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SAN DIEGO COUNTY WATER AUTHORITY,  
James F. Turner, Bernard Rhinerson and James Bond

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

SAN DIEGO COUNTY WATER  
AUTHORITY, a county water authority; James  
F. Turner, Bernard Rhinerson and James Bond,  
  
Plaintiffs and Petitioners,  
  
vs.  
  
METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA, a metropolitan  
water district; the BOARD OF DIRECTORS  
OF THE METROPOLITAN WATER  
DISTRICT OF SOUTHERN CALIFORNIA;  
CITY OF LOS ANGELES, a charter city; and  
DOES 1-100, inclusive,  
  
Defendants and Respondents.

Case No. **GIC 761526**  
  
**COMPLAINT FOR:  
DECLARATORY RELIEF  
(C.C.P. SECTION 1060),  
ACCOUNTING, INJUNCTIVE  
RELIEF and PETITION FOR  
WRIT OF MANDATE  
(C.C.P. SECTION 1085, et seq.)**

EXEMPT  
GOV'T CODE § 6103  
2001 JAN 30 P 4 00  
SAN DIEGO COUNTY, CA

1 I.

2 **INTRODUCTION**

3 Water is essential to human existence. Through this action, Plaintiffs seek judicial  
4 confirmation of their entitlement and the removal of a threat to the security of their primary water  
5 supply. Plaintiff San Diego County Water Authority ("SDCWA") has responsibility for  
6 supplying water to nearly 3 million people and brings this suit in furtherance of that  
7 responsibility.

8 Defendant Metropolitan Water District of Southern California ("Metropolitan") is a  
9 public agency that sells water at wholesale to its public agency customers including SDCWA and  
10 Defendant, City of Los Angeles ("Los Angeles"). For over fifty years Metropolitan has  
11 promised, assured and represented to SDCWA and the public it serves that Metropolitan would  
12 provide them with sufficient water to meet their needs. In good faith reliance on Metropolitan's  
13 assurances, SDCWA has expanded its territory, built public works and made its own assurances  
14 that it would provide the San Diego region with a reliable supply of water. In good faith reliance  
15 on Metropolitan's assurances, SDCWA has paid about three billion dollars toward the capital  
16 costs and operating expense of Metropolitan's water works.

17 Central to the current dispute is an antiquated section of the special legislation that  
18 created Metropolitan, namely, Section 135<sup>1</sup> of the Metropolitan Water District Act  
19 ("Metropolitan Act" or "Act") which establishes so-called "preferential rights" to Metropolitan's  
20 water supplies among Metropolitan's 26 member public agencies. Despite SDCWA's good faith  
21

22 <sup>1</sup>Section 135 declares:

23 "[e]ach member public agency shall have a preferential right to  
24 purchase from [Metropolitan] for distribution by such agency, or  
25 any public utility therein empowered by such agency for the  
26 purposes, for domestic and municipal uses within the agency a  
27 portion of the water served by [Metropolitan] which shall from  
28 time to time bear the same ratio to all of the water supply of  
[Metropolitan] as the total accumulation of amounts paid by such  
agency to [Metropolitan] on tax assessments and otherwise,  
excepting purchase of water, toward the capital costs and operating  
expense of [Metropolitan's] works shall bear to the total payments  
received by [Metropolitan] on account of tax assessments and  
otherwise, excepting purchase of water, toward such capital cost  
and operating expense."

1 reliance upon and multi-billion dollar investment in Metropolitan, its current and future water  
2 supply reliability is severely threatened by Section 135. As interpreted by Metropolitan, a  
3 member agency's preferential rights to water bear no relationship to its financial investment or  
4 water needs.

5 Defendant City of Los Angeles contends that Section 135 gives it a prior claim to water  
6 that is now and for many decades has been delivered to SDCWA to meet the needs of the San  
7 Diego region. The Los Angeles claim is not supported by proportional payments to  
8 Metropolitan's capital costs and operating expense; in fact, Los Angeles has only paid about half  
9 as much as SDCWA has paid toward Metropolitan's water works. As erroneously interpreted by  
10 Metropolitan and claimed by Los Angeles, Section 135 would deprive Plaintiffs of the benefit of  
11 their payments to Metropolitan, unjustly enrich Los Angeles and leave Plaintiffs without half of  
12 their water supply.

13 This is a case of first impression. It is of vital concern to the everyday well-being of the  
14 nearly three million residents and the business community of San Diego County. This Court has  
15 the authority and the responsibility to resolve the controversy. Fortunately, the California  
16 Constitution and the plain language and legislative intent behind Section 135 provide the  
17 guidance needed for this Court to cut the Gordian knot of this momentous dispute; SDCWA  
18 hereafter provides the legal framework by which the Court may remedy the situation.

## 20 II.

### 21 THE PARTIES

22 1. Plaintiff SDCWA is a county water authority, duly organized and existing under  
23 the laws of the State of California, with its principal place of business in San Diego County.

24 a. SDCWA was formed in 1944 and operates pursuant to the County Water  
25 Authority Act of 1943 (Stats. 1943, c. 545, as amended) ("County Water  
26 Authority Act"). The County Water Authority Act provides that SDCWA  
27 shall "provide each of its member agencies with adequate supplies of  
28 water to meet their expanding and increasing needs" (County Water

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Authority Act, Section 5, subdiv. (11)).

- b. SDCWA provides wholesale water service to 23 member public agencies in San Diego County. SDCWA's members include: Carlsbad Municipal Water District, City of Del Mar, City of Escondido, Fallbrook Public Utility District, Helix Water District, City of National City, City of Oceanside, Olivenhain Municipal Water District, Otay Water District, Padre Dam Municipal Water District, Pendleton Military Reservation, City of Poway, Rainbow Municipal Water District, Ramona Municipal Water District, Rincon del Diablo Municipal Water District, City of San Diego, San Dieguito Water District, Santa Fe Irrigation District, South Bay Irrigation District, Vallecitos Water District, Valley Center Municipal Water District, Vista Irrigation District, and Yuima Municipal Water District ("San Diego Member Agency or Agencies").
- c. SDCWA's powers are exercised by a board of directors that consists of at least one representative appointed by each San Diego Member Agency. The board of directors governs the activities of SDCWA and is the legislative body that has authority to adopt SDCWA policies.
- d. SDCWA was annexed to and became a member public agency of Metropolitan in 1946. As a condition of its annexation, SDCWA paid charges that were equivalent to payment of all past property taxes, plus interest, as though SDCWA were a Metropolitan member agency from the date of Metropolitan's creation.
- e. Like much of Southern California, San Diego County has a dry climate with average annual rainfall of only about 8 inches per year. Due to the lack of abundant local supplies, up to ninety percent (90%) of the region's existing water supply is provided by purchasing imported water through Metropolitan.
- f. Due to its population, its lack of significant local water supplies and the

1 volume of water it buys annually through Metropolitan, SDCWA is the  
2 Metropolitan member public agency most disadvantaged by  
3 Metropolitan's erroneous and inequitable interpretations of preferential  
4 rights under Section 135.

5 2. Plaintiffs James F. Turner, Bernard Rhinerson and James Bond are residents of  
6 San Diego County living within the boundaries of SDCWA. Each is a consumer of water that  
7 each acquires from a San Diego Member Agency that, in turn, obtains some or all of its water  
8 supply from SDCWA. Each is also a taxpayer of Metropolitan.

9 3. Defendant Metropolitan is a metropolitan water district, duly organized and  
10 existing under the laws of the State of California, with its headquarters in Los Angeles County,  
11 and having territory and doing business in San Diego and five other counties in Southern  
12 California.

13 a. Metropolitan was established pursuant to the Metropolitan Water District  
14 Act of 1927 (Stats. 1927, ch. 429) as reenacted in 1969 (Stats. 1969, ch.  
15 209) ("Metropolitan Act" or "Act").

16 b. Metropolitan was created in 1929 by thirteen cities, one of which was  
17 Defendant City of Los Angeles. As provided in the Act, each of the  
18 founding cities became a "member public agency" ("member agency" or  
19 "member agencies"). Since 1929, both the geographic scope and the  
20 membership of Metropolitan have increased such that Metropolitan today  
21 provides wholesale water service to 26 member public agencies located in  
22 Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura  
23 Counties.

24 c. Metropolitan's powers are exercised by a board of directors. The board of  
25 directors governs the activities of Metropolitan and is the legislative body  
26 that has authority to levy, impose and fix taxes and water rates, fees and  
27 charges and adopt other policies affecting the rights and liabilities of  
28 Metropolitan's member agencies.

1 4. Defendant Los Angeles is a charter law city, duly organized and existing under the  
2 laws of the State of California, with its principal place of business in Los Angeles County.

3 5. Los Angeles is a member public agency of Metropolitan.

4 6. Due to a number of factors including but not limited to its alternative water  
5 supplies and assessed valuation, Los Angeles is the member public agency most advantaged by  
6 Metropolitan's erroneous and inequitable interpretations of preferential rights under Section 135.

7 7. Defendants DOES 1 through 100, inclusive, are sued herein under fictitious  
8 names because their true names and capacities are unknown to Plaintiffs. Plaintiffs are informed  
9 and believe and thereon allege that the fictitiously named Defendants are in some way necessary  
10 for the granting of the relief sought herein. When their true names and capacities are ascertained,  
11 Plaintiffs will amend this Complaint by inserting their true names and capacities herein.

12  
13 **III.**

14 **PROCEDURAL STATEMENT**

15 8. A complaint for declaratory relief is proper to obtain judicial clarification of the  
16 parties' rights and obligations under Section 135 and to adjudicate the constitutionality of  
17 Section 135 as interpreted and applied by Metropolitan to SDCWA.

18 9. Actions for declaratory relief are set for trial at the earliest possible date and "take  
19 precedence over all other cases, except older matters of the same character and matters to which  
20 special precedence may be given by law" (Code Civil Proc. § 1062.3(a)), and Plaintiffs request  
21 such early trial setting.

22 10. This action satisfies the general venue rules for filing in San Diego County.  
23 However, Code of Civil Procedure Section 394(a) requires that a case of this nature, on the  
24 request of a "local agency" Defendant, be tried in a neutral county in which neither the Plaintiff  
25 public agency nor the Defendant public agencies are situated.

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IV.

STATEMENT OF FACTS

11. The preferential rights clause of the Metropolitan Act was enacted in 1927 and later amended in 1931. As part of the repeal and reenactment of the entire Act in 1969, the preferential rights clause was renumbered as Section 135 without substantive amendment.

Section 135 states that:

“[e]ach member public agency shall have a preferential right to purchase from [Metropolitan] for distribution by such agency, or any public utility therein empowered by such agency for the purposes, for domestic and municipal uses within the agency a portion of the water served by [Metropolitan] which shall from time to time bear the same ratio to all of the water supply of [Metropolitan] as the total accumulation of amounts paid by such agency to [Metropolitan] on tax assessments and otherwise, excepting purchase of water, toward the capital costs and operating expense of [Metropolitan’s] works shall bear to the total payments received by [Metropolitan] on account of tax assessments and otherwise, excepting purchase of water, toward such capital cost and operating expense.”

12. SDCWA is one of the largest urban water suppliers in the State of California, providing the imported water supply to meet the needs of San Diego’s \$103 billion economy and to sustain the quality of life of the nearly three million people who live and work in San Diego County. Currently, SDCWA is completely dependent upon Metropolitan for the water supply it imports to serve its customers. This imported water supply constitutes an average of 75% to 90% of the San Diego region’s annual water supply requirements.

13. SDCWA is Metropolitan’s largest water purchaser. SDCWA’s water purchases from Metropolitan have grown from about 40,000 acre feet (“AF”) in 1948 to more than 600,000 AF in 2000.

1           14.     Metropolitan is a wholesale water agency; its function is to provide a water supply  
2 to its member agencies. Since its creation and over the years beginning at least as early as 1952  
3 with a statement of board policy commonly known as the "Laguna Declaration," and continuing  
4 thereafter through the present date, Metropolitan has represented and assured its member  
5 agencies, including SDCWA, that it will provide them with adequate supplies of water to meet  
6 their "expanding and increasing needs," and has induced member agencies, including SDCWA,  
7 to rely upon those representations and assurances. The Laguna Declaration has been  
8 implemented by Section 4202 of Metropolitan's Administrative Code. For convenience, a copy  
9 of the Laguna Declaration is attached hereto as Exhibit A and incorporated herein by reference.

10           15.     In reasonable reliance upon the Laguna Declaration and numerous similar  
11 assurances by Metropolitan, SDCWA expanded its territory, built public works, authorized water  
12 connections, and gave assurances to the San Diego Member Agencies that water supplies would  
13 be available as needed to support the growth and development of San Diego's communities in  
14 accordance with their general plans. SDCWA has also contributed billions of dollars to the  
15 capital costs and operating expense of Metropolitan's water works.

16           16.     A demand by Los Angeles or delivery of water by Metropolitan according to  
17 Metropolitan's current interpretation of preferential rights under Section 135 ("Met-calculated  
18 preferential rights") would constitute a breach of the Laguna Declaration and numerous other  
19 Metropolitan board policies, and, deprive SDCWA of the benefit of its reasonable reliance upon  
20 Metropolitan. SDCWA's reliance is evidenced both by the billions of dollars it has paid  
21 Metropolitan and by the alternative water supply investments it has foregone.

22           17.     Metropolitan was originally created to transport Colorado River water to Southern  
23 California through the Colorado River Aqueduct, owned and operated by Metropolitan. The  
24 Colorado River water was secured by Metropolitan in behalf of its member agencies through a  
25 series of contracts and agreements, and state and federal permits and licenses. Because  
26 Metropolitan already held legal entitlements to Colorado River water, the water supply  
27 component of the capital costs and operating expense for Metropolitan's water works was *de*  
28 *minimus*.



1           18.    When Metropolitan was created, it was funded by property taxes levied on  
2 property within its territory and by annexation charges that were equivalent to past property  
3 taxes, plus interest. Consistent with its property-tax-based source of revenues, the Metropolitan  
4 Act provided each member agency with a "preferential right" to purchase water from  
5 Metropolitan according to its contribution to the capital costs and operating expense of  
6 Metropolitan's water works, then attributable to the payment of property taxes and assessments.  
7 Similarly, legislative representation on the Metropolitan board of directors was also apportioned  
8 according to assessed valuation. Thus, the Metropolitan Act established a direct nexus between  
9 Metropolitan's collection of revenues (who pays) and the allocation of voting and water rights  
10 (who benefits).

11           19.    Plaintiffs are informed and believe and thereon allege that Los Angeles through its  
12 representatives on Metropolitan's board of directors and otherwise, has encouraged, induced and  
13 supported actions of Metropolitan to shift collection of Metropolitan's revenues from taxes to  
14 water sales, to the benefit of Los Angeles and detriment of SDCWA.

15           20.    Plaintiffs are informed and believe and thereon allege that Los Angeles, through  
16 its representatives on Metropolitan's board of directors and otherwise, has encouraged, induced  
17 and supported Metropolitan's representations and assurances, such as the Laguna Declaration, to  
18 SDCWA and others, that Metropolitan would provide water to meet their expanding and  
19 increasing needs without interference or interruption on account of Los Angeles' claim of  
20 preferential rights. These actions were taken with full knowledge that if SDCWA relied upon  
21 Metropolitan to meet its increasing needs for water, it would forego other water supply planning  
22 and investment opportunities.

23           21.    In the 1960's, Metropolitan expanded its reach to the importation of water from  
24 Northern California by entering into a State Water Contract to buy water from the California  
25 Water Project (SWP Contract). Defendant Los Angeles insisted upon changes in Metropolitan's  
26 revenue structure to increase funding from water rates and decrease funding from taxes.

27           22.    In or about 1960, on the urging of Los Angeles, Metropolitan adopted Resolution  
28 5821 to limit the amount of Metropolitan capital costs to be collected from taxes. Resolution

1 5821 required at least one-half of all capital costs plus all operating and maintenance expense to  
2 be paid from water sales revenues.

3 23. Plaintiffs are informed and believe and thereon allege that at the time these and  
4 other changes were made to the Metropolitan revenue structure, Metropolitan and its member  
5 agencies, including Los Angeles, recognized that the true and correct calculation of preferential  
6 rights under Section 135 would include all payments toward the capital costs and operating  
7 expense for Metropolitan's works, without regard to the revenue source and method of  
8 collection.

9 24. In 1975, Los Angeles filed suit against Metropolitan attacking its water and tax  
10 rates on the grounds that they violated the Metropolitan Act and California Constitution,  
11 claiming a denial of equal protection of various classes of individuals and entities then residing  
12 in the City of Los Angeles.

13 25. Metropolitan settled the Los Angeles lawsuit in or about 1980. At that time, it  
14 adopted a "proportionate-use formula" under which water sales revenues would pay all operating  
15 expenses and an increasing share of the capital costs of Metropolitan's water works. Plaintiffs  
16 are informed and believe and thereon allege that Metropolitan's changed revenue policy and  
17 SDCWA's assent thereto were premised on a true and correct interpretation of Section 135, that  
18 includes and reflects each member agency's total payments toward the capital costs and operating  
19 expense of Metropolitan's works. However, Metropolitan has continually failed and refused to  
20 perform a correct calculation of preferential rights under Section 135; instead, Defendants, and  
21 each of them, have generally avoided, stalled and blocked attempts to correct the calculation and  
22 remedy the unjust enrichment created by Metropolitan's wrongful interpretation of preferential  
23 rights under Section 135.

24 26. SDCWA is informed and believes and on that basis alleges that, due to the  
25 foregoing facts and circumstances, beginning in the 1970's and continuing through today,  
26 property tax revenues collected by Metropolitan are inconsequential, providing approximately ten

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1 percent (10%) of Metropolitan's total revenues.<sup>2</sup> Instead, Metropolitan has chosen collections in  
2 conjunction with water sales as its dominant source of revenue. Revenues in conjunction with  
3 water sales currently pay for 100% of Metropolitan's operating expense and eighty-five percent  
4 (85%) of its capital costs.

5 27. It is fully within the authority and control of Metropolitan to establish sources of  
6 revenue that would maintain the nexus under Section 135 between payments toward capital costs  
7 and operating expense on the one hand, and preferential rights to water under Section 135 on the  
8 other, but it has failed and refused to do so. Instead, Metropolitan has adopted policies under  
9 which SDCWA is forced to pay the capital costs and operating expense of Metropolitan's works  
10 that benefit Los Angeles.

11 28. SDCWA's cumulative financial payments to Metropolitan through June 30, 2000  
12 are nearly \$3 billion, representing twenty-two percent (22%) of all member agencies' total  
13 historical payments. Yet, of this amount, only \$514 million is counted by Metropolitan in its  
14 calculation of SDCWA's preferential rights under Section 135, resulting in an entitlement by  
15 SDCWA to less than fifteen percent (15%) of Metropolitan's water supply. This calculation  
16 leaves SDCWA with a preferential right to less than one-half of the water supply it purchases,  
17 year in and year out, from Metropolitan – a shortfall of about 300,000 AF of water.

18 29. By way of contrast, Los Angeles' cumulative financial payments to Metropolitan  
19 through June 30, 2000 are approximately \$1.6 billion, representing twelve percent (12%) of all  
20 agencies' total historical payments. Of this amount, \$792 million is counted by Metropolitan in  
21 its calculation of Los Angeles' preferential rights under Section 135, resulting in an entitlement  
22 to more than twenty-two percent (22%) of Metropolitan's water supply. This calculation gives  
23 Los Angeles a preferential right to about two times as much as its regular water purchases from  
24

25  
26 <sup>2</sup>Metropolitan has included in its preferential rights calculation charges such as  
27 annexation charges calculated based upon past tax obligations, interest on "delinquent" past  
28 taxes, and certain other assessments for capital works. Similarly, in the 1990's, Metropolitan  
established a readiness-to-serve charge and a standby water charge which it also includes in its  
preferential rights calculation. However, the amount of revenue generated by these charges is  
insignificant compared to the revenue collected in conjunction with the sale of water and which  
is actually applied toward the capital costs and operating expense of Metropolitan's water works.

1 Metropolitan.

2 30. Over the years, Metropolitan has adopted policies and made significant changes in  
3 the manner and method of collecting revenues from its member agencies, without considering the  
4 impact of those changes under Section 135. Plaintiffs are informed and believe and thereon  
5 allege that Metropolitan's revenue policies allocate costs and expenses as if the Laguna  
6 Declaration and other similar assurances determine member agencies' rights to water, at the  
7 same time that it continues its erroneous calculation of preferential rights under Section 135.  
8 These actions unjustly enrich Los Angeles and deny SDCWA the benefit of payments it has  
9 actually made toward the capital costs and operating expense of Metropolitan's works.

10 31. Under a correct interpretation of Section 135, Metropolitan must determine  
11 toward what costs member agency revenue collections were applied; specifically, it must  
12 determine the amount each member agency has paid toward the capital costs and operating  
13 expense of Metropolitan's works. SDCWA is informed and believes and thereon alleges that the  
14 books and records of Metropolitan will plainly reflect that the overwhelming majority of the  
15 dollars collected from SDCWA in conjunction with water sales were applied directly to the  
16 capital costs and operating expense of Metropolitan's works, as both parties understood they  
17 would be. SDCWA is informed and believes and thereon alleges that Metropolitan has  
18 consistently ignored or misapplied the integral relationship between Section 135 preferential  
19 rights and the obligation to pay for the water works needed to meet Section 135 claims by  
20 Metropolitan member agencies.

21 32. Past investments in Metropolitan pale in comparison to the future revenues and  
22 indebtedness that will be required to meet the water supply demands of Metropolitan's member  
23 agencies. Plaintiffs are informed and believe and thereon allege that total cumulative financial  
24 payments from all Metropolitan member agencies from its inception in 1929 through 2000 is  
25 about \$13.3 billion. By way of contrast, Metropolitan's current annual budget is more than \$1  
26 billion; its current outstanding indebtedness is \$3.3 billion, and it has projected additional capital  
27 costs, including water supply costs, through 2020 in an amount estimated to exceed \$4 billion.  
28 SDCWA is informed and believes and thereon alleges that these estimated capital costs do not

1 include all of the costs associated with Metropolitan's water supply development projects, such  
2 as the proposed Cadiz Groundwater Storage Program. These and other substantial capital  
3 investments are expected to be financed by Metropolitan by collections made in conjunction with  
4 water sales and by the proceeds of revenue bond issues which are repaid over future years from  
5 collections made in conjunction with water sales, not property taxes.

6       33. Consistent with the Laguna Declaration and related policies, Metropolitan has  
7 purported to make various policy determinations over the years as to how Metropolitan's water  
8 should be distributed in times of shortage that are in direct conflict with Metropolitan's  
9 interpretation of preferential rights under Section 135. For example, it currently has adopted a  
10 "Water Supply and Drought Management Plan" (the "WSDM Plan") that purports to establish  
11 how Metropolitan's water supplies will be allocated during various degrees of water supply  
12 shortages. The WSDM Plan and other policies of Metropolitan are in direct conflict with  
13 "Met-calculated preferential rights" under Section 135.

14       34. Metropolitan's actions and policies over the years regarding Section 135 are  
15 inconsistent and arbitrary. Rather than correct "Met-calculated preferential rights" under Section  
16 135, Defendants, and each of them, have instead claimed from time to time that Section 135 has  
17 never been invoked and have repeatedly represented that it therefore has no effect on the water  
18 supply reliability of its member agencies. More recently, Metropolitan has proposed declaring a  
19 spurious permanent emergency water shortage in Southern California as a method of avoiding  
20 the uncertainty created by Section 135 preferential rights as they are calculated by Metropolitan,  
21 thus proposing to resolve the inconsistency between Section 135 and Metropolitan's declared  
22 policy of providing water to all of its member agencies according to the Laguna Declaration and  
23 other similar assurances. See North County Times, "District Leader Suggests Declaring  
24 'Permanent' Water Shortage (December 24, 2000), a copy of which is attached hereto as Exhibit  
25 B and incorporated herein by reference ("[d]eclaring an emergency water shortage,  
26 [Metropolitan's General Manager] Gastelum said, would give Metropolitan the legal right to  
27 ignore its own "preferential rights system," and allocate water the way Metropolitan decides is  
28 best.").

1           35.     Its protestations and representations as to the meaning and effect of preferential  
2 rights under Section 135 notwithstanding, Metropolitan also calculates and publishes the  
3 purported preferential rights of its member public agencies annually, according to its chosen,  
4 erroneous interpretation of Section 135 which excludes credit for revenues paid to Metropolitan  
5 in conjunction with the sale of water, without regard to the fact that the said revenues were  
6 applied toward payment of the capital costs and operating expense of Metropolitan's works.

7           36.     SDCWA is informed and believes and thereon alleges that Los Angeles claims its  
8 right to purchase water from Metropolitan is governed by its "Met-calculated preferential rights"  
9 under Section 135, and may be exercised at any time, in the sole discretion of the Los Angeles,  
10 notwithstanding the availability to it of alternative supplies and irrespective of any resulting  
11 reductions in supplies delivered to SDCWA. Confirming this intention, Los Angeles' most  
12 recent urban water management plan shows reliance upon Metropolitan to deliver Los Angeles'  
13 "Met-calculated preferential rights." SDCWA further alleges that Los Angeles is estopped from  
14 asserting Section 135 in any manner that would deprive SDCWA of water supplies that it has  
15 relied upon and for which it has paid.

16           37.     By their representations and policies, Metropolitan and Los Angeles have for  
17 more than 50 years, encouraged and induced Metropolitan member agencies including SDCWA  
18 to purchase and rely upon Metropolitan for water supplies far in excess of their respective "Met-  
19 calculated preferential rights."

20           38.     Plaintiffs are informed and believe and thereon allege that, despite its  
21 encouragement, inducement and support of Metropolitan's representations and assurances that  
22 Metropolitan would deliver water without regard to "Met-calculated preferential rights," Los  
23 Angeles has also encouraged, induced and supported Metropolitan's changed revenue sources  
24 and declined to purchase or pay for the full quantity of water to which Los Angeles would be  
25 entitled according to its "Met-calculated preferential right."

26           39.     As part of this action, SDCWA hereafter prays for an accounting to compel  
27 Metropolitan to determine precisely the extent of the disproportionality between payments to  
28 Metropolitan that were applied by it toward the capital costs and operating expense of

1 Metropolitan's water works, and its calculation of preferential rights, and for the Court to retain  
2 continuing jurisdiction to assure that Metropolitan performs the determination in a correct  
3 manner. SDCWA is informed and believes and thereon alleges that the disproportionality is  
4 dramatic, and that the injury Defendants would inflict on SDCWA, its member agencies, and the  
5 nearly three million residents and business community of San Diego County, in the event that  
6 Los Angeles should choose to exercise its "Met-calculated preferential rights," would be  
7 catastrophic.

8 40. SDCWA cannot reasonably make investments or plan to reliably meet the water  
9 supply needs of the San Diego Member Agencies or the nearly three million people it serves if it  
10 does not know what water supply it can be assured of receiving from Metropolitan.

11 41. Metropolitan has acknowledged that there is disagreement over "Met-calculated  
12 preferential rights." SDCWA does not believe that Metropolitan's proposed declaration of a  
13 permanent emergency water shortage, even if made in good faith, would resolve the controversy  
14 or uncertainty under Section 135. Moreover, any such action, in addition to causing grave  
15 problems for Southern California generally, would cause SDCWA irreparable harm in that it  
16 would destroy business confidence, undermine investment, translate directly into lost production,  
17 reduce income, cause lost jobs and result in a weakening economy in San Diego County.

18 42. SDCWA has made numerous attempts to address and resolve the issues that are  
19 raised by this Complaint through cooperation with Metropolitan. Despite much discussion,  
20 including but not limited to mediated facilitations which were finally reluctantly abandoned only  
21 months ago, no corrective action has been taken by Metropolitan. Plaintiffs are informed and  
22 believe and thereon allege that one reason for this inaction is the favorable treatment to which  
23 Defendant Los Angeles claims it is entitled under Section 135 as currently applied and  
24 interpreted by Metropolitan.

25  
26 V.

27 **FIRST CAUSE OF ACTION**

28 **(Declaratory Relief – Statutory Interpretation)**

1           43.    As a separate and independent basis for declaratory relief, Plaintiffs allege as  
2 follows:

3           44.    Plaintiffs refer to and incorporate as though fully set forth herein paragraphs 1  
4 through 42, inclusive, and paragraphs 55 through 61, inclusive of this Complaint.

5           45.    In construing or interpreting a statute, the Legislature's intent in enacting the law  
6 shall prevail. The Legislature enacted Section 135 for the purpose and objective of creating a  
7 method of fairly and equitably apportioning water supplies among Metropolitan's member public  
8 agencies in a manner that reflects each member public agency's proportionate payments toward  
9 and investment in the capital costs and operating expense needed to enable Metropolitan to serve  
10 its member public agencies.

11          46.    The legislative history of a statute may aid the Court in ascertaining the  
12 Legislature's intent. The legislative history of Section 135 confirms that the Legislature enacted  
13 Section 135 with the intent that it would provide each member agency with a right to purchase  
14 water from Metropolitan which was directly proportional with that member agency's financial  
15 payments toward the capital costs and operating expense of Metropolitan's works.

16          47.    A Court's interpretation must be rooted in common sense and be made in the  
17 context of related statutes. Metropolitan is authorized to establish and fix fees, rates and charges  
18 that would both result in revenue sufficient to pay its capital costs and operating expense, and,  
19 plainly qualify for inclusion and credit in "Met-calculated preferential rights." Section 135 must  
20 be construed in a manner that recognizes the integral relationship between preferential rights and  
21 Metropolitan's revenue structure.

22          48.    A declaratory judgement by this Court is the proper way to resolve the correct  
23 interpretation of Section 135.

24          49.    A present and actual controversy has arisen and now exists between Plaintiffs and  
25 Defendants in that Plaintiffs contend, while Defendants deny, each of the following contentions:

- 26               a.    Section 135 of the Metropolitan Act was enacted with the express intent  
27                       and purpose of fairly and equitably allocating Metropolitan's water  
28                       supplies among its member agencies in direct proportion to each member's



1 total payments toward the capital costs and operating expense of  
2 Metropolitan's water works.

3 b. Metropolitan's interpretation of Section 135, and its calculation of each  
4 member agency's preferential rights thereunder, must account for how  
5 revenues have actually been applied by Metropolitan, not the manner in  
6 which Metropolitan has unilaterally decided to characterize or collect the  
7 revenues.

8 c. In calculating preferential rights under Section 135, Metropolitan must  
9 account for all revenues that have been applied toward the capital costs  
10 and operating expense of Metropolitan's water works.

11 d. Section 135 cannot be interpreted to confer rights on member agencies  
12 who do not pay, proportionately, the capital costs and operating expense of  
13 Metropolitan's water works.

14 50. Plaintiffs are entitled to a judicial determination and declaration as hereinabove  
15 stated. Such a declaration is necessary and appropriate at this time because Metropolitan's  
16 current calculation of preferential rights under Section 135 is wrong, and results in an erroneous  
17 and inequitable allocation of water by Metropolitan which fails to account for the fact that  
18 Metropolitan has historically and continuously sold and delivered water to SDCWA in excess of  
19 its "Met-calculated preferential rights," and that SDCWA reasonably and to its injury has relied  
20 on the sale and delivery of water under such terms.

21 51. A prompt declaration by this Court is necessary because Los Angeles may choose  
22 to invoke its preferential rights at any time. Moreover, there is substantial uncertainty as to who  
23 is required to pay for Metropolitan's ongoing and future substantial capital costs, the member  
24 agencies buying Metropolitan's water, or the member agencies who claim "Met-calculated  
25 preferential rights" under Section 135.

26 52. As the primary source of water supply serving San Diego County, and as  
27 Metropolitan's largest water purchaser, Plaintiff SDCWA will suffer irreparable and lasting  
28 injury unless declaratory relief is granted as requested.

1 VI.

2 **SECOND CAUSE OF ACTION**

3 **(Declaratory Relief – Violation of California Constitution Article X, Section 2)**

4 **(Unreasonable Use of Water)**

5 53. As a separate and independent basis for relief, Plaintiffs allege as follows:

6 54. Plaintiffs refer to and incorporate as though fully set forth herein paragraphs 1  
7 through 42, inclusive, of this Complaint.

8 55. Metropolitan knows that since the early 1950's SDCWA has expanded its  
9 territory, constructed public works and made assurances of water supply reliability based upon  
10 Metropolitan's policies and water reliability assurances. Metropolitan knows that SDCWA's  
11 water purchases have, since the early 1960's, exceeded SDCWA's "Met-calculated preferential  
12 rights." Metropolitan knows that today, SDCWA's water supply needs exceed its "Met-  
13 calculated preferential rights" under Section 135 by almost fifty percent (50%), leaving half of  
14 San Diego's water supply vulnerable to claims by others, specifically, Los Angeles.

15 56. Metropolitan has continuously sold and delivered water to SDCWA in quantities  
16 that have far exceeded SDCWA's "Met-calculated preferential rights," and SDCWA has  
17 regularly and continuously paid all of the proportional capital costs and operating expense of  
18 Metropolitan's water works.

19 57. The water historically allocated, sold and delivered to SDCWA by Metropolitan  
20 has been used to develop the hundred billion dollar economy of San Diego County and is  
21 essential to meet the reasonable water needs of San Diego County's residents and businesses.

22 58. SDCWA, the San Diego Member Agencies and the public they serve continuously  
23 maintain a strong water ethic against any unreasonable use or waste of water. SDCWA is  
24 recognized across the State of California as a leader in water conservation. The water purchased  
25 from Metropolitan by SDCWA is applied reasonably and beneficially within and throughout the  
26 service territory of SDCWA.

27 59. SDCWA currently has no alternative but to rely upon Metropolitan as its primary  
28

1 source of imported water,<sup>3</sup> because Metropolitan controls all of the pipelines and conveyance  
2 facilities needed to transport water into the service territory of the SDCWA. Defendants, and  
3 each of them, have interfered with San Diego's recent efforts to obtain alternative water supplies  
4 that are not subject to claims of preferential rights.

5 60. Plaintiffs are informed and believe and thereon allege that there are no local or  
6 native water supplies that are reasonably within the control or authority of SDCWA that can be  
7 used to offset a loss of deliveries from Metropolitan. Further, SDCWA is unable to make cost-  
8 effective long term investment decisions because of the uncertainty of Metropolitan's supplies,  
9 and, because it is currently forced through the Metropolitan revenue structure to pay for water  
10 that is subject to pre-emptive claims by others. SDCWA's citizens and ratepayers cannot afford  
11 and should not be required to pay for water works acquired by Metropolitan to meet the needs of  
12 Los Angeles.

13 61. Defendant Los Angeles has historically relied primarily upon groundwater  
14 supplies and imported water from Mono and Inyo County to meet its water supply needs. Los  
15 Angeles' water purchases from Metropolitan have been used only to supplement its other water  
16 supply sources. A substantial portion of Metropolitan's water works that would provide water  
17 for Los Angeles' "Met-calculated preferential rights" have not been paid for and are not being  
18 paid for by Los Angeles. Under the calculation of preferential rights as intended by the  
19 Legislature, all member agencies including Los Angeles and SDCWA would have preferential  
20 rights to water according to their proportional payments of the capital costs and operating  
21 expense of Metropolitan's works necessary to supply and deliver water. Each and every member  
22 agency should be able to assure and protect its citizens and their economy as originally intended  
23 by the Legislature in adopting the Metropolitan Act.

24 62. A construction and application of Section 135 that would take water from  
25

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26 <sup>3</sup>SDCWA has entered into agreements with the Imperial Irrigation District and with  
27 Metropolitan to acquire and transport, respectively, up to 200,000 acre feet of conserved water to  
28 SDCWA. Certain conditions precedent to these agreements, including environmental review,  
have not yet been satisfied. Even if and when these agreements are implemented, SDCWA will  
be heavily dependent on Metropolitan for its primary water supply.

1 SDCWA and its customers and give it to Los Angeles, after decades of reliance by SDCWA and  
2 billions of dollars of payments toward Metropolitan's water works, without regard to Los  
3 Angeles' available alternative supplies, efficiency of use or economic considerations, constitutes  
4 an unreasonable use of water in violation of Article X, Section 2 of the California Constitution.

5 63. Metropolitan's failure and refusal to establish policies and revenue classifications  
6 consistent with the purpose and intent of Section 135 as it was created by the Legislature, have  
7 created great uncertainty about how Metropolitan will allocate water and what its true cost is, and  
8 is chilling needed water supply management and planning efforts in Southern California  
9 generally, and in the service territory of SDCWA specifically. Any direct or indirect allocation  
10 of water by Metropolitan among its member agencies according to "Met-calculated preferential  
11 rights," without regard to payments toward Metropolitan's water works by its member agencies  
12 through all forms of revenue, is an uncertain, unreasonable and wasteful allocation methodology  
13 in violation of Article X, Section 2 of the California Constitution.

14 64. Metropolitan's suggestion that it may declare a permanent water shortage  
15 emergency to pre-empt the provisions of Section 135 causes yet further uncertainty over the  
16 method by which its water supplies will be allocated among its member agency customers in  
17 times of shortage and violates the provisions of Article X, Section 2 of the California  
18 Constitution.

19 65. A present and actual controversy has arisen and now exists between Plaintiffs and  
20 Defendants in that Plaintiffs contend while Defendants deny each of the following contentions:

- 21 a. Metropolitan may not allocate water among its member agencies  
22 according to Metropolitan's current erroneous and inequitable calculation  
23 of preferential rights under Section 135.
- 24 b. Metropolitan may not allocate water among its member agencies without  
25 regard to SDCWA's proportional payment of capital costs and operating  
26 expense of Metropolitan's water works, SDCWA's reliance upon  
27 Metropolitan assurances and historical deliveries of water, and, the present  
28 method and efficiency of existing uses.

1 c. Metropolitan must adopt a water allocation methodology that (i) is  
2 reasonable and predictable, allowing its member agencies to reasonably  
3 rely upon continued provision of water; (ii) reflects the historical  
4 contribution of each member agency to Metropolitan's water works; (iii)  
5 reflects the efficiency of water use by the purchasing member agency; and  
6 (iv) takes into account the historical reliance upon Metropolitan of each of  
7 its member agencies.

8 66. Plaintiffs are entitled to a judicial determination and declaration consistent with its  
9 contentions, as hereinabove stated. Such a declaration is necessary and appropriate to avoid an  
10 allocation of water by Metropolitan that: is unreasonable and wasteful in violation of Article X,  
11 Section 2 of the California Constitution; is inequitable in that it fails to account for the fact that  
12 Metropolitan has historically sold and delivered water to SDCWA for reasonable and efficient  
13 uses for which there are no readily available alternative water supplies; and, disregards billions of  
14 dollars of payments accepted by Metropolitan from SDCWA to pay the capital costs and  
15 operating expense of its water works.

16 67. A prompt declaration by this Court is necessary because Los Angeles may demand  
17 at any time that Metropolitan allocate water among its member agency customers in accordance  
18 with their alleged "Met-calculated preferential rights."

19 68. As the source of up to ninety percent (90%) of the water supply needed to meet  
20 the needs of the citizens and businesses of San Diego County, SDCWA will suffer irreparable  
21 and lasting injury unless declaratory relief is granted as requested by Plaintiffs.

22  
23 **VII.**

24 **THIRD CAUSE OF ACTION**

25 **(Declaratory Relief – Estoppel)**

26 69. As a separate and independent basis for declaratory relief, Plaintiffs allege as  
27 follows:

28 70. Plaintiffs refer to and incorporate as though fully set forth herein paragraphs 1

1 through 42, inclusive, and paragraphs 55 through 61, inclusive of this Complaint.

2           71. Metropolitan knows that since the early 1950's SDCWA has expanded its  
3 territory, constructed public works and made assurances of water supply reliability based upon  
4 Metropolitan's policies and water reliability assurances, including but not limited to its  
5 contentions and representations from time to time that Section 135 has no impact on the water  
6 reliability of its member agencies. Metropolitan knows that SDCWA's water purchases have,  
7 since the early 1960's, exceeded its "Met-calculated preferential rights." Metropolitan knows that  
8 today, SDCWA's water supply needs exceed its "Met-calculated preferential rights" under  
9 Section 135 by almost fifty percent (50%), leaving half of San Diego's water supply vulnerable  
10 to pre-emptive claims by others.

11           72. Metropolitan has continuously sold and delivered water to SDCWA in quantities  
12 that have far exceeded SDCWA's "Met-calculated preferential rights;" reciprocally, SDCWA has  
13 regularly and continuously paid a proportional amount of the capital costs and operating expense  
14 of Metropolitan's water works.

15           73. In reasonable reliance upon the consistent conduct and express representations  
16 and assurances of Metropolitan, SDCWA reasonably believed that Metropolitan would continue  
17 to sell and deliver water to SDCWA in excess of its "Met-calculated preferential rights".

18           74. SDCWA has relied on Metropolitan to its detriment in that, historically, it has not  
19 pursued alternative water supplies from other sources. More recently, Metropolitan has  
20 affirmatively discouraged, thwarted and blocked SDCWA's efforts to develop alternative sources  
21 of supply, thus leaving it dependent on a supply of water that Metropolitan knows or should  
22 know is subject to preferential rights claims by others.

23           75. SDCWA is uncertain as to the manner in which Metropolitan will allocate water  
24 supplies in the future to its member agencies. In particular, SDCWA is uncertain whether  
25 Metropolitan will continue to sell and deliver water to SDCWA in excess of SDCWA's "Met-  
26 calculated preferential rights."

27           76. A present and actual controversy has arisen and now exists between Plaintiffs and  
28 Defendants in that Plaintiffs contend, while Defendants deny, each of the following contentions:

1 a. Metropolitan is estopped from allocating its water supply in any manner  
2 that is inconsistent with Metropolitan's historical sale and delivery of  
3 water to SDCWA and with the fact that SDCWA has paid and Los  
4 Angeles has not paid the proportional capital costs and operating expense  
5 of Metropolitan's water works, notwithstanding that such deliveries have  
6 been and are in excess of its "Met-calculated preferential rights" for  
7 SDCWA.

8 b. Los Angeles is estopped from asserting a preferential right to  
9 Metropolitan's water supply in any manner that is inconsistent with  
10 Metropolitan's historical sale and delivery of water to SDCWA, and with  
11 the fact that SDCWA has paid and Los Angeles has not paid the  
12 proportional capital costs and operating expense of Metropolitan's water  
13 works.

14 77. Plaintiffs are entitled to a judicial determination and declaration consistent with its  
15 contentions, as hereinabove stated. Such a declaration is necessary and appropriate to avoid an  
16 erroneous and inequitable allocation of water by Metropolitan which fails to account for the fact  
17 that Metropolitan has historically and continuously sold and delivered water to SDCWA in  
18 excess of its "Met-calculated preferential rights," and, that SDCWA has reasonably and to its  
19 injury relied on such sale and delivery, and, has regularly and continuously over many decades  
20 paid the proportional capital costs and operating expense of Metropolitan's water works.

21 78. A prompt declaration by this Court is necessary because Los Angeles may  
22 invoke their "Met-calculated preferential rights" at any time, and in so doing, unlawfully violate  
23 rights which have accrued to SDCWA over the years of consistent practice. Such an outcome  
24 would deny SDCWA the benefit of the water works for which it has consistently paid over many  
25 decades in reliance upon Metropolitan's assurances that such benefits would remain regularly  
26 and continuously available to SDCWA.

27 79. As the primary source of water supply serving San Diego County, and as  
28 Metropolitan's largest water purchaser, Plaintiff SDCWA will suffer irreparable and lasting

1 injury unless the declaratory relief is granted as requested.

2  
3 **VIII.**

4 **FOURTH CAUSE OF ACTION**

5 **(Declaratory Relief – Constitutional Violation)**

6 **(Denial of Equal Protection and Due Process of Law)**

7 80. As a separate and independent basis for declaratory relief, Plaintiffs allege as  
8 follows:

9 81. Plaintiffs refer to and incorporate as though fully set forth herein paragraphs 1  
10 through 43, inclusive, paragraphs 55 through 61, inclusive, and paragraphs 71 through 74,  
11 inclusive, of this Complaint.

12 82. A present and actual controversy has arisen and now exists between Plaintiffs and  
13 Defendants in that Plaintiffs contend, while Defendants deny, each of the following contentions:

- 14 a. That Metropolitan has in the past and continues to this date to fail to  
15 account in its calculation of preferential rights under Section 135 for  
16 monies collected from SDCWA and applied by Metropolitan toward the  
17 capital costs and operating expense of Metropolitan's works.
- 18 b. That Metropolitan's failure to account in its calculation of preferential  
19 rights under Section 135 for monies collected from SDCWA and applied  
20 by Metropolitan toward the capital cost and operating expense of  
21 Metropolitan's works, has denied the individual Plaintiffs and SDCWA  
22 and the public it serves equal protection and due process of the laws, and  
23 of privileges and immunities enjoyed by others in violation of Article I,  
24 Sections 7 of the California Constitution.
- 25 c. That Metropolitan's failure and refusal to establish a revenue classification  
26 that is consistent with its calculation of preferential rights has further  
27 denied the individual Plaintiffs, SDCWA and the public it serves equal  
28 protection and due process of the laws in violation of Article I, Section 7



1 of the California Constitution, and has further denied them of the  
2 privileges and immunities afforded by Metropolitan to others, in that,  
3 among other things, SDCWA and its customers are being required to pay  
4 disproportionately for water works that are subject to preferential rights  
5 claims by others.

6 d. That as a direct consequence of the above failures of Metropolitan, it has  
7 unreasonably and unconstitutionally denied SDCWA the full benefit of an  
8 essential community resource, namely, a reliable water supply for which  
9 SDCWA has already paid in full with the monies collected from it by  
10 Metropolitan.

11 83. Plaintiffs are entitled to a judicial determination and declaration, as hereinabove  
12 stated. Such a declaration is necessary and appropriate at this time so that Plaintiff SDCWA can  
13 responsibly plan for its future water supply, make required representations to local and state  
14 governmental agencies as to the reliability of its existing supply of water, and/or seek alternative  
15 supplemental sources of water supply if necessary to augment its existing supply of water.  
16 SDCWA is currently unable to fulfill its duties to the citizens and businesses of San Diego  
17 County because it is unable to determine with any certainty how Metropolitan will determine or  
18 be required to determine preferential rights under Section 135. Moreover, SDCWA is unable to  
19 make needed investments in its own water supply reliability if it is at the same time being forced  
20 to disproportionately pay rates, fees and charges for water supplies that are subject to claims by  
21 others. Plaintiffs Turner, Rhinerson and Bond are each substantially injured by SDCWA's  
22 inability to make reasonable plans for water reliability on account of the actions of Metropolitan  
23 and the threat of assertion by Los Angeles of its "Met-calculated preferential rights."

24 84. A prompt declaration by this Court is necessary because Los Angeles may invoke  
25 its "Met-calculated preferential rights" at any time. Moreover, there is substantial uncertainty as  
26 to who will be required to pay for Metropolitan's ongoing substantial capital investments -- the  
27 member agencies who are buying water or the member agencies for whose benefit Metropolitan  
28 has calculated rights under Section 135.

1 85. Because SDCWA is the primary source of water supply serving San Diego  
2 County, and as Metropolitan's largest water purchaser, SDCWA and Plaintiffs Turner, Rhinerson  
3 and Bond will suffer irreparable and lasting injury unless declaratory relief is granted as  
4 requested.

5  
6 **IX.**

7 **FIFTH CAUSE OF ACTION**

8 **(Accounting)**

9 86. As a separate and independent basis for relief, Plaintiffs allege as follows:

10 87. Plaintiffs refer to and incorporate as though fully set forth herein paragraphs 1  
11 through 43, inclusive, paragraphs 55 through 61, inclusive, and paragraphs 71 through 74,  
12 inclusive, of this Complaint.

13 88. As described above, for more than five decades, Plaintiffs on the one hand and  
14 Defendant Metropolitan on the other hand, have been parties to an implied-in-fact water supply  
15 and delivery contract whereby Metropolitan agreed to provide SDCWA with imported water.

16 89. Plaintiff SDCWA estimates that it has paid about \$3 billion to Metropolitan  
17 toward the capital costs and operating expense of Metropolitan's works and Metropolitan has  
18 collected under the agreement an amount estimated at about \$3 billion, the precise amount of  
19 which is not known to Plaintiffs.

20 90. More importantly, for purposes of interpreting and applying Section 135,  
21 Plaintiffs do not know the precise proportion of the estimated \$3 billion collected by  
22 Metropolitan which was applied toward the capital costs and operating expense of Metropolitan's  
23 works.

24 91. In order to fairly and equitably resolve this dispute, it is necessary for the Court to  
25 know with precision the proportion of the estimated \$3 billion in collections which were applied  
26 to the capital costs and operating expense of Metropolitan's water works.

27 92. Metropolitan has a fiduciary duty to account to SDCWA for all monies collected  
28 from it.

1 93. Prior to the commencement of this action, SDCWA has repeatedly demanded of  
2 Metropolitan an accounting of the monies collected from it, summarized in the categories or  
3 classification of cost or expense toward which they were applied by Metropolitan.

4 94. Metropolitan has never rendered an accounting for the monies collected in a form  
5 which shows amounts as applied to the categories or classifications specified under Section 135.

6 95. Metropolitan has exclusive possession and control of the books and records  
7 needed to produce the requested accounting and SDCWA is informed and believes and thereon  
8 alleges that Metropolitan has access to sophisticated electronic accounting records and tools  
9 which will permit it to produce the requested accounting without the expenditure of undue time  
10 or expense, under all the circumstances.

11 96. SDCWA is entitled to an accounting from Metropolitan of SDCWA's cumulative  
12 payments to Metropolitan over time, itemized into the categories or classification designated in  
13 Section 135, in the manner directed by the Court.

14  
15 X.

16 SIXTH CAUSE OF ACTION

17 (Injunctive Relief [C.C.P §§ 3420, 3522])

18 97. As a separate and independent basis for relief, Plaintiffs allege as follows:

19 98. Plaintiffs refer to and incorporate as though fully set forth herein paragraphs 1  
20 through 42, inclusive, paragraphs 55 through 61, inclusive, and paragraph 71 through 74,  
21 inclusive, of this Complaint.

22 99. Defendants, and each of them, wrongfully and unlawfully have threatened to  
23 allocate or seek to allocate Metropolitan's available water supplies in a manner that is  
24 inconsistent with SDCWA's historical reliance upon and purchase of water from Metropolitan  
25 and with the proportional payments SDCWA has made for past, present and future capital costs  
26 and operating expense of Metropolitan's works based upon such reliance and related assurances  
27 received from Metropolitan.

28 100. Defendants' threatened wrongful conduct, unless and until enjoined and restrained

1 by order of this Court, will cause great and irreparable injury to SDCWA in that any allocation of  
2 Metropolitan's available water supply which fails to account for SDCWA's historical reliance  
3 upon and purchase of water from Metropolitan and the proportional payments SDCWA has made  
4 for past, present and future capital costs and operating expense of Metropolitan's water works  
5 based upon such reliance and related assurances received from Metropolitan, would place almost  
6 fifty percent (50%) of SDCWA's water supply at risk, and would cause SDCWA irreparable  
7 harm in that it would destroy business confidence, undermine investment, translate directly into  
8 lost production, reduce income, cause lost jobs and result in a weakening economy in San Diego  
9 County.

10 101. SDCWA has no plain, speedy or adequate remedy at law. It will be impossible  
11 for SDCWA to determine the precise amount of damage that it will suffer if Defendants' conduct  
12 is not restrained.

13 102. SDCWA is entitled to issuance by this Court of a preliminary and permanent  
14 injunction enjoining Metropolitan from allocating available water supplies according to "Met-  
15 calculated preferential rights" under Section 135, or in any manner that is inconsistent with  
16 SDCWA's historical reliance upon and purchase of water from Metropolitan and its payment of  
17 the proportional capital costs and operating expenses of Metropolitan's works.

18  
19 **XI.**

20 **SEVENTH CAUSE OF ACTION**

21 **(Petition for Writ of Mandate [C.C.P. § 1085 et seq.])**

22 103. As a separate and independent basis for relief, Plaintiffs allege as follows:

23 104. Plaintiffs refer to and incorporate as though fully set forth herein paragraphs 42,  
24 inclusive, paragraphs 55 through 61, inclusive, paragraph 71 through 74, inclusive and paragraph  
25 99 through 100, inclusive, of this complaint.

26 105. Mandamus is available to compel the performance of a mandatory duty.

27 106. The Metropolitan Act imposes on Metropolitan, and Metropolitan's board of  
28 directors the following mandatory duties:

- 1 a. A duty to carry out all of the duties and provisions set forth in the  
2 Metropolitan Act.
- 3 b. A duty to comply with Metropolitan's Administrative Code.
- 4 c. A duty to raise sufficient revenue from its members to finance its capital  
5 costs and operating expense.
- 6 d. A duty to correctly interpret and enforce Section 135 and properly allocate  
7 its water supplies among its member public agencies based on each  
8 agency's total payments toward the capital costs and operating expense of  
9 Metropolitan's water works, and on their respective agreements to assume  
10 financial responsibility for the ongoing and future investments needed to  
11 supply water in accordance with Section 135.

12 107. SDCWA has a clear, present, and beneficial right in performance of each and  
13 every one of the above-mentioned duties by Metropolitan and the Metropolitan board of  
14 directors.

15 108. There is a great public interest in ensuring that Metropolitan and Metropolitan's  
16 board of directors perform their duties under the Metropolitan Act. Nearly three million people  
17 living and working in San Diego County rely on the availability and dependability of  
18 Metropolitan's water supply; more than 17 million people rely on the availability and  
19 dependability of Metropolitan's water supply throughout Southern California.

20 109. Metropolitan, by and through its board of directors, has failed to perform the  
21 above-mentioned duties by failing to recognize the conflicts between Section 135 on the one  
22 hand, and its own actions on the other, including but not limited to its ongoing promises and  
23 assurances to deliver water in contravention of "Met-calculated preferential rights" under Section  
24 135 and, by establishing a revenue structure that does not require its member public agencies to  
25 pay for rights they may claim and that Metropolitan has declared to exist according to "Met-  
26 calculated preferential rights" under Section 135.

27 110. Plaintiffs have no plain, speedy or adequate remedy at law.

28 111. Plaintiffs are entitled to issuance by this Court of a peremptory writ of mandate

1 commanding Metropolitan and Metropolitan's board of directors, to perform each of the  
2 following acts:

- 3 a. Continue to deliver water to SDCWA, at a minimum, in that proportion of  
4 Metropolitan's available water supply that corresponds to SDCWA's  
5 payments toward the capital and operating cost of Metropolitan's water  
6 works over time.
- 7 b. In the alternative, if the Court should find that "Met-calculated preferential  
8 rights" are enforceable, then command Metropolitan and Metropolitan's  
9 board of directors to:
- 10 (1) Cease and desist its unfounded declarations that Section 135 has no  
11 effect on the water reliability of its member agencies;
- 12 (2) Prepare an accounting of SDCWA's total payments toward the  
13 capital costs and operating expense of Metropolitan's works and  
14 itemize the data into the classifications or categories designated in  
15 Section 135, in the manner directed by the Court;
- 16 (3) Determine precisely the extent of the preferential rights currently  
17 held by SDCWA;
- 18 (4) Expressly recognize and plan for member agency rights and claims  
19 under Section 135; and
- 20 (5) Implement a revenue structure that establishes a proportionality  
21 and nexus between Section 135 rights on the one hand, and the  
22 capital costs and operating expense incurred and to be incurred by  
23 Metropolitan on the other hand, to develop and maintain the water  
24 needed to meet Section 135 claims.

25 The Court is requested to retain continuing jurisdiction over the case to assure that Metropolitan  
26 complies with the duties mandated on a continuing basis.

27

28 **WHEREFORE**, Plaintiffs pray for judgments of declaratory relief, accounting, and injunctive

1 relief and for a peremptory writ of mandate as follows:

2  
3 **First Cause of Action (Declaratory Relief – Statutory Interpretation):**

4 112. For a declaration of Metropolitan member agencies' rights and duties under  
5 Section 135, in accordance with the following contentions:

- 6 a. Section 135 of the Metropolitan Act was enacted with the express intent  
7 and purpose of fairly and equitably allocating Metropolitan's water  
8 supplies among its member public agencies based on each member's total  
9 payments toward the capital costs and operating expense of Metropolitan's  
10 works.
- 11 b. Metropolitan's interpretation of Section 135, and its calculation of each  
12 member agency's preferential rights thereunder, must take into account all  
13 payments toward the capital costs and operating expense of Metropolitan's  
14 works.
- 15 c. Section 135 cannot be interpreted to confer rights on member public  
16 agencies who do not pay proportionately the capital costs and operating  
17 expense of Metropolitan's water works

18  
19 **Second Cause of Action (Declaratory Relief – Violation of California Constitution Article**  
20 **X, Section 2 – Unreasonable Use of Water):**

21 113. For a declaration that:

- 22 a. Metropolitan may not allocate water among its member agencies  
23 according to "Met-calculated preferential rights;"
- 24 b. Metropolitan may not allocate water among its member agencies without  
25 regard to SDCWA's historical reliance upon the water delivered by  
26 Metropolitan, the proportional payments by SDCWA toward  
27 Metropolitan's capital costs and operating expense, and the present  
28 method and efficiency of existing uses.

1 c. Metropolitan must adopt a water allocation methodology that (i) is  
2 reasonable and predictable, allowing its member agencies to reasonably  
3 rely upon continued provision of water; (ii) reflects the historical  
4 contribution of each member agency to Metropolitan's water works; (iii)  
5 reflects the efficiency of water use by the purchasing member agency; and  
6 (iv) takes into account the historical reliance upon Metropolitan of each of  
7 its member agencies.  
8

9 **Third Cause of Action (Declaratory Relief – Estoppel):**

10 114. For a declaration that Defendants Los Angeles and Metropolitan are estopped  
11 from demanding or delivering, respectively, water according to "Met-calculated preferential  
12 rights," or in any manner that is inconsistent with SDCWA's historical reliance upon water  
13 delivered by Metropolitan and the proportional payments by SDCWA toward the capital costs  
14 and operating expense of Metropolitan's water works  
15

16 **Fourth Cause of Action (Declaratory Relief – Constitutional Violation - Denial of Equal  
17 Protection and Due Process of Law):**

18 115. For a declaration that Metropolitan has unreasonably and unconstitutionally  
19 denied SDCWA and Plaintiffs Turner, Rhinerson and Bond the equal protection of the laws in  
20 violation of Article I, Sections 7 of the California Constitution.

21 116. For a declaration that Metropolitan has denied SDCWA and Plaintiffs Turner,  
22 Rhinerson and Bond the due process of the laws in violation of Article I, Sections 11 and 21 of  
23 the California Constitution.  
24

25 **Fifth Cause of Action (Accounting):**

26 117. For a full and complete accounting of the cumulative payments by SDCWA  
27 applied toward the capital costs and operating expense of Metropolitan's water works, itemized  
28 into the classifications or categories designated in Section 135, in the manner directed by the



1 Court.

2  
3 **Sixth Cause of Action (Injunctive Relief [C.C.P. Sections 3420, 3522]):**

4 118. For a preliminary and permanent injunction enjoining Metropolitan from  
5 allocating available water supplies, under any circumstances, in a manner that is inconsistent  
6 with SDCWA's historical reliance upon and payment toward the capital costs and operating  
7 expense of Metropolitan's water works, or in any manner that denied Plaintiffs equal protection  
8 or due process of law.

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10 **Seventh Cause of Action (Petition for Writ of Mandate [C.C.P. Section 1085 et seq.]):**

11 119. Issuance by this Court of a peremptory writ of mandate commanding Metropolitan  
12 and Metropolitan's board of directors, to perform each of the following acts: Continue to deliver  
13 water to SDCWA in that proportion of Metropolitan's available water supply that corresponds to  
14 SDCWA's payments toward the capital and operating cost of Metropolitan's water works over  
15 time.

16 a. In the alternative, if the Court should find that "Met-calculated preferential  
17 rights" are enforceable, then command Metropolitan and Metropolitan's  
18 board of directors to:

- 19 (1) Cease and desist its unfounded declarations that Section 135 has no  
20 effect on the water reliability of its member agencies;
- 21 (2) Prepare an accounting of SDCWA's total payments toward the  
22 capital costs and operating expense of Metropolitan's works and  
23 itemize the data into the classifications or categories designated in  
24 Section 135, in the manner directed by the Court;
- 25 (3) Determine precisely the extent of the preferential rights currently  
26 held by SDCWA;
- 27 (4) Expressly recognize and plan for member agency rights and claims  
28 under Section 135; and

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(5) Implement a revenue structure that establishes a proportionality and nexus between Section 135 rights on the one hand, and the capital costs and operating expense incurred and to be incurred by Metropolitan on the other hand, to develop and maintain the water needed to meet Section 135 claims.


The Court is requested to retain continuing jurisdiction of this action to monitor Metropolitan and assure that the mandates of the Court are complied with on a continuing basis.

120. On all causes of action, for costs of suit herein incurred; and

121. On all causes of action, for such other and further relief as the Court may deem just and proper.

DATED: January 30, 2001

HATCH AND PARENT

By   
CHRISTINE M. FRAHM  
Attorneys for Plaintiffs SAN DIEGO COUNTY  
WATER AUTHORITY, James F. Turner, Bernard  
Rhinson and James Bond

## STATEMENT OF POLICY

The Metropolitan Water District of Southern California is prepared, with its existing governmental powers and its present and projected distribution facilities, to provide its service area with adequate supplies of water to meet expanding and increasing needs in the years ahead. The District now is providing its service area with a supplemental water supply from the Colorado River. When and as additional water resources are required to meet increasing needs for domestic, industrial and municipal water, The Metropolitan Water District of Southern California will be prepared to deliver such supplies.

Taxpayers and water users residing within The Metropolitan Water District of Southern California already have obligated themselves for the construction of an aqueduct supply and distribution system involving a cost in excess of \$350,000,000. This system has been designed and constructed in a manner that permits orderly and economic extensions and enlargements to deliver the District's full share of Colorado River water as well as water from other sources as required in the years ahead. Establishment of overlapping and paralleling governmental authorities and water distribution facilities to service Southern California areas would place a wasteful and unnecessary financial burden upon all of the people of California, and particularly the residents of Southern California.

Approved by the Board of Directors of  
The Metropolitan Water District of  
Southern California December 16, 1952

**§ 4202**

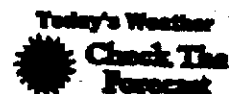
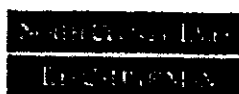
**MWD Administrative Code**

**§ 4202. Avoidance in District Service Area of Overlapping or Paralleling Governmental Authorities (Laguna Declaration).**

(a) The District is prepared, with its existing governmental powers and its present and projected distribution facilities, to provide its service area with adequate supplies of water to meet expanding and increasing needs in the years ahead. When and as additional water resources are required to meet increasing needs for domestic, industrial and municipal water, the District will be prepared to deliver such supplies.

(b) Taxpayers and water users residing within the District already have obligated themselves for the construction of an aqueduct supply and distribution system. This system has been designed and constructed in a manner that permits orderly and economic extensions and enlargements to deliver the District's full share of Colorado River water and State Project water as well as water from other sources as required in the years ahead. Establishment of overlapping and paralleling governmental authorities and water distribution facilities to service Southern California areas would place a wasteful and unnecessary financial burden upon all of the people of California, and particularly the residents of Southern California.

Section 301.2 based on M.L. 14727, December 18, 1962. Section 301.2 repealed and Section 4201 adopted by M.L. 38464 — January 13, 1967, effective April 1, 1967; Section 4201 renumbered 4202 by M.L. 38412 — January 14, 1962.



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## District leader suggests declaring 'permanent' water shortage

**GIG CONAUGHTON**

Staff Writer

The leader of Southern California's major water supplier wants to declare an emergency water shortage, not because there isn't enough water — there is — but to end a decades-long feud with San Diego County water agencies.

But some said they fear the proposal by General Manager Ron Gastelum of the Metropolitan Water District would be a disaster for local economies.

Metropolitan buys Colorado River water and water from the state Water Project, then sells it to its 27 member agencies, spreading across 5,200 square miles, providing water for nearly 17 million people.

Gastelum is proposing to invoke Section 350 of the California Water Code as a political/legal maneuver designed to override an antiquated system of allocating water known as "preferential rights," which San Diego County water agencies contend would allow Los Angeles to "steal" San Diego County's water in emergencies.

Preferential rights is the system created in the 1930s guaranteeing Metropolitan's member agencies a proportionate share of water equal to each agency's property tax investment in Metropolitan's system.

San Diego County Water Authority officials say that system is outdated and an agency's right to water should be tied to how much water each agency buys from Metropolitan.

Invoking Section 350, the emergency declaration, would declare that "ordinary" water demands would result in "insufficient water for human consumption, sanitation and fire protection" in Southern California.

Declaring an emergency water shortage, Gastelum said, would give Metropolitan the legal right to ignore its own "preferential rights system," and allocate water the way Metropolitan decides is best. Metropolitan's board can't change the "preferential rights system" without the permission of the state Legislature.

**Bad for business**

But Gastelum's cure could be just as bad as the illness, said representatives from several San Diego County water agencies, a state assemblyman from Riverside County, the Building

Industry Association and the chief economic officer for the San Diego Association of Governments.

They said declaring a "permanent" emergency water shortage in Southern California could kill off a good economy by driving away businesses interested in moving to the region for fear of facing water shortages and rationing.

Critics say it also could lower bond ratings for cities and businesses throughout the area, which could hinder development and the building of capital improvement projects such as roads.

Gastelum disagreed, saying "sophisticated people," such as business leaders and investors, would recognize the emergency shortage declaration for what it is, a legal way around the politically sticky issue of preferential rights.

Eric Hoffmann, a vice president and analyst for Moody's Investors Service of New York, one of the largest investment rating companies in the United States, said it was "too premature" to say whether Moody's would react badly to the proposed emergency declaration.

"A declaration of emergency would be a cause for concern in terms of business development, and in the long run could have bad effects upon credit quality. But if this were seen as a work around a difficult legal problem such as preferential rights, it could be a good thing," Hoffmann said. "We're into reality, not tricky uses of the law."

Steve Erie, a professor at UC San Diego who studies infrastructure issues such as water, also agreed with Gastelum.

Erie expects to make a presentation on the historical effects of Metropolitan's water policies on growth and development in Southern California at Cal Western Law School next month. He said Gastelum's proposal sounds as though it would solve San Diego County's problem with preferential rights.

Erie also said he didn't believe an emergency declaration meant only as a device to disarm preferential rights would scare off investment.

But others disagreed.

Mamey Cox, the chief economic officer for SANDAG, said he expected investment services such as Moody's would actually be alarmed by a declaration of emergency shortage, "ploy" or not.

It also could scare off growing local industries, he said, such as biotechnology, from remaining in San Diego County, if they feared possible "future" water shortages.

Former California state senator and current Assemblyman David Kelley, R-Riverside, sided with Gastelum's critics.

Kelley, a longtime vice chairman of the Senate's Agriculture and Water Resources

Committee, said licensing agencies such as the state Department of Fish and Game, which often weighs in on development issues, also would see the declaration as a negative.

"The permit-issuing authorities, cities, counties and state — they take that stuff (emergency declarations) seriously," Kelley said. "Metropolitan serves 17 million people, and it's pretty serious when you declare a water shortage."

#### Frightening investors

Jim Turner, the newly elected board president of the San Diego County Water Authority, and Carlsbad Mayor Bud Lewis, another authority representative, said the declaration would definitely scare off new business investment and growth in the region.

"If you're a developer out there," Turner said, "or you want to buy a business here in Southern California, are you going to want to go to a state where you don't know if you're going to have water? Where the Metropolitan Water District general manager is saying, 'We're in a shortage situation?' I don't think so."

Lewis predicted that a declaration of an emergency water shortage would rally "slow-growth and no-growth" activists into action.

"I mean, all hell would break loose," Lewis said.

Building Industry Association officials said they hadn't had time to know how Gastelum's proposal would affect development. But Matt Adams, the director of governmental affairs for the association in San Diego County, said, "Obviously, we would have very real concerns if a false shortage was perpetrated on the state of California, because it could have real negative economic consequences for growth and development."

But Gastelum says declaring a permanent water shortage would just be "a tool."

#### No immediate shortage

Metropolitan sold near-record amounts of water last year, and expects to do so again this year, Gastelum said, indicating there is no immediate shortage.

While Metropolitan maintains that preferential rights have never been invoked in its 72-year history, San Diego County Water Authority officials have been crying for its demise for decades.

Created in the 1930s just after Metropolitan was established by the state Legislature, the preferential rights system guarantees Los Angeles a larger "entitlement" to Metropolitan's water, roughly 23 percent, than San Diego County's 14 percent — despite the fact that Los Angeles annually buys only about 8 percent of Metropolitan's water, while the authority buys 26 percent of Metropolitan's water.

In particular, authority representatives want to be guaranteed that long-term contracts for water deliveries Metropolitan proposes as the backbone of a new water rate structure it hopes to implement by 2002 will be honored — and not rendered null and void in

emergencies by Los Angeles invoking its preferential rights.

Gastelum says declaring a general and "permanent" state of water shortage would legally override and "disarm" the preferential rights "bogyman."

#### Preferential rights

Gastelum's proposal is the first new idea to deal with San Diego County's preferential rights fears in years, even though the authority and Metropolitan have been at odds over the issue for decades.

When Metropolitan was created by the state Legislature in 1928, it used property tax revenue to generate the money it needed to build the aqueduct.

To fairly divide the rights to water, Metropolitan promised each of its member agencies an entitlement — a preferential right — to a percentage of Metropolitan's water equal to the amount each agency had contributed in property tax. Los Angeles, with the largest amount of development, contributed more in property taxes than any other agency, and got the highest preferential right to water.

However, by the 1970s, Metropolitan stopped using property taxes as its revenue base — the money it needs to maintain its 775-mile system of pipelines, pump stations, reservoirs and treatment plants. Instead, it switched to raising the bulk of its revenues by water sales. But at the same time Metropolitan did not change each agency's traditional preferential right to water, meaning each agency's preferential right still reflected property tax contributions — a much smaller portion of Metropolitan's current revenues — instead of water purchases.

#### L.A. is ahead

Now, authority representatives unhappily point out that even though they buy far and away the largest percentage of Metropolitan's water, thereby contributing more money to maintain Metropolitan's system of pipelines than any other agency, their preferential right is still dwarfed by Los Angeles.

And while Gastelum and others say preferential rights have never been invoked, some authority officials disagree.

Maureen Stapleton, the authority's general manager, insists that Los Angeles, with Metropolitan's blessing, did invoke preferential rights in 1991, during the last year of one of the worst droughts in California history.

Los Angeles normally buys Metropolitan's water only to supplement its own resource, the Owens Valley aqueduct it built at the turn of the century that supplies it with most of its water.

On the contrary, San Diego County has little in the way of ground-water supplies, and buys about 90 percent of the water used in the county from Metropolitan. Stapleton said while other Metropolitan agencies were being forced to take less water from Metropolitan as the drought reached its peak in 1991, Los Angeles actually received more water.



"They took our water. They did it because preferential rights said that L.A. had the right to," Stapleton said. "There's no other explanation."

Because they said they fear the same thing could happen again, the authority was the only one of Metropolitan's 27 member agencies that refused to approve the new conceptualized rate structure Dec. 12.

Gastelum said he hopes his emergency declaration proposal could ease the authority's fears.

"At least we've accomplished the beginning of a dialogue about how best to resolve that question. I put this out on the table and have invited them to come up with other ideas," Gastelum said. "It's all very healthy."

Contact staff writer Gig Conaughton at (760) 739-6696 or [gconaughton@nctimes.com](mailto:gconaughton@nctimes.com).

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**VERIFICATION**

**STATE OF CALIFORNIA,**

**COUNTY OF SAN DIEGO**

I have read the foregoing VERIFIED COMPLAINT FOR DECLARATORY RELIEF (C.C.P. SECTION 1060), ACCOUNTING, INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE (C.C.P. SECTION 1085, et seq.), and know its contents.

I am the General Manager of the San Diego County Water Authority, a plaintiff in this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

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

Executed on JAN 30, 2001, at San Diego, California.

  
Maureen A. Stapleton

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**VERIFICATION**  
**STATE OF CALIFORNIA,**  
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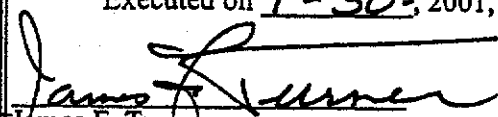
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I am a plaintiff in this action.

I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

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

Executed on 1-30-2001, at San Diego, California.

  
James F. Turner

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**STATE OF CALIFORNIA,**  
**COUNTY OF SAN DIEGO**

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I am a plaintiff in this action.

I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

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

Executed on Jan. 30, 2001, at San Diego, California.

  
Bernard Rhinerson

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**VERIFICATION**

**STATE OF CALIFORNIA,  
COUNTY OF SAN DIEGO**

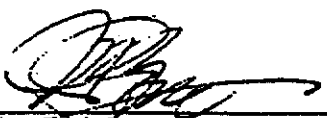
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I am a plaintiff in this action.

I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

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

Executed on JAN. 29, 2001, at Encinitas, California.

  
James Bond