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EXEMPT FROM FILING FEES  
[GOVERNMENT CODE § 6103]

26 SUPERIOR COURT OF THE STATE OF CALIFORNIA

27 COUNTY OF SAN FRANCISCO

28 SAN DIEGO COUNTY WATER AUTHORITY,

Petitioner and Plaintiff,

v.

METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA; ALL PERSONS  
INTERESTED IN THE VALIDITY OF THE  
RATES ADOPTED BY THE METROPOLITAN  
WATER DISTRICT OF SOUTHERN  
CALIFORNIA ON APRIL 13, 2010 TO BE  
EFFECTIVE JANUARY 2011; and DOES 1-10,

Respondents and Defendants.

No. CPF-10-510830

**RESPONDENT AND DEFENDANT  
METROPOLITAN WATER  
DISTRICT OF SOUTHERN  
CALIFORNIA'S ANSWER TO  
PETITIONER AND PLAINTIFF'S  
THIRD AMENDED PETITION AND  
COMPLAINT**

Dept.: 304  
Judge: Hon. Curtis E.A. Karnow

1 Respondent and Defendant Metropolitan Water District of Southern California  
2 (“Metropolitan”) answers Petitioner and Plaintiff San Diego County Water Authority’s  
3 (“SDCWA’s”) unverified Third Amended Petition For Writ of Mandate and Complaint For  
4 Damages and Declaratory Relief (collectively, “TAC”), as follows:

5 **GENERAL DENIAL**

6 Pursuant to California Code of Civil Procedure § 431.30(d), Metropolitan  
7 generally denies each and every allegation in the TAC, and further denies that SDCWA is  
8 entitled to any of the relief prayed for in the TAC.

9 **GENERAL ALLEGATIONS IN SUPPORT OF AFFIRMATIVE DEFENSES**

10 1. Metropolitan is a public agency and is a supplemental supplier of  
11 wholesale water. It operates as a collective of its member agencies, which themselves are public  
12 agencies, and it is governed by a Board of Directors composed of representatives from member  
13 agencies. Today, Metropolitan is made up of 26 member agencies.

14 2. In order to provide a supplemental wholesale water supply, Metropolitan  
15 imports water from the Colorado River via the Colorado River Aqueduct and from the State  
16 Water Project (“SWP”), which is operated by the California Department of Water Resources  
17 (“DWR”). The water is delivered to member agencies through an extensive regional network of  
18 canals, pipelines, and appurtenant facilities, as well as supply, treatment, and storage facilities.  
19 To pay for its activities, Metropolitan maintains water rates and charges.

20 3. SDCWA’s claims challenge features of Metropolitan’s rate structure that  
21 have been in place for a decade and a half. In January 1997, Metropolitan’s Board of Directors  
22 voted to adopt a “wheeling rate,” effective January 15, 1997, applicable to member agencies that  
23 convey non-Metropolitan water through Metropolitan’s water conveyance system in transactions  
24 of one year or less. This wheeling rate was developed through consultation and cooperation with  
25 Metropolitan’s 26 member agencies, of which SDCWA is one. This wheeling rate included,  
26 among other things, both Metropolitan’s conveyance costs under its “take-or-pay” contract with  
27 the California DWR for SWP water, and costs to assist in funding water conservation and other  
28 water demand management programs. Both of those cost allocations are inconsistent with the

1 allegations SDCWA now asserts – more than 15 years later – that all SWP costs, including  
2 conveyance and power costs, and water conservation and demand program costs must  
3 supposedly be allocated solely to Metropolitan’s water supply rate. This wheeling rate has been  
4 assessed on any member agency engaged in a wheeling transaction of one year or less since  
5 January 15, 1997, until it was modified in 2003 by the unbundled rates.

6 4. In the late 1990s, Metropolitan began a revision of its overall water rates  
7 and charges, again in consultation and cooperation with SDCWA and Metropolitan’s other  
8 member agencies. On October 16, 2001, Metropolitan’s Board of Directors voted to adopt a  
9 revised rate structure to be effective January 1, 2003. Among other things, this rate structure  
10 unbundled water rates and charges to reflect the different services provided by Metropolitan and  
11 more transparently allocate costs to functions. Among the unbundled rates in the new structure  
12 are a “System Access Rate” charged on every acre-foot of water conveyed through  
13 Metropolitan’s conveyance system, whether the water is purchased from Metropolitan or is non-  
14 Metropolitan water, a “System Power Rate,” and a “Water Stewardship Rate” to fund  
15 conservation and other water management programs. In addition, the rates for the wheeling of  
16 non-Metropolitan water through Metropolitan’s conveyance system for agreements of one year  
17 or less, which slightly modified the wheeling rate adopted in 1997, include the System Access  
18 Rate, Water Stewardship Rate and, for treated water, a treatment surcharge, as well as power  
19 costs. The basis for Metropolitan’s adoption of the unbundled rates was a detailed and thorough  
20 administrative record.

21 5. On March 12, 2002, with the affirmative vote of SDCWA’s  
22 representatives on Metropolitan’s Board, Metropolitan adopted specific rates and charges to be  
23 effective on January 1, 2003, pursuant to the rate structure adopted in 2001.

24 6. These specific rates and charges that have been assessed in every year  
25 from 1997, as reaffirmed in 2003, through the present – and in support of which SDCWA has  
26 voted at least four times – reflect the cost-of-service methodology that SDCWA challenges here.  
27 Specifically, in every year since 2003, Metropolitan has (i) included in its System Access Rate  
28 and System Power Rate, not in its water supply rate, SWP conveyance and power costs charged

1 to Metropolitan under its take-or-pay SWP contract, and (ii) charged the Water Stewardship Rate  
2 to all users of the Metropolitan system. These are the two cost allocation practices that SDCWA  
3 challenges in this lawsuit. When Metropolitan's Board considered and reaffirmed its cost  
4 allocation methodology on November 10, 2009, SDCWA voted in the affirmative. Likewise,  
5 SDCWA voted in favor of a 3% rate increase for the 2013 and 2014 calendar years based on this  
6 same rate structure that it is challenging.

7           7.       SDCWA and all of Metropolitan's member agencies have been fully  
8 aware of these cost allocation decisions in Metropolitan's structure of rates and charges, as  
9 evidenced by the written proposals and analyses that Metropolitan regularly provides to them,  
10 their own knowledge and understanding of these charges, and especially in SDCWA's case, the  
11 affirmative votes of its representatives on Metropolitan's Board in favor of these rates and  
12 charges. Each year, Metropolitan's Board of Directors adopts by majority vote the specific rates  
13 and charges for the coming fiscal year or, more recently, for the coming two fiscal years.  
14 Several months in advance of the meeting at which the rate vote is to take place, Metropolitan's  
15 General Manager presents to each Board member, member agency, and the public a detailed  
16 letter setting forth the revenue requirements and proposed rates and charges for the coming fiscal  
17 year or, more recently, for the coming two fiscal years. The proposed rates are presented and  
18 discussed at public meetings, the Board's and its Business and Finance Committee meetings, at  
19 meetings with all member agency managers, and in a noticed public hearing. Following these  
20 meetings and hearing, the General Manager presents to each Board member, member agency,  
21 and the public a second detailed letter setting forth the specifics of the proposed rates for the  
22 coming fiscal year or, more recently, for the coming two fiscal years, a list of the Board's options  
23 as to the rate structure, and a staff recommendation. This ensures that Board members, and the  
24 member agencies they represent, are fully informed in advance of the vote and have sufficient  
25 time to consider and raise questions, comments, and objections, as SDCWA did regularly. These  
26 records constitute a sufficiently detailed administrative record supporting Metropolitan's  
27 adoption of each year's rate structure. Minutes of Metropolitan's Board meetings indicate that in  
28 2005, 2006, and 2007, the Board adopted new rates under the existing cost-of-service

1 methodology without comment or objection from SDCWA, and that in 2002, 2008, 2009, and  
2 2012 (for the 2013 and 2014 calendar years), SDCWA's representatives on the Board actually  
3 voted to approve rates under the structure SDCWA now challenges:

4           8.       SDCWA has accepted the benefits of Metropolitan's rate structure. The  
5 different components of Metropolitan's rate structure are interrelated in that they must  
6 collectively recoup Metropolitan's costs as a water district. SDCWA has voted in favor of rates  
7 under the rate structure that was adopted in 2001 and has accepted the financial benefits of that  
8 rate structure for more than eleven years. If Metropolitan's rate structure were reorganized in the  
9 manner SDCWA now claims it should be – in other words, to exempt all SWP costs, as well as  
10 the Water Stewardship Rate, from the rates charged on all water conveyed through  
11 Metropolitan's system – other rates and charges would have been higher and would be higher in  
12 the future for all member agencies. SDCWA accepted, and at least four times voted in favor of,  
13 the rate structure that has been in effect since 2003. It would be inequitable to allow SDCWA to  
14 seek legal relief given its acquiescence to and the benefits it has received under a rate structure it  
15 has fully understood and in which it participated.

16           9.       In any event, the conservation and local supply programs funded by the  
17 Water Stewardship Rate provide conveyance services and benefits and, therefore, the Water  
18 Stewardship Rate is properly treated as a conveyance charge. The conveyance benefits afforded  
19 by the conservation and local supply programs include preserved conveyance capacity and  
20 reduced capital and operational expenditures on additional new conveyance capacity. A member  
21 agency's benefit is proportional to the demand it puts on the conveyance system. The Water  
22 Stewardship Rate is allocated to a member agency based on the volume of water that agency  
23 conveys. This manner of allocation to a member agency bears a fair or reasonable relationship to  
24 the member agency's use of, or reliance on, the conveyance system.

25           10.      The SWP transportation costs are properly allocated to the System Access  
26 Rate because they constitute conveyance costs. While the SWP is operated by the State DWR, it  
27 functions as an extension of the water supply and conveyance systems operated by the SWP  
28 contractors, including Metropolitan. DWR separately invoices its contractors, including

1 Metropolitan, for supply costs and transportation costs. Metropolitan, in turn, separately  
2 invoices its member agencies for these supply costs and transportation (i.e., conveyance) costs.  
3 Additionally, DWR invoices contractors, including Metropolitan, for transportation costs  
4 incurred for non-SWP water that is conveyed through the SWP system. SDCWA is an example  
5 of a Metropolitan agency that has conveyed, or “wheeled,” non-SWP water through the SWP  
6 system. If SWP transportation costs were allocated not to the System Access Rate but to the  
7 Supply Rate, then SDCWA and other member agencies that wheel water through the SWP would  
8 avoid their own conveyance costs and other member agencies would instead bear those costs.  
9 The System Access Rate, which includes SWP transportation costs, is allocated to a member  
10 agency based on the volume of water the agency conveys. This manner of allocation bears a fair  
11 or reasonable relationship to the member agency’s burdens on, or benefits received from, the  
12 conveyance system.

13           11. Member agencies have options regarding water supply including local  
14 water supply, water purchases and conveyance from non-Metropolitan third-party providers,  
15 purchases from Metropolitan, or purchases from third-party providers and conveyance using  
16 Metropolitan services and facilities. Metropolitan charges are incurred only if an agency elects  
17 to purchase water from Metropolitan, and/or use Metropolitan’s conveyance services and  
18 facilities to transport non-Metropolitan water. In that sense, the charges are voluntary, not  
19 imposed. In any event, Metropolitan’s transportation charges are for the service of conveyance  
20 and do not exceed the reasonable costs of providing conveyance services, and/or they are for the  
21 use of Metropolitan’s property (i.e., conveyance resources). Conveyance charges, including  
22 Metropolitan’s wheeling charges, are allocated to an agency based on the volume of water the  
23 agency transports through Metropolitan’s conveyance system. The manner that these charges are  
24 allocated to a member agency bears a fair or reasonable relationship to the member agency’s  
25 burdens on, or benefits received from, Metropolitan’s conveyance system.

26           12. Metropolitan has complied with its obligations under its October 2003  
27 Exchange Agreement with SDCWA. Paragraph 5.2 states that the price Metropolitan shall  
28 charge to SDCWA per acre-foot of Exchange Water under the Exchange Agreement “shall be

1 equal to the charge or charges set by Metropolitan’s Board of Directors pursuant to applicable  
2 law and regulation and generally applicable to the conveyance of water by Metropolitan on  
3 behalf of its member agencies.” Metropolitan has done this. In every year under the Exchange  
4 Agreement, Metropolitan has charged SDCWA the same amount it generally charges its member  
5 agencies for the conveyance of water by Metropolitan, including the System Access Rate,  
6 System Power Rate, and Water Stewardship Rate described above.

7 13. Revenues from the Water Stewardship Rate element of Metropolitan’s rate  
8 structure are used by Metropolitan to support regional water conservation, seawater desalination,  
9 and local resources development programs. The programs provide incentives for development of  
10 new water recycling, seawater desalination, water conservation, and groundwater recovery  
11 projects in Metropolitan’s service area. All member agencies benefit from each acre-foot of  
12 water developed through these programs, because it frees up capacity to convey water through  
13 Metropolitan’s system, reducing the need to invest in development of additional expensive water  
14 delivery infrastructure, and provides additional water supplies to meet the region’s demands.

15 14. Metropolitan implements the programs by entering into contracts with its  
16 member agencies (and also sometimes other parties) that provide financial incentives for the  
17 development or conservation of local water supplies. These water conservation, water recycling,  
18 and desalination programs are an important component of Metropolitan’s Integrated Resources  
19 Plan (“IRP”), which is Metropolitan’s definitive long-term planning mechanism to ensure that  
20 Metropolitan is able to reliably supply water to the Southern California region for the long-term  
21 future.

22 15. Since 2004, each conservation, seawater desalination, and local resources  
23 program incentive agreement between Metropolitan and its member agencies has contained a  
24 Rate Structure Integrity (RSI) provision. The RSI provision allows Metropolitan (upon Board  
25 action) to terminate an incentive contract if the recipient participates in litigation or supports  
26 legislation challenging Metropolitan’s rate structure (which was developed in collaboration with  
27 the member agencies and extensive public input). The RSI provision does not prevent  
28 challenges to the rate structure; instead, it simply encourages those challenges to be made within

1 the existing Board rate making process where all local and member agencies can participate.  
2 The RSI provision also includes detailed notice and procedural protections, including a  
3 mediation process that was used in this case before Metropolitan took action to enforce  
4 termination of any SDCWA incentive contracts containing the RSI provision.

5 16. Revenues from Metropolitan’s rates fund the local resources projects and  
6 conservation programs that are implemented to meet the IRP’s long-term water delivery system  
7 and supply reliability goals, water use efficiency goals, and local supply programs. Legal and  
8 legislative challenges to Metropolitan’s rate structure outside of established public Board  
9 processes have an adverse impact on Metropolitan’s ability to sustain project and program  
10 funding, and are disruptive and costly to Metropolitan and the other member agencies and  
11 ultimately to water users.

12 17. SDCWA freely, knowingly and voluntarily entered into the incentive  
13 contracts with Metropolitan that include the RSI provision. Each such contract includes the  
14 statement of SDCWA that it “agree[s] and understand[s] that Metropolitan’s rate structure as of  
15 January 1, 2004 (‘Existing Rate Structure’) provides the revenue necessary to support the  
16 development of new water supplies by local agencies through incentive payments in the Local  
17 Resources Program (LRP), Conservation Credits Program (CCP), and the Seawater Desalination  
18 Program (SDP). In particular, the Water Stewardship Rate is the component of Existing Rate  
19 Structure that provides revenue for the LRP, CCP and SDP.” SDCWA also stated and agreed in  
20 each such contract that the “Existing Rate Structure and all components within that rate structure  
21 were developed with extensive public input and member agency participation, and that the  
22 elements of Existing Rate Structure have been properly adopted in accordance with  
23 Metropolitan’s rules and regulations.”

24 18. SDCWA has received and accepted the benefits of the incentive contracts  
25 with RSI provisions for many years. Indeed, SDCWA will continue to receive the benefits of  
26 Metropolitan’s conservation and local resources programs regardless of whether the contracts to  
27 which it is a direct party continue.

28 19. The RSI provision in the incentive contracts supports a stable and



1 predictable revenue stream required for Metropolitan’s long-term water development and  
2 delivery planning. Legal or legislative challenges to Metropolitan’s rate structure – including the  
3 Water Stewardship Rate that is used to fund the LRP incentives – are inherently destabilizing  
4 and disruptive to Metropolitan’s mandate to provide its service area with a reliable and  
5 affordable supply of water, now and in the future. Such challenges place rates (and related  
6 revenues) in a state of uncertainty, thereby undermining the long-term planning efforts and plans  
7 of the IRP and LRP programs. The RSI provision simply encourages that disputes about  
8 Metropolitan’s rates be brought within the confines of the Board’s collaborative ratemaking  
9 process, where each agency can participate in the dialogue equally, resulting in consensus-based  
10 decisions. The RSI provision is reasonable, proper and lawful.

11           20.     SDCWA’s preferential rights claim lacks merit. A preferential right  
12 guarantees its holder the right to purchase a certain percentage of Metropolitan’s available water  
13 supply in the event of a shortage. Under § 135 of the MWD Act, Metropolitan is required to  
14 allocate preferential rights to each member agency in proportion to that agency’s payments,  
15 “excepting purchase of water, toward [Metropolitan’s] capital cost and operating expense.”  
16 Here, SDCWA’s payments under the Exchange Agreement are for the “purchase of water” under  
17 § 135. The term “purchase of water” in § 135 is not limited to funds paid for the water resource  
18 itself but includes all of the elements of Metropolitan’s water rate structure. This is evident from  
19 the text of § 135, Metropolitan’s long-standing interpretation of the statute, which interpretation  
20 is entitled to deference, and the Court of Appeal’s decision in *San Diego County Water Authority*  
21 *v. Metropolitan Water Dist.*, 117 Cal. App. 4th 13, 17 (2004).

22           21.     SDCWA’s allegations concerning a working group of staff of certain  
23 Metropolitan member agencies are irrelevant, and SDCWA’s allegations of misconduct by the  
24 working group are baseless. SDCWA’s allegations of a “secret society,” a “cabal,” a “shadow  
25 government,” an “Anti-San Diego Coalition,” and/or intent to discriminate against SDCWA are  
26 baseless. The member agencies are each separate public agencies, all of which have their own  
27 independent governing bodies (board of directors, city council, or other governing body). Each  
28 has representatives on Metropolitan’s Board. SDCWA has four representatives on the

1 Metropolitan Board (no member agency has more than four) and SDCWA controls  
2 approximately 18% of the Board’s vote. Each member agency has staff, who educate themselves  
3 and inform and advise the member agency’s representatives on the issues before Metropolitan’s  
4 Board. If staff of any separate agencies wish to meet to discuss water strategy or other matters,  
5 they may legally hold meetings and engage in advocacy like any other interested party.  
6 SDCWA’s allegations concerning the working group’s meetings and advocacy describe the  
7 legislative process that is an essential part of representative government, not that Metropolitan is  
8 “captured.” *See* TAC ¶ 19. Metropolitan has never improperly “colluded” with any member  
9 agency or group of member agencies. No member agency or member agency group exerts  
10 unlawful influence over Metropolitan. SDCWA’s claims that Metropolitan has made decisions,  
11 including regarding its rate structure, rates, “dry year peaking”, RSI provisions, and awards of  
12 “subsidy contracts” to intentionally discriminate against SDCWA are untrue, as well as  
13 irrelevant to the claims alleged in the TAC. Metropolitan’s decisions have reasonable and lawful  
14 bases.

15           22. Although the allegations regarding the member agency working group,  
16 and the allegations of a “secret society,” a “cabal,” a “shadow government,” an “Anti-San Diego  
17 Coalition” and/or intent to discriminate against SDCWA remain in the TAC, they remain in the  
18 case subject to the Court’s July 2, 2012 Order granting in part Metropolitan’s and the party  
19 member agencies’ Motion to Strike those allegations. The Court stated that the allegations have  
20 “nothing to do with anything in this case” and “are not part of this case, but to strike them and try  
21 to recast the Complaint would be too awkward.” The Court stated that it will issue a separate  
22 guiding order to the parties. No guiding order has been issued to date.

23           23. SDCWA’s allegations of discrimination are particularly odd – and untrue  
24 – given all that Metropolitan has done that benefits SDCWA. The long list of policies,  
25 programs, agreements, and other actions adopted or taken by the Metropolitan Board that  
26 have financially or operationally benefited SDCWA include the following. Many of these were  
27 adopted or approved with provisions that were deferential to specific concerns that SDCWA  
28 had raised or, in some cases, were negotiated to provide a direct financial benefit to SDCWA.

1                   a.       “Postage Stamp” Rate: Metropolitan charges its member agencies  
2 the same amount for conveying water, regardless of how close or how far the member agency is  
3 to the supply source. This has been likened to a “postage stamp” having the same cost whether it  
4 is transporting a letter down the street or across the country. SDCWA is the member agency that  
5 is the farthest away from Metropolitan’s water supply sources (from Northern California and the  
6 Colorado River) and benefits the most from this “one price to all” transportation rate structure.

7                   b.       Exchange Agreement: This agreement between Metropolitan and  
8 SDCWA – about which SDCWA now sues – enables the delivery of SDCWA’s transfer water  
9 from Imperial Irrigation District (“IID”). Metropolitan was not required to enter into the  
10 agreement. The Exchange Agreement and related agreements provide many exclusive and  
11 extraordinary financial and operational benefits to SDCWA, including:

12                               i.       State Funding: Metropolitan assigned to SDCWA \$235  
13 *million in funding* authorized by the California State Legislature that had previously been  
14 allocated to Metropolitan, for lining the All-American and Coachella Canals and for  
15 groundwater programs.

16                               ii.      Canal Lining Water: MWD assigned to SDCWA its rights  
17 to an estimated *77,000 acre-feet of water per year for 110 years* from the lining of the All-  
18 American and Coachella Canals.

19                               iii.     Assured Deliveries: Metropolitan agreed to deliver to  
20 SDCWA the full amount of the IID transfer and canal lining water in each calendar year that  
21 the Exchange Agreement is in effect. In contrast, the law (California’s Wheeling Statute) only  
22 requires Metropolitan to deliver water when and if it has available capacity in its pipelines and  
23 facilities to transfer this water. Under the law, whenever Metropolitan does not have available  
24 capacity, the delivery of the IID transfer and canal lining water would stop altogether. For  
25 example, if Metropolitan requires the use of its system to move its own water supplies at all  
26 times the facilities are in operation (i.e., when there are not outages due to maintenance or  
27 repairs), Metropolitan would have no legal obligation to deliver the IID transfer or canal lining  
28 water to SDCWA. In contrast, the Exchange Agreement ensures that SDCWA will receive its

1 transfer and canal lining water even if delivering that water would displace Metropolitan’s water  
2 supplies for its other member agencies.

3                   iv.       Blended Exchange Water: IID’s transfer water and the  
4 canal lining water consists only of Colorado River water, which has the highest salinity content  
5 of Metropolitan’s two sources of water supply. Under the Exchange Agreement, Metropolitan  
6 provides Exchange Water to SDCWA from whatever supply source and using whatever delivery  
7 facilities as Metropolitan determines. The result generally is blended water, consisting of  
8 California State Water Project water blended into the Colorado River water. This greatly  
9 improves the quality of the water SDCWA receives. And, when Metropolitan shuts down the  
10 Colorado River Aqueduct for maintenance or repairs, Metropolitan still delivers Exchange  
11 Water, using SWP supplies and SWP facilities. These are among many key reasons why the  
12 conveyance costs of the SWP should be recovered through Metropolitan’s System Access Rate,  
13 which is part of both Metropolitan’s rate structure and the Exchange Agreement’s price  
14 provision. The SWP makes achieving the lower salinity levels possible. By law (the California  
15 Wheeling Statute), Metropolitan is only required to deliver to SDCWA the high-salinity, IID  
16 transfer and canal lining Colorado River water.

17                   v.       System Power Rate: Metropolitan agreed to include the  
18 System Power Rate (Metropolitan’s average cost of pumping water) in the Exchange  
19 Agreement fees instead of the actual, higher marginal power costs. The law (California’s  
20 Wheeling Statute) only requires Metropolitan to charge SDCWA the higher amount.

21                   vi.       Readiness-to-Serve (“RTS”) Charge: By not counting  
22 the deliveries of IID transfer water against SDCWA’s RTS Charge base – although they  
23 require use of Metropolitan’s distribution system resources – SDCWA avoids paying that share  
24 of the RTS Charge. This provided an estimated *\$4.5 million benefit* to SDCWA through 2012.  
25 Under the Exchange Agreement, Metropolitan is only required to deliver to SDCWA an amount  
26 of water equivalent to the amount conserved by IID. When IID fails to conserve the full amount  
27 of water required by the Transfer Agreement between IID and SDCWA, as occurred in 2011,  
28 Metropolitan delivers Metropolitan’s supplies to SDCWA to fill the gap.

1                   vii.     Exchange Water as a Local Supply: Metropolitan agreed  
2 to account for the IID transfer water as a local supply in the context of Metropolitan’s Water  
3 Supply Allocation Plan (“WSAP”). This designation benefits SDCWA through an increase in  
4 retail reliability in the event of a water supply shortage, under the WSAP formula.

5                   viii.    Ownership of Colorado River Supply: Since the merger of  
6 SDCWA into Metropolitan, SDCWA has not owned any rights to Colorado River water. The  
7 Quantification Settlement Agreement, a historic collection of agreements that includes the  
8 Exchange Agreement, provides Metropolitan’s agreement that SDCWA can implement a transfer  
9 of Colorado River water from IID. Without Metropolitan’s acquiescence, IID does not have the  
10 right to transfer its water to an entity that is not an existing Colorado River water contractor; and  
11 Metropolitan and Coachella Valley Water District, as Colorado River contractors, would have  
12 the right to use Colorado River water that is unused by IID.

13                   c.        Salinity Goal: Metropolitan’s Board adopted a 500 TDS (total  
14 dissolved solids) salinity goal in response to SDCWA’s concerns about high salinity in the  
15 Colorado River supplies and the impacts to SDCWA. SDCWA receives the primary benefit of  
16 this measure, and those benefits extend to the Exchange Agreement supplies.

17                   d.        RTS Charge Base: As an accommodation to SDCWA’s  
18 concerns about variability of demands for Metropolitan supplies from year to year,  
19 Metropolitan’s Board adopted a 10-year rolling average of Metropolitan deliveries for  
20 calculating the RTS Charge base (rather than the previous three-year rolling average).

21                   e.        Interim Agricultural Water Program (“IAWP”) and IAWP Phase  
22 Out: As the largest agricultural water purchaser among Metropolitan’s member agencies,  
23 SDCWA benefited more than any other member agency from discounted interruptible service  
24 for agriculture from 1994 until the first interruption in 2007, *receiving \$136 million in total*  
25 *discounts* over that period. SDCWA was also the largest beneficiary of the IAWP Phase Out  
26 terms that allowed these historically interruptible demands to be treated as firm, rather than  
27 interruptible, demands. This increases SDCWA’s access to a lower cost water supply rate  
28 (Metropolitan’s Tier 1 rate) and improved its retail reliability in a shortage allocation under

1 the WSAP formula.

2 f. Skinner Treatment Plant Module 7: SDCWA supported  
3 construction of a *\$152 million expansion* of this treatment plant, which serves SDCWA along  
4 with agencies in Riverside County. This expansion of the Skinner plant would prove to be  
5 redundant to SDCWA's new Twin Oaks water treatment facility, leaving Metropolitan with  
6 unused capacity in the Skinner plant.

7 g. Surface Storage Operating Agreement: This program approved  
8 in 2002, available only to SDCWA, paid *financial incentives totaling \$17.6 million* (2004  
9 through 2008) for SDCWA to use its own reservoirs to help offset system capacity  
10 constraints.

11 h. Point of Delivery and Cost of San Diego Pipelines 1 to 5:  
12 Metropolitan's policy is that it delivers water to the boundary of a member agency's service area  
13 and a member agency must pay for infrastructure within its own service area. Metropolitan  
14 waived its policy for SDCWA. It allowed Metropolitan pipes and facilities serving SDCWA to  
15 be constructed six miles into SDCWA's service area, and the substantial costs of these pipes and  
16 facilities were borne by all Metropolitan member agencies rather than solely by SDCWA.

17 i. Conservation Funding: Metropolitan includes a Rate Structure  
18 Integrity provision in all of its conservation and local supply program agreements. When  
19 Metropolitan enforced this contractual provision with respect to SDCWA, it could have  
20 discontinued all of SDCWA's conservation and local supply program funding. As an  
21 accommodation, Metropolitan's Board continued access by SDCWA customers to conservation  
22 funding under rebate programs.

23 j. Supply Allocation Plans: A preferential rights formula exists  
24 under California state law and concerns the allocation of water among Metropolitan member  
25 agencies in the case of a severe drought. Preferential rights have never been invoked. Instead,  
26 Metropolitan's Board adopted the 1991 Incremental Interruption and Conservation Plan and  
27 then the 2008 WSAP, both of which provided a "needs-based" allocation to most fairly treat all  
28 member agencies, including SDCWA. These alternative measures provided SDCWA with a

1 more beneficial allocation than the preferential rights statute would have provided, and were  
2 intended to address SDCWA's concerns regarding statutory preferential rights while providing  
3 equity among member agencies.

4 **SPECIFIC AFFIRMATIVE DEFENSES**

5 Metropolitan asserts the following affirmative defenses to the claims for relief  
6 made against it in the TAC without admitting it has the burden of proof on any of the issues  
7 raised below:

8 **First Affirmative Defense**

9 **(Failure to State Facts Sufficient to Constitute a Cause of Action)**

10 (Applicable to All Causes of Action)

11 Metropolitan incorporates by reference the General Allegations stated above.

12 SDCWA fails to state facts in its TAC sufficient to constitute a cause of action  
13 upon which relief can be granted. Among other grounds, neither Proposition 13, i.e., Article  
14 XIII A, § 4 of the California Constitution (adopted by Proposition 13 in 1978), and its  
15 implementing statute, California Government Code § 50076, nor California Government Code  
16 § 54999.7(a), nor California Water Code §§ 1810 et seq., nor the unconstitutional doctrine, nor  
17 California Civil Code § 1668 are applicable to the facts alleged in the TAC. In addition, the  
18 Court struck SDCWA's purported allegations under Proposition 26 in its March 29, 2013 order,  
19 so those allegations are no longer in the case.

20 **Second Affirmative Defense**

21 **(Statute of Limitations)**

22 (Applicable to All Causes of Action)

23 Metropolitan incorporates by reference the General Allegations stated above.

24 SDCWA's claims are barred in whole or in part by the applicable statutes of  
25 limitations, including, but not limited to, §§ 338(a), 335.1, 343 and 860 of the California Code of  
26 Civil Procedure. Further, Metropolitan issued its first of many water revenue bonds  
27 incorporating the new rate structure components on September 12, 2002. The 60-day deadline to  
28 file a reverse validation action thus expired at the latest in November 2002, 60 days after the

1 bond issuance – and seven and a half years before this case was filed. Therefore, any challenge  
2 to the rate structure components is barred by the statute of limitations in the validation statute.  
3 Cal. Code Civ. Pro. § 860; *see Aughenbaugh v. Board of Supervisors*, 139 Cal. App. 3d 83, 87-  
4 91 (1983).

5 **Third Affirmative Defense**

6 **(California Government Claims Act)**

7 (Applicable to All Causes of Action)

8 Metropolitan incorporates by reference the General Allegations stated above.

9 SDCWA’s claim for breach of contract, as well as any other causes of action or  
10 relief sought to the extent they may implicate the California Government Claims Act, is barred in  
11 whole or in part because SDCWA failed to comply with all provisions of the Government  
12 Claims Act, including but not limited to California Government Code §§ 905, 905.2, 910 et seq.,  
13 935 and 945.4, and the Metropolitan Water District of Southern California Administrative Code  
14 §§ 9300-9310.

15 **Fourth Affirmative Defense**

16 **(California Government Claims Act)**

17 (Applicable to All Causes of Action)

18 Metropolitan incorporates by reference the General Allegations stated above.

19 SDCWA’s breach of contract claim for money damages, as well as any other  
20 causes of action or relief sought to the extent they may implicate the Claim Presentation  
21 requirements in the Government Code, is barred because the money and damages sought in the  
22 Complaint are barred by the Claim Presentation requirements in the California Government Code  
23 §§ 900 et seq.

24 **Fifth Affirmative Defense**

25 **(Untimely Claim)**

26 (Applicable to All Causes of Action)

27 Metropolitan incorporates by reference the General Allegations stated above.

28 SDCWA’s claim for breach of contract, as well as any other causes of action or



1 relief sought to the extent they may implicate the following provisions, is barred because  
2 SDCWA failed to timely file a claim as required by California Government Code §§ 901, 911.2,  
3 911.3, 911.4 and 946.6, and the Metropolitan Water District of Southern California  
4 Administrative Code §§ 9300-9310, and failed to timely file a court action relieving it from its  
5 failure to timely present a claim, as required by Government Code §§ 945.4 and 946.6, and the  
6 Metropolitan Water District of Southern California Administrative Code. As a consequence of  
7 the foregoing, SDCWA's Fourth Cause of Action, as well as any other causes of action or relief  
8 sought to the extent they may implicate the foregoing provisions, is barred as untimely.

9 **Sixth Affirmative Defense**

10 **(Laches)**

11 (Applicable to All Causes of Action)

12 Metropolitan incorporates by reference the General Allegations stated above.

13 SDCWA's claims are barred by the doctrine of laches.

14 **Seventh Affirmative Defense**

15 **(Exercise of Administrative Discretion)**

16 (Applicable to All Causes of Action)

17 Metropolitan incorporates by reference the General Allegations stated above.

18 Metropolitan has no ministerial duty to structure its rates in the manner alleged by  
19 SDCWA or to enter into contracting arrangements in the manner SDCWA contends. Rather, the  
20 legal directives under which Metropolitan operates broadly leave the design of water rates, as  
21 well as its contracting practices, to Metropolitan's sound discretion and the majority vote of  
22 Metropolitan's Board of Directors. Metropolitan's principal act, for example, states only that  
23 Metropolitan "shall fix the rate or rates at which water shall be sold," Cal. Water Code § 109-  
24 133, and that those rates "shall be uniform for like classes of service throughout the district," *id.*  
25 at § 109-134. Beyond this, decisions as to the detailed structure of its rates, or the substance of  
26 its contracting practices, are left to Metropolitan's sound discretion. California courts have  
27 recognized that "[s]ubstantial deference must be given to [Metropolitan's] determination of its  
28 rate design." *San Diego County Water Auth. v. Metropolitan Water Dist. of So. Cal.*, 117 Cal.

1 App. 4th 13, 23 n.4 (2004) (*citing Bryon v. East Bay Mun. Utility Dist.*, 24 Cal. App. 4th 178,  
2 196 (1994)). Further, “[r]ates established by [a] lawful rate-fixing body are presumed  
3 reasonable, fair, and lawful.” *Hansen v. City of San Buenaventura*, 42 Cal. 3d 1172, 1180  
4 (1986). In setting its current rates, adopting and implementing the RSI provisions, entering into  
5 and administering the Exchange Agreement and making preferential rights determinations,  
6 Metropolitan has at all times acted well within its broad and lawful discretion.

7 SDCWA’s claims are barred because Metropolitan has acted consistently with the  
8 discretion vested in it by the Legislature in California Water Code Appendix §§ 109-1 to 109-  
9 551 and other applicable authorities.

10 **Eighth Affirmative Defense**

11 **(Governmental Immunity for Exercise of Discretion)**

12 (Applicable to All Causes of Action)

13 Metropolitan incorporates by reference the General Allegations stated above.

14 Metropolitan’s classification and setting of its rates, allocation of its rate structure  
15 components, and the other decisions alleged in the TAC to be unlawful were an exercise of  
16 governmental discretion immune from challenge and, as such, all of SDCWA’s causes of action  
17 are barred. Among other reasons, SDCWA’s claims and the relief it seeks are incompatible with  
18 the requirement in the MWD Act that Metropolitan’s Board of Directors act by majority vote.

19 **Ninth Affirmative Defense**

20 **(Validation by Operation of Law)**

21 (Applicable to the First, Second, Third, Fourth, and Sixth Causes of Action)

22 Metropolitan incorporates by reference the General Allegations stated above.

23 Metropolitan’s rate structure components and cost allocations that SDCWA  
24 challenges have been in effect since January 1, 2003 and have been validated by operation of  
25 law, including but not limited to California Code of Civil Procedure § 869 and validating acts of  
26 the Legislature, such as The First Validating Act of 2003 (2003 Cal. Stats. Ch. 9, filed May 1,  
27 2003 and effective immediately) and similar validating acts. In particular, the validation of  
28 bonds validates the rate structure components pledged as security for those bonds. Metropolitan

1 issued its first of many water revenue bonds incorporating the new rate structure components on  
2 September 12, 2002. The rate structure components were validated because no one challenged  
3 them within the 60-day time period following Metropolitan’s 2002 bond issuance. The 60-day  
4 deadline to file a reverse validation action thus expired at the latest in November 2002, 60 days  
5 after the bond issuance – and seven and a half years before this case was filed. Therefore,  
6 Metropolitan’s rate components were validated by operation of law in 2002. The rate structure  
7 components were also validated by operation of law by the first validating act after the bond  
8 issuance, the First Validating Act of 2003, and subsequent validating acts. The current rate  
9 structure components, having been validated by operation of law, cannot be challenged as long  
10 as they remain in use.

11 **Tenth Affirmative Defense**

12 **(Separation of Powers)**

13 (Applicable to All Causes of Action)

14 Metropolitan incorporates by reference the General Allegations stated above.

15 SDCWA’s claims are barred in whole or in part because they seek improper  
16 judicial interference with Metropolitan’s quasi-legislative agency actions and discretion. Among  
17 other reasons, SDCWA’s claims and the relief it seeks are incompatible with the requirement in  
18 the MWD Act that Metropolitan’s Board of Directors act by majority vote.

19 **Eleventh Affirmative Defense**

20 **(Ripeness)**

21 (Applicable to the First, Second, Third, Fourth and Sixth Causes of Action)

22 Metropolitan incorporates by reference the General Allegations stated above.

23 Those portions of SDCWA’s first four claims for relief relating to the Wheeling  
24 Statute, and the entirety of SDCWA’s sixth claim for relief, are unripe for adjudication because  
25 SDCWA does not currently wheel any water through Metropolitan’s system and because  
26 preferential rights have never been invoked under § 135 of the MWD Act.

27 **Twelfth Affirmative Defense**

28 **(Waiver)**

1 (Applicable to All Causes of Action)

2 Metropolitan incorporates by reference the General Allegations stated above.

3 SDCWA's claims are barred because SDCWA has waived, relinquished, and/or  
4 abandoned any claim for relief against Metropolitan regarding the matters which are the subject  
5 of the TAC.

6 **Thirteenth Affirmative Defense**

7 **(Res Judicata and Collateral Estoppel)**

8 (Applicable to the First, Second, Third, Fourth and Sixth Causes of Action)

9 Metropolitan incorporates by reference the General Allegations stated above.

10 SDCWA's claims are barred by the doctrine of *res judicata* and collateral  
11 estoppel, including, without limitation, the following:

12 SDCWA's Sixth Cause of Action regarding its claim for "preferential rights" is  
13 directly barred by the prior litigation between SDCWA and MWD in which SDCWA asserted  
14 and lost the same issue it raises in its SAC, *San Diego County Water Authority v. Metropolitan*  
15 *Water Dist.*, 117 Cal. App. 4th 13, 17 (2004). ("*SDCWA*"). In *SDCWA*, SDCWA claimed that  
16 § 135 entitled it to preferential rights credit for those components of its water rate payments  
17 allocated to Metropolitan's capital and operating costs. *Id.* at 20. After an extensive review of  
18 § 135's text and legislative history, the court "reject[ed] San Diego's interpretation of the phrase  
19 'purchase of water' as being intended to mean only 'the cost of the water resource,' and not the  
20 'bundled' charge for water inclusive of capital costs and operating expenses." *Id.* at 26.  
21 "Purchase of water," the court held, was synonymous with "water rates" *in general*—including  
22 those components of water rates not allocated toward supply. *Id.* at 26 n.6 (rejecting "San  
23 Diego's attempt to draw any meaningful distinction between the Water Code's use of the  
24 alternative phrases "water rates" . . . and the "purchase of water").

25 That case is binding precedent, and should be deemed dispositive under both *res*  
26 *judicata* and collateral estoppel principles. In *SDCWA*, SDCWA sued the *same* party –  
27 Metropolitan; to redress the *same* purported injury – an under-allocation of its preferential rights;  
28 based on a purported violation of and an interpretation of the *same* statutory provision – § 135 of

1 the Metropolitan Water District Act; through the *same* mechanism – Metropolitan’s preferential  
2 rights calculation methodology; in the *same* venue – San Francisco County; in search of the *same*  
3 declaratory and injunctive relief. *See SDCWA*, 117 Cal. App. 4th at 17. Res judicata “prohibits a  
4 second suit between the same parties on the same cause of action.” *Boeken v. Philip Morris USA*  
5 *Inc.*, 48 Cal. 4th 788, 792 (2010). Collateral estoppel, similarly, prohibits relitigation of a  
6 particular issue that was decided in a prior proceeding between the same parties. *Gabriel v.*  
7 *Wells Fargo Bank*, 188 Cal. App. 4th 547, 556 (2010). Whether considered as a “cause of  
8 action” or an “issue,” the question of whether Metropolitan’s preferential rights methodology  
9 violates § 135 based on the interpretation of the phrase “purchase of water” has already been  
10 conclusively decided in favor of Metropolitan. *See SDCWA*, 117 Cal. App. 4th at 17 (“We  
11 conclude that Metropolitan has properly interpreted section 135.”).

12           SDCWA’s claims that Metropolitan’s water rates violate Water Code § 1810 et  
13 seq., which requires that wheeling rates not exceed “fair compensation” for the conveyance of  
14 water through Metropolitan’s facilities, is also barred by prior litigation between SDCWA and  
15 Metropolitan, *Metropolitan Water District v. Imperial Irrigation District*, 80 Cal. App. 4th 1403  
16 (2000) (“*IID*”). The statute defines “fair compensation” as “the reasonable charges incurred by  
17 the owner of the conveyance system, including capital, operation, maintenance, and replacement  
18 costs.” Water Code § 1811(c). The statute mandates considerable deference to the agency’s  
19 rate-setting determination. Water Code § 1813 (“[T]he court shall sustain the determination of  
20 the public agency if it finds that the determination is supported by substantial evidence.”)  
21 SDCWA previously challenged Metropolitan’s wheeling rates under Water Code § 1810 et seq.  
22 on this exact basis and lost. In *IID*, the court held, after conducting a detailed statutory analysis,  
23 that nothing in the statute indicated that “fair compensation” could not reasonably include  
24 “system-wide costs,” including costs to maintain and operate portions of the conveyance system  
25 not used by the transferor. *Id.* at 1426-1433. Moreover, with respect to SDCWA’s allegations of  
26 a “secret society” or “shadow government” intent on imposing discriminatory wheeling rates on  
27 SDCWA, that same court held “contrary to [SDCWA’s] assertions, there is no evidence the  
28 Legislature acted out of a concern that . . . Metropolitan Water District . . . [was] blocking

1 wheeling transactions by ‘demanding unreasonable prices for access [to their conveyance  
2 systems]’.” *Id.* at 1432. That case is binding precedent, and should be deemed dispositive under  
3 both *res judicata* and collateral estoppel principles.

4 **Fourteenth Affirmative Defense**

5 **(Justification)**

6 (Applicable to All Causes of Action)

7 Metropolitan incorporates by reference the General Allegations stated above.

8 SDCWA’s claims are barred because at all relevant times Metropolitan acted  
9 justifiably, reasonably, and in good faith.

10 **Fifteenth Affirmative Defense**

11 **(No Breach)**

12 (Applicable to the Fourth Cause of Action)

13 Metropolitan incorporates by reference the General Allegations stated above.

14 At all times relevant to the TAC, Metropolitan did not breach any agreement it  
15 had with SDCWA.

16 **Sixteenth Affirmative Defense**

17 **(Consent)**

18 (Applicable to All Causes of Action)

19 Metropolitan incorporates by reference the General Allegations stated above.

20 SDCWA’s claims are barred by the doctrine of consent.

21 **Seventeenth Affirmative Defense**

22 **(Estoppel)**

23 (Applicable to All Causes of Action)

24 Metropolitan incorporates by reference the General Allegations stated above.

25 SDCWA’s claims are barred by the equitable doctrine of estoppel.

26 **Eighteenth Affirmative Defense**

27 **(Unclean Hands)**

28 (Applicable to All Causes of Action)

1 Metropolitan incorporates by reference the General Allegations stated above.  
2 SDCWA's claims are barred by the equitable doctrine of unclean hands.

3 **Nineteenth Affirmative Defense**

4 **(Failure to Mitigate)**

5 (Applicable to All Causes of Action)

6 Metropolitan incorporates by reference the General Allegations stated above.  
7 If SDCWA has suffered any damages (which Metropolitan expressly denies),  
8 Metropolitan alleges that SDCWA's recovery for those damages is barred by its failure to  
9 mitigate, reduce, or otherwise avoid its damages.

10 **Twentieth Affirmative Defense**

11 **(Unjust Enrichment)**

12 (Applicable to All Causes of Action)

13 Metropolitan incorporates by reference the General Allegations stated above.  
14 SDCWA's claims are barred, in whole or part, because it seeks relief which  
15 would result in unjust enrichment of SDCWA.

16 **Twenty-First Affirmative Defense**

17 **(Offset)**

18 (Applicable to All Causes of Action)

19 Metropolitan incorporates by reference the General Allegations stated above.  
20 Metropolitan is informed and believes that, if it has any liability to SDCWA for  
21 the claims made in this action (which Metropolitan expressly denies), Metropolitan is entitled to  
22 an appropriate set-off.

23 **Twenty-Second Affirmative Defense**

24 **(Apportionment)**

25 (Applicable to All Causes of Action)

26 Metropolitan incorporates by reference the General Allegations stated above.  
27 Metropolitan is informed and believes that, if it has any liability to SDCWA for  
28 the claims made in this action (which Metropolitan expressly denies), Metropolitan is entitled to

1 an appropriate apportionment of damages among all parties whose negligence or fault  
2 contributed to the injuries or damages alleged.

3 Twenty-Third Affirmative Defense

4 **(Changed Position)**

5 (Applicable to All Causes of Action)

6 Metropolitan incorporates by reference the General Allegations stated above.

7 SDCWA's claims are barred because Metropolitan has relied in good faith to its  
8 detriment on the benefits received by SDCWA.

9 Twenty-Fourth Affirmative Defense

10 **(Justifiable Condition)**

11 (Applicable to Fifth Cause of Action)

12 Metropolitan incorporates by reference the General Allegations stated above.

13 SDCWA's fifth Cause of Action alleging that the RSI provision violates Article I,  
14 § 3 of the California Constitution is barred in whole because the RSI provision has a reasonable  
15 and rational basis, the RSI provision serves a reasonable and important purpose, the purpose and  
16 value of the RSI provision outweigh any alleged competing interest, and/or the RSI provision is  
17 otherwise justified under the law.

18 Twenty-Fifth Affirmative Defense

19 **(Lack of Standing)**

20 (Applicable to First, Second, Third, Fourth and Fifth Causes of Action)

21 Metropolitan incorporates by reference the General Allegations stated above.

22 SDCWA's first four claims for relief, including but not limited to the portions  
23 relating to the Wheeling Statute, and the entirety of SDCWA's fifth Cause of Action alleging  
24 that the RSI provision violates Article I, § 3 of the California Constitution, are barred because  
25 SDCWA lacks standing or authorization to assert those claims.

26 Twenty-Sixth Affirmative Defense

27 **(Proposition 13, Government Code § 50076, and Government Code § 54999.7(a) Do Not**  
28 **Apply to Metropolitan's Rates)**



1 (Applicable to First, Second, Third, and Fourth Causes of Action)

2 Metropolitan incorporates by reference the General Allegations stated above.

3 Those portions of SDCWA’s first four claims for relief relating to Proposition 13,  
4 i.e., Article XIII A, § 4 of the California Constitution (adopted by Proposition 13 in 1978), and  
5 its implementing statute, California Government Code § 50076, and California Government  
6 Code § 54999.7(a) are barred because these legal standards do not apply to Metropolitan’s water  
7 rates. Under California law, Proposition 13 (and by implication its implementing statute  
8 Government Code § 50076), was not intended to apply to water rates. *Rincon Del Diablo Mun.*  
9 *Water Dist. v. San Diego Cnty. Water Auth.*, 121 Cal. App. 4<sup>th</sup> 813, 819, 822 (2004); *Brydon v.*  
10 *E. Bay Mun. Util. Dist.*, 24 Cal. App. 4<sup>th</sup> 178, 194-95 (1994). And, Metropolitan, as a wholesaler  
11 of water, does not provide a “public utility service” within the meaning of Government Code §  
12 54999.7(a) because it does not provide SDCWA’s end-user water utility service. *See*  
13 § 54999.1(h) (defining “public utility service” as “service for water, light, heat communications,  
14 power, or garbage . . .”). Indeed, in a letter to Metropolitan’s Board of Directors concerning the  
15 rate dispute at issue, SDCWA admitted that § 54999.7 “is a provision of the San Marcos  
16 legislation governing the application of water service and other public utility rates to schools and  
17 other public agencies,” and it “does not apply to a water wholesaler like [Metropolitan].” (TAC,  
18 Ex. D.) The statute also cannot apply to Metropolitan since on its face it requires that rates  
19 charged to public agencies be the same as those charged to non-public agencies, and  
20 Metropolitan’s 26 customers are all public agencies.

21 **Twenty-Seventh Affirmative Defense**

22 **(Metropolitan’s Rates Are Paid Only by the Member Agencies that Set Them**  
23 **and Incurred Only Voluntarily)**

24 (Applicable to First, Second, Third, and Fourth Causes of Action)

25 Metropolitan incorporates by reference the General Allegations stated above.

26 Those portions of SDCWA’s first four claims for relief relating to Proposition 13,  
27 i.e., Article XIII A, § 4 of the California Constitution (adopted by Proposition 13 in 1978), and  
28 its implementing statute, California Government Code § 50076, and California Government

1 Code § 54999.7(a) are barred because these provisions were not intended to govern charges  
2 established directly by those who pay them, charged only to the member agencies that establish  
3 them, and incurred by the member agencies voluntarily. Here, Metropolitan's rates are  
4 established by its governing Board of Directors which is made up of representatives appointed by  
5 the member agencies—and only those representatives. (SDCWA is, and was at all relevant  
6 times, a member of Metropolitan's governing Board of Directors and, in fact, voted in favor of  
7 the very rate structure it challenges here.) The rates are charged only to those member agencies.  
8 And, member agencies, including SDCWA, incur Metropolitan's rates only if they choose to buy  
9 water from Metropolitan or to convey water through Metropolitan's system.

10 **Twenty-Eighth Affirmative Defense**

11 **(Reservation of Right)**

12 (Applicable to All Causes of Action)

13 Metropolitan incorporates by reference the General Allegations stated above.

14 Metropolitan may rely upon any and all further defenses which may be available  
15 or which later appear after further factual development in this action and hereby specifically  
16 reserves its right to amend this Answer, as of right or with leave of Court, for the purpose of  
17 asserting any such additional defenses.

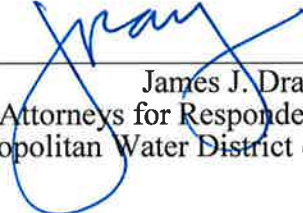
18 **PRAYER**

19 WHEREFORE Respondent and Defendant Metropolitan prays for judgment as  
20 follows:

- 21 1. That SDCWA's TAC be dismissed with prejudice and SDCWA take  
22 nothing by its TAC;
- 23 2. That SDCWA be denied a writ of mandate, declaratory relief, or any other  
24 form of relief;
- 25 3. That Metropolitan be awarded its costs and attorneys' fees, as permitted  
26 by law; and
- 27 4. That Metropolitan be awarded such other and further relief as the Court  
28 deems just and proper.

1 DATED: April 11, 2013

2 BINGHAM MCCUTCHEN LLP

3  
4 By:  FOR \_\_\_\_\_  
5 James J. Dragna  
6 Attorneys for Respondent and Defendant  
7 Metropolitan Water District of Southern California

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3 **PROOF OF SERVICE**

4 I am over eighteen years of age, not a party in this action, and employed in San  
5 Francisco County, California at Three Embarcadero Center, San Francisco, California 94111-  
6 4067. I am readily familiar with the practice of this office for collection and processing of  
7 correspondence for mail/fax/hand delivery/next business day Federal Express delivery, and they  
8 are deposited that same day in the ordinary course of business.

9 On April 11, 2013, I served the attached:

10 **RESPONDENT AND DEFENDANT METROPOLITAN WATER**  
11 **DISTRICT OF SOUTHERN CALIFORNIA'S ANSWER TO**  
12 **PETITIONER AND PLAINTIFF'S THIRD AMENDED PETITION**  
13 **AND COMPLAINT**

- 14  (VIA LEXISNEXIS) by causing a true and correct copy of the document(s) listed  
15 above to be sent via electronic transmission through LexisNexis File & Serve to  
16 the person(s) at the address(es) set forth below.
- 17  (EXPRESS MAIL/OVERNIGHT DELIVERY) by causing a true and correct copy  
18 of the document(s) listed above to be delivered by UPS in sealed envelope(s) with  
19 all fees prepaid at the address(es) set forth below.

20 as indicated on the following **Service List**.

21 I declare under penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct and that this declaration was executed on April 11, 2013, at San  
23 Francisco, California.

24   
25 \_\_\_\_\_  
26 Kelley A. Garcia  
27  
28

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