 the rates collected to pay them. Metropolitan makes no effort to link its rates to the costs of its
2 services, even after the fact. On the contrary, Metropolitan’s Chief Financial Officer, Gary
3 Breaux, has admitted that Metropolitan deliberately chooses to set its revenue requirement and
4 rates in such a way that revenues will exceed Metropolitan’s actual costs of providing its services
5 in “seven out of ten years.” This deliberate, consistent over-collection of revenue without any
6 associated cost-of-service justification violates cost-of-service principles.

7 65. Metropolitan could easily account for any variations between its estimated and
8 actual costs by establishing balancing accounts, or some other tracking mechanism, for the costs
9 related to its various services and revenues used to pay them. The Water Authority has repeatedly
10 requested that Metropolitan adopt some such accounting mechanism to track revenues from all
11 individual rates and the actual expenditures associated with those rates. However, Metropolitan
12 has refused to establish any such accounting approach to align its costs with the rates collected to
13 pay them. Instead, Metropolitan takes all the money it has collected—indeed, deliberately over-
14 collected—and simply treats all the over-collected revenue as a windfall that Metropolitan may
15 use for any purpose, without regard to the nature of the costs incurred or rates collected to pay
16 them. This approach, like Metropolitan’s Water Stewardship Rate, makes no attempt to align
17 rates with any proportional cost of services, and the resulting rates are therefore unlawful.

18 66. For example, over the past five years, Metropolitan has collected \$847 million
19 more in revenue than the actual costs of the services Metropolitan provides. Metropolitan refuses
20 to account for the over-collected revenue according to cost-of-service principles—*i.e.*, by linking
21 the source of the additional revenue (the specific over-collected rates) to the costs it is used to pay
22 for, or by taking the over-collected revenues into account in setting future rates for those services
23 (including the rates Metropolitan has adopted for 2017 and 2018). Instead, Metropolitan ignores
24 cost-of-service principles with respect to these deliberately over-collected revenues, treating that
25 money as a slush fund, which Metropolitan spends for any use its Board and staff dictate *ex post*
26 *facto*.

1 **I. Metropolitan’s supply-related rates and charges exceed the reasonable cost of**
2 **service.**

3 67. Metropolitan’s supply-related rates and charges—the Tier 1 and Tier 2 Supply
4 Rates, Treatment Charge, RTS Charge, and Capacity Charge—are also unlawful because they fail
5 to reflect Metropolitan’s cost of service.

6 **1. Tier 1 and Tier 2 Supply Rates do not reflect the cost of service.**

7 68. Metropolitan’s Tier 1 and Tier 2 Supply Rates—which purport to recover the cost
8 of providing Metropolitan’s water supply—are unlawful for several reasons.

9 69. First, both the Tier 1 and Tier 2 Supply Rates are unlawfully cross-subsidized by
10 Metropolitan’s inflated Transportation Rates. The Supply Rates do not include all of the State
11 Water Project costs that Metropolitan instead misallocates to its Transportation Rates (as
12 explained above, and as the court held in the 2010 and 2012 cases). Thus, the Supply Rates do
13 not reflect the true costs of Metropolitan’s State Water Project water supply, and are invalid.

14 70. Second, Metropolitan’s Supply Rates are also unlawful because Metropolitan
15 misallocates its supply costs—in particular, its drought storage costs—between and among its 26
16 member agency customers. Metropolitan fails to determine or allocate its supply costs according
17 to customer class service characteristics and demand patterns, or the proportional benefit each
18 member agency receives from Metropolitan’s water supplies.

19 71. Finally, Metropolitan purports to have two tiers of supply service, with the Tier 2
20 Supply Rate supposedly set at a level to recover Metropolitan’s costs of acquiring new water
21 supplies. But Metropolitan’s Tier 2 Supply Rate is a sham because it is based on such a high
22 demand threshold that Metropolitan has no expectation that the Tier 2 rate will be charged on any
23 water sales. In fact, Metropolitan’s own cost-of-service analysis acknowledges that Metropolitan
24 “estimate[s] that no supply will be sold at the Tier 2 Supply Rate in either fiscal year,” and
25 Metropolitan’s budget does not anticipate any revenue collected from Tier 2 water sales.
26 Metropolitan’s purported recovery of the costs of acquiring new supplies through its illusory Tier
27 2 Supply Rate is another artifice designed to disguise the true cost of serving the respective and
28 varying needs of Metropolitan’s 26 customer member agencies.

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2. Treatment Charge does not reflect the cost of service.

72. Metropolitan’s 2017 and 2018 rates impose a volumetric Treatment Charge on a dollar per acre-foot basis for treated water purchased from Metropolitan. In setting its 2017 and 2018 rates, Metropolitan informed its Board that it had reallocated costs that historically had been allocated as treatment costs to other service functions. But Metropolitan refused to disclose what costs had been allocated or provide its net book value model (which assigns Metropolitan’s capital costs to various functions), actual debt service cost for treatment, or its financial planning rate model, and it has failed to establish any cost-of-service basis for reallocating these treatment costs. Accordingly, Metropolitan has failed to establish that its Treatment Charge reflects its cost of service for providing treated water.

3. Readiness-to-Serve Charge does not reflect the cost of service.

73. The Readiness to Serve Charge (RTS) is a fixed charge imposed on all Metropolitan member agencies that purports to recover system capital costs for emergency storage capacity and capacity to meet outages and hydrologic variability. Metropolitan’s RTS Charge for 2017 and 2018 is arbitrary and unlawful. Metropolitan has previously acknowledged in its Engineer’s Report that, even in previous years, the RTS Charge substantially under-collected the costs of the backup and emergency services that it is designed to fund. Instead of re-allocating costs to align the RTS with the true costs of “standby” service, however, Metropolitan has now substantially *reduced* the RTS Charge for 2017 and 2018 compared to prior years. Metropolitan has done so even though it has not demonstrated any reasonable basis for finding that its costs associated with emergency service and capacity for outages and hydrologic variability have decreased. On the contrary, at the same time that Metropolitan has reduced the RTS Charge, it is planning to impose property taxes at a level only authorized as an emergency measure, instead of collecting any necessary fixed revenues through its non-volumetric water rates such as the RTS Charge.

74. Furthermore, Metropolitan defines its “standby” costs in a manner that is inconsistent with cost-of-service and industry standard, leading to distortions in Metropolitan’s cost allocations and resulting rates (including the RTS Charge). Metropolitan’s cost-of-service

1 analysis does not use the word “standby” consistently with the industry standard definition of
2 providing an emergency water supply in the face of outages or a reduction in the supply of a
3 customer’s primary water source. Instead, Metropolitan refers to its “standby” costs as the
4 existing supplies and capacity in Metropolitan’s system that its 26 customer member agencies
5 routinely access to varying degrees. Because of Metropolitan’s improper definition of “standby”
6 costs, Metropolitan fails to allocate its supply and storage costs between and among its 26
7 member agency customers according to the proportional benefit each member agency receives
8 from those services.

9 **4. Capacity Charge does not reflect the cost of service.**

10 75. The Capacity Charge for 2017 and 2018 is also arbitrary and unlawful. The
11 Capacity Charge purportedly recovers distribution system capital costs necessary to provide
12 peaking capacity on Metropolitan’s distribution system during the summer (the period of highest
13 demand). Metropolitan arbitrarily reduced the Capacity Charge for 2017 and 2018, without any
14 demonstrated justification for the reduction. Because this substantial reduction in the Capacity
15 Charge is not justified by any reduction in costs, the resulting Capacity Charge violates cost-of-
16 service requirements.

17 **FIRST CAUSE OF ACTION**

18 **FOR WRIT OF MANDATE RE: MISALLOCATION OF COSTS IN 2017 AND 2018**
19 **TRANSPORTATION RATES AND WHEELING RATE**

20 **(Against Respondent Metropolitan)**

21 76. Petitioner re-alleges paragraphs 1 through 75 as though set forth fully herein.

22 77. Metropolitan is under a clear and present duty, pursuant to Article XIII C, Section
23 1, subdivision (e) (adopted by Proposition 26) of the California Constitution, and Government
24 Code Section 50076 to set rates no greater than the reasonable cost of providing the service or
25 product for which the rates are charged. Under that duty, Metropolitan’s rates must reasonably
26 and fairly allocate its costs among its 26 customer member agencies by customer class and in
27 accordance with the benefits each receives from Metropolitan and burdens each agency imposes
28 on Metropolitan. Otherwise, the rates imposed for these services constitute special taxes, for
which Proposition 26 requires two-thirds approval by the electorate (the registered voters residing

1 in the counties served by Metropolitan). Indeed, Proposition 26 places the burden on
2 Metropolitan to prove that its rates are not a tax and therefore exempt from voter approval
3 requirements. Specifically, under the final, unnumbered paragraph of Article XIII C, § 1,
4 subdivision (e), Metropolitan “bears the burden of proving by a preponderance of the evidence
5 that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to
6 cover the reasonable costs of the government activity, and that the manner in which those costs
7 are allocated to a payor bears a fair or reasonable relationship to the payor’s burdens on, or
8 benefits from, the governmental activity.” Cal. Const., art. XIII C, § 1(e). In other words,
9 because Metropolitan fails to properly and proportionally assign the costs of providing services to
10 its member agencies in accordance with the needs of and benefits provided to each agency, its
11 rates are actually disguised taxes, which require approval by a two-thirds popular vote of the
12 registered voters residing in the counties served by Metropolitan.

13 78. Metropolitan is further under a clear and present duty, pursuant to Government
14 Code Section 54999.7(a), to set rates that do “not exceed the reasonable costs of providing the
15 public utility service.”

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

19 80. Metropolitan also is under a clear and present duty, imposed by the Wheeling
20 Statutes (Water Code § 1810 *et seq.*) to charge only “fair compensation” for the conveyance, or
21 “wheeling,” of water through Metropolitan’s facilities. In setting a wheeling rate, Metropolitan is
22 further obligated to “act in reasonable manner consistent with the requirements of the law to
23 facilitate the voluntary sale, lease, or exchange of water.” Above and beyond the Exchange
24 Agreement, which requires that Metropolitan transport the Water Authority’s IID and Canal
25 Lining Water at a Price equal to Metropolitan’s rates set “pursuant to applicable law and
26 regulation and generally applicable to the conveyance of water by Metropolitan,” the Water
27 Authority has previously engaged, in the past, and intends to engage in the future, in “wheeling”
28 of water from third-party sources through Metropolitan’s facilities.

1 81. Additionally, Metropolitan is under a clear and present duty under the MWD Act
2 to set rates that “shall be uniform for like classes of service throughout the district.” (Stats. 1969,
3 ch. 209 as amended; West’s California Water Code—Append. §§ 109-134 (2010)). Under this
4 duty, Metropolitan’s rates must also apportion costs equitably among its customers and
5 appropriately distinguish and charge “like” classes of service based on cost-causation principles.
6 Metropolitan has completely eliminated this step in its rate-setting process by simply declaring
7 that it has only one customer class, in spite of evidence in its own record and cost-of-service
8 analysis demonstrating that its 26 member agency customers have different service characteristics
9 and demand patterns. These different service characteristics and demand patterns cause
10 Metropolitan to incur different costs to meet the varying service demands of its 26 customer
11 member agencies.

12 82. Finally, Metropolitan also has a clear and present duty under California common
13 law to set rates that are fair, reasonable, and proportionate to the cost of service. Metropolitan
14 also has a common law duty to make decisions and set rates that do not unreasonably discriminate
15 among its customers.

16 83. Metropolitan has failed to perform these duties. Metropolitan’s Transportation
17 Rates—the System Access Rate, System Power Rate, and Water Stewardship Rate—and
18 wheeling rate, adopted on April 12, 2016, are unlawful, unconstitutional, and invalid as set for
19 calendar years 2017 and 2018.

20 84. As discussed above, Metropolitan improperly sets all of its rates to over-collect
21 revenue based on an arbitrary revenue requirement, and misallocates State Water Project supply
22 costs and Water Stewardship Rate costs to Metropolitan’s Transportation Rates and wheeling
23 rate. Metropolitan’s misallocation of these costs violates the duties described above that
24 Metropolitan has to allocate its costs, and set rates and charges, in a manner that is fair,
25 reasonable, and proportionate to the cost of service to each customer, and unlawfully overcharges
26 the Water Authority for water transportation, while undercharging Metropolitan’s member
27 agencies for water supply costs.

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1 85. The Water Authority estimates that if Metropolitan's misallocation of its State
2 Water Project costs and Water Stewardship Rate costs remains unchanged, the Water Authority
3 will be overcharged by approximately \$53 million in 2017 and more than \$62 million in 2018 for
4 deliveries of the Water Authority's Non-Metropolitan Water. The Water Authority further
5 estimates that it will be overcharged by approximately \$10 million each year in Water
6 Stewardship Rate charges on purchases of Metropolitan Water in 2017 and 2018. These annual
7 overcharges will increase each year until a court orders Metropolitan to comply—and
8 Metropolitan actually does comply—with its duties outlined above.

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

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

14 **SECOND CAUSE OF ACTION**

15 **FOR WRIT OF MANDATE RE: OVER-COLLECTION AND MISALLOCATION OF**
16 **COSTS IN 2017 AND 2018 TIER 1 AND TIER 2 SUPPLY RATES, READINESS-TO-**
17 **SERVE CHARGE, CAPACITY CHARGE AND TREATMENT CHARGE**

18 **(Against Respondent Metropolitan)**

19 88. Petitioner re-alleges paragraphs 1 through 87 as though set forth fully herein.

20 89. Metropolitan is under the clear and present duties described in paragraphs 77-82
21 above.

22 90. Metropolitan has failed to perform its requisite duties. Metropolitan's supply-
23 related rates and charges—the Tier 1 Supply Rate and Tier 2 Supply Rate, Readiness-to-Serve
24 (RTS) Charge, Capacity Charge, and Treatment Charge—adopted on April 12, 2016, are
25 unlawful, unconstitutional, and invalid as set for calendar years 2017 and 2018. As discussed
26 above, Metropolitan improperly sets all of these rates (and its Transportation Rates) to over-
27 collect revenue based on an arbitrary revenue requirement, cross-subsidizes the Supply Rates by
28 misallocating State Water Project costs to Transportation Rates, misallocates its supply (including
storage) costs between and among Metropolitan's 26 member agency customers, and likewise

1 sets its Treatment Charge, RTS Charge, and Capacity Charge without regard to Metropolitan’s
2 actual costs of service. Further, Metropolitan has failed to charge the Water Authority a rate
3 commensurate with the cost of services provided directly to the Water Authority.

4 91. Metropolitan’s misallocation of these costs violates the duties described above that
5 Metropolitan has to allocate its costs, and set rates and charges, in a manner that is fair,
6 reasonable, and proportionate to the cost of service to each customer.

7 92. If Metropolitan’s misallocation of its supply (including storage and other drought-
8 related) costs remains unchanged, the Water Authority will be overcharged by millions of dollars
9 in 2017 and 2018, in an exact amount subject to proof. These annual overcharges will continue
10 and increase each year until a court orders Metropolitan to comply—and Metropolitan actually
11 does comply—with its duties outlined above.

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

15 94. Accordingly, the Water Authority is entitled to issuance of a Peremptory Writ of
16 Mandate as specified more fully below.

17 **THIRD CAUSE OF ACTION**

18 **FOR WRIT OF MANDATE RE: PROCEDURAL VIOLATIONS**

19 **(Against Respondent Metropolitan)**

20 95. Petitioner re-alleges paragraphs 1 through 94 as though set forth fully herein.

21 96. Metropolitan has a clear and present duty, pursuant to Government Code Section
22 54999.7, subdivision (e) to, “[u]pon request of any affected public agency,” provide the “affected
23 public agency the data and proposed methodology for establishing or increasing the rate, charge,
24 surcharge, or fee.”

25 97. Metropolitan is also under a clear and present duty, under Metropolitan
26 Administrative Code Section 4304 to, “[n]ot later than at its February meeting,” present to the
27 Finance and Insurance Committee of the Board the (1) “cost of service analysis supporting the
28 rates and charges required during the biennial period beginning the following July 1, as

1 determined by the General Manager in accordance with current Board policies;” and (2)
2 “[r]ecommendations of rates including, but not limited to, the System Access Rate, Water
3 Stewardship Rate, System Power Rate, Treatment Surcharge, and the Supply Rates for the
4 various classes of water service to become effective each January 1 of the biennial period.”

5 98. Metropolitan failed to perform these duties. As discussed above, Metropolitan
6 refused to disclose the financial planning rate model it used to assign costs and establish its 2017
7 and 2018 rates and charges. Metropolitan did not timely provide all of the other data and
8 methodology it relied upon in setting its rates and charges. And Metropolitan failed to provide its
9 2016 cost-of-service analysis and recommendations of rates and charges at its February Board
10 meeting, and instead delayed producing its analysis and recommendations until after its public
11 hearing on the 2017 and 2018 rates and charges and less than thirty days before its final Board
12 vote adopting those rates and charges. As a result of Metropolitan’s improper rate-setting
13 process, Metropolitan did not meet the procedures required by law and failed to establish—as it
14 must—that its 2017 and 2018 rates and charges comply with cost-of- service requirements under
15 applicable law.

16 99. The Water Authority has no plain, speedy, and adequate remedy at law, other than
17 the relief sought in this Complaint. The Water Authority is beneficially interested in the issuance
18 of a Writ of Mandate to obtain judicial review of Metropolitan’s illegal rate-setting process.

19 100. Accordingly, the Water Authority is entitled to issuance of a Peremptory Writ of
20 Mandate as specified more fully below.

21 **FOURTH CAUSE OF ACTION**

22 **DECLARATORY RELIEF RE: OVER-COLLECTION AND MISALLOCATION OF**
23 **COSTS IN 2017 AND 2018 RATES AND CHARGES, AND PROCEDURAL**
24 **VIOLATIONS**

25 **(Against Respondent Metropolitan)**

26 101. Petitioner re-alleges paragraphs 1 through 100 as though set forth fully herein.

27 102. An actual and present controversy now exists between the Water Authority, on the
28 one hand, and Metropolitan, on the other. Petitioner contends that the rates and charges
Metropolitan adopted over its objections on April 12, 2016 violate state constitutional, statutory,

1 and common law, as set forth in the First and Second Causes of Action. The challenged rates and
2 charges overcharge the Water Authority, undercharge other member agencies, and do not comply
3 with Metropolitan's duty to impose rates and charges that are fair, reasonable, and proportionate
4 to the cost of service to each customer. Furthermore, Metropolitan's process for setting its 2017
5 and 2018 rates and charges violated important procedural requirements, as set forth in the Third
6 Cause of Action.

7 103. Respondent Metropolitan disagrees with these allegations and asserts that the rates
8 and charges challenged here are lawful in all respects and were set in a procedurally appropriate
9 manner.

10 104. In the absence of declaratory relief, Metropolitan will continue to impose unlawful
11 rates and charges that are not fair, reasonable, and proportionate to the cost of serving its
12 customers, including the Water Authority, and will continue to set rates and charges in a
13 procedurally unlawful manner.

14 105. The Water Authority desires and is entitled to a judicial declaration that
15 Metropolitan's 2017 and 2018 rates and charges are contrary to law and violate constitutional,
16 statutory and common law. The Water Authority further desires and is entitled to a judicial
17 declaration that Metropolitan's 2017 and 2018 rates and charges were set in violation of
18 applicable procedural law.

19 106. Such declaratory relief is necessary and appropriate now, because the Water
20 Authority anticipates that Metropolitan will continue to impose rates and charges that violate
21 constitutional, statutory and common law, both substantively and procedurally. A declaration is
22 therefore necessary to protect the Water Authority and the San Diego region from these unlawful
23 rates.

24 107. Therefore, the Water Authority prays for declaratory relief as specified more fully
25 below.

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1 **FIFTH CAUSE OF ACTION**

2 **DETERMINATION OF INVALIDITY OF RATES AND CHARGES ADOPTED BY**
3 **METROPOLITAN ON OR ABOUT APRIL 12, 2016**

4 **(CCP § 860 *et seq.*; Gov’t Code § 66022)**

5 **(Against Respondent Metropolitan)**

6 108. Petitioner re-alleges paragraphs 1 through 107 as though set forth fully herein.

7 109. Petitioner is informed and believes, and on that basis alleges, that the rates and
8 charges Metropolitan adopted on or about April 12, 2016 may include capacity charges as defined
9 in Government Code Section 66013. Government Code Section 66022 authorizes the filing of a
10 validation action or reverse-validation action pursuant to Code of Civil Procedure Sections 860 *et*
11 *seq.* to challenge a public agency’s adoption of rates that include capacity charges as defined in
12 Government Code Section 66013.

13 110. Assuming that Metropolitan’s rates and charges are subject to validation pursuant
14 to this provision or any other applicable law, the Water Authority seeks a determination pursuant
15 to Code of Civil Procedure Sections 860 and 863 that the rates and charges described below are
16 invalid.

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

22 112. For the reasons set forth above, the rates and charges adopted by Metropolitan’s
23 board on or about April 12, 2016 are invalid under: (a) Article XIII C, Section 1, subdivision (e)
24 of the California Constitution (adopted by Proposition 26), because such charges are greater “than
25 necessary to cover the reasonable costs of the governmental activity,” and are not allocated in a
26 manner that “bear[s] a fair or reasonable relationship to the payor’s burdens on, or benefits
27 received from, the governmental activity”; (b) California’s Wheeling Statutes (Water Code
28 Section 1810 *et seq.*), because the rates Metropolitan charges for transportation to the Water
Authority of Non-Metropolitan Water exceed “fair compensation” for use of Metropolitan’s

1 facilities; (c) Government Code Section 54999.7(a), which requires that its rates “not exceed the
2 reasonable cost of providing the public utility service;” (d) Government Code Section 66013,
3 which requires that Metropolitan’s rates not “exceed the estimated reasonable cost of providing
4 the service for which the fee or charge is imposed;” (e) Metropolitan’s principal act, Stats. 1969;
5 ch. 209 as amended; West’s California Water Code—Append. §§ 109-134 (2010), which requires
6 Metropolitan to set rates and charges that are “uniform for like classes of services throughout the
7 district”; (f) California common law, which requires that Metropolitan impose rates that are fair,
8 reasonable, and proportionate to the actual cost of service; (g) Government Code Section
9 54999.7(e), which requires that Metropolitan provide “the data and proposed methodology for
10 establishing or increasing the rate, charge, surcharge, or fee;” and (h) MWD Administrative Code
11 Section 4304, which requires Metropolitan to present, no later than at its February Board meeting,
12 the “cost of service analysis supporting the rates and charges” and Metropolitan’s
13 “[r]ecommendations of rates.”

14 113. The Water Authority is entitled to a declaration under the Validation Statutes that
15 the rates and charges Metropolitan adopted on April 12, 2016 are invalid and must be set aside.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, the Water Authority prays that judgment be entered against Defendants
18 and Respondents as follows:

19 1. As to the First, Second and Third Causes of Action, a peremptory writ of mandate
20 commanding Metropolitan to:

21 a) Vacate Metropolitan’s April 12, 2016 decision adopting the above-
22 described rates and charges for calendar years 2017 and 2018;

23 b) Set rates and charges for calendar years 2017 and 2018, and all future
24 years, that comply with the law, by:

- 25 • Conducting a full and independent cost-of-service study that analyzes, among
26 other issues, the causes of Metropolitan’s State Water Project costs, local water
27 supply program costs, storage costs, and treatment costs;
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- Allocating costs to rates and charges based on cost-causation—that is, Metropolitan must charge for its services based only on what it costs to provide them;
- Allocating costs to Metropolitan’s member agencies in a manner reasonably related to the benefits received from, and burdens imposed on, Metropolitan by each Metropolitan member agency for the activity for which that rate is charged;
- Not including in its Transportation Rates or wheeling rates costs that are not attributable to Metropolitan’s own conveyance system or to its actual costs in conveying water in that system, including but not limited to Metropolitan being required to exclude State Water Project costs from its Transportation Rates and wheeling rate;
- Allocating costs associated with local water supply development, water reclamation, desalination, and conservation programs to Metropolitan’s rates and charges based on cost causation;
- Not setting future rates and charges in a manner that discourages wheeling, and loss of income by Metropolitan attributable to lost water sales not being a permissible justification for increasing Metropolitan’s wheeling rates;
- Allocating Metropolitan’s supply (including storage and inventory) costs between and among Metropolitan’s 26 customer member agencies according to the proportional benefit each member agency receives from Metropolitan water supplies;
- Not using revenues from rates and charges collected to pay for one service to pay costs related to any other service, unless Met adjusts its cost of service accordingly; and
- Presenting to the Finance and Insurance Committee of the Board, not later than at its February meeting, its cost-of-service analysis and recommendations of rates; and

1 • Timely providing to the Water Authority all of the data and methodology
2 Metropolitan used to establish or increase its rates and charges, including but
3 not limited to its financial planning rate model.

4 c) Take any further action that the Court deems necessary and appropriate.

5 2. As to the Fourth Cause of Action, a declaration that:

6 a) All of Metropolitan's rates and charges, including its Transportation Rates
7 (the System Access Rate, System Power Rate and Water Stewardship Rate), wheeling rate, Tier 1
8 and Tier 2 Supply Rates, Treatment Charge, Readiness-to-Serve Charge, and Capacity Charge,
9 each and together, for calendar years 2017 and 2018 violate Article XIII C, Section 1 of the
10 California Constitution (Proposition 26); the Wheeling Statute (Water Code § 1810 *et seq.*);
11 Government Code Sections 54999.7(a) and 66013; the Metropolitan Water District Act (Stats.
12 1969, ch. 209 as amended; West's California Water Code—Append. §§ 109-134); and California
13 common law standards applicable to ratemaking.

14 b) Metropolitan's 2017 and 2018 rates and charges were set in an unlawful
15 manner, in violation of Government Code Section 54999.7(e) and Metropolitan Administrative
16 Code Section 4304; and

17 c) Metropolitan's rates and charges for calendar years 2017 and 2018 are and
18 were unlawful, unconstitutional and invalid, and must be set aside.

19 3. As to Fifth Cause of Action, an order invalidating Metropolitan's April 12, 2016
20 decision adopting the above-described rates and charges for calendar years 2017 and 2018.

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

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

23 Dated: April 13, 2016

KEKER & VAN NEST LLP

24
25 By: John W. Kecker / nsc
JOHN W. KEKER

26
27 Attorneys for Petitioner and Plaintiff
SAN DIEGO COUNTY WATER
28 AUTHORITY