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

16 FOOD & WATER WATCH and CENTER FOR
17 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 Resolutions
28 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

**COMBINED OPPOSITION TO:
(1) DEMURRER BY METROPOLITAN
WATER DISTRICT TO PLAINTIFFS'
FIRST AMENDED COMPLAINT IN
VALIDATION;
(2) DEMURRER BY SAN DIEGO COUNTY
WATER AUTHORITY TO PLAINTIFF'S
FIRST CAUSE OF ACTION; and
(3) MOTION TO STRIKE BY
METROPOLITAN WATER DISTRICT
PLAINTIFFS' FOURTH CAUSE OF
ACTION**

**DEPT.:47
ROOM: 507
JUDGE: Hon. Randolph Hammock**

Action Filed: September 7, 2018

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1 **INTRODUCTION**

2 This is a challenge to Metropolitan Water District’s (“MWD”) authorization of binding debt,
3 including future issuance of revenue bonds, to impose payment duties on anticipated billions in costs,
4 but without any specific ceiling, for the controversial WaterFix project. It is properly brought under
5 California’s validation statutes, which require actions challenging such authorizations to be brought
6 within 60 days. One of Plaintiffs’ primary grounds for invalidity is that MWD, in authorizing WaterFix
7 indebtedness, relies on and creates open-ended obligations necessitating future tax or rate increases not
8 approved by voters, as required by the California Constitution. Plaintiffs also allege that the repayment
9 plan violates the terms of the long-term contracts between MWD and the Department of Water
10 Resources for the operation of the State Water Project, as well as other requirements, including MWD’s
11 own District Act. This is a validation action, concerned with MWD’s authorization of financial
12 transactions and indebtedness, not a taxpayer challenge to taxes or rate increases.

13 MWD demurs on four grounds: (1) MWD did not authorize any bonds itself, it only authorized
14 a yet-to-be-formed joint powers authority to issue the bonds; (2) Plaintiffs lack standing; (3) Plaintiffs
15 fail to allege the adoption or approval of any fee or tax; and (4) the complaint fails to state a claim for
16 relief. San Diego County Water Authority (“SDCWA”) demurs to the First Cause of Action on almost
17 identical grounds: that no fee has actually been levied and that the action is unripe. MWD also moves
18 to strike Plaintiffs’ Fourth Cause of Action, substantially similar grounds to its demur.¹ Each of these
19 challenges must be rejected. First, it is inapposite that the yet-to-be-formed joint powers authority
20 referenced in MWD’s resolutions will actually issue the bonds; the law is crystal-clear that it is MWD’s
21 *authorization* of the indebtedness that matters, regardless of who or what actually issues the bonds.
22 Second, the statute that authorizes this action provides an exceptionally broad and inclusive standing
23 provision: “any interested person may bring” such an action. (Code Civ. Proc. § 863.) The FAC
24 alleges—and demonstrates—that Plaintiffs are persons interested in MWD’s bond authorizations
25

26 ¹ Because the arguments in MWD’s demurrer, SDCWA’s demurrer, and MWD’s motion to strike
27 almost completely overlap each other, Plaintiffs submit this Combined Opposition to both demurrers
28 and the motion to strike. Plaintiffs specifically address SDCWA’s arguments in Section V, below, but
also incorporate by reference all arguments pertaining to MWD’s demurrer, which apply equally to
SDCWA’s demurrer.

1 sought to be validated. Third, there is no need for Plaintiffs to allege that any taxes or fees have been
2 adopted; that MWD has authorized repayment of bonds and secured this extraordinary obligation with
3 future tax and/or rate increases is more than sufficient. Still, as the FAC alleges, MWD did more; it
4 also authorized MWD's General Manager to raise taxes and/or rates, without first securing required
5 voter approval. Finally, Plaintiffs' fourth cause of action amply states a cognizable claim rooted in
6 DWR's circumvention of other legal requirements, including voting provisions in MWD's own District
7 Act.

8 **LEGAL STANDARD**

9 **Demurrer**

10 A demurrer requires a high burden of proof, and will be denied if a complaint "alleges facts
11 sufficient to state a cause of action under any legal theory, such facts being assumed true for this
12 purpose." (*Committee for Green Foothills v. Santa Clara County Bd. Supervisors* (2010) 48 Cal.4th
13 32, 42.) A demurrer tests the sufficiency of a pleading by raising questions of law (*White v. Lieberman*
14 (2002) 103 Cal.App.4th 210, 216), while admitting the truth of facts properly pleaded. (Code Civ.
15 Proc. § 430.10; *Williams v. So. Cal. Gas* (2009) 176 Cal.App.4th 591, 600, citing *Colm v. Francis*
16 (1916) 30 Cal.App.742, 752) ("a court ruling on a general demurrer is not empowered to "ascertain
17 whether the facts stated [in the complaint] are true or untrue.") Therefore, if a complaint alleges
18 sufficient facts to support a particular cause of action, no demurrer lies.

19 **Validation Action**

20 Actions by public agencies regarding bonds, warrants, contracts, obligations, and evidences of
21 indebtedness are subject to court validation upon their authorization. (Code Civ. Proc. §§ 860, 864.)
22 Such actions can be brought by either the agency themselves or by "interested persons." (Code Civ.
23 Proc. § 863.) Validation actions allow public agencies to obtain judgments to quickly affirm the
24 legality of their financing commitments. (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835,
25 838.) A key purpose of validation actions is to limit the extent to which delay due to litigation may
26 impair a public agency's ability to operate financially. (*Graydon v. Pasadena Redevelopment Agency*
27 (1980) 104 Cal.App.3d 631, 644-645.) Validation actions also facilitate a public agency's financial
28 transactions with third parties by affirming their legality. (*Walters v. County of Plumas* (1976) 61

1 Cal.App.3d 460, 468 [“The fact that litigation may be pending or forthcoming drastically affects the
2 marketability of public bonds.”].) The validating statutes should be interpreted so as to uphold their
3 purpose: “the acting agency’s need to settle promptly all questions about the validity of its action.”
4 (*Millbrae Sch. Dist. v. Superior Court* (1989) 209 Cal.App.3d 1494, 1499.)

5 ARGUMENT

6 I. MWD Authorized Indebtedness Through the Issuance of Bonds.

7 MWD argues that Plaintiffs’ first through third causes of action fail as a matter of law because it is
8 not MWD that will be issuing the bonds, but rather a “yet-to-be formed joint-powers authority that itself is
9 expected to issue bonds under its own authority.” (MWD Demurrer at p. 11.) MWD cannot deny that the
10 challenged resolutions constitute authorizations of indebtedness by MWD, and that this debt will be repaid
11 by MWD and secured by MWD’s water rate revenue and property tax revenue. With Resolution 9243,
12 MWD authorized the issuance of bonds by a joint powers authority (“JPA”) that MWD will create, and
13 MWD authorized the repayment and securitization of the bonds with its own future water revenues. (FAC,
14 Ex. A.) Similarly, with Resolution 9244, MWD authorized its general manager to form, with other
15 agencies, a “Financing JPA” that will be able to issue “bonds of its own,” to be secured in part by MWD’s
16 water revenues. (FAC, Ex. B.) These resolutions, on their face, unequivocally authorize “bonds, warrants,
17 contracts, obligations, and evidences of indebtedness” subject to validation that are “deemed to be in
18 existence upon their authorization.” (Code. Civ. Proc. § 864.) Whether the bonds are ultimately issued by
19 MWD itself or a JPA is irrelevant; it is MWD that has authorized its own indebtedness, though the issuance
20 of bonds that it will repay and secure.

21 Particularly instructive here is the Second District Court of Appeal’s opinion in *California*
22 *Commerce Casino, Inc. v. Schwarzenegger* (2007) 146 Cal.App.4th 1406, a case notably not cited by
23 MWD. There, the plaintiffs challenged the constitutionality of enacted legislation that ratified tribal-state
24 gaming compacts and “authorized the issuance of bonds securitized by the moneys paid by the five tribes to
25 the state pursuant to the amended compacts.” (*California Commerce Casino*, supra, 146 Cal.App.4th at p.
26 1413.) Ruling that such a challenge should have been brought as a validation action, even though no bonds
27 had been issued and no debt was undertaken, the court stated that “the application of the validation statutes
28 is not contingent on whether the bonds are ultimately issued at the end of the process. The applicability of

1 the validation statutes is determined at the beginning of the financing process when the contracts—in this
2 case the amended compacts—required to implement that process are approved.” (*Id.* at p. 1431.) As the
3 court explained, “the amended compacts are inextricably intertwined with the state’s intended use of the
4 income stream created by them and with the bonds to be issued at a later date.” (*Id.* at p. 1430.)

5 Here, MWD has initiated the beginning of the financing process by approving Resolutions 9243 and
6 9244. The time to challenge the validity of this financial commitment by MWD is now, not when the bonds
7 are issued at some later date by some yet-to-be-formed JPA.

8 **II. Plaintiffs Have Standing.**

9 MWD erroneously asserts that “the validation procedures at Code of Civil Procedure section
10 860, *et seq.*, does not create independent standing to sue.” (MWD Demurrer at p. 14.) MWD’s only
11 support comes from irrelevant dicta in *Torres v. City of Yorba Linda* that regards taxpayer standing
12 under Code Civ. Proc. section 526a. (*Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035, 1046-
13 48.) This is not a taxpayer action under section 526a and thus Plaintiffs never cite to section 526a in
14 their complaint. Instead, while citing other laws to establish invalidity on the merits, Plaintiffs rely for
15 standing on Code Civ. Proc. section 863, which states that “[i]f no proceedings have been brought by
16 the public agency pursuant to this chapter, any interested person may bring an action within the time
17 and in the court specified by Section 860 to determine the validity of such matter.” (Code Civ. Proc. §
18 863.) This language clearly creates independent standing for Plaintiffs to sue.

19 **A. Plaintiffs Are “Interested Persons.”**

20 MWD contends that “Plaintiffs have no standing to challenge the validity of rates or taxes they
21 do not pay,” pointing out that MWD is a water wholesaler, and that Plaintiffs and/or their members do
22 not purchase water directly from MWD. (MWD Demurrer at p. 12-15.) Again, Plaintiffs do not
23 challenge assessed taxes or rate increases; they challenge MWD’s authorization of indebtedness
24 through the issuance of revenue bonds and authorization of future tax and/or rate increases to pay for
25 and secure those bonds. (FAC, p. 2.) MWD’s authorization explicitly provides that the revenue bonds
26 will be secured by a lien on MWD’s future water revenues. (Complaint Ex. A, p. 2 and Ex. B, p. 2.)
27 And it implicitly authorizes the general manager to increase taxes and/or water rates to raise revenue to
28 pay for the bonds. (Complaint Ex. A, p. 2 [“The Board hereby authorizes the General Manager ... to

1 do any and all things necessary or convenient in the best interest of [MWD] to effect any Unsubscribed
2 Capacity Arrangements...”]; Complaint Ex. B, p. 2 [“The Board further authorizes the General
3 Manager to secure the District’s obligations under any District Participation Action with a lien on its
4 water revenues on such terms and conditions as the General Manager shall determine in his or her
5 discretion.”].) Because Propositions 13 and 26 prohibit MWD from raising property taxes or water
6 rates to pay for MWD’s WaterFix project obligations without first securing voter approval, MWD’s
7 authorization of bonds that are secured by liens on these future tax and/or rate increases is invalid, and
8 Plaintiffs, whose members would have to pay any tax or rate increases, have standing.

9 MWD cites to *Chiatello v. City & County of San Francisco* to support its statement that “[t]o
10 challenge the validity of a tax or other government levy, a plaintiff must be directly obligated to pay it.”
11 (*Chiatello v. City & County of San Francisco* (2010) 189 Cal.App.4th 472, 477.) But *Chiatello* regards
12 a taxpayer action under Code Civil Procedure § 526a, not section 863 or validation law. Similarly,
13 *Reynolds v. Calistoga* regards a plaintiff that the court determined “lacks standing under § 526a.”
14 (*Reynolds v. Calistoga* (2014) 223 Cal.App.4th 865, 873.) Although the opinion addresses separate
15 “public interest” and “public trust” standing arguments raised by the plaintiff, it does not discuss
16 section 863. (*Id.* at pp. 873-876.) The same is true for almost every case cited by MWD in support of
17 its taxpayer standing argument; none of these are section 863 validation actions.²

18 What matters in this case is the standing standard set out in the validation statute. Code of Civil
19 Procedure section 863 provides that when no validation action is brought by a public agency, “any
20 interested person” may bring an action challenging the validity of a matter. (Code Civ. Proc., § 863.)
21 While “[t]hat phrase has been narrowly construed” in distinct types of cases addressed below (e.g.,
22 *Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035, 1042), courts have interpreted it to include
23 many types of plaintiffs in validation actions. These include a party who was stipulated to be “a
24 citizen, resident and taxpayer of the city” and “a person interested in the matter” of the redevelopment
25

26 ² See MWD Demurrer at pp. 10-13; *Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081 [action brought
27 under Business & Professions Code § 17200 and Civil Code § 1750 governed by Revenue and Taxation
28 [action brought under Revenue & Taxation Code § 6933]; *Water Replenishment Dist. of So. Cal. v. City
of Cerritos* (2013) 200 Cal.App.4th 1450 [Business & Professions Code § 17200 action].

1 plan at issue (*Card v. Cmty. Redevelopment Agency* (1976) 61 Cal.App.3d 570, 574); residents and
2 taxpayers of the city in which a redevelopment project was located but who did not live within the
3 specific redevelopment area (including an unincorporated association made up of such residents)
4 (*Regus v. City of Baldwin Park* (1977) 70 Cal.App.3d 968, 972); an unincorporated association
5 “composed of taxpayers, residents, landowners and/or registered voters” whose “sole purpose for
6 existence is to watch for and follow annexation proceedings and to test the validity of annexations
7 when they occur” (*Citizens Against Forced Annexation v. Cty. of Santa Clara* (1984) 153 Cal.App.3d
8 89, at pp. 89 and 97); and school districts whose future tax bases might be affected by unspecified
9 future financing authorized by a redevelopment plan (*Meaney v. Sacramento Housing &*
10 *Redevelopment Agency* (1993) 13 Cal.App.4th 566, 573-574).

11 Like the plaintiff associations in *Regus* and *Citizens Against Forced Annexation*, Plaintiffs each
12 allege that they are non-profit organizations with taxpaying and rate-paying members living within
13 MWD’s service area. (Complaint, ¶¶ 1, 2.) Like the association plaintiff in *Citizens Against Forced*
14 *Annexation*, which the court found to have a “direct organizational interest in the annexation
15 procedures,” i.e., an interest in “see[ing] that the government wielded its annexations power properly,”
16 Plaintiffs here allege an interest in “ensuring that MWD complies with law and requirements implicated
17 in” MWD’s financial authorizations. (*Citizens Against Forced Annexation v. Cty. of Santa Clara*,
18 *supra*, 153 Cal.App.3d at p. 98; Complaint, ¶¶ 1, 2.) And like the school district in *Meaney* that would
19 be affected by unspecified future financing authorized in a development agreement, Plaintiffs allege
20 that they will be exposed to excessive and undue financial risks and losses of accountability due to the
21 unspecified future tax and/or rate increases authorized by MWD’s WaterFix bond authorizations.
22 (*Meaney v. Sacramento Housing & Redevelopment Agency, supra*, 13 Cal.App.4th at p. 573;
23 Complaint, pp. 3-4; 11-13.) Plaintiffs are thus markedly unlike the individual plaintiffs in *Torres*, who
24 did not have standing to challenge a city’s redevelopment plan under section 863 because they did not
25 reside in the city, pay property taxes in the city, or have any other beneficial interest in the area other
26 than a vague plan to move to the city. (*Torres, supra*, 13 Cal.App.4th at pp. 1044, 1046.)

27 Plaintiffs need not allege that their members include any of MWD’s 26 member agencies; they
28 clearly allege their direct interest in MWD’s authorizations. The Complaint alleges that: (a) MWD’s

1 financial support of the WaterFix project will take the form of the issuance of revenue bonds secured by
2 a lien on its future water revenues (FAC, ¶¶ 4, 23); (b) MWD authorized its general manager to raise
3 rates and increase property taxes, at the general manager’s sole discretion, without voter approval
4 (FAC, ¶¶ 6, 23); (c) MWD plans to recover its increased spending through increased wholesale water
5 rates (FAC, ¶¶ 23-24); (d) MWD admits that increased wholesale rates lead to corresponding retail
6 rates, and thus residential ratepayers will pay an extra \$4.80 per month as a result of MWD’s WaterFix
7 authorization (FAC, ¶ 25); (e) Residential rate increases are likely to be far higher than \$4.80, “perhaps
8 double, triple, or more,” (FAC, ¶ 26); and (f) the terms of the SWP contracts require MWD to levy
9 taxes if it is unable to raise sufficient funds by other means (FAC, ¶ 45). Moreover, Plaintiffs allege
10 that the costs authorized by MWD’s actions will be unreasonable and disproportionate, both to water
11 ratepayers and taxpayers within MWD’s service area, as well as to MWD’s member agencies, of which
12 Plaintiffs’ members are customers. (FAC, ¶¶ 50-59.) MWD tries to evade liability as a mere
13 wholesaler, but it has the power to raise the property taxes of Plaintiffs’ members and the power to
14 raise wholesale rates that will be directly passed on to Plaintiffs’ members.

15 Although no published case addresses standing in validation actions against a water wholesaler,
16 courts have consistently recognized plaintiffs’ “direct interest” in validation actions even when their
17 financial interests were indirect. For example, in *Regus v. City of Baldwin Park*, the court determined
18 that the plaintiffs had standing to challenge the financing of a redevelopment project because the
19 project would divert revenues from some agencies (to which the plaintiffs paid taxes) to the
20 redevelopment agency. (*Regus v. City of Baldwin Park, supra*, 70 Cal.App.3d at pp. 972.) Nothing in
21 the opinion suggests that the plaintiffs’ taxes would go up, but the court nonetheless found that
22 plaintiffs’ interest in the financial affairs of agencies to which they paid taxes was “likely to motivate
23 plaintiffs to prosecute the action vigorously and provides sufficient basis to give them standing.” (*Id.*)
24 Similarly, the court in *Meaney v. Sacramento Housing & Redevelopment Agency* found the plaintiff
25 school districts to have standing to challenge the authorization of a redevelopment plan even though the
26 financing agreement did “not commit the Agency to any specific form of financing,” but made possible
27 the future issuance of tax incremental bonds and subordinated the County’s (and thus the school
28

1 districts’) interest in potential future property taxes within the redevelopment area. (*Meaney v.*
2 *Sacramento Housing & Redevelopment Agency, supra*, 13 Cal.App.4th at pp. 573-574.)

3 Here, Plaintiffs are customers of water retailers who obtain their water from MWD. Like the
4 plaintiffs in *Regus*, Plaintiffs have an interest in the financial affairs of their water providers and in the
5 financial affairs of their providers’ water wholesaler (especially because that wholesaler can levy taxes
6 directly on Plaintiffs). These interests are sufficient to clearly motivate Plaintiffs to prosecute this
7 action vigorously.

8 **B. Plaintiffs Have Associational Standing.**

9 MWD also argues that Plaintiffs lack associational standing because the claims asserted in the
10 FAC are not germane to the organizations’ purposes. (MWD Demurrer at p. 15-16.) But MWD
11 selectively quotes the FAC, diminishing both organizations’ stated interest in the litigation. While
12 Food & Water Watch is indeed “a non-profit ‘that champions clean water and healthy food for all’”
13 (Demurrer at pp. 15-16), the organization also “stands up to corporations that put profits before people,
14 and advocates for a democracy that improves people’s lives and protects our environment.” (FAC, ¶
15 8.) Similarly, while the Center for Food Safety’s members can indeed be “characterized by their
16 interest in ‘food production and equitable water distribution,’” (MWD Demurrer at p. 13), the
17 organization also works “to protect human health and the environment by promoting sustainable
18 agriculture.” (FAC, ¶ 9.) MWD’s statement that “none of these organizing principles touches on the
19 public-finance concerns raised by Plaintiffs’ FAC” (MWD Demurrer at p. 13) is directly contradicted
20 by Food & Water Watch’s advocacy “for a democracy that improves people’s lives and protects our
21 environment,” which is clearly germane to this lawsuit’s goal of holding a public agency accountable to
22 the law and the public, and by the Center for Food Safety’s purpose of promoting sustainable
23 agriculture, which is clearly germane to MWD’s attempt to shift an unreasonable and disproportionate
24 burden of the costs of the WaterFix project, that will significantly benefit large agricultural water users
25 in the San Joaquin Valley, to the residential and commercial public that is dependent on MWD for their
26 water. (See Complaint, ¶¶ 50-59.) A “court must assume the truth not only of all facts properly pled,
27 but also of those facts that may be implied or inferred from those expressly alleged in the” pleading.
28 (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459.)

1 Applying this standard to the Complaint, Plaintiffs clearly have standing as associations representing
2 their members' legitimate interests in MWD's bond authorizations.

3 **III. Plaintiffs Do Not Need to Allege Tax or Rate Increases in Order to Challenge the Validity**
4 **of MWD's Bond Authorizations**

5 MWD contends that Plaintiffs' first through third claims are "misplaced" because they fail to
6 allege the adoption of rates or taxes in the challenged resolutions. (MWD Demurrer at p. 16.)
7 Specifically, MWD asserts that "no challenge could lie until Metropolitan's general manager actually
8 increase[s] a rate or fee in a manner that violate[s] the law," and "the mere possibility that he will do so
9 is not justiciable." (MWD Demurrer at p. 19.) But this action does not challenge the setting of water
10 rates or property taxes, it challenges MWD's authorization of indebtedness through the issuance of
11 bonds. A challenge to an agency's bond authorization cannot wait until the agency issues the bonds or
12 raises the funds to repay the bonds, it must be brought within 60 days of the *authorization* of the
13 issuance of the bonds, and no later. (Code Civ. Proc. § 863.) MWD's timeliness argument is thus
14 misplaced; this action was brought within 60 days of MWD's authorization of indebtedness and
15 authorization of the issuance of bonds, the repayment of which is explicitly dependent on and secured
16 by rate and/or tax increases that have not been approved by voters. Although the requirement that the
17 rate and tax increases be approved by voters comes from the California Constitution, this is a validation
18 challenge, necessarily and properly brought within 60 days of MWD's authorization.

19 **A. Validation Serves the Function of Marketplace Confidence**

20 MWD authorized the issuance of bonds that are secured by and will be repaid by rate and/or tax
21 increases that have not yet been approved by voters. This makes MWD's authorization invalid; MWD
22 does not have the legal authority to issue a bond secured by future tax and/or rate increases that require
23 voter approval until it has secured that voter approval. But MWD argues that the legality of its
24 repayment plan cannot be considered in an action challenging the validity of its bond authorization.
25 According to MWD's argument, agencies should be allowed to incur debt, in the form of bonds,
26 secured by illegal rate and/or tax increases, and the illegality of those rate and tax increases could not
27 even be considered when determining the validity of the bond authorization.

28 MWD's argument completely undermines the purpose of a validation action, which is to resolve
legal challenges to financing decisions as quickly as possible, and thus establish the legality of those

1 decisions before the debt is incurred or bonds issued. (See *Planning & Conservation League v. Dep't*
2 *of Water Res.* (1998) 17 Cal.4th 264, 271-272 [“validation actions are most commonly used to secure a
3 judicial determination that a government entity’s proposed issuance of bonds is valid.”].) Investors are
4 highly unlikely to purchase public agency bonds that may be subject to a future legal challenge, and
5 thus establishing legal certainty for those bonds is paramount. (*Friedland, supra*, 62 Cal.App.4th at p.
6 842 [“The fact that litigation may be pending or forthcoming drastically affects the marketability of
7 public bonds” (quotation marks and citation omitted)]; *State of California ex rel. Pension Obligation*
8 *Bond Committee v. All Persons Interested in the Matter of the Validity of the California Pension*
9 *Obligation Bonds to be Issued* (2007) 152 Cal.App.4th 1386, 1397 [“Within their proper scope, such
10 validation actions serve an important function in eliminating legal uncertainty that could impair a
11 public agency’s ability to operate, market bonds, or the like.”].)

12 Therefore, validation actions challenging the validity of bond authorizations must proceed “at
13 the beginning of the financing process,” in order to ensure that the legal challenges are resolved before
14 those bonds are sold. (*California Commerce Casino, supra*, 146 Cal.App.4th at p. 1431.) Bonds depend
15 on the confidence of investors, who require adequate assurance that they will be repaid. A
16 determination that a bond’s repayment scheme was illegal, made after the bonds were issued, would
17 violate that core tenet.

18 **B. MWD’s Bond Authorizations Are Properly Challenged Now.**

19 As discussed above, a key objective of a validation action is to limit the extent to which delay
20 due to litigation may impair a public agency’s ability to operate financially. (*Friedland, supra*, 62
21 Cal.App.4th at pp. 842–843.) A validation action also serves to fulfill the important objective of
22 “facilitat[ing] a public agency’s financial transactions with third parties by quickly affirming their
23 legality” at the beginning of the approval process. (*Id.* at p. 843.) Thus, the validation statutes make
24 clear that if no actions are brought to challenge the validity of a bond authoriazation, the authorization
25 is deemed valid, and “shall permanently enjoin the institution by any person of any action or
26 proceeding raising any issue as to which the judgment is binding and conclusive.” (Code Civ. Proc. §
27 870, subd. (a).) As Plaintiffs allege, MWD’s authorization not only authorizes the issuance of the
28 bonds, it secures the debt on future water rates. (FAC, ¶¶ 4, 23.) And MWD’s contract with DWR

1 requires it to raise taxes if it cannot make its payment obligations from its water rates. (FAC, ¶ 45.)
2 Pursuant to section 870, there is a very real possibility that future challenges to the tax and/or rate
3 increases, including challenges under Propositions 13 or 26, could be permanently foreclosed if the
4 bonds are validated now. Moreover, because the resolutions also authorize MWD’s General Manager
5 to “do any and all things necessary or convenient in the best interests of the District to effect” any of
6 the financial transactions, the resolutions on their face authorize the General Manager to raise taxes
7 and/or water rates to pay for the bonds. (FAC, Ex. 1 at p. 2; Ex. 2 at p. 2.) Waiting until taxes or rates
8 were actually raised, after the bonds were issued, would completely violate the purpose of the
9 validation statutes.

10 MWD cites to *Citizens for Fair REU Rates v. City of Redding*, a taxpayer action, for support of
11 its argument that Plaintiffs’ action failed because taxes and rates have not yet been raised to pay for the
12 bonds. (MWD Demurrer at pp. 17-19; *Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.
13 5th 1, 237.) But this is a taxpayer challenge, not a validation action. Nowhere in *Redding* is section
14 863 cited, let alone discussed. Again, Plaintiffs are not challenging taxes or water rates; they are
15 challenging the approval of the issuance of bonds.

16 To the extent that Plaintiffs’ challenge requires a determination *now* of the legality of *future* tax
17 and/or rate increases (whether because the bonds are secured by such future tax and/or rate increases, or
18 because the resolutions explicitly authorize such future increases), there is clear authority for this Court
19 to make such a determination now. First, in *McLeod v. Vista Unified Sch. Dist.*, the Fourth District
20 Court of Appeal ruled that a school district’s reallocation of funds that might result in a future violation
21 of a ballot initiative was subject to a validation action at the time of the authorization, and that waiting
22 until the violation of the ballot proposition actually took place was too late. *McLeod v. Vista Unified*
23 *Sch. Dist.* (2008) 158 Cal.App.4th 1156, 1167-68.) Similarly, the Third District Court of Appeal in
24 *Walters v. Cty. of Plumas* allowed a validation action to move forward under the reasoning that “... the
25 possibility of future litigation is very likely to have a chilling effect upon potential third party lenders,
26 thus resulting in higher interest rates or even the total denial of credit, either of which might well impair
27 the county’s ability to maintain an adequate waste disposal program.” (*Walters v. Cty. of Plumas*
28 (1976) 61 Cal.App.3d 460, 468.) There, since the county’s agreements to guarantee payments on heavy

1 equipment were made “without lawful consideration” and could constitute ultra vires agreements, the
2 Court held that a validation action immediately following approval of a contract was proper to prevent
3 future litigation on future illegalities resulting from the contract. (*Id.* at pp. 465.)

4 Like the plaintiffs in *California Commerce Casino* and *McLeod*, plaintiffs challenge
5 authorizations that will result in and necessitate future illegality. In *California Commerce Casino*,
6 plaintiffs alleged that Assembly Bill 687 would result in a violation of Proposition 58, a provision of
7 the California Constitution prohibiting borrowing for yearend state budget deficits. (*California*
8 *Commerce Casino, supra*, 146 Cal.App.4th at p. 1415.) The Assembly Bill would result in a violation of
9 Proposition 58 because it authorized the issuance of up to \$1.5 billion in bonds, the proceeds of which
10 would fund state budget deficits, and “it propose[d] to meet the debt obligations created by these bonds
11 exclusively with moneys paid by the Five Tribes under the Amended Compacts” in violation of
12 Proposition 58. (*Id.* at p. 1415.) And in *McLeod*, although the school district had not yet completed the
13 school construction project in violation of Proposition O, the Court held that a validation action was
14 proper when the school board authorized construction. (*Id.*) Similarly, MWD authorized bonds that
15 rely on and will be secured by future tax and rate increases that have not been approved by voters, and
16 therefore, when assessed, will violate Propositions 13 and/or 26. If the public is required to wait until
17 the taxes or fees are actually assessed to challenge these bond authorizations, it will be too late; the
18 bonds will have been issued and the debt incurred. The time to challenge MWD’s authorization is now.

19 **C. Plaintiffs’ Interpretation of the General Manager’s Authority is Rational.**

20 MWD contends that Plaintiffs’ interpretation of the Resolutions’ language granting MWD’s
21 General Manager authority to “do any and all things necessary ... to effect” the WaterFix financial
22 transactions at issue here (FAC Ex. A, p. 2, Ex. B, p. 2) as allowing the general manager to increase
23 rates and property taxes is “not a rational reading.” (MWD Demurrer at p. 18.) But MWD’s
24 obligations to financially support the State Water Project are governed by the long-term contract made
25 between MWD and the Department of Water Resources, which provides that “[i]f in any year the
26 District fails or is unable to raise sufficient funds by other means, the governing body of the District
27 shall levy upon all property in the District not exempt from taxation, a tax or assessment sufficient to
28 provide for all payments under this contract then due or to become due within that year.” (FAC ¶ 45.)

1 Additionally, as a State Water Contractor, MWD is subject to Water Code section 11652, which
2 specifies that “[t]he governing body shall, whenever necessary, levy upon all property in the state
3 agency not exempt from taxation, a tax or assessment sufficient to provide for all payments under the
4 contract then due or to become due within the then current fiscal year or within the following fiscal
5 year before the time when money will be available from the next general tax levy.” (Water Code §
6 11652; see FAC ¶ 45.) Moreover, the authorizations explicitly state that MWD’s debt obligations will
7 be secured “with a lien on its water revenues.” (FAC Ex. A, p. 2.) Raising taxes and/or raising water
8 service rates are clearly the contemplated means of repaying the debt incurred by the bonds, so
9 Plaintiffs’ interpretation is thus not only rational, it is the only rational interpretation of this language.

10 **IV. Plaintiffs’ Fourth Cause of Action is a Cognizable Claim**

11 MWD contends that Plaintiffs’ Fourth Cause of Action fails to allege a cognizable claim
12 because the Resolutions do not themselves authorize the issuance of any bonds, since any bonds will be
13 issued by a joint powers authority, not MWD. (MWD Demurrer at p. 19-20; *see also* MWD Motion to
14 Strike at 7-8.) As discussed above, what matters for this validation action is that MWD authorized its
15 incurring of debt in the form of the issuance of bonds; it makes no difference whether another entity
16 actually issues the bonds later. As Plaintiffs clearly allege, MWD has authorized the formation of a
17 JPA that will issue bonds to pay for MWD’s financing obligations for the WaterFix project, secured by
18 MWD’s water revenue and governed by MWD’s obligations to raise funds through property taxes to
19 pay for costs not covered by water rates. (FAC ¶¶ 4, 6, 23-26, 45; FAC Ex. A, p. 2; FAC Ex. B, p. 3;
20 *see pp. 6-7, supra.*) It is MWD’s action authorizing the issuance of bonds that Plaintiffs allege violates
21 the Metropolitan District Act, and challenging this is properly part of this validation action. Moreover,
22 the WaterFix obligation, authorized by MWD without any “specific limitation” in total costs (FAC,
23 ¶20), has been the subject of extensive cost critiques and may be “significantly in excess” of already
24 staggering estimated costs (FAC, ¶22.) MWD authorizes raising rates and increasing property taxes
25 “without voter approval” (FAC, ¶23). These authorizations present not simply a “nominal,” but a
26 serious attempt to circumvent the popular vote provision in section 200 of MWD’s District Act (Water
27 Code App., § 109-200) for matters that, like WaterFix, are likely to far exceed District’s ability to pay
28 out of ordinary annual income and revenue. In authorizing the indebtedness, MWD established no clear

1 off-ramp than could accompany a future ordinance.

2 Similarly, it is MWD's authorizing action attempting to set up a JPA to shield itself from
3 liability that Plaintiffs allege violate the Joint Exercise of Powers Act. As this claim regards terms of a
4 resolution authorizing its general manager to sign a contract containing certain contract terms, this
5 claim is also properly brought now, as part of this validation action. MWD's demurrer to and its motion
6 to strike Plaintiffs' Fourth Cause of Action must therefore fail.

7 **V. SDCWA's Demurrer Should Be Rejected for the Same Reasons.**

8 SDCWA's demurrer to Plaintiffs' First Cause of Action is entirely predicated on the false
9 premise that Plaintiffs have filed a challenge under Proposition 26. As is described in detail above, this
10 is a challenge to MWD's) authorization of debt, in the form of the future issuance of bonds, to pay for
11 costs associated with the WaterFix project. It is a validation action, concerned with MWD's
12 authorization of financial transactions and indebtedness, not a challenge under Proposition 26 to water
13 rate increases. Because the arguments against SDCWA's demurrer are largely identical to those made
14 above regarding MDW's demurrer, Plaintiffs adopt and fully incorporate them here by reference;
15 SDCWA's demurrer should be denied for all of the same reasons. Plaintiffs also provide the following
16 additional responses:

17 First, SDCWA repeatedly mischaracterizes Plaintiffs' First Amended Complaint ("FAC") as
18 being an action under Proposition 26. For example, SDCWA argues that "[h]ere, Plaintiffs contend the
19 WaterFix Authorization *violates Proposition 26* because it authorizes actions that might impose
20 unreasonable and disproportionate taxes or fees." (SDCWA Demurrer at p. 8, *citing* ¶¶ 50-51
21 (emphasis added).) In actuality, the TAC contends that "MWD's WaterFix Authorization is *invalid*
22 because it authorizes the issuance of revenue bonds, secured with liens on future revenues, that are
23 dependent on and rely on future water rate increases which have not been approved...by voters...."
24 (FAC at ¶ 50 (emphasis added).) Similarly, paragraph 51 of the FAC alleges that "MWD's WaterFix
25 Authorization is *invalid* because it authorizes its General Manager to take any and all actions ...
26 including the raising of water rates...." (FAC at ¶ 51 (emphasis added).)

27 Second, SDCWA contends that Plaintiffs' First Cause of Action is "too uncertain for a
28 justiciable controversy," and thus not ripe, because MWD has not yet authored or approved the

1 “purportedly problematic agreements authorized by the WaterFix Authorization...” (SDCWA
2 Demurrer at p. 10.) Perhaps SDCWA is correct that a challenge under Proposition 26 would not be
3 ripe, but this being a validation action, the fact that the exact terms of the future contracts are uncertain
4 is inapposite; what matters is what MWD authorized. Here, the WaterFix Authorization authorizes
5 MWD “to provide additional financial support of California WaterFix sufficient to fully fund the
6 unsubscribed share of the project up to 64.6% of total project costs,” (FAC ¶ 19, quoting Ex. A,
7 Resolution 9243) ... financed through the issuance of bonds that will be secured by liens on future
8 water revenues. (FAC ¶ 23.) Far from representing non-judiciable uncertainty, the “up to 64.6%”
9 language represents the amount of debt MWD has authorized with its WaterFix Authorization. And the
10 problem with this authorization, to be repaid and secured by future water revenues, is that any water
11 rate increase made to support that debt (a) requires voter approval which was not obtained (FAC ¶¶ 50-
12 51); (b) will necessarily not bear a fair and reasonable relationship to the burdens/benefits obtained by
13 MWD (FAC ¶ 52); and (c) will be unreasonable and disproportionate to the benefits derived from the
14 project. (FAC ¶ 52-59.)

15 The gravamen of the First Cause of Action is thus not “that MWD authorized its general
16 manager to negotiate and execute contracts that might lead to imposition of ‘taxes or fees that do not
17 bear a fair and reasonable relationship to the burdens on or benefits to MWD taxpayers...” (SDCWA
18 Demurrer at p. 10, quoting Plaintiffs’ superseded original complaint), the gravamen is that MWD has
19 authorized indebtedness and the issuance of bonds to be repaid and secured by future water revenues,
20 and authorized its General Manager to raise water rates to pay those debts, and that no vote has been
21 taken to approve any related water rate increases. (FAC ¶¶ 50-52.) Because Challenges to the validity
22 of an authorization of indebtedness, including the issuance of bonds, must be brought within 60 days of
23 the authorization, Plaintiffs’ First Cause of Action is not unripe. (Code Civ. Proc. §§ 860, 863.)

24 CONCLUSION

25 This is a validation action, not a taxpayer suit. It timely alleges that MWD’s authorization of
26 indebtedness, in the form of the issuance of bonds, violated various laws and the terms of its SWP
27 contract. For these and the reasons described above, both demurrers and the motion to strike should be
28 rejected.

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RESPECTFULLY SUBMITTED,

DATED: March 4, 2019

CENTER FOR FOOD SAFETY

By: 
Adam Keats
Attorney for Plaintiffs

DATED: March 4, 2019

LAW OFFICE OF ROGER B. MOORE

By: 
Roger B. Moore
Attorney for Plaintiffs

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 of
4 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.

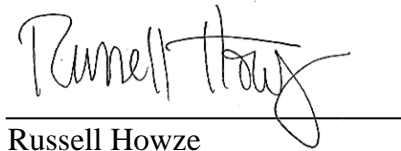
7 On March 4, 2019, I served a true and correct copy of the following document(s):

8 **COMBINED OPPOSITION TO: (1) DEMURRER BY METROPOLITAN WATER**
9 **DISTRICT TO PLAINTIFFS' FIRST AMENDED COMPLAINT IN VALIDATION; (2)**
10 **DEMURRER BY SAN DIEGO COUNTY WATER AUTHORITY TO PLAINTIFF'S FIRST**
11 **CAUSE OF ACTION; and (3) MOTION TO STRIKE BY METROPOLITAN WATER**
12 **DISTRICT PLAINTIFFS' FOURTH CAUSE OF ACTION**

13 On all parties in this action by electronically filing the document through OneLegal, LLC, instructing
14 OneLegal to electronically serve the document to the email addresses registered for service in this
15 action.

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

18 Executed on March 4, 2019, at San Francisco, California.

19 
20 _____
21 Russell Howze