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FILED
Superior Court of California
County of Los Angeles

NOV 08 2017

Sherril R. Carter, Executive Officer/Clerk

By J. De Luna, Deputy
Jennifer De Luna

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

The People of the State of California on the
Relation of the DISTRICT ATTORNEY OF LOS
ANGELES COUNTY,

Petitioner and Plaintiff,

v.

ALBERT ROBLES, an individual,

Respondent and Defendant.

CASE NO. BC608075
[Related to Case No. BC642232]

[Exempt Pursuant to *Gov't Code* § 6103]

**PETITIONER'S OPENING BRIEF RE: QUO
WARRANTO**

Assigned to Hon. James C. Chalfant
Department 85

Hearing Date: January 25, 2018
Department: 85
Time: 9:30 a.m.

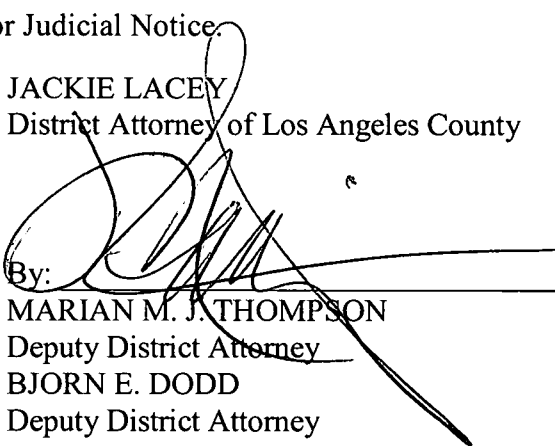
Action Filed: 01/25/16

[Filed concurrently with Declaration of Marian M.
J. Thompson, and Petitioner's Request for Judicial
Notice]

1 Petitioner and Plaintiff, the District Attorney of Los Angeles County ("District Attorney")
2 respectfully submits the following Opening Brief re: *Quo Warranto*, along with the Declaration of Marian
3 M. J. Thompson, and Petitioner's Request for Judicial Notice.

4 Dated: November 8, 2017

JACKIE LACEY
District Attorney of Los Angeles County

By: 

MARIAN M. J. THOMPSON

Deputy District Attorney

BJORN E. DODD

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Attorneys for Petitioner/Plaintiff/DISTRICT
ATTORNEY OF LOS ANGELES COUNTY

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1 **I. INTRODUCTION**

2 The District Attorney brings this extraordinary writ in Quo Warranto against Albert Robles
3 (“Robles”) under Code of Civil Procedure §§ 802-811, because Robles simultaneously holds the elected
4 offices of Director of the Water Replenishment District of Southern California (“WRD”) and Mayor of
5 the City of Carson (“Carson”), in violation of Government Code § 1099. Based on the powers and
6 jurisdiction of the offices, there is the potential for a significant clash of duties or loyalties between the
7 offices. The opportunities for conflict between the WRD and Carson derive from their legal status and
8 statutory powers as government agencies under California law—the conflicts are, in other words, formal
9 and institutional. Robles was elected as a Director of the WRD in November 1992, and has continuously
10 held such office, either through election or appointment, through the present. The District Attorney seeks
11 a judgment to remove Robles as a Director of the WRD, as the office first held. (Declaration of Marian
12 M. J. Thompson, Ex. 1, Ex. 16, pp. 2-4.)¹

13 As the Attorney General (“AG”) has repeatedly held in an unbroken line of authority, the offices
14 of city councilmember and water district board member are incompatible when the jurisdictions of the
15 two entities overlap each other. The jurisdiction of the WRD and Carson overlap. The WRD manages
16 groundwater for nearly four million residents in 43 cities of southern Los Angeles County. The WRD
17 created five Divisions of representation for each director. Robles represents Division Five, which
18 includes the cities of Bellflower, Carson, Compton, Downey, La Habra Heights, Norwalk, Paramount,
19 Pico Rivera, Santa Fe Springs, and Whittier.

20 In order to trigger the doctrine of incompatible offices, requiring the ouster of a public official
21 from the office first held, it is enough that there is the “potential” for a significant clash of duties and
22 loyalties between the two offices at some point in the future. The public need not wait until such a clash
23 occurs. A person who is both a director of the WRD and a city councilmember in the same district may
24 find a conflict between action which is in the best interests of the WRD and action which is in the best
25 interests of the city. As illustrated herein, the “potential” for a significant clash of duties exists between
26 the two offices under multiple scenarios.

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1 **II. FACTUAL BACKGROUND**

2 **A. The WRD is a Special District Created to Manage the Central and West Coast Basins**

3 The WRD is a special district created in 1959 pursuant to the Water Replenishment District Act
4 ("the Act") which was enacted in 1955, and codified in § 60000, et seq. of the California Water Code.
5 Robles is a director of the WRD, and has held this office continuously since his election in 1992. (Ex. 1,
6 pp. 1-3, 14-16, 36-39, 85, 116-117, 171-177, 193-195.) Prior to its creation, groundwater was produced
7 from the Central and the West Coast Basins ("Basins") by municipal and private pumpers who provided
8 water to residents and businesses in amounts that greatly exceeded natural replenishment, creating a
9 condition known as "overdraft." The "overdraft" caused a drastic decline of the groundwater table and
10 the intrusion of seawater. The WRD was created to manage and protect the Basins. (Ex. 2.)

11 The WRD may do any act necessary to replenish the groundwater of the Basins by, among other
12 things, buying and selling water, exchanging water, storing water, recycling water, injecting water into
13 seawater barriers to prevent seawater intrusion, building the necessary infrastructure to achieve
14 groundwater replenishment, and managing and controlling water for the beneficial use of persons or
15 property within the district. (Water Code §§ 60220-60226.)

16 The WRD may also sue and be sued; take property by grant, purchase, gift, devise, or lease real
17 property of every kind, within or without the district, necessary or convenient to the full exercise of its
18 power; and exercise the right of eminent domain to take any property necessary to supply the district or
19 any portion thereof with replenishment water. (Water Code § 60230.)

20 **B. The WRD has Authority to Raise Funds to Provide Services Within Its District**

21 In order to meet its statutory obligations, the Act authorizes three revenue sources to the WRD,
22 including (i) the sale of water for which it may impose a water charge, to pay its operating expenses; (ii)
23 the levy of property taxes, if the water charge is inadequate to meet its operating expenses, and (iii) the
24 imposition of a replenishment assessment ("RA"), only to the extent necessary to purchase water for
25 replenishment and to fund clean-up operations in the Basin. (Water Code §§ 60245-60246, 60250-60257,
26 and 60305-60329.)

27 In 1978, the WRD passed a resolution to fund its operating expenses from RAs rather than
28 property taxes to avoid Proposition 13 requirements, which required a two-thirds vote for the imposition

1 of any new or increased property taxes. (Cal. Const. Art. XIII A, § 4.) (Ex. 3.) The WRD holds annual
2 public rate setting hearings to determine the RA for the ensuing fiscal year, at which pumpers, public
3 officials, or residents in the district may be heard, and adopts a resolution establishing a uniform RA per
4 acre foot ("AF") of water on the production of groundwater from the Basins against groundwater
5 producers. (Water Code §§ 60300, 60306, 60315, and 60317.) The hearings provided an "invitation to
6 all interested parties to attend and be heard in support of or opposition to the proposed RA." (Ex. 4; Ex.
7 41, pp. 2-3, 9-13, 22.)

8 The WRD is also responsible for "clean up" operations in the Basins, the cost for which is
9 included in the RA. (Water Code § 60224.) The WRD operates and maintains groundwater monitoring
10 wells to test groundwater levels and water quality through its Regional Groundwater Monitoring Program
11 ("RGMP"). Between 1997-2010, the WRD obtained authorization and construction permits from Carson
12 to build three groundwater monitoring wells in the city. (Ex. 5.)

13 The RA is one of the single largest cost factor of groundwater for groundwater producers in the
14 Basins. A series of audits by the State Auditor between 1999 and 2004 criticized the WRD's excessive
15 RA rates, wasteful spending, and excessive reserves. (Ex. 6, pp. 3, 5, 17, 20, 25, 39, 43, 84; Ex. 7, pp. 3,
16 80-82; Ex. 8, pp. 3, 56-57.) However, the audits did nothing to prevent the RA rate increases since 2004.
17 The WRD has increased the RA by more than 100% between 2005-2017 (\$135/AF to \$318/AF). (Ex. 9,
18 pp. 5, 14, 22, 31, 40, 49, 59, 71, 82, 92, 108, 127, 137.)

19 This raises a potential for a significant clash of duties and loyalties because Robles approves the
20 annual RA as a director of the WRD assessed against all groundwater producers; the RA is passed through
21 to Carson by its water servicers on a dollar for dollar basis, which has led to rising water rates for
22 consumers; and Carson residents and/or public officials could object to the RA at the WRD's annual rate
23 setting hearing, or sue the WRD for wasteful spending in an effort to reduce the water rates charged by
24 their water servicers.

25 C. City of Carson

26 Carson overlies the West Coast Basin and lies within the boundaries of the WRD. In addition to
27 being a user of water from the West Coast Basin, Carson possesses all of the powers and authorities of a
28 general law city. (Ex. 29, pp. 2-6, 34.) These include the authority to regulate land use, (Cal. Const. Art.

XI, § 7), acquire property (Gov. Code § 37350), construct and operate facilities (Gov. Code § 37353), incur debt (Gov. Code § 43602), sue or be sued (Gov. Code § 945), and levy taxes on property. (Gov. Code § 37100.5.) Carson can also organize the provision of water supply services to its residents. Carson may acquire by gift, purchase, or condemnation, water, water rights, reservoir sites, rights of way for pipes, aqueducts, flumes, or other conduits, and all other property and appliances suitable and proper to supply water for the use of Carson. (Gov. Code § 38730; Code of Civ. Proc. §§ 1230.010-1273.050.) Robles was elected to the Carson City Council in March 2013, and was most recently sworn into office as mayor on January 10, 2017. (Ex. 10, pp. 1, 3, 31, 33; Ex. 16, p. 2)

D. Carson Water Suppliers

Carson is served by two investor-owned water utility companies, Golden State Water Company (“Golden State”) and California Water Service Company (“Cal Water”). (Ex. 16, p. 14-16; Ex. 29, p. 11.) As PUC-controlled public water utilities, the companies pass the RA assessed against them by the WRD to their customers on a dollar-for-dollar basis, which has led to increased water rates in Carson.² (Ex. 11, pp. 10, 20, 25; Ex. 16, p. 29.) On July 13, 2013, after vocal complaints at a city council meeting, and at the direction of the city council, Carson intervened before the Public Utilities Commission to object to Cal Water’s request to increase water rates, because increased water rates directly impact Carson. Cal Water regularly increased its rates as the result of increased RA’s imposed against it by the WRD. (Ex. 11, pp. 1-30; Ex. 12, pp. 9-10, 33-36; Ex. 16, pp. 57-58, 283-300; Ex. 29, p. 23.)

III. LEGAL ANALYSIS

A. The Quo Warranto Action

Quo Warranto (Latin for “by what authority”) is a legal action brought to resolve disputes concerning the right to hold public office. California law provides that the action may be brought either by the AG or by others acting with the consent of the AG, because disputes over title to public office are viewed as a public question of governmental legitimacy, and not merely a private quarrel among rival claimants. (Code of Civ. Proc. §§ 803-811.) Judgment against a defendant for usurping, intruding into, or unlawfully holding an office serves to oust the defendant from the office first held (and a fine up to \$5,000). (Code of Civ. Proc. § 809.) (*Ensher, Alexander & Barsoom, Inc. v. Ensher* (1965) 238

² Cal Water has sought numerous rate increases within the past ten years ranging between approximately 10% to as high as 25% each time. Rising RA rates contribute to rising water rates according to Cal Water.

1 Cal.App.2d 250, 255.) The burden of proof is on the defendant to establish the lawfulness of holding the
2 office. (*People v. City of San Jose* (1950) 100 Cal.App.2d 57, 59; *People v. Hayden* (1935) 9 Cal.App.2d
3 312, 313.)

4 **B. It is Enough if There is the Potential for a Significant Clash of Duties or Loyalties**

5 In order to trigger the doctrine of incompatible offices, it is enough if there is the “potential” for
6 a significant clash of duties or loyalties between the two offices. The AG has stated that only one potential
7 significant clash of duties or loyalties needs to be found to render two offices incompatible. In 63
8 Ops.Cal.Atty.Gen. 623 (1980), the offices of city mayor and airport district director were found to be
9 incompatible even though there were currently “no significant ‘interactions’ between the city and the
10 district.” The AG concluded that in many situations that would arise “‘in the regular operation of the
11 statutory plan,’” the person holding both offices would have “[t]he potential for significant clashes” of
12 loyalties. (*Id.* at p. 627.)

13 In 85 Ops.Cal.Atty.Gen. 60 (2002), a public official held office on both a water district and school
14 district board. The AG concluded that a significant clash of duties and loyalties could arise in connection
15 with the water district setting the wholesale water rate that could be “passed on” to the School District,
16 determining the need for restrictions on water usage during times of a water shortage, and imposing
17 conditions for providing sanitation services to the School District.

18 Likewise, in 73 Ops.Cal.Atty.Gen. 268 (1990), the AG determined that membership on the board
19 of directors of a county water district and a school district presented a substantial question of law with
20 respect to the incompatible offices doctrine. The AG observed the water district had the authority to
21 restrict the use of water during an emergency and to contract with other public agencies concerning the
22 control, distribution, and treatment of water, the construction of public works, the acquisition of property,
23 and the joint operation of any property or public works. (*Id.* at p. 271.)

24 In 76 Ops.Cal.Atty.Gen. 81 (1993), the AG concluded that an individual serving as a director on
25 both a water agency and an irrigation water district in the same county would be faced with conflicts of
26 interest based on the powers of each entity to enter into contracts involving matters of mutual concern
27 (Water Code §§ 71592, 71663, 71722), including the sale and purchase of water (Water Code §§ 71611-
28 71612), to sue and be sued in the case of conflicting interests (Water Code § 71750), and to exercise the

11/15/2017

1 right of eminent domain (Water Code §§ 71693-71694).

2 The AG has recognized that the public and each public entity have an interest in the undivided
3 loyalty of their elected officers. (73 Ops.Cal.Atty.Gen. 354, 357 (1990).) In a water district and city
4 councilman case, the AG opined:

5 “In such circumstances a city councilman would have to serve two masters if he held
6 the two offices concurrently. These examples do not nearly exhaust the possibilities of
7 conflict. Indeed, only one significant clash of duties and loyalties is required to make
8 the offices incompatible. The examples illustrate the compelling force of the district
9 attorney’s conclusion that on a number of occasions a person who is both a director of
10 the (water) district and a councilman of the city may find a conflict between the action
11 which is in the best interests of the (water) district and the action which is in the best
12 interests of the city.” (37 Ops.Cal.Atty.Gen. 21, 22, fn. 1 (1961).)

13 The legislature determined that the public interest prohibits one person from holding two public
14 offices which pose the potential for a significant clash of duties or loyalties. The issue is not how an
15 individual may attempt to reconcile exercising two public offices, but the mere fact that he or she must
16 make separate decisions for each office concerning subject matters that overlap. As illustrated below,
17 multiple scenarios create the potential for a significant clash of duties or loyalties that render Robles’ two
18 public offices incompatible.

19 **C. Robles’ and the WRD’s Actions in the Proposition 218 Lawsuit Against the WRD Illustrates**
20 **the Potential for a Significant Clash of Duties or Loyalties between Both Offices**

21 In August 2010, the cities of Cerritos, Downey, and Signal Hill filed a petition for writ of mandate
22 against the WRD under Proposition 218, challenging increased RAs on the grounds that it is a property-
23 related fee subject to Article XIII D of the California Constitution, and the result of excessive and out of
24 control spending by the WRD. Petitioners argued that prior to adopting a property-related fee, the WRD
25 must comply with Proposition 218’s procedural requirements, including written notice to all “affected
26 parties,” including property owners in the Basins, who have the right to protest increased expenses, debt,
27 reserves, administrative expenses, and director compensation, among other things, prior to the WRD’s
28 adoption of increased RAs. Under Proposition 218, if a majority of affected property owners file written
protests, “the agency shall not impose the fee or charge.” Petitioners also argued that the cost of service
for pumpers in the West Basin is four times greater than the cost of service for pumpers in the Central
Basin, and the RA should be assessed proportionally. (Ex. 13, pp. 6-8, 11.)

1 In April 2011, the Court granted the petition for mandate, having ruled that Proposition 218
2 applied to the RA, as a property-related fee, and ordered the WRD to vacate the RAs it imposed over the
3 past four years, and to comply with the provisions of Article XIII D, § 6(a) before imposing any new RA.
4 (Ex. 14, p. 14; Ex. 16, pp. 38-39, 120-136.)

5 On July 5, 2011, Robles, as a WRD director, met with Carson City Mayor Jim Dear to discuss
6 "city and WRD issues." On August 2, 2012, Robles, as a WRD director, met with Carson City Mayor
7 Jim Dear again in Carson for an "update on WRD matters," and to discuss matters impacting Carson.
8 (Ex. 15, pp. 54, 77; Ex. 16, pp. 17-19.)

9 In a May 29, 2012 WRD press release regarding the Proposition 218 lawsuit, Robles
10 acknowledged, "Unfortunately, it's the ratepayers (including Carson) who bear the burden of paying
11 millions of dollars in this unnecessary legal gamesmanship. We hope that the Court's decision allows us
12 a moment to pause and begin working together to solve the water crisis facing all ratepayers rather than
13 waste more precious public resources squabbling." (Italics added.) (Ex. 16, pp. 43-45, 228-229; Ex. 17.)

14 In September 2012, in related cases brought by Tesoro Refining and Marketing Co. ("Tesoro"),
15 with operations in Carson, and the Central Basin Municipal Water District ("CBMWD") against the
16 WRD, the Court granted the petitions for mandate, having ruled that Proposition 218 applied to the RA,
17 and ordered the WRD to vacate the RAs, and to comply with the provisions of Proposition 218 before
18 imposing any new RA. (Ex. 16, pp. 40-43, 137, 166, 192; Ex. 18, p. 1; Ex. 19, p. 1; Ex. 20, pp. 2, 28, 31.)

19 On October 16, 2012, after suffering repeated defeats in court in the Proposition 218 litigation,
20 Robles, in his role as President of the WRD board, made a PowerPoint presentation before the Carson
21 City Council to discuss the impact of the Proposition 218 lawsuit on Carson. (Ex. 16, p. 30; Ex. 21, pp.
22 1-26; Ex. 22, pp. 2-5.) Among other things, Robles admitted during his presentation that the WRD's
23 operation and litigation costs, assessed against Basin pumpers in the form of the RA, come from "the
24 pocket of every water rate payer in Carson," as those costs are "passed on to the ultimate consumer and
25 resident here in Carson." (Ex. 16, pp. 5, 19-26; Ex. 22, pp. 3-7.) He then attempted to interfere with
26 Carson's professional relationship with its City Attorney, Aleshire & Wynder, by highlighting the fact
27 that the city litigants were represented by the same firm. "What you have here is a situation where the
28 law firm that is the city attorney for the City of Carson is fighting to quadruple the water rates for the

1 City of Carson.” (Ex. 16, p. 26; Ex. 29, p. 8-9.) Robles concluded his presentation, “It’s costing the Water
2 Replenishment District money and it’s costing Carson residents money today. But if they’re successful,
3 it’s going to cost Carson residents a lot more money in the future.” (Ex. 22, pp. 7-8.) Although Robles
4 was not a sitting councilmember, Robles’ lobbying efforts as a WRD director in Carson highlight the
5 potential for a significant clash of duties and loyalties between both offices. Robles cannot serve two
6 masters and remain neutral (Ex. 29, pp. 14-18, 28-30.).

7 No action was taken by the City Council to terminate its contract with Aleshire & Wynder. (Ex.
8 23.) Within weeks, Robles pulled his nomination papers to run for Carson City Council and was elected
9 to office in March 2013. (Ex. 16, pp. 33, 71-76; Ex. 23; Ex. 24.) During the pendency of the Proposition
10 218 litigation against the WRD, and as soon as he was elected, Robles lobbied for appointment to sit on
11 the city council committee charged with the performance review of the City Attorney, in an effort to
12 terminate the City Attorney contract. (Ex. 16, pp. 31, 34-35; Ex. 23.) He told Carson public officials he
13 wanted to fire the City Attorney because the firm represented the city litigants in the Proposition 218
14 litigation against the WRD. (Ex. 16, p. 36-37; Ex. 23.)

15 The city litigants settled the Proposition 218 lawsuit with the WRD in 2015. The WRD agreed to
16 pay the city litigants’ attorneys’ fees and costs, and fund \$5 million in water projects in the cities. The
17 parties also agreed to a “peace term” during which the cities would not pursue any litigation against the
18 WRD related to the validity of the RA for the ensuing three years, giving the WRD carte blanche to
19 charge excessive rates without challenge. The parties also adopted Proposition 218-like Procedures,
20 which limited notice of the WRD’s annual rate setting hearing and protest opportunity to “Active
21 Pumpers” within its jurisdiction. An “Active Pumper” was defined as a holder of an adjudicated right
22 who had pumped water from a groundwater producing facility in the prior year. (Ex. 16, pp. 52-56, 59,
23 233-282; Ex. 25, p. 16.)

24 The Settlement Agreement may not have been in the best interests of Robles’ constituents in
25 Carson. The Proposition 218 litigants argued, and the court agreed in its final ruling, that the WRD must
26 give notice and an opportunity to be heard to all “affected parties” to protest any rate increase, including
27 all parcel owners within the Basins. However, the Settlement Agreement does not require notice to all
28 “affected parties.” This provision specifically excludes Robles’ constituents in Carson who Robles

1 admitted are directly impacted by rising RAs, as the result of decisions and actions by the WRD.

2 **D. Carson's Land Use Regulatory Activities May Affect the Supply and Quality of Basin**
3 **Groundwater**

4 Carson's land use regulatory activities may also affect the supply and quality of the groundwater
5 that the WRD is charged with supplying and conserving, which could serve as another area of potential
6 conflict. (*Azusa Land Reclamation Co. v. Main San Gabriel Watermaster* (1997) 52 Cal.App.4th 1165,
7 1178-1179.) Carson might seek to boost its economy through land development, and expanding industry
8 to increase revenue streams and add new jobs. But, from the WRD's perspective, such action could pose
9 risks to the supply and quality of the Basin groundwater. (Ex. 29, pp. 7-10, 24-27, 32-33, 37, 41; Ex. 41,
10 pp. 15-19, 33-34, 37-39.)

11 To illustrate, Tesoro³ announced plans in August 2012 to buy the BP Refinery in Carson as part
12 of a \$2.5 billion purchase. The acquisition would make Tesoro the largest refinery in California. The BP
13 Refinery provides about 20% of Southern California's gasoline market and half of the jet fuel for LAX.
14 The purchase required the approval of the AG and the Federal Trade Commission ("FTC.") (Ex. 26.)
15 Tesoro's purchase of the BP Refinery was not welcomed by Robles and the WRD. On April 18, 2013,
16 while a newly seated Carson councilmember, Robles and other WRD representatives met with the AG's
17 Antitrust Division in an attempt to stop approval of Tesoro's BP acquisition in Carson, by requesting that
18 the approval be conditioned on payment of monies owed to the WRD by Tesoro, in connection with the
19 Proposition 218 lawsuit. The AG declined to consider the request, and both the AG and the FTC later
20 approved the acquisition. (Ex. 16, pp. 44-51, 230-232; Ex. 27.)

21 Tesoro later acquired BP Refinery, and proposed to expand refinery operations in Carson, under
22 the Tesoro Los Angeles Refinery Integration and Compliance Project ("LARIC".) The South Coast Air
23 Quality Management District ("SCAQMD") became the lead agency, and approved the Final
24 Environmental Impact Report ("EIR") in May 2017. Within days, Robles voted to serve a Notice of Intent
25 to File CEQA Petition against the SCAQMD, to challenge the final EIR, and seek a TRO restraining any
26 action by Tesoro to carry out the LARIC project. (Ex. 28, pp. 1-2.) According to Carson City Manager
27 Ken Farfsing, "our position is that the entire refinery project needs to be approved by the City through a

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1 conditional use permit.” (Ex. 29, p. 14.)

2 In August 2017, Robles voted to place a .25% tax on revenues generated by the oil and gas
3 industry on the November 7, 2017 ballot. The tax primarily targets Tesoro, as the largest refinery in
4 Carson, and is estimated to generate \$24 million in additional tax revenues. (Ex. 30, pp. 1-5.)

5 In March 2014, Carson considered a development proposal by Occidental Petroleum to build a
6 production facility consisting of 202 wells, an oil and gas processing facility, and shipping and pipeline
7 facilities to produce and transport 6000 barrels per day of oil and three million standard cubic feet per
8 day of natural gas. Robles raised concerns about deep oil and gas drilling that could contaminate the
9 water supply, and moved to “stop and shelve the process immediately.” On Robles’ motion, a 45-day
10 moratorium was passed but later expired, because it did not have the majority support of the city council.
11 In former Mayor Jim Dear’s opinion, “an extension of the moratorium would have done nothing to protect
12 the interests of residents, or labor unions, who wanted more economic growth, and greater job
13 opportunities in Carson. (Ex. 16, p. 6, 63-64; Ex. 23, pp. 1-4; Ex. 31, pp. 21-22; Ex. 32, pp. 1 and 5.)

14 Robles’ actions on the Carson City Council serve to illustrate the inherent conflict in representing
15 two separate offices whose jurisdictions overlap. None of his actions served the interests of the large oil
16 and gas industry upon which much of Carson depends, but appear to have served the interests of the
17 WRD. Which master was Robles serving at the time he took these actions?

18 **E. The Statutory Authority of Carson to Exercise the Right of Eminent Domain May Create a**
19 **Potential Conflict of Duties and Loyalties**

20 The use of eminent domain to establish a municipal water service in Carson creates another area
21 for a potential clash of duties and loyalties, and is not purely speculative. (Ex. 29, pp. 12-13.) In 2004,
22 the City of Bellflower filed an eminent domain action to take the assets owned by Peerless Water Co.,
23 Inc., in order to establish a municipal water service in the city to better serve its constituents. (Ex. 33, pp.
24 1-6.) Similarly, in 2014, the City of Claremont filed an eminent domain action to take the assets owned
25 by Golden State used to provide water in the city in order to establish a municipal water service in
26 Claremont. (Ex. 34, pp. 1-4.) If Carson were to file an eminent domain action to take the assets of Golden
27 State, or Cal Water, used to provide water in the city, it would be directly impacted by the decisions and
28 actions of the WRD.

11/15/2017

1 The WRD could also enter into a Joint Powers Authority (JPA) agreement with Carson to take
2 over the assets of Golden State or Cal Water. This action is also not speculative. On August 10, 2016, the
3 Maywood City Council reviewed a proposal to create a Maywood Water Authority, as a JPA, to acquire
4 the water systems currently owned by three mutual water companies in Maywood. The proposal
5 contemplated joint control by Maywood and the WRD, with two WRD directors sitting on the JPA, along
6 with Maywood councilmembers, and the use of eminent domain by the JPA to acquire the mutual water
7 companies. (Ex. 35, pp. 6 and 9; Ex. 36, pp. 3, 17-18, 21, 26-27, 30.) Maywood City Attorney Michael
8 Montgomery stated in in his deposition that he discussed the JPA with Robles, who as a director of the
9 WRD supported the creation of the JPA. (Ex. 37, pp. 2-20, 23-24, 38.)

10 **F. The Statutory Authority of the WRD to Build Necessary Infrastructure May Create a**
11 **Potential Conflict of Duties and Loyalties**

12 Finally, the WRD is statutorily authorized to build the “necessary infrastructure” to achieve
13 groundwater replenishment, and to manage and control water for the beneficial use of persons or property
14 within the district, and may enter contracts with other public entities, or exercise the right of eminent
15 domain. (Water Code §§ 60220-60330.) The WRD has completed numerous capital improvement
16 projects in the Basins, and has multiple projects in development. Every project requires the WRD to
17 lobby and negotiate with local public officials, comply with California Environmental Quality Act
18 (CEQA) requirements, lease or purchase private or public property, obtain permits, pay local fees and
19 taxes, and/or enter into contracts with local city governments, in order to complete these projects. (Ex.
20 29, pp. 19-22, 30:22-31:11.) If a city, like Carson, refuses to cooperate with the WRD, the WRD could
21 exercise the right of eminent domain to seize public lands. (Code of Civ. Proc. § 1240.610.) (Ex. 16, pp.
22 7-13, 60-62.)

23 A city impacted by the WRD’s infrastructure projects may also find itself in the role of litigant.
24 In 1997, the WRD developed plans to build two desalination plants in Torrance to remove salt and
25 chloride from groundwater underlying the city. The plants were designed to turn brackish water into
26 drinkable water that would be sold to Torrance. In May 1999, six West Basin cities filed a lawsuit against
27 the WRD aimed at stopping the \$22-million water desalination project. The plaintiffs complained about
28 WRD’s out of control spending, and the failure to follow public bidding rules that could impact the cities.

11/15/2017

1 (Ex. 38, pp. 1-2.) The Robert W. Goldsworthy Desalter plant was later completed, but required the WRD
2 to obtain city authorization, enter into a contract with the city to lease public land, contract with the city
3 for the purchase of the city's pumping rights, and to set a water pricing structure to sell water to the city.
4 (Ex. 16, pp. 60-61; Ex. 39.)

5 Likewise, the WRD could develop capital improvement projects in Carson, or neighboring cities,
6 that directly impact Carson. Such projects would require the WRD to lobby and negotiate with local
7 public officials, obtain the approval of the city council, comply with CEQA requirements, lease or
8 purchase private or public property, enter into contracts with the city, and obtain permits. (Ex. 41, pp. 5-
9 8, 14-15, 20-31, 35-36, 43.) The WRD's statutory authority to build the necessary infrastructure to
10 replenish groundwater in the Basins, for the benefit of everyone in the district, including Carson, and
11 Carson's statutory authority to approve or disapprove a WRD project were it sited in Carson, create the
12 potential for a significant clash of duties or loyalties. (Ex. 16, pp.7-13.) Under these circumstances,
13 Robles cannot serve two masters, and remain neutral.

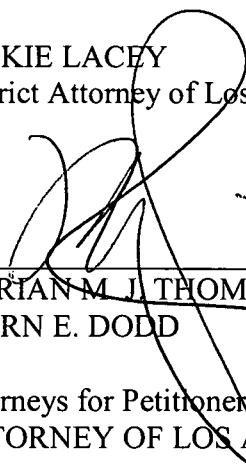
14 IV. CONCLUSION

15 As opined by renowned water management expert Dr. William A. Blomquist, the powers
16 belonging to the WRD and the powers belonging to cities within the WRD's jurisdiction overlap, and
17 actions taken by both public agencies have effects upon the other. Decisions by the WRD regarding
18 groundwater replenishment within the West Coast Basin, operation of the barrier projects that protect the
19 West Coast Basin from seawater intrusion, the siting, location and operation of WRD facilities,
20 groundwater levels and the quantity of groundwater in storage, and the RA on groundwater production,
21 among other things, all have important implications for overlying municipalities, including Carson. These
22 WRD decisions affect land-use options, property values, and the cost, availability, and reliability of water
23 supplies in Carson and other municipalities overlying the West Coast Basin. Carson's decisions and
24 actions concerning land uses and zoning, economic development, and public health within the city,
25 including decisions affecting some of the largest industry on which Carson's economy and residents
26 depend, such as its oil and gas producers, refineries, and others, who are major groundwater consumers
27 from the West Coast Basin that the WRD is charged to protect, also impact the decisions and actions
28 taken by the WRD. (Ex. 40, pp. 1-7.)

1 For all of the foregoing reasons, the District Attorney of Los Angeles County respectfully requests
2 this Court to grant the relief for which it prays.

3
4 Dated: November 8, 2017

JACKIE LACEY
District Attorney of Los Angeles County

5
6
7 By: 
8 MARIAN M. J. THOMPSON
9 BJORN E. DODD

10 Attorneys for Petitioner/Plaintiff DISTRICT
11 ATTORNEY OF LOS ANGELES COUNTY
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I, Chone-Li Yang, am over eighteen years of age, not a party to the within cause and employed in the Office of the District Attorney of Los Angeles County with offices at 211 W TEMPLE ST 10TH FLOOR LOS ANGELES, CA 90012. On the date of execution hereof I served the following documents:

by emailing a true copy thereof, in the United States mail in the County of Los Angeles, California, to the following email addresses as follows:

Larry Daniels Larry.Daniels@doj.ca.gov


Chone-Li Yang

JACKIE LACEY
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Attorneys for Relator DISTRICT ATTORNEY OF LOS ANGELES COUNTY

BEFORE THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

The People of The State of California on the
Relation of The DISTRICT ATTORNEY OF
LOS ANGELES COUNTY,

Plaintiff,

vs.

ALBERT ROBLES, an individual,

Defendant.

Case No.: [Number]

**MEMORANDUM OF POINTS AND
AUTHORITES IN SUPPORT OF
APPLICATION TO SUE IN QUO
WARRANTO**

MEMORANDUM OF POINTS AND AUTHORITES IN SUPPORT OF APPLICATION TO SUE IN QUO
WARRANTO - 1

INTRODUCTION

The District Attorney of Los Angeles County (District Attorney) respectfully requests the Attorney General grant the District Attorney permission to bring an action in *quo warranto* against Albert Robles, because Mr. Robles currently holds the two incompatible offices of Director of the Water Replenishment District of Southern California (WRD) and City Councilmember of the City of Carson (Carson), in violation of Government Code section 1099. If permitted by the Attorney General, the District Attorney would seek a judgment from the Court removing Mr. Robles as a Director of WRD.

As the Attorney General has repeatedly held in an unbroken line of authority, the offices of city councilmember and water district board member are incompatible when the jurisdictions of the two entities overlap each other. The jurisdiction of the WRD and the City of Carson overlap. The WRD manages groundwater for nearly four million residents in 43 cities of southern Los Angeles County. The WRD created five Divisions to develop areas of representation for each director. Director Robles represents Division Five, which includes the cities of Bellflower, Carson, Compton, Downey, La Habra Heights, Norwalk, Paramount, Pico Rivera, Santa Fe Springs, and Whittier.

In order to trigger the doctrine of incompatible offices, it is enough that there is the "potential" for a significant clash of duties between the two offices at some point in the future. A person who is both a director of the WRD and a City Councilmember may find a conflict between the action which is in the best interests of the WRD and the action which is in the best interests of the city. As illustrated by the verified statement of facts, the "potential" for a significant clash of duties between the two offices exists in this case.

ARGUMENT

I. SUMMARY OF FACTS

A. Background

The WRD was formed in 1959 by a vote of the citizens of Los Angeles County and pursuant to the Water Replenishment District Act enacted in 1955, codified in section 60000, et seq. of the California Water Code (Water Replenishment Act). Prior to its formation, groundwater was produced from the Central Basin and the West Coast Basin by private or public pumpers who provided water to residents in Los Angeles County in amounts that greatly exceeded natural replenishment, creating a condition in the Basins known as "overdraft." The "overdraft" caused numerous problems, including a drastic decline of the groundwater table and the intrusion of seawater into the Basins. The WRD was formed to manage the Basins, which provide water for nearly 4 million residents in Los Angeles County. The WRD has its principal offices in Lakewood, but its jurisdiction extends over the entire Central and West Coast Basins, which include Carson.

The WRD replenishes the groundwater under its jurisdiction, by among other things, buying and selling water, exchanging water, storing water, recycling water, injecting water into seawater barriers to prevent seawater intrusion, building the necessary infrastructure to achieve groundwater replenishment, and managing and controlling water for the beneficial use of persons or property within the district. In order to meet its statutory obligations, the Water Replenishment Act authorizes the WRD to raise funds through various methods, including the sale of water, the levy of taxes and the levy of a replenishment assessment (RA), also known as a "pump tax." On an annual basis, the WRD holds a public hearing to determine the estimated costs of its operations, at which pumpers, local elected officials, or members of the public may be heard, and then adopts a resolution, levying a RA or "pump tax" on the production of groundwater from the Basins against

1 the private and public pumpers who pump water from the Basins. (Water Code Sections 60300,
2 60306, and 60315.)

3 The WRD is also responsible for "clean up" operations in the Basins. It operates and
4 maintains groundwater monitoring wells to test groundwater levels *and* water quality through its
5 Regional Groundwater Monitoring Program (RGMP). At least three of these groundwater
6 monitoring wells are located in Carson. The costs of the WRD's clean-up operations are also
7 included in the "pump tax" assessed against producers. The "pump tax" is passed through to
8 Carson and its residents dollar-for-dollar by the water utility companies that provide water service
9 to the area. Both California Water Company and Golden State Water supply water to Carson and
10 its residents. Carson, and its residents, are therefore indirectly affected by the amount of the "pump
11 tax" assessed annually by the WRD, and may object to the assessment at the annual public hearing.
12

13 The "pump tax" is the single largest cost factor of groundwater for municipal water
14 providers, private water companies, and industry pumping water within the Basins. The "pump
15 tax" nearly doubled from 2006-2010 (\$138/AF to \$244/AF). A series of audits by the State
16 Auditor between 1994 and 2004 criticized the WRD's excessive rates, excessive reserves, and
17 wasteful administrative spending. However, it appears the audits did nothing to prevent the rate
18 increases.
19

20 This raises a potential for a significant clash of duties and loyalties because Robles
21 approves the annual "pump tax" as a director of the WRD; the "pump tax" is passed through to
22 consumers by the water utilities who service Carson on a dollar for dollar basis; and Carson
23 residents and/or local officials could object to the "pump tax" as excessive in an effort to reduce
24 the water rates they are charged by their water suppliers.
25

26 //

27
28 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION TO SUE IN QUO
WARRANTO - 4

1 B. Proposition 218 Lawsuit

2 In May 2010, the WRD adopted a resolution which levied an increased assessment, or
3 "pump tax," on the production of groundwater for the 2010-2011 fiscal year. In August 2010, the
4 cities of Cerritos, Downey, and Signal Hill filed a petition for writ of mandate against the WRD
5 under Proposition 218, challenging the increased assessment on the grounds that it is a property-
6 related fee subject to Article XIII D of the California Constitution, and the result of excessive and
7 out of control spending by the WRD. This Article requires that prior to adopting a property-related
8 fee, an agency must comply with the procedural requirements set forth therein, including written
9 notice to all affected parties. Moreover, if a majority of affected owners file written protests at the
10 public hearing, "the agency shall not impose the fee or charge." Proposition 218 limits fees to
11 those required for the service an agency provides, and gives pumpers, and other "affected parties,"
12 the right to protest increased expenses, debt, reserves, administrative expenses, and director
13 compensation, among other things. It also provides for a proportional application of fees. The
14 Central Basin plaintiffs in this lawsuit argue that the cost of service for pumpers in the West Basin
15 is four times greater than the cost of service for pumpers in the Central Basin, and that Central
16 Basin pumpers are subsidizing West Basin pumpers. To date, the WRD continues to impose a
17 uniform "pump tax" across the Basins.

18
19 In April 2011, the trial judge ruled that Proposition 218 applied to the replenishment
20 assessment, which is a property-related fee, and ordered the WRD to vacate the replenishment
21 assessments imposed by it over the past four years, and to comply with the provisions of Article
22 XIII D before imposing any new replenishment assessment. In September 2012, in a related case
23 brought by Tesoro Refining and Marketing Co. and Central Basin Municipal Water District, the
24 trial judge entered the same order against the WRD.

1 On July 5, 2011, Mr. Robles, as a WRD director, met with Carson City Mayor Jim Dear to
2 discuss "city and WRD issues." On August 2, 2012, Mr. Robles, as a WRD director, met with
3 Carson City Mayor Jim Dear again in Carson for an "update on WRD matters."

4
5 In October 2012, after suffering a major defeat in court, Mr. Robles, as a WRD Director,
6 appeared before the Carson City Council to discuss the potential impact of the Proposition 218
7 lawsuit on Carson. Robles made a PowerPoint presentation before the City Council, and criticized
8 the Central Basin litigants. He argued that if the Proposition 218 lawsuit were successful against
9 the WRD, the water rates for Carson "could quadruple." He also suggested that it would be in the
10 best interests of Carson and its residents for the council members to lobby against the lawsuit with
11 their Central Basin counterparts. He concluded by stating, "There is one more thing that these
12 litigant cities have in common, aside from suing WRD and being in the Central Basin, and that is
13 that they share one law firm, Aleshire & Wynder, which is the same law firm that represents the
14 city of Carson. What you have here is a situation where the law firm that is the city attorney for
15 the city of Carson is fighting to quadruple the water rates for the city of Carson, and what I'm
16 asking Mr. Mayor and council members and Mr. City Attorney is, why?" The last comment
17 prompted the council members to question whether a conflict of interest existed between their City
18 Attorney and Carson. In response, the City Attorney asked for the opportunity to respond at the
19 next council meeting in November 2012.¹ Aleshire & Wynder, through an associate handling the
20 Proposition 218 litigation, subsequently made a PowerPoint presentation before the City Council
21 to alleviate its conflict of interest concerns, and also discussed the merits of the Proposition 218
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28 ¹ Aleshire & Wynder has a \$1,000,000 annual contract with Carson to serve as its City Attorney.

1 litigation. Mr. Robles, and Robert Katherman, another WRD director, both attended the
2 presentation and were given the opportunity to respond to the City Attorney's comments. Mr.
3 Robles responded by stating the City Attorney made "flat out misrepresentations." No action was
4 taken by the City Council to terminate its contract with Aleshire & Wynder. Within weeks, Mr.
5 Robles pulled his nomination papers to run for Carson City Council. Within a matter of months,
6 Mr. Robles was appointed to chair a City Council committee charged with the responsibility of
7 reviewing the City Attorney contract, and reviewing the performance of the City Attorney.
8

9 Here are some of the additional comments Robles made during his initial presentation,
10 demonstrating the significant clash of loyalties and duties between the two offices:
11

12
13 "One of the cities that I'm most proud of, uh, to represent is the city of
14 Carson. I represent 11 other cities, but, uh, I have a particular love for the city of
15 Carson..."

16 "The biggest challenge that we have is the litigation that presently confronts our
17 agency..., the cities that reside in this area, um, a handful of them..., their argument is,
18 and it has been for the last, uh, at least five years, that they are subsidizing the water cost
19 in West Basin, in Carson."

20 "If these litigant cities that are suing us are successful, what they're asking
21 is that we send a notification to every single parcel owner every year, asking them
22 whether or not they agree or disagree with the proposed water rate. That's an
23 additional cost just in the printing, postage and administration of this notification of \$2
24 million annually, \$2 million that, again, is going to be passed on to the ultimate
25 consumer and resident here in Carson."

26 "Their argument is that Central Basin cities should be paying \$163 per acre
27 foot and that the West Basin cities and residents should be paying \$627 per acre foot,
28 almost four times more. And since the city of Carson is in West Basin, if these litigant
cities have their way, the water rates in Carson could be quadrupled."

29 "And in terms of luring businesses into Carson or West Basin, I submit to you
that many businesses, not all, but many businesses, particularly smaller businesses,
would choose to go to the—to the, uh, cities in the Central Basin, because their water
rates (would be), uh, four times lower."

1
2 "It's very expensive to hire attorneys, and we've been accused of having an
3 army of attorneys. And, uh, they have their army of attorneys and we have our army
4 of attorneys, and again, and that's money—it's not coming from my pocket
5 directly. It's coming from the pocket of every water rate payer in Carson."

6 "And I'm asking that, uh, whether or not there have been any conflict
7 waivers provided by the city attorney to the city of Carson, and I'm also asking and
8 imploring the council members that you personally in your individual capacity as elected
9 representatives for the city, ask the city attorney why his law firm is doing this. It's
10 costing the Water Replenishment District money and it's costing the Carson
11 residents money today. But if they're successful, it's going to cost the Carson
12 residents a lot more money in the future."

13 The very fact that Mr. Robles, as a WRD director, made a presentation before the Carson
14 City Council on this subject, reiterating time and time again how the litigation could "quadruple"
15 Carson's water rates if successful, and concluding his presentation targeting Carson's City
16 Attorney, effectively demonstrates not only the potential, but the *existence* of a significant clash
17 of loyalties between both offices. Mr. Robles cannot serve two masters and remain neutral.

18 **II. LEGAL ANALYSIS**

19 **A. The Quo Warranto Action**

20 The remedy of *quo warranto* is vested in the People, and not in any private individual or
21 group, because disputes over title to public office are viewed as a public question of governmental
22 legitimacy, and not merely a private quarrel among rival claimants. Although the Attorney
23 General occasionally brings a *quo warranto* action, usually the action is filed by a private party,
24 who has obtained the consent of the Attorney General for leave to sue in *quo warranto*. The
25 District Attorney may seek leave to sue from the Attorney General as a private party. (Code of
26 Civil Procedure Section 811.) Even though permission may have been granted, the Attorney

1 General remains in control of the action, and must be kept in the loop every step of the way. Before
2 any complaint may be filed, the Attorney General requires an undertaking in the amount of \$500
3 by corporate surety to be filed with its office.

4 The remedies available in a *quo warranto* judgment do not include correction or reversal
5 of acts taken under the ostensible authority of an office. Judgment is limited to ouster or forfeiture
6 (and possibly a fine of up to \$5000). (*Ensher, Alexander & Barsoom, Inc. v. Ensher* (1965) 238
7 Cal.App.2d 250, 255.) Judgment against a defendant for usurping, intruding into, or unlawfully
8 holding an office serves to oust the defendant from the office first held. (Code of Civil Procedure
9 Section 809.) Mr. Robles first held the office of Director of the WRD.

10 *Quo warranto* actions are civil in nature, filed in the civil courthouse, and are governed by
11 the applicable provisions of the Code of Civil Procedure, and other state and local rules. The
12 burden of proof is on the defendant to establish the lawfulness of holding the office. (*People v.*
13 *City of San Jose* (1950) 100 Cal.App.2d 57, 59; *People v. Hayden* (1935) 9 Cal.App.2d 312, 313.)

14 B. Potential Conflict in Duties or Loyalties

15 In order to trigger the doctrine of incompatible offices, it is enough that there is the
16 “potential” for a significant clash between the two offices at some point in the future. In 85 Ops.
17 Cal. Atty. Gen. 199 (2002), a public official held office on both a Water District and School District
18 board. The Attorney General concluded that a significant clash of duties and loyalties could arise
19 in connection with the Water District setting the wholesale water rate that could be passed on to
20 the School District, determining the need for restrictions on water usage during times of a water
21 shortage, and imposing conditions for providing sanitation services to the School District.

1 Likewise, in 73 Ops. Cal. Atty. Gen. 268 (1990), the Attorney General determined that
2 membership on the board of directors of a county water district and a school district presented a
3 substantial question of law with respect to the incompatible offices doctrine. The Attorney General
4 observed that the water district had the authority to restrict the use of water during an emergency and
5 to contract with other public agencies concerning the control, distribution, and treatment of water, the
6 construction of public works, the acquisition of property, and the joint operation of any property or
7 public works. (*Id.*, 271.)

8
9 In 76 Ops. Cal. Atty. Gen. 81 (1993), the Attorney General concluded that the powers of
10 respective water agencies to enter into contracts involving matters of mutual concern (see Water
11 Code §§ 71592, 71663, 71722), including the sale and purchase of water (see §§ 71611, 71612),
12 to sue and be sued in the case of conflicting interests (see § 71750), and to exercise the right of
13 eminent domain (see §§ 71693, 71694), presented substantial questions of law warranting a
14 judicial resolution.

15
16 It is also recognized that the public and each public entity have an interest in the undivided
17 loyalty of their elected officers. (73 Ops. Cal. Atty. Gen. 354, 357 (1990).) In a water district and
18 city councilman case, the Attorney General opined that in "such circumstances a city councilman
19 would have to serve two masters if he held the two offices concurrently. These examples do not
20 nearly exhaust the possibilities of conflict. Indeed, only *one* significant clash of duties and
21 loyalties is required to make the offices incompatible. The examples illustrate the compelling
22 force of the district attorney's conclusion that on a number of occasions 'a person who is both a
23 director of the (water) district and a councilman of the city may find a conflict between the action
24 which is in the best interests of the (water) district and the action which is in the best interests of

1 the city.' The two offices are therefore incompatible and may not be held by the same person."
2 (37 Ops. Cal. Atty. Gen. 21, 22, fn. 1 (1961).)

3 In 02 Cal. Ops. Atty. Gen. 702 (2002), the Attorney General noted that a water district has
4 the statutory authority to acquire, control, distribute, store, spread, treat, and recycle water (Water
5 Code, § 71610), sell water (Water Code, §§ 71611, 71614), acquire, construct and operate sewage
6 and storm water facilities (Water Code, § 71670), enter contracts with other public entities for the
7 purpose of carrying out any of its powers (Water Code, § 71722), impose taxes (Water Code, §§
8 72090-72102) and exercise the right of eminent domain (Water Code, §§ 71693, 71694), among
9 other powers and duties (see Water Code, § 71590; *Carlton Santee Corp. v. Padre Dam Mun.*
10 *Water Dist.* (1981) 120Cal.App.3d 14, 24). The District may also undertake a water conservation
11 program (Water Code, § 71610.5) and restrict the use of District water during any emergency
12 caused by a water shortage (Water Code, § 71640).

13 The City, on the other hand, has the statutory authority to acquire water supplies and
14 facilities for use by the City and its inhabitants (Gov. Code, §§ 38730, 38742, subd. (b)) and to do
15 so by contract (Gov. Code, § 38742, subd. (a)), condemnation (Gov. Code, §§ 38730, 39792) or
16 other means (Gov. Code, § 38730). The City may collect water service standby charges whether
17 its water service is actually used or not. (Gov. Code, § 38743.) The City may sell, lease, or
18 otherwise transfer the control or management of its waterworks system to any municipal water
19 district that is engaged in supplying water to the inhabitants of the City if the City lies wholly
20 within the boundaries of such district. (Gov. Code, § 38750.)

21 There are at least nine separate Attorney General Opinions which have concluded that
22 holding the offices of city councilman and water district simultaneously presents substantial
23 questions of law and fact warranting judicial resolution in a *quo warranto* action.

24 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION TO SUE IN QUO
25 WARRANTO - 11

1 Here, the WRD's role as the supplier of water could generate significant clashes of duties
2 and loyalties for a person holding the two offices in question. Although it does not sell water
3 directly to Carson, the District sets pump taxes which are assessed against the private water utility
4 pumpers who supply Carson with water. The WRD's pump taxes are in turn reflected in water
5 charges the private water pumper's pass-through to Carson on a dollar for dollar basis. A rate
6 increase by the WRD indirectly affects Carson by the increase in the water rates charged by its
7 water suppliers. As Mr. Robles stated in his presentation before the Carson City Council, the
8 Proposition 218 litigation costs are "coming from the pocket of every water rate payer in Carson",
9 and if the litigation is successful, Carson's water rates "will quadruple."
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11

12 The City's water use practices and land use regulatory activities may also affect the supply
13 and quality of the groundwater that the WRD is charged with supplying and conserving, which
14 could serve as an area of potential conflict. (See *Azusa Land Reclamation Co. v. Main San Gabriel*
15 *Watermaster* (1997) 52Cal.App.4th 1165, 1178-1179.) For example, earlier this year, Carson
16 considered a proposal and Draft Environmental Report (DEIR) by Occidental Petroleum to build
17 a production facility consisting of 202 wells, an oil and gas processing facility, and shipping and
18 pipeline facilities to produce and transport 6000 barrels per day of oil and three million standard
19 cubic feet per day of natural gas. At the council meeting to discuss the DEIR, Robles raised
20 concerns about the environmental risks posed to the city and region from contamination of surface
21 water and ground water, as well as other risks. As a result, Carson issued an ordinance establishing
22 a 45-day moratorium on oil and gas drilling in the city. Although the moratorium was allowed to
23 expire on a later council vote, the city is now considering the passage of local ordinances to protect
24 the city and region from the potential risks imposed by oil and gas operations within the city's
25 boundaries. An argument could be made that Robles would always vote in a manner consistent
26

1 with his role as a director of the WRD, the agency responsible for water quality in the West Coast
2 Basin region.

3 Similarly, Carson, as the lead agency for the Shell Carson Revitalization Project, has
4 proposed the expansion of the Carson Distribution Facility by 1.8 million square feet to increase
5 the storage and loading capacity of finished fuels for subsequent transport by pipeline and trucks
6 to wholesale users and retail outlets (such as local service stations) and airports for jet fuel. The
7 project site overlies the West Coast Basin. Although the recently released DEIR for the project
8 found that the project may have less than a significant impact on water quality in the West Coast
9 Basin, the project could substantially degrade water quality if Shell violated any water quality
10 standards or waste discharge requirements typically related to petroleum and chemical product
11 contamination. (Shell Carson Revitalization Project DEIR, Page 4.8-18.) Shell historically has
12 been the subject of numerous cleanup and abatement orders (CAO) to clean up and abate the
13 groundwater impacts at the Carson Distribution Facility. This project raises another area for a
14 potential clash of duties and loyalties. What may be good for the city from an economic
15 perspective, including new jobs and a revenue stream from the expansion of the Carson
16 Distribution Facility, may not be good for the WRD due to the project's potential impact on the
17 water quality of the West Coast Basin.

18 Likewise, Tesoro Corporation, whose subsidiary is one of the plaintiffs in the Proposition
19 218 litigation against the WRD, announced plans in August 2012, to buy the BP Refinery in Carson
20 as part of a \$2.5 billion purchase. The BP Refinery shares a fence with Tesoro Corporation's
21 Wilmington facility. The move was welcomed by Carson Mayor Jim Dear who stated, "It's
22 actually very good news because it's an American company and, though BP as an organization has
23 been very supportive of Carson and a very good community member, we also already have a good
24 MEMORANDUM OF POINTS AND AUTHORITES IN SUPPORT OF APPLICATION TO SUE IN QUO
25 WARRANTO - 13

1 relationship with Tesoro.” Mayor Dear added that, “BP has supported the Boys & Girls Club of
2 Carson, various local performance-oriented theater groups, and many children’s programs.”

3 The move was not as welcomed by the WRD. One month after taking office as a Carson
4 Councilmember, Mr. Robles and other WRD representatives met with staff from the California
5 Attorney General’s Office in an attempt to stymie approval of the acquisition, by requesting that
6 the approval be conditioned on payment of monies owed to the WRD by Tesoro Corporation. The
7 Attorney General’s Office wasn’t interested.

8
9 In January 2015, Tesoro Corporation announced it is seeking public and regulatory
10 approval of plans to further integrate the two refineries into one large petroleum-processing
11 operation. The Los Angeles Refinery Integration and Compliance Project would create the largest
12 single oil refinery on the West Coast. In a letter to the South Coast Air Quality Management
13 District, a Carson planning official warned that the project would not be good for Carson, and
14 argued that Carson, not the AQMD, should be the lead agency of the environmental review. On
15 the other hand, Carson Mayor Dear sent a letter in October 2014 to Tesoro Corporation praising
16 the project, which has enthusiastic support from labor unions. According to the Los Angeles
17 Business Federation, “the integration of the Wilmington and Carson refineries will drive business
18 sustainability in the highly competitive and capital-intensive refining business.” The project will
19 also “create temporary construction jobs and support local businesses during the construction
20 period.”
21
22

23
24 The AQMD is gearing up for a state-mandated scientific study of the potential adverse
25 health and environmental effects of the project, including, among other things, how it will impact
26 water quality. Once the study is finished, and the public comment periods have been completed,

27 Tesoro Corporation will be required to submit various permit applications for the multiple phases

1 of the project to Carson officials for approval, thereby creating a potential clash of duties and
2 loyalties for Mr. Robles, who is defending the Proposition 218 litigation Tesoro Corporation has
3 filed against the WRD.

4
5 The WRD is also statutorily authorized to build the "necessary infrastructure" to achieve
6 ground water replenishment, and to manage and control water for the beneficial use of persons or
7 property within the district, including Carson. The WRD has numerous capital improvement
8 projects that have been completed in its service area, as well as eight (8) current projects, including
9 the Leo J. Vander Lans AWTF Expansion, the Groundwater Reliability Improvement Program
10 (GRIP), the Regional Groundwater Monitoring Program, the Safe Drinking Water Program, the
11 Whittier Narrows Conservation Pool Study, the Goldsworthy Desalter Expansion, the
12 Groundwater Basins Master Plan PEIR), and the Alamitos Barrier Observation Wells. Each of
13 these projects require that directors "interface" with their constituents, including local city
14 officials. Some of these capital improvement projects have resulted in clashes with local city
15 officials.
16
17

18 In 1997, for example, the WRD developed plans to build two desalination plants in
19 Torrance, CA to remove salt and chloride from ground water underneath the city. The plants were
20 designed to turn brackish water into drinkable water that would be sold to the residents of Torrance.
21 In May 1999, according to news reports, six Los Angeles County cities failed in their effort to
22 obtain an injunction against the WRD aimed at stopping the \$22-million water desalination project.
23 The Robert W. Goldsworthy Desalter plant was eventually built in Torrance using public land, and
24 is owned and operated by the WRD. The WRD has current plans to expand the plant.
25

26 Likewise, the WRD could develop capital improvement projects that directly impact
27 Carson, a city renowned for its oil and gas industry and infrastructure, requiring city permits and
28
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION TO SUE IN QUO
WARRANTO - 15

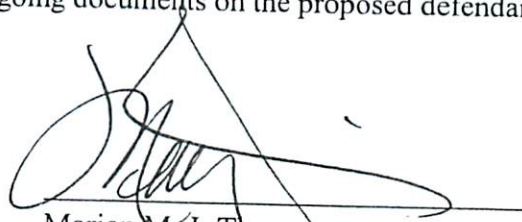
1 approval by the Carson City Council. Yet again, a potential for a significant clash of duties exists
2 between both offices held by Mr. Robles.

3 4 5 **III. CONCLUSION**

6 For all of the foregoing reasons, in accordance with Code of Civil Procedure section 803 and
7 title 11, sections 1 and 2 of the California Code of Regulations, relator and proposed plaintiff the
8 District Attorney of Los Angeles County hereby applies for leave to sue proposed defendant Albert
9 Robles in *quo warranto* in the name of the People of the State of California. Pursuant to title 11,
10 section 2 of the California Code of Regulations, the following documents are enclosed:
11

- 12 1. An original and one copy of the [proposed] verified complaint prepared for
13 the signature of a Deputy Attorney General, and the Attorney for the Relator, as attorneys for
14 plaintiff.
- 15 2. A verified statement of facts in support of this application;
- 16 3. A memorandum of points and authorities in support of this application;
- 17 4. A copy of the notice directed to the proposed defendant notifying him of
18 this application and giving him fifteen (15) days to appear and show cause why leave to sue
19 should not be granted; and
- 20 5. Proof of service of the foregoing documents on the proposed defendant.

21 Dated this 8th day of April, 2015.

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24 
25 Marian M. J. Thompson
26 Deputy District Attorney
27 Attorney for Relator District Attorney of
28 Los Angeles County