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

16 FOOD & WATER WATCH and
17 CENTER FOR FOOD SAFETY,

18 *Plaintiffs,*

19 v.

20 METROPOLITAN WATER DISTRICT OF
21 SOUTHERN CALIFORNIA,

22 and

23 ALL PERSONS INTERESTED IN THE
24 MATTER of the authorization, by the
25 Metropolitan Water District of Southern
26 California, of financial support of California
27 WaterFix, including the adoption of
28 Resolutions 9243 and 9244 and the execution
of certain agreements and amendments related
to financing, pre-construction and
construction activities for California
WaterFix;

Defendants.

) Case No. BC720692

) **FIRST AMENDED COMPLAINT IN
VALIDATION**

) **(Gov't Code § 53511; Code Civ. Proc. §§
860-870.5)**

) Dept.: 47

) Room: 507

) Judge: Hon. Randolph Hammock

) Action Filed: September 7, 2018

1
2 **INTRODUCTION**

3 1. Plaintiffs Food & Water Watch and the Center for Food Safety bring this action to
4 challenge the validity of two resolutions and related actions by Defendant Metropolitan Water
5 District of Southern California (MWD) authorizing financial support, including the issuance of
6 revenue bonds backed by liens on MWD’s future revenues, for nearly 65% of the total costs of
7 the California WaterFix project. These authorizations lacked any specific ceiling on MWD’s
8 cost obligation for the multi-billion dollar California WaterFix project. This action challenges
9 the validity of both of MWD’s authorizations on the grounds that they rely on raising revenue in
10 ways that are prohibited by the California Constitution and/or MWD’s long-term contract for the
11 operation and use of California’s State Water Project.

12 2. This *in rem* validation action is brought under Code of Civil Procedure section
13 860, *et seq.* and Government Code section 53511 and is directed to the Defendant and all persons
14 interested in defendant’s authorization, on July 10, 2018, of financial support of California
15 WaterFix, including (1) the adoption of Resolutions 9243 and 9244 and (2) the execution of
16 certain agreements and amendments related to financing, pre-construction and construction
17 activities for California WaterFix. Complete and correct copies of Resolutions 9243 and 9244
18 are respectively attached as Exhibit A and B and incorporated by reference.¹ Filed in the
19 absence of validation proceedings brought by the defendant public agency, this action is brought
20 by interested parties as a reverse validation action under Code of Civil Procedure section 863,
21 and is entitled to calendar preference under Code of Civil Procedure section 867.

22 3. Before taking the actions challenged here, MWD had a historic opportunity at its
23 July 10, 2018, Board of Directors meeting to learn from torrents of criticism from ratepayers,
24

25 ¹ Resolutions 9243 and 9244 define “California WaterFix” in paragraph 1 as a project,
26 proposed for construction by the California Department of Water Resources (“DWR”), “which
27 consists of the construction of three new intakes on the east bank of the Sacramento River in the
28 northern California Delta, tunnels connecting these intakes to a new, 30-acre intermediate
forebay, and two 30-mile long tunnels carrying water from this forebay to a new pumping plant
connected to an expanded and modified Clifton Court Forebay.”

1 taxpayers, members of the public, and its own member agencies, highlighting major financial as
2 well as environmental risks from a final decision authorizing financial support for California
3 WaterFix. Public concern about the shortage, instability and paucity of analysis of WaterFix
4 financing had intensified following the federal Bureau of Reclamation's refusal of funding and
5 the nonparticipation of all but one Central Valley Project contractor amid growing concerns
6 about financing costs. The WaterFix project, which had already drawn heavy criticism for the
7 lack of rigor and realism in its supporting cost analyses, now faced the further problem of
8 covering potential billions in additional shortfalls from assumed sources of funding that never
9 materialized. It is one of the most costly and risky water infrastructure projects proposed in
10 California's history, widely criticized for its risks to ecosystems and people in the Delta and
11 elsewhere, as well as for its high costs and financial unpredictability.

12 4. Rather than acting to ensure its decision-making on WaterFix protected its
13 taxpayers, its ratepayers, and members of the public from absorbing excessive and undue risks,
14 MWD instead did the opposite in its July 10, 2018, authorization decisions related to WaterFix
15 financing. MWD greatly expanded the risks, escalating its commitment to cover up to 64.6
16 percent (or under existing estimates, \$10.8 billion) of project costs. MWD also authorized the
17 issuance of revenue bonds backed by liens on future revenues; authorized its General Manager to
18 impose and/or increase water rates and/or property taxes—without first obtaining voter
19 approval—to supply the needed increased revenues; and empowered its General Manager to take
20 other steps that will add new risks, losses of accountability, or both. These authorizations, which
21 are tied to a percentage of a cost estimate, fail to provide any hard financial ceiling, leaving
22 MWD's true financial commitment to the WaterFix project unknown and unknowable at this
23 time. MWD's authorizations were made without requiring a public vote, and made despite the
24 opposition of members from the San Diego County Water Authority and City of Los Angeles,
25 among others.

26 5. MWD's financial commitment to the WaterFix project requires and is dependent
27 on future tax and/or rate increases. But MWD has authorized this financial commitment without
28 having first secured approval of these tax and/or rate increases from the voters, as is required

1 under the provisions of the California Constitution that were enacted by Propositions 13 and 26.
2 Because MWD has authorized the issuance of bonds and other indebtedness without legal
3 authority, its authorization cannot be deemed valid.

4 6. MWD has also authorized its General Manager to take any and all actions to
5 effectuate its financial commitments and repayment of its bonds. MWD has thus authorized its
6 General Manager to raise rates and/or taxes without voter approval as required by Propositions
7 13 and 26. For this reason, MWD's authorizations cannot be deemed valid.

8 7. MWD's authorizations violate provisions in its long-term contract regarding the
9 operation and management of the State Water Project, particularly regarding the contract's
10 taxation and cost recovery provisions. As such they cannot be deemed valid.

11 **PARTIES**

12 8. Plaintiff FOOD & WATER WATCH ("FWW") is a non-profit advocacy
13 organization that champions clean water and healthy food for all. FWW stands up to
14 corporations that put profits before people, and advocates for a democracy that improves
15 people's lives and protects our environment. FWW has over 10,000 supporters across the State
16 of California and has numerous members living within MWD's service area, including taxpayers
17 and ratepayers in that area. FWW's membership is beneficially interested in the determinations
18 of MWD addressed in this action, and in ensuring that MWD complies with law and
19 requirements implicated in these determinations.

20 9. Plaintiff CENTER FOR FOOD SAFETY ("CFS") is a national nonprofit public
21 interest and environmental advocacy organization working to protect human health and the
22 environment by promoting sustainable agriculture. CFS takes a holistic approach in pursuing its
23 mission, addressing all aspects of food production; from water, soil, sunlight and seed to harvest,
24 production, and consumption of food. As part of this mission, CFS has a specific program
25 dedicated to promoting the equitable distribution of and democratic control of our shared water
26 resources. CFS uses legal actions, scientific and policy reports, educational events, marketing
27 campaigns, and grassroots organizing. CFS has over 750,000 members across the country, with
28 approximately 92,000 residing in California, of which many thousands live within MWD's

1 service area. CFS members include farmers, businesses, and consumers whose economic and
2 personal wellbeing depends upon decisions regarding food production and equitable water
3 distribution. CFS members farm, fish, eat, drink, research, and recreate within the Sacramento-
4 San Joaquin Delta ecosystem, southern California, the Central Valley, and the San Francisco Bay
5 Area and would be affected by the Project and its significant impacts. CFS’s membership
6 includes numerous members living within MWD’s service area, including taxpayers and
7 ratepayers in that area. CFS’s membership is beneficially interested in the determinations of
8 MWD addressed in this action, and in ensuring that MWD complies with law and requirements
9 implicated in these determinations.

10 10. Defendant METROPOLITAN WATER DISTRICT OF SOUTHERN
11 CALIFORNIA (“MWD”) is a state-chartered metropolitan water district, formed and subject to
12 statutory authority pursuant to Water Code Appendix section 109, *et seq.* MWD is composed of
13 twenty-six member cities and public water agencies. According to its website, MWD “serves
14 nearly 19 million people in six counties. MWD imports water from the Colorado River and
15 Northern California to supplement local supplies and helps its members develop increased water
16 conservation, recycling, storage and other resource-management programs. The mission of
17 MWD is to provide its service area with adequate and reliable supplies of high-quality water to
18 meet present and future needs in an environmentally and economically responsible way.”
19 MWD is one of 29 State Water Project Contractors, having executed a contract with the
20 California Department of Water Resources (“DWR”) for the development, financing, and
21 operation of the State Water Project (“SWP”) and the delivery of water supplies through the
22 SWP, in exchange for repayment of all associated SWP capital and operating costs. MWD
23 neither owns nor operates the State Water Project, which is principally managed by DWR and
24 serves the people of the State of California.

25 **STATUTORY AUTHORITY**

26 11. Statutory authority for this in rem reverse-validation action is found in Gov. Code
27 section 53511 and Code of Civil Procedure section 863.
28

1 12. Government Code sections 53510 and 53511 apply the validating procedure in
2 Code of Civil Procedure section 860 to any county, city, city and county, public district or any
3 public or municipal corporation, public agency and public authority, any of whom may bring an
4 action to determine the validity of bonds, warrants, contracts, obligations, or evidences of
5 indebtedness.

6 13. If no proceedings have been brought by the relevant agency, any interested person
7 may bring an action within the time and in the court specified by Code of Civil Procedure section
8 860 to determine the validity of the matter. These actions, under Code of Civil Procedure section
9 863, brought by interested persons, are called “reverse validation actions.”

JURISDICTION, AND VENUE

10
11 14. Pursuant to Code of Civil Procedure section 861 and Government Code 6063,
12 jurisdiction will be perfected as of the date of the third successive weekly publication of the
13 summons issued in this action in a newspaper or newspapers of general circulation. Plaintiffs
14 will separately seek Court designation of the newspaper[s] pursuant to Code of Civil Procedure
15 section 861.

16 15. This action is timely pursuant to Code of Civil Procedure section 860 because
17 MWD’s authorization of the bonds, warrants, contracts, obligations, and/or indebtedness at issue
18 in this action (MWD’s “WaterFix Authorization”) was made by a vote of its Board of Directors
19 on July 10, 2018.

20 16. Venue is proper in this Court pursuant to Code of Civil Procedure section 860
21 because MWD’s principal office is located in Los Angeles County.

MWD’S WATERFIX AUTHORIZATION

22
23 17. MWD’s staff report for its July 10, 2018, agenda item related to WaterFix
24 funding confirmed, as DWR had previously, that the expected funding commitments (55 percent
25 from State Water Project contractors, 45 percent from the Central Valley Project contractors) had
26 “failed to materialize.” Staff recognized that the Bureau of Reclamation had rejected funding,
27 and that only one Central Valley Project contractor had decided to participate, “because of
28

1 concerns about the cost of financing the project and because Reclamation could not assure them
2 that any resulting benefits would be distributed solely among CVP PWA.”

3 18. MWD’s staff and counsel sought to reassure the public in advance of the July 10,
4 2018, hearing that it welcomed open discussion and public engagement on issues related to
5 WaterFix funding, and that related consideration of WaterFix in earlier meetings had not
6 produced final decision-making ripe for legal challenge. In a June 6, 2018, letter to Food &
7 Water Watch and the First Amendment Coalition, which had earlier raised concerns about
8 Brown Act violations in the consideration of WaterFix at MWD’s April 10, 2018, meeting,
9 MWD General Counsel Marcia Scully confirmed that “the Board will consider Metropolitan’s
10 increased funding and related actions anew at the July 10, 2018 meeting,” and requested “that
11 you allow the continued public discourse and new Board action regarding CWF to take place.”

12 19. On July 10, 2018, the Board of Directors of MWD authorized MWD “to provide
13 additional financial support of California WaterFix sufficient to fully fund the unsubscribed
14 share of the project up to 64.6% of total project costs; authorize General Manager to execute
15 certain agreements and agreement amendments related to financing, pre-construction and
16 construction activities for California WaterFix; authorize funding of up to \$86 million for further
17 contributions for study, review, planning, engineering, design, and other pre-construction capital
18 costs subject to certain conditions; and authorize General Manager to negotiate draft terms and
19 conditions for one or more multi-year transfers of State Water Project water supplies subject to
20 Board approval.”

21 20. MWD’s determinations on July 10, 2018, included final approval of Resolution
22 9243 (Exhibit A), which authorizes MWD’s purchase of capacity interest of up to 64.6 percent of
23 the estimated costs of WaterFix and the financing of that purchase and other arrangements.
24 However, the resolution provides no specific limitation on total costs, and other than a general
25 direction for the Director to use “reasonable assumptions and methods,” does not account for
26 what may occur if the actual costs of WaterFix substantially exceed estimated costs. The
27 resolution also authorizes MWD’s general manager to negotiate, execute and deliver additional
28 WaterFix-related agreements and documents.

1 21. MWD’s determinations on July 10, 2018, also included final approval of
2 Resolution 9244 (Exhibit B), which authorizes the District’s financial support of WaterFix, and
3 authorizes MWD’s general manager to negotiate, deliver and execute financing agreements and
4 related documents.

5 22. MWD’s 64.6% share of the estimated total WaterFix project costs would
6 constitute \$5.2 billion towards the construction of the first delta tunnel and \$5.6 billion needed to
7 construct the second delta tunnel, for a total of \$10.8 billion. However, numerous sources of
8 financial uncertainty, not addressed by MWD in or before its July 10, 2018, WaterFix
9 Authorization, raise the real possibility that actual costs may prove to be significantly in excess
10 of the estimates relies upon by MWD. Some of the missing elements of analysis include:
11 (1) Master Agreements for unsubscribed capacity; (2) legal analysis of financing that additional
12 capacity, and how that may implicate water rights and compliance with constitutional tax
13 provisions requiring a public vote; (3) benefit/cost analysis of financing the additional estimated
14 capacity; (4) evidence documenting staff’s expectation of leasing back the capacity; and (5) how
15 the State Board’s Sacramento-Delta framework may affect water supply from WaterFix.
16 (<http://valleyecon.blogspot.com/2018/04/will-metropolitan-water-district-board.html>.) Other
17 analyses have sharply criticized WaterFix’s claimed benefits in comparison to costs, and
18 estimated far higher costs for WaterFix than DWR and MWD have assumed. (See, e.g.,
19 <https://www.pacific.edu/Documents/school-business/BFC/WaterFix%20benefit%20cost.pdf>.) In
20 a statement criticizing MWD’s WaterFix Authorization, the Delta Counties Coalition predicted
21 that these actions aimed at facilitating WaterFix would “significantly increase utility bills for
22 California ratepayers and irreparably harm the Delta.”

23 23. MWD plans to finance its financial commitment to the WaterFix project through
24 the issuance of revenue bonds that will be secured with a lien or liens on future revenues. MWD
25 plans on raising rates to secure these increased revenues, but is contractually obligated to raise
26 property taxes if it cannot raise sufficient funds through rate increases. MWD’s actions
27 challenged here authorize the raising of rates and increasing property taxes, at the General
28 Manager’s sole discretion, without voter approval.

1 24. MWD estimates that its annual WaterFix costs will be \$515 million per year
2 through 2033—a 33% increase to MWD’s overall spending—which it intends to recover through
3 its wholesale water rates.

4 25. Wholesale rate increases lead directly to corresponding retail rate increases. As
5 such, MWD projects that residential ratepayers will pay at least an extra \$4.80/month in
6 WaterFix costs on their water bills.

7 26. The Los Angeles Office of Public Accountability asserts that WaterFix surcharges
8 for L.A. ratepayers could balloon to as high as \$6.78/month. Other estimates, including cost
9 assessments provided by Plaintiff Food & Water Watch and San Diego County Water Authority,
10 among others, suggest that the worst case may prove to be far higher, perhaps on the order of
11 double, triple or more. Moreover, continuing and unresolved uncertainties in the total costs of
12 WaterFix may substantially change these figures for the worse.

13 27. Once the WaterFix project is completed, MWD hopes to recoup some of its
14 capital expenditures later by wheeling water or selling portions of its extra conveyance capacity
15 (essentially, all of the capacity of the second tunnel) to other entities in the future, such as
16 Central Valley agricultural water contractors. MWD’s actual ability to recover those costs
17 remains speculative and unproven.

18 28. As of yet, no other contractors have agreed to purchase any of MWD’s interest in
19 the second tunnel or to purchase any of the capacity or use of the second tunnel.

20 29. MWD’s goal for the WaterFix project is to improve the reliability of its Delta
21 water supply, which represents approximately 30% of the total water supplies available to
22 MWD’s service area.

23 30. By any available measure, whether considered based upon historic deliveries,
24 maximum amounts referenced in project contracts, or projected future deliveries, the 64.6%
25 figure assumed by MWD bears little, if any, relationship to MWD’s obligations to its own
26 customers, and appears to include additional coverage for the SWP, CVP or both.

27 31. According to MWD, WaterFix will result in a number of quality and reliability
28 benefits to the SWP and MWD’s Delta water supply, including an estimated “Annual Average

1 MWD Supply Reliability Improvement” of 405 – 455 TAF/year. Whether any such benefits will
2 come about remains uncertain and unknown. However, at page 98 of MWD staff’s agenda
3 packet for the July 10, 2018, meeting is confirmation of MWD’s understanding that the
4 estimated amount would remain the same, whether a single tunnel or two tunnels are built.
5 (<http://edmsidm.mwdh2o.com/idmweb/cache/MWD%20EDMS/003738599-1.pdf>.)

6 32. MWD’s WaterFix Authorization is directed solely to DWR’s proposed WaterFix
7 project, but does not clearly disclose how the outcome of unresolved administrative proceedings,
8 federal decision-making, and stakeholder financing decisions could, and almost certainly will,
9 transform the very nature of the project, or whether there is a project at all.

10 33. California WaterFix is the subject of numerous other pending legal actions,
11 including those challenging DWR’s compliance with CEQA, the Delta Reform Act, the public
12 trust doctrine, and state and federal laws protecting endangered species, among other laws.
13 DWR’s proposed revenue bonds for WaterFix and related resolutions and orders, referenced by
14 MWD in its WaterFix Authorization, are also the subject of DWR’s pending direct validation
15 action, which has elicited numerous answers challenging validity and disputing WaterFix’s
16 eligibility for these bonds and authority to impose debt for them under governing laws and water
17 supply contracts. Many of these actions, including DWR’s validation action and others directed
18 at the Department of Fish and Wildlife, have been coordinated and are pending in the
19 Sacramento County Superior Court (*CDWR Environmental Impact Cases*, Sacramento County
20 Superior Court, JCCP No. 4942.)

21 **Burns-Porter Act**

22 34. The Burns-Porter Act, Water Code sec. 12930, *et seq.*, was enacted by the
23 Legislature in 1959 and ratified by voters in 1960. Its broad purpose was to assist in the
24 construction of the State Water System, comprised of (1) the specific State Water Facilities
25 authorized by Burns-Porter, (2) facilities authorized under the Central Valley Project and
26 California Water Plan, and (3) additional facilities deemed necessary or desirable to meet local
27 needs.
28

1 35. Under the Burns-Porter Act, the tax revenue a local water district generates to pay
2 its SWP contractual obligations can only be used for one of four voter-approved purposes, and in
3 the following order of priorities: (1) for the reasonable costs of annual maintenance, operation,
4 and replacement of the system, (2) to repay the principal or interest on Burns-Porter bonds, (3) to
5 reimburse the California Water Fund for funds utilized for construction of the State Water
6 Facilities, or, (4) if there is any surplus revenue, for the construction of new water system
7 facilities.

8 **Proposition 13**

9 36. Proposition 13, enacted by voters in 1978 and codified in article XIII A of the
10 California Constitution, caps property taxes at 1% of assessed value, and limits upward
11 reappraisals of value to 2% per year.

12 37. Proposition 13 allows the 1% cap on property taxes to be exceeded “to pay the
13 interest and redemption charges on ... [i]ndebtedness approved by the voters prior to July 1,
14 1978,” or by proposition, approved by two-thirds of the voters.

15 38. The terms of the SWP contracts require water districts to levy taxes if they “fail or
16 [are] unable to raise sufficient funds by other means” to make all payments due.

17 39. State Water Contractors have utilized Proposition 13’s exception for pre-1978
18 indebtedness for years to raise revenue to satisfy their SWP contracts, arguing that taxes and fees
19 assessed are authorized under Burns-Porter and thus not barred by Proposition 13.

20 **Proposition 26**

21 40. Proposition 26, enacted by voters in 2010 and codified Article XIII C of the
22 California Constitution, expanded the definition of tax to include “any levy, charge, or exaction
23 of any kind imposed by a local government.”

24 41. Under Proposition 26, local governments are prohibited from imposing,
25 extending, or increasing any such charge unless and until the tax is submitted to the electorate
26 and approved by a two-thirds vote.

27 42. Certain government charges are exempted from Proposition 26’s expanded
28 definition of tax, including “a charge imposed for a specific government service or product

1 provided directly to the payor that is not provided to those not charged, and which does not
2 exceed the reasonable costs to the local government of providing the service or product.”

3 43. Proposition 26 requires agencies to demonstrate that (1) the levy, charge, or fee is
4 not a tax; (2) that the amount is no greater than necessary to cover the reasonable costs of the
5 governmental activity, and (3) that the costs are allocated in a fair and proportionate manner.

6 **MWD’s State Water Project Long-Term Contract**

7 44. MWD’s obligations to financially support the State Water Project are governed by
8 the long-term contract made between MWD and the Department of Water Resources.

9 45. Paragraph 34 of MWD’s long-term contract requires MWD to assess property
10 taxes if it is unable to fulfill its payment obligations by other means, and specifies that “[i]f in
11 any year the District fails or is unable to raise sufficient funds by other means, the governing
12 body of the District shall levy upon all property in the District not exempt from taxation, a tax or
13 assessment sufficient to provide for all payments under this contract then due or to become due
14 within that year.”

15 46. As a State Water Contractor, MWD is a governing body subject to Water Code
16 section 11652, which specifies that “[t]he governing body shall, whenever necessary, levy upon
17 all property in the state agency not exempt from taxation, a tax or assessment sufficient to
18 provide for all payments under the contract then due or to become due within the then current
19 fiscal year or within the following fiscal year before the time when money will be available from
20 the next general tax levy.”

21 47. Under paragraph 34 of its long-term contract, MWD can only levy a tax when it is
22 unable to make its contract payments by other means. See 61 Ops. Cal. Atty. Gen. 373, •6
23 (1978).

24 48. Paragraph 17 of MWD’s long-term contract places additional restrictions on the
25 circumstances and conditions relating to bond sales and charges. For example, paragraph 17(d)
26 provides that “[n]o bonds shall be sold nor funds expended under the authority of the Bond Act
27 for the construction of any aqueduct or appurtenance thereto included in the System” unless
28 specified restrictions are met. If the cost of servicing CVP bonds were to be included in the

1 contractual payments of MWD owed to the state, paragraph 17(g)(2) of MWD's long-term
2 contract may also prevent the costs of CVP bonds from being passed onto SWP contractors.

3 **FIRST CAUSE OF ACTION**

4 **Determination of Invalidity:**

5 **Authorization of Bonds and Indebtedness Dependent on Rate Increases the Lack Voter**

6 **Approval; Authorization of Rate Increases that Would Violate Proposition 26**

7 49. Plaintiffs hereby re-allege and incorporate by reference each and every allegation
8 set forth above and below as if set forth fully herein.

9 50. MWD's WaterFix Authorization is invalid because it authorizes the issuance of
10 revenue bonds, secured with liens on future revenues, that are dependent on and rely on future
11 water rate increases which have not been approved, and may never be approved, by voters as
12 required by the California Constitution provisions enacted by Proposition 26.

13 51. MWD's WaterFix Authorization is invalid because it authorizes its General
14 Manager to take any and all actions to effectuate its financial commitment to the project,
15 including the raising of water rates in order to increase revenues required to pay back its revenue
16 bonds, in violation of provisions in the California Constitution that were enacted by Proposition
17 26.

18 52. Any water rate increase made to support MWD's WaterFix financial commitment
19 will necessarily not bear a fair and reasonable relationship to the burdens on or benefits to MWD
20 customers, ratepayers, and member agencies derived from the WaterFix project.

21 53. Imposing 64% of the total WaterFix costs on MWD customers, ratepayers, and
22 member agencies is unreasonable and disproportionate to the benefits derived by the project,
23 using any reasonable and available measure of proportionality.

24 54. Imposing all or nearly all of the costs of the second Delta tunnel on MWD
25 customers, ratepayers, and member agencies is unreasonable and disproportionate, as MWD
26 customers, ratepayers, and member agencies will receive, by MWD's estimation, no additional
27 water supplies from the second tunnel.
28

1 55. The \$5.6 billion estimated cost of the second tunnel is unreasonable and
2 disproportionate to any possible benefits related to increased reliability derived from the second
3 tunnel as only 30% of MWD's water supplies flow through the Sacramento San-Joaquin Delta.

4 56. The \$5.6 billion estimated cost of the second tunnel is an unfair and
5 disproportionate burden to MWD customers, ratepayers, and member agencies, who would be
6 shouldering all or nearly all of the costs of the second tunnel but sharing the benefits of the
7 second tunnel with almost all users of the SWP, most or nearly most of whom would not be
8 paying for those benefits.

9 57. MWD cannot justify its WaterFix Authorization obligations on future sales of its
10 unsubscribed capacity in the second tunnel, or in future wheeling contracts for use of the
11 WaterFix facilities. At the time of MWD's WaterFix Authorization, these plans are speculative
12 at best and cannot satisfy Proposition 26's requirements.

13 58. MWD's WaterFix Authorization exposed its customers, ratepayers, and member
14 agencies to cost overruns that will significantly exceed the estimates it previously disclosed and
15 on which it relied.

16 59. MWD's WaterFix Authorization will be unreasonably and disproportionately
17 borne by MWD customers, ratepayers, and member agencies that receive little, if any, SWP
18 water supplies.

19 **SECOND CAUSE OF ACTION**

20 **Determination of Invalidity: Authorization of Bonds and Indebtedness Dependent on Property**

21 **Tax Increases that Lack Voter Approval; Authorization of Property Tax Increases that Would**

22 **Violate Proposition 13**

23 60. Plaintiffs hereby reallege and incorporate by reference each and every allegation
24 set forth above and below as if set forth fully herein.

25 61. MWD's WaterFix Authorization is invalid because it authorizes the issuance of
26 revenue bonds, secured with liens on future revenues, that are dependent on and rely on future
27 property tax increases which have not been approved, and may never be approved, by voters as
28

1 required by the California Constitution provisions enacted by Proposition 13, California
2 Constitution Article XIII A.

3 62. MWD's WaterFix Authorization is invalid because it authorizes its General
4 Manager to take any and all actions to effectuate its financial commitment to the project,
5 including increasing property taxes in order to raise revenues required to pay back its revenue
6 bonds, in violation of provisions in the California Constitution that were enacted by Proposition
7 13.

8 63. Any property tax increase assessed to support MWD's WaterFix financial
9 commitments will necessarily violate provisions of the California Constitution that were enacted
10 by Proposition 13, because any such property tax increase would necessarily be in excess of 1%,
11 would not qualify as the payment of interest and redemption charges on any indebtedness
12 approved by the voters prior to July 1, 1978, and would be assessed without the approval of a
13 two-thirds vote of the voters. (Cal. Const. art. XIII A, subd. (b)(1) and subd. (b)(2).)

14 64. Any property tax increase assessed in support of MWD's WaterFix Authorization
15 would not qualify for Proposition 13's exemption for some taxes because the taxes will not be
16 paying a debt obligation that was either approved prior to July 1, 1978, or was approved by at
17 least two-thirds of the voters.

18 65. The Burns-Porter Act cannot be used to justify any property tax increase assessed
19 in support of MWD's WaterFix Authorization (and thus qualify for an exemption from
20 Proposition 13) because the tax revenue raised from the WaterFix Authorization cannot and will
21 not be used for one of the four voter-approved priorities described in the Burns-Porter Act.

22 66. The WaterFix construction costs to be paid for by MWD's WaterFix
23 Authorization are for the construction of facilities that are intended to supplement (and not
24 replace) existing infrastructure, and therefore any property tax increase assessed in support of
25 those costs cannot qualify under "Priority 1" of the Burns-Porter Act, which is limited to the
26 annual maintenance, operation, or replacement of the State Water Project system.

27 67. Because the Department of Water Resources has declared that it plans on
28 financing WaterFix under the authority of the Central Valley Project Act (Water Code sections

1 11100 *et seq.*)—not the Burns-Porter Act—any property tax increased assessed in support of
2 MWD’s WaterFix Authorization cannot qualify under Priorities 2 and 3 of the Burns-Porter Act,
3 which are to repay the principal or interest on Burns-Porter bonds, and to reimburse the
4 California Water Fund for funds utilized for construction of the State Water Facilities,
5 respectfully. Priorities 2 and 3 cannot be used to pay for bond obligations issued pursuant to the
6 CVP.

7 68. The Department of Water Resources has proposed that Priority 4 of the Burns-
8 Porter Act authorizes SWP project revenue to flow towards new construction of what DWR
9 describes as Central Valley Project facilities. But even if Priority 4 provides authority for funds
10 to go towards CVP debt obligations, it can be utilized only after all other Burns-Porter funding
11 priorities are met and a surplus remains. Thus, any property tax increase assessed to support
12 MWD’s obligations made in its WaterFix authorization cannot qualify as surplus revenue, left
13 over after all other funding priorities were paid, and thus cannot be used to support Priority 4
14 spending.

15 69. The Burns-Porter Act does not provide any authority for MWD to levy taxes for
16 the purpose of generating a surplus that would qualify for Priority 4 spending.

17 70. If MWD deems its WaterFix Authorization revenues to be independent, and not
18 dedicated to satisfying DWR debt obligations, these revenues would not qualify for an
19 exemption to Proposition 13’s restrictions because the Burns-Porter Act’s authority is limited to
20 DWR-financed and DWR-led state water projects, not independent, district-led projects.

21 **THIRD CAUSE OF ACTION**

22 **Determination of Invalidity: Violation of MWD’s State Water Project Long-Term Contract**

23 71. MWD’s WaterFix Authorization is invalid because it (1) authorizes the issuance
24 of revenue bonds, secured with liens on future revenues, that are dependent on and rely on future
25 property tax increases; (2) authorizes those future property tax increases, despite Paragraph 34 of
26 MWD’s long-term contract that permits MWD to levy property taxes to pay its State Water
27 Project obligations only when it is unable to make its contract payments by other means; and (3)
28

1 authorizes issuance of charges that may be prohibited under MWD's long-term contract,
2 including those specified in paragraph 17.

3 **FOURTH CAUSE OF ACTION**

4 **Determination of Invalidity: Violation of Other Provisions**

5 72. MWD's WaterFix Authorization is invalid because it authorizes actions that
6 exceed the limitations on its authority under its own District Act, Water Code Appendix section
7 109, including but not limited to the requirements for voter approval in section 200 of the
8 District Act.

9 73. MWD's WaterFix Authorization is invalid because it authorizes actions that
10 exceed the common authority of Joint Powers Agencies under the Joint Exercise of Powers Act,
11 Gov. Code, § 6500, *et seq.*, including but not limited to the requirement in section 6502 that
12 exercise of power be "common to the contracting parties."

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray for the following relief:

15 74. That the Court find that this action is properly brought under Government Code
16 section 53511 in the Superior Court for the County of Los Angeles;

17 75. That the Court find that MWD's WaterFix Authorization cannot support a final
18 determination of validity;

19 76. That the Court find that MWD's WaterFix Authorization is invalid, illegal, void,
20 not binding, and not in conformity with applicable provisions of law;

21 77. For costs of this suit;

22 78. For attorneys' fees pursuant to Code of Civil Procedure section 1021.5; and

23 79. For such other and further relief as the Court deems just and proper.

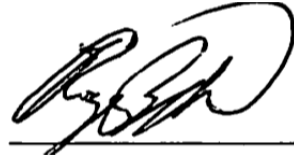
24
25
26 DATED: January 3, 2019

Respectfully Submitted,

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28 Adam Keats
CENTER FOR FOOD SAFETY

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Roger B. Moore
LAW OFFICE OF ROGER B. MOORE

Counsel for Plaintiffs

VERIFICATION

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2
3 I, Rebecca Spector, am the West Coast Director for Plaintiff Center for Food Safety and
4 am authorized to execute this verification on its and the other plaintiff's behalf. I have read the
5 foregoing First Amended Complaint in Validation and am familiar with its contents. I am
6 informed and believe that the matters recited herein are true and on that ground allege that the
7 matters stated herein are true.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct and that this Verification was executed on January 3, 2019, in San
10 Francisco, California.

11 

12 _____
13 Rebecca Spector
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Exhibit A

**THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA**

RESOLUTION 9243

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
AUTHORIZING DISTRICT'S PURCHASE OF CAPACITY INTEREST IN THE
CALIFORNIA WATERFIX, THE FINANCING OF SUCH PURCHASE, AND OTHER
ARRANGEMENTS, AND AUTHORIZING THE GENERAL MANAGER TO
NEGOTIATE, EXECUTE AND DELIVER VARIOUS AGREEMENTS AND
DOCUMENTS RELATED THERETO**

The Board of Directors of The Metropolitan Water District of Southern California (the "Board") hereby finds that:

1. The California Department of Water Resources ("DWR") has proposed the construction of the California WaterFix, which consists of the construction of three new intakes on the east bank of the Sacramento River in the northern California Delta, tunnels connecting these intakes to a new, 30-acre intermediate forebay, and two 30-mile long tunnels carrying water from this forebay to a new pumping plant connected to an expanded and modified Clifton Court Forebay; and

2. It is currently estimated that approximately 67% of the capacity of California WaterFix is subscribed by mostly California State Water Project contractors and that approximately 33% of the capacity of California WaterFix is unsubscribed (the unsubscribed portion of the capacity of the California WaterFix being referred to herein as the "Unsubscribed Capacity Interest"); and

3. The District is proposing to enter into a series of transactions to finance and purchase the Unsubscribed Capacity Interest and to take other actions (these transactions and actions being collectively referred to herein as the "Unsubscribed Capacity Arrangements"):

- (a) DWR and the District, and, at the District's election, a joint powers authority designated or formed by the District (the "Capacity Interest JPA") are proposing to enter into a master agreement (the "Master Agreement") under which the Capacity Interest JPA would purchase the Unsubscribed Capacity Interest in exchange for payments that the Capacity Interest JPA would make to DWR during the construction of the California WaterFix and which DWR would use to construct the California WaterFix; and

- (b)! The Capacity Interest JPA would issue one or more series of revenue bonds (the "JPA Bonds") which it would use to finance the payments it would make under the terms of the Master Agreement; and
- (c)! The Capacity Interest JPA and the District would enter into an installment purchase agreement or a series of installment purchase agreements (collectively, the "Capacity Interest IPA") pursuant to which the Capacity Interest JPA would transfer the Unsubscribed Capacity Interest to the District and the District would make installment payments that would support the payment of the JPA Bonds; and
- (d)! The District would secure its obligations to make installment payments with a lien on its water revenues; and
- (e)! The District may enter into one or more purchase agreements (collectively, the "Capacity Interest Purchase Agreements") under which other water agencies would agree to purchase or make payments for the purchase of the Unsubscribed Capacity Interest and the District would transfer to any such water agency all or a portion of the Unsubscribed Capacity Interest; and

4. The Board of Directors of the District desires to authorize the General Manager of the District to effect the Unsubscribed Capacity Arrangements and to negotiate, execute and delivery one or more agreements and documents necessary or advisable to carry into effect the Unsubscribed Capacity Arrangements.

NOW, THEREFORE, the Board of Directors (the "Board") of The Metropolitan Water District of Southern California, DOES HEREBY RESOLVE, DETERMINE AND ORDER as follows:

1. **Approval of the Unsubscribed Capacity Arrangements.** Each of the above recitals is true and correct and is adopted and approved by the Board. Subject to Section 3, the Board hereby authorizes and approves the District's participation in the Unsubscribed Capacity Arrangements.

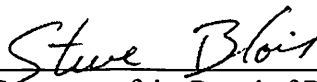
2. **Authorization of General Manager.** The Board hereby authorizes the General Manager of the District, and any of the designees of the General Manager of the District, to do any and all things necessary or convenient in the best interests of the District to effect any Unsubscribed Capacity Arrangements, and to negotiate, execute and deliver any and all agreements and documents that the General Manager or his designee determines, in his or her sole discretion, to be necessary or convenient in the best interests of the District to carry out any Unsubscribed Capacity Arrangement, and to execute all papers, documents, certificates, agreements or other instruments that may be required in order to carry out any Unsubscribed Capacity Arrangement or to evidence said authority and its exercise.

3. **Limitation of Authorization.** The District shall not enter into any Unsubscribed Capacity Arrangement under Section 1 or 2 of this Resolution if, after giving effect to such Unsubscribed Capacity Arrangement, the District's funding of such Unsubscribed Capacity Arrangement, together with the District's estimated costs in its capacity as a State Water Project

contractor, would commit the District to pay for more than 64.6% of the estimated costs of California WaterFix; provided, however, that the General Manager shall calculate the total amount of estimated costs of California WaterFix and the District's responsibility to pay for costs of California WaterFix based on such reasonable assumptions and methods as the General Manager shall determine in his or her reasonable discretion and judgment.

4. **Severability.** If any provision of this Resolution is held invalid, that invalidity shall not affect other provisions of this Resolution which can be given effect without the invalid portion or application, and to that end the provisions of this Resolution are severable.

I HEREBY CERTIFY that the foregoing is a full, true and correct copy of a Resolution adopted by the affirmative votes of members representing more than 50 percent of the total number of votes of all members of the Board of Directors of The Metropolitan Water District of Southern California at its meeting held on April 10, 2018.



Secretary of the Board of Directors
of The Metropolitan Water District
of Southern California



003738645 : RESOLUTION 9243 - Authorizing District's purchase of Capacity interes

Property	Value
Title	RESOLUTION 9243 - Authorizing District's purchase of Capacity interest in the California WaterFix ...
Date	7/10/2018 12:00:00 PM
Board Item Type	Resolution
Reference Number	Resolution attached to Board letter 8-6
Organization From, Author	MWD/Secretary of the Board
Committee Name	Board of Directors
Comment	Resolution attached to Board letter 8-6 and approved at July 10, 2018 Board meeting
Customer	
Organization To, Recipient	MWD/Board of Directors
Service Connection ID	
Keyword	
Current Version Author	ReplDaemon
Current Version Date	8/23/2018 8:15:03 AM
Added By User	ReplDaemon
Added By Group	Administrators
File Name	9243Res 07102018.pdf
File Size	154705
Comment	Resolution attached to Board letter 8-6 and approved at July 10, 2018 Board meeting



Exhibit B

**THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA**

RESOLUTION 9244

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
AUTHORIZING DISTRICT'S FINANCIAL SUPPORT OF CALIFORNIA WATERFIX
AND AUTHORIZING THE GENERAL MANAGER TO NEGOTIATE, EXECUTE AND
DELIVER VARIOUS FINANCING
IMPLEMENTATION AGREEMENTS AND RELATED DOCUMENTS**

The Board of Directors of The Metropolitan Water District of Southern California (the "Board") hereby finds that:

1. The California Department of Water Resources ("DWR") has proposed the construction of the California WaterFix, which consists of the construction of three new intakes on the east bank of the Sacramento River in the northern California Delta, tunnels connecting these intakes to a new, 30-acre intermediate forebay, and two 30-mile long tunnels carrying water from this forebay to a new pumping plant connected to an expanded and modified Clifton Court Forebay; and

2. Various participants in the California State Water Project (the "Project Participating Members") have proposed assisting DWR in the financing of California WaterFix, among others, in the following ways (collectively, the "CWF Financial Arrangements"):

- (a)! The CWF Participating Members have proposed forming a joint powers authority (the "Financing JPA") that would facilitate through different actions the issuance of revenue bonds by DWR (the "DWR Bonds") to finance the construction of the CWF, including (without limitation) through the issuance of bonds of its own (the "Financing JPA Bonds") for the purpose of financing California WaterFix through the purchasing of the DWR Bonds; and
- (b)! The CWF Participating Members have proposed supporting the Financing JPA Bonds by protecting the purchasers of such bonds from the risk of nonpayment or invalidity of DWR Bonds through one or more agreements (any such agreement, a "support agreement" and any such support agreement or other form of support of the DWR Bonds being referred to herein as "Support"), including, without limitation, in the form of debt service support agreements, or through the purchase by the CWF Participating Members of DWR Bonds or other property through installment purchase agreements; and

- (c)! The Financing JPA and DWR would enter into a security agreement (the “Security Agreement”) pursuant to which DWR would agree that if it defaults in the payment of debt service on the DWR Bonds or other agreed-upon conditions, DWR would transfer to the Financing JPA or another designated entity all of DWR’s right, title and interest in California Waterfix and use its efforts to assist any other necessary transfers to permit the Financing JPA or other designated entity to construct California WaterFix; and

3. The Board of Directors of the District desires to authorize the General Manager of the District to negotiate, execute, and deliver the CWF Financial Arrangements, in addition to the formation of the Financing JPA.


NOW, THEREFORE, the Board of Directors (the “Board”) of The Metropolitan Water District of Southern California, DOES HEREBY RESOLVE, DETERMINE AND ORDER as follows:

1. **Approval of the CWF Financial Arrangements.** Each of the above recitals is true and correct and is adopted by the Board. The Board hereby authorizes and approves the District’s participation in the CWF Financial Arrangements.

2. **Authorization of General Manager.** The Board hereby authorizes the General Manager of the District, and any of the designees of the General Manager of the District, to do any and all things necessary or convenient in the best interests of the District to effect any, and to effect the District’s participation in all or any, CWF Financial Arrangements (referred to herein as a “District Participation Action”), and to negotiate, execute and deliver any and all agreements and documents that the General Manager or his designee determines, in his or her sole discretion, to be necessary or convenient in the best interests of the District to carry out any District Participation Action, and to execute all papers, documents, certificates, agreements or other instruments that may be required in order to carry out any District Participation Action or to evidence said authority and its exercise. The Board hereby expressly authorizes the investment by the District in the DWR Bonds and authorizes an investment by the District in the DWR Bonds in which the maturity of the DWR Bonds exceeds five years. The Board further authorizes the General Manager of the District to make such revisions and changes to the investment policy of the District that are necessary or advisable to effect one or more District Participation Acts. The Board further authorizes the General Manager to secure the District’s obligations under any District Participation Action with a lien on its water revenues on such terms and conditions as the General Manager shall determine in his or her discretion.

3. **Severability.** If any provision of this Resolution is held invalid, that invalidity shall not affect other provisions of this Resolution which can be given effect without the invalid portion or application, and to that end the provisions of this Resolution are severable.

I HEREBY CERTIFY that the foregoing is a full, true and correct copy of a Resolution adopted by the affirmative votes of members representing more than 50 percent of the total number of votes of all members of the Board of Directors of The Metropolitan Water District of Southern California at its meeting held on April 10, 2018.


Secretary of the Board of Directors
of The Metropolitan Water District
of Southern California



003738646 : RESOLUTION 9244 - Authorizing District's Financial Support of Califor

Property	Value
Title	RESOLUTION 9244 - Authorizing District's Financial Support of California WaterFix ...
Date	7/10/2018 12:00:00 PM
Board Item Type	Resolution
Reference Number	Resolution attached to Board letter 8-6
Organization From, Author	MWD/Board Secretary
Committee Name	Board of Directors
Comment	Resolution attached to Board letter 8-6, approved 7/10/18
Customer	
Organization To, Recipient	MWD/Board of Directors
Service Connection ID	
Keyword	
Current Version Author	ReplDaemon
Current Version Date	8/23/2018 8:15:04 AM
Added By User	ReplDaemon
Added By Group	Administrators
File Name	9244 Res 07102018.pdf
File Size	154358
Comment	Resolution attached to Board letter 8-6, approved 7/10/18



View Security

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO.

3 I, Russell Howze, declare: I am employed in San Francisco, California. I am over the age
4 of 18 and not a party to the foregoing action. My business address is Center for Food Safety, 303
5 Sacramento Street, 2nd Floor, San Francisco, California, 94111. My email is
6 rhowze@centerforfoodsafety.org.

7 On January 3, 2019, I served a true and correct copy of the following document(s):

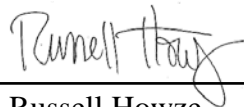
8 **FIRST AMENDED COMPLAINT IN VALIDATION**

9 on all parties in this action by placing a true and correct copy, enclosed in a sealed envelope
10 addressed as follows: See attached list.

11 By enclosing the document in a sealed envelope addressed to the persons at the addresses
12 listed in the Service List and places in an envelope for collection and mailing, following our
13 ordinary business practice. I am readily familiar with the organization's practice for collecting
14 and processing correspondence for mailing. Under that practice such envelope would be
15 deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid, at San
16 Francisco, California.

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

19 Executed on January 3, 2019, at San Francisco, California.

20
21 

22 _____
Russell Howze

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SERVICE LIST

1 2 3 4 5 6	Adam W. Hofmann Hanson Bridgett LLP 425 Market Street, 26 th Floor San Francisco, CA 94105 T: 415-777-320 ahofmann@hansonbridgett.com	Attorneys for Defendants Metropolitan Water District of Southern California
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