

COPY



1 Bingham McCutchen LLP  
2 JAMES J. DRAGNA (SBN 91492)  
3 COLIN C. WEST (SBN 184095)  
4 THOMAS S. HIXSON (SBN 193033)  
5 355 South Grand Avenue, Suite 4400  
6 Los Angeles, California 90071-3106  
7 Telephone: 213.680.6400  
8 Facsimile: 213.680.6499

9 KAREN L. TACHIKI (SBN 91539)  
10 JAMES F. ROBERTS (SBN 101278)  
11 The Metropolitan Water District Of Southern California  
12 700 North Alameda Street  
13 Los Angeles, California 90012-2944  
14 Telephone: 213.217.6000  
15 Facsimile: 213.217.6980

16 Attorneys for Defendant Metropolitan Water District of  
17 Southern California

EXEMPT FROM FILING FEES  
[GOVERNMENT CODE § 6103]

**CONFIRMED COPY**  
OF ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

AUG 20 2010

John A. Clarke, Executive Officer/Clerk

By Berta Jauregui, Deputy  
Berta Jauregui

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES

13 SAN DIEGO COUNTY WATER AUTHORITY,

14 Petitioner and Plaintiff,

15 v.

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

23 Respondents and Defendants.

Case No. BS 126888

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

1 Defendant and Respondent Metropolitan Water District of Southern California  
2 (“Metropolitan”) answers Plaintiff and Petitioner San Diego County Water Authority’s  
3 (“SDCWA’s”) unverified Petition and Complaint (collectively, “Complaint”), as follows:

4 **GENERAL DENIAL**

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

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

9 1. SDCWA’s claims challenge features of Metropolitan’s rate structure that  
10 have been in place for more than a decade. In January 1997, Metropolitan’s board of directors  
11 voted to adopt a “wheeling rate,” effective January 15, 1997, charged to member agencies who  
12 conveyed non-Metropolitan water through Metropolitan’s water conveyance system.  
13 Metropolitan developed this wheeling rate in consultation and cooperation with its 26 member  
14 agencies, of which SDCWA is one. This wheeling rate included both Metropolitan’s costs  
15 attributable to its obligation under its “take-or-pay” contract with the California Department of  
16 Water Resources for State Water Project water conveyance system costs, and costs to assist in  
17 funding water conservation and other water demand management programs. Both of those cost  
18 allocations are inconsistent with the allegations SDCWA now asserts—13 years later—that all  
19 State Water Project costs and water conservation and demand program costs must supposedly be  
20 allocated solely to Metropolitan’s water supply rate. This wheeling rate was assessed on any  
21 member agency moving non-Metropolitan water through Metropolitan’s conveyance system  
22 from January 15, 1997 until it was replaced in 2003 by the unbundled rates.

23 2. In the late 1990s, Metropolitan undertook a revision of its overall water  
24 rates and charges, again in consultation and cooperation with SDCWA and Metropolitan’s other  
25 member agencies. On October 16, 2001, Metropolitan’s board of directors voted to adopt a  
26 revised rate structure proposal to be effective January 1, 2003. Among other things, this rate  
27 structure unbundled water rates and charges to reflect the different services provided by  
28 Metropolitan and more accurately allocate costs to functions. Among the unbundled rates in the

1 new structure are a "system access rate" charged on every acre-foot of water conveyed through  
2 Metropolitan's conveyance system, whether the water is purchased from Metropolitan or is non-  
3 Metropolitan water, and a "water stewardship rate" to fund conservation and other water  
4 management programs. The rates for wheeling service, which replaced the wheeling rate  
5 adopted in 1997 for the movement of non-Metropolitan water through its conveyance system,  
6 include the system access rate, water stewardship rate and, for treated water, a treatment  
7 surcharge, as well as power costs.

8           3.       On March 12, 2002, with the affirmative vote of SDCWA's  
9 representatives on its board, Metropolitan adopted specific rates and charges to be effective on  
10 January 1, 2003, that were based on the rate structure adopted in 2001.

11           4.       These new specific rates and charges that have been assessed in every year  
12 from 2003 through the present—and in whose favor SDCWA has voted at least twice—reflect  
13 the cost-of-service methodology that SDCWA challenges here. Specifically, in every year since  
14 2003, Metropolitan has (i) not included in its water supply rate State Water Project costs that are  
15 allocable to conveyance and the aqueduct, and (ii) charged the Water Stewardship Rate to all  
16 users of the Metropolitan system. These are the two cost allocation practices that SDCWA  
17 challenges in this lawsuit.

18           5.       SDCWA and all of Metropolitan's member agencies have been fully  
19 aware of these cost allocation decisions in Metropolitan's structure of rates and charges, due to  
20 the written proposals and analyses that Metropolitan regularly provides to them, their own  
21 knowledge and understanding of these charges, and especially in SDCWA's case, its affirmative  
22 votes in favor of these rates and charges. Each year, Metropolitan's board of directors adopts by  
23 majority vote the specific rates and charges for the coming fiscal year. Several months in  
24 advance of the meeting at which the rate vote is to take place, Metropolitan's General Manager  
25 presents each board member with a detailed letter setting forth the revenue requirements and  
26 proposed rates and charges for the coming fiscal year. The proposed rates are presented and  
27 discussed at board meetings, at meetings of the board's Business and Finance Committee, at  
28 meetings with member agency managers and in a noticed public hearing. Following these

1 meetings and hearing, the General Manager presents each board member with a second detailed  
2 letter setting forth the specifics of its proposed rates for the coming fiscal year, a list of the  
3 board's options as to the rate structure, and a staff recommendation. This ensures that board  
4 members, and the member agencies they represent, are fully informed in advance of the vote and  
5 have sufficient time to consider and raise questions, comments, and objections. Minutes of  
6 Metropolitan's board meetings indicate that in 2005, 2006 and 2007, the board adopted new rates  
7 under the existing cost-of-service methodology without comment or objection from SDCWA,  
8 and that in 2002 and as recently as 2009, SDCWA's representatives on the board actually voted  
9 to approve rates under the structure SDCWA now challenges.

10           6.       SDCWA has accepted the benefits of Metropolitan's rate structure. The  
11 different components of Metropolitan's rate structure are interrelated in that they must  
12 collectively recoup Metropolitan's costs as a water district. SDCWA has voted in favor of rates  
13 under the rate structure that was adopted in 2001 and has accepted the financial benefits of that  
14 rate structure for more than seven years. If Metropolitan's rate structure were reorganized in the  
15 manner SDCWA now claims it should be—in other words, to exempt from SDCWA's wheeling  
16 rates all State Water Project costs, as well as the Water Stewardship Rate—other rates and  
17 charges that SDCWA pays would have been higher and would be higher in the future. SDCWA  
18 accepted, and at least twice voted in favor of, the rate structure that has been in effect since 2003  
19 because it preferred to accept the benefits of that structure. It would be inequitable to allow  
20 SDCWA to seek legal relief given its acquiescence to and the benefits it has received under a  
21 rate structure it has fully understood.

#### 22   **SPECIFIC AFFIRMATIVE DEFENSES**

23           Metropolitan asserts the following affirmative defenses to the claims for relief  
24 made against it in the Complaint.

#### 25   **First Affirmative Defense**

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

27           Metropolitan incorporates by reference the General Allegations stated above.

28           SDCWA fails to state facts in its Complaint sufficient to constitute a cause of

1 action upon which relief can be granted.

2 **Second Affirmative Defense**

3 **(Statute of Limitations)**

4 Metropolitan incorporates by reference the General Allegations stated above.  
5 SDCWA's claims are barred in whole or in part by the applicable statutes of  
6 limitations, including, but not limited to, Sections 338(a), 343 and 860 of the California Code of  
7 Civil Procedure.

8 **Third Affirmative Defense**

9 **(Laches)**

10 Metropolitan incorporates by reference the General Allegations stated above.  
11 SDCWA's claims are barred by the doctrine of laches.

12 **Fourth Affirmative Defense**

13 **(Exercise of Administrative Discretion)**

14 Metropolitan incorporates by reference the General Allegations stated above.  
15 In addition, Metropolitan alleges that it has no ministerial duty to structure its  
16 rates in the manner alleged by SDCWA. Rather, the legal directives under which Metropolitan  
17 operates broadly leave the design of water rates to Metropolitan's sound discretion.  
18 Metropolitan's principal act, for example, states only that Metropolitan "shall fix the rate or rates  
19 at which water shall be sold," Cal. Water Code § 109-133, and that those rates "shall be uniform  
20 for like classes of service throughout the district," *id.* at § 109-134. Beyond this, decisions as to  
21 the detailed structure of its rates is left to Metropolitan's sound discretion. Indeed, California  
22 courts have recognized that "[s]ubstantial deference must be given to [Metropolitan's]  
23 determination of its rate design." *San Diego County Water Auth. v. Metropolitan Water Dist. of*  
24 *So. Cal.*, 117 Cal. App. 4th 13, 23 n.4 (2004) (citing *Bryon v. East Bay Mun. Utility Dist.*, 24  
25 Cal. App. 4th 178, 196 (1994)). Further, "[r]ates established by [a] lawful rate-fixing body are  
26 presumed reasonable, fair, and lawful." *Hansen v. City of San Buenaventura*, 42 Cal. 3d 1172,  
27 1180 (1986). In setting its current rates, Metropolitan has at all times acted well within the  
28 confines of this discretion.

1                   Accordingly, SDCWA's claims are without merit because Metropolitan has acted  
2 consistently with the discretion vested in it by the Legislature in California Water Code  
3 Appendix sections 109-1 to 109-551 and other applicable authorities.

4                   **Fifth Affirmative Defense**

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

6                   Metropolitan incorporates by reference the General Allegations stated above and  
7 the allegations in support of its Fourth Affirmative Defense.

8                   Metropolitan's classification and setting of its rates were an exercise of  
9 governmental discretion immune from challenge and, as such, SDCWA's claims are barred.

10                   **Sixth Affirmative Defense**

11                   **(Waiver)**

12                   Metropolitan incorporates by reference the General Allegations stated above.

13                   SDCWA is barred from obtaining any relief on its Complaint in that, by conduct,  
14 representations and omissions, SDCWA has waived, relinquished and/or abandoned any claim  
15 for relief against Metropolitan regarding the matters which are the subject of the Complaint.

16                   **Seventh Affirmative Defense**

17                   **(Public Policy)**

18                   Metropolitan incorporates by reference the General Allegations stated above.

19                   SDCWA's claims are barred by public policy.

20  
21                   ///

22  
23                   ///

24  
25                   ///

26  
27                   ///

1 WHEREFORE Defendant Metropolitan prays for judgment as follows:

2 1. That SDCWA's Complaint be dismissed with prejudice and SDCWA take  
3 nothing by its Complaint;

4 2. That SDCWA be denied a writ of mandate, or any other form of relief;

5 3. That Metropolitan be awarded its costs and attorney's fees, as permitted  
6 by law; and

7 4. That Metropolitan be awarded such other and further relief as the Court  
8 deems just and proper.

9  
10 DATED: August 19, 2010

BINGHAM MCCUTCHEN LLP

11  
12  
13 By: 

Colin C. West

Attorneys for Defendant

Metropolitan Water District of Southern California

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

**PROOF OF SERVICE**

I am over eighteen years of age, not a party in this action, and employed in Los Angeles County, California at Bingham McCutchen, LLP, 355 South Grand Avenue, Suite 4400, Los Angeles, California 90071. I am readily familiar with the practice of this office for collection and processing of correspondence for email/mail/fax/hand delivery/next business day FedEx delivery, and they are deposited that same day in the ordinary course of business.

On August 20, 2010, I served the attached:

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



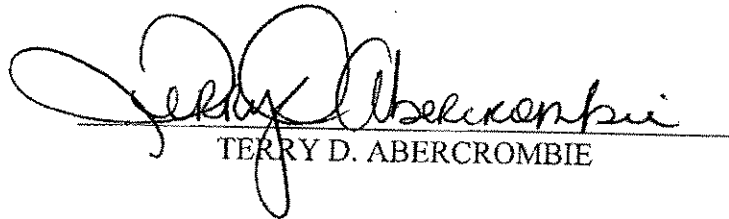
(BY MAIL) by causing a true and correct copy of the above to be placed in the United States Mail at Los Angeles, California in sealed envelope(s) with postage prepaid, addressed as set forth below. I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence is deposited with the United States Postal Service the same day it is left for collection and processing in the ordinary course of business.



(VIA EMAIL) by transmitting a true and correct copy via email the document(s) listed above on this date before 5:00 p.m. PST to the person(s) at the email address(es) set forth below.

as indicated in the following **Service List**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 20, 2010, at Los Angeles, California.

  
TERRY D. ABERCROMBIE



SERVICE LIST

Michael G. Colantuono, Esq.  
Holly O. Whatley, Esq.  
Colantuono & Levin, PC  
300 S. Grand Avenue, Suite 2700  
Los Angeles, CA 90071-3137  
Telephone: 213.542.5700  
Facsimile: 213.542.5710  
Email: mcolantuono@cllaw.us  
Email: hwhatley@cllaw.us

*Counsel for Petitioner and Plaintiff San Diego  
County Water Authority*

Daniel S. Hentschke, Esq.  
San Diego County Water Authority  
4577 Overland Avenue  
San Diego, CA 92123-1233  
Telephone: 858.522.6790  
Facsimile: 858.522.6566  
Email: dhentschke@sdcwa.org

*Counsel for Petitioner and Plaintiff San Diego  
County Water Authority*

Steven M. Kennedy, Esq.  
Brunick, McElhaney & Beckett, Professional  
Law Corporation  
1839 Commercenter West  
San Bernardino, CA 92412-3303  
Telephone: 909.889.8301  
Facsimile: 909.388.1889  
Email: skennedy@bmblawoffice.com

*Counsel for Three Valleys Municipal Water  
District*

Steven O'Neill, Esq.  
Lemieux and O'Neill  
2393 Townsgate Road, Suite 201  
Westlake Village, CA 91361  
Telephone: 805 495 4770  
Facsimile: 805 495 2787  
Email: steve@lemieux-oneill.com

*Counsel for West Basin Municipal Water  
District, Foothill Municipal Water District,  
Las Virgenes Municipal Water District*

Steven L. Mayer, Esq.  
Howard Rice Nemerovski Canady Falk  
& Rabkin, A Professional Corporation  
Three Embarcadero Center, 7th Floor  
San Francisco, CA 94111  
Telephone: 415.434.1600  
Facsimile: 415.217.5910  
Email: smayer@howardrice.com

*Counsel for Petitioner and Plaintiff San Diego  
County Water Authority*

Dorine Martirosian, Deputy City Attorney  
Glendale City Attorney's Office  
613 E. Broadway, Suite 220  
Glendale, CA 91206  
Telephone: 818.548-2080  
Facsimile: 818.547.3402  
Email: DMartirosian@ci.glendale.ca.us

*Counsel for City of Glendale*

John L. Fellows III, City Attorney  
Patrick Q. Sullivan, Assistant City Attorney  
Office of the City Attorney  
3031 Torrance Blvd.  
Torrance, CA 90503  
Telephone: 310.618.5817  
Facsimile: 310.618.5813  
Email: PSullivan@TorranceCA.Gov

*Counsel for the City of Torrance*

Victor Sofelkanik, Deputy City Attorney  
City of Los Angeles  
111 North Hope Street, Suite 340  
Los Angeles, CA 90012  
Telephone: 213.367.2115  
Facsimile: 213.367.4588  
Email: victor.sofelkanik@ladwp.com

*Counsel for the City of Los Angeles  
Department of Water and Power*

1 Russell G. Behrens, Esq.  
David D. Boyer, Esq.  
2 Patricia J. Quilizapa, Esq.  
McCormick, Kidman & Behrens, LLP  
3 650 Town Center Drive, Suite 100  
Costa Mesa, CA 92626-7187  
4 Telephone: 714.755.3100  
Facsimile: 714.755.3110  
5 Email: rbehrens@mkblawyers.com  
Email: dboyer@mkblawyers.com  
6 Email: pquilizapa@mkblawyers.com

7 *Counsel for Municipal Water District of  
Orange County*

8  
9 Scott D. Rasmussen Esq.  
Assistant City Attorney  
City of Pasadena  
10 100 North Garfield Avenue, Suite N210  
Pasadena, CA 91109  
11 Telephone: 626.744.4256  
Facsimile: 626.744.4190  
12 E-mail: srasmussen@cityofpasadena.net

13 *Counsel for City of Pasadena*

Norman A. Dupont, Esq.  
Richards Watson & Gershon  
355 South Grand Avenue  
40th Floor  
Los Angeles, CA 90071-3101  
Telephone: 213.253.0235  
Facsimile: 213.626.0078  
E-mail: NDupont@rwglaw.com

*Counsel for City of Beverly Hills*