

1 HANSON BRIDGETT LLP  
ADAM W. HOFMANN, SBN 238476  
2 ahofmann@hansonbridgett.com  
425 Market Street, 26th Floor  
3 San Francisco, California 94105  
Telephone: (415) 777-3200  
4 Facsimile: (415) 541-9366

5 THE METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA  
6 MARCIA SCULLY, SBN 80648  
ADAM C. KEAR, SBN 207584  
7 PATRICIA J. QUILIZAPA, SBN 233745  
700 N. Alameda Street  
8 Los Angeles, CA 90012  
Telephone: (213) 217-6327  
9 Facsimile: (213) 217-6890  
E-mail: PQuilizapa@mwdh2o.com

10 Attorneys for Defendant  
11 METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA

12  
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF LOS ANGELES**

15 FOOD & WATER WATCH and CENTER  
FOR FOOD SAFETY,

16 Plaintiffs,

17 v.

18 METROPOLITAN WATER DISTRICT OF  
19 SOUTHERN CALIFORNIA,

20 and

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

26 Defendants.

Case No. BC720692

**COMBINED REPLY IN SUPPORT OF  
DEFENDANT METROPOLITAN WATER  
DISTRICT OF SOUTHERN  
CALIFORNIA'S DEMURRER TO  
PLAINTIFFS' FIRST AMENDED  
COMPLAINT IN VALIDATION AND  
MOTION TO STRIKE**

Date: March 15, 2019  
Time: 8:30 a.m.

Judge: Hon. Randolph M. Hammock  
Dept: 47

Action Filed: September 7, 2018  
Trial: TBD

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

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION.....	5
II. ARGUMENT .....	5
A. Plaintiffs now disavow any challenge to Metropolitan’s wholesale water rates and property taxes, but that is the only illegality alleged in the first through third causes of action; Plaintiffs lack standing to raise the violations they claim. ....	5
1. Plaintiffs are not “interested persons” because they have not paid any wholesale service rate or property tax collected to recover the costs approved by the Resolutions. ....	5
2. Plaintiffs’ general organizational interests do not grant Plaintiffs associational standing to challenge the Resolutions. ....	8
B. Plaintiffs have not pled a cognizable challenge to any bond issuance under any cause of action. ....	8
1. Contrary to Plaintiffs’ argument, Metropolitan’s Resolutions did not authorize the issuance of any bond. ....	9
2. The legality of any potential future adoption of Metropolitan wholesale rates and property taxes cannot be determined now and is therefore not the proper subject of an anticipatory, reverse validation action. ....	11
3. Plaintiffs have not alleged any violation of the laws governing the issuance of bonds in their first three, nominal causes of action. ....	12
4. Plaintiffs’ nominal, fourth cause of action is not supported by the facts alleged or the text of the Resolutions. ....	12
5. The Resolutions cannot plausibly be read to authorize Metropolitan’s General Manager to violate bond laws. ....	13
C. Plaintiffs should not be granted leave to amend. ....	14
III. CONCLUSION .....	14

**TABLE OF AUTHORITIES**

		<b>Page(s)</b>
1		
2		
3	<b>Cases</b>	
4	<i>California Commerce Casino, Inc. v. Schwarzenegger</i>	
5	(2007) 146 Cal.App.4th 1406.....	<i>passim</i>
6	<i>Card v. Cmty. Redevelopment Agency</i>	
7	(1976) 61 Cal.App.3d 570.....	7
8	<i>Citizens Against Forced Annexation v. Cty. of Santa Clara</i>	
9	(1984) 153 Cal.App.3d 89.....	7
10	<i>Citizens for Fair REU Rates v. City of Redding</i>	
11	(2018) 6 Cal.5th 1, 17.....	12
12	<i>Hollywood Park Land Co. v. Golden State Transportation Financing Corp.</i>	
13	(2009) 178 Cal.App.4th 924.....	10
14	<i>In Associated Boat Industries v. Marshall</i>	
15	(1951) 104 Cal.App.2d 21.....	6
16	<i>Lawrence v. Bank of America</i>	
17	(1985) 163 Cal.App.3d 431.....	14
18	<i>McLeod v. Vista Unified Sch. Dist.</i>	
19	(2008) 158 Cal.App.4th 1156.....	11
20	<i>Meaney v. Sacramento Housing &amp; Redevelopment Agency</i>	
21	(1993) 13 Cal.App.4th 566.....	7
22	<i>Regus v. City of Baldwin Park</i>	
23	(1977) 70 Cal.App.3d 968.....	7, 8
24	<i>Rider v. City of San Diego</i>	
25	(1998) 18 Cal.4th 1035.....	10, 11, 13
26	<i>San Diegans for Open Government v. City of San Diego</i>	
27	(2015) 242 Cal.App.4th 416.....	10, 11, 13
28	<i>San Diego County Water Auth. v. Metropolitan Water Dist. of So. Cal.</i>	
	(2017) 12 Cal.App.5th 1124, 1142-1143.....	11
	<i>Sarale v. Pacific Gas &amp; Elec. Co.</i>	
	(2010) 189 Cal.App.4th.....	9
	<i>Schonfeldt v. California</i>	
	(1998) 61 Cal.App.4th 1462.....	14

1	<i>Torres v. City of Yorba Linda</i>	
2	(1993) 13 Cal.App.4th 1035.....	6, 7, 8
3	<i>Walters v. Cty. of Plumas</i>	
4	(1976) 61 Cal.App.3d 460.....	11
5	<b>Statutes</b>	
6	Code of Civil Procedure,	
7	§ 526a .....	6
8	§ 863 .....	5, 6, 7
9	Government Code,	
10	§ 6503.5 .....	10
11	§ 6551 .....	10
12	§ 6588 .....	10
13	§ 12012.40 .....	10
14	§ 33353.2 .....	7
15	Metropolitan District Act, , Water Code Appen., ch. 109,	
16	§ 200 .....	12, 13
17	<b>Other Authorities</b>	
18	California Constitution,	
19	Article XIII, A .....	12
20	Article XIII, C .....	12
21		
22		
23		
24		
25		
26		
27		
28		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

## I. INTRODUCTION

Metropolitan Water District of Southern California’s (“Metropolitan”) demurrer and motion to strike demonstrate that the First Amended Complaint (“FAC”) should be dismissed both because plaintiffs Food & Water Watch and Center for Food Safety (collectively, “Plaintiffs”) lack standing to challenge the validity of Metropolitan’s future wholesale water rates and charges, even if couched as a challenge to the validity of Resolutions 9243 and 9244 (the “Resolutions”), and because Plaintiffs have not pled any facts showing that the Resolutions are invalid. Their opposition brief fails to show otherwise.

Plaintiffs are not “interested persons” within the meaning of the validation statutes as it relates to Metropolitan’s future wholesale rates or property taxes, and in any event they now disavow any challenge to those rates and taxes. Instead, they claim to be “interested persons” in the validity of the bonds the Resolutions anticipate being issued by separate entities. However, Plaintiffs fail to allege any legal ground for invalidating those anticipated bonds. Plaintiffs argue only that the Resolutions are subject to the validation *procedures*, but fail to identify any *substantive legal defect* in the Resolutions. It is clear that Plaintiffs propose that this Court invalidate the Resolutions, not for what they authorize, but for what may be authorized in the future. That proposal fails as a matter of law.

## II. ARGUMENT

19 **A. Plaintiffs now disavow any challenge to Metropolitan’s wholesale water rates and**  
20 **property taxes, but that is the only illegality alleged in the first through third causes**  
21 **of action; Plaintiffs lack standing to raise the violations they claim.**

22 **1. Plaintiffs are not “interested persons” because they have not paid any**  
23 **wholesale service rate or property tax collected to recover the costs approved**  
24 **by the Resolutions.**

25 First, as Metropolitan argued in its demurrer, Plaintiffs lack standing to raise the challenges  
26 in their first three causes of action because their members neither have nor ever will pay  
27 Metropolitan’s wholesale service rates, and because they have not paid any property tax affected  
28 by the Resolutions. (See Memo. 12:6-15:19.) In response, Plaintiffs argue this is not a taxpayer-  
waste case, and their standing rests on their status as generally “interested persons” under Code of

1 Civil Procedure section 863, which they claim establishes an “exceptionally broad and inclusive  
2 standing provision.” (Opp. 1:22-23, 4:9-18.) Their arguments are misplaced.

3 First, Section 863 does not establish an independent basis for standing. The validation  
4 statutes provide a procedural mechanism for those who can establish a legally recognized  
5 “interest” in the challenge brought. (See *California Commerce Casino, Inc. v. Schwarzenegger*  
6 (2007) 146 Cal.App.4th 1406, 1420 (*California Commerce*)). And if the challenge is to a tax or  
7 charge, then a plaintiff must show direct responsibility for and actual payment of the challenged  
8 tax or charge. (See Memo. 13:1-12.) But that requirement is not limited to cases brought under the  
9 taxpayer-waste statute, Code of Civil Procedure section 526a.<sup>1</sup> Even Plaintiffs acknowledge as  
10 much, if in a footnote. (Opp. 5:26-28.)

11 Most relevantly, *Torres* found a group of plaintiffs lacked standing *under section 863* to  
12 challenge the validity of a city’s redevelopment plan, because there was no certainty the property  
13 taxes they paid would be used to fund the plan. (*Torres v. City of Yorba Linda* (1993) 13  
14 Cal.App.4th 1035, 1044 (*Torres*)). And even though the plaintiffs may have paid sales taxes in the  
15 city where the project would be built, sales taxes are imposed on retailers, not customers, even if  
16 customers ultimately bear the economic cost.<sup>2</sup> (*Id.* at pp. 1047.) As a result, plaintiffs lacked a  
17 sufficiently direct interest in the tax revenue used to fund the challenged redevelopment plan to  
18 maintain the suit. (*Ibid.*) In other words, paying property taxes did not give plaintiffs broad  
19 standing to challenge the use of other tax revenue. Consistently here, claiming an interest in “bond  
20 issuance” does not give Plaintiffs standing to challenge future wholesale rates and charges not yet  
21 set. Thus, there is no merit to Plaintiffs’ attempt to distinguish *Torres* or to treat its five-page  
22 discussion of standing under section 863 as “irrelevant dicta.” (See Opp. 4:11, 6:23-26.)

23 Second, courts have expressly construed section 863’s standing provision narrowly.  
24 (*Torres, supra*, 13 Cal.App.4th at p. 1042, citing *In Associated Boat Industries v. Marshall* (1951)

25 \_\_\_\_\_  
26 <sup>1</sup> Unless otherwise specified, all subsequent statutory citations are to the Code of Civil Procedure.

27 <sup>2</sup> Although the sales-tax issue arose in the court’s analysis of the plaintiffs’ standing arguments  
28 under section 526a, by virtue of the argument being before the court, it was implicitly inadequate  
to confer standing under section 863, as well.

1 104 Cal.App.2d 21, 22.) Attempting to show otherwise, Plaintiffs characterize several cases as  
2 applying a broad definition of “interested persons” under Section 863. (Opp. 5:18-6:10, citing  
3 *Meaney v. Sacramento Housing & Redevelopment Agency* (1993) 13 Cal.App.4th 566, 573-574  
4 (*Meaney*); *Citizens Against Forced Annexation v. Cty. of Santa Clara* (1984) 153 Cal.App.3d 89,  
5 97 (*CAFA*); *Regus v. City of Baldwin Park* (1977) 70 Cal.App.3d 968, 972 (*Regus*); *Card v. Cmty.*  
6 *Redevelopment Agency* (1976) 61 Cal.App.3d 570, 574 (*Card*.) Plaintiffs’ cases provide no help.  
7 (See *Torres, supra*, 13 Cal.App.4th at pp. 1042-1043 [distinguishing *CAFA*, *Regus*, and *Card*].)

8 That is because those cases do not express a “broad” definition of “interested persons;”  
9 they reflect that the scope of persons who are interested in the validity of an action depends on the  
10 nature of the action and the challenge. (See *CAFA, supra*, 153 Cal.App.3d at p. 94 [noting that no  
11 case had previously considered “who is an ‘interested person’ under section 863 *in the context* of a  
12 challenge to territorial annexations].) Thus, for example, property owners in annexed territories  
13 have standing to bring a validation action to challenge annexation, but taxpayers in the annexing  
14 city do not. (*Id.* at p. 95.) This is not a “broad” definition of interest; it is one that, unlike  
15 Plaintiffs’ view, requires some direct relationship between the plaintiff and the challenged action.

16 *Meaney* is likewise inapposite. In that case, school districts challenged a contract between  
17 a county and a redevelopment agency, diverting tax revenue from the school districts to the  
18 redevelopment agency. (*Meaney, supra*, 13 Cal.App.4th at pp. 573-574.) The school districts’  
19 interest in their own, direct loss of tax revenue was reflected both in common sense and in statute.  
20 (*Id.* at p. 583 [discussing Gov. Code, § 33353.2].) Plaintiffs have no similarly direct interest here,  
21 because they have not alleged and cannot allege they have paid the wholesale rates or property  
22 taxes they claim may be affected by the Resolutions in the future.

23 Plaintiffs’ reliance on *Regus* is particularly surprising. As even they describe it, *Regus*—  
24 and the various validation cases it discussed, including *Card*—found plaintiffs had standing to  
25 challenge a redevelopment project *because* they were city taxpayers. (See Opp. 7:17-20.)

26 As *taxpayers* of the City of Baldwin Park and of the County of Los Angeles,  
27 plaintiffs have a financial interest in the outcome of this proceeding, plaintiffs have  
28 a financial interest in the outcome of this proceeding [because] the Project will  
divert tax revenues from the taxing agencies to which *plaintiffs pay taxes* to the  
treasury of the redevelopment agency.

1 (*Regus, supra*, 70 Cal.App.3d at p. 972, italics added.) Thus, the plaintiffs in *Regus* had what the  
2 plaintiffs in *Torres* and Plaintiffs here lack: a direct interest in the challenged actions.

3 In an attempt to avoid the requirement for a direct interest in the hypothetical rates and  
4 taxes they challenge, Plaintiffs now claim an interest due only to the unsupportable allegation that  
5 the Resolutions authorize bonds. (Opp. 4:23-25.) Yet, Plaintiffs do not explain how they are  
6 interested in bond authorizations in a way that would satisfy the validation statutes' context-  
7 specific interest requirement. Regardless, as discussed below, Plaintiffs' Opposition focuses solely  
8 on their argument that the challenge to the Resolutions themselves is *procedurally triggered*. But  
9 they fail to identify a cognizable claim of bond invalidity.

10 **2. Plaintiffs' general organizational interests do not grant Plaintiffs associational**  
11 **standing to challenge the Resolutions.**

12 Metropolitan's demurrer also noted that Plaintiffs' standing rests on the standing of their  
13 members and, as a result, Plaintiffs can only maintain this suit if it is germane to their  
14 organizational purposes. (Memo. 15:20-16:6.) Plaintiffs do not contest either point. (Opp. 8:8-9:2.)  
15 Instead, they argue that this case is "clearly germane" to their broad organizational purposes to  
16 advocate "for a democracy that improves people's lives and protects our environment," and to  
17 "promot[e] sustainable agriculture." (Opp. 8:19-22.) Aside from these *ipse dixit* assertions,  
18 however, Plaintiffs point to no allegations that would tend to show their members have any shared  
19 interest in policing public finance. Plaintiffs' construction of their own organizational purposes  
20 would appear to grant them standing to raise any legal claim imaginable. That is not the law, and  
21 Plaintiffs have not shown that it is.

22 **B. Plaintiffs have not pled a cognizable challenge to any bond issuance under any cause**  
23 **of action.**

24 Plaintiffs' arguments in opposition are a shell game. They assert that their sole focus is the  
25 validity of an alleged bond authorization, but the violations they allege do not relate to any bond,  
26 but to the service rates and/or taxes Metropolitan may adopt in the future. (Opp. 1:2-4, 3:6-4:7,  
27 9:8-10.) Moreover, as the Resolutions themselves reflect, Metropolitan did not authorize the  
28 issuance of any bond, as Plaintiffs concede. (Opp. 1:20; FAC, Exs. A, B.) Rather, they merely



1 anticipate the issuance of bonds in the future by a JPA with its own, independent bond authority.  
2 In more detail, the Resolutions (i) authorize joining in the formation of a JPA, (ii) anticipate that  
3 the JPA would issue bonds and that DWR would also issue bonds, (iii) authorize Metropolitan to  
4 purchase capacity interest from the JPA in the Cal WaterFix project, (iv) authorize securing its  
5 obligation to pay for that capacity interest with a lien on its own water revenues, (v) authorize  
6 Metropolitan to sell any capacity interest acquired, and (vi) authorize the General Manager to  
7 enter into any and all agreements “to carry out” those arrangements. (See FAC, Exs. A, B pp. 1-2,  
8 §§ 3(a)-(d); see also *Sarale v. Pacific Gas & Elec. Co.* (2010) 189 Cal.App.4th 225, 245 [holding  
9 demurrers do not admit the truth of allegations contradicted by exhibits attached to the pleading].)  
10 Moreover, the Resolutions did not authorize the future adoption of any source of revenue in any  
11 particular manner. It simply authorized the pledge of water revenues Metropolitan does receive, as  
12 security for the purchase of capacity interests from the JPA. (FAC, Ex. A, p. 2, § 3, (d) [“The  
13 District would secure its obligations to make installment payments with a lien on its water  
14 revenues.”].)

15 Plaintiffs are only permitted to challenge that which was actually authorized in the  
16 Resolutions. Their attempt to challenge future matters, which fails as a matter of law.

17 **1. Contrary to Plaintiffs’ argument, Metropolitan’s Resolutions did not**  
18 **authorize the issuance of any bond.**

19 Plaintiffs argue that, because the Resolutions relate to a larger financing plan, the  
20 anticipated actions of the JPA and Metropolitan’s future adoption of wholesale service rates and/or  
21 property taxes can and must be determined immediately. (Opp. 3:21-7, 10:12-14, citing *California*  
22 *Commerce, supra*, 146 Cal.App.4th at p. 1430-1431.)<sup>3</sup> According to them, it is “irrelevant” that  
23 the Resolutions do not authorize the issuance of any bonds; it is sufficient that they anticipate

24 \_\_\_\_\_  
25 <sup>3</sup> Plaintiffs note that Metropolitan “notably” did not cite *Commerce Casino* in its demurrer. (Opp.  
26 3:22-23.) As discussed below, Metropolitan does not believe that *Commerce Casino* is relevant.  
27 And, notably, Plaintiffs never mentioned the case—or any other legal authority—during the  
28 parties’ pre-demurrer meet and confer. (See Meet and Confer Declaration of Adam Hofmann in  
Support of Metropolitan Water District of Southern California’s Demurrer to Plaintiffs’ First  
Amended Complaint.)

1 issuance of bonds by a separate entity in the future. (Opp. 13:14.) The law establishes otherwise.

2 Plaintiffs' reliance on *California Commerce* is misplaced. In *California Commerce*, the  
3 plaintiffs challenged the validity of a State Assembly Bill that (1) ratified a set of agreements  
4 executed by the Governor, granting certain tribes exclusive gaming rights; (2) created a new,  
5 special-purpose agency; and (3) granted that agency power to issue bonds in specific amounts to  
6 be secured with specific revenue generated by the agreements. (*Commerce Casino, supra*, 146  
7 Cal.App.4th at p. 1412-1414; Gov. Code, § 12012.40; see also *Hollywood Park Land Co. v.*  
8 *Golden State Transportation Financing Corp.* (2009) 178 Cal.App.4th 924, 933-934.) Here, the  
9 Resolutions do not ratify any contracts; to the contrary, they recognize that no contracts have yet  
10 even been negotiated. (FAC, Exs. A, p. 2, B, p. 2.) Nor do they authorize the issuance of bonds by  
11 Metropolitan. Again, they expressly anticipate that any bonds will be issued by a future JPA.  
12 (*Ibid.*) Nor do they grant authority to the JPA to issue bonds in any specific amount or at all.  
13 (*Ibid.*) Rather, the finance JPA will have its own power to issue bonds completely independent of  
14 Metropolitan and limited only by the statutes governing JPAs. (See Gov. Code, §§ 6503.5, subd.  
15 (a), 6551, 6588, subd. (c); (See *Rider v. City of San Diego* (1998) 18 Cal.4th 1035 (*Rider*); *San*  
16 *Diegans for Open Government v. City of San Diego* (2015) 242 Cal.App.4th 416 (*SDOG*.)

17 In *Rider*, certain plaintiffs brought a reverse validation action challenging the validity of a  
18 city's plan to finance expansion of a civic convention center. (*Rider, supra*, 18 Cal.4th at p. 1040.)  
19 That plan included the creation of a finance JPA, the issuance of bonds by the JPA to fund the  
20 project, and the execution of certain contracts requiring the city to fully fund the bond costs  
21 through rent payments, which the city was contractually obliged to include in its future budgets.  
22 (*Ibid.*) The plaintiffs claimed that the financing plan violated constitutional and charter limits on  
23 the city's authority to issue bonds in support of the project. (*Id.* at pp. 1042-1043.) The court  
24 rejected the plaintiffs' argument, finding that the limits on the city's bond authority did not  
25 constrain the finance JPA, notwithstanding the fact that the JPA was entirely created and  
26 controlled by the city and that the city was economically responsible for the JPA's debts. (*Id.* at p.  
27 1043-1045.) The Court held that the JPA was a separate legal entity and its actions could not be  
28 invalidated by attacks to the city's legal limitations.

1 Similarly, in *SDOG*, the court also enforced the separate existence and authority of a JPA.  
2 It construed a city charter provision limiting debts for public projects. (*SDOG, supra*, 242  
3 Cal.App.4th at p. 443.) The court concluded that charter provision only governed bonded  
4 indebtedness of the city, not the anticipated debts of a finance JPA, despite the fact that the city  
5 was the JPA's sole member. (*Ibid.*)

6 In short, the Resolutions bear no similarity to the Assembly Bill challenged in *Commerce*  
7 *Casino*, and that case does not support Plaintiffs' view that all future actions that may follow the  
8 Resolutions can or must be validated immediately.

9 **2. The legality of any potential future adoption of Metropolitan wholesale rates**  
10 **and property taxes cannot be determined now and is therefore not the proper**  
11 **subject of an anticipatory, reverse validation action.**

12 Contrary to Plaintiffs' arguments, validation for future wholesale rates or property taxes is  
13 not triggered by the fact that the anticipated payments to the JPA for its capacity interest purchase  
14 will be secured by Metropolitan's future revenues. To the contrary, even the express dedication of  
15 a specific revenue structure to specific, authorized bonds does not subject all future revenue  
16 measures under that structure to immediate validation. (*San Diego County Water Auth. v.*  
17 *Metropolitan Water Dist. of So. Cal.* (2017) 12 Cal.App.5th 1124, 1142-1143 (*San Diego*)).  
18 Contrary to Plaintiffs' arguments here, the Resolutions did not start the time running to challenge  
19 service rates or property taxes Metropolitan has not yet set. (Opp. 15:2-4.)

20 In *San Diego*, Metropolitan argued that it had pledged its wholesale water rate structure as  
21 security for its bonds and therefore any challenge to the rate structure was time-barred by the  
22 validation of those bonds. (*San Diego, supra*, 12 Cal.App.5th at pp. 1142-1143.) The Court of  
23 Appeal disagreed and held that Metropolitan pledged its revenues and not any specific method of  
24 setting its rates. (*Ibid.*) Therefore, the validity of Metropolitan's wholesale rates and charges is  
25 subject to review when they are adopted, not when they are pledged generally to debt service.  
26 (*Ibid.*)

27 Plaintiffs' reliance on *McLeod v. Vista Unified Sch. Dist.* (2008) 158 Cal.App.4th 1156,  
28 1167-1168 and *Walters v. Cty. of Plumas* (1976) 61 Cal.App.3d 460, 468, fails to show otherwise.  
Neither of those cases involved or approved a challenge to hypothetical, future revenue measures.

1           **3. Plaintiffs have not alleged any violation of the laws governing the issuance of**  
2           **bonds in their first three, nominal causes of action.**

3           Plaintiffs’ nominal bond challenge also fails because neither their FAC, nor their  
4           Opposition identifies a legal standard applicable to bonds that the Resolutions violate. Their  
5           primary claim, as reflected in their First and Second Causes of Action, is that the Resolutions  
6           violate Articles XIII A and XIII C, of the California Constitution. (FAC, ¶¶ 49-70; Opp. 5:5-8,  
7           6:28-7:12, 11:16-19, 12:14-16.) As Metropolitan noted in its Demurrer, however, the authorization  
8           of debt is not governed by either Article XIII A or Article XIII C. (Memo. 16:24-18:8, discussing  
9           *Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.5th 1, 17 (*Redding*)). Plaintiffs  
10          dismiss *Redding* because it was not a validation action. (Opp. 11:10-15.) But they offer no  
11          authority to contradict the relevant holding: Articles XIII A and XIII C govern the way that  
12          government costs are allocated to taxes and charges, not the ways debts are incurred.

13          Plaintiffs’ Third Cause of Action, alleging violations of Metropolitan’s long-term State  
14          Water Project contract, likewise states no claim respecting the authorization of debt. (FAC, ¶ 71.)  
15          Plaintiffs do not identify any contractual limit on Metropolitan’s debts.

16          Thus, even if the Resolutions are subject to validation, Metropolitan’s future revenue  
17          measures are not subject to anticipatory reverse validation.

18           **4. Plaintiffs’ nominal, fourth cause of action is not supported by the facts alleged**  
19           **or the text of the Resolutions.**

20          As discussed in Metropolitan’s demurrer and motion to strike, Plaintiffs’ nominal Fourth  
21          Cause of action combines two separate claims, one for alleged violations of Metropolitan District  
22          Act section 200 and the other for alleged violations of Joint Exercise of Powers Act. (See Memo.  
23          19:14-20:10, discussing FAC, ¶¶ 72, 73.) Unlike Plaintiffs’ first three causes of action, these  
24          arguments at least touch on the legal standards for bonds. Still, neither states a claim.

25          First, Plaintiffs argue that they have alleged the Resolutions authorized indebtedness,  
26          which is the same as issuing a bond and, therefore, have alleged a violation of Metropolitan  
27          District Act section 200. (FAC, ¶ 72; Opp. 13:4-28.) But section 200 governs only the bonded  
28          indebtedness Metropolitan directly incurs to support projects it cannot fund with ordinary revenue.

1 (MWD Act, §200.) Thus, section 200 does not apply to the Resolutions because, as discussed  
2 above and in Metropolitan’s demurrer, the Resolutions do not authorize Metropolitan to incur  
3 bonded debt; they anticipate that a finance JPA will do so. (FAC, Exs. A, p.2, B, p.2.) And the  
4 legal limits on Metropolitan’s bonds do not apply to the finance JPA. (See *Rider, supra*, 18  
5 Cal.4th at pp. 1042-1043; *SDOG, supra*, 242 Cal.App.4th at p. 443.) Nor does *Commerce Casino*  
6 establish otherwise, contrary to Plaintiffs’ arguments. (E.g., Opp. 3:18-20.) Moreover, far from  
7 Metropolitan’s Board determining that contributions to the project cannot be paid from ordinary  
8 revenue—which is one of section 200’s prerequisites—the FAC itself reflects Plaintiffs’ allegation  
9 that Metropolitan plans to fund its contribution to Cal WaterFix from its wholesale service rate  
10 revenue. (See FAC, ¶¶ 5, 23, 50, 61, 71.) Thus, section 200 does not apply to the facts alleged.

11       Second, Plaintiffs’ claim under the Joint Exercise of Powers Act also fails. (See FAC, ¶  
12 73.) Although it is difficult to parse their point, Plaintiffs seem to suggest that Metropolitan is  
13 somehow violating the Joint Exercise of Powers Act merely by planning to join a JPA. (Opp.  
14 14:2-6.) They point to no specific statute or any other authority to demonstrate that the facts  
15 alleged can constitute such a violation. Indeed, *Rider, supra*, 18 Cal.4th at p. 1042, rejected an  
16 apparently related argument. (Accord *SDOG, supra*, 242 Cal.App.4th at pp. 435-436 [rejecting  
17 argument that finance JPA’s relationship with city was “incestuous”].)

18       **5. The Resolutions cannot plausibly be read to authorize Metropolitan’s General**  
19       **Manager to violate bond laws.**

20       Lastly, Plaintiffs argue that they have pled legal violations because the Resolutions can be  
21 read to authorize Metropolitan’s General Manager to violate all public-finance laws in the  
22 implementation of Metropolitan’s participation in the Unsubscribed 33%. (Opp. 12:19-13:8.) As  
23 explained in Metropolitan’s demurrer, however, nothing in the Resolutions authorized the General  
24 Manager to break the law, to issue bonds, raise service rates, or increase property taxes  
25 unilaterally. (Memo. 18:25-19:13.) Plaintiffs’ arguments do not show otherwise and indeed, the  
26 plain language of the authorization confirms that the General Manager is authorized to enter into  
27 agreements “to carry out” the arrangements described therein. (See FAC, Ex. A, p. 2, § 2.)  
28

1 **C. Plaintiffs should not be granted leave to amend.**

2 Metropolitan's demurrer demonstrated that Plaintiffs could not save their claims by  
3 amendment. (Memo. 15:11-19, citing *Lawrence v. Bank of America* (1985) 163 Cal.App.3d 431,  
4 436; *Schonfeldt v. California* (1998) 61 Cal.App.4th 1462, 1465.) Plaintiffs cannot change the  
5 scope of the resolutions and they have not identified any law that allows them to challenge future  
6 actions not contained within the resolutions. Plaintiffs have neither requested leave to amend nor  
7 argued that they will be able to plead cognizable claims.

8 **III. CONCLUSION**

9 The Court should grant Metropolitan's demurrer as to each of Plaintiffs' causes of action  
10 and should deny leave to amend.

11 DATED: March 8, 2019

HANSON BRIDGETT LLP

12  
13 By: 

14 ADAM W. HOFMANN

15 Attorneys for Defendant

16 METROPOLITAN WATER DISTRICT OF  
17 SOUTHERN CALIFORNIA  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

**PROOF OF SERVICE**

*Food & Water Watch, et al. v. Metropolitan Water District of Southern California, et al.*  
Los Angeles County Superior Court Case No.: BC720692

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 425 Market Street, 26th Floor, San Francisco, CA 94105.

On March 8, 2019, I served true copies of the following document(s) described as:

**REPLY IN SUPPORT OF DEFENDANT METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA’S DEMURRER TO PLAINTIFFS’ FIRST AMENDED COMPLAINT IN VALIDATION**

on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY ELECTRONIC SERVICE:** I served the document(s) on the person listed in the Service List by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at [www.onelegal.com](http://www.onelegal.com).

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

Executed on March 8, 2019, at San Francisco, California.

  
\_\_\_\_\_  
Grace M. Mohr

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

**SERVICE LIST**

*Food & Water Watch, et al. v. Metropolitan Water District of Southern California, et al.*  
Los Angeles County Superior Court Case No.: BC720692

Adam Keats, Esq.  
CENTER FOR FOOD SAFETY  
303 Sacramento Street, 2nd Floor  
San Francisco, CA 94111  
Telephone: (415) 826-2770  
Facsimile: (415) 826-0507  
Email: [akeats@centerforfoodsafety.org](mailto:akeats@centerforfoodsafety.org)

*Attorneys for Plaintiffs*  
FOOD & WATER WATCH and CENTER  
FOR FOOD SAFETY

Roger B. Moore, Esq.  
LAW OFFICE OF ROGER B. MOORE  
337 17th Street, Suite 211  
Oakland, CA 94612  
Telephone: (510) 548-1401  
Email: [rbm@landwater.com](mailto:rbm@landwater.com)

Gregory V. Moser, Esq.  
John C. Lemmo, Esq.  
Jacob Kozaczuk, Esq.  
PROCOPIO, CORY, HARGREAVES &  
SAVITCH LLP  
525 B Street, Suite 2200  
San Diego, CA 92101  
Telephone: (619) 238-1900  
Facsimile: (619) 235-0398  
Email: [greg.moser@procopio.com](mailto:greg.moser@procopio.com)  
[john.lemmo@procopio.com](mailto:john.lemmo@procopio.com)  
[jacob.kozaczuk@procopio.com](mailto:jacob.kozaczuk@procopio.com)

*Attorneys for Defendant*  
SAN DIEGO COUNTY WATER  
AUTHORITY

Mark J. Hattam, Esq.  
General Counsel  
SAN DIEGO COUNTY WATER AUTHORITY  
4677 Overland Avenue  
San Diego, CA 92123  
Telephone: (858) 552-6791  
Facsimile: (858) 522-6566  
Email: [mhattam@sdewa.org](mailto:mhattam@sdewa.org)



1 Steven M. Torigiani, Esq.  
Brett A. Stroud, Esq.  
2 The Law Offices of Young Wooldridge, LLP  
1800 30th Street, Fourth Floor  
3 Bakersfield, CA 93301  
Telephone: (661) 327-9661  
4 Facsimile: (661) 327-0720  
Email: [storigiani@youngwooldridge.com](mailto:storigiani@youngwooldridge.com)  
5 [bstroud@youngwooldridge.com](mailto:bstroud@youngwooldridge.com)  
6  
7

*Attorneys for Interested Persons*  
WHEELER RIDGE-MARICOPA WATER  
STORAGE DISTRICT, SEMITROPIC  
WATER STORAGE DISTRICT,  
SEMITROPIC IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE  
DISTRICT, BUTTONWILLOW  
IMPROVEMENT DISTRICT OF  
SEMITROPIC WATER STORAGE  
DISTRICT, POND-POSO IMPROVEMENT  
DISTRICT OF SEMITROPIC WATER  
STORAGE DISTRICT, AND OAK FLAT  
WATER DISTRICT

8 Joseph D. Hughes, Esq.  
R. Scott Kimsey, Esq.  
9 Klein Denatale Goldner, LLP  
4550 California Avenue  
10 Bakersfield, CA 93309  
Telephone: (661) 401-7755  
11 Facsimile: (661) 326-0418  
Email: [jhughes@kleinlaw.com](mailto:jhughes@kleinlaw.com)  
12 [skimsey@kleinlaw.com](mailto:skimsey@kleinlaw.com)

*Attorneys for Answering Parties*  
BELDRIDGE WATER STORAGE  
DISTRICT, BERRENDA MESA WATER  
DISTRICT, DUDLEY RIDGE WATER  
DISTRICT, and LOST HILLS WATER  
DISTRICT

13 Cheryl A. Orr, Esq.  
Musick, Peeler & Garrett, LLP  
14 324 S. Grand Avenue, Suite 2000  
Los Angeles, CA 90017  
15 Telephone: (213) 629-7881  
Facsimile: (213) 624-1376  
16 Email: [c.orr@musickpeeler.com](mailto:c.orr@musickpeeler.com)

*Attorneys for Answering Party*  
TULARE LAKE BASIN WATER  
STORAGE DISTRICT

17 Isaac St. Lawrence, Esq.  
McMurtrey, Hartsock & Worth  
18 2001 22nd Street, Suite 100  
Bakersfield, CA 93301  
19 Telephone: (661) 322-4417  
Facsimile: (661) 322-8123  
20 Email: [isaac@mcmurtreyhartsock.com](mailto:isaac@mcmurtreyhartsock.com)  
21  
22  
23  
24  
25  
26  
27  
28

*Attorneys for Answering Party*  
HENRY MILER WATER DISTRICT