No: B297553

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION THREE

FOOD & WATER WATCH AND CENTER FOR FOOD SAFETY
Plaintiffs and Appellants,

v.

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, ET AL.
Defendants and Respondents.

From the Superior Court in and for the County of Los Angeles
The Hon. Randolph M. Hammock
Case No. BC720692

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA'S RESPONDENT'S BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS *(Check one):* ☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

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(2)		
(3)		
(4)		
(5)		

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Date: July 14, 2020

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INTRODUCTION

Appellants Food & Water Watch and Center for Food Safety, in their own words, opposed the ecological impact of the now-terminated California Bay Delta water conveyance project known as California WaterFix ("WaterFix"), proposed by a prior state administration. As part of their opposition to that project, Appellants sought in this case to challenge two resolutions (the "Resolutions") adopted by the Board of Directors of respondent Metropolitan Water District of Southern California ("Metropolitan"), one of 29 State Water Contractors Those resolutions authorized Metropolitan's expanded participation in WaterFix and set forth a related plan for funding that expanded participation. Appellants claimed that Metropolitan's funding plans violated laws governing the imposition of certain taxes and rates for service and/or the laws governing the issuance of bonds. The trial court properly dismissed Appellants' claims on demurrer, finding the Resolutions did not enact any tax or rate or authorize the issuance of any bond.

First, Appellants' first three causes of action failed because the constitutional and contractual tax challenges they alleged—regardless of the procedural label they assigned to those claims—have no application to Metropolitan's Resolutions. As Appellants admit, the Resolutions adopted no wholesale water service rate or property tax. Moreover, California Supreme Court precedent establishes that Metropolitan's authorization to fund WaterFix is not a service rate or tax subject to the legal standards Appellants have raised. A present, justiciable controversy cannot be

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premised on the possibility that Metropolitan might one day have increased service rates and/or property taxes to fund the WaterFix contributions anticipated by the Resolutions. Appellants' contrary arguments seek an impermissible advisory opinion regarding what hypothetical future rates or taxes would be legal.

Nor is there any merit to Appellants' contention that judicial review is necessary or available to determine the validity of Metropolitan's authorization to negotiate and enter into future agreements with a financing joint-powers authority, when the authorization relates to a project that now no longer exists, there are no proposed terms, and no agreement was ever executed. Appellants have not shown and cannot show that their first three causes of action had any legal merit or that the trial court erred in dismissing them.

Second, Appellants' fourth cause of action failed to allege any violation of any legal authority and so failed to state a valid cause of action. On appeal, Appellants assert, without supporting authority or analysis, that Metropolitan was required by its own enabling legislation to secure voter approval for its challenged Resolutions. But the statute Appellants cite, by its own terms, has no application to the facts Appellants alleged. Appellants have offered no support for this claim.

Third, while the trial court considered the merits of Appellants' claims, it could also have dismissed for lack of standing. Appellants did not allege and could not allege that they or their members ever paid or were liable to pay a wholesale

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water service rate or property tax adopted or increased as a result of Metropolitan's Resolutions. As a result, they could not establish a sufficient interest in their tax challenges to maintain standing under California law.

Fourth, since the entry of judgment, the State of California has abandoned the WaterFix project entirely. Metropolitan's Resolutions, which expressly authorized increased support for WaterFix and only WaterFix, are now ineffective, and Metropolitan cannot implement them. As a result, Appellants' claims—never ripe to begin with—are now also moot.

Appellants' claims are both meritless and non-justiciable. This Court should affirm the judgment below.

FACTUAL AND PROCEDURAL BACKGROUND

A. The California Department of Water Resources proposed the California WaterFix, and Metropolitan planned to provide funding as a State Water Contractor.

California's Department of Water Resources ("DWR") owns and operates the State Water Project, which conserves water in and transports water from Northern California through the Sacramento River Delta and the California Aqueduct. (1 AA 12;[1] *San Diego County Water Authority v. Metropolitan Water Dist. of So. Cal.* (2017) 12 Cal.App.5th 1124, 1132-1133 (*San Diego*).)

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[1] This appeal arises from a judgment dismissing the underlying action on demurrer. (1 AA 273-296; 2 AA 297-310.) Consistent with that procedural posture, this brief assumes the truth of properly pleaded, factual allegations. (See *State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 346.)

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DWR has contracts with 29 local government entities (the State Water Contractors), requiring the Contractors to pay all water supply and transportation-related costs of the State Water Project in return for participation rights in the system. (1 AA 12.)

Several years ago, DWR proposed to improve the State Water Project by constructing significant new infrastructure to resolve problems transporting water from the Sacramento River to the existing State Water Project facilities. (1 AA 28.) The proposed project, which has now been terminated, was known as the California WaterFix or WaterFix. It would have added three new intakes to the east bank of the Sacramento River, tunnels connecting the intakes to a new, 30-acre intermediate forebay, two 30-mile tunnels carrying water from the forebay to a new pumping plant, and an expanded Clifton Court Forebay (the intake for the California Aqueduct, which transports delta water to Southern California and other locations). (*Ibid.*)

Before July 10, 2018, approximately 67% of the WaterFix project's costs and capacity were estimated to be subscribed primarily by various State Water Contractors, including Metropolitan. (1 AA 28-31.) But DWR had not secured funding for the remaining 33% of capacity (the "Unsubscribed 33%"). (See *ibid.*)

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B. On July 10, 2018, Metropolitan authorized an increase in its participation in California WaterFix, which included the purchase of the Unsubscribed 33%.

Metropolitan is a local government entity that is unlike most public water agencies. It is "a voluntary collective of '26 member public agencies—14 cities, 11 municipal water districts, [and] one county water authority'" that are Metropolitan's only customers and that govern Metropolitan through representatives who comprise Metropolitan's entire Board of Directors. (See *San Diego*, *supra*, 12 Cal.App.5th at pp. 1131-1132; 1 AA 12; Wat. Code Appen., ch. 109 (the "Metropolitan Water District Act"), §§ 12 [defining member public agencies], 26 [boundaries set by boundaries of member public agencies].) Metropolitan imports water through its participation in the State Water Project and from the Colorado River. (See *San Diego*, at pp. 1131-1132; 1 AA 12.)

On July 10, 2018, Metropolitan's Board of Directors considered and ultimately adopted Resolutions 9243 and 9244. (1 AA 28-36.) The Resolutions authorized Metropolitan's General Manager to negotiate, execute, and deliver a series of possible transactions to provide additional funding for California WaterFix, including the purchase of the Unsubscribed 33% and increased participation in a joint-powers authority ("JPA") to finance the WaterFix project. (See 1 AA 28-29, 33-34.) The authorized transactions would have brought Metropolitan's total, potential contribution to WaterFix to a maximum of 64.6% of the

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project's total estimated costs of approximately $10.8 billion. (1 AA 14-15, 28-31.)

Metropolitan projected that it would likely increase future wholesale water rates paid by its member agencies to pay for the costs of its anticipated participation in WaterFix. (1 AA 15, 28-31.) It also had planned to recoup much of its up-front contribution toward the Unsubscribed 33% either by selling or charging for the use of some of the additional capacity. (*Ibid.*) In the end, as discussed below, Metropolitan's General Manager never executed an agreement binding Metropolitan to any action implementing either of the Resolutions. And, as Appellants acknowledge, Metropolitan has not increased any wholesale water rate or taken any other action to recover the costs related to the authorization provided by the Resolutions. (1 AA 10-11, 20-24.)

C. Appellants filed a reverse validation action to challenge the Resolutions, alleging potential future taxes and water rates may be illegal.

Appellants—organizations that advocate for clean water, healthy food, sustainable agriculture, and equitable water distribution—filed the underlying, reverse validation action to challenge Metropolitan's Resolutions. (1 AA 8-39.)[2] Acknowledging that the Resolutions did not approve any increase in a tax or water rate, Appellants asserted that Metropolitan's

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[2] Appellants' operative pleading was their First Amended Complaint, filed in response to a prior demurrer and motion to strike by Metropolitan. (See 1 AA 167.)

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planned funding for WaterFix, which depended on potential future wholesale rate increases and/or property tax increases, may violate the law. (1 AA 10-11, 20-24.) As a result, they claimed, Metropolitan's authorization to enter into agreements pursuant to which Metropolitan would have incurred related costs must have been illegal immediately. (*Ibid.*) Appellants also suggested that the Resolutions constituted a challengeable bond issuance, although they acknowledged that Metropolitan merely "*plan[ned]* to finance its financial commitment to the WaterFix project through the issuance of revenue bonds that *will* be secured with a lien or liens on future revenues." (1 AA 9, 10-11, 15, italics added.)

D. The trial court dismissed Appellants' claims on demurrer, finding that the Resolutions did not enact or increase a tax or water rate.

Metropolitan responded to Appellants' suit with a demurrer and motion to strike, challenging each of Appellants' claims. (1 AA 63-170.) Defendant and respondent San Diego County Water Authority also filed a demurrer, seeking to dismiss Appellants' first cause of action. (1 AA 40-58.) After briefing and a hearing, the trial court sustained both demurrers. (1 AA 281-290.)

The trial court found Appellants had not alleged and could not allege that the Resolutions enacted any tax or water rate or issued any bonds, and their first three causes of action were "hypothetical and speculative" and failed as a result. (1 AA 287-289.) Appellants' fourth cause of action also failed because it did not include any factual allegation reflecting any violation of the

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statutes cited. (1 AA 289-290.) As a result, Appellants had not alleged and could not allege a violation of the laws governing taxes and bonds. (1 AA 287-290.)

After sustaining Metropolitan and San Diego's demurrers without leave to amend, the trial court entered judgment on April 9, 2019, and Metropolitan served notice the same day. (2 AA 299-310.) This appeal timely followed. (2 AA 311-314.)

E. Following entry of judgment, DWR terminated the WaterFix project, rendering the Resolutions inoperative.

While the parties were litigating Appellants' pleadings, Gavin Newsom was elected Governor of California, and on February 12, 2019, he announced publicly that he did not support the WaterFix project. (Motion for Judicial Notice in Support of Motion to Dismiss ("MJN") Ex. 1.) On April 29, 2017, Governor Newsom issued Executive Order N-10-19 (MJN Ex. 2), which ordered state agencies to reassess the two-tunnel WaterFix and develop a new plan "to modernize conveyance through the Bay Delta with a new *single tunnel* project." (MJN Exs. 6, p. 6, italics added.) Consistent with that direction, on May 2, 2019, the Director of DWR set aside all approvals for the WaterFix project. (MJN Ex. 3.) And on May 7, 2019, DWR formally rescinded its prior authorizations for the issuance of its WaterFix revenue bonds, noting that "no Bonds have been issued thereunder. . . ." (MJN Ex. 4.)

Following these announcements, Metropolitan's General Manager Jeffrey Kightlinger publicly reported to Metropolitan's

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Board on June 25, 2019, that the Resolutions only authorized him to negotiate and execute transactions expressly and specifically tied to the two-tunnel WaterFix project. (MJN Ex. 5, pp. 6-8; see also 1 AA 28 [referencing the two-tunnel design]; 1 AA 33 [same].) As a result, Mr. Kightlinger explained, the Resolutions are "void" and "mooted out" by the State's decision to withdraw that project. (MJN Ex. 5, p. 7.) In short, he explained, Metropolitan staff cannot and will not implement the Resolutions, now that the State abandoned WaterFix. (*Ibid.*)

Nonetheless, six months later, Appellants filed their Opening Brief, perpetuating this appeal. (See AOB.)

STANDARD OF REVIEW

This Court independently reviews Appellants' operative, First Amended Complaint to determine whether it states any cognizable causes of action. (*Moore v. Regents of the University of Cal.* (1990) 51 Cal.3d 120, 125 (*Moore*).) It assumes the truth of properly pleaded, factual allegations and judicially noticeable facts, while ignoring contentions, deductions, and conclusions of law or fact. (*Ibid.*)

Although the allegations in the complaint must be regarded as true for purposes of testing the sufficiency of a complaint on demurrer, allegations that contradict judicially noticeable facts or a document attached to the complaint must not be accepted as true. (*Interinsurance Exchange v. Narula* (1995) 33 Cal.App.4th 1140, 1143; see also *Cansino v. Bank of Am.* (2014) 224 Cal.App.4th 1462, 1468 (*Cansino*) [affirming demurrer and holding courts assume the truth of facts pled, except those

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contradicted by judicially noticeable facts]; *Sarale v. Pacific Gas & Elec. Co.* (2010) 189 Cal.App.4th 225, 245 (*Sarale*) [affirming demurrer and holding facts appearing in exhibits attached to pleading take precedence over contrary allegations in the complaint].) Thus, where there is a conflict between the complaint's allegations and the contents of an exhibit to the complaint, the facts reflected in the exhibit govern over the conflicting allegations. (*SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 83.)

Finally, as with all appeals, Appellants bear the burden to demonstrate prejudicial error. (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368; *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.)

ARGUMENT

I. The trial court correctly dismissed Appellants' first three causes of action.

Appellants' first, second, and third causes of action all challenged the validity of the Resolutions based on the purported illegality of wholesale water service rates and/or property taxes that Appellants alleged Metropolitan would one day have to increase to fund its expanded participation in WaterFix. (1 AA 20-24.) The trial court reviewed Appellants' allegations and held correctly that they had not alleged the adoption of any new or increased service rate or tax. (1 AA 287-289.) As a result, the trial court held, Appellants' rate and tax claims were "hypothetical and speculative" and failed as a matter of law. (1

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AA 287-289, discussing *Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.5th 1, 10 (*Redding*); see also March 15, 2019 Transcript ("Tr.") 304, discussing *Reid v. City of San Diego* (2018) 24 Cal.App.5th 343, 371 (*Reid*).)

Appellants have not shown error. They concede that Metropolitan's Resolutions adopted no service rate or property tax. (AOB 10-11, 40-41.) And they also concede that their challenge to future increases in service rates and/or property taxes is unripe. (AOB 24.)

Instead, as they did below, Appellants ask the Court to consider the lawfulness of the bonds Appellants claim Metropolitan authorized. (See AOB 27-28.) But their arguments are misplaced for two reasons. First, the only law they claim Metropolitan violated is the law governing imposition of service rates and property taxes. Again, the Resolutions did not establish or increase any rate or tax, and those laws do not restrict planning of public projects. Second, notwithstanding Appellants' argument, the Resolutions did not authorize the issuance of any bond by Metropolitan.

This Court should affirm dismissal of Appellants' first three causes of action.

A. Appellants' operative complaint alleged violations of Propositions 13 and 26, which apply to certain property taxes and rates for services—not to Metropolitan's planned WaterFix participation.

Appellants' position in this case is difficult to pin down. At times, as they did in the trial court, Appellants assert that they

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have not brought a "taxpayer challenge"[3] and emphasize that their case presents no "constitutional challenge to an assessed rate or tax increase. . . ." (AOB 7, 24-25, 41.) Elsewhere, however, they argue that the Resolutions "plainly violate[] Propositions 13 and 26," and they call upon the Court to consider the lawfulness of anticipated tax and/or service rate increases. (AOB 8, 20-23, 28-30.)

Ultimately, however Appellants characterize their claims, this Court must look to their operative complaint to determine whether they have pleaded a viable cause of action. (See *Moore*, *supra*, 51 Cal.3d at p. 125.) As noted, Appellants' complaint alleged challenges to the wholesale water service rates and/or property taxes they believed Metropolitan would one day set to fund the activities anticipated by the Resolutions. (1 AA 20-24.)

Their first cause of action alleged Metropolitan's *future* wholesale water service rate increase *would* violate Article XIII C of the California Constitution (Proposition 26) if the increase is passed on to Metropolitan's "customers, ratepayers, and member agencies"[4] in a way that *would* be disproportional to the benefits

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[3] Appellants use the phrase "taxpayer challenge" repeatedly in Appellants' Opening Brief. Appellants use it to suggest an unspecified—and as far as Metropolitan understands, non-existent—category of claims that are distinct in some manner from validation actions, but it has no meaning in the relevant law.

[4] This is a functionally redundant phrase, given that Metropolitan's only customers and rate payers are its member agencies. (See *San Diego*, *supra*, 12 Cal.App.5th at pp. 1131-1132.)

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of the funded project. (1 AA 20-21.) Proposition 26 amended California Constitution article XIII C, section 1, to define the word "tax," as a levy or charge "imposed"[5] by a local government agency. (Cal. Const., art. XIII C, § 1, subd. (e).) Fees for government services or benefits, among other fees, are excluded from the constitutional definition of "tax," so long as they do not exceed the reasonable cost of providing the service or benefit. (Cal. Const., art. XIII C, § 1, subd. (e)(1), (2).) So defined, taxes may only be imposed by local government if approved by the relevant electorate. (See Cal. Const., art. XIII C, § 2.)

In their second cause of action, Appellants claimed any *future* property-tax increase by Metropolitan *would* violate Article XIII A of the California Constitution (Proposition 13) because the increase *would* be in excess of the constitutional limit. (1 AA 21-23.) Enacted in 1978, Proposition 13 added Article XIII A to the California Constitution, placing limits on the ad valorem taxes that may be imposed on real property.

Their third cause of action alleged—in conclusory terms—that any such "future property tax increases" and future charges "may be prohibited" by paragraphs 17 and 34 of Metropolitan's long-term State Water Contract. (1 AA 23-24.) It is unclear from Appellants' complaint, and from their argument on appeal, *how*

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[5] Metropolitan has maintained throughout this case that it does not "impose" its rates on its member agencies or anyone else. (1 AA 86, citing *Ponderosa Homes, Inc. v. City of San Ramon* (1994) 23 Cal.App.4th 1761, 1770.) As San Diego County Water Authority noted in its own briefing below, however, this is a contested legal question that the Court need not, and accordingly should not, decide in resolving Appellants' claims.

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the cited provisions "may" prohibit the tax increases Appellants anticipate. (See, e.g., AOB 11.) But it is clear that Appellants' third cause of action alleged contractual limits on anticipated, future taxes.

These are the allegations the trial court considered. They all allege challenges to anticipated future service rates and property taxes, and the trial court properly dismissed them.

B. Appellants' claims failed as a matter of law because they did not allege and could not allege Metropolitan adopted any new or increased wholesale water service rate or property tax.

The central problem with Appellants' claims is that the lawfulness of a tax or service rate cannot be evaluated until it is adopted, as the trial court held. (1 AA 283-285, discussing *Reid*, *supra*, 24 Cal.App.5th at p. 371 [holding ordinance establishing a framework and procedure for the imposition of assessments was not subject to Proposition 26]; see also *Webb v. City of Riverside* (2018) 23 Cal.App.5th 244, 259-260 (*Webb*) [holding that only increased *rates* are subject to Proposition 26, not changes to an agency's budgetary methods].)

Importantly, Appellants do not dispute this principle. They admit that the Resolutions did not raise any service rate or tax.[6]

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[6] In the trial court, Appellants argued that the Resolutions authorized the General Manager to increase service rates unilaterally. Metropolitan noted that Appellants' reading of the Resolutions was inconsistent with the law and with principles of textual construction. (1 AA 88-89, discussing Metropolitan Water District Act, § 134 [the Board sets rates and charges]; Evid. Code,

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(AOB 10-11.) And they admit that service rates and taxes cannot be challenged—at least in the form of a so-called "direct taxpayer challenge"—before they are "actually assessed or imposed." (AOB 24.) As a result, regardless of the way they characterize the procedural nature of their case, Appellants' challenges to future service rates and/or taxes—the only substantive challenges they pleaded—fail as a matter of law.

This should end the Court's inquiry. However, despite all the foregoing, Appellants still ask the Court to evaluate the lawfulness of the service rates and/or taxes Metropolitan might have had to raise to fund the activities anticipated by the Resolutions.[7] They assert that anticipated service rate increases "cannot, under any circumstance, satisfy any exemption under Proposition 26" and will accordingly require voter approval. (AOB 21, 28.) This is because, they claim, the anticipated increase in service rates will exceed the benefits conferred on ratepayers. (AOB 28-29; see also AOB 40.)

These assertions are completely unsupported by any legal authority. (AOB 28-30.) For that reason alone, they should be

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§ 664 [establishing an evidentiary presumption that public agencies and officials will fulfill their legal duties].) Appellants have abandoned that argument on appeal, and it bears no further discussion. (*Reichert v. Hoffman* (1997) 52 Cal.App.4th 754, 764 (*Reichert*) [refusing to consider arguments raised for the first time in reply]; *Stoll v. Shuff* (1994) 22 Cal.App.4th 22, 25, fn. 1 (*Stoll*) [same].)

[7] As discussed in Section III.B, *infra,* the State has now abandoned WaterFix, and so Metropolitan will not undertake the activities authorized by the Resolutions or incur any related costs to fund WaterFix.

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rejected. (See *Kim v. Sumitomo Bank* (2008) 17 Cal.App.4th 974, 979 (*Kim*) [holding Court need not consider points raised without citation to any "recognized legal authority"].)

Moreover, as the trial court explained, Appellants' arguments are inherently "hypothetical and speculative." (1 AA 288.) The lawfulness of a charge cannot be evaluated in a vacuum; it is necessary to consider the charge's specific features to determine whether they are consistent with constitutional standards. (See, e.g., *Northern Cal. Water Assn. v. State Water Resources Control Bd.* (2018) 20 Cal.App.5th 1204, 1221 [evaluating state fee to determine whether it allocated costs reasonably among payors].)

Beyond the fact that the Resolutions did not set any new rate or tax increase, the actual WaterFix costs that might have been allocated to service rates were not known at the time Metropolitan's Board adopted the Resolutions. The Resolutions authorized support of up to 64.6% of the project's estimated costs of approximately $10.8 billion. (1 AA 14-15, 28-31.) But, as Appellants acknowledge, Metropolitan did not plan to fund that participation alone; it sought to secure contributions from other agencies and water users to help it cover or recover some part of those costs. (AOB 20; 1 AA 15, 16.) While Appellants are right that Metropolitan had not secured commitments for those contributions at the time Appellants filed suit, *neither had it increased its service rates to pay any of the unsubscribed WaterFix costs*. (See AOB 20.) There was no allegation or basis to believe that Metropolitan would increase service rates until the question

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of other financial contributions and Metropolitan's actual commitment to pay was resolved. Thus, any effort to evaluate the lawfulness of service rates that Metropolitan might one day have increased to fund WaterFix is inherently unripe and seeks an impermissible advisory opinion.

Indeed, Appellants' repeated argument that Metropolitan's future service rates and/or taxes would have been illegal because they lack voter approval illustrates the problem. (AOB 20, 22-23, 27-28, 30.) The only approval required for Metropolitan's rates is that of its Board; there is no other relevant electorate. But even putting that aside, what is it Appellants contend Metropolitan should have submitted to voters? As Appellants acknowledge, Metropolitan never determined the actual amount it might contribute to WaterFix, the sources of revenue to support such contribution (including those from third parties), the amount of any service-rate increase required or a proposed rate of increase for property taxes. In other words, Metropolitan was not even yet in a position to *seek* voter approval, let alone required to have already secured it. (See, e.g. Gov. Code, § 53724, subd. (a) [requiring an agency seeking voter approval for a proposed tax to enact an ordinance or resolution setting forth, among other things, the type of tax and rate to be levied].)

Appellants' contrary contention appears to be that any service rate increased due to Metropolitan's expanded support for WaterFix would have been inherently unlawful because, they believe, WaterFix would not serve the interests of Metropolitan's

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"ratepayers" in proportion to its cost. (AOB 29; see also Tr. 324-325.) That contention is meritless.

Metropolitan's only "ratepayers" are its member agencies, and their chosen representatives comprise the entirety Metropolitan's Board. As such, the member agencies decide what projects are in their interest and set the rates they pay. (See Metropolitan Water District Act, §§ 12, 26, 51, 134.) Nothing in the laws Appellants cite limits the projects a water district undertakes to fulfill its statutory mission. And there is no question that funding WaterFix—an improvement to the State Water Project—fell within Metropolitan's legal authority. (See Metropolitan Water District Act, § 25.) Accordingly, it is not for Appellants to second guess the wisdom of Metropolitan's Board in selecting projects to serve its members.

Alternatively, Appellants note that Metropolitan must raise property taxes to meet State Water Contract obligations if its service rates fall short. (AOB 22.) Acknowledging that obligations under the State Water Contract are exempted from Proposition 13's 1% limit on property taxes, Appellants argue that payment of debts related to WaterFix would not qualify. (AOB 22-23.) Again, they provide neither authority nor analysis for their argument. The Court should accordingly decline to consider it. (*Kim*, *supra*, 17 Cal.App.4th at p. 979.) This is especially true as Appellants' unsupported arguments are also premature when, as they admit, Metropolitan never increased any property tax and was pursuing various strategies for avoiding any such increase. (AOB 20; 1 AA 15-16.)

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Because Appellants cannot challenge the lawfulness of service rates and/or property taxes that were never adopted, their first through third causes of action fail as a matter of law.

C. Appellants' claims are not saved by casting them as a challenge to the issuance of bonds.

In an attempt to avoid the legal defects in their challenge to hypothetical service charges and property taxes, Appellants characterize their claims as a challenge to the Resolutions' authorization of bonded indebtedness that, according to them, Metropolitan cannot constitutionally repay. (AOB 8, 27-28, 41.) They claim this requires immediate consideration of the Resolutions' validity, absent which Metropolitan's future actions would be immunized from legal challenge. They are wrong on all fronts.

1. Appellants cannot challenge Metropolitan's WaterFix participation under Propositions 13 and 26.

The first problem with Appellants' approach to this case is that Article XIII C (Proposition 26) does not apply to funding authorizations, it only applies to certain types of revenue generation by local governments.[8] The California Supreme Court

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[8] As noted, Appellants also assert that Metropolitan's Resolutions "may" have violated its State Water Contract obligations. (1 AA 23-24.) But they have not alleged the relevant terms, provided a copy of the contract, or explained how the Resolutions were inconsistent with Metropolitan's contractual obligations. (See AOB 11.) They have accordingly failed to demonstrate error in

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has recently confirmed that an agency's decision to incur a cost is not a tax subject to constitutional challenge. (*Redding*, *supra*, 6 Cal.5th at pp. 16-17, citing *Northern Cal. Water Assn. v. State Water Resources Control Bd.* (2018) 20 Cal.App.5th 1204, 1221.) Rather, a tax only exists when specified payors have been required to cover those costs in a way that the Constitution prohibits, which occurs only after the tax is imposed by the agency. (*Ibid.*; accord *Webb*, *supra*, 23 Cal.App.5th at pp. 259-260.)

In *Redding,* plaintiffs challenged the validity of the City of Redding's electric rates to the extent they covered a transfer of money from the city's electric utility to the city (a payment in lieu of taxes, or "PILOT"). (See *Redding*, *supra*, 6 Cal.5th at p. 7.) Admitting that the utility, rather than customers, paid the PILOT, the plaintiff nonetheless alleged that the cost of the PILOT was "embedded" in the city's utility's rates, which they alleged resulted in a violation of Proposition 26 by failing to reflect the actual costs of the utility to provide electricity service to plaintiffs. (*Ibid.*) On demurrer, the city argued that the PILOT predated and was accordingly not limited by Proposition 26 and that the utility had sufficient reserves to cover the cost of the PILOT, such that there was no evidence that cost was actually passed on to the utility's ratepayers. (*Ibid.*) The trial court agreed and dismissed the case. (See *id.* at p. 8.)

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the dismissal of their third cause of action. (See *Kim*, *supra*, 17 Cal.App.4th at p. 979.)

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The Court of Appeal reversed, holding that the PILOT itself was a tax that was newly imposed each time the City approved a budget that included the PILOT, even in the absence of evidence that the cost had been actually allocated by the utility to any rate or charge. (*Redding*, *supra*, 6 Cal.5th at pp. 8-9.) The California Supreme Court reversed the Court of Appeal. It emphasized the need "to distinguish between the PILOT transfer in the city's budget and the rates charged to REU's customers." (*Id.* at p. 6.) Looking carefully at Proposition 26's definition of a "tax," the Court concluded that the PILOT was a budgeted cost obligation of the utility; it was not a levy, charge, or exaction imposed by the utility on any individual and, accordingly, "is not the type of exaction that is subject to article XIII C." (*Id.* at pp. 4-5, 12.) The retail electricity *rate* was subject to Proposition 26's limitations, but the utility's individual cost obligations are not. (*Id.* at pp. 4, 15-19.)

Metropolitan's authorization to provide additional funding for California WaterFix costs likewise planned a cost obligation, it was "not the type of exaction that is subject to article XIII C." (*Redding*, at pp. 4-5, 12.) Thus, Appellants' argument that they are challenging a debt commitment, rather than a service rate or tax, is self-defeating under *Redding*. They did not allege facts sufficient to establish a cause of action for a violation of the tax laws they identify, Propositions 13 and 26, or any other tax laws.

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2. Contrary to Appellants' arguments, the reverse validation *procedure* does not create a *substantive* basis for invalidating wholesale water service rates and/or property taxes that have not been adopted.

Appellants attempt to distinguish *Redding* by arguing that they have not brought a "direct taxpayer challenge," but a validation action. (See, e.g. AOB 24-25; see also AOB 41 ["For this is a validation action, not a taxpayer challenge."]; AOB 8 [characterizing Appellants' claims as a challenge to the "authorization" of future service rates or property taxes.) Again, they are wrong.

Code of Civil Procedure section 863 establishes a *procedure* for testing the validity of certain public agency actions. (See *California Commerce Casino, Inc. v. Schwarzenegger* (2007) 146 Cal.App.4th 1406, 1420 (*California Commerce*).) It does not create a *substantive* legal right or a standard against which the lawfulness of Metropolitan's Resolutions may be measured.

To reiterate, the only *substantive* violations that Appellants have alleged to invalidate the Resolutions arise from certain limits on an agency's authority to raise revenue through rates, taxes, and/or bonds. Yet, Metropolitan did not take an action to raise revenue. *Redding*, *Reid*, and *Webb* hold that Metropolitan's authorization of a framework for future funding did not trigger the legal limitations alleged. Appellants have cited no authority supporting their contention that the procedural vehicle they employed here renders the substantive analysis in those cases inapplicable. Nor does any such authority appear to exist.

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Appellants' argument is no different than if they had filed the case as a declaratory relief action under Code of Civil Procedure section 1060, which provides the vehicle for the remedy of declaratory relief; it does not create the substantive basis to declare an action illegal. The defective substance of Appellants' challenge cannot be saved by the procedural vehicle they have chosen to assert that challenge.

3. Metropolitan authorized no bonds and incurred no debt when it adopted the Resolutions.

Appellants are also wrong when they claim that Metropolitan authorized the issuance of bonds, triggering the validation statutes. (See AOB 7, 14, 40; 1 AA 20-21, 23.) The Resolutions themselves and the supporting Board letter show otherwise. (1 AA 28-30, 33-35, 98-107.)

The Resolutions authorize Metropolitan's increased participation in a JPA that *itself* was expected to issue bonds under its own authority. (See 1 AA 28-30; Gov. Code, § 6588, subd. (c) [granting JPAs power to issue bonds independent of any member's bond-issuance authority].) Moreover, the Resolutions did not authorize the future adoption of any source of revenue in any particular manner. It simply authorized the pledge to DWR of water revenues Metropolitan does and may receive, as security for the purchase of capacity interests from the JPA. (1 AA 28 ["The District would secure its obligations to make installment payments with a lien on its water revenues . . . ."].)

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Appellants attempt to portray the Resolutions as authorizing billions of dollars in bonded debt by Metropolitan. (AOB 30.) But their rhetoric cannot overcome what the documents themselves state. (See *Cansino*, *supra*, 224 Cal.App.4th at p. 1468; *Sarale*, *supra*, 189 Cal.App.4th at p. 245.) The Resolutions do not authorize the issuance of Metropolitan bonds; they merely anticipate the issuance of bonds by a JPA. (See 1 AA 28-29, 33-34.) Appellants' statutory basis for invoking validation jurisdiction does not apply to the Resolutions. (See AOB 15, 31, citing Gov. Code, § 53511.)

Attempting to show otherwise, Appellants argue that because the Resolutions relate to a larger financing plan, the anticipated actions of the JPA and Metropolitan's future adoption of service rates and/or property taxes can and must be determined immediately. (AOB 15-16, citing *California Commerce*, *supra*, 146 Cal.App.4th at pp. 1430-1431.) Appellants' reliance on *California Commerce* is misplaced.

In that case, the plaintiffs challenged the validity of a State Assembly Bill that (1) ratified a set of agreements executed by the Governor, granting certain tribes exclusive gaming rights; (2) created a new, special-purpose state agency; and (3) granted that state agency power to issue bonds in specific amounts to be secured with specific state revenue generated by the agreements. (*California Commerce*, *supra*, 146 Cal.App.4th at pp. 1412-1414; Gov. Code, § 12012.40; see also *Hollywood Park Land Co., LLC v. Golden State Transportation Financing Corp.* (2009) 178 Cal.App.4th 924, 933-934.)

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Here, the Resolutions do not ratify any contracts; to the contrary, they recognize that no contracts have yet even been negotiated. (1 AA 29, 34.) Nor do they authorize the issuance of bonds by Metropolitan. Again, they expressly anticipate that any bonds will be issued by a JPA—not Metropolitan. (*Id.* at pp. 28-30, 33-35.) Nor can they grant authority to the JPA to issue bonds in any specific amount or at all, because only the JPA has that authority. (*Ibid.*)

In this way, the Resolutions bear no similarity to the Assembly Bill challenged in *California Commerce*, a state law authorizing the creation of a state agency and issuance of state bonds. (See 146 Cal.App.4th at p. 1413.) And that case does not support Appellants' view that the validity of all future bond authorizations by a separate, independently authorized JPA can or must be determined immediately through a challenge to Metropolitan's Board action. Rather, the finance JPA has its own power to issue bonds completely independent of Metropolitan and limited by the statutes governing JPAs. (See Gov. Code, §§ 6503.5, 6551, 6588, subd. (c); see also *Rider v. City of San Diego* (1998) 18 Cal.4th 1035, 1051-1052 (*Rider*); *San Diegans for Open Government v. City of San Diego* (2015) 242 Cal.App.4th 416, 438 (*SDOG*).) And those actions may be challenged at the appropriate time.

Attempting to show otherwise, Appellants insist that ""[w]hether the bonds are issued by [Metropolitan] or a JPA is irrelevant for the purposes of a validation challenge." (AOB 15.) And they claim that allowing Metropolitan to support project

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funding through a JPA "would completely eviscerate Propositions 13 and 26." (AOB 10.) Case law establishes otherwise.

In *Rider*, certain plaintiffs brought a reverse validation action challenging the validity of a city's plan to finance expansion of a civic convention center. (*Rider*, *supra*, 18 Cal.4th at p. 1040.) That plan included the creation of a finance JPA, the issuance of bonds by the JPA to fund the project, and the execution of certain contracts requiring the city to fully fund the bond costs through rent payments to the JPA, which the city was contractually obliged to include in its future budgets. (*Ibid.*) The plaintiffs claimed that the financing plan violated constitutional and charter limits on the city's authority to issue bonds in support of the project. (*Id.* at pp. 1042-1043.) The court rejected the plaintiffs' argument, finding that the limits on the city's bond authority did not constrain the finance JPA, notwithstanding the fact that the JPA was entirely created and controlled by the city and that the city was economically responsible for the JPA's debts. (*Id.* at pp. 1043-1045.) The Court held that the JPA was a separate legal entity and its actions could not be invalidated by attacks to the city's legal limitations. (*Id.* at pp. 1044-1045.)

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

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Despite the fact that both cases were discussed in the briefing below (1 AA 265-268), Appellants ignore the relevant portions of the *Rider* decision and ignore *SDOG* entirely. Nor do they cite any authority to support their contrary view of the validation statute's scope. (AOB 14-15.) The Court should reject their argument.

In fact, whatever they now say, Appellants even acknowledged in the trial court that if Metropolitan was "authorizing just the creation of a JPA[] Then there's no case." (Tr. 317.) They explained, "When the bonds get issued, at the point the bonds get issued, they're going to be issued by the JPA. The JPA is going to be making the authorization at that point." (Tr. 309.) The problem, as they described it, was that there would be no cause of action *against Metropolitan*. (*Ibid.*) But Appellants' desire to have a claim against Metropolitan does not mean that one exists. (See *Rider*, *supra*, 18 Cal.4th at p. 1042 ["The short answer to plaintiffs' argument is that the Constitution and the City's charter permit the City to avoid the two-thirds vote requirement by creating a joint powers agency to finance public works projects."].)

Nor is there any merit to Appellants' argument that preventing immediate review of Metropolitan's funding plans will immunize Metropolitan's future service rates and/or property taxes from judicial scrutiny. (AOB 32-33.) To the contrary, even the express dedication of a specific revenue structure to specific, authorized bonds does not subject all future revenue measures under that structure to immediate validation. (*San Diego*, *supra*,

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12 Cal.App.5th at pp. 1142-1143.) Each adoption of a new or increased rate and/or tax is subject to judicial review.

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

Thus, as Metropolitan acknowledged in the trial court, its future revenue measures can be challenged under applicable law if and when they are adopted. (1 AA 266-267; Tr. 307.) Even the trial court was careful to avoid ruling on the viability of some future challenge to some other step in the funding process. (Tr. 307.) Contrary to their insistence, Appellants were not placed between a "rock and a hard place." (AOB 32-34.)

Appellants also argue that their validation action was timely brought within 60 days of Metropolitan's Board adopting the Resolutions. (AOB 16-17, citing Code Civ. Proc., § 860; *Reid*, *supra*, 24 Cal.App.5th at p. 371; *Kaatz v. City of Seaside* (2006) 143 Cal.App.4th 13, 30; *Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 846-847 (*Freidland*).) And they note the critical certainty that attends validation of bond issuances. (AOB 17-18, citing Code Civ. Proc., § 864; *Friedland*, at pp. 842-843;

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California Commerce, *supra*, 146 Cal.App.4th at p. 1431; *State of California ex rel. Pension Obligation Bond Committee v. All Persons, etc.* (2007) 152 Cal.App.4th 1386, 1397.) But the timeliness of Appellants' action has never been questioned, nor is there any dispute that the public interest is served by timely validation of bond issuances. Neither of these arguments, however, demonstrates that Metropolitan's Resolutions authorized issuance of any bond or that any other basis exists for finding a ripe subject for validation. Thus, Appellants' arguments regarding timeliness are accordingly irrelevant.

II. Appellants' fourth cause of action failed to articulate any cognizable claim, and the trial court properly dismissed it, as Appellants have tacitly conceded.

Appellants' fourth cause of action alleged that the Resolutions "exceed the limitations on [Metropolitan's] 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." (1 AA 24.) Appellants also claimed that the Resolutions exceed some unidentified JPA authority. (*Ibid.*) In its tentative ruling, the trial court determined that the claim lacked the specificity required for a statutory cause of action, but invited Appellants during the demurrer hearing to substantiate their claim and provide a basis for permitting amendment. (1 AA 290; Tr. 321-324.) Appellants admitted they could not do so. (Tr. 324.) Accordingly, the trial court dismissed the claim without leave to amend. (1 AA 290.)

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On appeal, Appellants make only one attempt to resuscitate this claim. Without mentioning their fourth cause of action, they argue that the Resolutions required voter approval under section 200 of the Metropolitan Water District Act because it contemplated debts that could not be paid from existing sources of revenue. (AOB 23-24.)

As Metropolitan explained in the trial court, however, section 200 permits Metropolitan's Board, following adoption of certain ordinances, to submit to local voters a proposition for Metropolitan to incur bonded indebtedness. Yet, as discussed above, the Resolutions did not authorize any bond; it expressly anticipated future issuance of bonds by a JPA. (1 AA 28-29.) That bond issuance as a matter of law would have rested on the JPA's own statutory powers and would neither have been supported nor constrained by the Metropolitan Water District Act. (Gov. Code, § 6588, subd. (c); see also *Rider*, *supra*, 18 Cal.4th at pp. 1042-1043; *SDOG*, *supra*, 242 Cal.App.4th at p. 443.)

Moreover, far from Metropolitan's Board determining that contributions to the project cannot be paid from ordinary revenue—which is one of section 200's prerequisites—Appellants' complaint affirmatively alleged that Metropolitan planned to fund its contribution to WaterFix from wholesale service rates. (See 1 AA 10, 15, 20-21.) Thus, section 200 had no application to the facts alleged.

Although Metropolitan raised these defects below, Appellants made no effort on appeal to address them. In

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addition, they made no effort whatsoever to explain how their claim that the Resolutions violated the Joint Exercise of Powers Act, in some manner, is viable. Indeed, it is telling that even now Appellants can only describe their own fourth cause of action as alleging "violations of various other provisions." (AOB 11, citing 1 AA 24.) They have tacitly abandoned this claim, and the Court should give it no further consideration. (*Reichert*, *supra*, 52 Cal.App.4th at p. 764; *Stoll*, *supra*, 22 Cal.App.4th at p. 25, fn. 1.)

III. Appellants' claims were not and are not justiciable.

Beyond the substantive defects in their claims, Appellants also lacked standing to challenge Metropolitan's Resolutions. (AOB 34, citing AA 82.) The trial court did not dismiss on this ground, but it remains an alternative basis for affirming the judgment. (See *Little v. Los Angeles Cty. Assessment Appeals Bds.* (2007) 155 Cal.App.4th 915, 925 fn. 6 [holding that a trial court ruling should be upheld if the result is correct, even if the reasoning is not].) In addition, Appellants' claims, never ripe to begin with, have now been rendered moot by events occurring after the judgment. This stands as yet another reason to affirm. (See *ibid.*)

A. Appellants lacked standing to challenge the Resolutions.

1. Appellants did not allege that they or their members paid a wholesale water service rate or property tax collected to recover the costs approved by the challenged Resolutions.

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Only an "interested person" has standing to bring a reverse validation proceeding. (See *Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035, 1042-1044 (*Torres*) [holding plaintiffs were not sufficiently "interested" in neighboring city's redevelopment plans, and fact that they paid sales tax in the city was insufficient to establish standing in a reverse validation case].) In this case, Appellants could not meet this standard.

To challenge the validity of a tax or other government levy, a plaintiff must be directly obligated to pay it. (See *Chiatello v. City & County of San Francisco* (2010) 189 Cal.App.4th 472, 494-499 (*Chiatello*) [holding retail customer did not have standing to challenge sales tax imposed on the retail seller by the state]; see also *id*. at pp. 496-497 [noting the absurd results and "chaos" that would result if a tax challenge could be raised by individuals who were not required to pay it]; *Reynolds v. Calistoga* (2014) 223 Cal.App.4th 865, 872-873 (*Reynolds*) [holding retail customers lack taxpayer standing because, despite the fact that the cost of the sales tax is passed on to customers, sales tax is imposed on retailers, not the retail customers].) In addition, under the "pay first, litigate later" rule, a plaintiff must first pay a tax or fee *before* filing suit. (See Cal. Const., art. XIII, § 32*; Loeffler v. Target Corp*. (2014) 58 Cal.4th 1081, 1101-1102 (*Loeffler*)*; Delta Airlines, Inc. v. State Board of Equalization* (1989) 214 Cal.App.3d 518, 525-526; see also *Water Replenishment Dist. of So. Cal. v. City of Cerritos* (2013) 220 Cal.App.4th 1450, 1455, 1469-1470 (*Cerritos*) [applying the "pay first, litigate later" rule to

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government fees challenged under California Constitution, article XIII D].)

This principle was most recently affirmed by the Second District Court of Appeal in *County Inmate Telephone Services Cases* (2020) 48 Cal.App.5th 354 (*County Inmate*). In that case, inmates of nine county jails in California challenged allegedly "exorbitant" commissions that telecommunications companies paid to counties for the exclusive right to provide telephone service to jails. (*Id.* at p. 357.) The inmates asserted that the commissions were taxes imposed in violation of Article XIII C. (*Ibid.*) Affirming the trial court, the Second District Court of Appeal held that the inmates lacked standing to raise such a challenge; they were not legally responsible for paying the commissions, even though they bore the ultimate economic burden. (*Id.* at pp. 360-361, 363-364.)

Here, Appellants did not allege that they paid or ever would have paid any wholesale water service rate or property tax to recover Metropolitan's increased contributions to WaterFix. Nor did they allege that their members paid any such service rate or property tax. Moreover, Appellants *could* not allege that they or their members ever would pay Metropolitan's wholesale water service rates. As noted, Metropolitan has only 26 customers that pay its wholesale service rates: its member agencies. (*San Diego*, at pp. 1131-1132; Metropolitan Water District Act, §§ 25, 26, 130; 1 AA 12.) Appellants have not alleged that any of Metropolitan's member agencies are also members of Appellants' organizations. As a result, they lacked standing to assert any challenge to

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Metropolitan's wholesale water service rates in their own right or on behalf of their members. (*Chiatello*, *supra*, 189 Cal.App.4th at p. 494; *Loeffler*, *supra*, 58 Cal.4th 1081 at pp. 1101-1102; *Cerritos*, *supra*, 220 Cal.App.4th at pp. 1455, 1469-1470.)

Appellants claim nonetheless to be "interested persons" under section 863. (AOB 35-36, citing *Card v. Community Redevelopment Agency* (1976) 61 Cal.App.3d 570, 574 (*Card*); *Regus v. City of Baldwin Park* (1977) 70 Cal.App.3d 968, 972 (*Regus*); *Citizens Against Forced Annexation v. County of Santa Clara* (1984) 153 Cal.App.3d 89, 97 (*CAFA*); *Meaney v. Sacramento Housing & Redevelopment Agency* (1993) 13 Cal.App.4th 566, 573-574 (*Meaney*).) Not so.

First, section 863 does not establish an independent basis for standing. The validation statutes provide a procedural mechanism for those who can establish a legally recognized "interest" in the challenge brought. (See *California Commerce*, *supra*, 146 Cal.App.4th at p. 1420.) And, as discussed above, if the challenge is to a tax or charge, then a plaintiff must show direct responsibility for and actual payment of the challenged tax or charge.

For example, *Torres* found a group of plaintiffs lacked standing under section 863 to challenge the validity of a city's redevelopment plan, because there was no certainty the property taxes they paid would be used to fund the plan. (*Torres*, *supra*, 13 Cal.App.4th at pp. 1044-1046.) And even though the plaintiffs may have paid sales taxes in the city where the project would be built, sales taxes are imposed on retailers, not customers, even if

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customers ultimately bear the economic cost.[9] (*Id.* at p. 1047.) As a result, the plaintiffs lacked a sufficiently direct interest in the tax revenue used to fund the challenged redevelopment plan to maintain the suit. (*Id.* at pp. 1047-1048.) In other words, paying property taxes did not give plaintiffs broad standing to challenge the use of other tax revenue. Consistently here, claiming an interest in "bond issuance" does not give Appellants standing to challenge future wholesale water service rates and charges not yet set. Despite its being discussed in some detail in the trial court briefing, Appellants omit any response to *Torres* in their Opening Brief.

Second, courts have expressly construed section 863's standing provision narrowly. (*Torres*, *supra*, 13 Cal.App.4th at p. 1042, citing *In Associated Boat Industries v. Marshall* (1951) 104 Cal.App.2d 21, 22.) In turn, the cases Appellants cite to demonstrate their interest in this case merely reflect that the scope of persons who are interested in the validity of an action depends on the nature of the action and the challenge. (See *CAFA*, *supra*, 153 Cal.App.3d at p. 94 [noting that no case had previously considered "who is an 'interested person' under section 863 *in the context* of a challenge to territorial annexations"], italics added.)

For example, in *Meaney*, school districts challenged a contract between a county and a redevelopment agency, diverting

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[9] Although the sales tax issue arose in the court's analysis of the plaintiffs' standing arguments under section 526a, by virtue of the argument being before the court, it was implicitly inadequate to confer standing under section 863, as well.

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tax revenue from the school districts to the redevelopment agency. (*Meaney*, *supra*, 13 Cal.App.4th at pp. 573-574.) The school districts' interest in their own, direct loss of tax revenue was reflected both in common sense and in statute. (*Id.* at p. 583 [discussing Gov. Code, § 33353.2].) Appellants have no similarly direct interest here, because they have not alleged and cannot allege they have paid to Metropolitan the wholesale rates or property taxes they claim may be affected by the Resolutions in the future.

Plaintiffs' reliance on *Regus* is particularly surprising. As even they describe it, *Regus*—and the various validation cases it discussed, including *Card*—found plaintiffs had standing to challenge a redevelopment project *because* they were city taxpayers.

> As *taxpayers* of the City of Baldwin Park and of the County of Los Angeles, plaintiffs have 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.

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

Appellants also attempted to avoid the fact that neither they nor their members will ever pay Metropolitan's wholesale water service rates by speculating that retail customers within Metropolitan's service area might have seen increased retail water rates as a result of Metropolitan's support for WaterFix. (1 AA 16.) Their argument is meritless under this Court's decision

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in *County Inmate*, *supra*, 48 Cal.App.5th at pp. 360-361, 363-364. Moreover, that allegation constituted nothing more than a conclusion of fact that can be disregarded on demurrer. (See *Cansino*, *supra*, 224 Cal.App.4th at p. 1468.) Appellants cannot allege that Metropolitan is responsible for or has any control over the ways in which its 26 member agencies, or the agencies that purchase from those 26 agencies, recover their costs. (See Metropolitan Water District Act, § 17.) Metropolitan's member agencies are wholesalers and retailers, and they may recover their costs in various ways, including grants, transfers from municipal general funds, service rates and charges recovered from their own customers, or through other manners determined by their own governing bodies. Under this structure, it is clear that whatever projections may have existed regarding the impacts of WaterFix on retail rates, they are beyond Metropolitan's legal authority to control and not a basis for retail customers to challenge the validity of Metropolitan's wholesale rates paid by its 26 member agencies. (See *Torres*, at pp. 1046-1048.)

2. Appellants lack organizational standing to challenge the Resolutions on behalf of their members.

Metropolitan's demurrer also highlighted the fact that Appellants' allegations did not establish organizational standing to challenge the Resolutions on behalf of their members as alleged "ratepayers" and "taxpayers" in this action. An association may only litigate in the interest of its members on

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claims that are germane to the organization's purpose. (See *Property Owners of Whispering Palms, Inc. v. Newport Pacific* (2005) 132 Cal.App.4th 666, 673 (*Property Owners*).)

Although they cite various other organizational purposes, they only tie two to the goals of this case. One is Food & Water Watch's interest in "a democracy that improves people's lives and protects our environment. . . ." (AOB 39, quoting 1 AA 11.) They state they are holding a public agency accountable to the law. The second is Center for Food Safety's effort to promote "sustainable agriculture." (*Ibid*, quoting 1 AA 10.) They state this is "clearly germane" to Metropolitan's action, which will benefit large agricultural users at the expense of residential and commercial property owners. (*Ibid.*)

Aside from these *ipse dixit* assertions, however, Appellants point to no allegations that would tend to show their members have any shared interest in policing public finance. Appellants' construction of their own organizational purposes would appear to grant them standing to raise any legal claim imaginable. That is not the law, and Appellants have not shown that it is.

As the trial court noted, "I can see a Howard Jarvis Taxpayers Association might be involved. I just can't see why [Appellants] are." (Tr. 312-313.) In response, Appellants explained, "These organizations, [Appellants] oppose the California WaterFix project, which will de-water the Delta ecosystem, the most important ecological system on the face of the Earth, essentially." (Tr. 313.) Appellants may have had standing to litigate their members' interest in the ecological

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impacts of the WaterFix project. That does not mean that they had organizational standing to challenge Metropolitan's Resolutions.

B. Appellants' claims were initially unripe; they have now been rendered moot by events occurring after judgment.

Ultimately, presented with a number of different flaws in Appellants' case, the trial court focused on the fact that their claims were not ripe. (1 AA 286-289; see also Tr. 327 ["There's really no controversy yet . . . an actual controversy."].) In the time since judgment, however, their claims have also been rendered moot.

As set forth in greater detail in Metropolitan's May 21, 2020 motions to dismiss and for judicial notice, after Governor Gavin Newsom's election, and at his direction, the State abandoned the WaterFix project and resolved to develop a different, smaller Bay Delta project. (MJN Exs. 1-4, 6.) Metropolitan's Resolutions planned funding only for WaterFix and its two-tunnel design. (MJN Ex. 5, pp. 6-8.) As a result, Metropolitan cannot and will not ever implement the Resolutions. (*Ibid.*) And Appellants' sole, asserted interest in this case—their desire to stop WaterFix from being built[10]—has disappeared. This Court should dismiss Appellants' appeal as a result. (See *Lee v. Gates* (1983) 141 Cal.App.3d 989, 991-994; *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 130-131.)

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[10] See Tr. 313 (explaining Appellants' interest in the case in terms of their opposition to the ecological impacts of WaterFix).

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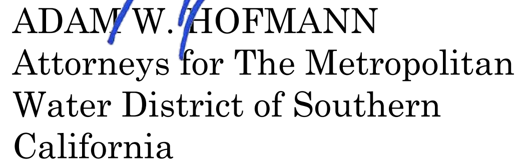
CONCLUSION

There was no merit to any of Appellants' challenges to Metropolitan's now defunct plan to provide financial support for the California WaterFix project. The Resolutions did not increase any wholesale water service rate or tax and were accordingly not subject to Propositions 13 or 26. Moreover, Appellants lacked standing to assert any challenge to Metropolitan's service rates and/or taxes. And now, due to the State's termination of the project, Appellants' claims have been rendered moot. Appellants have not shown that the trial court erred in dismissing their claims, and this Court should affirm.

DATED: July 14, 2020 HANSON BRIDGETT LLP

By: 
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WORD COUNT CERTIFICATION

I, Adam W. Hofmann, counsel for Metropolitan Water District of Southern California, hereby certify that, according to Microsoft Word, the computer program used to prepare this Respondent's Brief, the number of words in the document, including footnotes, is 9,604, exclusive of caption, tables, signature block, and this certification.

DATED: July 14, 2020

/s/ Adam Hofmann
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California Court of Appeals, 2nd Appellate District Court Case No. B297553
Los Angeles County Superior Court Case No.: BC720692

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

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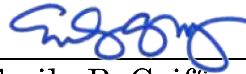

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