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SAN DIEGO COUNTY WATER AUTHORITY
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN FRANCISCO
12

13 SAN DIEGO COUNTY WATER
AUTHORITY,

14 Petitioner and Plaintiff,

15 v.

16 METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA; ALL
17 PERSONS INTERESTED IN THE
VALIDITY OF THE RATES ADOPTED
18 BY THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA
19 ON APRIL 13, 2010 TO BE EFFECTIVE
JANUARY 2011; and DOES 1-10,
20

21 Respondents and Defendants.

Case No. CPF-10-510830

**SAN DIEGO COUNTY WATER
AUTHORITY'S SECOND AMENDED
PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF**

Judge: Hon. Hon. Richard A. Kramer

Date Filed: June 11, 2010

Trial Date: Not Set

1 water it buys from IID (“IID Water”) to its facilities, the Water Authority entered into an
2 agreement with Metropolitan under which Metropolitan transports that water. Metropolitan also
3 transports water the Water Authority has conserved from the lining of the All American and
4 Coachella Canals (“Canal Lining Water”). The only way for this IID and Canal Lining Water to
5 reach the Water Authority’s facilities is through the Colorado River Aqueduct (“CRA”) and other
6 distribution facilities owned by Metropolitan. The Water Authority has a contractual right under
7 a 2003 Amended and Restated Agreement for the Exchange of Water (“Transportation
8 Agreement”) to use Metropolitan’s CRA and other facilities to transport IID Water and Canal
9 Lining Water. Metropolitan and the self-interested Metropolitan member agencies who dominate
10 the Metropolitan Board have chosen to respond to the Water Authority’s need for additional
11 water by taking actions that punish and disadvantage the Water Authority, while enriching the
12 other member agencies in three fundamental ways, each described below.

13 3. *First*, on April 13, 2010, Metropolitan adopted rates that violate common law,
14 California statutory law, and the California constitution, as well as Metropolitan’s Transportation
15 Agreement with the Water Authority, by misclassifying certain water supply costs as water
16 transportation costs. Metropolitan breaks up its rates into a “supply rate” and a series of rates that
17 it claims together comprise the cost of “water transportation.” About half of the water supply
18 Metropolitan provides to its member agencies is purchased by Metropolitan from the State
19 Department of Water Resources (“DWR”), pursuant to a long-term “take-or-pay” contract that
20 requires Metropolitan to pay a fixed amount per year regardless of how much water it purchases.
21 Metropolitan does not transport this water itself. Instead, DWR transports the water to
22 Metropolitan’s facilities via DWR’s state-owned State Water Project facilities. Although the
23 money Metropolitan pays to DWR is for water supply—that is, to enable Metropolitan to meet
24 the water supply needs of its member agencies—Metropolitan reallocates most of the costs
25 associated with obtaining the DWR water supply into the cost components that comprise
26 Metropolitan’s so-called “transportation rate.” As a result, when Metropolitan charges the Water
27 Authority a “transportation rate” for Metropolitan’s conveyance of IID Water and Canal Lining
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1 Water, transportation that occurs entirely within Metropolitan-owned pipelines, the Water
2 Authority is forced to pay for costs associated with the supply of DWR water that have nothing to
3 do with the use of Metropolitan’s pipelines or other facilities. In addition, Metropolitan loads
4 onto its “transportation rates” the costs Metropolitan incurs from subsidizing member agencies’
5 conservation programs and new local water-supply development. Conservation and local supply
6 development expenditures are payments for water supply available to member agencies from
7 sources other than Metropolitan, and hence properly should be classified as water supply charges.
8 Such expenditures certainly have nothing to do with transportation of water—yet Metropolitan
9 characterizes them as part of its “transportation rates”

10 4. **Second**, despite having taken the position, in the context of establishing its rates,
11 that “supply” costs should be characterized as “transportation,” Metropolitan takes the exact
12 opposite position in the context of calculating the so-called “preferential rights” to which each
13 member agency is entitled. Metropolitan’s position on preferential rights is consistent with its
14 rates in only one respect: both are designed to, and in fact do, disadvantage the Water Authority
15 while providing advantages to the other Metropolitan member agencies. Under section 135 of
16 Metropolitan’s enabling act, the Metropolitan Water District Act, Cal. Water Code – Appendix §
17 109 (“MWD Act”), each Metropolitan member agency has a preferential right to purchase a
18 percentage of Metropolitan’s water supply equal to that agency’s share of payments for
19 Metropolitan’s capital costs and operating expenses, “excepting purchase of water.” In the
20 context of its rate-setting, and in the context of defending those rates in this litigation,
21 Metropolitan has argued that the Water Authority’s payments for “transportation” of non-
22 Metropolitan water have “no connection” to “the actual supply of water”—that is, that those
23 payments are not for the “purchase of water.” But if that were so, Metropolitan ought to include
24 the amounts the Water Authority has paid Metropolitan to transport IID Water and Canal Lining
25 Water in its calculation of the Water Authority’s preferential rights. Metropolitan has refused to
26 do so. In the event preferential rights are ever asserted, the Water Authority and its ratepayers
27 would receive less water than they should be entitled to under section 135 of the MWD Act.
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1 5. *Third*, in order to shield its mistreatment of the Water Authority from any review,
2 Metropolitan began including a so-called “Rate Structure Integrity” provision (“RSI Clause”) in
3 contracts with its member agencies. Metropolitan collects revenues from its member agencies—
4 through its Water Stewardship Rate—to subsidize water conservation and development of local
5 water supplies. That money is then awarded to the member agencies in the form of subsidy
6 contracts, on a project-by-project basis. The RSI Clause, included in every one of these contracts
7 since 2005 at Metropolitan’s insistence, purports to authorize Metropolitan unilaterally to
8 terminate these contracts—and stop providing subsidies for conservation and local water-supply
9 development—if any member agency files a lawsuit, or even offers political support for
10 legislation, that would challenge or change Metropolitan’s rates and charges. It therefore
11 penalizes any member agency that exercises its core constitutional right to petition the courts or
12 the Legislature for redress of grievances regarding Metropolitan’s rates, regardless of the merits
13 of the member agency’s position. In June 2011, Metropolitan actually terminated part or all of
14 four contracts between Metropolitan and the Water Authority, including a contract involving
15 Metropolitan, the Water Authority and one of the Water Authority’s member agencies.
16 Metropolitan has gone further and declared the Water Authority ineligible to receive any future
17 subsidy contracts, which means that, although the Water Authority must continue to fund
18 Metropolitan’s subsidy programs through its substantial “Water Stewardship Rate” payments to
19 Metropolitan, the Water Authority will get nothing in return for those payments. Instead, those
20 payments are entirely diverted to benefit other Metropolitan member agencies, in particular the
21 large, self-interested member agencies which comprise a majority voting bloc of the Metropolitan
22 Board with respect to the approval of subsidy contracts and other decisions. Metropolitan’s
23 enforcement of the RSI Clause has already cost the Water Authority millions of dollars and will
24 cost the Water Authority tens of millions of dollars annually in the future.

25 6. These various decisions, and the fact that they consistently work to the detriment
26 of the Water Authority, are no accident. They are a product of concerted action by Metropolitan,
27 working in concert with a majority group of member agencies that dominates and controls the
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1 Metropolitan Board of Directors. These member agencies, working hand-in-glove with
2 Metropolitan's executives, have formed a "shadow government" that meets in secret to decide in
3 advance issues pending before the Metropolitan Board and then coordinates the rubber-stamping
4 of those decisions by the Metropolitan Board. This shadow government takes advantage of the
5 fact that the Water Authority, despite having a minority voting share on the Board, is
6 Metropolitan's largest steady purchaser of water and only significant purchaser of transportation
7 services, and implements policies (including the 2011-12 water rates) that work to the detriment
8 of a single member agency, the Water Authority. Metropolitan's coordination with and effective
9 delegation to this shadow government demonstrate that Metropolitan's decisions vis-a-vis the
10 Water Authority and its constituents are unlawful and invalid.

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

13 II. PARTIES

14 8. Petitioner and Plaintiff the San Diego County Water Authority is, and at all times
15 mentioned herein was, a county water authority organized under the laws of the State of
16 California and located in the County of San Diego, California.

17 9. Respondent and Defendant Metropolitan is, and at all times mentioned herein was,
18 a public agency of the State of California organized pursuant to the Metropolitan Water District
19 Act [Stats. 1969, ch. 209 as amended; West's California Water Code Append. §§ 109-134
20 (2010)], and located in Los Angeles, California.

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

3 **III. SERVICE OF PROCESS**

4 11. Petitioner will serve Metropolitan, and all other defendants/respondents who
5 answered the First Amended Complaint, with the Second Amended Complaint in the manner
6 provided by law for the service of summons in a civil action.

7 12. In conjunction with the filing of the First Amended Complaint, Petitioner
8 published notice of this action in newspapers of general circulation published in the counties
9 served by Metropolitan is the method most likely to give notice to persons interested in these
10 proceedings. Those counties are Ventura, Los Angeles, Riverside, San Bernardino, Orange and
11 San Diego. As this Second Amended Complaint does not add any new causes of action subject to
12 the validation statutes, Code of Civil Procedure Section 861 et seq., Petitioner will seek an order,
13 either by stipulation or ex parte, that further publication of the summons is unnecessary.

14 **IV. JURISDICTION AND VENUE**

15 13. This court has jurisdiction over this matter pursuant to Code of Civil Procedure
16 Section 1085, Code of Civil Procedure Section 410.10, and with respect to the Third Cause of
17 Action, Code of Civil Procedure Sections 860 et seq., Government Code § 66022, and
18 Government Code § 53511.

19 14. The original complaint was filed in Los Angeles County Superior Court on June
20 11, 2010. Venue was transferred to this Court pursuant to Code of Civil Procedure Section
21 394(a). Venue over this amended Complaint is therefore proper in this Court.

22 **V. FACTUAL ALLEGATIONS**

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

24 15. Metropolitan imports, stores, and transports water throughout the Southern
25 California counties of San Diego, Orange, Los Angeles, Riverside, San Bernardino and Ventura.
26 Metropolitan has 26 member agencies, including the Water Authority. These agencies in turn sell
27 water they obtain from Metropolitan to sub-agencies and utilities or directly to consumers. In
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1 addition to obtaining and delivering water for sale to its member agencies, Metropolitan has more
2 recently undertaken to subsidize member agency conservation programs and projects aimed at
3 developing local water sources.

4 16. Metropolitan's operations are largely paid for by the rates and charges it imposes
5 on its 26 member agencies for the sale of water and in the case of the Water Authority, the
6 transportation of a member agency's own water through Metropolitan's facilities. The MWD
7 Act, which defines the powers and responsibilities of both Metropolitan and its Board, obligates
8 Metropolitan to set rates that "shall be uniform for like classes of service throughout the district."

9 17. Metropolitan obtains water for its member agencies from two principal sources:
10 first, from the California DWR, via the State Water Project; and, second, from Metropolitan's
11 allocation of water from the Colorado River. The State Water Project water is delivered by DWR
12 directly to Metropolitan's facilities. Metropolitan transports its water from the Colorado River
13 via the Metropolitan-owned and operated Colorado River Aqueduct ("CRA"). In this Complaint,
14 these two principal sources of imported water will be referred to collectively as "Metropolitan
15 Water."

16 18. Metropolitan is governed by a Board of Directors, which includes at least one
17 representative from each member agency. Additional seats on the Board are allocated according
18 to a percentage share of the assessed property values within those agencies. This results in
19 Metropolitan member agencies having voting representation on the Board that can diverge
20 substantially from each agency's water usage and payment of Metropolitan's operating costs.

21 19. Although Section 50 of the MWD Act requires that Metropolitan act exclusively
22 through its Board of Directors, as detailed below, a group of self-interested member agencies has
23 come to dominate and control Metropolitan. In recent years, a group of more than fifteen
24 Metropolitan member agencies—led by the Municipal Water District of Orange County
25 ("MWDOC"), the City of Los Angeles Department of Water and Power ("LADWP"), the
26 Western Municipal Water District and the West Basin Municipal Water District—has created a
27 self-described "Anti-San Diego Coalition" of member agencies for the purpose of securing votes
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1 on the Metropolitan Board to ratify water rates and policies that further its members' own narrow
2 self-interests while systematically disadvantaging the interests of the Water Authority and its
3 ratepayers. This well-organized "working group" of member agency managers meets outside the
4 public view, retains high-priced consultants to further its goals, and engages in wide-ranging *sub*
5 *rosa* activities to coordinate Metropolitan Board votes and outcomes. Their shadow government
6 has captured Metropolitan's governance, with the full knowledge and complicity of
7 Metropolitan's top management and several members of its Board of Directors.

8 20. The MWD Act also requires that Metropolitan establish an Office of Ethics and
9 adopt rules relating to internal disclosure, conflicts of interest, and other ethics rules for its Board
10 members, officers and employees. Metropolitan and its member agencies are expressly
11 prohibited from creating any association that is likely to mislead the public as to the association's
12 true identity, its source of funding, or its purpose.

13 **B. The Water Authority is Metropolitan's largest customer.**

14 21. The Water Authority's service area has a relatively small local water supply from
15 groundwater and other natural sources. As a result, in order to meet local demand for water, the
16 Water Authority historically relied on Metropolitan to a greater degree, and purchased a much
17 higher percentage of Metropolitan Water, than other Metropolitan member agencies. Until the
18 early 1990s, with the exception of capturing a small amount of local rainwater and limited
19 groundwater, the Water Authority service area was entirely dependent on Metropolitan Water.
20 Because the Water Authority was (and remains) Metropolitan's largest steady purchaser of water
21 from year to year, it also paid (and pays) the largest portion of Metropolitan's bills, including the
22 fixed payments Metropolitan must make to obtain water supply from the State Water Project.

23 22. Between 2006 and 2010, the Water Authority purchased more than 2.5 million
24 acre feet of Metropolitan water, a total accounting for about 25 % of the total Metropolitan water
25 purchased by the member agencies. During that same period, the Water Authority paid
26 Metropolitan to transport 548,464 acre-feet of water purchased from IID and conserved from the
27 All American and Coachella canal-lining projects. Overall payments from the Water Authority—
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1 including payments for transportation of IID and Canal Lining Water—accounted for about 25%
2 of Metropolitan’s total revenue during that period. These numbers make the Water Authority by
3 far the biggest source of revenue to Metropolitan among the various Metropolitan member
4 agencies.

5 23. Historically, because Metropolitan Water was relatively plentiful and inexpensive,
6 and local water supply development opportunities were less cost-effective, the Water Authority
7 did not need to look to third-party sources like IID for water. But as a consequence of a
8 prolonged and near-catastrophic drought in the late 1980s and early 1990s, during which time
9 Metropolitan was unable to meet the Water Authority’s supply needs, the Water Authority’s
10 Board of Directors realized it needed to secure dependable alternative sources of water supply,
11 thereby reducing its reliance on Metropolitan in the event of future water shortages or other
12 emergencies. In order to obtain alternate sources of water supply, the Water Authority turned to
13 IID, which was seeking additional ways to comply with orders of the State Water Resources
14 Control Board to increase conservation and water-use efficiency. The Water Authority began
15 negotiations with IID in the mid-1990s to obtain conserved Colorado River water. This water
16 would be delivered to the Water Authority via Metropolitan’s Colorado River Aqueduct and
17 pipelines. These negotiations were ultimately successful, culminating in an agreement in 1998
18 for the transfer of conserved water between the Water Authority and IID.

19 **C. Metropolitan adopts its current, unbundled rate structure.**

20 24. Metropolitan sets annual water rates, which it then charges to its member agencies
21 on a per-acre-foot volumetric basis. Since 2003, Metropolitan’s rates have been “unbundled,” or
22 separated, into (1) a “supply rate” (nominally for water itself); and (2) various component rates
23 that Metropolitan sums up and treats as a “transportation rate” (nominally, though not actually,
24 related to costs of delivering water).

25 25. Metropolitan’s current rate structure, first implemented in January 2003, includes
26 three Metropolitan-created components—a “System Access Rate,” a “System Power Rate,” and a
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1 “Water Stewardship Rate”—in Metropolitan’s so-called “transportation rate.” Metropolitan
2 defines the three components as follows:

3 a) Metropolitan’s “System Access Rate” purports to “recover[] the cost of providing
4 conveyance and distribution capacity to meet average annual demands.” This rate
5 therefore recovers a large share of Metropolitan’s costs to maintain and operate its
6 distribution system within the Southern California region and the Colorado River
7 Aqueduct. In addition, the System Access Rate includes a large share of the costs
8 Metropolitan pays DWR to purchase water it obtains from the State Water Project, even
9 though that project is neither owned nor operated by Metropolitan.

10 b) Metropolitan’s “System Power Rate” purports to “recover[] the cost of pumping
11 water to Southern California.” It therefore includes “the melded costs of power for both
12 the SWP and CRA” (id.) – i.e., both the costs Metropolitan incurs to power its own
13 Colorado River Aqueduct and distribution facilities within the Southern California region,
14 as well as another portion of the amount Metropolitan pays DWR for water obtained from
15 the State Water Project.

16 c) Metropolitan’s “Water Stewardship Rate” purports to “recover[] the costs of
17 providing financial incentives for existing and future investments in local resources
18 including conservation and recycled water.” Money collected through this rate is used to
19 subsidize water conservation and local water supply development by Metropolitan’s
20 member agencies. Metropolitan claims that payment of these subsidies reduces the
21 amount of water supply it must obtain from other sources or makes transportation capacity
22 available for use by other member agencies. Unlike the other components of
23 Metropolitan’s unbundled rate—i.e., supply, system access, and system power, which
24 (even if calculated improperly) relate to services Metropolitan actually provides to its
25 member agencies—“water stewardship” is a concocted concept that does not describe any
26 service provided by Metropolitan, other than the redistribution of money from some
27 Metropolitan member agencies to others. In any case, Metropolitan itself has previously
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1 acknowledged that “water stewardship” costs are properly categorized as “supply,” not
2 “transportation.”

3 Metropolitan also provides treatment services, for which it charges a treatment surcharge that is
4 properly paid solely by purchasers of treated water.

5 26. For purchases of Metropolitan water, the breakdown of Metropolitan costs into
6 “supply” versus “transportation” makes no difference, because the purchaser pays all of them.
7 But for member agencies—namely the Water Authority—that use Metropolitan’s system to
8 transport Non-Metropolitan Water purchased from other sources, the rate breakdown is critically
9 important.

10 27. Metropolitan’s current “wheeling rate”—what it charges for the transportation of
11 third-party water (“Non-Metropolitan Water”) on the Metropolitan system—is an aggregate of the
12 System Access Rate, the Water Stewardship Rate, and the Water Treatment Rate (if that water is
13 treated), plus a power component. As detailed below, the rate Metropolitan charges the Water
14 Authority under the Transportation Agreement to transport IID and Canal Lining Water to the
15 Water Authority’s facilities incorporates components of Metropolitan’s wheeling rate. Neither
16 the “wheeling rate” nor the rate charged to the Water Authority under the Transportation
17 Agreement should lawfully include costs associated with supply. But because the Water
18 Authority is the only Metropolitan member agency that must use Metropolitan facilities to
19 transport significant quantities of Non-Metropolitan Water, the remaining Metropolitan member
20 agencies have an incentive to re-characterize these supply costs as “transportation” charges.

21 28. Accordingly, the rates Metropolitan imposes for “transportation” force the Water
22 Authority to bear a disproportionate share of Metropolitan’s supply costs and to subsidize water
23 supply for, and conservation and local water supply development by, the other Metropolitan
24 member agencies. The misallocation of Metropolitan’s “supply” costs onto its “transportation”
25 rate was designed to advantage the other member agencies at the Water Authority’s expense.

26 29. On October 10, 2003, Metropolitan and the Water Authority executed the
27 Transportation Agreement, under which Metropolitan agreed to deliver to the Water Authority a
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1 volume of water equal to the volume the Water Authority purchased from third parties, including
2 IID, and delivered to Metropolitan. Pursuant to section 5.2 of the Transportation Agreement,
3 Metropolitan promised that the price for transporting this Non-Metropolitan Water to the Water
4 Authority “shall be equal to the charge or charges set by Metropolitan’s Board of Directors
5 pursuant to applicable law and regulation and generally applicable to the conveyance of water by
6 Metropolitan on behalf of its member agencies.” (A copy of the Transportation Agreement is
7 attached hereto as Exhibit A.) But because Metropolitan miscategorizes as “transportation” costs
8 certain items that have nothing to do with transportation, Metropolitan’s charges to the Water
9 Authority far exceed the actual costs Metropolitan incurs in conveying water. As a result,
10 Metropolitan’s overcharges unlawfully and unfairly extract money from the Water Authority and
11 its ratepayers and funnel the proceeds to other Metropolitan member agencies, in the form of
12 artificially reduced water-supply rates and, in the case of certain member agencies, multi-million
13 dollar subsidies to pay for water supply projects that provide no demonstrated benefit to the
14 Water Authority or the Metropolitan service area as a whole.

15 **D. Metropolitan tries to shield its misconduct from review through the RSI Clause.**

16 30. Despite being a public agency that is statutorily obligated to serve the interests of
17 all ratepayers in its service area, Metropolitan has taken steps intended to permanently shield its
18 rates from judicial or legislative scrutiny. In a June 18, 2004 memorandum from Metropolitan’s
19 then-CEO (and former Metropolitan Board member representing the City of Los Angeles) Ronald
20 Gastelum to Metropolitan member agency managers (“Gastelum memorandum”), Metropolitan
21 laid out the RSI Clause, which Metropolitan declared it would seek to impose in its subsidy
22 contracts with member agencies. (A copy of this memorandum is attached as Exhibit B.) The
23 RSI Clause provides in relevant part that if any member, such as the Water Authority, “file[s] or
24 participate[s] in litigation or support[s] legislation to challenge or modify” Metropolitan’s
25 existing rates, “including changes in overall rates and charges that are consistent with the current
26 cost-of-service methodology, Metropolitan may initiate termination of this agreement” In
27 other words, the RSI Clause purports to give Metropolitan unilateral authority to terminate any
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1 water conservation or local water supply development project contract with any member agency
2 who initiates litigation or supports legislation related to Metropolitan's rates.

3 31. The Gastelum memorandum candidly described the provision as being designed to
4 coerce member agencies to "refrain from attacking Metropolitan's rate structure in court or in the
5 legislature as a grant condition." Indeed, the Gastelum memorandum directly admits that
6 Metropolitan drafted the RSI Clause specifically in response to the Water Authority's reservation
7 of its rights in the Transportation Agreement to challenge Metropolitan's rates.

8 32. On or about July 22, 2004, the Water Authority adopted a policy of opposing any
9 Metropolitan proposals that would condition receipt of Metropolitan services or money on a
10 waiver of constitutional rights or otherwise impair the ability of member agencies to seek
11 resolution of issues in all appropriate forums. Over the Water Authority's objections, on
12 December 14, 2004, Metropolitan's Board of Directors approved the RSI Clause, and directed
13 that it be incorporated in subsidy agreements as of April 15, 2005. (A copy of the RSI language
14 approved by the Board is attached hereto as Exhibit C.)

15 33. Initially, the Water Authority refused to enter into subsidy agreements containing
16 an RSI Clause. As a result, for more than two years, the Water Authority and its 24 member
17 agencies did not obtain any subsidies for conservation or local water supply projects, even though
18 they had no choice but to pay, and did pay, tens of millions of dollars to Metropolitan through the
19 Water Stewardship Rate that was used to fund such subsidies for other Metropolitan member
20 agencies. Indeed, because the Water Authority is Metropolitan's largest single customer, it paid a
21 greater percentage of the cost of Metropolitan's subsidies than any other member agency.

22 34. In 2007 the Water Authority's Board of Directors authorized its General Manager
23 to execute agreements containing an RSI Clause while reserving its position that "the RSI
24 provision is poor public policy and legally unenforceable." Subject to this reservation of rights,
25 the Water Authority then entered into four executory two-party subsidy agreements with
26 Metropolitan ("Project Contracts"). In addition, Metropolitan, the Water Authority and the
27 Ramona Municipal Water District ("Ramona"), one of the Water Authority's member agencies,
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1 entered into a three-party agreement under which Metropolitan would subsidize the San Vicente
2 Water Recycling Project (“Ramona Agreement”). Each of these agreements contained an RSI
3 Clause.

4 **E. A majority group of Metropolitan member agencies forms a shadow government to**
5 **enforce a rate allocation that unlawfully discriminates against the Water Authority**
6 **and its ratepayers.**

7 35. Unbeknownst to the Water Authority, in or about October 2009, a group of
8 Metropolitan member agencies, whose Board members control a majority of the voting power on
9 the Metropolitan Board, organized a secret group comprised of the general managers or
10 representatives of those member agencies. Membership in this secret group was on an “invitation
11 only” basis: the Water Authority was not invited to participate and was not informed of the
12 group’s existence. From at least October 2009 to the present, this “Working Group”—which has
13 been referred to by its own participants as the “Secret Society” and the “Anti-San Diego
14 Coalition”—has functioned as a shadow government, working to direct and control Metropolitan
15 Board votes on water rates, and other key decisions, for the financial benefit of the majority
16 member agencies and to the detriment of the Water Authority.

17 36. This shadow government meets in secret, without any notice to non-members or
18 the public, sometimes at Metropolitan’s headquarters. Without disclosing the existence or extent
19 of its association, this Secret Society has issued a series of written “recommendations” to
20 Metropolitan and others in letters signed by as many as 23 of Metropolitan’s 26 member
21 agencies. The Board dutifully follows the recommendations of this shadow government, often
22 with only perfunctory Board consideration of the issues.

23 37. From its inception, this shadow government has been focused on ensuring that
24 Metropolitan’s rate structure punished the Water Authority for purchasing water from IID rather
25 than continuing to rely solely on purchasing water from Metropolitan to meet its ratepayers’
26 needs. The agendas, notes and meeting summaries for the early sessions of this Secret Society
27 reflect its participants’ intent to make sure that the calendar year 2011-12 water rates imposed an
28 unfair burden on the Water Authority.

1 38. The Secret Society’s actions to rig Metropolitan’s rate structure—for their own
2 benefit and to the Water Authority’s detriment—are not informal efforts. They are the product of
3 a well-organized, well-funded effort. The member agency “working group” has retained multiple
4 sets of consultants, including former Metropolitan General Manager Ronald Gastelum and former
5 Metropolitan Assistant General Manager Edward Means, at a cost of more than \$15,000 per
6 month. At the close of their monthly secret meetings, the member agency representatives assign
7 each other detailed action items to ensure that their desired results are implemented, such as
8 reporting back on how their agencies’ appointed Board members intend to vote or drafting anti-
9 San Diego policy proposals that Metropolitan staff members will pass off and introduce as their
10 own. Most importantly, with the help of their paid consultants and lobbyists, the Secret Society
11 has conveyed to Metropolitan Board members (formally and informally, in writing and orally)
12 that Metropolitan’s current, misallocated water rates should be upheld not because they are
13 consistent with cost-of-service principles (which they are not) but because the illegitimate rates
14 provide the majority member agencies with a \$25 million annual windfall.

15 39. In addition to operating in secret and hiding its existence, this shadow government
16 has engaged in highly suspect public agency activities. For example, it has secretly polled and
17 met with Metropolitan Board members in a manner designed to circumvent the Brown Act, in
18 order to ensure Metropolitan board votes following its direction. And, again hidden from public
19 view, this shadow government commissioned a \$50,000 study from the Los Angeles County
20 Economic Development Corporation with the express aim of discrediting the Water Authority’s
21 purchase of water from IID and the Water Authority’s requests for a rate structure that fairly and
22 reasonably reflects Metropolitan’s costs of service.

23 40. At every step, this shadow government has both aided and been aided by
24 Metropolitan. Metropolitan provided space for Secret Society meetings at Metropolitan’s
25 headquarters. Metropolitan staff have regularly attended Secret Society meetings and provided
26 the participants with exclusive briefings on matters then pending before the Metropolitan Board.
27 Metropolitan has coordinated with the secret group to conduct anti-San Diego lobbying and
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1 outreach campaigns for Metropolitan Board members and state legislators. And Metropolitan's
2 General Manager Jeffrey Kightlinger has personally met with both the entire shadow government,
3 and a select group of its ringleaders, to coordinate strategy and offer Metropolitan's continuing
4 assistance to the efforts and objectives of the Secret Society. Given that the Water Authority was
5 the principal target of the shadow government, it is little wonder that Metropolitan's 2011-12
6 rates, and numerous other decisions by the Metropolitan Board, have consistently disfavored a
7 single agency, the Water Authority.

8 **F. Metropolitan sets unlawful rates for 2011 and 2012.**

9 41. On January 6, 2010, Metropolitan's Board set a March 8, 2010 public hearing of
10 its Business & Finance Committee on Metropolitan's proposed rates and charges to become
11 effective January 1, 2011, continuing through 2012. On March 8, 2010, Metropolitan's Business
12 and Finance Committee held that public hearing, at which the Water Authority provided written
13 and oral testimony. On or about April 12, 2010, counsel for the Water Authority submitted a
14 letter to Metropolitan's Board reiterating that the rates and charges challenged here violate the
15 State Constitution, state statutes, the common law, and Metropolitan's own Administrative Code
16 and Board policy directives. (A copy of this letter is attached as Exhibit D.) Nevertheless, on
17 April 13, 2010, without any discussion of the points raised by the Water Authority and its
18 consultants, Metropolitan's Board adopted the proposed water rates and charges, without
19 remedying the problems identified by the Water Authority and its experts. (A copy of the April
20 13, 2010 Board Action approving these rates is attached as Exhibit E.)

21 42. Metropolitan's 2011 and 2012 rates, formalized on or around April 13, 2010,
22 classify costs as "transportation" that, under various state statutes and the Transportation
23 Agreement, should be categorized as supply. Similarly, Metropolitan includes in its
24 "transportation" charges its Water Stewardship Rate, which in reality is another supply-related
25 cost. The Water Stewardship Rate recovers costs to subsidize local projects to develop water
26 supplies, such as desalination projects, groundwater recovery and reclaimed water facilities, as
27 well as costs to encourage conservation. All of these projects pertain to increasing the member
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1 agencies' "supply" of water or decreasing their usage of water; none pertains to transportation. In
2 addition to violating California law and common sense, by misclassifying most of its payments to
3 DWR for additional water supply as costs to operate its own transportation infrastructure,
4 Metropolitan overstates the cost of transporting water, understates the cost of imported water, and
5 illegally and unfairly imposes charges on the Water Authority significantly exceeding the cost of
6 services Metropolitan actually provides.

7 43. These arbitrary, capricious and illegal cost allocations materially affect only one of
8 Metropolitan's member agencies—the Water Authority, because it is the only agency that
9 transports a large volume of Non-Metropolitan Water through the Metropolitan facilities. These
10 misclassified rates apply to all third-party water that the Water Authority purchases from outside
11 San Diego County, because all such water must be transported to the Water Authority through
12 Metropolitan's system. In other words, these rates apply to (1) the transfer of IID and Canal
13 Lining Water by Metropolitan under the Transportation Agreement; and (2) any wheeling of
14 water from other third-party sources in which the Water Authority may wish to engage. As a
15 direct result of Metropolitan's unlawful and discriminatory water rates, the Water Authority
16 estimates it will be overcharged by at least \$30 million per year if the 2011 and 2012 rates and
17 charges challenged in this action remain in effect. This annual overcharge will grow larger each
18 year so long as Metropolitan's rates continue to be based on such unlawful cost allocations.

19 44. Pursuant to the dispute resolution provisions of Section 11.1 of the Transportation
20 Agreement, the Water Authority invited Metropolitan to negotiate toward resolution of this rate
21 dispute. Metropolitan agreed to such negotiations. However, the Water Authority had no choice
22 but to initiate this litigation before such discussions could commence to comply with the
23 potentially applicable statute of limitations contained in Code of Civil Procedure Sections 860
24 and 863. In any event, the Water Authority's negotiations with Metropolitan were unsuccessful.
25 Metropolitan refused to bring its rates into compliance with applicable law.

1 **G. At the behest of the Secret Society, Metropolitan invokes the RSI Clause to punish**
2 **the Water Authority and its ratepayers for challenging Metropolitan's illegal**
3 **conduct.**

4 45. Shortly after the Water Authority filed this lawsuit, exercising its constitutional
5 right to petition for redress of grievances against Metropolitan, and at the behest of the self-
6 interested member agencies that comprise the shadow government, Metropolitan invoked the RSI
7 Clause to penalize the Water Authority and its ratepayers. On August 25, 2010, Metropolitan
8 General Manager Jeffrey Kightlinger sent a letter to Water Authority General Manager Maureen
9 Stapleton, invoking the RSI Clause and giving notice of Metropolitan's intent to terminate the
10 four Project Contracts that contain the RSI Clause. In addition, the letter notified the Water
11 Authority that Metropolitan's Board had directed Metropolitan staff to defer the execution of
12 three additional subsidy agreements for which the Water Authority previously had qualified. (A
13 copy of this letter is attached as Exhibit F.)

14 46. On the same day, Metropolitan General Manager Kightlinger sent a letter to
15 Ramona's General Manager, invoking the RSI Clause and giving Ramona notice of
16 Metropolitan's intent to terminate funding for the San Vicente Water Recycling Project because
17 of the Water Authority's filing of the Rate Case. The letter also stated that Metropolitan would
18 not terminate this funding if Ramona "transmits written documentation to Metropolitan within 30
19 days of the date of this letter demonstrating that [it] has not participated directly or indirectly in
20 the filing or prosecution of any litigation ... to challenge or modify Metropolitan's existing rate
21 structure, and indicates support for Metropolitan's existing rate structure." (A copy of this letter is
22 attached as Exhibit G.)

23 47. In response to these letters, the Water Authority elected to mediate the disputes
24 under the Project Contracts. The parties held two mediation sessions, on March 9 and June 6,
25 2011, but did not resolve their disputes.

26 48. On June 14, 2011, Metropolitan's Board of Directors voted to terminate the
27 Project Contracts with the Water Authority and the Ramona Agreement, exempting only those
28 portions of two agreements that directly provide conservation rebates to consumers or businesses.

1 Metropolitan's Board also rejected the Water Authority's request that Metropolitan place the
2 funds withheld as a result of termination of these Project Contracts into an interest-bearing
3 account that would be maintained until final disposition of the Rate Case.

4 49. By letter dated June 23, 2011, Metropolitan's General Manager notified the Water
5 Authority of Metropolitan's final action regarding the termination of the Project Contracts, and
6 the Ramona Agreement. (A copy of that letter is attached as Exhibit H.) Ramona has assigned to
7 the Water Authority its right to sue for relief arising out of Metropolitan's termination of the
8 Ramona Agreement.

9 50. Metropolitan's unlawful termination of the Project Contracts and the Ramona
10 Agreement has stripped money away from ongoing water conservation programs and local water
11 supply development projects designed to provide important benefits to San Diego County.
12 Moreover, by blackballing the Water Authority from continued participation in subsidy programs,
13 Metropolitan is further redistributing the region's water ratepayer dollars away from San Diego
14 County to other parts of Southern California—all as conceived and implemented by the
15 ringleaders of a self-interested shadow government. Although San Diego's ratepayer dollars
16 continue to fund the substantial conservation and local water supply projects approved by
17 Metropolitan, San Diego is excluded from receiving any benefit from its payments. Further, as
18 Metropolitan pays its other member agencies to conserve more water and develop alternative
19 local water, those member agencies will purchase less Metropolitan water. In turn, that result will
20 force Metropolitan to increase its rates for purchases of its water in order to recover its costs.
21 Because the Water Authority is the largest purchaser of Metropolitan water, it will suffer
22 disproportionate harm from any rate increase.

23 **H. Metropolitan's 2011-12 rates unlawfully discriminate against the Water Authority.**

24 51. Metropolitan's calendar year 2011 and 2012 water rates not only violate the
25 California constitution and numerous California statutes; they also violate the common law
26 principle that a public agency may not set rates that unlawfully discriminate against a single
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1 customer or group of customers. That Metropolitan sets rates that unduly burden and unlawfully
2 discriminate against the residents of San Diego is evidenced by the following:

3 52. First and foremost, Metropolitan and its Board—under the domination and control
4 of a shadow government led by large, self-interested Metropolitan member agencies—have
5 enacted rates that load Metropolitan’s costs of obtaining the DWR water supply, as well as
6 Metropolitan’s water stewardship costs, onto the rate Metropolitan charges for transportation,
7 rather than incorporating those costs into the water supply rate. As described throughout this
8 Complaint, the Water Authority is uniquely situated among Metropolitan’s member agencies, and
9 uniquely vulnerable to abusive conduct by Metropolitan and its Board, due to the fact that the
10 Water Authority is the only Metropolitan member agency that is a high-volume, steady purchaser
11 of Metropolitan water, but also must utilize Metropolitan’s system to transport significant
12 quantities of Non-Metropolitan Water. Metropolitan, and the self-interested member agencies
13 that control the Metropolitan Board, have knowingly taken improper advantage of the Water
14 Authority’s position to load costs onto the Water Authority that ought to be borne proportionally
15 by their agencies and ratepayers. The misclassification results in overcharges to the Water
16 Authority of more than \$25 million, which the Secret Society’s documents suggest will grow over
17 time and amount to nearly \$3 billion over the remaining term of the Water Authority-IID
18 Agreement.

19 53. Second, after implementing the above-described rates, which violate California
20 law and were designed to discriminate against the Water Authority, Metropolitan and its Board,
21 under the domination and control of this shadow government, then sought to insulate their
22 conduct from legal or political challenge by imposing and enforcing the RSI Clauses against the
23 Water Authority. Because only the Water Authority is disadvantaged by these current unlawful
24 rates, only the Water Authority, among the Metropolitan member agencies, is affected by the RSI
25 Clauses as a practical matter. Metropolitan’s invocation of these RSI clauses works to the
26 detriment of the Water Authority and its ratepayers, by preventing them from receiving any
27 benefit from their own duly-contributed share of the Metropolitan funds used to pay for the local
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1 water-supply subsidies (while enriching the large member agencies that organized the Secret
2 Society).

3 54. Third, Metropolitan has improperly allowed the shadow government to exert
4 undue influence and control over the decisionmaking of Metropolitan's Board. Upon information
5 and belief, and based on information from public records recently obtained by the Water
6 Authority, a majority voting bloc of more than fifteen Metropolitan member agencies—with
7 LADWP, MWDOC, Western and West Basin as its ringleaders—have created a shadow
8 government, working in secret to direct and control Metropolitan board votes on water rates and
9 other key decisions. This shadow government acts for the benefit of the majority member
10 agencies and to the detriment of the Water Authority. The *sub rosa* existence and actions of this
11 shadow government have resulted in Metropolitan governance that is procedurally unfair, and has
12 resulted in biased, unfair and unreasonable water rates that unlawfully discriminate against the
13 Water Authority and the residents of San Diego.

14 55. Metropolitan's pattern and practice of working hand-in-glove with this shadow
15 government and allowing it improperly to influence and control Metropolitan votes, is evident not
16 only from the 2011-12 water rates, but also from other policy decisions by Metropolitan and its
17 Board that likewise harm or disadvantage the Water Authority. Specifically, Metropolitan and its
18 Board, at the urging of the shadow government, have (1) approved rate structures that fail to
19 account for the costs of dry-year peaking on the Metropolitan system; and (2) entered into multi-
20 million dollar conservation and local water supply development subsidy contracts that principally
21 benefit the ringleaders of the shadow government.

22 56. With respect to dry-year peaking, Metropolitan and its Board, under the influence
23 and control of this shadow government, have refused to account in Metropolitan's rates for the
24 costs of keeping supplies in reserve for a single agency that significantly increases its water
25 purchases during dry years. The chief beneficiary of this practice is the City of Los Angeles,
26 because LADWP's water supply purchases from Metropolitan vary widely from year to year
27 depending on the water supply conditions in the Owens Valley, which serves LADWP's own Los
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1 Angeles Aqueduct. When its own water supplies are short during dry years, LADWP can pick up
2 the telephone and buy more water from Metropolitan—a supply of water Metropolitan holds on
3 call for LADWP at no cost to LADWP. From 1996 to 2010, this practice has delivered an
4 estimated annual financial benefit to LADWP, and corresponding annual detriment to the other
5 Metropolitan member agencies, of as much as \$35 million to \$40 million. As Metropolitan’s
6 largest steady purchaser of water, the Water Authority bears the largest share of Metropolitan’s
7 subsidization of LADWP’s dry-year water supply.

8 57. With respect to subsidy contracts, Metropolitan and its Board, under the influence
9 and control of the shadow government, have disbursed subsidy contracts in an unequal manner
10 that provides multi-millions of dollars in local benefits, primarily to the ringleaders of the Secret
11 Society, but fails to provide any regional benefit throughout Metropolitan’s service area. The
12 agencies that do not receive these subsidy contracts, or do not receive their roughly proportional
13 share of such contracts, are thus forced to pay for projects that benefit only other Metropolitan
14 member agencies. To take one example, Western Municipal Water District has reported to its
15 board that, between the time of Metropolitan’s adoption of its unbundled rates in 2003 through
16 2010, it paid Metropolitan approximately \$14.8 million in Water Stewardship Rate fees, while
17 receiving \$38.1 million for “water stewardship” projects in return—a net benefit of more than \$23
18 million. Other large Metropolitan member agencies, including MWDOC and the West Basin
19 Municipal Water District, have reaped similarly large benefits from Metropolitan’s “water
20 stewardship” projects. By contrast, the Water Authority has been blackballed from this subsidy
21 program because of the Water Authority’s exercise of its constitutional right to challenge
22 Metropolitan’s unlawful rates. In short, Metropolitan is systematically draining money from the
23 San Diego region and redistributing it to other Southern California counties.

24 58. Accordingly, while the Water Authority pays millions of dollars to fund these
25 programs and gets nothing in return, a subset of member agencies pays in far less and gets a
26 windfall. This conduct harms not only the Water Authority specifically, but also the overall
27 Metropolitan constituency, which must pay higher rates because the subsidized conservation and
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1 local water-supply projects administered by Metropolitan do not provide any regional benefit to
2 Metropolitan's service area. Indeed, Metropolitan's current practices actually reduce purchases
3 of Metropolitan Water by member agencies, thereby forcing Metropolitan to raise its rates for
4 Metropolitan Water.

5 59. Because the Water Authority has been excluded from the secret meetings of this
6 shadow government, its efforts to reverse these policies through advocacy in the Metropolitan
7 board room have been unsuccessful. The Water Authority has regularly objected—in Board
8 meetings, in staff meetings and in other contexts—to Metropolitan's water rates, to the imposition
9 of the RSI clause incorporated into Metropolitan project contracts, to Metropolitan's failure to
10 account for the costs of dry-year peaking, and to Metropolitan's granting of conservation and
11 local water-supply development subsidies to member agencies despite the lack of any
12 demonstrated regional benefit, all to no avail.

13 Taken together, Metropolitan's actions represent a pattern and practice of discrimination
14 against the Water Authority and its constituents, and a naked redistribution of money to the
15 ringleaders of the self-described Anti-San Diego Coalition, both of which the Water Authority is
16 powerless to halt except through litigation.

17 **I. Metropolitan under-calculates the Water Authority's preferential rights to water.**

18 60. The arbitrary, capricious, and self-serving nature of Metropolitan's definitions of
19 "supply," on the one hand, and "transportation," on the other, is further proven by Metropolitan's
20 miscalculation of the Water Authority's preferential rights. As discussed above, under section
21 135 of the MWD Act, the Legislature determined that the preferential rights of Metropolitan
22 member agencies shall be calculated according to their shares of payments for Metropolitan's
23 capital costs and operating expenses, "excepting purchase of water." Metropolitan is responsible
24 for accurately calculating preferential rights.

25 61. Metropolitan has failed to calculate its member agencies' preferential rights in
26 accordance with section 135 of the MWD Act, instead arbitrarily and irrationally misapplying the
27 statutory formula to disadvantage the Water Authority. Metropolitan excludes the considerable
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1 sums the Water Authority pays Metropolitan under the Transportation Agreement for transporting
2 IID and Canal Lining water when calculating the Water Authority’s preferential rights, taking the
3 position that these payments are for “purchases of water”—i.e., supply.

4 62. This directly contradicts Metropolitan’s rate-setting practices. In the context of
5 rate setting, when Metropolitan delivers IID and Canal Lining Water to the Water Authority, it
6 charges the Water Authority not for supply but for transportation (although it inflates its
7 purported “transportation” charges by including amounts in those charges that are actually related
8 to supply). But when it comes to calculating preferential rights based on the exact same charges,
9 Metropolitan says that those same payments are for supply.

10 63. Metropolitan’s preferential-rights calculation practice also contradicts the terms of
11 its Transportation Agreement with the Water Authority. That Agreement provides that, when
12 Metropolitan transports Non-Metropolitan Water, such as IID water, to the Water Authority
13 through the Metropolitan system, it is engaging in water transportation, not water supply. Section
14 4.1 of the Transportation Agreement provides that non-Metropolitan Water “shall be
15 characterized for the purposes of all of Metropolitan’s ordinances, plans, programs, rules and
16 regulations ... in the same manner as the Local Water of other Metropolitan member agencies”—
17 in other words, as Non-Metropolitan Water.

18 64. Metropolitan’s systematic under-calculation of the Water Authority’s preferential
19 rights erodes the reliability of water supply for the Water Authority and its ratepayers, denying
20 them the benefit of payments they have actually made to Metropolitan that should entitle them to
21 increased preferential rights under the statutory formula of section 135 of the MWD Act. In the
22 event any member agency, including the Water Authority, asserts its preferential rights to water,
23 the Water Authority would be unable to obtain the share of water it is lawfully entitled to receive.
24 By contrast, every other Metropolitan member agency has seen its share of preferential rights
25 increase as a result of Metropolitan’s misclassification, and stands to benefit at the expense of the
26 Water Authority and San Diego ratepayers in the event preferential rights are asserted.

1 65. During 2010, Metropolitan calculated the Water Authority's preferential rights at
2 about 17.47% of the water available from Metropolitan. The Water Authority estimates that it
3 has paid \$155,999,600 to Metropolitan under the Transportation Agreement through December
4 31, 2010. Given these payments, Metropolitan ought to have calculated the Water Authority's
5 2010 preferential rights to be approximately 19.37% of the water available from Metropolitan.
6 This 1.9% increase in the Water Authority's preferential rights over what Metropolitan has
7 calculated would mean the Water Authority would be eligible to receive a volume of water 11%
8 greater than what it would currently receive in the event preferential rights are asserted.

9 66. In early 2011, the Water Authority became aware that Metropolitan was excluding
10 its payments for the transportation of IID Water and Canal Lining Water from the calculation of
11 the Water Authority's preferential rights. On or about April 6, 2011, counsel for the Water
12 Authority wrote to Metropolitan, noting the miscalculation and requesting that Metropolitan
13 calculate the preferential rights amounts in a manner consistent with the statutory command of
14 section 135. (A copy of that letter is attached as Exhibit I.) On April 26, 2011, Metropolitan's
15 Interim General Counsel refused to include the amounts paid under the Transportation Agreement
16 in Metropolitan's preferential rights calculations, attempting to mask the transportation rates as "a
17 discounted volumetric rate" for the sale of water by Metropolitan, despite the Transportation
18 Agreement providing the contrary and despite Metropolitan's position in this litigation that those
19 charges are for transportation, not for water supply. (A copy of that letter is attached as Exhibit
20 J.) On May 4, 2011, the Water Authority's General Counsel responded to the April 26 letter. (A
21 copy of that letter, without its attachment, is attached as Exhibit K.)

22 67. Despite the Water Authority's demands and its obligations under its own enabling
23 act and the Transportation Agreement, Metropolitan refuses to properly classify the Water
24 Authority's payments for transportation of Non-Metropolitan Water in determining the Water
25 Authority's preferential rights. Absent a clear judicial declaration of Metropolitan's obligations,
26 the Water Authority is informed and believes that Metropolitan will continue to refuse to do so.

1 FIRST CAUSE OF ACTION

2 **FOR WRIT OF MANDATE RE: ALLOCATION OF SUPPLY AND**
3 **TRANSPORTATION COSTS**

4 **(Against Respondent Metropolitan)**

5 68. Petitioner re-alleges paragraphs 1 through 67 as though set forth fully herein.

6 69. Metropolitan is under a clear and present duty, pursuant to Article XIII A, Section
7 4 of the California Constitution (adopted by Proposition 13 in 1978), and its implementing
8 statute, Government Code Section 50076, to set rates and charges no greater than the “reasonable
9 cost of providing the service ... for which the fee is charged.” (Gov. Code § 50076.) Under that
10 duty, Metropolitan’s rates and charges must reasonably and fairly allocate its costs among the
11 services Metropolitan provides. Otherwise, the rates and charges imposed for these services
12 constitute special taxes, for which Proposition 13 requires two-thirds voter approval.
13 Metropolitan did not obtain voter approval of the rates and charges challenged here.

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

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

22 72. Metropolitan also is under a clear and present duty, imposed by the Wheeling
23 Statutes (Water Code § 1810 et seq.) to charge only “fair compensation” for the conveyance, or
24 “wheeling,” of water through Metropolitan’s facilities. In addition to the Transportation
25 Agreement, which requires that Metropolitan transport IID Water and Canal Lining Water at rates
26 equal to Metropolitan’s rates set “pursuant to applicable law and regulation and generally
27 applicable to the conveyance of water by Metropolitan,” the Water Authority has contracted in
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1 the past, and intends to contract with Metropolitan in the future, for “wheeling” of water from
2 third-party sources not covered by the Transportation Agreement.

3 73. Finally, Metropolitan also has a clear and present duty under California common
4 law to set rates and charges that are fair, reasonable, and proportionate to the cost of service.
5 Metropolitan also has a common law duty to make decisions and set rates that do not discriminate
6 against a particular group of its constituents.

7 74. Metropolitan has failed to perform these duties. Certain rates adopted by
8 Metropolitan on or about April 13, 2010, including the System Access Rate, System Power Rate,
9 and Water Stewardship Rate, comprise the “wheeling rate” applicable to the conveyance of Non-
10 Metropolitan Water through Metropolitan’s system and the rate that the Water Authority is
11 charged under the Transportation Agreement. As described above, those rates include costs that
12 bear no relationship to the costs of conveyance through Metropolitan’s system.

13 75. First, the adopted rates and charges allocate most of Metropolitan’s cost of
14 obtaining a water supply from the State Water Project to the System Access Rate and System
15 Power Rate, which the Water Authority is required to pay as part of its “transportation” cost for
16 the delivery of Non-Metropolitan Water.

17 76. Second, Metropolitan charges the Water Stewardship Rate as part of its
18 “transportation” cost for the delivery of non-Metropolitan Water, even though the Water
19 Stewardship Rate has no relationship to the costs of conveying water. The proceeds from the
20 Water Stewardship Rate are used to fund local water supply development and water conservation
21 efforts by Metropolitan’s member agencies. Even assuming that Metropolitan has a legitimate
22 basis to impose “water stewardship” charges, because the money from this rate is used to increase
23 the supply of water available to the Metropolitan member agencies who receive the subsidies, it
24 can be characterized only as a cost of supply, not transportation.

25 77. Treating these supply costs as part of Metropolitan’s “transportation” rate charged
26 for the conveyance of Non-Metropolitan Water unlawfully *overcharges* the Water Authority for
27 water transportation, while artificially *undercharging* all member agencies for the cost of water.

1 Metropolitan's misallocation of these costs violates the duties described above to set rates and
2 charges that are fair, reasonable, and proportionate to the cost of service to each customer.

3 78. The Water Authority estimates that if Metropolitan's misallocation of its State
4 Water Project costs, and the Water Stewardship rate costs, remains unchanged, the Water
5 Authority will be overcharged by at least \$30 million annually. This annual overcharge will
6 increase each year until a court orders Metropolitan to comply with its duties outlined above.

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

10 80. Accordingly, the Water Authority is entitled to issuance of a Peremptory Writ of
11 Mandate as specified more fully below.

12 **SECOND CAUSE OF ACTION**

13 **DECLARATORY RELIEF RE: ALLOCATION OF SUPPLY
14 AND TRANSPORTATION COSTS**

15 **(Against Respondent Metropolitan)**

16 81. Petitioner re-alleges paragraphs 1 through 80 as though set forth fully herein.

17 82. An actual and present controversy now exists between the Water Authority, on the
18 one hand, and Metropolitan, on the other. Petitioner contends that the rates and charges
19 Metropolitan adopted over its objections on April 13, 2010 violate state constitutional, statutory,
20 and common law, as well as Metropolitan's own Administrative Code, as set forth in the First
21 Cause of Action. That is because the rates allocate most of Metropolitan's costs for a water
22 supply from the State Water Project to the System Access Rate and the System Power Rate, and
23 Metropolitan's costs associated with local conservation and water supply development to the
24 Water Stewardship Rate, both of which are then charged to the Water Authority and its
25 constituents as part of the rate for "transportation" of Non-Metropolitan Water. As a result, the
26 challenged rates and charges overcharge San Diego residents for water transportation,
27 undercharge Metropolitan's other member agencies for water supply, and do not comply with
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1 Metropolitan's duty to impose rates and charges that are fair, reasonable, and proportionate to the
2 cost of service to each customer.

3 83. Moreover, Metropolitan's actions violate the common law principle that an agency
4 may not set unduly discriminatory rates by classifying its constituents on an unreasonable basis.
5 Metropolitan engages in a pattern and practice of discriminatory and unreasonable rate-setting
6 that violates the well-established common law prohibition against such discrimination.
7 Metropolitan has deliberately singled out and targeted the residents of San Diego by imposing
8 upon them unreasonably high water costs.

9 84. Respondent Metropolitan disagrees with these allegations and asserts that the rates
10 and charges challenged here are lawful in all respects. Metropolitan further contends that the
11 existence and activities of the Anti-San Diego Coalition—and its own actions in working with
12 this shadow government—constitute reasonable and acceptable public agency practices.

13 85. In the absence of declaratory relief, Metropolitan will continue to impose
14 discriminatory rates and charges that are not fair, reasonable, and proportionate to the cost of
15 serving its customers, including the Water Authority. The Water Authority estimates that if
16 Metropolitan's 2011-2012 rates remain unchanged, the misallocation of Metropolitan's State
17 Water Project costs and conservation and local supply development costs to the "transportation"
18 rate will result in the Water Authority being overcharged by at least \$30 million annually. This
19 overcharge will continue to increase as the amount of Non-Metropolitan Water transported
20 through Metropolitan facilities increases and as Metropolitan continues to execute subsidy
21 contracts.

22 86. In the absence of declaratory relief, Metropolitan also will continue to participate
23 in and encourage the *sub rosa* activities of the shadow government running Metropolitan, which
24 meets in secret to dictate Metropolitan decisions and coordinates with Metropolitan to ensure the
25 enactment of discriminatory rates and other board policies that discriminate against the Water
26 Authority.

1 pursuant to Code of Civil Procedure Sections 860 et seq. to challenge a public agency's adoption
2 of rates that include capacity charges as defined in Government Code Section 66013.

3 92. Petitioner also is informed and believes, and on that basis alleges, that
4 Metropolitan has pledged the rates adopted on or about April 13, 2010 to the payment or security
5 of its general obligation bonds, as it is permitted to under Government Code Section 53502.
6 Government Code Section 53511, in turn, authorizes the filing of a validation action or reverse-
7 validation action "to determine the validity of its bonds, warrants, contracts, obligations or
8 evidences of indebtedness."

9 93. Assuming that Metropolitan's rates are validable pursuant to one or the other, if
10 not both, of these provisions, the Water Authority seeks a determination pursuant to Code of Civil
11 Procedure sections 860 and 863 that the rates and charges described below are invalid.

12 94. Code of Civil Procedure Section 863 provides that "any interested person may
13 bring an action ... to determine the validity of the matter" in situations where a public agency
14 could bring a validation action. The Water Authority qualifies as an "interested person" within
15 the meaning of Section 863 because the Water Authority pays Metropolitan's inflated and
16 improperly allocated rates for the services at issue.

17 95. The rates and charges Metropolitan adopted on or about April 13, 2010 are invalid
18 under Art. XIII A, Section 4 of the California Constitution (adopted by Proposition 13), and its
19 implementing statute, Government Code Section 50076, because these rates and charges are not
20 limited to the "reasonable cost of providing the service ... for which the fee is charged." (Gov.
21 Code § 50076). The water rates and charges challenged here violate these provisions for two
22 independent reasons, either one of which alone is sufficient to render the rates invalid:

23 a. The challenged rates and charges, including any capacity charges, recover
24 the bulk of Metropolitan's costs of water from the State Water Project through the System
25 Access Rate and the System Power Rate, rather than Metropolitan's Supply Rate. As a
26 result, the challenged rates and charges overcharge for water transportation and
27 undercharge for water supply. Thus, these rates and charges do not allocate to each
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1 customer the actual, reasonable and proportionate cost of serving that customer and
2 instead are unreasonable, arbitrary, capricious, and discriminatory.

3 b. The challenged rates and charges, including any capacity charges, include
4 the Water Stewardship Rate in the rates and charges Metropolitan imposes for water
5 transportation. As a result, the challenged rates and charges overcharge for water
6 transportation and undercharge for water supply. For this reason, too, these rates and
7 charges fail to allocate to each customer the actual, reasonable and proportionate cost of
8 serving that customer and instead are unreasonable, arbitrary, capricious, and
9 discriminatory.

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

21 97. The Water Authority is entitled to a declaration under the Validation Statutes that
22 the rates and charges Metropolitan adopted on April 13, 2010 are invalid and must be set aside.
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1 liability for setting rates in violation of California law. By establishing draconian penalties
2 against any Metropolitan member agency who raises a legitimate challenge to Metropolitan's
3 rates, the RSI Clauses create a substantial disincentive for any challenge, and effectively permit
4 Metropolitan to violate California law in setting its rates without fear of reprisal.

5 107. Respondent Metropolitan has expressly told the Water Authority that it disagrees
6 with the Water Authority's position on the RSI Clauses, and contends that the RSI Clauses are
7 valid and enforceable.

8 108. In the absence of declaratory relief, Metropolitan will continue in its refusal to
9 honor the Project Contracts between itself and the Water Authority, will continue to withhold
10 money due under the Ramona Agreement, and will continue in its refusal to allow the Water
11 Authority to obtain any benefits from Metropolitan subsidy programs. If the RSI Clauses are not
12 declared invalid, the Water Authority will continue to lose the benefit of the subsidies it has
13 contracted for under the Project Contracts and will continue to be ineligible for future benefits
14 under those programs, despite the fact that its ongoing contributions to Metropolitan continue to
15 fund subsidies to all other Metropolitan member agencies. Accordingly, the Water Authority
16 seeks a declaration that the RSI Clauses are invalid and unenforceable, reinstating the Project
17 Contracts and the Ramona Agreement, and directing Metropolitan not to enter into any future
18 contracts containing an RSI Clause and to restore the Water Authority's eligibility for any lawful
19 Metropolitan subsidy programs. These declarations are necessary in order to protect the Water
20 Authority and its ratepayers, as well as Metropolitan ratepayers generally.

21 109. The Water Authority desires and is entitled to a judicial declaration that the RSI
22 Clauses violate California constitutional, statutory and common law. Such declaratory relief is
23 necessary and appropriate now, because Metropolitan has both terminated existing contracts,
24 depriving the Water Authority and the Water Authority's member agencies of millions of dollars
25 of funding to which the Water Authority is contractually entitled, and declared the Water
26 Authority ineligible to receive any such benefits in the future.

1 114. In the absence of declaratory relief, Metropolitan will continue in its wrongful
2 calculation of the Water Authority's preferential rights, which negatively impacts the Water
3 Authority's ability to rely on a stable water supply in the event preferential rights are asserted by
4 any member agency, including the Water Authority. A declaration is therefore necessary to
5 ensure that the Water Authority receives its full entitlement of preferential rights.

6 115. Therefore, the Water Authority prays for a judicial declaration (a) that the current
7 methodology used by Metropolitan to calculate the Water Authority's preferential rights violates
8 section 135 of the MWD Act; and (b) directing Metropolitan to follow the requirements of the
9 MWD Act by including the Water Authority's payments to Metropolitan for transportation of IID
10 Water and Canal Lining Water (which payments are not for "purchases of water") in the
11 calculation of the Water Authority's preferential rights to water.¹

12
13 **PRAYER FOR RELIEF**

14 WHEREFORE, the Water Authority prays that judgment be entered against defendants
15 and Respondents as follows:

16 1. As to the First Cause of Action, a peremptory writ of mandate directing
17 Metropolitan to:

- 18 • Vacate the rates set on or about April 13, 2010;
- 19 • Refrain from allocating any costs associated with State Water Project water
20 supplies to charges for water transportation;
- 21 • Refrain from allocating any costs associated with Metropolitan's Water
22 Stewardship Rate to charges for water transportation;
- 23 • Allocate all costs associated with State Water Project water supplies that are not
24 paid for through the Readiness to Serve charge or property taxes to charges for
25 supplying water; and

26
27 ¹ "The Water Authority expressly reserves its right to appeal from the Court's January 4, 2012 order sustaining
28 Metropolitan's demurrer, without leave to amend, to the Fifth and Sixth Causes of Action from the Water Authority's
First Amended Complaint."

1 • Allocate all costs associated with Metropolitan's Water Stewardship Rate to its
2 charges for supplying water.

3 2. As to the Second Cause of Action, a declaration that (a) the rates and charges
4 adopted by Metropolitan on April 13, 2010 are discriminatory, invalid, and must be set aside; that
5 Metropolitan cannot allocate any costs associated with obtaining water supplies from the State
6 Water Project, or any costs associated with its Water Stewardship Rate, to charges for water
7 transportation; that Metropolitan must allocate all costs associated with State Water Project water
8 supplies that are not paid for through the Readiness to Serve charge or property taxes to charges
9 for supplying water; and that Metropolitan must allocate all costs associated with its Water
10 Stewardship Rate to charges for water supply; (b) that Metropolitan has engaged in a pattern and
11 practice of unlawful discriminatory rate-setting, as evidence by the activities of the Anti-San
12 Diego Coalition and Metropolitan's resulting decisions which target and disadvantage the Water
13 Authority and its constituents; and (c) that Metropolitan must end its practice of delegating its
14 policymaking authority to and coordinating in secret with a shadow government, including for the
15 purpose of discriminating against the Water Authority and San Diego County ratepayers, and
16 must conduct the business of Metropolitan in public view.

17 3. As to the Third Cause of Action, an order that the rates and charges adopted by
18 Metropolitan on April 13, 2010 are invalid and must be set aside and that Metropolitan cannot
19 allocate any costs associated with State Water Project water supplies or with its Water
20 Stewardship Rate to charges for water transportation.

21 4. As to the Fourth Cause of Action, an award of compensatory and general damages
22 against Metropolitan, in an amount to be determined according to proof, and an order of specific
23 performance of the Transportation Agreement requiring Metropolitan to set the rates charged to
24 the Water Authority under the Transportation Agreement in conformance with applicable laws
25 and regulations. SDCWA also prays for interest on any amounts paid to MWD pursuant to
26 MWD's invalid and unlawful rates for 2011 and 2012, from the date of SDCWA's payment of any
27 amounts under those rates to the date of judgment. SDCWA has a right to such interest both as a
28

1 matter of general damages principles and as a result of the express term in section 12.4(c) of the
2 Transportation Agreement, which requires MWD, in the event of a rate challenge, to place all
3 disputed amounts in an interest-bearing escrow account. To SDCWA's knowledge, as of the date
4 of this Petition, MWD has failed to comply in full with the escrow obligations in the
5 Transportation Agreement.

6 5. As to the Fifth Cause of Action, a judicial declaration (a) holding that the RSI
7 Clauses are invalid and unenforceable; (b) reinstating, as of the date of the wrongful termination,
8 all Project Contracts between the Water Authority and Metropolitan, which Metropolitan has
9 terminated due to purported violation of the RSI Clauses; (c) reinstating, as of the date of the
10 wrongful termination, the Ramona Agreement between Ramona, the Water Authority and
11 Metropolitan, which Metropolitan has terminated due to a purported violation of the RSI Clause;
12 (d) directing Metropolitan not to enforce any RSI Clauses in any of its contracts in the future; and
13 (e) directing Metropolitan to restore the Water Authority's eligibility for any lawful Metropolitan
14 subsidy programs on the same terms applicable to other Metropolitan member agencies.

15 6. As to the Sixth Cause of Action, a judicial declaration (a) that Metropolitan's
16 current methodology for calculating the Water Authority's preferential rights violates section 135
17 of the MWD Act; and (b) directing Metropolitan to follow the requirements of the MWD Act by
18 including the Water Authority's payments to Metropolitan for transportation of IID Water and
19 Canal Lining Water (which payments are not for "purchases of water") in the calculation of the
20 Water Authority's preferential rights to water.

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

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

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Dated: March 16, 2012

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