

1 SANDRA J. LEVIN, State Bar No. 130690
 SLevin@CLLAW.US
 2 HOLLY O. WHATLEY, State Bar No. 160259
 HWhatley@CLLAW.US
 3 DAVID J. RUDERMAN, State Bar No. 245989
 DRuderman@CLLAW.US
 4 COLANTUONO & LEVIN, PC
 300 S. Grand Avenue, Suite 2700
 5 Los Angeles, California 90071-3137
 Telephone: (213) 542-5700
 6 Facsimile: (213) 542-5710

Exempt from Filing Fees
 Government Code § 6103

FILED
 Los Angeles Superior Court

JUN 20 2011
 JOHN A. CLARKE, CLERK
 BY J. DELUNA, DEPUTY

7 Attorneys for Respondent
 CITY OF SIERRA MADRE

NO FEE GOVT CODE SEC. 6188
 AMOUNT RECOVERABLE PURSUANT
 TO 6103.5 GC § 4111
 PLUS A ONE TIME ADMINISTRATIVE FEE UPON JUDGEMENT
 IF THE PARTY BECOMES A JUDGEMENT CREDITOR

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **FOR THE COUNTY OF LOS ANGELES, STANLEY MOSK COURTHOUSE**

Colantuono & Levin, PC
 300 S. GRAND AVENUE, SUITE 2700
 LOS ANGELES, CA 90071-3137

13 JOHN CRAWFORD,
 14 Petitioner,
 15 v.
 16 CITY OF SIERRA MADRE; and DOES 1
 through 10, inclusive,
 17 Respondents.

CASE NO. BS131950
 Unlimited Jurisdiction
 (Case assigned to Hon. James C. Chalfant)
 1) RESPONDENT CITY OF SIERRA
 MADRE'S NOTICE OF DEMURRER
 AND DEMURRER TO THE VERIFIED
 PETITION AND COMPLAINT; AND
 2) MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT
 THEREOF

[Request for Judicial Notice and Declaration of
 Karin Schnaider Filed Concurrently Herewith]
 Petition Filed: May 6, 2011
 Hearing Date: July 25, 2011
 Time: 9:30 a.m.
 Dept.: 85
 Trial Date: None Set

26
 27
 28

56/23/11

1 TO PETITIONER AND HIS ATTORNEY OF RECORD:

2 Please take notice that on July 25, 2011, at 9:30 a.m., or as soon thereafter as the matter will
3 be heard in Department 85 of the above-entitled Court, located at 111 North Hill Street, Los
4 Angeles, California 90012, Respondent City of Sierra Madre (the "City") will and hereby does
5 demur to the Verified Petition for Writ of Mandate and Complaint for Declaratory Relief ("Petition")
6 filed by Petitioner John Crawford ("Petitioner").

7 The City demurs generally on the ground that the Petition fails to state facts sufficient to
8 constitute a cause of action pursuant to Code of Civil Procedure section 430.10, subdivision (e),
9 because each purported cause of action is time-barred. Because the Petition challenges an Ordinance
10 adopted pursuant to the rate covenant in the City's bond issuance, Petitioner's challenge was
11 required to be brought as a reverse validation action within 60 days from the date the Ordinance was
12 enacted. (Code Civ. Proc, § 860 et seq.; Gov't Code, §§ 53511, subd. (a), 6599.3.)

13 The demurrer is based on this notice, the attached Demurrer, the attached Memorandum of
14 Points and Authorities, the Request for Judicial Notice and Declaration of Karin Schnaider filed
15 concurrently herewith, the pleadings, records and files in this action, and such argument as may be
16 presented by the City at or before the hearing.

17
18 DATED: June 20, 2011

COLANTUONO & LEVIN, PC

19
20 
21 _____

HOLLY O. WHATLEY
Attorneys for Respondent
CITY OF SIERRA MADRE

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

11/11/98

1 **GENERAL DEMURRER**

2 Respondent City of Sierra Madre demurs generally to the first and second causes of action of
3 the Verified Petition for Writ of Mandate and Complaint for Declaratory Relief on the following
4 grounds:

5 **Demurrer to First Cause of Action**

6 1. The First Cause of Action fails to state a claim sufficient to constitute a cause of
7 action because it shows on its face that the action is barred by the 60-day statute of limitations
8 applicable pursuant to Code of Civil Procedure sections 860 and 863. (Code Civ. Proc., § 430.10,
9 subd. (e).)

10 **Demurrer to Second Cause of Action**

11 2. The Second Cause of Action fails to state a claim sufficient to constitute a cause of
12 action because it shows on its face that the action is barred by the 60-day statute of limitations
13 applicable pursuant to Code of Civil Procedure sections 860 and 863. (Code Civ. Proc., § 430.10,
14 subd. (e).)

15
16 DATED: June 20, 2011

COLANTUONO & LEVIN, PC

17
18 

19 HOLLY O. WHATLEY
20 Attorneys for Respondent
21 CITY OF SIERRA MADRE
22
23
24
25

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

11/02/08

26
27
28

TABLE OF CONTENTS

Page

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

I. Introduction and Summary of Argument.....1

II. Statement of Facts.....2

III. Authority and Standard for Demurrer.....7

IV. The Petition Is Untimely Under the Validation Statute (Code Civ. Proc., § 860 et seq.)....8

A. The Validation Statute Applies To Test the Validity of the City’s Bond
 Issuance.....8

B. The Validation Statute Applies Because the Challenged Ordinance Is
 Inextricably Bound Up With the 2003 Water Revenue Bonds at Issue.....10

C. Because the Petition Was Filed After the 60-Day Limitations Period, It Is
 Time- Barred and Must Fail.....13

V. Conclusion14

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

86/23/11

TABLE OF AUTHORITIES

Page

CASES

1

2

3

4 *Blue v. City of Los Angeles*

5 (2006) 137 Cal.App.4th 11318

6 *California Commerce Casino, Inc. v. Schwarzenegger*

7 (2007) 146 Cal.App.4th 14069, 10, 11, 12

8 *City of Ontario v. Superior Court*

9 (1970) 2 Cal.3d 3358, 9, 10

10 *Cnty. Youth Athletic Ctr. v. City of Nat'l City*

11 (2009) 170 Cal.App.4th 4168

12 *Flying Dutchman Park, Inc. v. City & County of San Francisco*

13 (2001) 93 Cal.App.4th 11298

14 *Friedland v. City of Long Beach*

15 (1998) 62 Cal.App.4th 835 passim

16 *Gong v. City of Fremont*

17 (1967) 250 Cal.App.2d 5688

18 *Graydon v. Pasadena Redevelopment Agency*

19 (1980) 104 Cal.App.3d 63110, 11, 13

20 *Iverson, Yoakum, Papiano & Hatch v. Berwald*

21 (1999) 76 Cal.App.4th 9908

22 *McLeod v. Vista Unified School Dist.*

23 (2008) 158 Cal.App.4th 115610, 11, 12

24 *Phillips v. Seely*

25 (1974) 43 Cal.App.3d 10410

26 *Walters v. County of Plumas*

27 (1976) 61 Cal.App.3d 46011

28 *Writers Guild of Am., Inc. v. City of Los Angeles*

(2000) 77 Cal.App.4th 4757

STATUTES

27 Code Civ. Proc., § 430.10, subd. (e)7

28 Code Civ. Proc., § 8601, 8, 9, 12, 13

Code Civ. Proc., § 8617, 12

Code Civ. Proc., § 861.17

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

55-224-55

TABLE OF AUTHORITIES

Page

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

Gov't Code, § 17700.....9

Gov't Code, § 53400.....9

Gov't Code, § 53511.....9, 10

Gov't Code, § 53511, subd. (a).....9

Gov't Code, § 6063.....7, 12

Gov't Code, § 6584.....1, 9

Gov't Code, § 6599.3.....9

OTHER AUTHORITIES

Cal. Const., art. XIII D.....7

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

11/02/98

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 **I. Introduction and Summary of Argument**

4 Petitioner John Crawford ("Petitioner") seeks to invalidate a duly-authorized ordinance of the
5 City Council of Respondent City of Sierra Madre (the "City") increasing water rates to fund the
6 operation of the City's water system and payment on its bond debt. Petitioner, however, delayed too
7 long in filing his lawsuit. Under California Code of Civil Procedure section 860 et seq., Petitioner
8 had 60 days from the passage of the Ordinance to file a reverse validation proceeding. Instead, he
9 waited nearly four months to file his Verified Petition for Writ of Mandate and Complaint for
10 Declaratory Relief (the "Petition"). His Petition is accordingly time-barred.

11 The Petition challenges the validity of the City's Ordinance No. 1312 (the "Ordinance"),
12 adopted on January 11, 2011 amending the City's water rates to fund costs associated with providing
13 water services to City residents and keep revenues at levels sufficient to cover the City's bond
14 payments. Under the City's 2003 issuance of water revenue bonds, the City promised bondholders it
15 would levy water rates at levels sufficient to (i) cover its principal and interest payments on the
16 bonds, and (ii) ensure that its net revenues from operating the water system were at least 120% of the
17 amount payable in principal and interest per fiscal year. The bonds are still in existence and the City
18 is bound to comply with these covenants. The Petition, therefore, challenges not only the Ordinance,
19 but the City's ability to adhere to its promises to bondholders to increase its water rates to cover its
20 debt and maintain an adequate revenue stream.

21 Under the statutes authorizing the City to finance its water operations through issuing bonds
22 (Gov't Code, § 6584 et seq.), any challenge to the validity of such bonds must be brought as a
23 reverse validation proceeding under the validation statute, Code of Civil Procedure section 860 et
24 seq. This validation statute provides the procedure to challenge the validity of certain local
25 governmental decisions or acts, especially where third parties such as bondholders depend on the
26 certainty and financial stability of the government's actions. The validation statute requires notice
27 by publication and, because it is in the nature of an *in rem* proceeding, applies to bind all interested
28 parties, not simply those who are parties to the proceeding. The validation statute is intended to

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

11/22/98

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

33,02,98

1 limit the extent to which delay due to litigation may impair a public agency's ability to operate
2 financially, or a third party's ability to rely upon actions taken by a public agency in connection with
3 financial instruments, by providing for prompt resolution of claims that a public agency's decision or
4 act is invalid. Accordingly, a validation proceeding must be brought either by the public agency or
5 any interested party (a so-called "reverse validation action") within 60 days of the challenged
6 decision or act.

7 Here, Petitioner failed to bring his lawsuit as a validation proceeding, failed to provide the
8 requisite notice and – most importantly – failed to timely file the Petition. Yet, by seeking to
9 invalidate the Ordinance, the Petition threatens the City's ability to raise revenues to service its debt
10 obligations in compliance with its covenants to bondholders and therefore threatens the validity of
11 the bonds themselves. The Petition not only seeks to limit the City's revenue stream – the only
12 source of revenue to meet its covenants to bondholders – it also threatens the City's ability to abide
13 by its promises and the bondholders' ability to rely upon the bonds. The remedy Petitioner seeks
14 could therefore have a chilling effect on potential third party lenders, result in higher interest rates,
15 reduced availability of credit and even default or invalidation of the bonds.

16 Accordingly, the Ordinance is inextricably bound to the City's financial obligations and
17 Petitioner's challenge to it should have been brought as a reverse validation action. A validation
18 proceeding would have alleviated the hindrance to the City's financial operation caused by the
19 uncertainty of litigation and would have allowed those interested parties, like the bondholders, to
20 appear and be heard where, as here, their interests are at stake. However, because the Petition was
21 brought outside the applicable 60-day limitations period, it is time-barred on its face. The City's
22 demurrer should accordingly be sustained without leave to amend.

23
24 **II. Statement of Facts**

25 Original Bond Issuance To Finance Water Improvements. On September 1, 2003, the Sierra
26 Madre Financing Authority (the "Authority") issued \$6,750,000 in water revenue bonds: the Water
27 Revenue Parity Bonds, Series 2003. (Declaration of Karin Schnaider ["Schnaider Decl."], Exh. 4 §
28 2.1.) The City Council authorized the bond issuance on July 28, 2003 to finance improvements to

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

11/22/98

1 the City's water system. (See *id.*, Exhs. 1-3.) The proceeds from the water revenue bonds were to
2 finance certain improvements "described in the City's ten year Water System Improvement Plan,"
3 including the following infrastructure categories: "(1) Source of Supply Projects, (2) Reservoir
4 Projects, (3) Pump Station Projects, (4) Transmission Pipeline Projects, (5) Distribution System
5 Projects, (6) Interconnection Projects, (7) Facility Improvements and (8) Capital Equipment." (*Id.*,
6 Exh. 5 at p. B-1.)

7 Under the Installment Sale Agreement, the City agreed to acquire the improvements from the
8 Authority in exchange for payments of principal and interest (the "Installment Payments") from the
9 City' water enterprise revenues. In connection with the bond issuance, the City agreed to a rate
10 covenant that required it to revise water rates to ensure the City could pay both principal and interest
11 on the water revenue bonds. (*Id.*, Exh. 5 § 4.7; *id.*, Exh. 6 at 14.) In particular, the City covenanted,
12 in relevant part, as follows:

13 The City shall fix, prescribe, revise and collect rates, fees and charges for the
14 services and facilities furnished by the Water Enterprise during each Fiscal Year,
15 which are at least sufficient, after making allowances for contingencies and error in
16 the estimates, to yield Gross Revenues sufficient to pay the following amounts in
17 order of priority:

18 (a) All Operation and Maintenance Costs estimated by the City to become due
19 and payable in such Fiscal Year;

20 (b) All Installment Payments and payments of principal of and interest on any
21 Parity Obligations as they become due and payable during such Fiscal Year . . .;

22 (*Id.*, Exh. 5 § 4.7.)

23 In addition to the rate covenant, the City agreed to revise rates as necessary to maintain a
24 particular ratio of revenue to debt on the bonds:

25 [T]he City shall fix, prescribe, revise and collect rates, fees and charges for the
26 services and facilities furnished by the Water Enterprise during each Fiscal Year,
27 which are sufficient to yield Net Revenues which are at least equal to one hundred
28 twenty percent (120%) of the amount described in the preceding clause (b) [*i.e.*,
section 4.7(b), *supra*] for such Fiscal Year.

(*Ibid.*) Compliance with the covenants and the payment obligations is thus founded on water rate
increases.

Under the Installment Sale Agreement, the City pledged its water revenues for timely
payment of the Installment Payments. (*Id.*, Exh. 5 § 4.5(a) ["All of the Net Revenues, and all

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

11/16/08

1 moneys on deposit in the Water Enterprise Fund, are hereby irrevocably pledged, charged and
2 assigned to the punctual payment of the Installment Payments and any Parity Obligations . . .”].)
3 This pledge constitutes a first lien on the City’s water revenues from the operation of its water
4 system. (*Ibid.* [“Such pledge, charge and assignment shall constitute a first lien on the Net Revenues
5 and such other moneys for the payment of the Installment Payments . . .”].)

6 Pursuant to the Indenture, the Authority assigned all its right, title and interest in the
7 Installment Payments it receives from the City to the Trustee on behalf of the bondholders. (*Id.*,
8 Exh. 4 § 4.1; see also *id.* Exh. 5 §§ 4.4(d), 7.1.) The bondholders thereby receive an interest in and
9 lien upon the Installment Payments that the Authority receives from the City. (See *id.*, Exh. 6 at 9.)
10 As the Authority’s assignees (by virtue of the Indenture), the bondholders share the Authority’s
11 interest in the City’s rate covenants because the rates serve to secure the revenue for the Installment
12 Payments. (*Ibid.*) Indeed, so long as the bonds are outstanding, the Installment Payments cannot be
13 used for any purpose other than servicing the debt on the bonds. (*Id.*, Exh. 5 § 4.5(a); *id.*, Exh. 6 at
14 9.)

15 Moreover, the bonds are limited obligations and “[t]he full faith and credit of the Authority,
16 the City or the Agency (which are parties to the agreement creating the Authority), is not pledged for
17 the payment of the principal of or interest or premium, if any, on the Bonds.” (*Id.*, Exh. 6 at i.)
18 Thus, bond agreements require the City to fix adequate water rates to pay off the bond debt because
19 the City’s water rate revenue is the source of payments to the bondholders. (*Id.*, Exh. 5 § 4.7; *id.*,
20 Exh. 6 at 9.)

21 Finally, the Installment Sale Agreement assigns the Authority’s rights and remedies as against
22 the City for an Event of Default to the Trustee and bondholders. (*Id.*, Exh. 5 § 8.6.)¹ Again, it is the
23 bondholders who benefit from the rate covenants and therefore hold the rights and remedies in the
24 event of a default.

25 Rate Adjustment Under the Terms of the Rate Covenant. As Petitioner alleges, in 2008, the
26 City commissioned a study on possible water rate increases to comply with its rate covenant in the
27 _____

28 ¹ The enforcement of the bondholders’ rights against the City is given to the Trustee. (*Id.*, Exh. 4 §
5.8.)

1 2003 bond issuance. (Petition and Complaint ["Pet."], Exh. 2 at 7-9, 16.²) The City considered a
2 rate increase because, as City staff reported, since fiscal year 2006-2007, the City's revenue had not
3 kept pace with the increased cost of operating the water system. (Pet., Exh. 3 at 25.) As a result,
4 "[b]ond covenants [were] not currently met." (*Ibid.*) Funding for the cost of operating the water
5 system had to come from a rate increase for two reasons. First, because the rate covenant in the
6 Installment Sale Agreements provided for revenue exclusively from water rates (on which
7 bondholders hold a first lien), and second, because "the water department is an Enterprise Fund, and
8 as such it is run like a business. All of the expenses and revenues are kept separate from other city
9 funds." (*Ibid.*) The City was accordingly aware that it would likely need to raise rates to comply
10 with the 120% debt ratio and ensure sufficient funds to pay the Installment Payments. (*Ibid.*; Pet.,
11 Exh. 6 at 59.)

12 To determine the amount of increase necessary, the City assessed the "specific amount of
13 funding . . . needed to operate the water system." (Pet., Exh. 3 at 23.) While the first goal of rates
14 was to fund routine maintenance and upgrades, "[t]he second priority [was] to meet the debt
15 obligations of the Water Fund, meaning repayment the bonds [sic] and loans that funded the recent
16 \$20 million water infrastructure improvements." (*Id.* at 23-24.) The City staff report prepared in
17 anticipation of the rate proposal explained the consequences of not increasing water rates. (*Id.* at 24-
18 26.) The report noted that "[w]ithout proper revenue to cover operating expenses, the City's Water
19 Fund credit and bond rating will deteriorate, closing the door for financing options to pay for
20 infrastructure replacement, such as the financing capital used for the Mira Monte Reservoir
21 replacement." (*Id.* at 26.) Indeed, in the report's "Projected Changes to Water Net Assets Without
22 Approval of the Water Rate Increase," by far the largest single expense was servicing the City's debt
23 obligations (over \$1 million annually beginning in fiscal year 2011-2012). (*Id.* at 28.)

24 Bucknam and Associates, who the City had retained to conduct the water rate study,
25 concluded that "[t]he current water rates do not generate the amount of revenue necessary to meet
26

27 _____
28 ² Citations to page numbers in the Petition's Exhibits are to the sequential pagination provided by
Petitioner.

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

5/23/11

1 the covenants on the bonds issued to the City.” (Pet., Exh. 10 at 197.)³ The Mayor Pro Tem
2 commented that “[w]e are short of bond indebtedness. . . . To cover the Bond obligation, we need
3 \$1.7M by 2014.” (Pet., Exh. 10 at 205.) Finally, as explained by City staff to an interested resident,
4 “[i]f rates remain unchanged for a long period of time, it is projected that the current \$2 million in
5 reserves will be exhausted by the end of 2014-2015.” (Pet., Exh. 17 at 254.) Indeed, the rate
6 proposals submitted during the November 9, 2010 City Council meeting all indicated their target
7 was compliance with the City’s 1.20 debt ratio as required under the bond covenants. (See Pet., Exh.
8 12 at 221-223.)

9 The City therefore determined the amount of rate increase necessary to fund routine
10 maintenance and “meet the debt obligations of the Water Fund, meaning repayment the bonds [sic]
11 and loans that funded the recent \$20 million water infrastructure improvements.” (Pet., Exh. 3 at 23-
12 24.) After some two and a half years of study, meetings, hearings, education outreach and public
13 comment, the City Council introduced the challenged Ordinance (Ordinance No. 1312) on
14 November 23, 2010 and adopted it on January 11, 2011. (Pet., Exh. 1 at 2.) It did so “to fund costs
15 associated with providing water service to water customers in the City” in compliance with, and in
16 reliance upon, the rate covenant in the 2003 bond issuance. (*Id.* at 1.)

17 Petitioner’s Allegations. Petitioner filed his Petition challenging the Ordinance on May 6,
18 2011, nearly four months after the City Council passed the Ordinance. (Pet.) (Petitioner and his
19 counsel had already been corresponding with the City concerning the proposed and later-enacted
20 water rates since September 2010. (Pet., Exh. 7 at 80.)) The Petition alleges that the City’s notice of
21 the proposed water rate increase was insufficient (Pet. ¶¶ 29-37) and, in an effort to educate residents
22 about the proposed rate change, that City officials made misleading statements about the reason for
23 the rate change (Pet. ¶¶ 44-55). It also alleges that the majority protest proceeding conducted in
24 connection with the proposed rate increase was inadequate under Proposition 218 because the City

25
26 ³ At the May 11, 2010 City Council meeting to discuss the rate proposal, the City’s consultant
27 commented that, although the City had adequate revenue to service its debt obligation, with rising
28 costs, revenue may not be sufficient and the City could default on its obligations. (Pet., Exh. 5 at
44.) The May 11, 2010 agenda report on the subject also concluded that “Water Fund reserves have
been eroded to a level that does not provide adequate coverage for the City’s existing Water Bonds
. . . .” (Pet., Exh. 11 at 209.)

1 ultimately passed water rates that were less than the rates that were the subject of the majority
2 protest proceeding. (Pet. ¶¶ 56-67.)

3 More specifically, the Petition alleges that the City failed to adequately notify residents that
4 the rate increase was necessary to comply with the rate covenants. Petitioner alleges, on information
5 and belief, that “many residents were misled into believing that the revenue from the water rate
6 increase would be used primarily to replace the water mains instead of satisfying water bond and
7 other debt obligations.” (Pet. ¶ 55.) Petitioner also alleges that the City’s Notice of Public Hearing
8 on Proposed Water Rates did not adequately disclose that the rate increase was integral to complying
9 with the City’s bond obligations when it stated: “the City imposes its water rates in order to fund the
10 City’s cost of operating and maintaining the water system, as well as to pay off the costs of
11 improvements to that system.” (Pet. ¶ 37 [quoting Pet., Exh. 4 at 32].)

12 Based on these allegations, Petitioner asserts two causes of action: (1) a writ of mandate
13 invalidating the Ordinance based on purported violations of Proposition 218 (Cal. Const., art. XIII
14 D); and (2) a declaratory judgment that the Ordinance is invalid and unlawful on similar grounds
15 (*Ibid.*). (Pet. ¶¶ 68-75.)

16 Petitioner filed his Petition nearly four months – 115 days – after the City passed the
17 challenged Ordinance. He also failed to publish the “summons pursuant to Section 6063 of the
18 Government Code in a newspaper of general circulation designated by the court, published in the
19 county where the action is pending,” and did not direct the summons to “all persons interested in the
20 matter.” Code Civ. Proc., §§ 861, 861.1.

21 This demurrer followed.

22
23 **III. Authority and Standard for Demurrer**

24 A party may demur to a complaint that does not state facts sufficient to constitute a cause of
25 action. (Code Civ. Proc., § 430.10, subd. (e).) A demurrer tests the legal sufficiency of a complaint,
26 accepting as true all facts properly pled or subject to judicial notice. (*Writers Guild of Am., Inc. v.*
27 *City of Los Angeles* (2000) 77 Cal.App.4th 475, 477 [affirming sustaining of demurrer without leave
28 to amend as to First Amendment challenge to business license tax].) It is well-settled that “[a]

1 complaint showing on its face the cause of action is barred by the statute of limitations is subject to
2 general demurrer.” (*Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App.4th 990,
3 995.) If the complaint does not state facts sufficient to constitute a cause of action, and the plaintiff
4 is unable to demonstrate a reasonable possibility of curing that defect by amendment, the demurrer
5 should be sustained without leave to amend. (*Flying Dutchman Park, Inc. v. City & County of San*
6 *Francisco* (2001) 93 Cal.App.4th 1129, 1134 [affirming sustaining of demurrer without leave to
7 amend as to constitutional challenge to parking tax].) This standard applies equally to petitions for
8 writs of mandate. (See *Gong v. City of Fremont* (1967) 250 Cal.App.2d 568, 572.)
9

10 **IV. The Petition Is Untimely Under the Validation Statute (Code Civ. Proc., § 860 et seq.)**

11 **A. The Validation Statute Applies To Test the Validity of the City’s Bond Issuance**

12 The validation statute applies because the City adopted the challenged Ordinance to preserve
13 the 2003 water revenue bonds and comply with its obligations under those bonds, the validity of
14 which must be tested by a validation proceeding according to statute. A “validation proceeding”
15 (Code Civ. Proc., § 860 et seq.) is a lawsuit filed and prosecuted for the purpose of securing a
16 judgment determining the validity of a particular local governmental decision or act. (*Blue v. City of*
17 *Los Angeles* (2006) 137 Cal.App.4th 1131, 1135 n.4.) The validation statute tests “the validity of
18 [public agencies’] bonds or assessments or the legality of their existence.” (*City of Ontario, supra*, 2
19 Cal.3d at p. 340.) “A key objective of a validation action is to limit the extent to which delay due to
20 litigation may impair a public agency’s ability to operate financially.” (*Friedland v. City of Long*
21 *Beach* (1998) 62 Cal.App.4th 835, 843.) There is accordingly a strict 60-day limitations period
22 applicable to such validation actions. (Code Civ. Proc., § 860.) “ ‘Under the statutory scheme, “an
23 agency may indirectly but effectively ‘validate’ its action by doing nothing to validate it; unless an
24 ‘interested person’ brings an action of his own under section 863 within the 60–day period, the
25 agency’s action will become immune from attack whether it is legally valid or not.” ‘ [Citations.]
26 ‘[A]s to matters which have been or which could have been adjudicated in a validation action, such
27 matters ... must be raised within the statutory limitations period in section 860 et seq. or they are
28 waived.’ [Citation.]” (*Cnty. Youth Athletic Ctr. v. City of Nat’l City* (2009) 170 Cal.App.4th 416, 428

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

FILE/98

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

11/22/98

1 [quoting *McLeod v. Vista Unified School Dist.* (2008) 158 Cal.App.4th 1156, 1166-1167].)

2 The validation statute does not specify the matters to which it applies. Rather, it applies to
3 “any matter which under any other law is authorized to be determined pursuant to this chapter”
4 (Code Civ Proc., § 860.) Thus, other statutes, and cases that have interpreted them, determine the
5 scope of public agency actions subject to validation. For example, “contracts subject to validation
6 under Government Code section 17700 are those that are in the nature of, or directly relate to the
7 state or a state agency’s bonds, warrants, or other evidence of indebtedness.” *California Commerce*
8 *Casino, Inc. v. Schwarzenegger* (2007) 146 Cal.App.4th 1406, 1430.

9 In the instant case, the City Council passed the challenged Ordinance to comply with the rate
10 covenant in the Installment Sale Agreement in the 2003 bond issuance and to preserve the validity
11 and marketability of those bonds. The Authority issued the 2003 water revenue bonds pursuant to
12 the Marks-Roos Local Bond Pooling Act, Gov’t Code, § 6584 et seq. (Schnaider Decl., Exh. 5 at 1.)
13 Government Code section 53400 et seq. also provides authority more generally for “the power of
14 local agencies to sell their bonds, replace defaced or lost bonds, and pledge their revenues to pay or
15 secure such bonds.” (*City of Ontario v. Superior Court* (1970) 2 Cal.3d 335, 343.)

16 Both of these articles, which govern the 2003 bond issuance, require that challenges to the
17 validity of bonds issued pursuant to their terms must be brought as validation actions under Code of
18 Civil Procedure section 860 et seq. The Marks-Roos Act provides:

19 Notwithstanding any other provision of law, an action may be brought under Chapter
20 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil
21 Procedure, to determine the validity of any bonds issued under this article to finance
the purchase of bonds for local agencies, [or] the financing of public capital
improvements . . .

22 (Gov’t Code, § 6599.3.) In addition, Government Code section 53511 provides: “A local agency
23 may bring an action to determine the validity of its bonds, warrants, contracts, obligations or
24 evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part
25 2 of the Code of Civil Procedure.” (Gov’t Code, § 53511, subd. (a).) Because both provisions
26 governing the bond issuance incorporate the procedures of the validation statute, the validation
27 statute applies to actions challenging the bond’s validity or which otherwise may “impair a public
28 agency’s ability to operate financially.” (*Friedland, supra*, 62 Cal.App.4th at p. 843.)

1 **B. The Validation Statute Applies Because the Challenged Ordinance Is**
2 **Inextricably Bound Up With the 2003 Water Revenue Bonds at Issue**

3 The validation statute applies here because the Petition seeks to invalidate the actions
4 required to comply with the rate covenants and promises to bondholders and, if successful, would
5 render the City in default under the bonds.

6 To determine whether a bond, contract or other evidence of indebtedness falls within the
7 scope of the validation statute, courts consider whether the challenge is “in the nature of, or directly
8 relate[s] to the . . . agency’s bonds, warrants, or other evidences of indebtedness” or is “inextricably
9 bound to the Agency’s financial obligations.” (*California Commerce Casino, supra*, 146 Cal. App.
10 4th at p. 1430; *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 645.)
11 “The validating statutes should be construed so as to uphold their purpose, i.e., ‘the acting agency’s
12 need to settle promptly all questions about the validity of its actions.’” (*McLeod, supra*, 158
13 Cal.App.4th 1156, 1166 [quoting *Friedland, supra*, 62 Cal.App.4th at p. 842].) In addition, courts
14 generally construe “bonds, warrants, contracts, obligations or evidences of indebtedness” in
15 Government Code section 53511 to “deal with the limited topic of a local agency’s financial
16 obligations.” (*City of Ontario, supra*, 2 Cal.3d at p. 344.) Accordingly, while challenges to an
17 agency’s contract for legal services to indigent criminal defendants does not fall within the validation
18 statute (*Phillips v. Seely* (1974) 43 Cal.App.3d 104, 112), a city’s pledge of funds to insure
19 repayment of an aquarium’s bonds does (*Friedland, supra*, 62 Cal.App.4th at p. 843).

20 In *Graydon v. Pasadena Redevelopment Agency*, the Court of Appeal found that defendant
21 agency’s no-bid contract for the construction of a parking garage was “inextricably bound to the
22 Agency’s financial obligations” for funding a larger retail center. (*Graydon, supra*, 104 Cal.App.3d
23 at p. 645.) The court explained that “[t]he financing [of the retail center] is by bonds issued by the
24 Agency to be paid from tax increments allocated to the Agency.” (*Ibid.*) The plaintiff challenged the
25 no-bid nature of the contract, but the court found that a competitively bid contract would have
26 delayed the construction of the retail center. (*Ibid.*) “The ability of the Agency to pay its bonds,
27 dependent in large part upon the flow of tax increment monies resulting from the completion of the
28 retail center, was thus directly linked to the award of the questioned contract.” (*Ibid.*) As a result,

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

11/22/98

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

11/22/95

1 the court applied the validating statute because it found that the “[t]he lack of a prompt validating
2 procedure would impair this public agency’s ability to operate and carry out its statutory purpose.”
3 (*Ibid.*) The court accordingly found that the validation statute applied to plaintiff’s challenge to the
4 construction contract. (*Ibid.*)

5 In *Graydon*, the plaintiff’s challenge to the contract threatened the defendant agency’s ability
6 to pay its bonds. Similarly, here, the Petitioner’s challenge to the Ordinance threatens the City’s
7 ability to pay its bonds. The ability of the City to pay its bond indebtedness – indeed, its very
8 compliance with the express terms of its bond obligations – is directly linked to the passage of the
9 Ordinance. Because the Ordinance provides a revenue stream (via a water rate increase), the
10 Petition directly challenges the City’s financing arrangement for improvements to its water system.
11 (*California Commerce Casino, supra*, 146 Cal. App. 4th at p. 1430 [finding challenged tribal
12 compacts were “inextricably intertwined with the state’s intended use of the income stream created
13 by them and with the bonds to be issued at a later date”] [internal quotations omitted].) The
14 challenged Ordinance is thus “inextricably bound up” with the City’s financial obligations.
15 (*Graydon, supra*, 104 Cal.App.3d at p. 645; see also *Friedland, supra*, 62 Cal.App.4th at p. 845
16 [finding “pledges of funds from various sources to insure repayment of AOP bonds in the event that
17 Aquarium revenues could not repay that debt” were “integral components of financing” subject to
18 validation].)

19 The Ordinance also directly relates to the City’s bonds because challenging the Ordinance
20 “threatens to impede the [City’s] ability to operate.” (*McLeod, supra*, 158 Cal.App.4th at pp. 1170-
21 1171.) The revenue derived from the rate increase is directly linked to the financing mechanism of
22 the bond issuance. The rate covenants in the bond issuance require the City to increase rates as
23 necessary to provide an ongoing revenue stream to pay bondholders the Installment Payments on the
24 bonds. In addition, the debt covenant, which the City cannot fulfill without a rate increase, also
25 requires the City to maintain a financial “cushion” to ensure payments on the bond debt. The City’s
26 inability to comply with these covenants – which the Ordinance aims to address – could lead to a
27 lower credit rating, higher cost of debt and, potentially, default. (*Walters v. County of Plumas* (1976)
28 61 Cal.App.3d 460, 468 [finding validation statute applied where “[t]he possibility of future

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

55/55/98

1 litigation is very likely to have a chilling effect upon potential third party lenders, thus resulting in
2 higher interest rates or even the total denial of credit,” which may impair a public agency’s ability to
3 fulfill its responsibilities]; see also *McLeod, supra*, 158 Cal.App.4th at pp. 1170-1171 [finding
4 validation statute applied to time-bar plaintiff’s challenge to revised plan for use of bond funds].)

5 In addition, the policy underlying the validation statute is furthered by application to
6 Petitioner’s action. The lack of a prompt validating procedure puts the City’s financing at risk and
7 frustrates the City’s ability to pursue the purpose of the rate increase and bond issuance. Here, the
8 purpose of the bond issuance was to finance improvements to the City’s water system. (See
9 Schnaider Decl., Exhs. 2-3 & Exh. 5 at B-1.) The purpose of the Ordinance, in turn, was to produce
10 revenue to comply with its rate covenant – water rates. Without the ability to promptly determine
11 the validity of its actions, the City risks breaking its promises to the bondholders who helped finance
12 improvements to the City’s water system. The City, already out of compliance with its debt
13 covenant, risks further negative impacts to its credit rating if it does not raise rates. Therefore, the
14 ability of the City to accomplish the purpose of the Ordinance “would be substantially impaired
15 absent a prompt validating procedure as to” the Ordinance. (*California Commerce Casino, supra*,
16 146 Cal.App.4th at p. 1430 [finding validation statute applied to amended tribal compacts in which
17 tribes’ annual payments would be securitized into bonds and sold to investors to fund transportation
18 programs] [quoting *Grayson, supra*, 104 Cal.App.3d at p. 645].)

19 The particular procedures triggered by a validation proceeding also support application of the
20 validation statute to the Petition. A validation proceeding is “in the nature of a proceeding in rem.”
21 (Code Civ. Proc., § 860.) “As an in rem proceeding, a validation action differs from traditional
22 actions challenging a public agency decision; its effect binds the agency and all other persons.”
23 (*Friedland, supra*, 62 Cal.App.4th at p. 843.) In addition, the notice provisions of the validation
24 statute provide for notice by “publication of summons pursuant to Section 6063 of the Government
25 Code in a newspaper of general circulation designated by the court, published in the county where
26 the action is pending.” (Code Civ. Proc., § 861.) Here, the real party in interest is not Petitioner, but
27 the bondholders whose interests will be adversely affected if the City is prevented from meeting its
28 covenants to them. It is the bondholders who have an interest in and lien upon the Installment

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

3/1/11

1 Payments that the Authority receives from the City. (See Schnaider Decl., Exh. 6 at 9.) Challenging
2 the Ordinance effectively challenges the bondholders' rights to their payments. The validation
3 statute, intended to provide certainty to investors, is necessary to ensure prompt resolution of
4 Petitioner's claims because they could result in the City breaching its promises to the bondholders.
5 Only the validation statute, with its notice provisions and ability to bind all persons, is appropriate
6 for a challenge, like Petitioner's, that seeks to encumber others' rights under the bond
7 documentation. The Petition should accordingly have been brought as a reverse validation action.

8 In sum, Petitioner's challenge to the Ordinance seeks to overturn the City's efforts to comply
9 with its financing obligations. This could "have a chilling effect upon potential third party lenders,
10 thus resulting in higher interest rates or even the total denial of credit," which may impair a public
11 agency's ability to fulfill its responsibilities." (*Friedland, supra*, 62 Cal.App.4th at p. 843 [citing
12 *Walters, supra*, 61 Cal.App.3d at p. 468].) It would also result in a default under the bonds.
13 Therefore, because the Ordinance is "inextricably bound to the [City's] financial obligations,"
14 Petitioner's challenge to the City's Ordinance should have been brought under the validation statute,
15 Code of Civil Procedure section 860 et seq. (See *Graydon, supra*, 104 Cal.App.3d at p. 645.)
16

17 **C. Because the Petition Was Filed After the 60-Day Limitations Period, It Is Time-**
18 **Barred and Must Fail**


19 The validation statute requires that all validation proceedings, including reverse validation
20 proceedings brought by an interested party, be brought within 60 days of "the existence of any
21 matter which under any other law is authorized to be determined pursuant to this chapter." (Code
22 Civ. Proc., § 860; see also *id.* § 863 ["[A]ny interested person may bring an action within the time
23 and in the court specified by Section 860 to determine the validity of such matter".]) Here, that
24 matter accrued, at the latest, on January 11, 2011, when the City passed the Ordinance raising water
25 rates. (Pet. ¶ 63 & Exh. 1.) Because Petitioner did not file this action prior to March 14, 2011, but
26 instead waited nearly four months, the Petition is untimely under the validation statute. This
27 demurrer should accordingly be sustained.
28

1 **V. Conclusion**

2 Although ratepayers are entitled to challenge a City's actions taken to comply with bond
3 covenants, the law requires that they do so within a short, specified time frame in order to provide
4 financial stability for local governments and certainty for third-party bondholders. Here, the
5 challenge was filed too late. For the foregoing reasons, Respondent City of Sierra Madre
6 respectfully requests the Court sustain its demurrer to all causes of action alleged in the Petition
7 without leave to amend.

8
9 DATED: June 20, 2011

COLANTUONO & LEVIN, PC

10
11 
12 _____
13 HOLLY O. WHATLEY
14 Attorneys for Respondent
15 CITY OF SIERRA MADRE
16
17
18
19
20
21
22
23
24
25
26
27
28

Colantuono & Levin, PC
300 S. GRAND AVENUE, SUITE 2700
LOS ANGELES, CA 90071-3137

11/02/98

PROOF OF SERVICE
Crawford v. City of Sierra Madre, et al.
Los Angeles Superior Court Case No. BS131950

I, Kimberly Nielsen, declare:

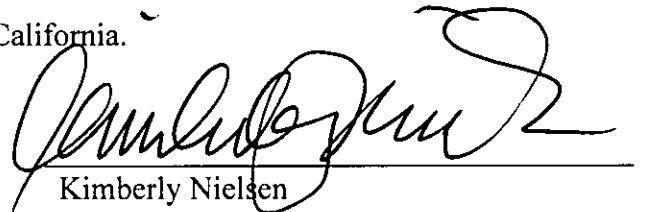
I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 300 S. Grand Avenue, Suite 2700, Los Angeles, California 90071. On June 20, 2011, I served the document(s) described as
1) NOTICE OF RESPONDENT CITY OF SIERRA MADRE'S DEMURRER AND DEMURRER TO THE VERIFIED PETITION AND COMPLAINT AND
2) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Kurt Zimmerman
312-1/2 E. Grandview Ave.
Sierra Madre, CA 91024

BY MAIL: The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

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

Executed on June 20, 2011, at Los Angeles, California.



Kimberly Nielsen