

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

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

15 FOOD & WATER WATCH and CENTER
FOR FOOD SAFETY,
16
17 Plaintiffs,
18 v.
19 METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA, et al.,
20 Defendants.

Case No. BC720692
NOTICE OF ENTRY OF ORDER

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

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 9, 2019, the Court entered an Order Sustaining the Demurrers filed by Metropolitan Water District of Southern California and San Diego County Water Authority in the above-entitled action. A true and correct copy is attached as Exhibit A.

DATED: April 9, 2019

HANSON BRIDGETT LLP


By: 
ADAM W. HOFMANN
Attorneys for Defendant
METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA

EXHIBIT A

EXHIBIT A

Electronically Received 03/26/2019 01:31

[Exempt From Filing Fee
Government Code § 6103]

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

FILED
Superior Court of California
County of Los Angeles

APR 09 2019

Sherri R. Carter, Executive Officer/Clerk
By Felipe Rojas Deputy
Felipe Rojas

5 THE METROPOLITAN WATER DISTRICT OF
6 SOUTHERN CALIFORNIA
7 MARCIA SCULLY, SBN 80648
8 ADAM C. KEAR, SBN 207584
9 PATRICIA J. QUILIZAPA, SBN 233745
10 700 N. Alameda Street
11 Los Angeles, CA 90012
12 Telephone: (213) 217-6327
13 Facsimile: (213) 217-6890
14 E-mail: PQuilizapa@mwdh2o.com

15 Attorneys for Defendant
16 METROPOLITAN WATER DISTRICT OF
17 SOUTHERN CALIFORNIA

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **COUNTY OF LOS ANGELES**

20 FOOD & WATER WATCH and CENTER
21 FOR FOOD SAFETY,

22 Plaintiffs,

23 v.

24 METROPOLITAN WATER DISTRICT OF
25 SOUTHERN CALIFORNIA, et al.,

26 Defendants.

Case No. BC720692

**[PROPOSED] ORDER SUSTAINING THE
DEMURRERS FILED BY
METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA AND SAN
DIEGO COUNTY WATER AUTHORITY**

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

Judge: Hon. Randolph M. Hammock
Dept: 47

Action Filed: September 7, 2018
Trial: TBD

27 The Demurrer and Motion to Strike filed by defendant Metropolitan Water District of
28 Southern California and the Demurrer filed by defendant San Diego County Water Authority came
before this Court in the above-captioned matter on a regularly noticed hearing at 8:30 a.m., on
March 15, 2019. Adam W. Hofmann and Patricia J. Quilizapa appeared on behalf of Metropolitan
Water District of Southern California. Gregory V. Moser appeared on behalf of San Diego

**[PROPOSED] ORDER SUSTAINING THE DEMURRERS FILED BY METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA AND SAN DIEGO COUNTY WATER AUTHORITY**

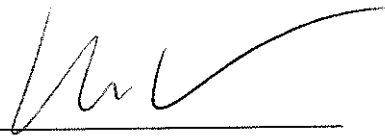
1 County Water Authority. Adam Keats and Roger Moore (via CourtCall) appeared on behalf of
2 plaintiffs Food & Water Watch and Center for Food Safety. Brett Stroud appeared via CourtCall
3 on behalf of the Kern Answering Parties.¹

4 Having read and considered the parties' moving, opposition, and reply papers and having
5 heard and considered the parties' arguments at the hearing, the Court adopts its Tentative Ruling,
6 except as modified at page 4, dismissing plaintiffs' First Amended Complaint in Validation
7 without leave to amend, pursuant to Code of Civil Procedure section 430.10, subs. (e) and (f). A
8 copy of the adopted Tentative Ruling, as modified, is attached hereto. Given the ruling on the
9 demurrers, Metropolitan's motion to strike is moot.

10 IT IS SO ORDERED

11 Dated:

4/9/19



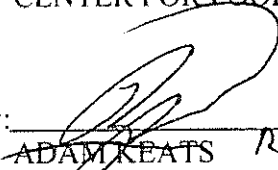
Hon. Randolph M. Hammock
JUDGE OF THE SUPERIOR COURT

12
13
14 APPROVED AS TO FORM:
15
16
17
18
19
20
21
22
23

24 ¹ The "Answering Parties" refers to the parties who collectively filed the Answer of Interested
25 Persons to First Amended Complaint in Validation and include Wheeler Ridge Maricopa Water
26 Storage District, Semitropic Water Storage District, Semitropic Improvement District of
27 Semitropic Water Storage District, Buttonwillow Improvement District of Semitropic Water
28 Storage District, Pond-Poso Improvement District of Semitropic Water Storage District, and Oak
Flat Water District, Belridge Water Storage District, Berrenda Mesa Water District, Dudley Ridge
Water District, and Lost Hills Water District, Tulare Lake Basin Water Storage District, and
Henry Miller Water District.

1 DATED: March 26, 2019

CENTER FOR FOOD SAFETY

2
3 By: 
4 ~~ADAM KEATS~~ ROGER B. MOSE
5 Attorneys for Plaintiffs
FOOD & WATER WATCH; CENTER
FOR FOOD SAFETY

6 DATED: March _____, 2019

HANSON BRIDGETT LLP

7
8 By: _____
9 ADAM W. HOFMANN
10 Attorneys for Defendant
METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA

11 DATED: March _____, 2019

PROCOPPIO, CORY, HARGREAVES &
SAVITCH LLP

12
13
14 By: _____
15 GREGORY V. MOSER
16 Attorneys for Defendant
17 SAN DIEGO COUNTY WATER
18 AUTHORITY
19
20
21
22
23
24
25
26
27
28

1 DATED: March _____, 2019

CENTER FOR FOOD SAFETY

2

3

By: _____

4

ADAM KEATS
Attorneys for Plaintiff's
FOOD & WATER WATCH: CENTER
FOR FOOD SAFETY

5

6 DATED: March 26, 2019

HANSON BRIDGETT LLP

7

8

By:  _____

9

ADAM W. HOFMANN
Attorneys for Defendant
METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA

10

11 DATED: March 19, 2019

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

12

13

By:  _____

14

GREGORY V. MOSER
Attorneys for Defendant
SAN DIEGO COUNTY WATER
AUTHORITY

15

16

17

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

EXHIBIT A

Tentative Ruling

Judge Randolph M. Hammock, Department 47

HEARING DATE: **March 15, 2019**

TRIAL DATE: Not set.

CASE: **Food and Water Watch, et al. v. Metropolitan Water District of Southern California**

CASE NO.: **BC720692**

**(1) & (2) DEMURRERS TO FIRST AMENDED COMPLAINT (x2)
(3) MOTION TO STRIKE**

MOVING PARTY: (1) Defendant San Diego County Water Authority;
(2) & (3) Defendant Metropolitan Water District of Southern California

RESPONDING PARTY(S): (1) – (3) Plaintiffs Food & Water Watch and Center For Food Safety

STATEMENT OF MATERIAL FACTS AND/OR PROCEEDINGS:

Plaintiff brings a reverse validation action challenging the validity of two resolutions and related actions by Defendant Metropolitan Water District authorizing financial support, including the issuance of revenue bonds backed by liens on MWD's future revenues.

Defendant San Diego County Water Authority demurs to the first amended complaint.

Defendant Metropolitan Water District of Southern California demurs to the first amended complaint and moves to strike portions thereof.

TENTATIVE RULING:

Defendant San Diego County Water Authority's demurrer to the first cause of action is **SUSTAINED without** leave to amend, unless Plaintiffs demonstrate a reasonable possibility of successful amendment at the hearing.

Defendant Metropolitan Water District of Southern California's demurrer to the first, second, third and fourth causes of action is **SUSTAINED without** leave to amend, unless Plaintiffs demonstrate a reasonable possibility of successful amendment at the hearing.

DISCUSSION:

Defendant San Diego County Water Authority's Demurrer

Meet and Confer

The Declaration of Jacob Kozaczuk reflects that the meet and confer requirement set forth in CCP § 430.41 was satisfied.

Analysis

1. First Cause of Action (Determination of Invalidity: Authorization of Bonds and Indebtedness Dependent on Rate Increases [That] Lack Voter Approval; Authorization of Rate Increases that Would Violate Proposition 26).

Defendant San Diego County Water Authority argues that the MWD resolutions challenged do not impose any “taxes” under Proposition 26, nor is there a controversy ripe for judicial review.

The IAC expressly characterizes this lawsuit as a validation action brought pursuant to CCP § 860, challenging: (1) the adoption of Resolutions 9243 and 9244 (attached as Exhs. A and B to the IAC)(the adoption of these resolutions on July 10, 2018 is referred to by Plaintiffs as the “WaterFix Authorization”—see IAC, ¶¶ 15, 17 - 22; and (2) the execution of certain agreements and amendments related to financing, pre-construction and construction activities for California WaterFix. IAC, ¶ 2.

The first cause of action alleges that Defendant Metropolitan Water District of Southern California (“MWD”)’s WaterFix Authorization is invalid because it authorizes the issuance of revenue bonds, secured with liens of future revenues, that are dependent on and rely on future water rate increases which have not been approved, and may never be approved, by voters as required by the California Constitution provisions enacted by Proposition 26. IAC, ¶ 50.

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

¶ 52 alleges that any water rate increase made to support MWD’s WaterFix financial commitment will necessarily not bear a fair and reasonable relationship to the burdens on or benefits to MWD customers, ratepayers, and member agencies derived from the WaterFix project.

¶ 53 alleges that imposing 64% of the total WaterFix costs on MWD customers, ratepayers, and member agencies is unreasonable and disproportionate to the benefits derived by the project, using any reasonable and available measure or proportionality.

¶¶ 54 – 56 and 59 allege that imposing all or nearly all of the \$5.6 billion estimated costs of the second Delta tunnel on MWD customers, ratepayers, and member agencies is unreasonable and disproportionate, as MWD customers, ratepayers, and member agencies will receive, by MWD’s estimation, no additional water supplies from the second tunnel. ¶ 57 alleges that, at the time of MWD’s WaterFix Authorization, plans for future sales of unsubscribed capacity in the second tunnel are speculative at best and cannot satisfy Proposition 26’s requirements.

If no proceedings have been brought by the public agency pursuant to this chapter, any interested person may bring an action within the time and in the court specified by Section 860 to determine the validity of such matter. The public agency shall be a defendant and shall be served with the summons and complaint in the action in the manner provided by law for the service of a summons in a civil action. In any such action the summons shall be in the form prescribed in Section 861.1 except that in addition to being directed to “all persons interested in the matter of [specifying the matter],” it shall also be directed to the public agency. **If the interested person bringing such action fails to complete the publication and such other notice as may be prescribed by the court in accordance with Section 861 and to file proof thereof in the action within 60 days** from the filing of his complaint, the action shall be forthwith dismissed on the motion of the public agency unless good cause for such failure is shown by the interested person.

CCP § 863 (bold emphasis added).

For purposes of this chapter, bonds, warrants, contracts, obligations, and evidences of indebtedness shall be deemed to be in existence upon their authorization. Bonds and warrants shall be deemed authorized as of the date of adoption by the governing body of the public agency of a resolution or ordinance authorizing their issuance, and contracts shall be deemed authorized as of the date of adoption by the governing body of the public agency of a resolution or ordinance approving the contract and authorizing its execution.

CCP § 864 (bold emphasis and underlining added).

Whether an action is subject to the validation procedures is an important determination because validation proceedings result in an expedited and definitive ruling regarding the validity or invalidity of certain actions taken by public agencies. The ruling in a validation action is definitive because it is an in rem proceeding that, once proper constructive notice is given, results in a judgment that is binding against the world and cannot be collaterally attacked, even on constitutional grounds. (*Colonies Partners, L.P. v. Superior Court* (2015) 239 Cal.App.4th 689, 694 [191 Cal. Rptr. 3d 45].)

Code of Civil Procedure sections 860 and 863 do not specify the matters to which the validation procedure applies. Rather, a court must ascertain

whether some “other law” has declared the particular claim or action to be subject to validation. In *Kaatz, supra*, 143 Cal.App.4th 13, the court noted there were more than “200 statutes that provide for validating proceedings” (*Id.* at p. 31, fn. 19.) For example, statutes provide for validation actions to determine the validity of redevelopment plans (Health & Saf. Code, § 33501, subd. (a)), certain bonds (Gov. Code, § 53359), and the formation of special districts (Gov. Code, § 58200).

Reid v. City of San Diego (2018) 24 Cal.App.5th 343, 371 (bold emphasis and underlining added).

Here, at ¶ 2, Plaintiff alleges that Gov. Code § 53511 authorizes a validation action as to the following:

(a) A local agency may bring an action to **determine the validity of its bonds, warrants, contracts, obligations or evidences of indebtedness** pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(b) A local agency that issues bonds, notes, or other obligations the proceeds of which are to be used to purchase, or to make loans evidenced or secured by, the bonds, warrants, contracts, obligations, or evidences of indebtedness of other local agencies, may bring a single action in the superior court of the county in which that local agency is located to determine the validity of the bonds, warrants, contracts, obligations, or evidences of indebtedness of the other local agencies, pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(Bold emphasis and underlining added.)

Resolution 9244 (IAC, Exh. B), at ¶ 2, Page 2 contains the following language under the clause “Authorization of General Manager”: “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 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.” (Bold emphasis added.)

~~It would appear that a validation action for the authorization of such bonds, contracts, obligations and/or evidences of indebtedness is authorized by Gov. Code § 53511(a) and CCP § 864 (cited above). Accordingly, the Court finds that a validation action is authorized as to the first cause of action. The Court finds that the first cause of action is ripe for adjudication.~~

However, it also appears that the questions to be litigated in this action are whether the WaterFix Authorization contains disguised taxes that were not subject to constitutional voting requirements (see IAC, ¶¶ 23, 50, 51):

Significantly, Proposition 218 did not define the term “tax.” That definition was provided 14 years later, with the passage of Proposition 26 in November 2010. Proposition 26’s findings stated that, despite the adoption of Propositions 13 and 218, “California taxes have continued to escalate.” (Voter Information Guide, Gen. Elec. (Nov. 2, 2010) text of Proposition 26, § 1, subd. (c), p. 114.) The findings also took note of a “recent phenomenon whereby the Legislature and local governments have disguised new taxes as ‘fees’ in order to extract even more revenue from California taxpayers without having to abide by [the] constitutional voting requirements.” (*Id.*, subd. (e), p. 114.)

To ensure the effectiveness of Propositions 13 and 218, Proposition 26 made two changes to article XIII C. First, it specifically defined “tax,” and did so broadly, to include “any levy, charge, or exaction of any kind imposed by a local government.” (Art. XIII C, § 1, subd. (e).) However, the new definition has seven exceptions. A charge that satisfies an exception is, by definition, not a tax. The relevant exception here involves charges “imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.” (Art. XIII C, § 1, subd. (e)(2).)

Second, Proposition 26 requires the local government to prove “by a preponderance of the evidence that ... [an] exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.” (Art. XIII C, § 1, subd. (e).)

Citizens for Fair REU Rates v. City of Redding (2018) 6 Cal.5th 1, 11-12.

In this regard, the Court finds that the IAC does not plead facts giving rise to a violation of Proposition 26 because there has been **no actual imposition** of a “tax,” but only the establishment of a framework for future rate raises and taxes. Indeed, ¶ 24 refers to a 33% “estimate” of increased spending by MWD as to an annual WaterFix costs, which it “intends” to recover through its wholesale water rates. ¶ 25 refers to MWD’s **projection** of at least an extra \$4.80/month in WaterFix costs on their water bills. ¶ 26 alleges that WaterFix surcharges for L.A. ratepayers “could” balloon to as high as \$6.78/month and other worst case scenario estimates are double, triple or more. However, for purposes of Proposition 26, there must be an enactment of a “tax” in order for it to be imposed:

Plaintiffs’ second cause of action seeks a declaratory judgment that the Procedural Ordinance is an unconstitutional tax because the City denied the electorate the right to vote on the TMD assessment and the Procedural Ordinance. **Defendants successfully demurred to this cause of action on the grounds that the Procedural Ordinance itself does not impose any tax, but rather creates a framework** under which the City may, by resolution, levy assessments. Defendants state the City Council’s 2012 *resolution* renewing the TMD and

levying the assessment is what imposes the alleged “tax”—not the Procedural Ordinance that is the sole subject of the second cause of action.

The court properly sustained the demurrer to the second cause of action. Proposition 26 requires voter approval of “taxes” as it defines them and applies only to those taxes “imposed by a local government.” (Cal. Const., art. XIII C, § 1, subd. (e)¹; see *Shapiro, supra*, 228 Cal.App.4th at p. 767, fn. 6.) **“[I]mposed” in this context means enacted.** (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 944 [222 Cal. Rptr. 3d 210, 401 P.3d 49].)

Defendants correctly assert that the Procedural Ordinance **does not enact or impose any assessment. It creates a framework and procedure** for the City to subsequently define a district and levy assessments by resolution of the City Council. For example, Municipal Code section 61.2501, subdivision (e) provides that the Procedural Ordinance’s purpose is, among other things, “[t]o provide a mechanism with which a charge may be imposed for a special and specific benefit

1

(e) As used in this article, “tax” means any levy, charge, or exaction of any kind **imposed** by a local government, except the following:

(1) A charge **imposed** for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

(2) A charge **imposed** for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

(3) A charge **imposed** for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge **imposed** for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

(5) A fine, penalty, or other monetary charge **imposed** by the judicial branch of government or a local government, as a result of a violation of law.

(6) A charge **imposed** as a condition of property development.

(7) Assessments and property-related fees **imposed** in accordance with the provisions of Article XIII D.

The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.

Cal. Const, Art. XIII C § 1 (bold emphasis and underlining added).

conferred directly to the payors.” Municipal Code section 61.2509 provides that it is the City Council, by resolution, that will “adopt, revise, change, reduce, or modify” any “proposed assessment.” (Italics omitted.) Plaintiffs **cite nothing in the Procedural Ordinance that sets the rate or term of any assessment or identifies those who are assessed.** Rather, the City Council did so by the resolution Plaintiffs untimely challenged.

Reid v. City of San Diego (2018) 24 Cal.App.5th 343, 367-68 (bold emphasis and underlining added).

Here, the IAC does not allege that any “tax,” whether a tax proper, or a tax disguised as a rate increase, has yet been enacted against anyone. Accordingly, no violation of Proposition 26 is pled.

To reiterate, this validation action is authorized, but on the merits, no violation of Proposition 26 is pled.

The demurrer to the first cause of action is SUSTAINED without leave to amend. Generally speaking, leave to amend must be allowed where there is a reasonable possibility of successful amendment. Goodman v. Kennedy (1976) 18 Cal.3d 335, 348. In this instance, however, Plaintiffs must demonstrate this possibility at the hearing, otherwise no leave to amend will be given.

Defendant Metropolitan Water District of Southern California’s Demurrer

Meet and Confer

The Declaration of Adam W. Hofmann reflects that the meet and confer requirement set forth in CCP § 430.41 was satisfied.

Analysis

1. First Cause of Action (Determination of Invalidity: Authorization of Bonds and Indebtedness Dependent on Rate Increases [That] Lack Voter Approval; Authorization of Rate Increases that Would Violate Proposition 26).

For the reasons discussed above re: Defendant San Diego County Water Authority’s demurrer, the demurrer to the first cause of action is SUSTAINED without leave to amend, unless Plaintiffs can demonstrate a reasonable possibility of successful amendment.

2. Second Cause of Action (Determination of Invalidity: Authorization of Bonds and Indebtedness Dependent on Property Tax Increases that Lack Voter Approval; Authorization of Property Tax Increases that Would Violate Proposition 13).

... Proposition 13, adopted in 1978 ... added article XIII A to the state Constitution “to assure effective real property tax relief by means of an “interlocking “package”” of four provisions. (*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 872 [64 Cal. Rptr. 2d 447, 937 P.2d 1350] (*Sinclair Paint*)). The first provision capped the ad valorem real property tax rate at 1 percent (art. XIII A, § 1); the second limited annual increases in real property assessments to 2 percent (art. XIII A, § 2); the third required that any increase in statewide taxes be approved by two-thirds of both houses of the Legislature (art. XIII A, § 3); and the fourth required that any special tax imposed by a local government entity be approved by two-thirds of the qualified electors (art. XIII A, § 4). Thus, with its first two provisions, Proposition 13 limited local government authority to increase property taxes. Further, “since any tax savings resulting from the operation of [the first two provisions] could be withdrawn or depleted by additional or increased state or local levies of other than property taxes, sections 3 and 4 combine to place restrictions upon the imposition of such taxes.” (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231 [149 Cal. Rptr. 239, 583 P.2d 1281].)

Citizens for Fair REU Rates v. City of Redding (2018) 6 Cal.5th 1, 10.

As discussed above, the JAC does not plead that any property tax increase has yet been effectuated in conjunction with the WaterFix Authorization. Indeed, Plaintiffs have not, and cannot, specify the rate of any increase above that permitted by Proposition 13 because any such increase is, at the moment, hypothetical and speculative.

Accordingly, the demurrer to the first cause of action is SUSTAINED without leave to amend, unless Plaintiffs can demonstrate a reasonable possibility of successful amendment.

3. Third Cause of Action (Determination of Invalidity: Violation of MWD’s State Water Project Long-Term Contract)

At ¶ 71, the third cause of action alleges that MWD’s WaterFix authorization is invalid because it: (1) authorizes the issuance of revenue bonds, secured with liens on future revenues, that are dependent on and rely on future property tax increases; (2) authorizes those future property tax increases, despite Paragraph 34 of MWD’s long-term contract that permits MWD to levy property taxes to pay its State Water Project obligations only when it is unable to make its contract payments by other means; and (3) authorizes issuance of charges that may be prohibited under MWD’s long-term contract, including those specified in ¶ 17 of the contract.

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

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

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

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

¶ 48 alleges that Paragraph 17 of MWD's long-term contract places additional restrictions on the circumstances and conditions relating to bond sales and charges. For example, paragraph 17(d) provides that "[n]o bonds shall be sold nor funds expended under the authority of the Bond Act for the construction of any aqueduct or appurtenance thereto included in the System" unless specified restrictions are met. If the cost of servicing CVP bonds were to be included in the contractual payments of MWD owed to the state, paragraph 17(g)(2) of MWD's long-term contract may also prevent the costs of CVP bonds from being passed onto SWP contractors.

As discussed above, the 1AC fails to allege that any property tax was assessed, any bond was issued, or any charge imposed in connection with the WaterFix authorization. As such, an actual breach/violation of the State Water Project Long-Term Contract is not pled.

Accordingly, the demurrer to the third cause of action is SUSTAINED without leave to amend, unless Plaintiffs can demonstrate a reasonable possibility of successful amendment.

4. Fourth Cause of Action (Determination of Invalidity: Violation of Other Provisions)

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

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

"[S]tatutory causes of action must be pleaded with particularity." Covenant Care, Inc. v. Superior Court (2004) 32 Cal.4th 771, 790.

Ordinarily, negligence may be pleaded in general terms and the plaintiff need not specify the precise act or omission alleged to constitute the breach of duty. (3 Witkin, Cal. Procedure (2d ed. 1971) §§ 465, 466, pp. 2119-2120.) However, because under the Tort Claims Act all governmental tort liability is based on statute, the general rule that statutory causes of action must be pleaded with particularity is applicable. Thus, "to state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity." (Citations omitted.)

Lopez v. Southern Cal. Rapid Transit Dist., (1985) 40 Cal.3d 780, 795.

Here, the fourth cause of action does not specify in what manner the WaterFix Authorization violates Water Code Appendix 109, Section 200 of the District Act, or the Joint Exercise of Powers Act, Gov. Code § 6500, 6502. The particular statutory section, and the manner of the violations thereof, must be specifically pled.

The demurrer to the fourth cause of action is SUSTAINED without leave to amend, unless Plaintiffs can demonstrate a reasonable possibility of successful amendment

Defendant Metropolitan Water District of Southern California's Motion To Strike

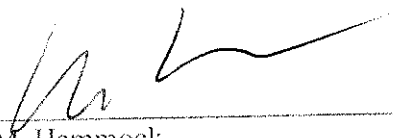
Given the ruling on the demurrer, the motion to strike is MOOT.

Moving Party to give notice, unless waived.

IT IS SO ORDERED.

Dated: ~~March 15, 2019~~

4-9-19



Randolph M. Hammock
Judge of the Superior Court

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 26, 2019, I served true copies of the following document(s) described as:

[PROPOSED] ORDER SUSTAINING THE DEMURRERS FILED BY METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA AND SAN DIEGO COUNTY WATER AUTHORITY

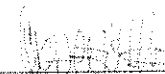
on the interested parties in this action as follows:

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.

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

Executed on March 26, 2019, at San Francisco, California.



Grace M. Mohr

[PROPOSED] ORDER SUSTAINING THE DEMURRERS FILED BY METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA AND SAN DIEGO COUNTY WATER AUTHORITY

1 **SERVICE LIST**

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

4 Adam Keats, Esq.
5 CENTER FOR FOOD SAFETY
6 303 Sacramento Street, 2nd Floor
7 San Francisco, CA 94111
8 Telephone: (415) 826-2770
9 Facsimile: (415) 826-0507
10 Email: akeats@centerforfoodsafety.org

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

11 Roger B. Moore, Esq.
12 LAW OFFICE OF ROGER B. MOORE
13 337 17th Street, Suite 211
14 Oakland, CA 94612
15 Telephone: (510) 548-1401
16 Email: rblm@landwater.com

17 Gregory V. Moser, Esq.
18 John C. Lemmo, Esq.
19 Jacob Kozaczuk, Esq.
20 PROCOPIO, CORY, HARGREAVES &
21 SAVITCH LLP
22 525 B Street, Suite 2200
23 San Diego, CA 92101
24 Telephone: (619) 238-1900
25 Facsimile: (619) 235-0398
26 Email: greg.moser@procopio.com
27 john.lemmo@procopio.com
28 jacob.kozaczuk@procopio.com

Attorneys for Defendant
SAN DIEGO COUNTY WATER
AUTHORITY

17 Mark J. Hattam, Esq.
18 General Counsel
19 SAN DIEGO COUNTY WATER AUTHORITY
20 4677 Overland Avenue
21 San Diego, CA 92123
22 Telephone: (858) 552-6791
23 Facsimile: (858) 522-6566
24 Email: mhattam@sdewa.org

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

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.
9 R. Scott Kimsey, Esq.
10 Klein Denatale Goldner, LLP
11 4550 California Avenue
12 Bakersfield, CA 93309
13 Telephone: (661) 401-7755
14 Facsimile: (661) 326-0418
15 Email: jhughes@kleinlaw.com
16 skimsev@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.
14 Musick, Peeler & Garrett, LLP
15 324 S. Grand Avenue, Suite 2000
16 Los Angeles, CA 90017
17 Telephone: (213) 629-7881
18 Facsimile: (213) 624-1376
19 Email: c.orr@musickpeeler.com

Attorneys for Answering Party
TULARE LAKE BASIN WATER
STORAGE DISTRICT

17 Isaac St. Lawrence, Esq.
18 McMurtrey, Hartsock & Worth
19 2001 22nd Street, Suite 100
20 Bakersfield, CA 93301
21 Telephone: (661) 322-4417
22 Facsimile: (661) 322-8123
23 Email: isaac@mcMurtreyhartsock.com

Attorneys for Answering Party
HENRY MILER WATER DISTRICT

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 April 9, 2019, I served true copies of the following document(s) described as:

NOTICE OF ENTRY OF ORDER

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.

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

Executed on April 9, 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

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

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
john.lemmo@procopio.com
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@sdcwa.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
5 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
12 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

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
21
22
23
24
25
26
27
28

Attorneys for Answering Party
HENRY MILER WATER DISTRICT