

1 STEVEN P. O'NEILL, Esq. (SBN. 143075)
CHRISTINE M. CARSON, Esq. (SBN. 188603)
2 LEMIEUX & O'NEILL
4165 E. Thousand Oaks Blvd., Suite 350
3 Westlake Village, CA 91362
Telephone: (805) 495-4770
4 Facsimile: (805) 495-2787

EXEMPT FROM FILING FEES
[GOVERNMENT CODE § 6103]

5 Attorneys for Real Parties in Interest
EASTERN MUNICIPAL WATER DISTRICT,
6 WESTERN MUNICIPAL WATER DISTRICT,
WEST BASIN MUNICIPAL WATER DISTRICT,
7 FOOTHILL MUNICIPAL WATER DISTRICT,
LAS VIRGENES MUNICIPAL WATER DISTRICT
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

12 SAN DIEGO COUNTY WATER)
AUTHORITY,)

CASE NO. BC 547139

13)
Petitioner and Plaintiff,)

) EASTERN MUNICIPAL WATER
) DISTRICT'S ANSWER TO
) PETITIONER AND PLAINTIFF'S
) PETITION FOR WRIT OF
) MANDATE AND COMPLAINT
) FOR DETERMINATION OF
) INVALIDITY, DAMAGES AND
) DECLARATORY RELIEF

14 vs.)

15 METROPOLITAN WATER DISTRICT OF)
16 SOUTHERN CALIFORNIA; ALL PERSONS)
INTERESTED IN THE VALIDITY OF THE)
17 RATES ADOPTED BY THE)
METROPOLITAN WATER DISTRICT OF)
18 SOUTHERN CALIFORNIA ON APRIL 8,)
2014 TO BE EFFECTIVE JANUARY 1, 2015)
19 and JANUARY 1, 2016; and DOES 1-10,)

) Dept.: 17
) Judge: Hon. Richard Rico
) Date Filed: May 30, 2014
) Trial Date: Not Yet Set

20 Respondents and Defendants.)
21)

22
23 Pursuant to California Code of Civil Procedure, Section 860, *et seq.*, Real Party In Interest
24 EASTERN MUNICIPAL WATER DISTRICT ("DISTRICT") hereby answers the first three causes
25 of action alleged in Petitioner and Plaintiff San Diego County Water Authority's ("SDCWA's")
26 unverified Petition For Writ of Mandate and Complaint For Determination of Invalidity, Damages
27

1 and Declaratory Relief (collectively, the “Complaint”), as follows¹:

2 **GENERAL DENIAL**

3 Pursuant to California Code of Civil Procedure § 431.30(d), DISTRICT generally denies
4 each and every allegation in the Complaint, and further denies that SDCWA is entitled to any of the
5 relief prayed for in the Complaint.

6 **GENERAL ALLEGATIONS IN SUPPORT OF GENERAL DENIAL**

7 **AND AFFIRMATIVE DEFENSES**

8 **A. The Metropolitan Water District Of Southern California**

9
10 1. Respondent and Defendant Metropolitan Water District of Southern
11 California (“MWD” or “Metropolitan”) is a public agency and is a supplemental supplier of
12 wholesale water. It operates as a voluntary cooperative of member public agencies, which join
13 Metropolitan after a majority of the voters within that agency’s service area vote to become a
14 member agency. Metropolitan is governed by a Board of Directors composed of representatives
15 from the member agencies. Today, Metropolitan is made up of 26 member agencies.

16 2. Each member agency has proportional representation on the Board of
17 Directors, and is entitled to at least one seat on the Board, plus an additional seat for every full 3%
18 of the total assessed value of the property within the member agency’s service area that is taxable
19 for district purposes. Currently, the Board is made up of 37 directors and, although 23 of the
20 agencies have no more than two directors, three agencies—SDCWA, the City of Los Angeles
21 Department of Water and Power, and the Municipal Water District of Orange County—each have
22 four. Each director is guaranteed one vote, which may be weighted more heavily depending on the
23 property valuation in his or her service area. SDCWA controls approximately 18% of the Board’s
24 vote.

25
26 ¹ DISTRICT is a Real Party in Interest in the first, second, and third causes of action in SDCWA’s
27 Complaint. The fourth cause of action in the Complaint is not asserted against DISTRICT as a Real
28 Party in Interest, as DISTRICT is not a party to the Exchange Agreement between SDCWA and
Metropolitan Water District of Southern California that is at issue in the fourth cause of action.

1 3. As relevant to this case, Metropolitan provides two separate services: (1) full
2 service water, where Metropolitan delivers Metropolitan water to its customers, and (2) wheeling
3 service, where Metropolitan transports third-party water. To the degree a member agency has local
4 resources, develops local resources, implements conservation, or otherwise reduces demands, that
5 member agency is not required to use Metropolitan water or water services in the way a consumer
6 would be required to use services from a local retail water agency; the member agency is free to opt
7 out fully or partially from Metropolitan's services. As to wheeling service, Metropolitan voluntarily
8 maintains a pre-established rate for wheeling service that applies to wheeling to member agencies
9 for one year or less, for the purpose of facilitating these shorter-term transactions. All other
10 wheeling transactions are negotiated. Metropolitan also exchanges Metropolitan water for other
11 water, and those transactions are negotiated.

12 4. To the degree Metropolitan supplies water to the member agencies, it is as a
13 supplemental supplier of wholesale water. In order to provide a supplemental wholesale water
14 supply, Metropolitan imports water from two principal sources: the State Water Project ("SWP") in
15 Northern California, via the California Aqueduct, and the Colorado River, via the Colorado River
16 Aqueduct. Metropolitan constructed, and operates and maintains, the Colorado River Aqueduct.
17 The SWP is operated by the California Department of Water Resources ("DWR"). Metropolitan,
18 along with other state water contractors, funded the SWP's construction and are obligated to
19 continue to fund its operations and maintenance, regardless of whether Metropolitan receives a
20 water allocation from the SWP. DWR, and the state of California, are responsible for none of the
21 SWP's costs. Metropolitan delivers Colorado River and SWP water to member agencies through an
22 extensive regional network of canals, pipelines, and appurtenant facilities, as well as supply,
23 treatment, and storage facilities. Because of the integrated nature of its conveyance and distribution
24 systems, Metropolitan supplies most of its full service customers with a blend of SWP and Colorado
25 River water. On occasion, Metropolitan must supplement its water supplies with non-project and
26 non-Colorado River water, which it delivers to its member agency customers through the SWP
27 facilities. Metropolitan also uses the SWP facilities to transport third-party water, or "wheel" water,

1 on behalf of its customers. Metropolitan considers both the Colorado River Aqueduct and the SWP
2 part of its conveyance system.

3 5. To pay for its activities, Metropolitan maintains water rates and charges.
4 Metropolitan's enabling statute (the "MWD Act") mandates that Metropolitan set rates that recover
5 the revenue necessary to pay its expenses. Pursuant to the MWD Act, Metropolitan's Board of
6 Directors must set rates and charges, through a majority vote of the representatives of
7 Metropolitan's member agencies on the Board. SDCWA's claims challenge features of
8 Metropolitan's rate structure that have been in place for over a decade and a half.

9 **B. The Evolution of Metropolitan's Full Service Water Rate**

10 6. Until 2003, Metropolitan charged member agencies a single, bundled rate
11 without any separate components, i.e., supply or transportation components, for full service water.
12

13 7. In 1998, Metropolitan's Board of Directors began the process of designing
14 and implementing unbundled water rates and charges in order to more transparently recover its
15 costs. Throughout this process, the Board, including representatives from SDCWA and the other
16 member agencies, sought input from numerous stakeholders including business and community
17 leaders and the public at large. SDCWA and Metropolitan's other member agencies were deeply
18 involved in the three-year process of developing an unbundled rate structure.

19 8. On October 16, 2001, Metropolitan's Board of Directors voted to adopt a
20 revised, unbundled rate structure. On January 8, 2002, Metropolitan's Board initiated adoption of
21 the first cycle of rates under the new, unbundled rate structure. Beginning in February 2002, once
22 the rate development process was underway, Metropolitan held public hearings on the
23 recommended rates and charges to be implemented under the new rate structure. On March 12,
24 2002, with the affirmative vote of SDCWA's representatives on Metropolitan's Board, Metropolitan
25 adopted specific rates and charges to be effective on January 1, 2003, pursuant to the rate structure
26 adopted in 2001. Metropolitan's unbundled rate structure and the rates and charges that comprise it
27 have remained in effect for over a decade.

1 **C. The Components of Metropolitan’s Full Service Water Rate**

2 9. Metropolitan’s full service water rate includes the overall cost of providing
3 full service water. This includes Metropolitan’s supply and transportation-related SWP costs, as
4 well as its supply and transportation-related Colorado River costs, its demand management costs,
5 and other costs. The relevant rate components that Metropolitan uses to recover the cost of
6 providing full service water include the supply rate components (the Tiers 1 and 2 Supply Rates),
7 and the transportation rate components (the System Access Rate, System Power Rate, and Water
8 Stewardship Rate). Member agencies also pay a water treatment charge, if applicable.
9 Approximately 95% of the time that Metropolitan charges the System Access Rate and Water
10 Stewardship Rate transportation rate components, it does so as part of the sale of full service
11 water—the other 5% of the time Metropolitan charges these components as part of its rate for
12 wheeling service, as discussed below. Metropolitan’s Supply Rates and System Power Rate are
13 charged as part of the rate for full service water 100% of the time. All full service customers must
14 pay all of the full service water rate components. Because of the volumetric nature of the rate
15 components, full service customers pay each rate component in direct proportion to the amount of
16 water that they purchase.

17 10. The Supply Rate components of Metropolitan’s full service water rate
18 recover costs to maintain and develop water supplies needed to meet the member agencies’
19 demands. These costs include capital financing, operating, maintenance, and overhead costs for
20 storage in Metropolitan’s reservoirs. These costs are generally recovered through the Tier 1 Supply
21 Rate. However, if purchases in a calendar year by a member agency that executed a purchase order
22 exceed 90% of its base firm demand (an amount based on the member agency’s past annual firm
23 demands), that member agency must pay a higher Tier 2 Supply Rate. If a member agency did not
24 execute a purchase order, the member agency must pay the higher Tier 2 Supply Rate for any
25 amount exceeding 60% of its base firm demand.

26 11. During its Cost of Service process, Metropolitan determines what storage-
27 related costs it anticipates incurring and separates out those costs into three functions, one of which

1 is drought storage that produces additional supplies during times of shortage, including dry years.
2 This stored supply is equally available to all member agencies should they need to utilize it.
3 Metropolitan categorizes drought storage as a supply cost, and ultimately allocates drought storage
4 to its Supply Rates which every member agency pays on a volumetric basis.

5 12. The System Access Rate generates revenues to recover the capital, operating,
6 maintenance, and overhead costs associated with the transportation facilities (e.g., aqueducts and
7 pipelines) necessary to deliver water to meet member agencies' average annual demands. Revenues
8 from the System Access Rate recover the costs of paying for "distribution" facilities (Metropolitan's
9 facilities within its service area) and "conveyance" facilities (costs associated with the SWP
10 facilities and Colorado River Aqueduct). The System Access Rate also includes regulatory storage
11 costs, which are associated with maintaining additional distribution capacity and help meet peak
12 demands. The System Power Rate generates revenues to recover the costs of power necessary to
13 pump water through the SWP and Colorado River facilities to Metropolitan, and through
14 Metropolitan's facilities to the member agencies. Metropolitan allocates transportation costs
15 associated with the SWP to the System Access Rate and the System Power Rate the same way it
16 allocates such costs associated with the Colorado River Aqueduct.

17 13. The SWP transportation costs are properly allocated to the System Access
18 Rate and System Power Rate because they constitute conveyance costs that Metropolitan is legally
19 allocated through its contract with the California Department of Water Resources (the "DWR
20 Contract"). The DWR Contract allocates to Metropolitan the costs of transporting water to it.
21 Specifically, it allocates to Metropolitan the costs of: (1) the transportation facilities—such as
22 aqueducts—needed to deliver the water to Metropolitan, and maintenance of those facilities, and (2)
23 the power required to deliver the water to Metropolitan. Metropolitan is obligated to pay these
24 costs. The contract makes Metropolitan (and the other state water contractors) solely responsible
25 for these costs; DWR is responsible for none of them. And Metropolitan must pay the bulk of these
26 SWP transportation costs regardless of the amount of SWP water (i.e., water supply) that it receives.
27 Moreover, Metropolitan at times uses the SWP facilities for no supply-related purpose at all—as

1 discussed above, Metropolitan also uses the SWP facilities to convey non-project water to its full
2 service customers when SWP and Colorado River water is too low to satisfy demands.

3 14. Metropolitan is able to appropriately allocate its SWP transportation costs to
4 the System Access Rate and System Power Rate because Metropolitan is billed separately for SWP
5 Transportation Charges that the SWP contract legally allocates to it and the costs of obtaining an
6 SWP water supply. Therefore, through DWR's bills, Metropolitan is able to disaggregate (1) the
7 costs Metropolitan incurs to purchase SWP water supplies, from (2) the costs it is obligated to pay
8 for SWP transportation facilities. The System Access Rate and System Power Rate, which include
9 SWP transportation costs, are allocated to a member agency based on the volume of water the
10 agency purchases or requests that Metropolitan convey to it. This manner of allocation bears a fair
11 or reasonable relationship to the member agency's burdens on, or benefits received from, the
12 conveyance system.

13 15. The Water Stewardship Rate recovers the costs of funding demand
14 management programs (local water resource development programs, water conservation programs,
15 and seawater desalination programs). These demand management programs incentivize the
16 development of local water supplies and the conservation of water which reduce the volume of
17 water that must be imported and conveyed through Metropolitan's system, and thus reduce and
18 defer the need for conveyance system capacity expansion and maintenance costs, and create
19 available capacity that may be used to accommodate requests to wheel water. Because all member
20 agencies benefit from these system-wide conveyance benefits, including the reduction or deferral of
21 capital expenditures by Metropolitan which would be funded through transportation rates applicable
22 to all member agencies, all member agencies pay the Water Stewardship Rate, even if they receive
23 no funding for a particular demand management program. SDCWA has received, and continues to
24 receive, demand management program funding. While SDCWA's legal challenges to
25 Metropolitan's water rates triggered a contractual Rate Structure Integrity clause which terminated
26 several of SDCWA's demand management programs, SDCWA remains among the highest
27 recipients of Metropolitan's demand management program funding.

1 16. Because the conservation and local supply programs funded by the Water
2 Stewardship Rate provide conveyance services and benefits and avoided conveyance costs, and
3 because there is no Metropolitan water supply created through the programs (only local water
4 supply is created), the Water Stewardship Rate is properly treated as a conveyance charge. The
5 conveyance benefits afforded by the conservation and local supply programs include preserved or
6 increased conveyance capacity and reduced or deferred capital and operational expenditures on
7 additional new conveyance facilities and maintenance of existing conveyance facilities. A member
8 agency's benefit is proportional to the demand it puts on the conveyance system. The Water
9 Stewardship Rate is allocated to a member agency based on the volume of water that agency
10 purchases or requests that Metropolitan convey to it. This manner of allocation to a member agency
11 bears a fair or reasonable relationship to the member agency's use of, or reliance on, the
12 conveyance system.

13 17. Metropolitan also recovers its standby and emergency storage costs, as well
14 as the costs of peak usage and seasonal peak storage capacity, through a number of charges, namely
15 the Readiness-to-Serve Charge and the Capacity Charge.

16 18. Metropolitan's Readiness-to-Serve Charge recovers, *inter alia*, SWP-related
17 conveyance costs associated with peak demand (i.e., capital financing costs), as well as emergency
18 storage and peak-related storage costs (i.e., storage which provides operational flexibility in meeting
19 peak demands and flow requirements), and costs incurred to stand by and provide services during
20 times of emergency or outage of facilities. Each member agency's Readiness-to-Serve Charge is
21 based on that agency's ten-year rolling average of past total consumption, i.e., all firm deliveries
22 including water transfers and exchanges that use Metropolitan capacity.

23 19. The Capacity Charge is intended to pay for the cost of "peaking" capacity on
24 Metropolitan's system, while providing an incentive for local agencies to decrease their use of
25 Metropolitan's system to meet peak day demands. Each member agency's Capacity Charge is
26 based on that agency's maximum summer day demand placed on the system between May 1 and
27 September 30 for a three-calendar year period.

1 20. To the extent that Metropolitan’s volumetric rates do not capture the entirety
2 of Metropolitan’s costs associated with member agencies’ fluctuating demands between and within
3 any given year, for any reason, the Readiness-to-Serve and Capacity Charges recover the reasonable
4 costs of standby and peaking, respectively, or the reasonable costs of conferring the benefit of
5 standby and peaking capability. The Readiness-to-Serve and Capacity Charges are allocated among
6 member agencies based on their historical usage of conveyance services. This manner of allocation
7 to a member agency bears a fair or reasonable relationship to the member agency’s use of, or
8 reliance on, standby and peaking services and capacity. In addition, to the extent a member agency
9 purchases more water, it pays more through Metropolitan’s volumetric rates.

10 **D. Metropolitan’s Rate For Wheeling Service**

11 21. Metropolitan’s current rate for wheeling service traces back to January 1997,
12 when Metropolitan’s Board of Directors voted to adopt a “wheeling rate,” effective January 15,
13 1997, applicable to member agencies that convey non-Metropolitan water through Metropolitan’s
14 water conveyance system in transactions of one year or less. This wheeling rate is defined in
15 Metropolitan’s Administrative Code, and was developed through consultation and cooperation with
16 Metropolitan’s 26 member agencies, including SDCWA. This fixed rate for wheeling service
17 applies only to a subset of wheeling transactions: wheeling to a member agency, for up to one year.
18 Other wheeling transactions (i.e., to a third party of any duration, or to a member agency for more
19 than one year) are negotiated on a case-by-case basis.

20 22. This wheeling rate included, among other things, both Metropolitan’s SWP
21 conveyance costs under the DWR Contract (now allocated to the System Access Rate), and costs to
22 assist in funding water conservation and other water demand management programs (now allocated
23 to the Water Stewardship Rate). Instead of paying the System Power Rate, wheelers are responsible
24 for only the actual costs of power for the wheeling transaction. These cost allocations are
25 inconsistent with the allegations SDCWA now asserts – more than 15 years later – that all SWP
26 costs, including conveyance and power costs, and water conservation and demand program costs
27

1 must supposedly be allocated solely to Metropolitan's water Supply Rate. This wheeling rate has
2 been assessed on any member agency engaged in a wheeling transaction of one year or less since
3 January 15, 1997, until it was modified in 2003 by the unbundled rates.

4 23. When Metropolitan first adopted its rate for wheeling service in 1997, it
5 made written findings, pursuant to the Wheeling Statute, which concluded that allocating SWP
6 transportation costs, and costs to incentivize local resource development programs, to its general
7 rate for wheeling service results in a rate that charges fair compensation. These findings are
8 embodied in Metropolitan's Resolution 8520.

9 24. Metropolitan found that it was appropriate to include a portion of its fixed
10 SWP conveyance charges in its general rate for wheeling service because wheelers are partially
11 responsible for, and benefit from those costs. For instance, Metropolitan's payment of SWP
12 transportation costs pursuant to its contract with DWR, gives Metropolitan the right to wheel water
13 through the SWP on behalf of its member agencies. When Metropolitan uses the SWP to wheel
14 water on behalf of its member agencies, it does so without having to pay an otherwise applicable
15 facilities fee because it has already paid for this service by paying the fixed Transportation Charges
16 under the DWR Contract. Under this contract, Metropolitan agreed to pay its allocated share of the
17 costs of the SWP facilities, whether Metropolitan receives water or not, and whether it wheels water
18 for its member agencies or not. Metropolitan recognized in its 1997 Resolution that if wheelers did
19 not bear a portion of Metropolitan's fixed SWP conveyance costs, then they would gain an unfair
20 subsidy from Metropolitan's full service customers. Because every member agency that wheels
21 water pays the System Access Rate on a volumetric basis, each wheeler pays a portion of
22 Metropolitan's system-wide SWP costs in direct proportion to the amount of water that
23 Metropolitan wheels to that agency.

24 25. Metropolitan also found that the costs for water conservation projects and
25 financial assistance for water recycling and groundwater recovery facilities provided benefits to the
26 whole system, including wheelers, and should therefore be recovered in part through the rate for
27 wheeling service. This is because all member agencies, including wheelers, benefit from each acre-

1 foot of water developed through the demand management programs, because they free up capacity
2 to convey water through Metropolitan's system, reducing the need to invest in development of
3 additional expensive water delivery infrastructure, and allowing more wheeling transactions to take
4 place.

5 26. Member agencies have options regarding water supply including local water
6 supply, water purchases and conveyance from non-Metropolitan third-party providers, purchases
7 from Metropolitan, or purchases from third-party providers and conveyance using Metropolitan
8 services and facilities. Metropolitan charges are incurred only if an agency elects to purchase water
9 from Metropolitan, and/or use Metropolitan's conveyance services and facilities to transport non-
10 Metropolitan water. In that sense, the charges are voluntary, not imposed. In any event,
11 Metropolitan's transportation charges are for the service of conveyance and do not exceed the
12 reasonable costs of providing conveyance services, and/or they are for the use of Metropolitan's
13 property (i.e., conveyance resources). As part of the full service rate, the transportation charges are
14 also a charge for the purchase of Metropolitan's property (water). Conveyance charges, including
15 Metropolitan's wheeling charges, are allocated to an agency based on the volume of water the
16 agency transports through Metropolitan's conveyance system. The manner that these charges are
17 allocated to a member agency bears a fair or reasonable relationship to the member agency's
18 burdens on, or benefits received from, Metropolitan's conveyance system.

19 **E. SDCWA's Benefits From MWD's Operations and Agreements**

20 27. SDCWA receives numerous benefits from MWD's democratic and
21 cooperative structure as a whole. The long list of policies, programs, agreements, and other
22 actions adopted or taken by the Metropolitan Board that have financially or operationally
23 benefited SDCWA include the following. Many of these were adopted or approved with
24 provisions that were deferential to specific concerns that SDCWA had raised or, in some cases,
25 were negotiated to provide a direct financial benefit to SDCWA.

26 a. "Postage Stamp" Rate: Metropolitan charges its member agencies the
27

1 same amount for conveying water, regardless of how close or how far the member agency is to the
2 supply source. This has been likened to a “postage stamp” having the same cost whether it is
3 transporting a letter down the street or across the country. SDCWA is the member agency that is
4 the farthest away from Metropolitan’s water supply sources (from Northern California and the
5 Colorado River) and benefits the most from this “one price to all” transportation rate structure.

6 b. Salinity Goal: Metropolitan’s Board adopted a 500 TDS (total
7 dissolved solids) salinity goal in response to SDCWA’s concerns about high salinity in the
8 Colorado River supplies and the impacts to SDCWA. SDCWA receives the primary benefit of this
9 measure, and those benefits extend to the supplies under the Exchange Agreement between
10 SDCWA and Metropolitan (*see below*).

11 c. Readiness-to-Serve Charge Base: As an accommodation to
12 SDCWA’s concerns about variability of demands for Metropolitan supplies from year to year,
13 Metropolitan’s Board adopted a 10-year rolling average of Metropolitan deliveries for
14 calculating the Readiness-to-Serve Charge base (rather than the previous three-year rolling
15 average).

16 d. Interim Agricultural Water Program (“IAWP”) and IAWP Phase
17 Out: As the largest agricultural water purchaser among Metropolitan’s member agencies, SDCWA
18 benefited more than any other member agency from discounted interruptible service for agriculture
19 from 1994 until the first interruption in 2007, *receiving \$136 million in total discounts* over that
20 period. SDCWA was also the largest beneficiary of the IAWP Phase Out terms that allowed these
21 historically interruptible demands to be treated as firm, rather than interruptible, demands. This
22 increases SDCWA’s access to a lower cost water supply rate (Metropolitan’s Tier 1 rate)
23 and improved its retail reliability in a shortage allocation under Metropolitan’s Water Supply
24 Allocation Plan (“WSAP”) formula.

25 e. Skinner Treatment Plant Module 7: SDCWA supported construction
26 of a *\$152 million expansion* of this treatment plant, which serves SDCWA along with agencies in
27 Riverside County. This expansion of the Skinner plant would prove to be redundant to SDCWA’s

1 new Twin Oaks water treatment facility, leaving Metropolitan with unused capacity in the Skinner
2 plant.

3 f. Surface Storage Operating Agreement: This program approved in
4 2002, available only to SDCWA, paid *financial incentives totaling \$17.6 million* (2004 through
5 2008) for SDCWA to use its own reservoirs to help offset system capacity constraints.

6 g. Point of Delivery and Cost of San Diego Pipelines 1 to 5:
7 Metropolitan's policy is that it delivers water to the boundary of a member agency's service area
8 and a member agency must pay for infrastructure within its own service area. Metropolitan waived
9 its policy for SDCWA. It allowed Metropolitan pipes and facilities serving SDCWA to be
10 constructed six miles into SDCWA's service area, and the substantial costs of these pipes and
11 facilities were borne by all Metropolitan member agencies rather than solely by SDCWA.

12 h. Conservation Funding: Metropolitan includes a Rate Structure
13 Integrity provision in all of its conservation and local supply program agreements. When
14 Metropolitan enforced this contractual provision with respect to SDCWA, it could have
15 discontinued all of SDCWA's conservation and local supply program funding. As an
16 accommodation, Metropolitan's Board continued access by SDCWA customers to conservation
17 funding under rebate programs.

18 i. Supply Allocation Plans: A preferential rights formula exists under
19 California state law and concerns the allocation of water among Metropolitan member agencies in
20 the case of a severe drought. Preferential rights have never been invoked. Instead, Metropolitan's
21 Board adopted the 1991 Incremental Interruption and Conservation Plan and then the 2008 WSAP,
22 both of which provided a "needs-based" allocation to most fairly treat all member agencies,
23 including SDCWA. These alternative measures provided SDCWA with a more beneficial
24 allocation than the preferential rights statute would have provided, and were intended to address
25 SDCWA's concerns regarding statutory preferential rights while providing equity among member
26 agencies.

27 28. Under the amended Exchange Agreement between SDCWA and

1 Metropolitan entered into in October 2003 (“Exchange Agreement”), involving the exchange of
2 water, SDCWA chose to pay the System Access Rate, System Power Rate, and Water Stewardship
3 Rate in return for numerous benefits it received as part of the consideration package, including:

4 a. State Funding: Metropolitan assigned to SDCWA \$235 million in
5 *funding* authorized by the California State Legislature that had previously been allocated to
6 Metropolitan, for lining the All-American and Coachella Canals and for groundwater programs.

7 b. Canal Lining Water: MWD assigned to SDCWA its rights to an
8 estimated *77,000 acre-feet of water per year for 110 years* from the lining of the All-American
9 and Coachella Canals. The estimated value of this water over 110 years is in the billions.

10 c. Assured Deliveries: Metropolitan agreed to deliver Exchange Water
11 to SDCWA equivalent to the full amount of the Imperial Irrigation District (“IID”) transfer
12 and canal lining water in each calendar year that the Exchange Agreement is in effect, in regular
13 monthly intervals. In contrast, if this were a wheeling transaction, the law (California’s Wheeling
14 Statute) only requires Metropolitan to deliver water when and if it has available capacity in its
15 pipelines and facilities to transfer this water. Under the law, whenever Metropolitan does not have
16 available capacity, the delivery of water would stop altogether. For example, if Metropolitan
17 requires the use of its system to move its own water supplies at all times the facilities are in
18 operation (i.e., when there are not outages due to maintenance or repairs), Metropolitan would have
19 no legal obligation to deliver the water to SDCWA. In contrast, the Exchange Agreement ensures
20 that SDCWA will receive Exchange Water even if delivering that water would displace
21 Metropolitan’s water supplies for its other member agencies. Further, under the Exchange
22 Agreement, Metropolitan is only required to deliver to SDCWA an amount of water equivalent to
23 the amount conserved by IID. Yet, when IID fails to conserve the full amount of water required by
24 the Transfer Agreement between IID and SDCWA, as occurred in 2011, Metropolitan delivers
25 Metropolitan’s supplies to SDCWA to fill the gap.

26 d. Blended Exchange Water: IID’s transfer water and the canal lining
27 water consists only of Colorado River water, which has the highest salinity content of

1 Metropolitan's two sources of water supply. Under the Exchange Agreement, Metropolitan
2 provides Exchange Water to SDCWA from whatever supply source and using whatever delivery
3 facilities as Metropolitan determines. The result generally is blended water, consisting of California
4 State Water Project water blended into the Colorado River water. This greatly improves the quality
5 of the water SDCWA receives, providing acknowledged water quality and operational benefits to
6 SDCWA. And, when Metropolitan shuts down the Colorado River Aqueduct for maintenance or
7 repairs, Metropolitan still delivers Exchange Water, using SWP supplies and SWP facilities. These
8 are among many key reasons why the conveyance costs of the SWP should be recovered through
9 Metropolitan's System Access Rate, which is part of both Metropolitan's rate structure and the
10 Exchange Agreement's price provision. The SWP makes achieving the lower salinity levels
11 possible. By law (the California Wheeling Statute), Metropolitan is only required to deliver to
12 SDCWA the high-salinity, IID transfer and canal lining Colorado River water.

13 e. System Power Rate: Metropolitan agreed to include the System
14 Power Rate (Metropolitan's average cost of pumping water) in the Exchange Agreement fees
15 instead of the actual, higher marginal power costs. The law (California's Wheeling Statute) only
16 requires Metropolitan to charge SDCWA the higher amount.

17 f. Readiness-to-Serve Charge: By not counting the deliveries of
18 Exchange Water against SDCWA's Readiness-to-Serve Charge base – although they require use
19 of Metropolitan's distribution system resources – SDCWA avoids paying that share of the
20 Readiness-to-Serve Charge. This provided an estimated *\$4.5 million benefit* to SDCWA through
21 2012.

22 g. Exchange Water as a Local Supply: Metropolitan agreed to account
23 for the Exchange Water as a local supply in the context of Metropolitan's WSAP. This
24 designation benefits SDCWA through an increase in retail reliability in the event of a water supply
25 shortage, under the WSAP formula.

26 h. Ownership of Colorado River Supply: Since the merger of SDCWA
27 into Metropolitan, SDCWA has not owned any rights to Colorado River water. The Quantification

1 Settlement Agreement, a historic collection of agreements that includes the 2003 Exchange
2 Agreement, provides Metropolitan's agreement that SDCWA can implement a transfer of Colorado
3 River water from IID. Without Metropolitan's acquiescence, IID does not have the right to transfer
4 its water to an entity that is not an existing Colorado River water contractor; and Metropolitan and
5 Coachella Valley Water District, as Colorado River contractors, would have the right to use
6 Colorado River water that is unused by IID.

7 **SPECIFIC AFFIRMATIVE DEFENSES**

8 DISTRICT asserts the following affirmative defenses to the claims for relief made
9 against it in the Complaint without admitting it has the burden of proof on any of the issues raised
10 below:

11 **First Affirmative Defense**

12 **(Failure to Name Real Parties in Interest)**

13 (Applicable to First through Third Causes of Action)

14 DISTRICT incorporates by reference the General Allegations stated above.

15 SDCWA fails to name the 25 other Metropolitan member agencies, whose interests are
16 directly at issue in this litigation and in whose absence complete relief cannot be accorded among
17 SDCWA and Metropolitan, pursuant to Code of Civil Procedure Section 389(a).

18 **Second Affirmative Defense**

19 **(Failure to State Facts Sufficient to Constitute a Cause of Action)**

20 (Applicable to First through Third Causes of Action)

21 DISTRICT incorporates by reference the General Allegations stated above.

22 SDCWA fails to state facts in its Complaint sufficient to constitute a cause of action upon
23 which relief can be granted. Among other grounds, neither Proposition 13, i.e., Article XIII A, § 4
24 of the California Constitution (adopted by Proposition 13 in 1978), and its implementing statute,
25 California Government Code § 50076, nor California Government Code §§ 54999.7(a) and 66013,
26 nor Proposition 26, i.e., Article XIII C, Section 1, subdivision (e) (adopted by Proposition 26), nor
27 California Water Code §§ 1810 et seq. are applicable to the facts alleged in the Complaint.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Third Affirmative Defense

(Statute of Limitations)

(Applicable to First through Third Causes of Action)

DISTRICT incorporates by reference the General Allegations stated above.

SDCWA’s claims are barred in whole or in part by the applicable statutes of limitations, including, but not limited to, §§ 338(a), 335.1, 343 and 860 of the California Code of Civil Procedure. Further, Metropolitan issued its first of many water revenue bonds incorporating the new rate structure components on September 12, 2002. The 60-day deadline to file a reverse validation action thus expired at the latest in November 2002, 60 days after the bond issuance – and nearly twelve years before this case was filed. Therefore, any challenge to the rate structure components is barred by the statute of limitations in the validation statute. Cal. Code Civ. Pro. § 860; *see Aughenbaugh v. Board of Supervisors*, 139 Cal. App. 3d 83, 87-91 (1983).

Fourth Affirmative Defense

(Untimely Claim)

(Applicable to First through Third Causes of Action)

DISTRICT incorporates by reference the General Allegations stated above.

SDCWA’s claims are barred, in whole or in part to the extent they may implicate the following provisions, because SDCWA failed to timely file a claim as required by California Government Code §§ 901, 911.2, 911.3, 911.4 and 946.6, and the Metropolitan Water District of Southern California Administrative Code §§ 9300-9310, and failed to timely file a court action relieving it from its failure to timely present a claim, as required by Government Code §§ 945.4 and 946.6, and the Metropolitan Water District of Southern California Administrative Code. As a consequence of the foregoing, SDCWA’s claims are barred to the extent they may implicate the foregoing provisions, as untimely.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Fifth Affirmative Defense

(Laches)

(Applicable to First through Third Causes of Action)

DISTRICT incorporates by reference the General Allegations stated above.

SDCWA’s claims are barred by the doctrine of laches.

Sixth Affirmative Defense

(Exercise of Administrative Discretion)

(Applicable to First through Third Causes of Action)

DISTRICT incorporates by reference the General Allegations stated above.

Metropolitan has no ministerial duty to structure its rates in the manner alleged by SDCWA. Rather, the legal directives under which Metropolitan operates broadly leave the design of water rates to Metropolitan’s sound discretion and the majority vote of Metropolitan’s Board of Directors. Metropolitan’s principal act, for example, states only that Metropolitan “shall fix the rate or rates at which water shall be sold,” Cal. Water Code § 109-133, and that those rates “shall be uniform for like classes of service throughout the district,” *id.* at § 109-134. Beyond this, decisions as to the detailed structure of its rates are left to Metropolitan’s sound discretion. California courts have recognized that “[s]ubstantial deference must be given to [Metropolitan’s] determination of its rate design.” *San Diego County Water Auth. v. Metropolitan Water Dist. of So. Cal.*, 117 Cal. App. 4th 13, 23 n.4 (2004) (*citing Bryon v. East Bay Mun. Utility Dist.*, 24 Cal. App. 4th 178, 196 (1994)). Further, “[r]ates established by [a] lawful rate-fixing body are presumed reasonable, fair, and lawful.” *Hansen v. City of San Buenaventura*, 42 Cal. 3d 1172, 1180 (1986). In setting its current rates, Metropolitan has at all times acted well within its broad and lawful discretion.

SDCWA’s claims are barred because Metropolitan has acted consistently with the discretion vested in it by the Legislature in California Water Code Appendix §§ 109-1 to 109-551 and other applicable authorities.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Seventh Affirmative Defense

(Governmental Immunity for Exercise of Discretion)

(Applicable to First through Third Causes of Action)

DISTRICT incorporates by reference the General Allegations stated above.

Metropolitan's classification and setting of its rates, allocation of its rate structure components, and the other decisions alleged in the Complaint to be unlawful were an exercise of governmental discretion immune from challenge and, as such, all of SDCWA's causes of action are barred. Among other reasons, SDCWA's claims and the relief it seeks are incompatible with the requirement in the MWD Act that Metropolitan's Board of Directors act by majority vote.

Eighth Affirmative Defense

(Validation by Operation of Law)

(Applicable to First through Third Causes of Action)

DISTRICT incorporates by reference the General Allegations stated above.

Metropolitan's rate structure components and cost allocations that SDCWA challenges have been in effect since January 1, 2003 and have been validated by operation of law, including but not limited to California Code of Civil Procedure § 869 and validating acts of the Legislature, such as The First Validating Act of 2003 (2003 Cal. Stats. Ch. 9, filed May 1, 2003 and effective immediately) and similar validating acts. In particular, the validation of bonds validates the rate structure components pledged as security for those bonds. Metropolitan issued its first of many water revenue bonds incorporating the new rate structure components on September 12, 2002. The rate structure components were validated because no one challenged them within the 60-day time period following Metropolitan's 2002 bond issuance. The 60-day deadline to file a reverse validation action thus expired at the latest in November 2002, 60 days after the bond issuance – and nearly twelve years before this case was filed. Therefore, Metropolitan's rate components were validated by operation of law in 2002. The rate structure components were also validated by operation of law by the first validating act after the bond issuance, the First Validating Act of 2003, and subsequent validating acts. The current rate structure components, having been validated by

1 operation of law, cannot be challenged as long as they remain in use.

2 **Ninth Affirmative Defense**

3 **(Separation of Powers)**

4 (Applicable to First through Third Causes of Action)

5 DISTRICT incorporates by reference the General Allegations stated above.

6 SDCWA's claims are barred in whole or in part because they seek relief that would require
7 the Court to unconstitutionally intrude into the functions reserved to the legislative branch of
8 government and violate the doctrine of separation of powers. These claims seek improper judicial
9 interference with MWD's quasi-legislative agency actions and discretion. Among other reasons,
10 SDCWA's claims and the relief it seeks are incompatible with the requirement in the MWD Act
11 that MWD's Board of Directors act by majority vote. Accordingly, this Court lacks jurisdiction to
12 the grant the requested relief.

13 **Tenth Affirmative Defense**

14 **(Ripeness)**

15 (Applicable to First through Third Causes of Action)

16 DISTRICT incorporates by reference the General Allegations stated above.

17 To the extent SDCWA's claims for relief relating to the Wheeling Statute purport to extend
18 beyond a facial challenge to Metropolitan's rate for wheeling service, the claims are unripe for
19 adjudication because SDCWA does not currently wheel any water through Metropolitan's system
20 and/or because SDCWA does not allege that the charge for any particular wheeling transaction was
21 unlawful.

22 **Eleventh Affirmative Defense**

23 **(Waiver)**

24 (Applicable to First through Third Causes of Action)

25 DISTRICT incorporates by reference the General Allegations stated above.

26 SDCWA's claims are barred because SDCWA has waived, relinquished, and/or abandoned
27 any claim for relief against Metropolitan regarding the matters which are the subject of the

1 Complaint.

2 **Twelfth Affirmative Defense**

3 **(Res Judicata and Collateral Estoppel)**

4 (Applicable to First through Third Causes of Action)

5 DISTRICT incorporates by reference the General Allegations stated above.

6 SDCWA's claims are barred by the doctrine of *res judicata* and collateral estoppel,
7 including, without limitation, the following:

8 SDCWA's claims that Metropolitan's water rates violate Water Code § 1810 *et seq.*, which
9 requires that wheeling rates not exceed "fair compensation" for the conveyance of water through
10 Metropolitan's facilities, is barred by prior litigation between SDCWA and Metropolitan,
11 *Metropolitan Water District v. Imperial Irrigation District*, 80 Cal. App. 4th 1403 (2000) ("*IID*").
12 The statute defines "fair compensation" as "the reasonable charges incurred by the owner of the
13 conveyance system, including capital, operation, maintenance, and replacement costs." Water Code
14 § 1811(c). The statute mandates considerable deference to the agency's rate-setting determination.
15 Water Code § 1813 ("[T]he court shall sustain the determination of the public agency if it finds that
16 the determination is supported by substantial evidence.") SDCWA previously challenged
17 Metropolitan's wheeling rates under Water Code § 1810 *et seq.* on this exact basis and lost. In *IID*,
18 the court held, after conducting a detailed statutory analysis, that nothing in the statute indicated that
19 "fair compensation" could not reasonably include "system-wide costs," including costs to maintain
20 and operate portions of the conveyance system not used by the transferor. *Id.* at 1426-1433. The
21 court also held that "contrary to [SDCWA's] assertions, there is no evidence the Legislature acted
22 out of a concern that . . . Metropolitan Water District . . . [was] blocking wheeling transactions by
23 'demanding unreasonable prices for access [to their conveyance systems]'.
24 *Id.* at 1432. That case is binding precedent, and should be deemed dispositive under both *res judicata* and collateral
25 estoppel principles.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Thirteenth Affirmative Defense

(Justification)

(Applicable to First through Third Causes of Action)

DISTRICT incorporates by reference the General Allegations stated above.

SDCWA’s claims are barred because at all relevant times Metropolitan acted justifiably, reasonably, and in good faith.

Fourteenth Affirmative Defense

(Consent)

(Applicable to First through Third Causes of Action)

DISTRICT incorporates by reference the General Allegations stated above.

SDCWA’s claims are barred by the doctrine of consent.

Fifteenth Affirmative Defense

(Estoppel)

(Applicable to First through Third Causes of Action)

DISTRICT incorporates by reference the General Allegations stated above.

SDCWA’s claims are barred by the equitable doctrine of estoppel.

Sixteenth Affirmative Defense

(Unclean Hands)

(Applicable to First through Third Causes of Action)

DISTRICT incorporates by reference the General Allegations stated above.

SDCWA’s claims are barred by the equitable doctrine of unclean hands.

Seventeenth Affirmative Defense

(Failure to Mitigate)

(Applicable to First through Third Causes of Action)

DISTRICT incorporates by reference the General Allegations stated above.

If SDCWA has suffered any damages (which DISTRICT expressly denies), DISTRICT alleges that SDCWA’s recovery for those damages is barred by its failure to mitigate, reduce, or

1 otherwise avoid its damages.

2 **Eighteenth Affirmative Defense**

3 **(Unjust Enrichment)**

4 (Applicable to First through Third Causes of Action)

5 DISTRICT incorporates by reference the General Allegations stated above.

6 SDCWA's claims are barred, in whole or part, because it seeks relief which would result in
7 unjust enrichment of SDCWA.

8 **Nineteenth Affirmative Defense**

9 **(Changed Position)**

10 (Applicable to First through Third Causes of Action)

11 DISTRICT incorporates by reference the General Allegations stated above.

12 SDCWA's claims are barred because DISTRICT has relied in good faith to its detriment on
13 the benefits received by SDCWA.

14 **Twentieth Affirmative Defense**

15 **(Lack of Standing)**

16 (Applicable to First through Third Causes of Action)

17 DISTRICT incorporates by reference the General Allegations stated above.

18 SDCWA's claims for relief, including but not limited to the portions relating to the
19 Wheeling Statute, are barred because SDCWA lacks standing or authorization to assert those
20 claims.

21 **Twenty-First Affirmative Defense**

22 **(Inapplicability of Proposition 26 Because Rate**

23 **Structure and Rate Components in Place Before Proposition 26)**

24 (Applicable to First through Third Causes of Action)

25 DISTRICT incorporates by reference the General Allegations stated above.

26 SDCWA fails to state facts in its Complaint sufficient to constitute a cause of action under
27 Proposition 26, i.e., Article XIII C, Section 1, subdivision (e), because the challenged rate structure

1 (i.e., the unbundled rates by which conservation and local supply costs and SWP transportation and
2 power costs are recovered through the Water Stewardship Rate, System Access Rate, and System
3 Power Rate, standby costs are recovered through the Readiness-to-Serve Charge, and peaking costs
4 are recovered through the Capacity Charge) and the challenged rate for wheeling service (which
5 reflects the rate structure) have been in place since, at least, 2003. Because Proposition 26 applies
6 only to local charges “imposed” after November 2010, Proposition 26 does not govern the existing
7 rate structure or the challenged rate components.

8 **Twenty-Second Affirmative Defense**

9 **(Inapplicability of Proposition 26 Because Rate Structure and Rate Components Not**
10 **“Imposed”)**

11 (Applicable to First through Third Causes of Action)

12 DISTRICT incorporates by reference the General Allegations stated above.

13 SDCWA fails to state facts in its Complaint sufficient to constitute a cause of action under
14 Proposition 26, i.e., Article XIII C, Section 1, subdivision (e), because the challenged rates and
15 charges are voluntary, not “imposed,” pursuant to Proposition 26.

16 **Twenty-Third Affirmative Defense**

17 **(Inapplicability of Proposition 26 Because Rate Components Are For Purchase or Use of**
18 **Property)**

19 (Applicable to First through Third Causes of Action)

20 DISTRICT incorporates by reference the General Allegations stated above.

21 SDCWA fails to state facts in its Complaint sufficient to constitute a cause of action under
22 Proposition 26, i.e., Article XIII C, Section 1, subdivision (e), because the challenged rates and
23 charges are for the purchase or use of local government property.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Twenty-Fourth Affirmative Defense

(System Access Rate, System Power Rate, and Water Stewardship Rate are Fees Under Proposition 26)

(Applicable to First through Third Causes of Action)

DISTRICT incorporates by reference the General Allegations stated above.

Contrary to SDCWA’s allegations, the System Access Rate and System Power Rate, which include SWP transportation and power costs, and the Water Stewardship Rate, are charges for full service water or conveyance services or benefits. The charges do not exceed the reasonable costs of providing the service or conferring the benefit. The charges are allocated to member agencies based on the amount of water purchased or conveyed. This manner of allocation to a member agency bears a fair or reasonable relationship to the member agency’s use of, or reliance on, Metropolitan’s services and system.

Twenty-Fifth Affirmative Defense

(Rate for Wheeling Service Is Fee Under Proposition 26)

(Applicable to First through Third Causes of Action)

DISTRICT incorporates by reference the General Allegations stated above.

Contrary to SDCWA’s allegations, the rate for wheeling service is a charge for wheeling services or a charge to use Metropolitan’s property. The charge does not exceed the reasonable costs of providing wheeling services. The charge is allocated to member agencies based on the amount of water they wheel. This manner of allocation to a member agency bears a fair or reasonable relationship to the member agency’s use of the conveyance system.

Twenty-Sixth Affirmative Defense

(Proposition 13, Government Code § 50076, and Government Code § 54999.7(a) Do Not Apply to Metropolitan’s Rates)

(Applicable to First through Third Causes of Action)

DISTRICT incorporates by reference the General Allegations stated above.

Those portions of SDCWA’s claims for relief relating to Proposition 13, i.e., Article XIII A,

1 § 4 of the California Constitution (adopted by Proposition 13 in 1978), and its implementing statute,
2 California Government Code § 50076, and California Government Code § 54999.7(a) are barred
3 because these laws do not apply to Metropolitan’s water rates. Under California law, Proposition
4 13 (and by implication its implementing statute Government Code § 50076), was not intended to
5 apply to water rates. *Rincon Del Diablo Mun. Water Dist. v. San Diego Cnty. Water Auth.*, 121 Cal.
6 App. 4th 813, 819, 822 (2004); *Brydon v. E. Bay Mun. Util. Dist.*, 24 Cal. App. 4th 178, 194-95
7 (1994). And, Metropolitan, as a wholesaler of water, does not provide a “public utility service”
8 within the meaning of Government Code § 54999.7(a) because it does not provide SDCWA’s end-
9 user water utility service. See § 54999.1(h) (defining “public utility service” as “service for water,
10 light, heat communications, power, or garbage . . .”). The statute also cannot apply to Metropolitan
11 since on its face it requires that rates charged to public agencies be the same as those charged to
12 non-public agencies, and Metropolitan’s 26 customers are all public agencies.

13 **Twenty-Seventh Affirmative Defense**

14 **(Metropolitan’s Rates Are Paid Only by the Member Agencies that Set Them**
15 **and Incurred Only Voluntarily)**

16 (Applicable to First through Third Causes of Action)

17 DISTRICT incorporates by reference the General Allegations stated above.

18 Those portions of SDCWA’s claims for relief relating to Proposition 13, i.e., Article XIII A,
19 § 4 of the California Constitution (adopted by Proposition 13 in 1978), and its implementing statute,
20 California Government Code § 50076, and California Government Code § 54999.7(a) are barred
21 because these provisions were not intended to govern charges established directly by those who pay
22 them, charged only to the member agencies that establish them, and incurred by the member
23 agencies voluntarily. Here, Metropolitan's rates are established by its governing Board of Directors
24 which is made up of representatives appointed by the member agencies—and only those
25 representatives. (SDCWA is, and was at all relevant times, a member of Metropolitan’s governing
26 Board of Directors and, in fact, voted in favor of the very rate structure it challenges here.) The
27 rates are charged only to those member agencies. And, member agencies, including SDCWA, incur

1 Metropolitan's rates only if they choose to buy water from Metropolitan or to convey water through
2 Metropolitan's system.

3 **Twenty-Eighth Affirmative Defense**

4 **(Reservation of Right)**

5 (Applicable to First through Third Causes of Action)

6 DISTRICT incorporates by reference the General Allegations stated above.

7 DISTRICT may rely upon any and all further defenses which may be available or which
8 later appear after further factual development in this action and hereby specifically reserves its right
9 to amend this Answer, as of right or with leave of Court, for the purpose of asserting any such
10 additional defenses.

11 **Twenty-Ninth Affirmative Defense**

12 **(Failure to Exhaust Administrative / Judicial Remedies)**

13 (Applicable to First Through Third Causes of Action)

14 DISTRICT incorporates by reference the General Allegations stated above.

15 SDCWA's claims are barred in whole or in part on the ground that SDCWA failed to
16 exhaust its administrative and/or judicial remedies.

17 **Thirtieth Affirmative Defense**

18 **(Benefit Received -- Offset)**

19 (Applicable to First Through Third Causes of Action)

20 DISTRICT incorporates by reference the General Allegations stated above.

21 SDCWA was, is and will be benefitted by reason of MWD's actions or inactions at issue
22 herein, and damages, if any, to SDCWA allegedly caused by MWD's actions or inactions, and any
23 other relief that may be granted to SDCWA, must be offset by such benefits.

24 **PRAYER**

25 WHEREFORE DISTRICT prays for judgment as follows:

- 26 1. That SDCWA's Complaint be dismissed with prejudice and SDCWA take nothing
27

1 by its Complaint;

2 2. That SDCWA be denied a writ of mandate, declaratory relief, or any other form of
3 relief;

4 3. That DISTRICT be awarded its costs and attorneys' fees, as permitted by law; and

5 4. That DISTRICT be awarded such other and further relief as the Court deems just and
6 proper.

7

8

DATED: July 23, 2014

LEMIEUX & O'NEILL

9

10

By: 

11

STEVEN P. O'NEILL

12

CHRISTINE CARSON ✓

13

Attorneys for Real Party in Interest

14

EASTERN MUNICIPAL WATER DISTRICT

15

16

17

18

19

20

21

22

23

24

25

26

27

28

PROOF OF SERVICE

STATE OF CALIFORNIA,)
) ss.
COUNTY OF VENTURA)

I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action. My business address is 4165 E. Thousand Oaks Blvd., Suite 350, Westlake Village, CA 91362.

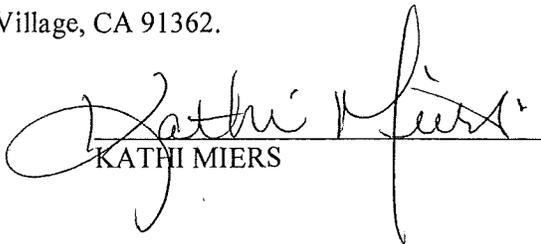
On July 24, 2014, I served the foregoing document described as **EASTERN MUNICIPAL WATER DISTRICT'S ANSWER TO PETITIONER AND PLAINTIFF'S PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DETERMINATION OF INVALIDITY, DAMAGES AND DECLARATORY RELIEF** on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

John W. Keke, Esq. KEKER & VAN NEST 633 Battery Street San Francisco, CA 94111 Tel: (415) 391-5400 <i>Attorneys for Plaintiff, San Diego County Water Authority</i>	Daniel S. Hentschke, Esq. San Diego County Water Authority 4677 Overland Avenue San Diego, CA 92123 Tel: (858) 522-6791 <i>General Counsel for San Diego County Water Authority</i>
--	--

- (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Westlake Village, California in the ordinary course of business.
- (BY FACSIMILE) from (805) 495-2787 to above-referenced fax numbers.
- (BY OVERNIGHT DELIVERY) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice the sealed document has been deposited in the designated Golden State Overnight Drop Box for overnight, next business day delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 24, 2014, in Westlake Village, CA 91362.


KATHI MIERS