

1 KEKER & VAN NEST LLP
JOHN W. KEKER - #49092
2 DANIEL PURCELL - #191424
DAN JACKSON - #216091
3 WARREN A. BRAUNIG - #243884
633 Battery Street
4 San Francisco, CA 94111-1809
Telephone: (415) 391-5400
5 Facsimile: (415) 397-7188

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Superior Court of California
County of San Francisco

SEP 23 2011

CLERK OF THE COURT
BY: MICHAEL RAYRAY
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN FRANCISCO

11 SAN DIEGO COUNTY WATER
AUTHORITY,
12
13 Petitioner and Plaintiff,

14 v.

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

19 Respondents and Defendants.

Case No. CPF-10-510830

**SAN DIEGO COUNTY WATER
AUTHORITY'S NOTICE OF MOTION
AND MOTION FOR LEAVE TO FILE
FIRST AMENDED PETITION FOR
WRIT OF MANDATE AND COMPLAINT
FOR DAMAGES AND DECLARATORY
RELIEF; MEMORANDUM OF POINTS
AND AUTHORITIES**

Date: October 27, 2011
Time: 10:30 a.m.
Dept: 304
Judge: Hon. Richard A. Kramer

Date Comp. Filed: June 11, 2010

Trial Date: Not Set

1 **NOTICE OF MOTION**

2 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on _____ at _____, or as soon thereafter as
4 the matter may be heard in Department 304 of the Superior Court in and for the County of San
5 Francisco, located at 400 McAllister Street, San Francisco, CA 94102, petitioner and plaintiff
6 San Diego County Water Authority (“Water Authority”) will and hereby does move for leave to
7 file its First Amended Petition for Writ of Mandate and Complaint for Damages and Declaratory
8 Relief (“Amended Complaint”). The proposed Amended Complaint revises and streamlines the
9 general factual background of the case at page 1, line 5 to page 5, line 7 (paragraphs 1-6), page 6,
10 line 24 to page 12, line 8 (paragraphs 16-30), and page 13, line 26 to page 15, line 13
11 (paragraphs 36-39), adds additional factual detail regarding its proposed new claims at page 12,
12 line 10 to page 13, line 24 (paragraphs 31-35) and page 15, line 15 to page 19, line 12
13 (paragraphs 40-53). The proposed Amended Complaint also adds causes of action for breach of
14 contract, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, and
15 declaratory relief, at page 25, line 4, to page 37, line 1 (paragraphs 82-120).

16 This motion is based on this notice of motion; the memorandum of points and authorities
17 below; the proposed Amended Complaint attached hereto as Exhibit A; the accompanying
18 Declaration of Daniel Purcell (“Purcell Decl.”); all pleadings, records and papers on file in this
19 action; such evidence and oral argument as may be presented at or before the hearing of this
20 matter; and any other evidence the Court deems appropriate.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I. INTRODUCTION**

23 This is a case about the systematic and unlawful mistreatment of a local water authority
24 by a regional water supplier and that supplier’s Board of Directors, in violation of California
25 constitutional, statutory, and common law, contract, and the supplier’s fiduciary duty to treat all
26 its members fairly. Metropolitan Water District (“Metropolitan”) and the large, self-interested
27 member agencies who dominate the Metropolitan Board of Directors have imposed unlawful
28 water rates that redistribute tens of millions of dollars annually from the Water Authority to the

1 other Metropolitan member agencies. They have undercalculated the Water Authority's right to
2 obtain water in the event of potential shortages. Most shockingly, they have sought to immunize
3 their unlawful conduct from any legislative or judicial review by imposing conditions on
4 contracts with the Water Authority that bar the Water Authority from exercising its core
5 constitutional right to challenge Metropolitan's rates, on penalty of termination. These practices
6 are unjustifiable and harm the Water Authority every day they are in effect.

7 This has been the basic factual subject matter of this case ever since it was filed, but now
8 the Water Authority would like to add new, factually related claims to the case, in order to allow
9 this Court to address, and hopefully resolve, all its claims against Metropolitan in an economical
10 manner. It is well established that courts should grant leave to amend liberally because "judicial
11 policy favors resolution of all disputed matters in the same lawsuit." *Kittredge Sports Co. v.*
12 *Superior Court*, 213 Cal. App. 3d 1045, 1047 (1989). The Water Authority's proposed
13 Amended Complaint furthers that judicial policy by using the most efficient procedure to bring
14 the parties' related disputes together for this Court to resolve. For the reasons set forth in detail
15 below, the Court should grant the Water Authority leave to file its Amended Complaint.

16 II. BACKGROUND

17 The Water Authority filed its original Petition and Complaint ("Original Complaint") in
18 this action on June 11, 2010 in Los Angeles Superior Court. The Water Authority then asserted
19 its rights under California Code of Civil Procedure section 394, which mandates a neutral forum,
20 and moved to transfer the case to this Court on October 21, 2010. After transfer, the case was
21 designated complex and assigned to this Department on December 1, 2010.

22 For reasons set forth in the Original Complaint, the Water Authority initially petitioned
23 this Court for writs of mandate vacating Metropolitan's rates due to its illegal misallocation of
24 water supply costs as transportation costs, corresponding declaratory relief, and a determination
25 that Metropolitan's rates are invalid. The Water Authority now seeks leave to file its proposed
26 amended complaint ("Amended Complaint"), in hopes of resolving additional, but factually and
27 legally related, disputes with Metropolitan, as discussed below. Specifically, the Water
28 Authority seeks to add causes of action for breach of contract, breach of the covenant of good

1 faith and fair dealing, breach of fiduciary duty, and declaratory relief. The Amended Complaint
2 combines the parties' various related disputes in a single pleading, in order to allow for efficient
3 judicial resolution of all those disputes at once.

4 As explained in the Amended Complaint, the Water Authority is uniquely situated among
5 the 25 Metropolitan member agencies. *See* Ex. A (Amended Complaint) ¶ 2. The other member
6 agencies rely primarily on water purchased from Metropolitan ("Metropolitan Water")—which
7 water Metropolitan obtains either from the California Department of Water Resources' State
8 Water Project ("SWP") or from its Colorado River Aqueduct—or on local supplies. *Id.* But the
9 Water Authority not only is Metropolitan's largest annual steady purchaser of Metropolitan
10 Water, but also buys a significant volume of water supply from other sources, which
11 Metropolitan transports through its facilities. *Id.* In particular, the Water Authority purchases
12 water from the Imperial Irrigation District ("IID"), contracting with Metropolitan to transport
13 that water ("IID Water") to the Water Authority's facilities. *Id.* Metropolitan also transports
14 water the Water Authority has conserved from the lining of the All American and Coachella
15 Canals ("Canal Lining Water"). *Id.* Under a 2003 Amended and Restated Agreement for the
16 Exchange of Water ("Transportation Agreement") with Metropolitan, the Water Authority has
17 the right to use Metropolitan's facilities to transport IID Water and Canal Lining Water. *Id.*
18 Metropolitan and the handful of large, self-interested Metropolitan member agencies who
19 dominate the Metropolitan Board have seized on the Water Authority's unique purchasing
20 profile by enacting policies that systematically redistribute money from the Water Authority to
21 the other Metropolitan member agencies. *Id.*

22 *First*, as the Water Authority has alleged since filing the Original Complaint, on April 13,
23 2010, Metropolitan adopted rates that violate the California constitution, statutes, and common
24 law by seeking recovery of Metropolitan's water *supply* costs in the form of water
25 *transportation* charges. *See id.* ¶ 3. When Metropolitan purchases water from the SWP in order
26 to meet the water supply needs of its member agencies, it recharacterizes most of its supply costs
27 as components making up its so-called "transportation rate." *Id.* As a result, when Metropolitan
28 charges the Water Authority a "transportation rate" for conveying IID and Canal Lining Water—

1 transportation that occurs entirely within Metropolitan-owned pipelines—the Water Authority is
2 forced also to pay Metropolitan’s costs associated with the supply of SWP water and having
3 nothing to do with the use of Metropolitan’s facilities. *Id.* Because only the Water Authority
4 buys significant water-transportation services from Metropolitan, this accounting trick
5 redistributes millions of dollars each year from the Water Authority to the other Metropolitan
6 member agencies. *Id.* This trick has always been the basis of the Water Authority’s rate
7 challenges, and now the Water Authority seeks leave to assert that Metropolitan’s imposition of
8 these rates also breach the Transportation Agreement.

9 *Second*, despite unlawfully and arbitrarily misclassifying its water supply costs as water
10 transportation charges for purposes of setting its rates, Metropolitan takes the opposite position
11 when calculating the member agencies’ “preferential rights” to water—the amount of water each
12 agency would be entitled to receive in the event of a shortage. *See id.* ¶ 4. Metropolitan’s
13 enabling statute, the Metropolitan Water District Act (“MWD Act”), requires Metropolitan to
14 calculate each of its member agency’s preferential rights to water based on the total amount paid
15 to Metropolitan by each agency “excepting [for] purchase of water.” *Id.* As discussed above, in
16 the context of setting its rates—and defending those rates in this litigation—Metropolitan has
17 argued that the Water Authority’s payments of Metropolitan’s “transportation rates” for IID and
18 Canal Lining Water have “no connection” to “the actual supply of water.” *Id.* In other words,
19 they are not payments for the “purchase of water.” *Id.* But if that were so, Metropolitan ought to
20 include the amounts the Water Authority has paid Metropolitan to transport that water in its
21 calculation of the Water Authority’s preferential rights. *Id.* It has refused to do so. *Id.* In the
22 event preferential rights are ever asserted, the Water Authority and its ratepayers would receive
23 less water than they are entitled to under the MWD Act. *Id.* Metropolitan’s position on
24 preferential rights is consistent with its rate-setting in only one respect: both are designed to, and
25 do, disadvantage the Water Authority while bolstering the other Metropolitan member agencies.

26 *Third*, to shield its mistreatment of the Water Authority from review, Metropolitan began
27 including a so-called “Rate Structure Integrity” provision (“RSI Clause”) in contracts with its
28 member agencies starting in 2005. *See id.* ¶ 5. Metropolitan collects money from its member

1 agencies to subsidize water conservation and development of local water supplies, then doles out
2 those funds to the member agencies in the form of subsidy contracts, on a project-by-project
3 basis. *Id.* The RSI Clause, included in every one of these contracts since 2005, purports to
4 authorize Metropolitan unilaterally to terminate these contracts—and stop providing subsidies
5 for conservation and local water-supply development—in the event any member agency
6 exercises its fundamental constitutional right to file a lawsuit, or petition the Legislature,
7 challenging or changing Metropolitan’s rates and charges. *Id.* In June 2011, in retaliation for the
8 filing of the Water Authority’s Original Complaint, Metropolitan terminated part or all of four
9 contracts with the Water Authority, as well as one additional contract involving Metropolitan,
10 the Water Authority and one of the Water Authority’s member agencies. *Id.* Further,
11 Metropolitan has blackballed the Water Authority from receiving any future subsidy contracts,
12 even though the Water Authority is still obligated to pay into the fund from which Metropolitan
13 disburses subsidy money. *Id.* Not only is this a deliberate abridgement of free-speech rights by
14 a public agency, it results—as Metropolitan intends—in an additional redistribution of wealth
15 from the Water Authority to Metropolitan’s majority member agencies.

16 Based on this record of misconduct by Metropolitan, the Water Authority seeks leave to
17 amend its Original Complaint to include five additional claims, for

- 18 • ***Breach of the Transportation Agreement***, which requires Metropolitan to set
19 rates consistent with applicable law, based on the same facts underlying the Water
Authority’s initial rate challenge. *See id.* ¶¶ 82-86.
- 20 • ***Breach of the covenant of good faith and fair dealing*** contained within the
21 Transportation Agreement, under which Metropolitan expressly granted the Water
22 Authority the right to challenge its rates. Metropolitan has breached the covenant
by penalizing the Water Authority’s rate challenge by imposing and enforcing the
RSI Clause. *See id.* ¶¶ 87-93.
- 23 • ***Breach of fiduciary duty***, based on Metropolitan and its Board of Directors’
24 systematic discrimination against and disadvantaging of the Water Authority’s
25 minority interest, in setting unlawful rates that disadvantage the Water Authority,
26 imposing and enforcing the RSI Clause that punishes the Water Authority from
27 challenging the unlawful rates, and proceeding not through its Board in public
meetings, but in secret meetings dominated by certain large, self-interested
28 member agencies. Again, the net result of these breaches is to force the Water
Authority and San Diego ratepayers to subsidize the operations of the other
Metropolitan member agencies. *See id.* ¶¶ 94-107.

- 1 • *Declaratory relief* invalidating the RSI Clause and reinstating the contracts
2 terminated by Metropolitan pursuant to that clause. *See id.* ¶¶ 108-115.
- 3 • *Declaratory relief* mandating Metropolitan to properly calculate the Water
4 Authority’s preferential rights under the MWD Act. *See id.* ¶¶ 116-120.

5 All of these claims are legally and factually related, and the Water Authority’s proposed
6 new claims are factually and legally related to the claims in the Original Complaint. The Court
7 and the parties would benefit from combining and resolving them in a single proceeding.

8 III. ARGUMENT

9 The Court should permit the Water Authority to file its proposed Amended Complaint in
10 this proceeding. The Court has broad discretion to “allow, upon any terms as may be just, an
11 amendment to any pleading” Cal. Code Civ. Proc. § 473 (2011); *see also* Cal. Code Civ.
12 Proc. § 576 (2011) (amendment is allowed “at any time before or after commencement of trial”).
13 “This discretion should be exercised liberally in favor of amendments, for judicial policy favors
14 resolution of all disputed matters in the same lawsuit.” *Kittredge*, 213 Cal. App. 3d at 1047.
15 Indeed, while it is virtually always within the Court’s discretion to allow amendment, “it is a rare
16 case” where refusal to allow amendment is justified. *Morgan v. Superior Court*, 172 Cal. App.
17 2d 527, 530 (1959). “If the motion to amend is timely made and the granting of the motion will
18 not prejudice the opposing party, it is error to refuse permission to amend and where the refusal
19 also results in a party being deprived of the right to assert a meritorious cause of action or a
20 meritorious defense, it is not only error but an abuse of discretion.” *Id.*; *see also Kittredge*,
21 213 Cal. App. 3d at 1048 (“[I]t is an abuse of discretion to deny leave to amend where the
22 opposing party was not misled or prejudiced by the amendment.”).

23 Further, the Court “has discretion to permit *any* sort of amendment; i.e., the amendment
24 need not relate to the claims or defenses originally pleaded. Thus, amended pleadings may set
25 forth entirely different claims” *Cal. Prac. Guide Civ. Proc. Before Trial* ch. 6-E ¶ 6:640
26 (2011) (emphasis in original). In particular, a plaintiff may add new claims by amendment rather
27 than filing a separate action where—as here—“filing an amended complaint” is “the judicially
28 more economical path.” *Brumley v. FDCC California, Inc.*, 156 Cal. App. 4th 312, 321 (2007).
As the California Supreme Court held in *Barrington v. A. H. Robins Co.*, 39 Cal. 3d 146 (1985),

1 any rule that would force a plaintiff to take the less efficient course of filing a separate action “is
2 inherently unfair and deserves to be discarded.” *Id.* at 157.

3 Here, allowing the Water Authority to file its proposed Amended Complaint is supported
4 by “judicial policy,” which “favors resolution of all disputed matters in the same lawsuit.”
5 *Kittredge*, 213 Cal. App. 3d at 1047. It would also further the interests of judicial economy,
6 because allowing the parties to litigate the disputes set forth in the amended complaint in the
7 action already pending before this Court is certainly more efficient than requiring the Water
8 Authority to bring a separate action, which would either be litigated separately—with all of the
9 inefficiencies that would entail—or transferred to this Court and consolidated with this action in
10 a series of pointless and expensive procedural steps. Finally, no party would be prejudiced by
11 the amendment. On the contrary, all parties, this Court, and the broader California court system
12 would benefit if this Court were to adopt the most judicially economical path. *See Barrington*,
13 39 Cal. 3d at 157; *Brumley*, 156 Cal. App. 4th at 321. To the extent Metropolitan would claim
14 prejudice from a quick and efficient joinder of the Water Authority’s new claims, that would
15 contradict its previously-stated interest in speedy resolution of this dispute. Certainly it would
16 not prefer piecemeal litigation or drawn-out procedural maneuvering.

17 Metropolitan previously suggested in its Case Management Conference Statement that it
18 would challenge the Water Authority’s right to amend because of venue provisions in the
19 subsidy contracts containing the RSI Clauses. Those venue provisions purport to require that
20 any action brought under those agreements be tried in Los Angeles. But Metropolitan’s reliance
21 on those venue provisions would be misplaced for at least three reasons.

22 **First** and most basically, a “provision in a contract purporting to fix the venue of a future
23 action on the contract in a particular county is illegal and void.” 3 Witkin, Cal. Proc. 5th (2008)
24 Actions, § 785, p. 1022. “Since the venue statutes themselves declare the public policy of this
25 state with respect to the proper court for an action, agreements fixing venue in some location
26 other than that allowed by statute are a violation of that policy.” *Alexander v. Superior Court*,
27 114 Cal. App. 4th 723, 731 (2003) (holding that “the trial court erred in determining that the
28 contractual venue selection provision was dispositive of the question of venue”); *see also, e.g.*,

1 *Arntz Builders v. Superior Court*, 122 Cal. App. 4th 1195, 1206 (2004) (“Permitting a county to
2 extract an advance waiver of the right of a private party to have disputes with the county
3 resolved in a neutral forum would be at odds with the fundamental principle that a party may not
4 waive the benefits of a statute enacted primarily for a public purpose.”) (footnote omitted).

5 **Second**, the MWD Act expressly provides that Metropolitan “may sue and be sued in all
6 actions and proceedings and in all courts and tribunals of competent jurisdiction.” Cal. Water
7 Code § 109-160. This specific venue provision controls over the general provision of Code of
8 Civil Procedure section 395.¹ *See Brown v. Superior Court*, 37 Cal. 3d 477, 487 (1984). Here,
9 this Court plainly has jurisdiction over Metropolitan and the Water Authority, making venue here
10 proper for “all actions and proceedings” between them. Cal. Water Code § 109-160.

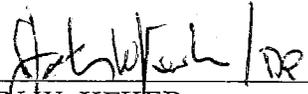
11 **Third** and finally, “[p]roper venue is not made improper by a subsequent amendment to
12 the complaint.” *Armstrong Petroleum Corp. v. Superior Court*, 114 Cal. App. 3d 732, 738
13 (1981). Metropolitan cannot dispute that this Court is the proper venue for the Water Authority’s
14 Original Complaint. Because amendment is also proper, allowing the Water Authority to amend
15 its complaint cannot, and would not, make this Court an improper venue.² *See id.*

16 IV. CONCLUSION

17 For all the foregoing reasons, the Court should grant the Water Authority leave to file the
18 Amended Complaint, and deem it filed and served as of the date of the granting of this motion.

19 Dated: September 23, 2011

KEKER & VAN NEST LLP

20 By: 

21 JOHN W. KEKER
22 Attorneys for Petitioner and Plaintiff
23 SAN DIEGO COUNTY WATER
AUTHORITY

24 ¹ Section 395 establishes a default rule for “[a]ctions generally,” providing that venue lies where
the defendant resides “[e]xcept as otherwise provided by law.” Cal. Code Civ. Proc. § 395.

25 ² Even if Metropolitan were right, the parties still would end up before this Court on the Water
26 Authority’s new claims, only after a delay. The Water Authority simply would file its new
27 claims in a new case in Los Angeles County, then move to transfer that new case to a neutral
28 forum—as it did with this case and inarguably would have the right to do with a new case. The
Judicial Council then would transfer the new case to this Court, whereupon the Water Authority
would move to consolidate the new case with this one. There is no point to engaging in this sort
of procedural runaround, particularly if the goal is to resolve this dispute quickly.

EXHIBIT A

1 KEKER & VAN NEST LLP
JOHN W. KEKER - #49092
2 DANIEL PURCELL - #191424
DAN JACKSON - #216091
3 WARREN A. BRAUNIG - #243884
633 Battery Street
4 San Francisco, CA 94111-1809
Telephone: (415) 391-5400
5 Facsimile: (415) 397-7188

6 Attorneys for Petitioner and Plaintiff
SAN DIEGO COUNTY WATER AUTHORITY
7
8
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11 IN AND FOR THE COUNTY OF SAN FRANCISCO

12 SAN DIEGO COUNTY WATER
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Case No. CPF-10-510830

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

Dept: 304
Judge: Hon. Richard A. Kramer

Date Comp. Filed: June 11, 2010

Trial Date: Not Set

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

4 I. INTRODUCTION

5 1. The Water Authority brings this action for a writ of mandate challenging rates set
6 by Respondent and Defendant Metropolitan Water District of Southern California
7 ("Metropolitan"), along with claims for breach of contract, breach of the covenant of good faith
8 and fair dealing, breach of fiduciary duty, and declaratory relief as a result of systematic
9 discrimination against the Water Authority by Metropolitan and members of the Metropolitan
10 Board of Directors. The Water Authority is one of Metropolitan's 26 member agencies and is
11 Metropolitan's single largest customer, purchasing more than 300,000 acre-feet of water
12 annually from Metropolitan. Metropolitan is bound to treat the Water Authority fairly and
13 lawfully as a matter of California statutory law, its contractual duties under its negotiated
14 agreements with the Water Authority, and its fiduciary duties to fairly and equitably serve all its
15 member agencies. The Water Authority brings this lawsuit because Metropolitan has breached
16 every single one of these duties. Metropolitan has set rates contrary to the law and its contractual
17 obligations; it has intentionally discriminated against the Water Authority, to the detriment of the
18 Water Authority and Metropolitan itself and to the benefit only of Metropolitan's other member
19 agencies; and it has imposed unconstitutional conditions on its contracts with the Water
20 Authority that are expressly intended to immunize its unlawful rates from legitimate challenge,
21 through either the political or judicial process.

22 2. The Metropolitan Board of Directors, under the influence and control of various
23 self-interested member agencies that comprise a majority of the voting interests of the Board, has
24 adopted unlawful water rates that force the Water Authority to subsidize the water supply costs
25 of the self-interested member agencies. The Water Authority is unique among Metropolitan's
26 member agencies in that it purchases a large, steady volume of water from Metropolitan, year in
27 and year out, and also purchases a significant volume of water supply for transport through
28 Metropolitan's facilities from third-party sources other than Metropolitan. In particular, the

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

14 3. **First**, on April 13, 2010, Metropolitan adopted rates that violate both California
15 statutory law and the California constitution, as well as Metropolitan’s Transportation
16 Agreement with the Water Authority, by misclassifying certain water supply costs as water
17 transportation costs. Metropolitan breaks up its rates into a “supply rate” and a series of rates
18 that it claims together comprise the cost of “water transportation.” About half of the water
19 supply Metropolitan provides to its member agencies is purchased by Metropolitan from the
20 State Department of Water Resources (“DWR”), pursuant to a long-term “take-or-pay” contract
21 that requires Metropolitan to pay a fixed amount per year regardless of how much water it
22 purchases. Metropolitan does not transport this water itself. Instead, DWR transports the water
23 to Metropolitan’s facilities via DWR’s state-owned State Water Project facilities. Although the
24 money Metropolitan pays to DWR is for water supply—that is, to enable Metropolitan to meet
25 the water supply needs of its member agencies—Metropolitan recharacterizes most of those
26 supply costs as components making up Metropolitan’s so-called “transportation rate.” As a
27 result, when Metropolitan charges the Water Authority a “transportation rate” for Metropolitan’s
28 conveyance of IID Water and Canal Lining Water, transportation that occurs entirely within

1 Metropolitan-owned pipelines, the Water Authority is forced to pay for costs associated with the
2 supply of DWR water and having nothing to do with the use of Metropolitan's pipelines or other
3 facilities. In addition, Metropolitan loads onto its "transportation rates" the costs Metropolitan
4 incurs from subsidizing member agencies' conservation programs and new local water-supply
5 development. Conservation and local supply development expenditures are payments for water
6 supply available to member agencies from sources other than Metropolitan, and hence are
7 properly classified as water supply charges. Such expenditures certainly have nothing to do with
8 transportation of water.

9 4. *Second*, despite having taken the position, in the context of establishing its rates,
10 that "supply" costs should be characterized as "transportation," Metropolitan takes the exact
11 opposite position in the context of calculating the so-called "preferential rights" to which each
12 member agency is entitled. Metropolitan's position on preferential rights is consistent with its
13 rates in only one respect: both are designed to, and in fact do, disadvantage the Water Authority
14 while providing advantages to the other Metropolitan member agencies. Under section 135 of
15 Metropolitan's enabling act, the Metropolitan Water District Act, Cal. Water Code – Appendix
16 § 109 ("MWD Act"), each Metropolitan member agency has a preferential right to purchase a
17 percentage of Metropolitan's water supply equal to that agency's share of payments for
18 Metropolitan's capital costs and operating expenses, "excepting purchase of water." In the
19 context of its rate-setting, and in the context of defending those rates in this litigation,
20 Metropolitan has argued that the Water Authority's payments for "transportation" of non-
21 Metropolitan water have "no connection" to "the actual supply of water"—that is, that those
22 payments are not for the "purchase of water." But if that were so, Metropolitan ought to include
23 the amounts the Water Authority has paid Metropolitan to transport IID Water and Canal Lining
24 Water in its calculation of the Water Authority's preferential rights. It has refused to do so. In
25 the event preferential rights are ever asserted, the Water Authority and its ratepayers would
26 receive less water than they should be entitled to under section 135 of the MWD Act.

27 5. *Third*, in order to shield its mistreatment of the Water Authority from any review,
28 Metropolitan began including a so-called "Rate Structure Integrity" provision ("RSI Clause") in

1 contracts with its member agencies. Metropolitan collects revenues from its member agencies to
2 subsidize water conservation and development of local water supplies. That money is then
3 awarded to the member agencies in the form of subsidy contracts, on a project-by-project basis.
4 The RSI Clause, included in every one of these contracts since 2005 at Metropolitan's insistence,
5 purports to authorize Metropolitan unilaterally to terminate these contracts—and stop providing
6 subsidies for conservation and local water-supply development—where any member agency files
7 a lawsuit, or even offers political support for legislation, that would challenge or change
8 Metropolitan's rates and charges. It therefore penalizes any member agency that exercises its
9 core constitutional right to petition the courts or the Legislature for redress of grievances
10 regarding Metropolitan's rates, regardless of the merits of the member agency's position. In
11 June 2011, Metropolitan actually terminated part or all of four contracts between Metropolitan
12 and the Water Authority, including a contract involving Metropolitan, the Water Authority and
13 one of the Water Authority's member agencies. Metropolitan has gone further and declared the
14 Water Authority ineligible to receive any future subsidy contracts, which means that, although
15 the Water Authority must continue to fund Metropolitan's subsidy programs through its
16 substantial "Water Stewardship Charge" payments to Metropolitan, the Water Authority will get
17 nothing in return for those payments. Instead, those payments are entirely diverted to benefit
18 other Metropolitan member agencies, in particular the large, self-interested member agencies
19 which comprise a majority voting bloc of the Metropolitan Board with respect to the approval of
20 subsidy contracts and other decisions. Metropolitan's enforcement of the RSI Clause has already
21 cost the Water Authority millions of dollars and will cost the Water Authority tens of millions of
22 dollars annually in the future.

23 6. These various decisions, and the fact that they consistently work to the detriment
24 of the Water Authority, are no accident. They are a product of concerted action by Metropolitan,
25 working in concert with the majority voting bloc that dominates its Board of Directors, to take
26 advantage of the fact that the Water Authority, despite having a minority voting share on the
27 Board, is Metropolitan's revenue cash cow, being Metropolitan's largest steady purchaser of
28 water and only significant purchaser of transportation services. In systematically oppressing the

1 Water Authority's minority interest, Metropolitan, through its Board, under the domination and
2 control of the self-interested majority voting bloc, has breached fiduciary duties it owes to the
3 Water Authority and the Water Authority's 3.1 million ratepayers. Similarly, because the acts
4 taken by Metropolitan's Board members, under the domination and control of the self-interested
5 majority voting bloc, are discriminatory and favor a handful of member agencies over the
6 interests of Metropolitan itself, the Board members also have breached their fiduciary duties to
7 Metropolitan itself and to the entire Southern California ratepayer constituency.

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

10 **II. PARTIES**

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

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

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

26 **III. SERVICE OF PROCESS**

27 11. Petitioner will serve Metropolitan with the Summons and Complaint in this action
28 in the manner provided by law for the service of summons in a civil action.

1 12. Published notice of this action in newspapers of general circulation published in
2 the counties served by Metropolitan is the method most likely to give notice to persons interested
3 in these proceedings. Those counties are Ventura, Los Angeles, Riverside, San Bernardino,
4 Orange and San Diego. Petitioner will seek an order ex parte ordering:

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

7 b. that notice be given by mailing a copy of the Summons and Complaint to
8 those persons, if any, or their attorneys, who have notified Petitioner's attorneys of record in
9 writing of their interest in the matter not later than the date on which publication of the summons
10 is complete or such other time as the Court may order.

11 13. If Metropolitan agrees, as an alternative to an ex parte application, Petitioner will
12 present the Court with a stipulation and proposed order for publication of the summons as set
13 forth above.

14 IV. JURISDICTION AND VENUE

15 14. 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 Fifth Cause of
17 Action, Code of Civil Procedure Sections 860 *et seq.*, Government Code § 66022, and
18 Government Code § 53511.

19 15. 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 16. 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
27 sell water they obtain from Metropolitan to sub-agencies and utilities or directly to consumers.
28 In addition to obtaining and delivering water for sale to its member agencies, Metropolitan has

1 more recently undertaken to subsidize member agency conservation programs and projects
2 aimed at developing local water sources.

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

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

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

20 20. Although Section 50 of the MWD Act requires that Metropolitan's member
21 agencies act exclusively through the Board to determine Metropolitan policy, each member
22 agency has paid staff members who work on Metropolitan's finances and policymaking. As
23 detailed below, certain self-interested member agencies have come to dominate and control the
24 Metropolitan Board and have exerted and continue to exert undue influence over Metropolitan,
25 engaging in systematic back-room meetings and deal-making with Metropolitan management
26 outside of the official Board process, the public eye, and the presence of Water Authority
27 representatives. Recently, these member agencies, including but not limited to the Municipal
28 Water District of Orange County ("MWDOC") and the West Basin Municipal Water District,

1 have created a self-described “Anti-San Diego Coalition” of member agencies to secure votes on
2 the Metropolitan Board to ratify policies that further their own narrow, local self-interest while
3 systematically disadvantaging the interests of the Water Authority and its ratepayers.

4 21. The MWD Act also requires that Metropolitan establish an Office of Ethics and
5 adopt rules relating to internal disclosure, conflicts of interest, and other ethics rules for its Board
6 members, officers and employees. The Metropolitan Board Ethics Guide prepared by the Ethics
7 Office requires that Board members show loyalty not just to their respective member agencies,
8 whom they represent on the Board, but also to the “full constituency of the Metropolitan service
9 area.” Board members also are subject to ethical rules and obligations that derive from state law,
10 and owe fiduciary duties to the Metropolitan constituency and the member agencies.

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

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

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

1 Metropolitan member agencies.

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

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

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

22 26. Metropolitan's current rate structure, first implemented in January 2003, includes
23 three Metropolitan-created components—a "System Access Rate," a "System Power Rate," and
24 a "Water Stewardship Rate"—in Metropolitan's so-called "transportation rate." Metropolitan
25 defines the three components as follows:

- 26 a) Metropolitan's "System Access Rate" purports to "recover[] the cost of
27 providing conveyance and distribution capacity to meet average annual demands."

28 This rate therefore recovers a large share of Metropolitan's costs to maintain and

1 operate its distribution system within the Southern California region and the
2 Colorado River Aqueduct. In addition, the System Access Rate includes a large
3 share of the costs Metropolitan pays DWR to purchase water it obtains from the
4 State Water Project, even though that project is neither owned nor operated by
5 Metropolitan.

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

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

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

1 27. For purchases of Metropolitan water, the breakdown of Metropolitan charges into
2 these components makes no difference, because the purchaser pays all of them. But for member
3 agencies—namely the Water Authority—that use Metropolitan’s system to transport Non-
4 Metropolitan Water purchased from other sources, the rate breakdown is critically important.

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

16 29. Accordingly, the rates Metropolitan imposes for “transportation” force the Water
17 Authority to bear a disproportionate share of Metropolitan’s supply costs and to subsidize water
18 supply for, and conservation and local water supply development by, the other Metropolitan
19 member agencies. The misallocation of Metropolitan’s “supply” costs onto its “transportation”
20 rate was designed to advantage the other member agencies at the Water Authority’s expense

21 30. On October 10, 2003, Metropolitan and the Water Authority executed the
22 Transportation Agreement, under which Metropolitan agreed to deliver to the Water Authority a
23 volume of water equal to the volume the Water Authority purchased from third parties, including
24 IID, and delivered to Metropolitan. Pursuant to section 5.2 of the Transportation Agreement,
25 Metropolitan promised that the price for transporting this Non-Metropolitan Water to the Water
26 Authority “shall be equal to the charge or charges set by Metropolitan’s Board of Directors
27 *pursuant to applicable law and regulation* and generally applicable to the *conveyance of water*
28 *by Metropolitan* on behalf of its member agencies.” (A copy of the Transportation Agreement is

1 attached hereto as Exhibit A.) But because Metropolitan miscategorizes as “transportation” costs
2 certain items that have nothing to do with transportation, Metropolitan’s charges to the Water
3 Authority far exceed the actual costs Metropolitan incurs in conveying water. As a result,
4 Metropolitan’s unlawful overcharges unlawfully and unfairly extract money from the Water
5 Authority and its ratepayers and funnel the proceeds to other Metropolitan member agencies, in
6 the form of artificially reduced water-supply rates and, in the case of certain member agencies,
7 multi-million dollar subsidies to pay for water supply projects that provide no demonstrated
8 benefit to the Water Authority or the Metropolitan service area as a whole.

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

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

24 32. The Gastelum memorandum candidly described the provision as being designed
25 to coerce member agencies to “refrain from attacking Metropolitan’s rate structure in court or in
26 the legislature as a grant condition.” Indeed, the Gastelum memorandum directly admits that
27 Metropolitan drafted the RSI Clause specifically in response to the Water Authority’s reservation
28 of its rights in the Transportation Agreement to challenge Metropolitan’s rates.

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

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

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

25 **E. Metropolitan sets unlawful rates for 2011 and 2012.**

26 36. On January 6, 2010, Metropolitan's Board set a March 8, 2010 public hearing of
27 its Business & Finance Committee on Metropolitan's proposed rates and charges to become
28 effective January 1, 2011, continuing through 2012. On March 8, 2010, Metropolitan's Business

1 and Finance Committee held that public hearing, at which the Water Authority provided written
2 and oral testimony. On or about April 12, 2010, counsel for the Water Authority submitted a
3 letter to Metropolitan's Board reiterating that the rates and charges challenged here violate the
4 State Constitution, state statutes, the common law, and Metropolitan's own Administrative Code
5 and Board policy directives. (A copy of this letter is attached as Exhibit D.) Nevertheless, on
6 April 13, 2010, without any discussion of the points raised by the Water Authority and its
7 consultants, Metropolitan's Board adopted the proposed water rates and charges, without
8 remedying the problems identified by the Water Authority and its experts. (A copy of the
9 April 13, 2010 Board Action approving these rates is attached as Exhibit E.)

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

23 38. These arbitrary, capricious and illegal cost allocations materially affect only one
24 of Metropolitan's member agencies—the Water Authority, because it is the only agency that
25 transports a large volume of Non-Metropolitan Water through the Metropolitan facilities. These
26 misclassified rates apply to all third-party water that the Water Authority purchases from outside
27 San Diego County, since all such water must be transported to the Water Authority through
28 Metropolitan's system. In other words, these rates apply to (1) the transfer of IID and Canal

1 Lining Water by Metropolitan under the Transportation Agreement; and (2) any wheeling of
2 water from other third-party sources in which the Water Authority may wish to engage. As a
3 direct result of Metropolitan's unlawful rates, the Water Authority estimates it will be
4 overcharged by at least \$30 million per year if the 2011 and 2012 rates and charges challenged in
5 this action remain in effect. This annual overcharge will grow larger each year so long as
6 Metropolitan's rates continue to be based on such unlawful cost allocations.

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

14 **F. Metropolitan invokes the RSI Clause to punish the Water Authority and its**
15 **ratepayers for challenging Metropolitan's illegal conduct.**

16 40. Shortly after the Water Authority filed this lawsuit, exercising its constitutional
17 right to petition for redress of grievances against Metropolitan, Metropolitan invoked the RSI
18 Clause to penalize the Water Authority and its ratepayers. On August 25, 2010, Metropolitan
19 General Manager Jeffrey Kightlinger sent a letter to Water Authority General Manager Maureen
20 Stapleton, invoking the RSI Clause and giving notice of Metropolitan's intent to terminate the
21 four Project Contracts that contain the RSI Clause. In addition, the letter notified the Water
22 Authority that Metropolitan's Board had directed Metropolitan staff to defer the execution of
23 three additional subsidy agreements for which the Water Authority had qualified. (A copy of
24 this letter is attached as Exhibit F.)

25 41. On the same day, Metropolitan General Manager Kightlinger sent a letter to
26 Ramona's General Manager, invoking the RSI Clause and giving Ramona notice of
27 Metropolitan's intent to terminate funding for the San Vicente Water Recycling Project because
28 of the Water Authority's filing of the Rate Case. The letter also stated that Metropolitan would

1 not terminate this funding if Ramona “transmits written documentation to Metropolitan within
2 30 days of the date of this letter demonstrating that [it] has not participated directly or indirectly
3 in the filing or prosecution of any litigation ... to challenge or modify Metropolitan’s existing
4 rate structure, and indicates support for Metropolitan’s existing rate structure.” (A copy of this
5 letter is attached as Exhibit G.)

6 42. In response to these letters, the Water Authority elected to mediate the disputes
7 under the Project Contracts. The parties held two mediation sessions, on March 9 and June 6,
8 2011, but did not resolve their disputes.

9 43. On June 14, 2011, Metropolitan’s Board of Directors voted to terminate the
10 Project Contracts with the Water Authority and the Ramona Agreement, exempting only those
11 portions of two agreements that directly provide conservation rebates to consumers or
12 businesses. Metropolitan’s Board also rejected the Water Authority’s request that Metropolitan
13 place the funds withheld as a result of termination of these Project Contracts into an interest-
14 bearing account that would be maintained until final disposition of the Rate Case.

15 44. By letter dated June 23, 2011, Metropolitan’s General Manager notified the Water
16 Authority of Metropolitan’s final action regarding the termination of the Project Contracts, and
17 the Ramona Agreement. (A copy of that letter is attached as Exhibit H.) Ramona has assigned
18 to the Water Authority its right to sue for relief arising out of Metropolitan’s termination of the
19 Ramona Agreement.

20 45. Metropolitan’s unlawful termination of the Project Contracts and the Ramona
21 Agreement has stripped money away from ongoing water conservation programs and local water
22 supply development projects designed to provide important benefits to San Diego County.
23 Moreover, by blackballing the Water Authority from continued participation in subsidy
24 programs, Metropolitan is further redistributing the region’s water ratepayer dollars away from
25 San Diego County to other parts of Southern California. Although San Diego’s ratepayer dollars
26 continue to fund the substantial conservation and local water supply projects approved by
27 Metropolitan, San Diego is excluded from receiving any benefit from its payments. Further, as
28 Metropolitan pays its other member agencies to conserve more water and develop alternative

1 local water, those member agencies will purchase less Metropolitan water. In turn, that will
2 force Metropolitan to increase its rates for purchases of its water in order to recover its costs.
3 Because the Water Authority is the largest purchaser of Metropolitan water, it will suffer
4 disproportionate harm from any rate increase.

5 **G. Metropolitan under-calculates the Water Authority's preferential rights to water.**

6 46. The arbitrary, capricious, and self-serving nature of Metropolitan's definitions of
7 "supply," on the one hand, and "transportation," on the other, is further proven by Metropolitan's
8 miscalculation of the Water Authority's preferential rights. As discussed already, under section
9 135 of the MWD Act, the Legislature determined that the preferential rights of Metropolitan
10 member agencies shall be calculated according to their shares of payments for Metropolitan's
11 capital costs and operating expenses, "excepting purchase of water." Metropolitan is responsible
12 for accurately calculating preferential rights.

13 47. Metropolitan has failed to calculate its member agencies' preferential rights in
14 accordance with section 135 of the MWD Act, instead arbitrarily and irrationally misapplying
15 the statutory formula to disadvantage the Water Authority. Metropolitan excludes the
16 considerable sums the Water Authority pays Metropolitan under the Transportation Agreement
17 for transporting IID and Canal Lining water when calculating the Water Authority's preferential
18 rights, taking the position that these payments are for "purchases of water"—*i.e.*, supply.

19 48. This directly contradicts Metropolitan's rate-setting practices. In the context of
20 rate setting, when Metropolitan delivers IID and Canal Lining Water to the Water Authority, it
21 charges the Water Authority not for supply but for transportation (although it inflates its
22 purported "transportation" charges by including amounts in those charges that are actually
23 related to supply). But when it comes to calculating preferential rights based on the exact same
24 charges, Metropolitan says that those same payments are for supply.

25 49. Metropolitan's preferential-rights calculation practice also contradicts the terms of
26 its Transportation Agreement with the Water Authority. That Agreement provides that, when
27 Metropolitan transports Non-Metropolitan Water, such as IID water, to the Water Authority
28 through the Metropolitan system, it is engaging in water transportation, not water supply.

1 Section 4.1 of the Transportation Agreement provides that non-Metropolitan Water “shall be
2 characterized for the purposes of all of Metropolitan’s ordinances, plans, programs, rules and
3 regulations ... in the same manner as the Local Water of other Metropolitan member agencies”—
4 in other words, as Non-Metropolitan Water.

5 50. Metropolitan’s systematic under-calculation of the Water Authority’s preferential
6 rights erodes the reliability of water supply for the Water Authority and its ratepayers, denying
7 them the benefit of payments they have actually made to Metropolitan that should entitle them to
8 increased preferential rights under the statutory formula of section 135 of the MWD Act. In the
9 event any member agency, including the Water Authority, asserts its preferential rights to water,
10 the Water Authority would be unable to obtain the share of water it is lawfully entitled to
11 receive. By contrast, every other Metropolitan member agency has seen its share of preferential
12 rights increase as a result of Metropolitan’s misclassification, and stands to benefit at the expense
13 of the Water Authority and San Diego ratepayers in the event preferential rights are asserted.

14 51. During 2010, Metropolitan calculated the Water Authority’s preferential rights at
15 about 17.47% of the water available from Metropolitan. The Water Authority estimates that it
16 has paid \$155,999,600 to Metropolitan under the Transportation Agreement through December
17 31, 2010. Given these payments, Metropolitan ought to have calculated the Water Authority’s
18 2010 preferential rights to be approximately 19.37% of the water available from Metropolitan.
19 This 1.9% increase in the Water Authority’s preferential rights over what Metropolitan has
20 calculated would mean the Water Authority would be eligible to receive a volume of water 11%
21 greater than what it would currently receive in the event preferential rights are asserted.

22 52. In early 2011, the Water Authority became aware that Metropolitan was
23 excluding its payments for the transportation of IID Water and Canal Lining Water from the
24 calculation of the Water Authority’s preferential rights. On or about April 6, 2011, counsel for
25 the Water Authority wrote to Metropolitan, noting the miscalculation and requesting that
26 Metropolitan calculate the preferential rights amounts in a manner consistent with the statutory
27 command of section 135. (A copy of that letter is attached as Exhibit I.) On April 26, 2011,
28 Metropolitan’s Interim General Counsel refused to include the amounts paid under the

1 Transportation Agreement in Metropolitan's preferential rights calculations, attempting to mask
2 the transportation rates as "a discounted volumetric rate" for the sale of water by Metropolitan,
3 despite the Transportation Agreement providing the contrary and despite Metropolitan's position
4 in this litigation that those charges are for transportation, not for water supply. (A copy of that
5 letter is attached as Exhibit J.) On May 4, 2011, the Water Authority's General Counsel
6 responded to the April 26 letter. (A copy of that letter, without its attachment, is attached as
7 Exhibit K.)

8 53. Despite the Water Authority's demands and its obligations under its own enabling
9 act and the Transportation Agreement, Metropolitan refuses to properly classify the Water
10 Authority's payments for transportation of Non-Metropolitan Water in determining the Water
11 Authority's preferential rights. Absent a clear judicial declaration of Metropolitan's obligations,
12 the Water Authority is informed and believes that Metropolitan will continue to refuse to do so.

13 **FIRST CAUSE OF ACTION**

14 **FOR WRIT OF MANDATE RE: ALLOCATION OF SUPPLY AND**
15 **TRANSPORTATION COSTS**

16 (Against Respondent Metropolitan)

17 54. Petitioner re-alleges paragraphs 1 through 53 as though set forth fully herein.

18 55. Metropolitan is under a clear and present duty, pursuant to Article XIII A, Section
19 4 of the California Constitution (adopted by Proposition 13 in 1978), and its implementing
20 statute, Government Code Section 50076, to set rates and charges no greater than the "reasonable
21 cost of providing the service ... for which the fee is charged." (Gov. Code § 50076.) Under that
22 duty, Metropolitan's rates and charges must reasonably and fairly allocate its costs among the
23 services Metropolitan provides. Otherwise, the rates and charges imposed for these services
24 constitute special taxes, for which Proposition 13 requires two-thirds voter approval.
25 Metropolitan did not obtain voter approval of the rates and charges challenged here.

26 56. Additionally, Metropolitan is under a clear and present duty under the MWD Act
27 to set rates and charges that "shall be uniform for like classes of service throughout the district."
28 ([Stats. 1969, ch. 209 as amended; West's California Water Code—Append. §§ 109-134

1 (2010)].) Under this duty, Metropolitan's rates and charges must also apportion costs equitably
2 among its customers.

3 57. Metropolitan is further under a clear and present duty, pursuant to Government
4 Code Section 54999.7(a), to set rates and charges that do "not exceed the reasonable costs of
5 providing the public utility service."

6 58. Metropolitan also is under a clear and present duty, imposed by the Wheeling
7 Statutes (Water Code § 1810 *et seq.*) to charge only "fair compensation" for the conveyance, or
8 "wheeling," of water through Metropolitan's facilities. In addition to the Transportation
9 Agreement, which requires that Metropolitan transport IID Water and Canal Lining Water at
10 rates equal to Metropolitan's rates set "pursuant to applicable law and regulation and generally
11 applicable to the conveyance of water by Metropolitan," the Water Authority has contracted in
12 the past, and intends to contract with Metropolitan in the future, for "wheeling" of water from
13 third-party sources not covered by the Transportation Agreement.

14 59. Finally, Metropolitan also has a clear and present duty under California common
15 law to set rates and charges that are fair, reasonable, and proportionate to the cost of service.

16 60. Metropolitan has failed to perform these duties. Certain rates adopted by
17 Metropolitan on or about April 13, 2010, including the System Access Rate, System Power Rate,
18 and Water Stewardship Rate, comprise the "wheeling rate" applicable to the conveyance of Non-
19 Metropolitan Water through Metropolitan's system and the rate that the Water Authority is
20 charged under the Transportation Agreement. As described above, those rates include costs that
21 bear no relationship to the costs of conveyance through Metropolitan's system.

22 61. First, the adopted rates and charges allocate most of Metropolitan's cost of
23 obtaining a water supply from the State Water Project to the System Access Rate and System
24 Power Rate, which the Water Authority is required to pay as part of its "transportation" cost for
25 the delivery of Non-Metropolitan Water.

26 62. Second, Metropolitan charges the Water Stewardship Rate as part of its
27 "transportation" cost for the delivery of non-Metropolitan Water, even though the Water
28 Stewardship Rate has no relationship to the costs of conveying water. The proceeds from the

1 Water Stewardship Rate is used to fund local water supply development and water conservation
2 efforts by Metropolitan's member agencies. Even assuming that Metropolitan has a legitimate
3 basis to impose "water stewardship" charges, because the money from this rate is used to
4 increase the supply of water available to the Metropolitan member agencies who receive the
5 subsidies, it can be characterized only as a cost of supply, not transportation.

6 63. Diverting these supply costs into the "transportation" cost buckets charged for the
7 conveyance of Non-Metropolitan Water unlawfully overcharges the Water Authority for water
8 transportation, while artificially undercharging all member agencies for the cost of water.
9 Metropolitan's misallocation of these costs violates the duties described above to set rates and
10 charges that are fair, reasonable, and proportionate to the cost of service to each customer.

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

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

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

20 **SECOND CAUSE OF ACTION**

21 **DECLARATORY RELIEF RE: ALLOCATION OF SUPPLY
22 AND TRANSPORTATION COSTS**

23 (Against Respondent Metropolitan)

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

25 68. An actual and present controversy now exists between the Water Authority, on
26 the one hand, and Metropolitan, on the other. Petitioner contends that the rates and charges
27 Metropolitan adopted over its objections on April 13, 2010 violate state constitutional, statutory
28 and common law as well as Metropolitan's own Administrative Code. That is because the rates

1 allocate most of Metropolitan's cost of a water supply from the State Water Project to the System
2 Access Rate and the System Power Rate, and Metropolitan's cost associated with local
3 conservation and water supply development to the Water Stewardship Rate, both of which are
4 then charged to the Water Authority as part of the rate for "transportation" of Non-Metropolitan
5 Water. As a result, the challenged rates and charges overcharge for water transportation and
6 undercharge for water supply and do not comply with Metropolitan's duty to impose rates and
7 charges that are fair, reasonable, and proportionate to the cost of service to each customer.

8 69. Respondent Metropolitan disagrees with these allegations and asserts that the
9 rates and charges challenged here are lawful in all respects.

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

18 71. The Water Authority desires and is entitled to a judicial declaration that, because
19 of Metropolitan's misallocation of its State Water Project costs, Metropolitan's rates and charges
20 are contrary to law and violate constitutional, statutory and common law as well as
21 Metropolitan's own Administrative Code and Board policy directives.

22 72. Such declaratory relief is necessary and appropriate now, because the Water
23 Authority anticipates that Metropolitan will continue to impose rates and charges which violate
24 constitutional, statutory and common law as well as Metropolitan's own Administrative Code.
25 A declaration is therefore necessary to protect the Water Authority from these unlawful rates and
26 charges.

27 73. Therefore, the Water Authority prays for declaratory relief as specified more fully
28 below.

1 THIRD CAUSE OF ACTION

2 **DETERMINATION OF INVALIDITY OF RATES ADOPTED BY METROPOLITAN**
3 **ON OR ABOUT APRIL 13, 2010**

4 (CCP § 860 *et seq.*; Gov't Code § 53511; Gov't Code § 66022)

5 (Against Respondent Metropolitan)

6 74. Petitioner re-alleges paragraphs 1 through 73 as though set forth fully herein.

7 75. Petitioner is informed and believes, and on that basis alleges, that the rates and
8 charges Metropolitan adopted on or about April 13, 2010 may include capacity charges as
9 defined in Government Code Section 66013. Government Code Section 66022 authorizes an
10 action pursuant to Code of Civil Procedure Sections 860 *et seq.* to challenge a public agency's
11 adoption of rates that include capacity charges as defined in Government Code Section 66013.

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

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

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

26 79. The rates and charges Metropolitan adopted on or about April 13, 2010 are invalid
27 under Art. XIII A, Section 4 of the California Constitution (adopted by Proposition 13), and its
28 implementing statute, Government Code Section 50076, because these rates and charges are not

1 limited to the “reasonable cost of providing the service ... for which the fee is charged.” (Gov.
2 Code § 50076). The water rates and charges challenged here violate these provisions for two
3 independent reasons, either one of which alone is sufficient to render the rates invalid:

4 a. The challenged rates and charges, including any capacity charges, recover
5 the bulk of Metropolitan’s costs of water from the State Water Project
6 through the System Access Rate and the System Power Rate, rather than
7 Metropolitan’s Supply Rate. As a result, the challenged rates and charges
8 overcharge for water transportation and undercharge for water supply.
9 Thus, these rates and charges do not allocate to each customer the actual,
10 reasonable and proportionate cost of serving that customer and instead are
11 unreasonable, arbitrary, capricious, and discriminatory.

12 b. The challenged rates and charges, including any capacity charges, include
13 the Water Stewardship Rate in the rates and charges Metropolitan imposes
14 for water transportation. As a result, the challenged rates and charges
15 overcharge for water transportation and undercharge for water supply. For
16 this reason, too, these rates and charges fail to allocate to each customer
17 the actual, reasonable and proportionate cost of serving that customer and
18 instead are unreasonable, arbitrary, capricious, and discriminatory.

19 80. For the reasons set forth in the preceding paragraph, the rates and charges adopted
20 by Metropolitan’s Board on or about April 13, 2010 are also invalid under: (a) Metropolitan’s
21 principal act, Stats. 1969; ch. 209 as amended; West’s California Water Code—Append. §§ 109-
22 134 (2010), which requires Metropolitan to set rates and charges that are “uniform for like
23 classes of services throughout the district”; (b) California’s Wheeling Statutes (Water Code
24 Section 1810 et seq.), because the rates Metropolitan charges for conveyance to the Water
25 Authority of Non-Metropolitan Water exceed “fair compensation” for use of Metropolitan’s
26 system; (c) Government Code Section 54999.7(a), which requires that its rates and charges “not
27 exceed the reasonable cost of providing the public utility service”; and (d) California common
28 law, which requires that Metropolitan impose rates and charges that are fair, reasonable, and

1 proportionate to the actual cost of service.

2 81. The Water Authority is entitled to a declaration under the Validation Statutes that
3 the rates and charges Metropolitan adopted on April 13, 2010 are invalid and must be set aside.

4 **FOURTH CAUSE OF ACTION**

5 **BREACH OF CONTRACT**

6 (Against Respondent Metropolitan)

7 82. Petitioner re-alleges paragraphs 1 through 81 as though set forth fully herein.

8 83. Petitioner Water Authority and Respondent Metropolitan are parties to the
9 Transportation Agreement, a valid contract for the transportation of Non-Metropolitan Water
10 purchased by the Water Authority from IID and Canal Lining projects.

11 84. The Water Authority has always fully performed its obligations under the
12 Transportation Agreement since entering into that contract.

13 85. Section 5.2 of the Transportation Agreement requires Metropolitan to set a rate
14 for the transportation of the Water Authority's Non-Metropolitan Water that "shall be equal to
15 the charge or charges set by Metropolitan's Board of Directors *pursuant to applicable law and*
16 *regulation* and generally applicable to the *conveyance of water by Metropolitan* on behalf of its
17 member agencies." As detailed above, Metropolitan has breached section 5.2 by setting rates for
18 the conveyance of the Water Authority's purchased water that violate applicable laws and
19 regulations, by incorporating Metropolitan's costs of obtaining its supply of DWR/State Water
20 Project water and its costs to subsidize local conservation and water development projects, into
21 the "transportation rate" charged to the Water Authority. By doing those things, Metropolitan
22 has improperly loaded on to the Water Authority, in the form of transportation charges, water
23 supply costs incurred by Metropolitan that are unrelated to transportation, in violation of
24 applicable laws and regulations, including (a) Art. XIII A, Section 4 of the California
25 Constitution; (b) Cal. Gov. Code § 50076; (c) Metropolitan's principal act, Stats. 1969; ch. 209
26 as amended; Cal. Water Code—Append. §§ 109-134 (2010); (d) California's Wheeling Statutes
27 (Cal. Water Code § 1810 et seq.); (e) Cal. Gov. Code § 54999.7(a); and (f) California common
28 law, as described elsewhere in this complaint.

1 86. Metropolitan's unlawful misallocation of costs has caused Water Authority to pay
2 excess charges for its transportation of Non-Metropolitan Water, in an amount to be determined
3 according to proof. Accordingly, the Water Authority prays for relief as set forth below.

4 **FIFTH CAUSE OF ACTION**

5 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

6 (Against Respondent Metropolitan)

7 87. Petitioner re-alleges paragraphs 1 through 86 as though set forth fully herein.

8 88. Petitioner Water Authority and Respondent Metropolitan are parties to the
9 Transportation Agreement, a valid contract establishing the framework for the rates that
10 Metropolitan would charge the Water Authority for transportation of IID Water and Canal
11 Lining Water for a 45-year period beginning in 2003. The Transportation Agreement included
12 an implied covenant of good faith and fair dealing.

13 89. The Water Authority has always fully performed its obligations under the
14 Transportation Agreement since entering into that contract.

15 90. The parties agreed to a specific compromise with respect to the prospect of future
16 rate litigation, which was embodied in the written Transportation Agreement. The parties agreed
17 to a five-year standstill period in which the Water Authority would not sue Metropolitan over the
18 legality of Metropolitan's rates that were applied to the transportation of IID and Canal Lining
19 Water. They further agreed that, at the conclusion of the five-year standstill period, the Water
20 Authority would be within its rights to sue Metropolitan over Metropolitan's rates.

21 91. After negotiating with the Water Authority regarding, and then entering into, a
22 binding five-year standstill agreement, Metropolitan then enacted (over the Water Authority's
23 objections) the RSI Clause, which imposed severe penalties on any Metropolitan member agency
24 that chose to sue Metropolitan over its rates, by allowing Metropolitan to unilaterally terminate
25 conservation and local water-supply contracts and forfeit any future benefits from Metropolitan's
26 subsidy programs.

27 92. Metropolitan implemented the RSI Clause to interfere with the Water Authority's
28 benefit of the bargain to which it had agreed in the Transportation Agreement. As described

1 above, Metropolitan, in the Gastelum memorandum, admitted that the RSI Clause was drafted
2 (and incorporated in the subsidy contracts) in response to, and in an effort to prevent the exercise
3 of, the Water Authority's negotiated option to challenge Metropolitan's rates at the conclusion of
4 the five-year standstill period. The express intent and plain effect of the RSI Clause was to make
5 it more difficult, and more costly, for the Water Authority to exercise its right, enshrined in the
6 Transportation Agreement, to petition the courts after the conclusion of the five-year standstill.
7 As detailed more fully below, the RSI Clause also violates Article I, section 3 of the California
8 constitution, and California Civil Code section 1668.

9 93. By passing the resolution authorizing use of the RSI Clause, including the RSI
10 Clauses in each of the Project Contracts and the Ramona Agreement, invoking the RSI Clauses
11 in response to the Water Authority's exercise of its constitutional right to challenge
12 Metropolitan's unlawful rate setting, and purporting to terminate each of the Project Contracts
13 and the Ramona Agreement pursuant to the RSI Clauses, Metropolitan has breached the
14 covenant of good faith and fair dealing contained within the Transportation Agreement.
15 Metropolitan's actions undermine and ridicule one of the overriding compromises of the
16 Transportation Agreement, namely that the Water Authority would be entitled to challenge
17 Metropolitan's rates after it complied with the five-year litigation standstill. Accordingly, the
18 Water Authority prays for relief as set forth below.

19 **SIXTH CAUSE OF ACTION**

20 **BREACH OF FIDUCIARY DUTY**

21 (Against Respondent Metropolitan)

22 94. Petitioner re-alleges paragraphs 1 through 93 as though set forth fully herein.

23 95. Metropolitan and the Metropolitan Board owe fiduciary duties of loyalty and care
24 to the Water Authority, as a member agency with a minority voting interest on the Metropolitan
25 Board. Metropolitan and its Board also owe express fiduciary duties to the Water Authority's
26 constituency under both the MWD Act and the ethics rules promulgated by Metropolitan under
27 the MWD Act. And the Metropolitan Board owes fiduciary duties to Metropolitan itself.

28 96. Specifically, section 126.7 of the MWD Act requires Metropolitan to establish an

1 Office of Ethics, which must “adopt rules relating to internal disclosure, conflicts of interest, and
2 other ethics rules for its Board members, officers and employees.” In response, the Metropolitan
3 Board Ethics Office prepared an Ethics Guide expressly providing that all Metropolitan Board of
4 Directors members have a duty of loyalty not just to their respective member agencies, whom
5 they represent on the Board, but also to the “full constituency of the Metropolitan service area.”
6 In the case of Metropolitan Board members who represent member agencies other than the Water
7 Authority, this ethical rule makes the members of the Metropolitan Board fiduciaries of the
8 Water Authority and its ratepayers with regard to their acts on the Metropolitan Board.
9 Similarly, because section 50 of the MWD Act requires Metropolitan to act exclusively through
10 its Board of Directors in determining Metropolitan policies, including the setting of rates and the
11 negotiation of the terms of Metropolitan contracts, Metropolitan itself has a fiduciary duty to
12 treat the Water Authority and its ratepayers fairly with respect to all its public acts. Finally, the
13 Metropolitan Ethics Guide also makes clear that Metropolitan Board members also are subject to
14 general ethical rules and obligations that derive from state law, and owe fiduciary duties to the
15 Metropolitan constituency and all member agencies, including the Water Authority, under those
16 generally applicable provisions.

17 97. Metropolitan and the majority of its Board, under the domination and control of
18 certain large, self-interested Metropolitan member agencies, have violated their above-described
19 fiduciary duties in a number of ways, set forth below.

20 98. First and most fundamentally, Metropolitan and its Board, under the domination
21 and control of certain large, self-interested Metropolitan member agencies, have enacted rates
22 that load Metropolitan’s costs of obtaining DWR water supply, and its water stewardship costs,
23 onto the rate Metropolitan charges for transportation, rather than incorporating those costs into
24 the water supply rate. As described throughout this Complaint, the Water Authority is uniquely
25 situated among Metropolitan’s member agencies, and uniquely vulnerable to abusive conduct by
26 Metropolitan and its Board, due to the fact that the Water Authority is the only Metropolitan
27 member agency that is a high-volume, steady purchaser of Metropolitan water, but also must
28 utilize Metropolitan’s system to transport significant quantities of Non-Metropolitan Water.

1 Metropolitan and the self-interested member agencies which control the Metropolitan Board
2 have knowingly taken improper advantage of the Water Authority's position to load costs onto
3 the Water Authority that ought to be borne proportionally by their agencies and ratepayers.
4 Metropolitan and its Board have done this by misclassifying water supply charges as water
5 transportation charges. This misclassification harms only the Water Authority's minority
6 interest, while benefitting the interests of all other Metropolitan member agencies. The
7 misclassification results in annual overcharges to the Water Authority running into the multi-
8 millions of dollars, which overcharges are estimated to exceed \$2 billion over the next 40 years.
9 Overcharges of this magnitude threaten water-supply reliability to the San Diego region.

10 99. Second, after implementing the above-described rates, which violate California
11 law and were designed to prejudice the Water Authority's minority interest, Metropolitan and its
12 Board, under the domination and control of certain large, self-interested Metropolitan member
13 agencies, then sought to insulate its conduct from legal or political challenge by imposing and
14 enforcing the RSI Clauses against the Water Authority. Because only the Water Authority is
15 disadvantaged by these current unlawful rates, only the Water Authority, among the
16 Metropolitan member agencies, is affected by the RSI Clauses as a practical matter.
17 Metropolitan's invocation of these RSI clauses works to the detriment of the Water Authority
18 and its ratepayers, by preventing them from receiving any benefit from their own duly-
19 contributed share of the Metropolitan funds used to pay for the local water-supply subsidies.
20 Metropolitan is systematically draining money from the San Diego region and redistributing it to
21 other Southern California counties.

22 100. Third, Metropolitan and its Board have breached their fiduciary duties by
23 improperly allowing the managers and staff members of the large, self-interested member
24 agencies to exert undue influence and control over the decisionmaking of Metropolitan's Board.
25 Unlike Metropolitan Board members, who owe fiduciary duties to treat all Metropolitan member
26 agencies and all Southern California ratepayers fairly, the member agency managers and staff
27 members act solely in their own self-interest. Upon information and belief, including public
28 records so indicating, a majority voting bloc of Metropolitan's member agencies, including the

1 City of Los Angeles, MWDOC, and the West Basin Municipal Water District, have engaged in
2 regular, private meetings of their staff members to align positions and “recommend” to
3 Metropolitan’s Board how it should vote on key ratemaking and policymaking decisions, in
4 order to implement agreements that allow for the majority voting bloc to obtain the benefits of
5 their self-dealing. The Water Authority is not invited to participate in these meetings and does
6 not have knowledge of the backroom deals that are negotiated until they are announced as
7 “recommended” Board policy at Metropolitan Board meetings or in letters addressed to the
8 Metropolitan Board from the majority member agencies. Participants in these meetings have
9 explicitly used the name “Anti-San Diego Coalition” to refer to this cabal in conversations with
10 Water Authority staff. According to public records, MWDOC requested contributions from the
11 other member agencies for their participation in this so-called “working group,” which meets
12 with Metropolitan staff members in advance of regularly scheduled Metropolitan Board meetings
13 and has even hired its own outside consultants. The “working group” sometimes publishes
14 detailed recommendations to Board members, signed by the general managers of as many as 23
15 of Metropolitan’s 26 member agencies, instructing the Board how to vote on key issues. The
16 Board has followed the recommendations of the Anti-San Diego Coalition, with only perfunctory
17 Board involvement, in violation of its fiduciary duties to the Water Authority, its constituency,
18 and Metropolitan itself.

19 101. Because the Water Authority has been excluded from these secret meetings, and,
20 in any event, has only a minority voting interest on the Metropolitan Board, its efforts to reverse
21 these policies have been unsuccessful. The Water Authority has regularly objected to
22 Metropolitan and the other Board members, both in Board meetings and in other contexts,
23 regarding Metropolitan’s rates, the RSI Clauses incorporated into Project Contracts, and
24 Metropolitan’s granting of conservation and local water-supply development subsidies to
25 member agencies despite the lack of any demonstrated regional benefit—much less any benefit
26 to the Water Authority. The Water Authority’s protests have fallen on deaf ears. The Water
27 Authority has been unable to persuade Metropolitan, its Board, or the majority member agencies
28 to respond to the merits of the Water Authority’s arguments, let alone to treat the Water

1 Authority and its minority interests fairly and equitably.

2 102. Finally, the dominance of Metropolitan's Board by certain member agencies, and
3 their success in converting Metropolitan from an agency created to serve the public interest into
4 a means of enriching the dominant member agencies at the expense of the other member
5 agencies and Metropolitan itself, is evident from several other Metropolitan practices.
6 Specifically, Metropolitan and its Board, at the urging of the self-interested majority voting bloc,
7 have (1) approved rate structures that do not account for the costs of dry-year peaking on the
8 Metropolitan system; (2) sold discounted water to select member agencies; and (3) entered into
9 multi-million dollar conservation and local water supply development subsidy contracts. All
10 these acts by Metropolitan specifically disadvantage the Water Authority but are also detrimental
11 to Metropolitan's own water ratepayers.

12 103. With respect to dry-year peaking, Metropolitan and its Board, under the influence
13 and control of certain self-interested member agencies, have refused to account for or properly
14 assess the costs of keeping supplies in reserve for an agency that significantly increases its water
15 purchases during dry years. The chief beneficiary of this practice is the City of Los Angeles's
16 Department of Water and Power ("LADWP"), because LADWP's water supply purchases from
17 Metropolitan vary widely from year to year depending on the water supply conditions in the
18 Owens Valley, which serves LADWP's own Los Angeles Aqueduct. When its own water
19 supplies are short during dry years, LADWP can pick up the telephone and buy more water from
20 Metropolitan—a supply of water Metropolitan holds on call for LADWP at no cost to LADWP.
21 From 1996 to 2010, this practice has delivered an estimated annual financial benefit to LADWP,
22 and corresponding annual detriment to the other Metropolitan member agencies, of as much as
23 \$35 million to \$40 million. As Metropolitan's largest steady purchaser of water, the Water
24 Authority bears the largest share of Metropolitan's subsidization of LADWP's dry-year water
25 supply.

26 104. With respect to the sale of discounted water, Metropolitan and its Board, under
27 the influence and control of the majority voting bloc, have established a so-called
28 "replenishment" practice, under which Metropolitan sells discounted water to some but not all

1 member agencies, at a net loss to Metropolitan. Metropolitan itself has essentially conceded that
2 this practice has no regional benefit to the Metropolitan service area or to Metropolitan's
3 ratepayers. Although Metropolitan's sale of below-cost, discounted water benefits the individual
4 Metropolitan member agencies who purchase that water, the practice also erodes Metropolitan's
5 financial condition, ultimately forcing increases in Metropolitan's water supply rates to cover the
6 losses Metropolitan experiences as a result of the sale of discounted water. Again, as
7 Metropolitan's largest steady purchaser of water, the Water Authority bears the largest share of
8 the negative financial effects caused by this practice.

9 105. With respect to subsidy contracts, Metropolitan and its Board, under the influence
10 and control of the majority voting bloc, have disbursed subsidy contracts in an unequal manner
11 that provides multi-millions of dollars in local benefits, primarily to the agencies that make up
12 the Anti-San Diego Coalition, but fails to provide any regional benefit throughout Metropolitan's
13 service area. The agencies that do not receive these subsidy contracts, or do not receive their
14 roughly proportional share of such contracts, are thus forced to pay for projects that benefit other
15 Metropolitan member agencies only. To take just one example, Western Municipal Water
16 District has reported to its board that, between the time of Metropolitan's adoption of its
17 unbundled rates in 2003 through 2010, it paid Metropolitan approximately \$14.8 million in
18 Water Stewardship Rate fees, while receiving \$38.1 million for "water stewardship" projects in
19 return—a net benefit of more than \$23 million. Other large Metropolitan member agencies,
20 including MWDOC and the West Basin Municipal Water District, have reaped similarly large
21 benefits from Metropolitan's "water stewardship" projects. By contrast, the Water Authority has
22 been blackballed from this subsidy program because of the Water Authority's exercise of its
23 constitutional right to challenge Metropolitan's unlawful rates. Accordingly, while the Water
24 Authority pays millions of dollars to fund these programs and gets nothing in return, select other
25 member agencies pay in far less and get a windfall. This conduct harms not only the Water
26 Authority specifically, but also the overall Metropolitan constituency, which must pay higher
27 rates because the subsidized conservation and local water-supply projects administered by
28 Metropolitan do not provide any regional benefit to Metropolitan's service area. Indeed,

1 Metropolitan's current practices actually reduce purchases of Metropolitan Water by member
2 agencies, thereby forcing Metropolitan to raise its rates for Metropolitan Water.

3 106. Taken together, Metropolitan's practices of failing to account for and properly
4 charge for dry-year peaking, selling discounted water at a loss, and forcing some of its member
5 agencies, including the Water Authority, to fund local water-supply subsidy programs of other
6 member agencies represent a naked redistribution of money to certain self-interested member
7 agencies, primarily those controlling the Anti-San Diego Coalition. The self-interested agencies
8 that reap the benefits of these Metropolitan policies comprise a voting majority of the
9 Metropolitan Board.

10 107. These breaches of fiduciary duty by Metropolitan and the majority of its Board of
11 Directors already have caused significant and concrete financial harm to the Water Authority, in
12 the form of higher rates for the Water Authority (both generally and for the transportation of
13 Non-Metropolitan Water), the cancellation of the Project Contracts and the Ramona Agreement,
14 the exclusion of the Water Authority from future subsidy contracts despite the Water Authority's
15 forced subsidization of other agencies' projects, and the exclusion of the Water Authority from
16 the political process of negotiation and deliberation regarding future Metropolitan policy
17 affecting the Water Authority and its ratepayers. These breaches of fiduciary duty by
18 Metropolitan and the majority of its Board of Directors have also caused significant and concrete
19 financial harm to Metropolitan and its ratepayers, by requiring them to pay for subsidy contracts
20 that do not provide a regional benefit, and that are designed to transfer regional ratepayer dollars
21 to the self-interested member agencies. Accordingly, the Water Authority prays for relief as set
22 forth below.

23 **SEVENTH CAUSE OF ACTION**

24 **DECLARATORY RELIEF RE: RSI CLAUSE**

25 (Against Respondent Metropolitan)

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

27 109. An actual and present controversy has arisen and now exists between the Water
28 Authority, on the one hand, and Metropolitan, on the other, regarding the enforceability of the

1 RSI Clauses and the termination of the Project Contracts and the Ramona Agreement. The
2 Water Authority contends that the RSI Clauses that Metropolitan insisted, over the Water
3 Authority's objection, be inserted into the Project Contracts and the Ramona Agreement violate
4 the California constitution, statutory law and common law. Furthermore, Metropolitan has
5 invoked the RSI Clauses in purporting to terminate the Project Contracts and the Ramona
6 Agreement. Also based on the RSI Clauses, Metropolitan refuses to allow the Water Authority
7 to receive any benefit from the Water Stewardship Rates it is forced to pay to Metropolitan to
8 fund conservation and local water-supply subsidy contracts.

9 110. First, the RSI Clauses, and Metropolitan's actions pursuant to those clauses,
10 violate Article I, section 3 of the California Constitution because they purport to permit
11 Metropolitan, a government entity, to deprive the Water Authority of its constitutional right to
12 petition the courts of this State for redress of legitimate legal grievances against Metropolitan, by
13 allowing Metropolitan the right to unilaterally terminate the Project Contracts in the event that
14 the Water Authority challenges Metropolitan's rates in court. Put another way, the RSI Clauses
15 constitute unconstitutional conditions on the Water Authority's ability to receive any benefit
16 from Metropolitan subsidy programs.

17 111. Second, the RSI Clauses are unlawful contract provisions under California Civil
18 Code section 1668, because they were intended to, and purport to, exempt Metropolitan from
19 liability for setting rates in violation of California law. By establishing draconian penalties
20 against any Metropolitan member agency who raises a legitimate challenge to Metropolitan's
21 rates, the RSI Clauses create a substantial disincentive for any challenge, and effectively permit
22 Metropolitan to violate California law in setting its rates without fear of reprisal.

23 112. Respondent Metropolitan has expressly told the Water Authority that it disagrees
24 with the Water Authority's position on the RSI Clauses, and contends that the RSI Clauses are
25 valid and enforceable.

26 113. In the absence of declaratory relief, Metropolitan will continue in its refusal to
27 honor the Project Contracts between itself and the Water Authority, will continue to withhold
28 money due under the Ramona Agreement, and will continue in its refusal to allow the Water

1 Authority to obtain any benefits from Metropolitan subsidy programs. If the RSI Clauses are not
2 declared invalid, the Water Authority will continue to lose the benefit of the subsidies it has
3 contracted for under the Project Contracts and will continue to be ineligible for future benefits
4 under those programs, despite the fact that its ongoing contributions to Metropolitan continue to
5 fund subsidies to all other Metropolitan member agencies. Accordingly, the Water Authority
6 seeks a declaration that the RSI Clauses are invalid and unenforceable, reinstating the Project
7 Contracts and the Ramona Agreement, and directing Metropolitan not to enter into any future
8 contracts containing an RSI Clause and to restore the Water Authority's eligibility for any lawful
9 Metropolitan subsidy programs. These declarations are necessary in order to protect the Water
10 Authority and its ratepayers as well as Metropolitan ratepayers generally.

11 114. The Water Authority desires and is entitled to a judicial declaration that the RSI
12 Clauses violate California constitutional, statutory and common law. Such declaratory relief is
13 necessary and appropriate now, because Metropolitan has both terminated existing contracts,
14 depriving the Water Authority and the Water Authority's member agencies of millions of dollars
15 of funding to which the Water Authority is contractually entitled, and ruled the Water Authority
16 ineligible to receive any such benefits in the future.

17 115. Therefore, the Water Authority prays for a judicial declaration (a) holding that the
18 RSI Clauses are invalid and unenforceable; (b) reinstating all Project Contracts between the
19 Water Authority and Metropolitan, which Metropolitan has terminated due to purported violation
20 of the RSI Clauses; (c) reinstating the Ramona Agreement between Ramona, the Water
21 Authority and Metropolitan, which Metropolitan has terminated due to a purported violation of
22 the RSI Clause; (d) directing Metropolitan not to enforce any RSI Clauses in any of its contracts
23 in the future; and (e) directing Metropolitan to restore the Water Authority's eligibility for any
24 lawful Metropolitan subsidy programs on the same terms applicable to other Metropolitan
25 member agencies.

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1 **EIGHTH CAUSE OF ACTION**

2 **DECLARATORY RELIEF RE: PREFERENTIAL RIGHTS CALCULATION**

3 (Against Respondent Metropolitan)

4 116. Petitioner re-alleges paragraphs 1 through 116 as though set forth fully herein.

5 117. An actual and present controversy has arisen and now exists between the Water
6 Authority, on the one hand, and Metropolitan, on the other, regarding the proper calculation of
7 the Water Authority's preferential rights under Section 135 of the MWD Act.

8 118. Section 135 states that preferential rights shall be calculated based on the member
9 agency's payments to Metropolitan, except for the "purchase of water." The Water Authority
10 formally requested a determination that its preferential rights should include the amount paid as
11 "transportation" costs for Metropolitan's conveyance of Non-Metropolitan Water through its
12 pipelines and facilities. Metropolitan has formally denied that request, taking the position that
13 money paid by the Water Authority for the transportation of its IID and Canal Lining water are
14 for the "purchase of water" (i.e., supply). Metropolitan's position is contrary to both common
15 sense and to its position, in the context of setting rates, that the Water Authority's charges for the
16 conveyance of water are "transportation" costs and not "supply." As such, Metropolitan's
17 decision about the Water Authority's preferential rights is arbitrary, capricious and contrary to
18 law.

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

24 120. Therefore, the Water Authority prays for a judicial declaration (a) that the current
25 methodology used by Metropolitan to calculate the Water Authority's preferential rights violates
26 section 135 of the MWD Act; and (b) directing Metropolitan to follow the requirements of the
27 MWD Act by including the Water Authority's payments to Metropolitan for transportation of
28 IID Water and Canal Lining Water (which payments are not for "purchases of water") in the

1 calculation of the Water Authority's preferential rights to water.

2 **PRAYER FOR RELIEF**

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

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

- 7 • Vacate the rates set on or about April 13, 2010;
- 8 • Refrain from allocating any costs associated with State Water Project
9 water supplies to charges for water transportation;
- 10 • Refrain from allocating any costs associated with Metropolitan's Water
11 Stewardship Rate to charges for water transportation;
- 12 • Allocate all costs associated with State Water Project water supplies that
13 are not paid for through the Readiness to Serve charge or property taxes to
14 charges for supplying water; and
- 15 • Allocate all costs associated with Metropolitan's Water Stewardship Rate
16 to its charges for supplying water.

17 2. As to the Second Cause of Action, a declaration that the rates and charges adopted
18 by Metropolitan on April 13, 2010 are invalid and must be set aside; that Metropolitan cannot
19 allocate any costs associated with obtaining water supplies from the State Water Project, or any
20 costs associated with its Water Stewardship Rate, to charges for water transportation; that
21 Metropolitan must allocate all costs associated with State Water Project water supplies that are
22 not paid for through the Readiness to Serve charge or property taxes to charges for supplying
23 water; and that Metropolitan must allocate all costs associated with its Water Stewardship Rate
24 to charges for water supply.

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

1 4. As to the Fourth and Fifth Causes of Action, an award of compensatory and
2 general damages against Metropolitan, in an amount to be determined according to proof, and an
3 order of specific performance of the Transportation Agreement requiring Metropolitan to (a) set
4 the rates charged to the Water Authority under the Transportation Agreement in conformance
5 with applicable laws and regulations; and (b) perform the covenant of good faith and fair dealing
6 in the Transportation Agreement by reinstating and fully performing the terminated Project
7 Contracts and Ramona Agreement, refraining from enforcing RSI Clauses that may be contained
8 in any other contracts with the Watery Authority, and refraining from imposing RSI Clauses in
9 any future contracts with the Water Authority.

10 5. As to the Sixth Cause of Action, judicial declarations that:

- 11 • Metropolitan and its Board members owe the Water Authority a fiduciary
12 duty and have violated that duty by (a) setting rates in a manner that
13 violates California law and systematically disadvantages the Water
14 Authority's minority interest while benefiting the remaining member
15 agencies' majority interest; (b) adopting and enforcing the RSI Clause to
16 terminate the Project Contracts and deprive the Water Authority and its
17 member agencies of funding for subsidy and local water-supply
18 development projects; and (c) engaging in self-dealing by causing
19 Metropolitan to approve subsidy contracts that provide multi-million
20 dollar benefits to certain other member agencies, but no benefit to the
21 Water Authority and no demonstrated benefit to the Metropolitan service
22 area as a whole;
- 23 • Metropolitan's rates set on or about April 13, 2010 are vacated;
- 24 • In setting new rates, Metropolitan must refrain from allocating any costs
25 associated with State Water Project water supplies to charges for water
26 transportation and must allocate all costs associated with State Water
27 Project water supplies that are not paid for through the Readiness to Serve
28 charge or property taxes to charges for supplying water;

- 1 • Any RSI Clause, in any contract executed by Metropolitan with any party,
2 is invalid and unenforceable;
- 3 • Any Project Contract between the Water Authority and Metropolitan, or
4 between the Water Authority, any of its member agencies, and
5 Metropolitan, which contract Metropolitan terminated due to a purported
6 violation of the RSI Clause, is reinstated, and Metropolitan must
7 specifically perform all terms of those contracts, including immediate
8 resumption of any payments due under those contracts;
- 9 • Metropolitan must restore the Water Authority's eligibility for any lawful
10 Metropolitan subsidy programs on the same terms applicable to other
11 Metropolitan member agencies; and

12 6. As to the Seventh Cause of Action, a judicial declaration (a) holding that the RSI
13 Clauses are invalid and unenforceable; (b) reinstating all Project Contracts between the Water
14 Authority and Metropolitan, which Metropolitan has terminated due to purported violation of the
15 RSI Clauses; (c) reinstating the Ramona Agreement between Ramona, the Water Authority and
16 Metropolitan, which Metropolitan has terminated due to a purported violation of the RSI Clause;
17 (d) directing Metropolitan not to enforce any RSI Clauses in any of its contracts in the future;
18 and (e) directing Metropolitan to restore the Water Authority's eligibility for any lawful
19 Metropolitan subsidy programs on the same terms applicable to other Metropolitan member
20 agencies.

21 7. As to the Eighth Cause of Action, a judicial declaration (a) that Metropolitan's
22 current methodology for calculating the Water Authority's preferential rights violates section
23 135 of the MWD Act; and (b) directing Metropolitan to follow the requirements of the MWD
24 Act by including the Water Authority's payments to Metropolitan for transportation of IID Water
25 and Canal Lining Water (which payments are not for "purchases of water") in the calculation of
26 the Water Authority's preferential rights to water.

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

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

Dated: September __, 2011

KEKER & VAN NEST LLP

By: _____
JOHN W. KEKER
Attorneys for Petitioner and Plaintiff
SAN DIEGO COUNTY WATER
AUTHORITY