FILED
Superior Court of California
County of Los Angeles
APR 17 2018
Sherri R. Carter, Executive Officer/Clerk
By Jennifer De Luna, Deputy

The People of the State of California on the Relation of the District Attorney of Los Angeles County v. Albert Robles, et al., BC 608075

~~Tentative~~ decision on petition for *quo warranto*: granted

Plaintiff The People of the State of California on the Relation of the District Attorney of Los Angeles County ("Relator") seeks *quo warranto* to remove Defendant Albert Robles ("Robles") as a director of the Water Replenishment District of Southern California ("WRD").

The court has read and considered the moving papers, opposition, and reply,[1] and renders the following tentative decision.

A. Statement of the Case

1. Complaint

Plaintiff Relator commenced this proceeding on January 25, 2016, alleging violations of Government Code section 1099 ("section 1099"). The *quo warranto* Complaint alleges in pertinent part as follows.

At all times relevant to this action, Defendant Albert Robles ("Robles") was a director of WRD. On March 6, 2013, Robles was elected to the City Council of the City of Carson ("Carson" or "City"). On April 1, 2015, Robles was appointed to the office of Mayor of Carson.

As of March 6, 2013, Robles has unlawfully held the office of director of WRD in violation of section 1099. The positions of City Councilman/Mayor of Carson and director of WRD are incompatible under section 1099 because WRD and Carson have overlapping territory, duties, and responsibilities.

Relator seeks a judgment determining that Robles is not entitled to hold or exercise the office of director of WRD. Relator further seeks to fine Robles $5,000 pursuant to CCP section 809.

2. Course of Proceedings

On October 18, 2016, Department 15 granted Relator's special motion to strike under CCP section 425.16 and struck Robles' Cross-Complaint.

On May 17, 2017, Relator applied *ex parte* for a protective order to prevent the deposition of District Attorney Jackie Lacey ("Lacey"). The court granted the application, and set a hearing on a noticed motion for June 15, 2017. The taking of the deposition was stayed until after the hearing.

On June 15, 2017, the court granted Relator's protective order preventing the deposition of Lacey. The court also ordered case BC608075 and BC642232 related. The court ordered that all discovery in both cases could be used in either case. The court then set a briefing schedule for the instant case.

On February 27, 2018, the court adopted its tentative with respect to the conflict analysis, not the express exemption analysis. The matter was continued to April 17, 2018 for

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[1] The court has not considered Robles' sur-reply, which is not authorized by statute and not supported by a proof of service.

supplemental briefing.

B. *Quo warranto*

CCP section 803 provides:

> "An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state. And the attorney general must bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor."

Quo warranto — "by what authority?" — lies to test the usurpation of an office or exercise of a franchise or office. The attack is made on the procedural regularity of office or franchise already in effect. *See* International Assn. of Fire Fighters, Local 55 v. Oakland, ("International") (1985) 174 Cal.App.3d 687, 694 (*quo warranto* challenge to city police and fire pension and compensation measures that had taken effect). A *quo warranto* action under CCP section 803 provides the sole means for a private citizen to challenge the unlawful holding of public office. Nicolopulos v. City of Lawndale, ("Nicolopulos") (2001) 91 Cal.App.4th 1221, 1225. Title to an office cannot be tried by mandamus, injunction, certiorari, or declaratory relief. Ibid.

The remedy of *quo warranto* is vested in the People, and not in any private individual or group, because disputes over title to public office are a public question of governmental legitimacy and not just a private quarrel among rival claimants. Nicolopulos, *supra*, 91 Cal.App.4th at 1228. A *quo warranto* action may be brought by the Attorney General, or authorized by the Attorney General on the complaint of a private party. CCP §803. A chief object of the requirement for leave to sue "protects public officers from frivolous lawsuits." Nicolopulos, *supra,* 91 Cal.App.4th at 1229. A private citizen seeking leave to sue need only have a general public right, not an individual right to enforce. International, *supra*, 174 Cal.App.3d at 697. The action *must* be brought whenever the Attorney General "has reason to believe" that the conditions exist, or when the Attorney General is directed to do so by the Governor. CCP §803. Although the word "must" suggests a mandatory duty, the qualifying language "has reason to believe" provides the Attorney General with discretion to refuse to sue where the issue is debatable. International, *supra*, 174 Cal.App.3d at 697.

The Attorney General's determination whether to grant leave to file a lawsuit in the name of the People involves the exercise of discretion, and a court should compel the Attorney General to violate her own judgment by ordering her to grant leave to commence a suit "only where the abuse of discretion by the Attorney General in refusing the leave is extreme and clearly indefensible." Lamb v. Webb, (1907) 151 Cal. 451, 455. "Only in the event of an extreme abuse of the discretion should the courts annul the Attorney General's decision." City of Campbell v. Mosk, ("City of Campbell") (1961) 197 Cal.App.2d 640, 651 (Attorney General's refusal to file *quo warranto* over annexation of property in battle between cities was not extreme abuse of

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discretion).

A complaint in a *quo warranto* proceeding may set forth the claim of the person rightly entitled to the office, and the judgment may determine that right. CCP §§ 804, 805, 806. The rights of multiple claimants may be adjudicated in a single action. CCP §808. The defendant has the burden of proof to establish the lawfulness of holding the office or franchise. People ex rel. Smith v. City of San Jose, (1950) 100 Cal.App.2d 57, 59; People v. Hayden, (1935) 9 Cal.App.2d 312, 313. If the defendant is adjudged guilty of the usurpation, a judgment must be rendered excluding the defendant from the office, with costs, and the court in its discretion may impose a fine not exceeding $5,000. CCP §809. Damages suffered by the rightful party may be recovered in a separate action. CCP §807.

C. Statement of Facts[2]

1. Petitioner's Evidence

a. WRD

Founded in 1959, WRD is the largest groundwater agency in the State of California. Thompson Decl. Ex. 2, p.2. WRD is the only replenishment district in California set up under the Water Replenishment Act of California, Water Code §60000 *et seq.* Thompson Decl., Ex. 6, p. 5. WRD manages and protects local groundwater resources for four million residents. Id. WRD's service area covers a 420-square-mile region of southern Los Angeles County ("County"), the most populated county in the United States. Id. The 43 cities in WRD's service

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[2] Plaintiff asks the court to judicially notice (a) a mandamus petition in City of Cerritos et al v. WRD, ("Cerritos") BS128136 (Ex.13), (b) the notice of ruling in BS128136 (Ex. 14), (c) a mandamus petition in Central Basin Municipal Water District v. WRD, ("CBMWD") BS132202 (Ex. 18), (d) a mandamus petition in Tesoro Refining and Marketing Company v. WRD, ("Tesoro") BS134239 (Ex. 19), (e) a notice of ruling in the CBMWD and Tesoro cases (Ex. 20), (f) a notice of errata to joint stipulation filed in Cerritos as the lead case to related cases (Ex. 25), (g) a complaint in eminent domain in City of Bellflower v. Peerless Water Co., Inc., ("Bellflower") BC326514 (Ex. 33), (h) a complaint in eminent domain in City of Claremont v. Golden State Water Company, ("Claremont") BC566125 (Ex. 34), and (i) a complaint for declaratory relief in City of Downey et al v. WRD et al., ("Downey") BC210864 Ex. 38). The existence, but not the truth of these court filings is judicially noticed. Evid. Code §452(d); Sosinsky v. Grant, (1992) 6 Cal.App.4th 1548, 1551.

Robles asks the court to judicially notice (a) an Attorney General publication on *quo warranto* Ex. A), (b) a 1990 Attorney General publication on *quo warranto* (Ex. B), (c) a statement of final decision in Claremont (Ex. C), (d) a portion of the legislative history of SB 274, codified as section 1099 (Ex. D), (e) Carson Ordinance No. 17-1642U dated December 19, 2017, and (f) WRD Resolution No. 17-1069 dated December 14, 2017 (Ex. F). The requests are granted. Evid. Code §§ 452(b), (c), (d). Again, only the existence, but not truth, of the court filing is judicially noticed. Sosinsky v. Grant, *supra*, 6 Cal.App.4th at 1551.

Although Plaintiff does not ask for judicial notice, the legislative history of the enactment and repeal of section 1129.1 (Exs. 1-4) and a more complete history of SB 274 attached to or provided with the reply is judicially noticed. Evid. Code §452(b).

Finally, the court has ruled on Robles' evidentiary objections, interlineating Relator's original evidence where an objection was sustained.

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area, including Carson, use about 250,000 acre-feet (82 billion gallons) of groundwater annually which accounts for approximately half of the region's water supply. Id.

WRD's mission is to provide, protect, and preserve high-quality groundwater through innovative, cost-effective, and environmentally sensitive basin management practices for the benefit of residents and businesses. Id. WRD protects groundwater basins through artificial groundwater replenishment, ensuring that aquifers maintain healthy levels. Id. WRD also protects the Central and West Basins from seawater intrusion by injecting water into wells along the coastline to keep the ocean from further contaminating the groundwater aquifers. Id. WRD routinely monitors the groundwater to ensure the quality meets all health standards. Id. WRD operates groundwater monitoring wells throughout Southern California. Thompson Decl. Ex. 5, p.1.

WRD is governed by a five-member board of directors ("Board"), and each director represents a division of the district. Thompson Decl. Ex. 2, p. 2. WRD may do any act necessary to replenish the groundwater of the district. Water Code §60220. For the purpose of replenishing groundwater, the WRD may buy or sell water, distribute water to persons in exchange for reducing groundwater usage, spread or inject water underground, and store, recycle, purify, and otherwise manage water for the beneficial use of persons or property within the district. Water Code §60221. WRD may build the necessary works to achieve groundwater replenishment. Id. WRD has the power to sue and be sued and take real and personal property by grant, purchase, or lease within or without the district as necessary. Water Code §60230.

To raise revenue, WRD may (1) sell water for replenishment purposes at rates which will pay the operating expenses of the district (Water Code §§60221, 60245); (2) levy taxes if revenues from water charges are inadequate (Water Code §60250), or (3) impose a replenishment assessment ("RA") (also known as "pump tax") to purchase water for replenishment or remove contaminants from the groundwater supplies of the district. Water Code §60306.

If WRD elects to impose a RA, it must hold an annual public hearing. Water Code §60306. The notice shall contain an invitation to all interested parties to attend and be heard in support of or opposition to the proposed assessment. Water Code §60306. Following the hearing, WRD's Board shall adopt a resolution specifying, *inter alia*, the estimated rate of the RA. Water Code §60315(o). The RA must be fixed by the Board at a uniform rate per acre-foot of groundwater produced. Water Code §60317.

In 1978, the WRD's Board passed Resolution No. 78-211 stating that all general and administrative expenses of WRD, including purchases of water for replenishment, shall be paid from RA funds. Thompson Decl. Ex. 3, p.2.

A California State Auditor report issued in December 1999 concluded that WRD's "[w]eak policies and poor planning have led to excessive water rates and questionable expenses." Thompson Decl. Ex. 6, p.1. The report noted: "Over the past 10 years, [WRD] has purchased considerably less water than it has estimated it would need. Also, [WRD] has not sufficiently taken into consideration its unused cash balance when estimating how much money it would need to collect through the [RA] in a given year." Thompson Decl. Ex. 6, p. 5. A California State Auditor report issued in June 2004 found lingering problems with WRD's financial situation, noting that WRD likely overstated its reserve-fund targets by using faulty assumptions and did not provide outcomes by which the public can measure its progress. Thompson Decl. Ex. 8, p.3.

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Despite the State Auditor's findings, since 2004 WRD has increased the RA by more than 100%. Thompson Decl. Ex. 9, p.5, 137. Thus, the RA in the 2005 fiscal year was approximately $135 per acre-foot, and the RA for the 2017 fiscal year was $318 per acre-foot. *See* id.

b. Carson

Carson is a general law city. Thompson Decl. Ex. 29, p. 6. Robles was sworn in as the Mayor of Carson in January 2017. Thompson Decl. Ex. 10, p.1. As Mayor, Robles is also a member of the City Council. Thompson Decl. Ex. 29, p. 34.

California Water Service Company ("Cal Water") and Golden State Water Company ("Golden State") are the water producers which supply water to Carson itself, as well as to Carson's residents and businesses. Thompson Decl. Ex. 16, p. 14-15. Cal Water supplies the vast majority of this water. Thompson Decl. Ex. 29, p. 6.[3] Cal Water is a public water utility regulated by the California Public Utilities Commission ("CPUC"). Thompson Decl. Ex. 11, p. 2. The CPUC regulates Cal Water's rates in accordance with the cost-of-service method meaning that it sets rates solely to cover the utility's expenses, maintain facilities, and provide a reasonable return on capital. Id., p. 7.

97% of WRD's revenue is generated by the RA. Id., p.12. Some of Cal Water's rate increases are due to increases in the RA levied by WRD. Thompson Decl. Ex. 11, p.10. Cal Water passes the RA through to all of its customers via increased water rates on a dollar-for-dollar basis. Id., p. 20.

The decision to Cal Water's water rates is exclusively within the CPUC's discretion. Id., p. 16. Carson can protest, and has in the past protested, Cal Water's proposed rates to the CPUC. Id., p. 16. In 2012, Carson filed a motion to intervene in a CPUC proceeding wherein Cal Water sought to increase its rates by 19.4% in 2014, 3% in 2015, and 2.9% in 2016. Thompson Decl. Ex. 16, p. 285. Carson chiefly complained of the substantial economic burden on Carson residents and businesses, noting that Cal Water had increased rates for residential customers numerous times in the past ten years and non-residential customers (businesses and Carson) and recycled water users also had absorbed significant rate increases. Id., p. 288.

c. Jim Dear

Jim Dear ("Dear") served as the Mayor of Carson between 2004 and 2015. Dear Decl. ¶1. In 2012, Robles, acting as the President of WRD, contacted Dear to lobby Carson on behalf of WRD in connection with a Prop 218 lawsuit filed against WRD by several Central Basin cities. Dear Decl. ¶3. Robles told Dear that the Prop 218 lawsuit was going to hurt Carson through increased water rates. Dear Decl. ¶5.

In October 2012, Robles made a PowerPoint presentation to the Carson City Council in which he argued that the Prop 218 lawsuit against WRD could result in Carson's water rates quadrupling, and the costs would come out of the pockets of every ratepayer in Carson. Dear Decl. ¶7. At the conclusion of the presentation, Robles raised the issue of a conflict of interest between Carson and its City Attorney. Dear Decl. ¶8. Dear believes that Robles wanted the City Attorney fired because he represented the petitioner Central Basin cities in the Prop 218 lawsuit against WDR. Id. After the presentation, Robles offered to sponsor a charity of Dear's choosing

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[3] For convenience, the court will refer only to Cal Water as Carson's water vendor.

with WRD funds. Dear Decl. ¶9. Dear found this *quid pro quo* offer inappropriate and declined it. Id.

On November 13, 2012, Robles took out nomination papers to run for Carson's City Council. Dear Decl. ¶10. Robles won the election and was seated in March 2013. Dear Decl. ¶11. Shortly thereafter, Robles asked Dear to appoint him to the committee that reviews the City Attorney's performance and contract. Dear Decl. ¶12. In May 2013, Dear appointed Robles to serve as co-chair of that committee. Dear Decl. ¶13. Robles almost immediately began lobbying for termination of the City Attorney and told Dear that he was doing so because the City Attorney was suing WRD (in the Prop 218 lawsuit). Dear Decl. ¶14. Dear viewed Robles' lobbying as a conflict of interest. Dear Decl. ¶15. Despite Robles' efforts, the City Attorney was not fired. Dear Decl. ¶17.

On March 4, 2014, Carson's City Council considered a development proposal by Occidental Petroleum to build a state-of-the-art production facility consisting of 202 wellheads in an industrial zoned area approximately 1500 feet from any residential area. Dear Decl. ¶18. The proposal included a guarantee that Occidental would not engage in "fracking". Id. The subject area had operated as an active oil field for 70 years. Id.

Robles expressed concerns about the environmental risks posed to Carson and the surrounding region from contamination of surface and groundwater from deep oil and gas drilling, and moved to stop and shelve the process. Dear Decl. ¶¶ 18-19. To investigate, Carson's City Council passed an urgency ordinance imposing a 45-day moratorium on oil and gas drilling. Dear Decl. ¶20. The investigative staff reported little environmental impact from the project's construction and no negative environmental or health impact during operation of the facility. Id. Robles sought to extend the moratorium for another year but did not have the votes. Id. In Dear's opinion, an extension of the moratorium would not have protected the interests of Carson residents or the labor unions which wanted economic growth and greater job opportunities. Dear Decl. ¶21.

d. William A. Blomquist

William A. Blomquist ("Blomquist") is an expert on water management institutions and their performance. Blomquist Decl. ¶3. In his opinion, opportunities for conflicts of interest exist for persons who simultaneously hold office in WRD and a city government within WRD's boundaries. Blomquist Decl. ¶4.

Decisions by a municipality like Carson regarding land use, including the approval of development projects, the issuance of construction permits, siting of facilities, and the maintenance of property within the City (including waste disposal), have important implications for the West Basin to which Carson belongs. Blomquist Decl. ¶11. These municipal decisions affect the demand for groundwater supplies and the protection of or threats to groundwater quality. Id. WRD's planning and choices concerning the amount of groundwater replenishment needed, the location and operation of replenishment facilities, and the need to address remediate any groundwater quality contamination depend on the decisions taken by these municipal governments. Id.

WRD decisions regarding groundwater replenishment, operation of barrier projects that protect the West Basin from seawater intrusion, the location of WRD facilities, and its RA all have important implications for municipalities such as Carson. Blomquist Decl. ¶14. WRD's decisions affect land use options, property values, and the cost, availability, and reliability of

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water supplies in Carson. Id. Carson's planning and choices concerning land use, development, and public health depend on WRD's decisions and actions. Blomquist Decl. ¶15. Some of the largest businesses on which Carson's economy depends -- such as oil and gas companies -- are major groundwater users from the Central and West Basin that WRD is charged to protect. Blomquist Decl. ¶15.

WRD also has been given some duties by the court-appointed watermaster governing the water rights adjudication in the Central and West Basins. Blomquist Decl. ¶16. Major businesses in Carson, as well as the water companies that supply water to Carson, are parties to this adjudication which WRD aids. Id.

All of this creates opportunities for conflict between officials of WRD and Carson. Blomquist Decl. ¶17. WRD may make decision that impose costs on, or limit the options available to, Carson, and vice versa. Id. These conflicts are formal and institutional. Id.

As an example, in 2014 Carson's City Council considered a proposed Shell Carson Revitalization Project that would have expanded Shell's Distribution Facility in Carson. This project entailed the construction of 1.8 million square feet of fuel storage and additional oil and gas production wells and conveyance pipelines, all of which might pose threats to groundwater quality as well as require significant increases in water supply needs which would need to be met by groundwater. Blomquist Decl. ¶12. Carson's decisions for the project had implications for WRD's discharge of its responsibilities in the Basins. Blomquist Decl. ¶19.

Another example is the Dominquez Gap Barrier Project, a facility located in Carson to which WRD supplies water to protect the West Basin from seawater intrusion. Blomquist Decl. ¶20.

2. Respondent's Evidence

a. Robles

On November 8, 2015, Robles was elected both Mayor of Carson and to WRD's Board. Robles Decl. ¶3. Despite the District Attorney's campaign mailers and candidate propaganda questioning the desirability of electing him to two offices, Robles still won both elections. Robles Decl. ¶3. He received 17,660 votes for Mayor, the most votes ever received by an individual seeking office in Carson. Robles Decl. ¶4.

The District Attorney has a long history of unsuccessfully targeting Robles, and the parties have a long-standing political feud. Robles Decl. ¶¶ 6-7. Among other things, Robles published an Op-Ed referring to the District Attorney as an "illegitimate officeholder" because she did not reside in Los Angeles County upon being elected. Id. Over the last 20 years, the District Attorney has wasted millions of public dollars targeting Robles including, but not limited to, convening two criminal grand juries and charging and prosecuting Robles in a week-long criminal trial for campaign-related violations in which the jury unanimously returned a not guilty verdict. Robles Decl. ¶9.

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There are three requirements to become the mayor of Carson: (1) be a registered voter in Carson; (2) timely complete necessary paperwork; and (3) receive the highest number of votes on Election Day by the voting electorate. Robles Decl. ¶12. Robles satisfied all three of these requirements and is authorized to hold the office pursuant to California law. Robles Decl. ¶13.

There are three requirements to become a WRD board member: (1) be a registered voter within Division Five of WRD, (2) timely complete necessary paperwork; and (3) receive the highest number of votes on Election Day by the voting electorate. Robles Decl. ¶14. Robles

satisfied all three of these requirements and is authorized to hold the office. Robles Decl. ¶15

Carson does not have a municipal landfill or expressed a desire for one to be created. Robles Decl. ¶11. Carson does not possess, never has possessed, and never will possess a municipal water department or any groundwater pumping rights. Robles Decl. ¶¶ 16, 17. Carson does not sell recycled water. Robles Decl. ¶16.

The functions, duties, loyalties, and responsibilities of the two offices are complementary, not inconsistent. Robles Decl. ¶19. Even if Robles was so inclined, WRD cannot sell discounted water to Carson because it is statutorily mandated to have a uniform RA. Robles Decl. ¶21.

Robles characterizes his speech at the October 16, 2012 City Council meeting as "political puffery" that was not under oath. Robles Decl. ¶23.

In December 2017, Carson and WRD approved an ordinance and resolution, respectively, permitting the simultaneous holding of the offices of Mayor of Carson and board member of WRD as not incompatible. Robles Decl. ¶29, Ex. A-B.

Robles is willing to resign from WRD upon the construction of a wastewater treatment plant scheduled to be completed in September 2018. Robles Decl. ¶32.

b. Donesia L. Gause

Donesia L. Gause "(Gause") is the City Clerk of Carson. Gause Decl. ¶2. As City Clerk, Gause conducts municipal elections, oversees filing of conflict of interest statements, administers oaths of office to city-elected officials, and maintain official legislative records. Gause Decl. ¶3.

On November 8, 2016, Robles was re-elected as Mayor of Carson and as board member of WRD. Gause Decl. ¶7.

Carson does not have a municipal landfill and has not expressed a desire for one to be created. Gause Decl. ¶14. Carson does not possess and has never possessed a municipal water department or any groundwater pumping rights. Gause Decl. ¶15. Carson also does not sell and has never sold recycled water. Id.

The functions, nature, rights, duties, and obligations of Robles' two offices are not inherently inconsistent and appear to be complementary. Gause Decl. ¶16.

Gause believed Robles' speech before the Carson City council was "political speech" dismissible as "political puffery." Gause Decl. ¶17.

D. Analysis

1. The Attorney General's *Quo Warranto* Authorization

In authorizing Plaintiff Relator to sue Defendant Robles in *quo warranto*, the Attorney General initially noted that Robles' positions of WRD director and city council member/mayor of a general law city are "public offices" for purposes of the incompatible offices doctrine. 98 Ops.Cal.Atty.Gen. 94 (2015) at *3.

The Attorney General found that WRD does not sell water to Carson or its residents or directly set their water rates, and WRD has no groundwater extraction rights in the Basins and only buys water and spreads, injects, or sinks it into the Basins to replenish the groundwater. Thus, WRD and Carson do not have a classic vendor-purchaser arrangement between a water district and another public agency. Id. at *4.

Nonetheless, the Attorney General authorized a *quo warranto* suit in a very similar case in which a person was holding the two offices of WRD director and mayor of Maywood. Ibid.

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The Attorney General found in that case, as in the case of Robles, the existence of a potential conflict. In this case, WRD could raise the RA to Cal Water for pumping groundwater, which Cal Water would pass on to Carson and its residents in Cal Water's water rates. Carson has the right to object to WRD's RA as excessive before WRD's Board. Carson also has the right to sue to reduce the RA, as some other entities have done (in their Prop 218 lawsuits). A Carson council member's interest in keeping the RA low, and hence keeping the water rates low for Carson and its residents, could conflict with a WRD director's power to fund groundwater replenishment in the Basins through the RA. Id. at *4.

Another potential conflict lay in Carson's regulation of land use and water quality or supply. WRD has a duty to protect water quality, and it may take actions and pass ordinances designed to protect water quality. WRD may increase the RA to cover cleanup costs and could pass ordinances designed to protect water quality. Id. at *5. As a result, WRD could block Carson's approval of development on the ground that it could adversely affect the groundwater supply. Ibid.

Other clashes could arise from either entity's exercise of its eminent domain power, if Carson denied WRD permission to construct a project in the City, and from WRD's exercise of its statutory power to sell water directly to Carson and its residents. Ibid.

As a result, the Attorney General concluded that Relator had raised substantial questions whether the two offices are incompatible such that Robles may be found to have forfeited the office of WRD director. Ibid.

2. The Governing Test

A public officer shall not simultaneously hold two public offices that are incompatible "unless the simultaneously holding of the particular offices is compelled or expressly authorized by law." §1099(a). Office are incompatible if (1) either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body, (2) based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices, or (3) public policy considerations make it improper for one person to hold both offices. Id. (a)(1)-(3). When two offices are deemed incompatible, a public officer shall forfeit the first office upon acceding to the second. §1099(b). Section 1099 was intended to codify the common law prohibition against public officers hold incompatible offices. Pet. Lodging of SB 274 Leg. Hist, p. 18.

In determining whether two offices with overlapping territory are incompatible, it is not necessary to find that actual clashes of duty and loyalties exist; the potential for such clashes is sufficient to render the offices incompatible. 63 Ops.Cal.Atty.Gen. 623 (1980) at *1.[4] Moreover, the doctrine of incompatibility does not permit the incumbent to simply "omit to perform one of the incompatible roles." The doctrine was designed to avoid the necessity for that choice. 67 Ops.Cal.Atty.Gen. 409, 414 (1984).

The Attorney General has opined that the offices of mayor of a general law city and

[4] Opinions of the Attorney General, while not binding, are entitled to great weight. Napa Valley Educators' Assn. v. Napa Valley Unified School Dist., (1987) 194 Cal.App.3d 243, 251; *see also* Lucas v. Board of Trustees, (1971) 18 Cal.App.3d 988, 991-92. Additionally, while an official interpretation of a statute by the Attorney General is not controlling, it is entitled to great respect. Thorning v. Hollister School Dist., (1992) 11 Cal.App.4th 1598, 1604.

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director of an airport district with overlapping territory are incompatible based on the potential for, rather than actual, clashes of duty and loyalty. 63 Ops.Cal.Atty.Gen. 623 (1980). The doctrine of incompatibility is based upon a clash of duties and loyalties based on the nature and functions of the offices, and not merely on actual clashes which must surely occur. Id. at *2. The policy comprehends prospective as well as present clashes of loyalty. Id. (citation omitted). "In other words, it is not a question of the use of the powers that creates incompatibility, but the possibility of such use through the possession of inconsistent functions." Ibid. Consequently, it is irrelevant to say that the conflict in duties may never arise; it is enough that the conflict may arise in the regular operation of the statutory plan. Id. at *3 (citation omitted). Only one significant clash of duties and loyalties is required to make the offices incompatible. Id. at *2.

The Attorney General also has determined that a person may not serve simultaneously as director of WRD and as a director of the Metropolitan Water District of Southern California ("MWD") because MWD has the broader interest of developing, storing, and delivering water than WRD's narrow interest in replenishing water supplies. To replenish groundwater, WRD may favor importing water over programs that have the effect of reducing groundwater usage, but replenishing groundwater may not always be what MWD desires. In times of plentiful water supply, MWD might promote the sale of water when WRD has no desire to do so. Hence, the offices potentially conflict in their duties and loyalties. 90 Ops.Cal.Atty.Gen. 12 (2007) at *4. *See also* 85 Ops.Cal.Atty.Gen. 60 (2002) (trustee of school district may not serve as director of water district because of a clash of duties and loyalties on two issues: the entities may differ on whether to abandon wells which supply district's irrigation water and on whether to continue to use septic tanks or use the water district's sewer system services); 76 Ops.Cal.Atty.Gen. 81 (doctrine of incompatibility precludes simultaneously holding positions of director of water agency and director of water district because of respective powers to contract for purchase, development, and sale of water, sue and be sued, eminent domain, and to impose fee for new retail connections) 73 Ops.Cal.Atty.Gen. 354 at *2 (school district trustee and city councilmember positions are incompatible because entities could contract for specific authorized purposes, either body could condemn other entity's property, and school district may dedicate property to city for public purpose); 73 Ops.Cal.Atty.Gen. 268 (duties and functions of water district director incompatible with school district trustee because water district may decide what rates to charge the school district and may restrict the district's water usage during times of shortage, and because each district may restrict the other's use of property).

Defendant Robles appears to disagree with the Attorney General's articulation of the law for determining when two offices are incompatible. Robles notes that he indisputably holds each office lawfully. Opp. at 8-9. He notes that the Attorney General's authorization for Relator to sue him does not purport to examine the likelihood of either party prevailing in court. Def. RNJ Ex. B, p. 12. Opp. at 11. He further notes that there is no *per se* rule barring him from holding the offices of WRD director and Mayor/Council member, offices to which he was elected overwhelmingly despite Relator's objection and extensive media coverage. Opp. at 5-6.

Robles points out that section 1099(a)(2) is the only possible ground on which his two offices could be incompatible: "Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices." He argues that, under the common law, as codified by section 1099(a)(2), he cannot be ousted from his elected office on the WRD Board based on a "theoretical conflict." Opp. at 11-12. In support of this argument, he cites People ex. Rel. Goodell v. Garrett, (1925) 72 Cal.App. 452, 456: "[I]t is

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extremely difficult to lay down any clear and comprehensive rule as to what constitutes incompatible offices." Robles also quotes Matt v. Horstmann, (1950) 36 Cal.2d 388, 392: "The doctrine applies where the functions of the offices concerned are inherently inconsistent, as where there are conflicting interests, or where public policy dictates that one person may not retain both offices." Robles finally quotes People ex. rel Chapman, v. Rapsey, ("Rapsey") (1940) 16 Cal.2d 636, 641-42:

> "Two offices are said to be incompatible when the holder cannot in every instance discharge the duties of each. Incompatibility arises, therefore, from the nature of the duties of the offices, when there is an inconsistency in the functions of the two, where the functions of the two are inherently inconsistent or repugnant, as where antagonism would result in the attempt by one person to discharge the duties of both offices, or where the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both. The true test is whether the two offices are incompatible in their natures, in the rights, duties or obligations connected with or flowing from them."

It is unclear what Robles means by "theoretical conflicts." Nothing in the cited cases mandates that "theoretical conflicts" are an improper basis to evidence a *quo warranto* action. The cases instead emphasize an evaluation of the inherent inconsistency or repugnancy of the duties and functions of the two offices. Section 1099(a)(2) provides that two offices are incompatible where "there is a possibility of a significant clash of duties or loyalties between the offices." The definition of "possibility" is: "An uncertain thing which may happen." Black's Law Dictionary (4th ed. 1968) p. 1327.

The Attorney General concludes that a potential conflict is sufficient to meet the requirement of a possible significant clash of duties or loyalties. A potential conflict in duties or loyalties occurs when they "may happen". The court must look to the functions of the offices and evaluate whether the possible use of the powers of the offices through inconsistent functions creates an incompatible clash of loyalties. 63 Ops.Cal.Atty.Gen. 623 (1980) at *2. It is irrelevant to say that the conflict in duties may never arise; it is enough that the conflict may arise in the regular operation of the statutory plan. Id. at *3 (citation omitted).

To the extent that Robles contends that a mere hypothetical conflict in duties and functions which has little or no chance of ever happening is insufficient to create a section 1099(a)(2) possibility of a significant clash of duties or loyalties, he is correct. To the extent that he contends that a conflict which is not actual but which may happen does not meet section 1099(a)(2), he is wrong. As noted by Rapsey, the public has a right to know with certainty what duties an elected official will perform or not perform. 16 Cal.2d at 643. The public should not be questioning the loyalties and duties of an elected official because the official possesses two positions.

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3. The Prop 218 Lawsuit

A Prop 218 lawsuit was brought by petitioners Cities of Cerritos, Downey, and Signal Hill against the WRD on August 24, 2010. Thompson Decl. Ex. 13, p.1. The cities brought the action to prevent WRD from continuing to "illegally tax" the cities in violation of Article XIII D of Prop 218 and to recover funds paid pursuant to WRD's "illegal tax." Id., p.2. Article XIII D

imposes procedural requirements pertaining to the levying of a charge or fee. Prior to imposing or increasing a charge or fee, an agency must identify the parcels upon which a fee or charge is proposed, calculate the proposed fee or charge upon each parcel, and provide written notice of such. Article XIII D §6(a)(1). Additionally, the agency must conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice. Id. §6(a)(2). At the public hearing, the agency must consider all protests against the proposed fee or charge and not impose the fee or charge if the protests are presented by a majority of owners of the identified parcels. Id.

This department held that the cities were entitled to mandamus relief as Article XIII D applied to the imposition of WRD's RA and WRD did not comply with its provisions. Thompson Decl. Ex. 14, p. 14. The court directed WRD to vacate the RAs imposed over the previous four years and comply with the provisions of Article XIII D before imposing future RAs. Id. The court's order was not entered as a final judgment because it did not resolve the city petitioners' third cause of action for a refund. Thompson Decl. Ex. 25, p. 5.[5]

On May 12, 2015, the city litigants settled their Prop 218 lawsuit with WRD. Thompson Decl. Ex. 25, pp. 1, 4. The parties resolved all disputes regarding the validity of RAs adopted and levied from 2006 to 2015 and entered into a three fiscal year period ("peace term") during which the cities agreed not to file any litigation against WRD pertaining to the validity of its RAs. Id., pp. 12, 17. WRD agreed to pay the cities $4.1 million for attorney's fees and $5 million for Basin improvement projects. Id., p.13. With respect to Prop 218, WRD agreed to provide notice of its annual RA and protest opportunity to "Active Pumpers" within its service area. Id., p.16. The Settlement Agreement defined "Active Pumpers" as holders of an adjudicated right who have pumped water from a groundwater producing facility during the prior Water Year as defined in Water Code section 60013. Id. WRD further agreed to provide notice of its annual RA to all holders of adjudicated pumping rights in its service area for the limited purpose of ensuring that the notice did not miss any Active Pumpers. Id.

a. Robles' Actions in Connection with the Prop 218 Lawsuit

In a WRD press release issued May 29, 2012, Robles commented on the Prop 218 lawsuit: "Unfortunately, it's the ratepayers who bear the burden of paying millions of dollars in this unnecessary legal gamesmanship.... We hope that the Court's decision allows us a moment to pause and begin working together to solve the water crisis facing all ratepayers rather than waste more precious public resources squabbling." Thompson Decl. Ex. 16, p. 229.

On July 5, 2011 and August 2, 2012, Robles, in his capacity as a WRD representative, met with then Carson Mayor Dear. Thompson Decl. Ex. 15, pp. 54, 77. The purpose of these meetings was to promote WRD's agenda because Carson is within WRD's service area. Thompson Decl. Ex. 15, pp. 17-18.

On October 16, 2012, in his capacity as President of WRD, Robles gave a presentation at a Carson City Council meeting. Thompson Decl. Ex. 22, pp. 1-2. Robles explained that if Prop 218 applies to its RA, the water rate would have to be applied proportionally to the actual services/benefits received by a property owner. Thompson Decl. Ex. 21, p.18. In effect, the uniform water rate of $244 per acre foot would become $163 per acre foot for Central Basin

[5] The court made a similar ruling in a related case brought by Tesoro Refining and Marketing Co. Ex. 16, pp. 40-43.

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pumpers and $627 per acre foot for West Basin pumpers. Id., p.22. West Basin pumpers would pay a water rate four times higher than the uniform one. Id. As Carson is in the West Basin, its water rates would quadruple. Id. Robles noted that the cities seeking to apply Prop 218 to the RA were represented by the same law firm, Aleshire & Wynder, and that firm is Carson's City Attorney. Thompson Decl. Ex. 22, p.8. Robles stated: "What you have here is a situation where the law firm that is the city attorney for the city of Carson is fighting to quadruple the water rates for the city of Carson, and what I'm asking Mr. Mayor and council members and Mr. City Attorney is why?" Id.

Aleshire & Wynder was not terminated as a result of Robles' presentation. *See* Thompson Decl. Ex. 23, pp. 2-3. Robles took out nominations papers to run for Carson City Council on November 13, 2012. Id., p.2. Robles won the election in March 2013. Id. Robles asked and was thereafter appointed by prior Dear to the committee that reviews the City Attorney's performance and contract. Thompson Decl. Exs. 16, p. 5; 23, p.2. Robles began to almost immediately lobby for the termination of Aleshire & Wynder's contract "because [it] was suing the WRD." Thompson Decl. Ex. 23, p. 3.

b. Implications from the Prop 218 Lawsuit

Relator contends that the actions of Robles and WRD in the Prop 218 lawsuit illustrate that a potential significant clash of duties or loyalties is present for the two offices held by Robles. Relator contends that Carson could be in the same or similar position as the city petitioners in the Prop 218 lawsuit and that such a lawsuit would raise a potential significant clash of duties and loyalties for Robles. Pet. Op. Br. at 6.

Robles first contends that his two offices do not potentially conflict because Carson does not possess a municipal water department or any groundwater pumping rights and does not sell recycled water. Opp. at 10. Robles contends that his two offices would consequently never clash since the RA imposed by WRD only affects water pumpers. Id. Robles acknowledges that if he were a mayor of a city with a municipal water department and/or groundwater pumping rights, such a possibility of a significant clash of duties or loyalties between the offices would arise as they could disagree over groundwater management issues and groundwater pumping rights. Opp. at 11.

Robles's contention assumes that Carson will never acquire groundwater pumping rights or a municipal water department during Robles' tenure as mayor. This is not a foregone conclusion. Robles' expertise in water management might even foreseeably lead to changes to Carson's water management practices. Even if implausible, this possibility exists and, as Robles acknowledges, would create a possibility of a significant clash of duties and loyalties of his two positions.

Perhaps more important, the Prop 218 lawsuits show how Carson, which acquires water from a water vendor, still may become embroiled in legal proceedings with WRD. Even though it does not pump water, Carson can challenge Cal Water's rates before the CPUC. In turn, Cal Water can challenge WRD's RA before WRD's Board or in a lawsuit. Carson may choose to join Cal Water in such a lawsuit because of the pass-through nature of the RA. In all of these circumstances, Carson's interests would not align with those of WRD.

Robles contends that Prop. 218 lawsuits against WRD were completely debunked and discredited because of the recent California Supreme Court in City of San Buenaventura v. United Water Conservation District, ("Ventura") (2017) 3 Cal.5th 1191, 1203, which held that

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RAs are not property taxes within the meaning of Article XIII D. Opp. at 14.

There are two problems with Robles' argument. First, it is true that the Supreme Court in Ventura disagreed with the conclusion that a RA is a "property-related service" under article XIII D. 3 Cal.5th at 1208-09. However, the Supreme Court did not conclude that WRD's RA was exempt from article XIII C's definition of a tax because it was unable to conclude that the manner in which the costs were allocated to Ventura bore a reasonable relationship to the benefits the city received compared to other pumpers. Id. at 1214-15. Therefore, the court remanded to the court of appeal to evaluate that issue. Ibid. Consequently, Cal Water would not necessarily precluded from bringing a Prop 218 lawsuit against WRD on the ground of disproportionate burden. Carson could become a party to the lawsuit, or at least have a rooting interest for Cal Water.

Second, whatever the availability of a Prop 218 theory, Relator raised the lawsuit as illustrative of litigation which might arise between the WRD and Carson. The example did not purport to be exhaustive, and even administrative proceedings before the CPUC or WRD's Board concerning the RA could pose a potential significant clash of Robles' duties or loyalties.

Moreover, Robles fails to address in detail his clear entanglement of functions as evidenced by the October 16, 2012 City Council meeting. As a representative of WRD, Robles explained to Carson's City Council that its City Attorney faced a conflict of interest in representing both Carson and petitioner cities in the Prop 218 litigation. If Carson does not pump water, why would Robles provide the City with a presentation? The reason is that the RA imposed on Cal Water gets passed through to Carson, as a water user, as well as its residents and businesses. Robles said as much when he stated that litigation costs associated with the Prop 218 lawsuit would "be passed on to the ultimate consumer." Thompson Decl. Ex. 22, p. 5; Dear Decl. ¶¶ 5, 7.

Contrary to Robles' contentions, the imposition of RAs, even when uniform, have ramifications for Carson as a water user and its residents and businesses. Carson has an interest in keeping the RA low, but WRD does not. Robles' actions show a potential clash of the functions of his two offices.

3. Carson's Land Use Regulatory Activities

Relator contends that a potential conflict could arise due to Carson's land use regulatory activities which may affect the supply and quantity of groundwater that the WRD is charged with supplying and conserving. Pet. Op. Br. at 9. Relator provides several examples of Carson's ability to make land use decisions that could affect groundwater. Pet. Op. Br. at 9-10.

First, according to a report submitted by the City Attorney to the Carson Mayor and City Council, Robles asked the City Attorney to consider whether Carson should adopt a moratorium on the use of "fracking." Thompson Decl. Ex. 29, p.38. The report explained that the water quality of surface and ground waters might be contaminated as a result of spills and releases of hydraulic fracturing chemicals, produced water, and drill cuttings. Id., p. 41. The report also explained that while small in comparison to agriculture, fracking uses a "great deal of water and may be cumulatively significant based on the State's drought condition." Id., p. 42. A ban, or a refusal to ban, fracking could affect groundwater quality.

Second, Carson possesses an abandoned landfill that requires remediation activities because it may contain toxic substances. Thompson Decl. Ex. 29, p.7. If left untreated, these toxic substances could impact the quality of groundwater beneath the landfill. Id., p. 8.

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Third, Tesoro announced plans in August 2012 to purchase BP's integrated Southern California refining and marketing business, including its high complexity refinery in Carson, for nearly $2.5 billion. Thompson Decl. Ex. 26, p.1. In November 2012, WRD sued Tesoro demanding that it immediately stop pumping water until it had settled its delinquent bill with WRD. Thompson Decl. Ex. 16, p. 231. Acting as WRD President, Robles remarked that "Tesoro is engaging in a behavior you'd expect form a bully, a bad neighbor, and a freeloader.... "It's simply irresponsible to refuse to pay for water you need for your own business operations while jeopardizing the regions' groundwater supply for millions of Southern California residents." Id. Robles added that the prior Attorney General would not allow "Big Oil [to] trample on the consumers of this state" and that WRD was confident that the current Attorney General would follow the same path. Id. at p. 232. In his deposition, Robles acknowledged that Tesoro's purchase of BP's facility could potentially impact the quality of water in the Basins since it would acquire more political power and feel less inclined to curb its pollution. Id., p.50. Robles acknowledged that this impact would also affect WRD and Carson. Id., p. 51.

Carson filed a Notice of Intent to File CEQA Petition in May 2017 challenging South Coast Air Quality Management District's ("SCAQMD") approval of the certified Final Environmental Impact Report ("EIR") for Tesoro's refinery project. Thompson Decl. Ex. 28, p. 1. Carson contended that it would be irreparably harmed by the Project, citing odors and poor air quality emitted from the refinery in the past. Id., p. 2. Carson's position is that the entire refinery project should require approval by Carson through a conditional use permit. Thompson Decl. Ex. 29, p. 14.

On August 7, 2017, Carson City Council, including Robles, ordered that a Special Municipal Election be held for the purpose of voting on whether a business license tax of 0.25% should be imposed on petroleum companies in Carson. Thompson Decl. Ex. 30, p. 1.

Fourth, on March 4, 2014, the Carson City Council considered a development proposal by Occidental Petroleum to build a state of the art production facility consisting of 202 wellheads in an industrial zoned area. Dear Decl. ¶18. Although the subject area was operated as an active oil field for the past seventy years, Robles expressed concerns about the environmental risks posed to Carson and the region from contamination of surface and groundwater and moved to stop and shelve the process. Id. Robles specifically raised concerns about deep oil and gas drilling that could contaminate WRD's water supply. Dear Decl. ¶19. On March 18, 2014, Carson's City Council passed an urgency ordinance to impose a 45-day moratorium on oil and gas drilling in the City in order to investigate any project impacts on the well-being of Carson residents. Dear Decl. ¶20. The investigative staff report concluded that no negative environmental or health impacts during the operation of such a facility. Id. Robles wanted to extend the moratorium for another year but did not have majority support of the City Council. Id. Dear's opinion was that the moratorium's extension would have done nothing to protect the interests of Carson residents or labor unions who want more economic growth and greater job opportunities in Carson. Dear Decl. ¶21.

Relator's point via these examples is well-taken. It is difficult to parse Robles' role as a WRD Board member from his role as Carson Mayor in these instances of regulatory land use where both potentially have conflicting interests. Robles noted that WRD is concerned with the oil industry's potential contamination of groundwater given its environmentally unfriendly history. Thompson Decl. Ex. 16, p.6. Yet, as the former Carson mayor points out, environmental interests pertaining to the oil business need to be tempered by the interests of

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Carson residents and labor unions who desire economic growth and greater job opportunities. Echoing a principle set forth in Rapsey, the public has a right to know what role Robles is playing when he acts on issues affecting water management. Robles fails to show that his WRD affiliation is not potentially in conflict with his Carson mayoral role in these situations.

Robles contends that the Notice of Intent against the SCAQMD and election to place a 0.25% tax on revenues generated by the oil industry were decided unanimously by the City Council. Opp. at 15. This may be true, but is largely irrelevant. The point of the examples was to demonstrate that Robles is placed in potentially conflicting scenarios. The fact that City Council decisions were unanimous does not lessen the potential conflict. Further, Relator presented evidence that Robles acted independently from the rest of the City Council in seeking to extend the moratorium for one year.

Robles contends that Relator failed to mention that the Notice of Intent resulted in a settlement of $45 million for Carson and that Carson voters overwhelmingly approved the 0.25% tax. Opp. at 15. Again, these points are largely irrelevant. Robles may have acted in the best interest of Carson, but that fact does not change the conflict may arise between his two offices. Robles' pro-water management policies borne from his WRD experience may be the best course for Carson, but they also suggest the potential for significant clashes when Carson's interests lie in development.

c. Eminent Domain

Relator argues that if Carson were to file an eminent domain action to take the water supply businesses of Golden State or Cal Water, Carson would be subject to the actions and decisions of WRD. Pet. Op. Br. at 10.

Carson could theoretically take a water company by eminent domain. Thompson Decl. Ex. 29, p.13. In 2014, the City of Claremont tried to take by eminent domain a Golden State branch in its city borders. Id. Thompson Decl. Ex. 34, p. 2. In 2004, the City of Bellflower also filed a complaint in eminent domain against Peerless Water Company alleging that public interest and necessity required the taking. Thompson Decl. Ex. 33, pp. 1-2.

As a different example, the City of Maywood and WRD in 2016 considered entering into a Joint Exercise of Power Agreement ("JPA"). Thompson Decl. Ex. 36, p.17. Pursuant to the agreement, a public entity known as the Maywood Water Authority would be created which would coordinate the overall improvement and development of water systems and supply for both agencies. Id., pp. 17-18. The agreement permitted both parties to appoint two directors to the board of the new entity. Id., p. 18. Robles opined that the JPA was a good idea. Thompson Decl. Ex. 37, p. 19.[6]

In response, Robles focuses on the Claremont case. Opp. at 16. There, the superior court ruled against Claremont and in favor of Golden State, finding that Golden State rebutted several statutory presumptions in favor of eminent domain. Robles Decl. Ex. C, pp. 1-2. Citing CCP section 1240.650(c), the superior court found that while a public entity's taking of privately owned property is presumed to be a "more necessary use," that presumption is rebuttable if the public entity seeks to take property from a water utility and intends to use the property for precisely the same purpose. Id., p. 4. As a result, Claremont's eminent domain proceeding

[6] It is not clear from the evidence whether Maywood and WRD actually entered into a JPA.

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failed. Opp. at 16.

Robles contends that the Claremont case negates Relator's hypothetical eminent domain scenario. Opp. at 16. However, the failure by the City of Claremont to take a private water supplier by eminent domain is only one case where the presumption favoring the public entity was rebutted. There may be other circumstances where a city's exercise of eminent domain over a water utility is not rebutted because the city has an additional purpose for taking than the precise purpose of the private water vendor. Moreover, Robles fails to address or rebut the more likely potential of a JPA between the Carson and WRD.

d. Necessary Infrastructure

WRD is statutorily authorized to do any act necessary to replenish the district's groundwater, including building the necessary works to achieve ground water replenishment. Water Code §§ 60220, 60221. WRD could decide to build necessary infrastructure in Carson. Thompson Decl. Ex. 16, p. 61; Ex. 29, p. 19. If so, Carson would have to approve the construction. Thompson Decl. Ex. 29, p. 21. Pet. Op. Br. at 11.

In May 1999, six Southern California cities sued WRD seeking to halt a $22 million contract awarded by WRD to construct two desalination facilities in the South Bay of Los Angeles. Thompson Decl. Ex. 38, pp. 1-2. The desalination facility was completed, and WRD and the City of Torrance entered into a Contract Services Agreement for the operation of the facility and set a water pricing structure for the city to purchase water produced by the facility from WRD. Thompson Decl. Ex. 39, p. 144. This example, according to Relator, illustrates the cooperation sometimes necessary for these infrastructure projects between WRD and cities in its service area, including Carson. Pet. Op. Br. at 12.

Three WRD monitoring wells are located within Carson. Thompson Decl. Ex. 41, p. 24. The wells purposes are to monitor the quality and quantity of water in the Basins. Id., p. 28. If WRD determined that the quality of water in Carson was deficient on the basis of the results from these monitoring wells, WRD would talk to owners of drinkable water wells nearby and make them aware of its safe drinking water program. Id. If this approach failed to lead to remediation, WRD might build a treatment plant to improve the water quality. Id., p. 29. Building this treatment plant on public land would require negotiations with Carson. Id.

Relator contends that these illustrations show that WRD's statutory authority to build necessary infrastructure creates a potential for a clash of duties or loyalties with Carson's authority to approve or disapprove a WRD project located on public land. Pet. Op. Br. at 12. Robles responds only that the generic use of eminent domain is invalid, and two offices with eminent domain powers are not *per se* incompatible. Opp. at 16-17.

Robles misunderstands Relator's argument, which does not necessarily concern eminent domain but rather the need for agency agreement. Relator contends that WRD's statutory authority to build necessary infrastructure may create conflict of interest issues. Even though it lacks a municipal water department or groundwater pumping rights, Carson contains three monitoring wells. If WRD wanted to build more wells or wanted to impose a remediation program on public land within Carson, that fact would implicate Robles' duties as a WRD Board member and as Mayor of Carson. WRD's best interests would be to acquire the public land at the lowest price, but Carson's interests may be to require a better price or use the land for a different purpose.

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e. Express Authorization by Law to Hold Two Incompatible Offices

(i) Express Authorization by Law

Notwithstanding a finding of incompatibility, the simultaneous holding of two incompatible offices is permissible if it is compelled or expressly authorized by law. §1099(a). Robles presents evidence that Carson approved a local ordinance expressly authorizing Councilmembers to hold office simultaneously *inter alia* as WRD directors. Robles Decl., ¶29, Ex. A. WRD also has approved a resolution expressly authorizing board members to hold positions in cities within district boundaries provided that the city is not a groundwater pumper and has not been one within the past 25 years. Robles Decl. ¶29, Ex. B.

The question becomes whether Carson's and WRD's actions authorize Robles to hold the simultaneous offices of WRD director and Carson Mayor/Councilman. Carson did so expressly by ordinance. An ordinance in its primary and usual sense means a local law. San Diego City Firefighters, Local 145, AFL-CIO v. Board of Admin. of San Diego City Employees' Retirement System, (2012) 206 Cal.App.4th 594, 607. An ordinance is the equivalent of a municipal statute, passed by the city council or equivalent body, and is adopted with the legal formality of a statute. California Aviation Council v. City of Ceres, (1992) 9 Cal.App.4th 1384, 1391; City of Sausalito v. County of Marin, (1970) 12 Cal.App.3d 550, 565-66.

However, WRD only authorized Robles to hold both positions by resolution. A "resolution" is commonly defined as "a formal expression of opinion, will, or intent voted by an official body or assembled group." Marquez v. Medical Board, (2010) 182 CalApp.4th 548, 557-58. A resolution does not require the same formality of enactment as an ordinance, such as being initiated by a bill or having more than one reading. Id. at 558 (citation omitted). A resolution is adopted by a recorded vote of the governing body in accordance with statutory open meeting and agenda laws. Ibid. (citation omitted). A resolution is effective immediately unless it states otherwise. Ibid. (citation omitted). Unlike a statute, a resolution is temporary in the sense that it does not prevent the governing body from addressing the issue again. Ibid. (citations omitted).

Section 1099(a) permits the simultaneous holding of two otherwise incompatible offices if "expressly authorized by law." Carson's ordinance authorizing Robles to hold the offices of WRD director and Carson Mayor/Councilman is a law, but WRD's resolution to the same effect is not a law. A resolution is only a formal expression of the local agency's will. Robles has not met the exception under section 1099(a) of "expressly authorized by law."

(ii) Preemption

Relator also contends that section 1099(a)'s exception is not met because a local law cannot compel or authorize something that state law prohibits. Reply at 7.

The California Constitution states that a general city such as Carson can make and enforce ordinances and regulations not in conflict with general laws. Cal. Const. Art. 11, §7. Local legislation that conflicts with state law is void. City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., ("Riverside") (2013) 56 Cal.4th 729, 743. A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law either expressly or by legislative implication. Id. Local legislation is contradictory to general law when it is inimical thereto and will not be deemed contradictory unless the ordinance directly requires what the state statute forbids or prohibits what the state enactment demands. Id. This preemption also applies to special districts whose local laws conflict with state statutes. Danville

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Fire Protection District v. Duffel Financial & Construction Co., (1976) 58 Cal.App.3d 241, 249.

Prior to the enactment of section 1099 in 2005, the common law prohibition against holding incompatible public offices could be abrogated by the Legislature when it so chose. 82 Ops.Cal.Atty.Gen. 201 (1999) at *3; citing American Canyon Fire Protection District v. County of Napa, (1983) 141 Cal.App.3d 100, 104 (potential conflict by member of city council sitting on airport authority commission permissible because statute authorized two or more public agencies to jointly exercise powers as airport authority).

According to the Attorney General, the Legislature also authorized a charter city to abrogate the common law rule by appropriate legislation. 73 Ops. Cal.Atty.Gen. 360-61 (1990). The Attorney General reached this conclusion based on the fact that the Legislature created an exception to Civil Code section 22.2's general application of the common law in California: "The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State is the rule of decision in all of the courts of this State." Emphasis added. The "laws of this State" includes a local ordinance adopted by a city or county. Id. (*citing* 66 Ops. Cal.Atty.Gen. at 293). Accordingly, while a city or county may not adopt an ordinance inconsistent with a state statute, Civil Code section 22.2 authorizes such an inconsistency with respect to common law rules. Id. However, the common law may not be repealed by implication; a statute (or ordinance) is not presumed to alter the common law. Id. at *4.

After the 2005 enactment of section 1099, the Legislature superseded this law concerning a local agency's ability to authorize the holding of two conflicting offices. Now, two conflicting local offices may be held simultaneously only if "expressly authorized by law". §1099(a). Nonetheless, local agency enactments remain the "laws of this State". As such, they may constitute the express authorization permitted by section 1099(a) unless preempted.

Relator admits that a local ordinance may be a "law", but contends that the local ordinance authorizing Robles to hold two offices contradicts or is inimical to section 1099(a). Reply at 7-8. Relator cites City of Monte Sereno v. Padgett, (2007) 149 Cal.App.4th 1530, to illustrate that the existence of a local ordinance as law does not foreclose state law from preempting the local ordinance. Reply at 8. In Padgett, the local ordinance provided that the City of Monte Sereno was entitled to reasonable attorney's fees if it commenced an action to abate a public nuisance. Id. at 1536. The pertinent state law, Government Code section 38773.5, allowed a city to enact a local ordinance for the recovery of attorneys' fees in nuisance abatement actions but specified that the fees must be awarded to the "prevailing party, rather than limiting recovery ... to the city if it prevails." Id. The court held that the local ordinance violated section 387773.5 because it limited an award of attorney's fees to the city, and its application could not be upheld. Id. at 537. The Padgett situation is obviously dissimilar from Robles' situation as the Carson local ordinance and WRD resolution do not violate section 1099(a) expressly or implicitly.

Relator relies on the legislative history of section 1099 (SB 274) to show that the Legislature intended to preclude localities from being able to exempt themselves from the purview of this statute. Reply at 8. As amended in March 29, 2005, SB 274 prohibited the holding of two local offices where *inter alia* there was any significant clash of duties or loyalties, except as provided by statute and "except as provided by local ordinance". Pet. Notice of Lodging, Legislative Counsel's Digest, p. 3. The Senate local government committee commented on this language as follows:

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"By deferring to exceptions provided by local ordinances, SB 274 creates an overly-broad exception to the ban on incompatible offices. Local officials could use the bill's language to side-step the current controversy involving the Baldwin Park Unified School District and the Valley County Water District. Either the water district or the school district could adopt a local ordinance that allows dual-office holding and avoid the bill's ban. Any time the Attorney General finds conflicts, local officials could wiggle out of the problem by persuading their colleagues to adopt local ordinances. The Committee may wish to avoid this unintended consequence by amending the bill to delete that phrase." Notice of Lodging, p. 7.

Following this comment, the April 13, 2005 version of SB 274 provides that a public officer may not simultaneously hold two public offices that are incompatible "[e]xcept as otherwise provided by law". Notice of Lodging, p. 9. Finally, the June 20, 2005 version of SB 274 changed this language again to permit the holding of incompatible offices only if "compelled or expressly authorized by law". Notice of Lodging, p. 14. This is the currently enacted language of section 1099(a).

Relator contends that SB 274's deletion of language permitting a local ordinance exception to the prohibition against holding two incompatible offices, which occurred in the face of senate local government committee criticism that local officials would use such ordinances to "wiggle out" of a conflict problem, is evidence that the Legislature consciously considered and rejected permitting localities to evade the requirements of section 1099 via local ordinance. Reply at 9.

Relator's interpretation of this deletion is reasonable. The Legislature initially contemplated permitting a local ordinance to create an exception to the statutory prohibition against holding two incompatible offices. When this was criticized, SB 274 was changed so that an exception would exist only where authorized by law. While an ordinance is a "law of this State", it seems plain that the Legislature did not include local ordinances within the scope of section 1099(a)'s exceptions "expressly authorized by law". This interpretation of what is "expressly authorized by law" is consistent with the legislative intent of SB 274 to prohibit local officials from holding incompatible offices and to prevent their colleagues from deciding whether to nonetheless permit the dual offices as an exception.

In sum, Robles has not been authorized by ordinance from both WRD and Carson to hold both offices. Even if WRD's resolution is effective, section 1099(a) does not permit authorization by local agencies to hold incompatible offices.

E. <u>Conclusion</u>

The Complaint for *quo warranto* is granted. Robles is removed from the office of WRD director. No fine is imposed pursuant to CCP section 809.

Relator's counsel is ordered to prepare a proposed judgment and writ of *quo warranto*, serve them on Robles for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for March 22, 2018 at 9:30 a.m.

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F. Supplemental Briefing

1. Local Jurisdiction's Power of Abrogation

Robles contends that a local jurisdiction's power of abrogation under the common law doctrine of incompatible public offices continues unchanged after the doctrine's codification at section 1099. Rob. Supp. Br. at 2. Section 1099(f)'s express terms show that the common law remains in full effect: "This section codifies the common law rule prohibiting an individual from holding incompatible public offices." Rob. Supp. Br. at 3. Since the Legislature codified the common law rule, Robles contends that judicial and administrative common law precedent, including a local jurisdiction's power of abrogation, also survived. Rob. Supp. Br. at 4. He argues that nothing in section 1099 limits the scope of the common law precedent post-codification. Id.

An uncodified section 2 of section 1099 also states: "Nothing in this act is intended to expand or contract the common law rule prohibiting an individual from holding incompatible public offices. It is intended that courts interpreting this act shall be guided by judicial and administrative precedent concerning incompatible public offices developed under the common law." Stats. 2005, ch. 254, §2; Rob. Supp. Br., Ex. A.

An Attorney General Opinion issued in 2010 states that section 1099 "codifies the common law rule against holding incompatible offices", and "our construction and application of [section 1099] are also guided by administrative and judicial interpretations developed under the common law". 93 Ops.Cal.Atty.Gen. 144 (2010) at *2, n.7. The Opinion further states that, according to an uncodified portion of the 2005 legislation,[7] "the Legislature declared that section 1099 was 'not intended to expand or contract the common law rule,' and that judicial interpretations 'shall be guided by judicial and administrative precedent concerning incompatible public offices developed under the common law.'" Rob. Supp. Br. at 4.

The Legislative Counsel's Digest for SB 274 also reads: "The bill [section 1099's precursor] would state that it codifies the common law rule prohibiting an individual from holding incompatible public offices. It would further state that nothing in its provisions is intended to expand or contract the common law, and that it is intended that courts interpreting its provision be guided by judicial and administrative precedent developed under the common law." Rob. Supp. Br.at 4-5, Ex. A.

Robles convincingly shows that the plain language and legislative history of section 1099(f) indicates a legislative intent to codify the common law. Regardless, Robles' broader argument that this codification of common law includes the ability of a local agency's power of abrogation has two dispositive flaws.

First, while section 1099(f) plainly shows a legislative intent to codify the common law, it does not negate the rest of section 1099. The entirety of section 1099 was presumably enacted and articulated deliberately, and section 1099's subdivisions have equal ability to provide for substantive rules. As a result, subdivision (f) can offer only instructive, not dispositive, guidance in interpreting subdivision (a)'s exception to the incompatible offices rule. This basic point was underscored by the 2010 Attorney General Opinion: "While section 1099 now governs the question of incompatible offices in California, our construction and application of that statute are

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[7] The Attorney General is citing the Legislative Counsel's Digest for SB 274. Supp. Br. Ex. A.

also guided by administrative and judicial interpretations developed under the common law." 93 Ops.Cal.Atty.Gen. 144 (2010) at *2 (emphasis added).

The legislative history for subdivision (a) remains more probative than subdivision (f)'s incorporation of the common law as it directly informs of the legislative intent for the exception to the incompatible offices doctrine. To repeat, that legislative history suggests that the Legislature deliberately deleted the exception's "local ordinance" language in response to concerns that section 1099 created "an overly-broad exception" that "local officials could use ... to side-step" conflicts. The court's interpretation of section 1099 accords with this legislative intent.

Second, there is no inconsistency between the court's interpretation of section 1099(a) to prevent local agencies from abrogating the prohibition against holding two incompatible offices and section 1099(f)'s codification of the common law if local jurisdictions lack the authority to abrogate the power of abrogation anyway. Although Robles states that local jurisdictions have a common law power of abrogation for the prohibition against holding two incompatible offices, he cites authority to that effect. *See* Rob. Supp. Br. at 2, 4. The Attorney General only stated that "section 1099 enacted the common law rule against holding incompatible offices"; the Attorney General did not state that the common law permitted local jurisdictions to override the rule. 93 Ops.Cal.Atty.Gen. at *2.

Robles is confusing a common law rule governing conduct with a local agency's power and authority. The authority of local jurisdictions does not arise from the common law; it arises from the California Constitution and state legislation. Therefore, section 1099(f)'s mere incorporation of the common law, including the prohibition against holding two incompatible public offices, does not authorize a local jurisdiction to abrogate that prohibition unless the local agency has authority to do so from the California Constitution or state legislation. *See* City of Sausalito v. County of Marin, (1970) 12 Cal.App.3d 550, 567. Neither Carson nor WRD was authorized by the common law to override the prohibition against holding two incompatible public offices.

Do WRD and Carson have authority from the California Constitution or state legislation to override the prohibition? "The common law of England, so far as it is not repugnant to or inconsistent with ... the Constitution of laws of this State, is the rule of decision in all courts of this State." Civ. Code §22.2. State statutes and state common law are co-equal state laws. Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc., (2010) 190 Cal.App.4th 1502, 1521. These combined authorities indicate that the doctrine of preemption thwarts a local agency's attempts to override state common law. *See also* In re Farley's Estate, (1944) 63 Cal.App.2d 130, 134 ("When California became a State of the Union the common law was adopted and put in force except where superseded by statute.").

The state may, of course, override the common law prohibition against holding incompatible offices, and has done so. *See, e.g.,* Govt. Code §1128, 1129. The Legislature may also authorize a local agency to override the common law. A charter city or county has constitutional home rule authority under Cal. Const., art. XI, §§ 3-5. As stated *ante*, the Attorney General has opined that the Legislature authorized a charter city, under its home rule, has authority to abrogate the common law rule by appropriate legislation. 73 Ops. Cal.Atty.Gen. 360-61 (1990). The Attorney General reached this conclusion based on the fact that the Legislature created an exception to Civil Code section 22.2's general application of the common law in California so far as not inconsistent with the "laws of this State." Since the "laws of this

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State" includes a local ordinance adopted by a charter city or county, the Attorney General reasoned that Civil Code section 22.2 authorizes such an inconsistency with respect to common law rules. Id. (*citing* 66 Ops. Cal.Atty.Gen. 293 (1983)).

Carson is a general law city, not a charter city, and Robles provides no authority to show that Carson has such power. However, Relator acknowledges that an Attorney General Opinion also indicated that a general law county's ordinance also could override the common law based on its constitutional police power to pass laws promoting the general welfare and power to provide for other officers of the county. 66 Ops.Cal.Atty.Gen. 293, 301-02 (1983). Relator also points to case law undermines that the Attorney General's opinion. Rel. Supp. at 4 (citing People ex rel. Deputy Sheriff's Assn. v. County of Santa Clara, (1996) 49 Cal.App.4th 1471.

The court need not decide whether Carson as a general law city is empowered to override the common law prohibition against holding incompatible offices because WRD cannot. Unlike Carson's general police power, WRD is empowered to make and enforce within its boundaries only those ordinances and regulations for which it has specific powers derived from state statutes. Water Quality Assn. v. County of Santa Barbara, (1996) 44 Cal.App.4th 732, 741. The only implied powers which WRD possesses are those essential to the limited, declared powers provided by its enabling act. Id. at 746. WRD's enabling act grants WRD to exercise its power only for replenishment purposes, with the exception of powers related to groundwater contaminants. Central and West Basin Water Replenishment District v. Southern California Water Co., (2003) 109 Cal.App.4th 891, 897. WRD's Board of Directors only has the power to carry out WRD's statutory duties. Matters relating to their qualifications are governed by statute, and the Board lacks authority to address them. *See* Water Code §§ 60131-33, 60143-44. Since WRD's authority to make laws is limited to replenishment, WRD does not have the power to override state common law as it pertains to the incompatible offices rule.

2. Ordinance versus Resolution

Even if *arguendo* both Carson and WRD possess the power of abrogation for the prohibition against holding two incompatible offices, the next issue is whether there is a legally significant difference between abrogation by ordinance or resolution. Rob. Supp. Br. at 7. Robles claims there is none. Id.

A legislative act is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts. California Aviation, *supra*, 9 Cal.App.4th at 1390-91. Put another way, whenever an act undertakes to determine a question of right or obligation, or of property, as the foundation upon which it proceeds, such act is to that extent a judicial one, and not the proper exercise of legislative functions. Id. at 1391. The classification of an administrative decision as adjudicatory or legislative does not depend on the nature of the decision-making body, the procedural characteristics of the administrative process, or the breadth or narrowness of the administrative agency's discretion. Id.[8]

In the absence of a statutory or charter provision to the contrary, a legislative act may be either in the form of a resolution or of an ordinance. Crowe v. Boyle, ("Crowe") (1920) 184 Cal.

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[8] Robles misstates this rule from California Aviation as depending on these factors; the California Aviation court stated that the classification does not depend on these factors. Id. at 1391.

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117, 149. For many purposes, resolutions and ordinances are equivalent terms. Id. Even where the statute or municipal charter requires the municipality to act by ordinance, if a resolution is passed in the manner and with the statutory formality required in the enactment of an ordinance, it will be binding and effective as an ordinance. Id. at 149-50.

Robles contends that the precise character of the legislative body's action determines whether the action may properly be characterized as a local law and the designation of the act as ordinance or resolution is immaterial. Rob. Supp. Br. at 7. He argues that WRD's resolution was equivalent to Carson's ordinance in that it (1) was approved and passed by WRD's Board of Directors in compliance with the Brown Act, (2) was signed by WRD's officers, and (3) amended WRD's Administrative Code upon its enactment. Id. at 7-8;, Exs. B, C. Robles also contends that the distinction is immaterial because on March 21, 2018, WRD passed an "ordinance" expressly authorizing members of WRD's Board of Directors to hold offices simultaneously with governmental agencies and cities that do not own groundwater rights for pumping. Rob. Supp. Br., Ex. D.[9]

Although he has persuasively shown that WRD's resolution was a legislative act, Robles has not shown that WRD's legislative act is tantamount to a law. A legislative act can be a policy with widespread applicability. W. W. Dean & Associates v. City of South San Francisco, (1987) 190 Cal.App.3d 1368, 1374 ("Legislative acts of a city which establish general policies and objectives..."). WRD's resolution/ordinance appears to take the form of a policy, not a law. As Relator points out (Rel. Supp. Resp. at 4-5), WRD's "ordinance" was codified in its Administrative Code, which sets forth "policies" that are "general guidelines for conduct as an employee." Supp. Resp. Ex. C, p.4. The ordinance does not appear to be a law that could be argued as abrogating section 1099(a)'s doctrine of incompatible public offices. This conclusion is reinforced by WRD's enabling act, which only empowers WRD to make regulations pertaining to water replenishment. Internal employee composition is not a matter on which WRD is empowered to pass laws as opposed to codified policy.

3. Jurisdiction

Robles contends that the court lacks jurisdiction as the Attorney General's approval for Relator to file this *quo warranto* action was granted for a specific term of office which has expired. Supp. Br. at 9. Robles relies on a California Attorney General Opinion in which leave to sue in *quo warranto* was denied because it was "at least reasonably probable that the issue would become moot prior to resolution" since defendants' term of office would expire in four months. 83 Ops.Cal.Atty.Gen. 181 (2000) at *3.

Robles' contention lacks merit. The Attorney General granted Relator leave to sue in *quo warranto* to preclude Robles from holding two incompatible public offices. "A public office is said to be the right, authority, and duty, created and conferred by law — the tenure of which is not transient, occasional, or incidental — by which for a given period an individual is invested with power to perform a public function for public benefit." Leymel v. Johnson, (1930) 105 Cal.App. 694, 697. Robles retains both offices; it does not matter that he has a new term of office in Carson. The duration in office has no meaningful bearing on the question of whether two offices are substantively incompatible under section 1099.

[9] Exhibit D is labeled "Draft" and is unsigned. Therefore, it is not evidence of any WRD action.

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G. Conclusion

The Complaint for *quo warranto* is granted. Robles is removed from the office of WRD director.

Relator's counsel is ordered to prepare a proposed judgment and writ of *quo warranto*, serve them on Robles for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for May 29, 2018 at 1:30 p.m.

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