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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **IN AND FOR THE COUNTY OF LOS ANGELES**

16 FOOD & WATER WATCH and
17 CENTER FOR FOOD SAFETY,

18 *Plaintiffs,*

19 v.

20 METROPOLITAN WATER DISTRICT OF
21 SOUTHERN CALIFORNIA,

22 and

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

Defendants.

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

SEP 07 2018

Sherri R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

) Case No. **BC720692**

) **COMPLAINT IN VALIDATION**

) (Gov't Code § 53511; Code Civ. Proc. §§
) 860-870.5; Cal. Const., art. XIII A
) [Proposition 13]; Cal. Const., art. XIII C
) [Proposition 26])

BY FAX

INTRODUCTION

This *in rem* validation action under Code of Civil Procedure section 860, *et seq.* and Government Code section 53511 is brought by two plaintiff non-profit advocacy organizations, Food & Water Watch and Center for Food Safety, whose membership across California includes residents, taxpayers and ratepayers in the service area of defendant Metropolitan Water District of Southern California. Plaintiffs' complaint is directed to the defendant and all persons interested in defendant's authorization, on July 10, 2018, of financial support of a project known as "California WaterFix," including (1) the adoption of Resolutions 9243 and 9244, and (2) the execution of certain agreements and amendments related to financing, pre-construction and construction activities for California WaterFix. Complete and correct copies of Resolutions 9243 and 9244 are respectively attached as Exhibit A and B and incorporated by reference.¹ Filed in the absence of validation proceedings brought by the defendant public agency, this action is brought by interested parties as a reverse validation action under Code of Civil Procedure section 863, and is entitled to calendar preference under Code of Civil Procedure section 867.

Before taking the actions challenged here, MWD had a historic opportunity at its July 10, 2018, Board of Directors meeting to learn from torrents of criticism from ratepayers, taxpayers, members of the public, and its own member agencies, highlighting major financial as well as environmental risks from a final decision authorizing financial support for California WaterFix. Public concern about the shortage, instability and paucity of analysis of WaterFix financing had intensified following the federal Bureau of Reclamation's refusal of funding and the nonparticipation of all but one Central Valley Project contractor amid growing concerns about

¹ Resolutions 9243 and 9244 define "California WaterFix" in paragraph 1 as a project, proposed for construction by the California Department of Water Resources ("DWR"), "which consists of the construction of three new intakes on the east bank of the Sacramento River in the northern California Delta, tunnels connecting these intakes to a new, 30-acre intermediate forebay, and two 30-mile long tunnels carrying water from this forebay to a new pumping plant connected to an expanded and modified Clifton Court Forebay."

1 financing costs. The WaterFix project, which had already drawn heavy criticism for the lack of
2 rigor and realism in its supporting cost analyses, now faced the further problem of covering
3 potential billions in additional shortfalls from assumed sources of funding that never
4 materialized. The Delta tunnels project, now known as WaterFix, the underlying subject of
5 MWD's authorization decisions, is one of the most costly and risky water infrastructure projects
6 proposed in California's history, widely criticized for its risks to ecosystems and people in the
7 Delta and elsewhere, as well as for its high costs and financial unpredictability.

8 Faced with the historic opportunity to ensure its decision-making on WaterFix protected
9 its taxpayers, its ratepayers, and members of the public from absorbing excessive and undue
10 risks, MWD instead did the opposite in its July 10, 2018, authorization decisions related to
11 WaterFix financing. Far from containing these risks, MWD greatly expanded them, escalating
12 its commitment to cover up to 64.6 percent (or under existing estimates, \$10.8 billion) of project
13 costs, and empowering its Director to take other steps that may add new risks, losses of
14 accountability, or both. Moreover, because MWD's commitment is tied to a percentage of an
15 estimate, MWD failed to provide any hard financial ceiling, leaving further uncertainty in the
16 event of significant cost overruns. MWD's commitments were made without requiring a public
17 vote, and made despite the opposition of members from the San Diego County Water Authority
18 and City of Los Angeles, among others.

19 As detailed below, MWD's authorizations run afoul of California's constitutional
20 protections under Propositions 26 and 13, and exceed MWD's authority under the Burns-Porter
21 Act and State Water Project contracts, among other requirements. MWD's commitments also
22 cannot be deemed valid because they are solely directed to an underlying California WaterFix
23 project that is still lacking required approvals and is the subject of separate pending legal
24 challenges against other entities.

25 **PARTIES**

26 1. Plaintiff FOOD & WATER WATCH ("FWW") is a non-profit advocacy
27 organization that champions clean water and healthy food for all. FWW has over 100,000
28 supporters across the State of California. FWW's membership includes numerous members

1 living within MWD’s service area, including taxpayers and ratepayers in that area. FWW’s
2 membership is beneficially interested in the determinations of MWD addressed in this action,
3 and in ensuring that MWD complies with law and requirements implicated in these
4 determinations. FWW stands up to corporations that put profits before people, and advocates for
5 a democracy that improves people’s lives and protects our environment.

6 2. Plaintiff CENTER FOR FOOD SAFETY (“CFS”) is a national nonprofit public
7 interest and environmental advocacy organization working to protect human health and the
8 environment by promoting sustainable agriculture. CFS has over 750,000 members across the
9 country, with approximately 92,000 residing in California, of which many thousands live within
10 MWD’s service area. CFS members include farmers, businesses, and consumers whose
11 economic and personal wellbeing depends upon decisions regarding food production and
12 equitable water distribution. CFS takes a holistic approach in pursuing its mission, using legal
13 actions, scientific and policy reports, educational events, marketing campaigns, and grassroots
14 organizing. CFS members farm, fish, eat, drink, research, and recreate within the Sacramento-
15 San Joaquin Delta ecosystem, southern California, the Central Valley, and the San Francisco Bay
16 Area and would be affected by the Project and its significant impacts. CFS’s membership
17 includes numerous members living within MWD’s service area, including taxpayers and
18 ratepayers in that area. CFS’s membership is beneficially interested in the determinations of
19 MWD addressed in this action, and in ensuring that MWD complies with law and requirements
20 implicated in these determinations.

21 3. Defendant METROPOLITAN WATER DISTRICT OF SOUTHERN
22 CALIFORNIA (“MWD”) is a state-chartered metropolitan water district, formed and subject to
23 statutory authority pursuant to Water Code Appendix section 109, *et seq.* MWD is composed of
24 twenty-six member cities and public water agencies. According to its website, MWD “serves
25 nearly 19 million people in six counties. Metropolitan imports water from the Colorado River
26 and Northern California to supplement local supplies and helps its members develop increased
27 water conservation, recycling, storage and other resource-management programs. The mission
28 of the Metropolitan Water District of Southern California is to provide its service area with

adequate and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way.” MWD is one of 29 State Water Project Contractors, having executed a contract with the California Department of Water Resources (“DWR”) for the development, financing, and operation of the State Water Project (“SWP”) and the delivery of water supplies through the SWP, in exchange for repayment of all associated SWP capital and operating costs. MWD neither owns nor operates the State Water Project, which is principally managed by DWR and serves the people of the State of California.

STATUTORY AUTHORITY

4. Statutory authority for this in rem reverse-validation action is found in Gov. Code section 53511 and Code of Civil Procedure section 863.

5. Government Code sections 53510 and 53511 apply the validating procedure in Code of Civil Procedure section 860 to any county, city, city and county, public district or any public or municipal corporation, public agency and public authority, any of whom may bring an action to determine the validity of bonds, warrants, contracts, obligations, or evidences of indebtedness.

6. If no proceedings have been brought by the relevant agency, any interested person may bring an action within the time and in the court specified by Code of Civil Procedure section 860 to determine the validity of the matter. These actions, under Code of Civil Procedure section 863, brought by interested persons, are called “reverse validation actions.”

JURISDICTION, AND VENUE

7. Pursuant to Code of Civil Procedure section 861 and Government Code 6063, jurisdiction will be perfected as of the date of the third successive weekly publication of the summons issued in this action in a newspaper or newspapers of general circulation. Plaintiffs will separately seek Court designation of the newspaper[s] pursuant to Code of Civil Procedure section 861.

8. This action is timely pursuant to Code of Civil Procedure section 860 because MWD’s authorization of the bonds, warrants, contracts, obligations, and/or indebtedness at issue

1 in this action (MWD’s “WaterFix Authorization”) was made by a vote of its Board of Directors
2 on July 10, 2018.

3 9. Venue is proper in this Court pursuant to Code of Civil Procedure section 860
4 because MWD’s principal office is located in Los Angeles County.

5 **MWD’S WATERFIX AUTHORIZATION**

6 10. MWD’s staff report for its July 10, 2018, agenda item related to WaterFix
7 funding confirmed, as DWR had previously, that the expected funding commitments (55 percent
8 from State Water Project contractors, 45 percent from the Central Valley Project contractors) had
9 “failed to materialize.” Staff recognized that the Bureau of Reclamation had rejected funding,
10 and that only one Central Valley Project contractor had decided to participate, “because of
11 concerns about the cost of financing the project and because Reclamation could not assure them
12 that any resulting benefits would be distributed solely among CVP PWA.”

13 11. MWD’s staff and counsel sought to reassure the public in advance of the July 10,
14 2018, hearing that it welcomed open discussion and public engagement on issues related to
15 WaterFix funding, and that related consideration of WaterFix in earlier meetings had not
16 produced final decision-making ripe for legal challenge. In a June 6, 2018, letter to Food &
17 Water Watch and the First Amendment Coalition, which had earlier raised concerns about
18 Brown Act violations in the consideration of WaterFix at MWD’s April 10, 2018, meeting,
19 MWD General Counsel Marcia Scully confirmed that “the Board will consider Metropolitan’s
20 increased funding and related actions anew at the July 10, 2018 meeting,” and requested “that
21 you allow the continued public discourse and new Board action regarding CWF to take place.”

22 12. On July 10, 2018, the Board of Directors of MWD authorized MWD “to provide
23 additional financial support of California WaterFix sufficient to fully fund the unsubscribed
24 share of the project up to 64.6% of total project costs; authorize General Manager to execute
25 certain agreements and agreement amendments related to financing, pre-construction and
26 construction activities for California WaterFix; authorize funding of up to \$86 million for further
27 contributions for study, review, planning, engineering, design, and other pre-construction capital
28 costs subject to certain conditions; and authorize General Manager to negotiate draft terms and

1 conditions for one or more multi-year transfers of State Water Project water supplies subject to
2 Board approval.”

3 13. MWD’s determinations on July 10, 2018, included final approval of Resolution
4 9243 (Exhibit A), which authorized its purchase of capacity interest of up to 64.6 percent of the
5 estimated costs of WaterFix and the financing of that purchase and other arrangements.
6 However, the resolution provides no specific limitation on total costs, and other than a general
7 direction for the Director to use “reasonable assumptions and methods,” does not account for
8 what may occur if the actual costs of WaterFix substantially exceed estimated costs. The
9 resolution also authorizes MWD’s general manager to negotiate, execute and deliver additional
10 WaterFix-related agreements and documents.

11 14. MWD’s determinations on July 10, 2018, also included final approval of
12 Resolution 9244 (Exhibit B), which authorizes the District’s financial support of WaterFix, and
13 authorizes MWD’s general manager to negotiate, deliver and execute financing agreements and
14 related documents.

15 15. MWD’s 64.6% share of the estimated total WaterFix project costs would
16 constitute \$5.2 billion towards the construction of the first delta tunnel and \$5.6 billion needed to
17 construct the second delta tunnel, for a total of \$10.8 billion. However, numerous sources of
18 financial uncertainty, not addressed by MWD in or before its July 10, 2018, WaterFix
19 Authorization, raise the real possibility that actual costs may prove to be significantly in excess
20 of the estimates relies upon by MWD. Some of the missing elements of analysis include:

21 (1) Master Agreements for unsubscribed capacity; (2) legal analysis of financing that additional
22 capacity, and how that may implicate water rights and compliance with constitutional tax
23 provisions requiring a public vote; (3) benefit/cost analysis of financing the additional estimated
24 capacity; (4) evidence documenting staff’s expectation of leasing back the capacity; and (5) how
25 the State Board’s Sacramento-Delta framework may affect water supply from WaterFix.

26 (<http://valleyecon.blogspot.com/2018/04/will-metropolitan-water-district-board.html>.) Other
27 analyses have sharply criticized WaterFix’s claimed benefits in comparison to costs, and
28 estimated far higher costs for WaterFix than DWR and MWD have assumed. (See, e.g.,

1 <https://www.pacific.edu/Documents/school-business/BFC/WaterFix%20benefit%20cost.pdf>.) In
2 a statement criticizing MWD’s WaterFix Authorization, the Delta Counties Coalition predicted
3 that these actions aimed at facilitating WaterFix would “significantly increase utility bills for
4 California ratepayers and irreparably harm the Delta.”

5 16. MWD plans to finance the capital costs associated with the WaterFix project in
6 two ways: (1) through payments made to DWR as a State Water Project Contractor, and (2)
7 through various forms of additional financial support that MWD will contribute to the project.

8 17. MWD estimates that its annual WaterFix costs will be \$515 million per year
9 through 2033—a 33% increase to MWD’s overall spending—which it will recover through its
10 wholesale water rates.

11 18. Because wholesale rate increases lead to corresponding retail rate increases,
12 MWD projects that residential ratepayers will pay an extra \$4.80/month in WaterFix costs on
13 their water bills.

14 19. The Los Angeles Office of Public Accountability asserts that WaterFix surcharges
15 for L.A. ratepayers could balloon to as high as \$6.78/month. Other estimates, including cost
16 assessments provided by FWW and San Diego County Water Authority, among others, suggest
17 that the worst case may prove to be far higher, perhaps on the order of double, triple or more.
18 Moreover, continuing and unresolved uncertainties in the total costs of WaterFix may
19 substantially change these figures for the worse.

20 20. Once the WaterFix project is completed, MWD hopes to recoup some of its
21 capital expenditures by selling its interest in the second tunnel capacity to interested State Water
22 Contractors and Central Valley Project contractors.

23 21. Specifically with regards to the second Delta tunnel, MWD hopes to acquire
24 ownership of the second tunnel, finance its construction by issuing bonds, and recoup its costs
25 later by wheeling water or selling portions of conveyance capacity to other entities in the future.
26 MWD’s actual ability to recover those costs remains speculative and unproven.

27 22. As of yet, no other contractors have agreed to purchase any of MWD’s interest in
28 the second tunnel or to purchase any of the capacity or use of the second tunnel.

23. MWD's goal for the WaterFix project is to improve the reliability of its Delta water supply, which represents approximately 30% of the total water supplies available to MWD's service area.

24. By any available measure, whether considered based upon historic deliveries, maximum amounts referenced in project contracts, or projected future deliveries, the 64.6% figure assumed by MWD bears little, if any, relationship to MWD's obligations to its own customers, and appears to include additional coverage for the SWP, CVP or both.

25. According to MWD, WaterFix will result in a number of quality and reliability benefits to the SWP and MWD's Delta water supply, including an estimated "Annual Average MWD Supply Reliability Improvement" of 405 – 455 TAF/year. Whether any such benefits will come about remains uncertain and unknown. However, at page 98 of MWD staff's agenda packet for the July 10, 2018, meeting is confirmation of MWD's understanding that the estimated amount would remain the same, whether a single tunnel or two tunnels are built. (<http://edmsidm.mwdh2o.com/idmweb/cache/MWD%20EDMS/003738599-1.pdf>.)

Burns-Porter Act

26. The Burns-Porter Act, Water Code sec. 12930, *et seq.*, was enacted by the Legislature in 1959 and ratified by voters in 1960. Its broad purpose was to assist in the construction of the State Water System, comprised of (1) the specific State Water Facilities authorized by Burns-Porter, (2) facilities authorized under the Central Valley Project and California Water Plan, and (3) additional facilities deemed necessary or desirable to meet local needs.

27. Under the Burns-Porter Act, the tax revenue a local water district generates to pay its SWP contractual obligations can only be used for one of four voter-approved purposes, and in the following order of priorities: (1) for the reasonable costs of annual maintenance, operation, and replacement of the system, (2) to repay the principal or interest on Burns-Porter bonds, (3) to reimburse the California Water Fund for funds utilized for construction of the State Water Facilities, or, (4) if there is any surplus revenue, for the construction of new water system facilities.

1 **Proposition 13**

2 28. Proposition 13, enacted by voters in 1978 and codified in article XIII A of the
3 California Constitution, caps property taxes at 1% of assessed value, and limits upward
4 reappraisals of value to 2% per year.

5 29. Proposition 13 allows the 1% cap on property taxes to be exceeded “to pay the
6 interest and redemption charges on ... [i]ndebtedness approved by the voters prior to July 1,
7 1978,” or by proposition, approved by two-thirds of the voters.

8 30. The terms of the SWP contracts require water districts to levy taxes if they “fail or
9 [are] unable to raise sufficient funds by other means” to make all payments due.

10 31. State Water Contractors have utilized Proposition 13’s exception for pre-1978
11 indebtedness for years to raise revenue to satisfy their SWP contracts, arguing that taxes and fees
12 assessed are authorized under Burns-Porter and thus not barred by Proposition 13.

13 **Proposition 26**

14 32. Proposition 26, enacted by voters in 2010 and codified Article XIII C of the
15 California Constitution, expanded the definition of tax to include “any levy, charge, or exaction
16 of any kind imposed by a local government.”

17 33. Under Proposition 26, local governments are prohibited from imposing,
18 extending, or increasing any such charge unless and until the tax is submitted to the electorate
19 and approved by a two-thirds vote.

20 34. Certain government charges are exempted from Proposition 26’s expanded
21 definition of tax, including “a charge imposed for a specific government service or product
22 provided directly to the payor that is not provided to those not charged, and which does not
23 exceed the reasonable costs to the local government of providing the service or product.”

24 35. Proposition 26 requires agencies to demonstrate that (1) the levy, charge, or fee is
25 not a tax; (2) that the amount is no greater than necessary to cover the reasonable costs of the
26 governmental activity, and (3) that the costs are allocated in a fair and proportionate manner.

FIRST CAUSE OF ACTION

(Determination of Invalidity, Violation of Proposition 26)

36. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above and below as if set forth fully herein.

37. MWD's WaterFix Authorization, if deemed ripe for determination, violates multiple provisions of California law and thus is invalid under California's validation statutes.

38. MWD's WaterFix Authorization violates Proposition 26, California Constitution Article XIII C, as it authorizes the imposition of taxes or fees that do not bear a fair and reasonable relationship to the burdens on or benefits to MWD ratepayers derived from the WaterFix project.

39. Imposing 64% of the total WaterFix costs on MWD ratepayers is unreasonable and disproportionate to the benefits derived by the project, using any reasonable and available measure of proportionality.

40. Imposing 100% of the costs of the second Delta tunnel on MWD ratepayers is unreasonable and disproportionate, as MWD ratepayers will receive, by MWD's estimation, no additional water supplies from the second tunnel.

41. The \$5.6 billion estimated cost of the second tunnel is unreasonable and disproportionate to any possible benefits related to increased reliability derived from the second tunnel as only 30% of MWD's water supplies flow through the Sacramento San-Joaquin Delta.

42. The \$5.6 billion estimated cost of the second tunnel is an unfair and disproportionate burden to MWD ratepayers, who would be shouldering 100% of the costs of the second tunnel but sharing the benefits of the second tunnel with almost all users of the SWP, most or nearly most of whom would not be paying for those benefits.

43. MWD cannot justify its WaterFix Authorization obligations on future sales of its unsubscribed capacity in the second tunnel, or in future wheeling contracts for use of the WaterFix facilities. At the time of MWD's WaterFix Authorization, these plans are speculative at best and cannot satisfy Proposition 26's requirements. Moreover, MWD failed to resolve

major and unresolved problems relating to exposure of its customers to cost overruns significantly exceeding estimates relied upon in its authorization decisions.

44. MWD's WaterFix Authorization will be unreasonably and disproportionately borne by MWD member agencies that receive little, if any, SWP water supplies.

SECOND CAUSE OF ACTION

(Determination of Invalidity, Violation of Proposition 13)

45. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above and below as if set forth fully herein.

46. MWD's WaterFix Authorization, if deemed ripe for determination, violates Proposition 13, California Constitution Article XIII A, as it authorizes a property tax in excess of 1% that does not qualify as the payment of interest and redemption charges on any indebtedness approved by the voters prior to July 1, 1978, and was enacted without the approval of a two-thirds vote of the voters. (Cal. Const. art. XIII A, subd. (b)(1) and subd. (b)(2).)

47. MWD's WaterFix Authorization does not qualify for Proposition 13's exemption for some taxes because the taxes will not be paying a debt obligation that was either approved prior to July 1, 1978, or was approved by at least two-thirds of the voters.

48. The Burns-Porter Act cannot be used to justify MWD's WaterFix Authorization (and thus qualify the Authorization for an exemption from Proposition 13) because the tax revenue raised from the WaterFix Authorization cannot and will not be used for one of the four voter-approved priorities described in the Burns-Porter Act.

49. The WaterFix construction costs to be paid for by MWD's WaterFix Authorization are for the construction of facilities that are intended to supplement (and not replace) existing infrastructure, and therefore do not qualify under "Priority 1" of the Burns-Porter Act, which is limited to the annual maintenance, operation, or replacement of the State Water Project system.

50. Because the Department of Water Resources has declared that it plans on financing WaterFix under the authority of the Central Valley Project Act (Water Code sections 11100 *et seq.*)—not the Burns-Porter Act—any funds authorized by MWD's WaterFix

1 Authorization cannot qualify under Priorities 2 and 3 of the Burns-Porter Act, which are to repay
2 the principal or interest on Burns-Porter bonds, and to reimburse the California Water Fund for
3 funds utilized for construction of the State Water Facilities, respectfully. Priorities 2 and 3
4 cannot be used to pay for bond obligations issued pursuant to the CVP.

5 51. The Department of Water Resources has proposed that Priority 4 of the Burns-
6 Porter Act authorizes SWP project revenue to flow towards new construction of what DWR
7 describes as Central Valley Project facilities. But even if Priority 4 provides authority for funds
8 to go towards CVP debt obligations, it can be utilized only after all other Burns-Porter funding
9 priorities are met and a surplus remains. Thus, if DWR includes CVP debt obligations in
10 MWD's contract, payments on those obligations would no longer qualify as surplus revenue, left
11 over after all other funding priorities were paid, and thus would not qualify as Priority 4
12 spending.

13 52. The Burns-Porter Act also does not provide any authority for MWD to levy taxes
14 for the purpose of generating a surplus that would qualify for Priority 4 spending.

15 53. If MWD deems its WaterFix Authorization revenues to be independent, and not
16 dedicated to satisfying DWR debt obligations, these revenues would not qualify for an
17 exemption to Proposition 13's restrictions because the Burns-Porter Act's authority is limited to
18 DWR-financed and DWR-led state water projects, not independent, district-led projects.

19 **THIRD CAUSE OF ACTION**

20 (Violation of Other Requirements)

21 54. MWD's WaterFix Authorization is inconsistent with requirements of MWD's
22 long-term SWP contract, including but not limited to the provision detailed in paragraph 34 that
23 allows MWD to levy a tax only when it is unable to make its SWP contract payments by other
24 means. (MWD long-term contract, ¶ 34.) MWD's long-term SWP contract also prohibits DWR
25 from passing the costs of CVP bonds onto the SWP contractors.

26 55. MWD's WaterFix Authorization, as addressed above, is inconsistent with the
27 limitations on its authority under its own District Act, Water Code section 109. Depending on its
28 future application, Resolution 9243 also could be construed in a manner that exceeds the

1 common authority of Joint Powers Agencies under the Joint Exercise of Powers Act, Gov. Code,
2 § 6500, *et seq.*

3 **FOURTH CAUSE OF ACTION**

4 (Relationship to Underlying WaterFix Approval)

5 56. MWD's WaterFix Authorization is directed solely to DWR's proposed WaterFix
6 project, but does not clearly disclose how the outcome of unresolved administrative proceedings,
7 federal decision-making, and stakeholder financing decisions could, and almost certainly will,
8 transform the very nature of the project, or whether there is a project at all.

9 57. The underlying project, California WaterFix, is also already the subject of
10 numerous other pending legal actions, including those challenging DWR compliance with
11 CEQA, the Delta Reform Act, the public trust doctrine, and state and federal laws protecting
12 endangered species, among other laws. DWR's proposed revenue bonds for WaterFix and
13 related resolutions and orders, referenced by MWD in its WaterFix Authorization, is also the
14 subject of DWR's pending direct validation action, which has elicited numerous answers
15 challenging validity and disputing WaterFix's eligibility for these bonds. Many of these actions,
16 including DWR's validation action and others directed at the Department of Fish and Wildlife,
17 have been coordinated and are pending in the Sacramento County Superior Court (*CDWR*
18 *Environmental Impact Cases*, Sacramento County Superior Court, JCCP No. 4942.) Plaintiffs do
19 not expect that this separate action against MWD will need to, or should, cover or duplicate these
20 same pending issues subject to resolution there. Nonetheless, plaintiffs reference these actions
21 here in an abundance of caution, to avoid any inference that omission here would amount to a
22 concession that the underlying WaterFix project and DWR's proposed bonds are lawful and
23 valid.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs pray for the following relief:

26 58. That the Court find that this action is properly brought under Government Code
27 section 53511 in the Superior Court for the County of Los Angeles;
28

1 59. That the Court find that MWD's WaterFix Authorization cannot support a final
2 determination of validity;

3 60. That the Court find that MWD's WaterFix Authorization violates Proposition 13;

4 61. That the Court find that MWD's WaterFix Authorization violates Proposition 26;

5 62. That the Court find that MWD's WaterFix Authorization is invalid, illegal, void,
6 not binding, and not in conformity with applicable provisions of law;

7 63. For costs of this suit;

8 64. For attorneys' fees pursuant to Code of Civil Procedure section 1021.5; and

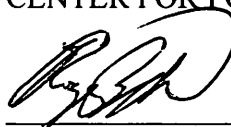
9 65. For such other and further relief as the Court deems just and proper.

10
11
12 DATED: September 7, 2018

Respectfully Submitted,

13 

14 Adam Keats
15 CENTER FOR FOOD SAFETY

16 

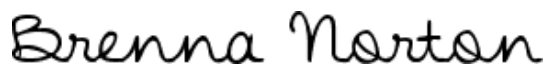
17 Roger B. Moore
18 LAW OFFICE OF ROGER B. MOORE

19 *Counsel for Plaintiffs*
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VERIFICATION

I, Brenna Norton, am the Senior Organizer for Plaintiff Food & Water Watch and am authorized to execute this verification on its and the other plaintiff's behalf. I have read the foregoing Complaint in Validation and am familiar with its contents. The facts recited in the Complaint are true of my personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on September 7, 2018, in Los Angeles, California.



Brenna Norton

Exhibit A

**THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA**

RESOLUTION 9243

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
AUTHORIZING DISTRICT'S PURCHASE OF CAPACITY INTEREST IN THE
CALIFORNIA WATERFIX, THE FINANCING OF SUCH PURCHASE, AND OTHER
ARRANGEMENTS, AND AUTHORIZING THE GENERAL MANAGER TO
NEGOTIATE, EXECUTE AND DELIVER VARIOUS AGREEMENTS AND
DOCUMENTS RELATED THERETO**

The Board of Directors of The Metropolitan Water District of Southern California (the "Board") hereby finds that:

1. The California Department of Water Resources ("DWR") has proposed the construction of the California WaterFix, which consists of the construction of three new intakes on the east bank of the Sacramento River in the northern California Delta, tunnels connecting these intakes to a new, 30-acre intermediate forebay, and two 30-mile long tunnels carrying water from this forebay to a new pumping plant connected to an expanded and modified Clifton Court Forebay; and

2. It is currently estimated that approximately 67% of the capacity of California WaterFix is subscribed by mostly California State Water Project contractors and that approximately 33% of the capacity of California WaterFix is unsubscribed (the unsubscribed portion of the capacity of the California WaterFix being referred to herein as the "Unsubscribed Capacity Interest"); and

3. The District is proposing to enter into a series of transactions to finance and purchase the Unsubscribed Capacity Interest and to take other actions (these transactions and actions being collectively referred to herein as the "Unsubscribed Capacity Arrangements"):

- (a) DWR and the District, and, at the District's election, a joint powers authority designated or formed by the District (the "Capacity Interest JPA") are proposing to enter into a master agreement (the "Master Agreement") under which the Capacity Interest JPA would purchase the Unsubscribed Capacity Interest in exchange for payments that the Capacity Interest JPA would make to DWR during the construction of the California WaterFix and which DWR would use to construct the California WaterFix; and

- (b)! The Capacity Interest JPA would issue one or more series of revenue bonds (the "JPA Bonds") which it would use to finance the payments it would make under the terms of the Master Agreement; and
- (c)! The Capacity Interest JPA and the District would enter into an installment purchase agreement or a series of installment purchase agreements (collectively, the "Capacity Interest IPA") pursuant to which the Capacity Interest JPA would transfer the Unsubscribed Capacity Interest to the District and the District would make installment payments that would support the payment of the JPA Bonds; and
- (d)! The District would secure its obligations to make installment payments with a lien on its water revenues; and
- (e)! The District may enter into one or more purchase agreements (collectively, the "Capacity Interest Purchase Agreements") under which other water agencies would agree to purchase or make payments for the purchase of the Unsubscribed Capacity Interest and the District would transfer to any such water agency all or a portion of the Unsubscribed Capacity Interest; and

4. The Board of Directors of the District desires to authorize the General Manager of the District to effect the Unsubscribed Capacity Arrangements and to negotiate, execute and delivery one or more agreements and documents necessary or advisable to carry into effect the Unsubscribed Capacity Arrangements.

NOW, THEREFORE, the Board of Directors (the "Board") of The Metropolitan Water District of Southern California, DOES HEREBY RESOLVE, DETERMINE AND ORDER as follows:

1. **Approval of the Unsubscribed Capacity Arrangements.** Each of the above recitals is true and correct and is adopted and approved by the Board. Subject to Section 3, the Board hereby authorizes and approves the District's participation in the Unsubscribed Capacity Arrangements.

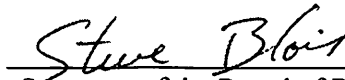
2. **Authorization of General Manager.** The Board hereby authorizes the General Manager of the District, and any of the designees of the General Manager of the District, to do any and all things necessary or convenient in the best interests of the District to effect any Unsubscribed Capacity Arrangements, and to negotiate, execute and deliver any and all agreements and documents that the General Manager or his designee determines, in his or her sole discretion, to be necessary or convenient in the best interests of the District to carry out any Unsubscribed Capacity Arrangement, and to execute all papers, documents, certificates, agreements or other instruments that may be required in order to carry out any Unsubscribed Capacity Arrangement or to evidence said authority and its exercise.

3. **Limitation of Authorization.** The District shall not enter into any Unsubscribed Capacity Arrangement under Section 1 or 2 of this Resolution if, after giving effect to such Unsubscribed Capacity Arrangement, the District's funding of such Unsubscribed Capacity Arrangement, together with the District's estimated costs in its capacity as a State Water Project

contractor, would commit the District to pay for more than 64.6% of the estimated costs of California WaterFix; provided, however, that the General Manager shall calculate the total amount of estimated costs of California WaterFix and the District's responsibility to pay for costs of California WaterFix based on such reasonable assumptions and methods as the General Manager shall determine in his or her reasonable discretion and judgment.

4. **Severability.** If any provision of this Resolution is held invalid, that invalidity shall not affect other provisions of this Resolution which can be given effect without the invalid portion or application, and to that end the provisions of this Resolution are severable.

I HEREBY CERTIFY that the foregoing is a full, true and correct copy of a Resolution adopted by the affirmative votes of members representing more than 50 percent of the total number of votes of all members of the Board of Directors of The Metropolitan Water District of Southern California at its meeting held on April 10, 2018.


Secretary of the Board of Directors
of The Metropolitan Water District
of Southern California



003738645 : RESOLUTION 9243 - Authorizing District's purchase of Capacity interes

Property	Value
Title	RESOLUTION 9243 - Authorizing District's purchase of Capacity interest in the California WaterFix ...
Date	7/10/2018 12:00:00 PM
Board Item Type	Resolution
Reference Number	Resolution attached to Board letter 8-6
Organization From, Author	MWD/Secretary of the Board
Committee Name	Board of Directors
Comment	Resolution attached to Board letter 8-6 and approved at July 10, 2018 Board meeting
Customer	
Organization To, Recipient	MWD/Board of Directors
Service Connection ID	
Keyword	
Current Version Author	ReplDaemon
Current Version Date	8/23/2018 8:15:03 AM
Added By User	ReplDaemon
Added By Group	Administrators
File Name	9243Res 07102018.pdf
File Size	154705
Comment	Resolution attached to Board letter 8-6 and approved at July 10, 2018 Board meeting



Exhibit B

**THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA**

RESOLUTION 9244

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
AUTHORIZING DISTRICT'S FINANCIAL SUPPORT OF CALIFORNIA WATERFIX
AND AUTHORIZING THE GENERAL MANAGER TO NEGOTIATE, EXECUTE AND
DELIVER VARIOUS FINANCING
IMPLEMENTATION AGREEMENTS AND RELATED DOCUMENTS**

The Board of Directors of The Metropolitan Water District of Southern California (the "Board") hereby finds that:

1. The California Department of Water Resources ("DWR") has proposed the construction of the California WaterFix, which consists of the construction of three new intakes on the east bank of the Sacramento River in the northern California Delta, tunnels connecting these intakes to a new, 30-acre intermediate forebay, and two 30-mile long tunnels carrying water from this forebay to a new pumping plant connected to an expanded and modified Clifton Court Forebay; and

2. Various participants in the California State Water Project (the "Project Participating Members") have proposed assisting DWR in the financing of California WaterFix, among others, in the following ways (collectively, the "CWF Financial Arrangements"):

- (a)! The CWF Participating Members have proposed forming a joint powers authority (the "Financing JPA") that would facilitate through different actions the issuance of revenue bonds by DWR (the "DWR Bonds") to finance the construction of the CWF, including (without limitation) through the issuance of bonds of its own (the "Financing JPA Bonds") for the purpose of financing California WaterFix through the purchasing of the DWR Bonds; and
- (b)! The CWF Participating Members have proposed supporting the Financing JPA Bonds by protecting the purchasers of such bonds from the risk of nonpayment or invalidity of DWR Bonds through one or more agreements (any such agreement, a "support agreement" and any such support agreement or other form of support of the DWR Bonds being referred to herein as "Support"), including, without limitation, in the form of debt service support agreements, or through the purchase by the CWF Participating Members of DWR Bonds or other property through installment purchase agreements; and

- (c)! The Financing JPA and DWR would enter into a security agreement (the "Security Agreement") pursuant to which DWR would agree that if it defaults in the payment of debt service on the DWR Bonds or other agreed-upon conditions, DWR would transfer to the Financing JPA or another designated entity all of DWR's right, title and interest in California Waterfix and use its efforts to assist any other necessary transfers to permit the Financing JPA or other designated entity to construct California WaterFix; and

3. The Board of Directors of the District desires to authorize the General Manager of the District to negotiate, execute, and deliver the CWF Financial Arrangements, in addition to the formation of the Financing JPA.

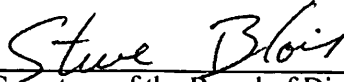
NOW, THEREFORE, the Board of Directors (the "Board") of The Metropolitan Water District of Southern California, DOES HEREBY RESOLVE, DETERMINE AND ORDER as follows:

1. **Approval of the CWF Financial Arrangements.** Each of the above recitals is true and correct and is adopted by the Board. The Board hereby authorizes and approves the District's participation in the CWF Financial Arrangements.

2. **Authorization of General Manager.** The Board hereby authorizes the General Manager of the District, and any of the designees of the General Manager of the District, to do any and all things necessary or convenient in the best interests of the District to effect any, and to effect the District's participation in all or any, CWF Financial Arrangements (referred to herein as a "District Participation Action"), and to negotiate, execute and deliver any and all agreements and documents that the General Manager or his designee determines, in his or her sole discretion, to be necessary or convenient in the best interests of the District to carry out any District Participation Action, and to execute all papers, documents, certificates, agreements or other instruments that may be required in order to carry out any District Participation Action or to evidence said authority and its exercise. The Board hereby expressly authorizes the investment by the District in the DWR Bonds and authorizes an investment by the District in the DWR Bonds in which the maturity of the DWR Bonds exceeds five years. The Board further authorizes the General Manager of the District to make such revisions and changes to the investment policy of the District that are necessary or advisable to effect one or more District Participation Acts. The Board further authorizes the General Manager to secure the District's obligations under any District Participation Action with a lien on its water revenues on such terms and conditions as the General Manager shall determine in his or her discretion.

3. **Severability.** If any provision of this Resolution is held invalid, that invalidity shall not affect other provisions of this Resolution which can be given effect without the invalid portion or application, and to that end the provisions of this Resolution are severable.

I HEREBY CERTIFY that the foregoing is a full, true and correct copy of a Resolution adopted by the affirmative votes of members representing more than 50 percent of the total number of votes of all members of the Board of Directors of The Metropolitan Water District of Southern California at its meeting held on April 10, 2018.


Secretary of the Board of Directors
of The Metropolitan Water District
of Southern California



003738646 : RESOLUTION 9244 - Authorizing District's Financial Support of Califor

Property	Value
Title	RESOLUTION 9244 - Authorizing District's Financial Support of California WaterFix ...
Date	7/10/2018 12:00:00 PM
Board Item Type	Resolution
Reference Number	Resolution attached to Board letter 8-6
Organization From, Author	MWD/Board Secretary
Committee Name	Board of Directors
Comment	Resolution attached to Board letter 8-6, approved 7/10/18
Customer	
Organization To, Recipient	MWD/Board of Directors
Service Connection ID	
Keyword	
Current Version Author	ReplDaemon
Current Version Date	8/23/2018 8:15:04 AM
Added By User	ReplDaemon
Added By Group	Administrators
File Name	9244 Res 07102018.pdf
File Size	154358
Comment	Resolution attached to Board letter 8-6, approved 7/10/18

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