No. S226036

Exempt From Filing Fee
[Gov. Code §6103]

In the Supreme Court
of the
State of California

City of San Buenaventura
Plaintiff, Cross-Defendant and Respondent/Cross-Appellant

vs.

United Water Conservation District and Board of Directors of United Water Conservation District
Defendant, Cross-Complainants and Appellants/Cross-Respondents

APPLICATION FOR PERMISSION TO FILE AN AMICUS CURIAE BRIEF AND ACCOMPANYING AMICUS CURIAE BRIEF IN SUPPORT OF UNITED WATER CONSERVATION DISTRICT

Of a Published Decision of the
Second Appellate District, Case No. B251810

Reversing a Judgment of the Superior Court of the State of California
County of Santa Barbara, Case Nos. VENCI 00401714 and 1414739
Honorable Thomas P. Anderle, Judge Presiding

THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP
Ernest A. Conant (SBN 089111)
Jeffrey J. Patrick (SBN 285553)
1800 30th Street, 4th Floor
Bakersfield, CA 93301
Telephone: 661-327-9661
Facsimile: 661-327-0720
Email: econant@youngwooldridge.com
jpatrick@youngwooldridge.com

Attorneys for Applicant and Amicus Curiae
Santa Ynez River Water Conservation District

38390.000

No. S226036

Exempt From Filing Fee
[Gov. Code §6103]

In the Supreme Court
of the
State of California

City of San Buenaventura
Plaintiff, Cross-Defendant and Respondent/Cross-Appellant

---

vs.

United Water Conservation District and Board of Directors of United Water Conservation District
Defendant, Cross-Complainants and Appellants/Cross-Respondents

---

APPLICATION FOR PERMISSION TO FILE AN AMICUS CURIAE BRIEF AND ACCOMPANYING AMICUS CURIAE BRIEF IN SUPPORT OF UNITED WATER CONSERVATION DISTRICT

Of a Published Decision of the
Second Appellate District, Case No. B251810

Reversing a Judgment of the Superior Court of the State of California
County of Santa Barbara, Case Nos. VENCI 00401714 and 1414739
Honorable Thomas P. Anderle, Judge Presiding

THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP
Ernest A. Conant (SBN 089111)
Jeffrey J. Patrick (SBN 285553)
1800 30th Street, 4th Floor
Bakersfield, CA 93301
Telephone: 661-327-9661
Facsimile: 661-327-0720
Email: econant@youngwooldridge.com
jpatrick@youngwooldridge.com

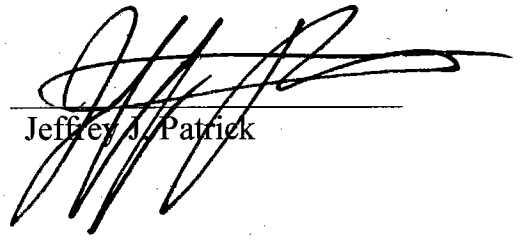
Attorneys for Applicant and Amicus Curiae
Santa Ynez River Water Conservation District

38390.000

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rules of Court, Rules 8.208 and 8.488, the undersigned counsel for Applicant and Amicus Curiae Santa Ynez River Water Conservation District certifies that there are no interested entities or persons that must be listed under Rule 8.208.

Executed this 17th day of November, 2015, in Bakersfield, California.



Jeffrey J. Patrick

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE:

Amicus Curiae, the Santa Ynez River Water Conservation District ("SYRWCD") hereby requests, per California Rule of Court, Rule 8.520(f)(1), permission to file the attached brief in support of United Water Conservation District in this matter.

SYRWCD, as one of only eleven water conservation districts in the State of California, has a significant stake in the outcome of this case and, in particular, this Court's resolution of the applicability of Water Code section 75594's mandated rate ratios to SYRWCD's groundwater charges imposed pursuant to Water Code section 75500 *et seq.* SYRWCD imposes groundwater charges pursuant to Water Code section 75594 to fund groundwater management activities within its jurisdiction and has done so for the past 37 years. SYRWCD will be significantly affected by this Court's determination of whether groundwater charges are subject to Proposition 218 or Proposition 26 requirements.

Pursuant to California Rule of Court, Rule 8.520, subdivisions (f)(4)(A)(i and ii) and (f)(4)(B), SYRWCD declares that Musick, Peeler & Garret, LLP, attorneys for United Water Conservation District provided commentary on the accompanying brief but that no party nor any counsel in the pending appeal made a monetary contribution to fund the preparation or submission of the accompanying brief and that no other person or entity, other than SYRWCD and counsel in this appeal, made a monetary contribution intended to fund the preparation or submission of the accompanying brief.

1. **As Water Conservation Districts are Mandated to Impose Water Code Section 75594's Rate Ratio as Part of their Groundwater Charges, SYRWCD has a Significant Interest in the Outcome of this Appeal.**

SYRWCD has been imposing a groundwater charge pursuant to Water Code section 75500 *et seq.* and, specifically, Water Code section 75594, for the past 37 years. SYRWCD relies on fees from these charges to fund groundwater management activities within its jurisdiction.

This Court's determination on the constitutionality of Water Code section 75594 and whether water conservation districts need to comply with Proposition 218 or Proposition 26 when imposing groundwater charges will significantly affect SYRWCD's daily and ongoing administration, budget, operations and groundwater management activities.

2. **The Amicus Curiae Brief Assists this Court by Succinctly Discussing the Legal and Practical Defects in Characterizing Groundwater Charges as Property Related Services Fees Subject to Proposition 218 and the Legal and Practical Merits of Characterizing the Fees as Regulatory Fees Subject to Proposition 26.**

The accompanying Amicus Curiae Brief provides analysis of both the practical and legal defects of characterizing a groundwater charge as a property related service fee pursuant to Proposition 218 and the difficulties such a characterization would place on public agencies that impose groundwater charges to fund groundwater management activities. The brief analogizes groundwater charges to current regulatory fees and contrasts groundwater management from traditional property related services. The brief further demonstrates that legally, practically and as a matter of public policy, groundwater charges are properly characterized as regulatory fees under Proposition 26 and that the Appellate Court's holding should stand.

Dated: November 17, 2015

Respectfully submitted:

The Law Offices of Young Wooldridge, LLP

By: _____

Jeffrey J. Patrick, Esq.
Attorneys for Applicant and Amicus Curiae:
Santa Ynez River Water Conservation District

No. S226036

Exempt From Filing Fee
[Gov. Code §6103]

In the Supreme Court
of the
State of California

City of San Buenaventura
Plaintiff, Cross-Defendant and Respondent/Cross-Appellant

---

vs.

United Water Conservation District and Board of Directors of United Water Conservation District
Defendant, Cross-Complainants and Appellants/Cross-Respondents

---

AMICUS CURIAE BRIEF IN SUPPORT OF UNITED WATER CONSERVATION DISTRICT

Of a Published Decision of the
Second Appellate District, Case No. B251810

Reversing a Judgment of the Superior Court of the State of California
County of Santa Barbara, Case Nos. VENCI 00401714 and 1414739
Honorable Thomas P. Anderle, Judge Presiding

THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP
Ernest A. Conant (SBN 089111)
Jeffrey J. Patrick (SBN 285553)
1800 30th Street, 4th Floor
Bakersfield, CA 93301
Telephone: 661-327-9661
Facsimile: 661-327-0720
Email: econant@youngwooldridge.com
jpatrick@youngwooldridge.com

Attorneys for Applicant and Amicus Curiae
Santa Ynez River Water Conservation District

TABLE OF CONTENTS

TABLE OF AUTHORITIES

California Cases

Treatises

State Statutes

INTRODUCTION

This Amicus Curiae Brief is submitted on behalf of the Santa Ynez River Water Conservation District ("SYRWCD"). Like United Water Conservation District ("UWCD"), SYRWCD is one of only 11 water conservation districts in California and is uniquely affected by the outcome of this case.

SYRWCD formed in 1939 to protect the rights of water users downstream of the United States Bureau of Reclamation's Cachuma Project on the Santa Ynez River. Included within the boundaries of SYRWCD are the cities of Solvang, Buellton and Lompoc, and the communities of Santa Ynez, Los Olivos and Ballard, along with over 30,000 acres devoted to irrigated agriculture which produce a wide variety of crops, including vegetable crops and grapes. SYRWCD's principal activities are to work with various agencies and participate in administrative proceedings to ensure the continuance of unimpaired state-mandated "water rights releases" from the Bradbury Dam that constitute Santa Ynez River flows that would have flowed downstream in the absence of the Cachuma Project. SYRWCD's activities protect water users downstream of the Bradbury Dam and within SYRWCD boundaries and groundwater resources within the region.

For the last 37 years, SYRWCD has imposed a groundwater charge pursuant to Water Code section 75500 *et seq.* to fund a significant portion of its groundwater management activities. SYRWCD's groundwater management activities, including its investigation and monitoring activities, provide invaluable information to assist SYRWCD with its ongoing groundwater management.

Like UWCD, SYRWCD is bound to impose regulatory fees for groundwater extraction at the ratio set by the Legislature in Water Code

section 75594. This Court's determination of whether groundwater charges are property related service fees subject to Proposition 218 or regulatory fees subject to Proposition 26 and its determination of the requirements of Water Code section 75594 are of significant importance to SYRWCD's long-term conservation efforts and daily operations.

ARGUMENT

I. GROUNDWATER CHARGES ARE NOT PROPERTY RELATED FEES PURSUANT TO PROPOSITION 218

A fee must be many things to be a property related service fee subject to Proposition 218. Article XIIID, Section 6 of the California Constitution[1] requires a property related service fee to:

1. Be charged to an identifiable parcel;
2. Be charged for a service that is actually used by or immediately available to the owner of the identifiable parcel; *and*
3. Be charged as an incident of property ownership.

If a fee does not meet *all* of the above requirements, then it is not subject to Proposition 218 and is either a tax under Proposition 13 or a regulatory fee under Proposition 26.

On their face, the groundwater charges imposed by UWCD do not satisfy *any*—let alone all—of the prerequisites that make a fee a property related service fee requiring adherence to Proposition 218.

A. Groundwater Charges are Imposed Differently from, and for a Different Purpose than, Property Related Service Fees

UWCD's groundwater charges—referred to by the Trial Court, the Appellate Court and within the industry as "groundwater extraction

[1] All further references to articles or sections of articles are to the California Constitution.

charges"—are fees for the *extraction* of groundwater. (Joint Appendix of Exhibits ("JAE"), Vol. 5, Ex. 50, pp. 922-935; JAE, Vol.10, Ex. 88, pp. 2123-2158; JAE, Vol. 12, Ex. 105, pp. 2501-2518; see Water Code §§ 75522, 75503, and 75504 [emphasis added].) That the fees charge for *extraction* rather than receipt of delivered water signifies both the regulatory nature of the fee and separates the fee from any notion that it is service based.

The fee is an *extraction* fee. The onus of the fee is on the extractor and their purposeful actions and activities. (Water Code § 75501.) Such fees are imposed only on operators of "water-producing facilities" and those operators are engaged in an action of *taking*—not receiving. (Water Code § 75504.) A groundwater charge does not fund the delivery of a commodity or service to a parcel; instead, it is simply a fee that must be paid for the privilege of engaging in the activity of extracting groundwater. (Water Code § 75522.)

B. The Purpose of Property Related Service Fees Under Proposition 218 is to Fund a Service that Directly Benefits an Identifiable Parcel

Consider a traditional property related service fee subject to Proposition 218: a water delivery fee. With a water delivery fee the service being procured—the *delivery* of water—is clearly identifiable and easily understood. The onus of a water delivery fee is on the fee payor's receipt of delivered water—an indisputable service. The payor does not need to take or engage in any action to receive water from the deliverer other than to pay the delivery fee.

With a water delivery fee, a homeowner turning on a faucet receives an immediate benefit from paying the fee: a useable and quantifiable amount of water. The water delivery fee goes directly towards paying for

the amount of water received. The homeowner can review a bill and know and understand exactly what services she has received and how her property has benefited. If the homeowner turns the faucet and no water comes out, that homeowner can call its water delivery service and expect that a service technician will be sent to their home to diagnose and correct the problem. It is the water delivery service's duty to ensure that when that faucet is turned, water is available.

For its services, the water deliverer charges the homeowner a fee based on the homeowner's consumption. Each parcel that subscribes to the water delivery service receives this benefit and pays only for the cost to deliver water to their parcel and not their neighbors. Water is delivered to an identifiable house, the service is both actually used by and immediately available to the homeowner. The service is incident to property ownership because the parcel and homeowner are the only ones that benefit from the delivery of water to the parcel.

Water delivery fees where a parcel owner pays only for the actual quantity of water delivered to it are the type of consumption-based fees that rightfully fall under *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 217. UWCD is not obligated to import or recharge water on a one-to-one ratio to groundwater charges paid or to recharge water in any specific quantities and thus, its groundwater charges cannot be held to fund a consumption-based service.

C. The Purpose of Groundwater Charges is to Fund Groundwater Management Activities that Conserve the Viability of the Groundwater Basin as a Public Resource

The duty of a water conservation district, and the purpose of a groundwater charge, is markedly different. The duty is not to the homeowner or parcel, but to the basin. A water conservation district plays

no part in ensuring that any particular faucet will spout water on command or more aptly, that any well will pump water.

For example, if UWCD were unable to import supplemental water for recharge purposes or otherwise perform recharge activities in any given year, the City would still be required to pay UWCD's groundwater charge if it were pumping groundwater. The charge is dependent only on the City's extraction of groundwater and does not fund the delivery of water or guarantee a supply.

Hypothetically, if one of the City's well pumps burns out or a well collapses or the water-table lowers below the depth of their well, UWCD is under no obligation to replace the pump, re-drill the well, or provide an alternative supply of water. Throughout this hypothetical downtime of the City's well, the City would not pay a groundwater charge because it would not be extracting groundwater. It would resume paying the groundwater charge *only* once it resolved its own issues with the well and chose to actively engage in the action of taking groundwater.

Continuing with the hypothetical, during the time the City ceased pumping and therefore ceased paying the groundwater charge, UWCD's groundwater management activities would not differ from normal. If groundwater management were truly substantially similar to a water delivery fee as suggested in *Pajaro Valley Water Mgmt. Agency v. Amrhein* (2007) 150 Cal.App.4th 1364, 1391 ("*Pajaro I*"), UWCD would be able to stop providing the property related service and benefit during the hypothetical downtime. But that is not the case with a groundwater charge: UWCD would not cease performing groundwater management or providing a benefit to the basin (and, in fact, could not stop as the benefits from its management are not realized immediately)—it would simply lose a source of funding for those activities.

As a corollary, if UWCD dissolved, groundwater extractors like the City would notice no immediate change. Pumps would continue to pull groundwater up from the basin and the City could continue supplying water to its inhabitants for municipal and commercial purposes until the basin runs dry.

Groundwater charges are simply not used to fund any of the hallmarks of a property related service like ensuring or delivering a water supply. The City's groundwater charge payments do not buy groundwater from UCWD like a dollar buys a bottle of water from a store—or like a water delivery fee buys a quantifiable supply of delivered water.

D. The Proportional Cost of Groundwater Management Cannot be Attributed to a Parcel as Required by Proposition 218 without that Attribution Being an Arbitrary Figure

Proposition 218 requires that a parcel only be charged the proportional cost attributable to it of providing the property related service. Thus, on its face, Proposition 218 only applies to charges where such attribution is possible. Determining the proportional cost of groundwater management attributable to a parcel is a practically insurmountable, if not impossible, task. Therefore, Proposition 218 could not have been intended to apply to fees to fund groundwater management activities.

With a water delivery service, the deliverer knows the cost it will take to obtain the water and deliver it to the customer. Determining the proportional costs attributable to a parcel is a simple mathematical equation.

In contrast, as the Trial Court determined and the City freely acknowledged, costs of groundwater management activities cannot be apportioned on a parcel-by-parcel basis. (JEA, Vol. 10, Ex. 88, pp. 2146-2149; City's Reply Brief, p. 34.)

The main issue—and one that spawns several sub-issues—is the complexity of the hydro-connectivity among subbasins of a main basin. As the Trial Court determined, all pumping within the main basin affects all other basins to *some* degree and groundwater recharge and management activities in one subbasin affect the main basin and all other subbasins to *some* degree. (JEA, Vol. 10, Ex. 88, p. 2146.) To *what* degree activities in the various subbasins affect other subbasins is the unanswerable question that prevents proportional attribution of costs to a parcel. (JEA, Vol. 10, Ex. 88, pp. 2148-2149.)

Groundwater recharge is not readily quantifiable like the amount of delivered water. Effects of recharge activities in one subbasin may not show themselves in another for multiple years. Calculating the flow of any particular recharged water molecule becomes even more difficult due to the fact that pumping continues during the recharge process. Calculating the proportional cost of the service to any parcel is nearly impossible because groundwater extraction on that parcel could cease before any benefits from paying the groundwater charge are realized.

Further, in addition to the problem of having multiple subbasins with various levels of connectivity, there can be—and, in fact, the Sustainable Groundwater Management Act will require there to be—places where multiple public agencies with control over groundwater will have overlapping jurisdiction over the same basin for groundwater management purposes. (Water Code §§ 10700 *et seq.*) How can a public agency properly determine the proportional cost to any one parcel where there are so many variables completely out of its control?

The Sustainable Groundwater Management Act implicitly recognized this challenge. Groundwater sustainability agencies are authorized to impose Proposition 26 regulatory fees to fund their

groundwater management activities and Proposition 218 property related service fees where they are supplying water directly to parcels. (Water Code §§ 10730(a) and 10730.2(a).)

Water Code section 10730.2, subdivision (a)(3) requires a groundwater sustainability agency to charge Proposition 218 property related service fees only where it seeks to recover its costs for the "supply, production, treatment or distribution of water." (Water Code § 10730.2(a)(3).)

Supplying, producing, treating and distributing water are all water delivery service costs and not the costs of groundwater management. As water delivery service costs, the costs are easily attributable to a parcel and are subject to Proposition 218 as consumption-based services. (*Bighorn-Desert View Water Agency v. Verjil, supra,* 39 Cal.4th at p. 217.)

The Legislature's provision of two options for imposing groundwater charges—one subject to Proposition 26 and the other to Proposition 218—demonstrates that groundwater charges are properly characterized as regulatory fees when they fund groundwater management and are only Proposition 218 property related service fees when they fund water delivery services.

In the instant case, the City—as a groundwater *extractor*—supplies and produces its own water through pumping from its water producing facilities, treats the water itself if necessary and distributes that water to itself and then its customers. Thus, UCWD's groundwater management activities and groundwater charges fall outside of the Legislature's most recent declaration of when a groundwater charge is subject to Proposition 218. (Water Code § 10730.2(a).)

E. As UWCD does not Provide a Property Related Service, it is Irrelevant Whether or not Groundwater Charges are Charged as an Incident of Property Ownership

In concluding groundwater charges were subject to Proposition 218, *Pajaro I* stated that extraction of water from a groundwater basin is "in some ways more intimately connected with property ownership than is the mere receipt of delivered water." (*Pajaro I, supra,* 150 Cal.App.4th at p. 1391.) While this may be true, it is irrelevant due to the lack of the receipt of a property related service. The law is clear that a charge to owners of a parcel is not in-and-of-itself a property related service fee. (*Apartment Association, Richmond v. Shasta Community Services District* (2004) 32 Cal.4th 409.)

What's more, *Pajaro I*'s determination ignores that prescriptive and appropriative groundwater rights (like the City's) *are **not** dependent on property ownership*. (JAE, Vol. 5, Ex. 50, p. 929; *San Bernardino v. Riverside* (1921) 186 Cal. 7, 29; 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Prop, § 958, p. 1152 [discussing overlying, appropriative, and prescriptive groundwater rights]; Slater, Cal. Water Law and Policy (1995) § 2.01, p. 2-8 ["[T]he appropriative right does not arise out of land ownership, but by the action of the appropriator in taking and applying water to a beneficial use."].)

Assuming *arguendo* that groundwater charges are charged as an incident of property ownership, they still do not fund an immediately available and actually used service attributable to an identifiable parcel. Because not *all* the perquisites to be a property related service fee under Proposition 218 are met, UWCD's groundwater charges cannot be property related service fees. To the extent *Pajaro I* holds otherwise, it is wrongly

decided as indicated by the Appellate Court. (Appellate Court Opinion, pp. 16-24.)

II. GROUNDWATER CHARGES ARE REGULATORY FEES UNDER ARTICLE XIIIC, SECTION 1, SUBDIVISIONS (e)(1), (e)(2) AND (e)(3)

Groundwater charges are properly classified as regulatory fees pursuant to Article XIIIC, Section 1, subdivisions (e)(1), (e)(2) and (e)(3). Those sections provide that the following charges are not taxes:

> (1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege;
>
> (2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product; and
>
> (3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

A groundwater charge like UWCD's funds multiple regulatory purposes and fits neatly into all three of the above exceptions:

A. UWCD's Groundwater Charges Fund a Specific Benefit and Privilege Only Available to Fee Payors

Groundwater charges provide both a privilege and a specific benefit to payors of the fee in accordance with Article XIIIC, Section 1, subdivision (e)(1). Within UWCD, landowners cannot pump groundwater unless they register their wells with UWCD and pay the established groundwater charge. (Water Code §§ 75640, 75641 and 75642.) Thus, only

those landowners that pay the fee—and none of those that do not—enjoy the privilege of exercising their rights to pump groundwater from the basin.

Because only fee payors may extract groundwater, those fee payors alone experience the specific benefits that result from UWCD's groundwater management activities. Fee payors benefit from a higher groundwater table due to UWCD's groundwater management, including its importation of surface water and coordination of groundwater recharge efforts. Fee payors directly benefit from lowered energy costs to pump water and by avoiding the need to deepen their wells.

Perhaps more importantly, fee payors benefit from the regulation of other groundwater extractors. Without UWCD's regulation, no fee payor could be assured that other groundwater extractors were acting reasonably with respect to the basin without resorting to legal action. Charging groundwater extractors a fee per acre foot pumped, monitoring their pumping, and requiring registration of their wells restricts an otherwise unrestricted (or nearly so) right and promotes responsibility and conservation of groundwater as a natural resource.

Both benefits prevent, or at least delay, the need for landowners to engage in a costly groundwater adjudication by increasing the amount of available groundwater and mitigating potential overdraft scenarios. If UWCD did not impose a groundwater charge, unregulated and unmitigated pumping could lead to overdraft and at that point, groundwater users such as the City could face curtailment of their use to constitutionally reasonable levels within the safe yield. (Article X, § 2.) Thus, the groundwater charges imposed by UWCD provide groundwater extractors the benefit of continued pumping of groundwater at levels made reasonable because of UWCD's efforts—a benefit they could not enjoy without paying the groundwater charge for the privilege.

B. Groundwater Charges Fund Specific Services that Benefit Only Fee Payors

Groundwater charges fund a specific government service that is not available to those that do not pay the fee in accordance with Article XIIIC, Section 1, subdivision (e)(2). *Pajaro I* characterized this service (management of the basin as a natural resource) as a property related service subject to Proposition 218. (*Pajaro I, supra,* 150 Cal.App.4th at p. 1381.) But this determination, rejected by the Appellate Court in the instant case, misconstrues the "service" being provided by groundwater management as well as the intended beneficiary. (Appellate Court Opinion, p. 17.)

A water conservation district does not engage in groundwater management activities for the benefit of any individual landowner or parcel; rather, it performs its duties solely for the benefit of the region and in protection of the interests of the State of California.[2]

The service being provided is mitigation of the payor's actions and such a service is not akin to a water delivery charge or a property related service fee. This Court has previously determined that mitigation of a fee payor's actions can be considered a valid regulatory service. (*Sinclair Paint Co. v. State Board of Equalization* (1997) 15 Cal.4th 866, 870.) In addition, the final, unnumbered paragraph of Article XIIIC, Section 1 states that the regulatory fees may be imposed based on "the payor's burdens on...the governmental activity." (*Ibid.*)

In addition, consider the analogy between the operation of a California State Park and management of a groundwater basin. Proposition

---

[2] California has a constitutionally stated public policy favoring the conservation of groundwater as a natural resource. (see Article X, § 2; Water Code § 100, 370-374, 12992 and 78500.2.)

26 specifically provides that park entrance fees are not taxes or property related service fees. (Article XIIIC, § 1, subd. (e)(4).)

The park's land—just like groundwater supplies—is owned in trust by the State of California for the benefit of its citizens. Generally, every citizen has a right to access the park, just like every landowner has a right to extract groundwater for reasonable uses.

But a citizen may not freely enter the park; instead, she must purchase a ticket. The fees paid by those wishing to enter the park allow the government to maintain the park for the benefit of all of its citizens—even those who will never exercise their right to enter the park. Employees of the park perform services, such as repaving roads, clearing brush and other fire hazards, monitoring the wildlife, etc. While these actions are services, they are services to the park and not the visitor. People who pay the fee do experience the benefits of these services, but the true and only intended beneficiary is the park itself.

The fee paid by the visitor ensures that the government can continue to maintain the park for the benefit of future fee payors. In essence, the fee mitigates the negative impacts to the park of allowing visitors to enter. From an accounting standpoint, the actual entrance fee dollars paid by the visitor cannot pay for any services the visitor will receive while in the park as they will remain in a cash register; thus, the entrance fee pays only for continuing services for the benefit of the park. What matters is that the entrance fee ensures that the park remains in a condition to be enjoyed.

Groundwater management activities such as requiring registration of groundwater extraction facilities, monitoring extractions, importing water for groundwater recharge, regulatory compliance and funding studies and investigations on groundwater use and availability are all services to the basin, and not the groundwater extractor. Just like with a park entrance fee

where a visitor must pay a fee to enjoy the park, a groundwater extractor must pay a fee to pump groundwater. The groundwater charge does not pay for a service received, but funds the continuation of groundwater management services to mitigate the fee payor's actions for the benefit of the basin. The fee payor then enjoys those benefits upon paying the fee to exercise its privilege.

A groundwater extractor may pump groundwater one year, pay the associated groundwater charges and then never pump groundwater or pay groundwater charges again. Such a groundwater extractor would be analogous to a citizen who visited the park only one time. The park entrance fee and groundwater charges fund the management of the resource to ensure its continued viability, even if the payor chooses never to exercise its privilege to visit the park or pump groundwater again. The fee funds the mitigation necessary to provide the privilege and the payor need only to pay the fee to exercise its privilege again.

While specifically called out as its own exception in Proposition 26, a park entrance fee meets all the requirements of Article XIIIC, Section 1, subdivisions (e)(1), (e)(2), and (e)(3). A groundwater charge functions in exactly the same manner as a park entrance fee and, likewise, fits neatly into the other exceptions of Proposition 26. (Article XIIIC, § 1, subds. (e)(1), (e)(2) and (e)(3).)

C. Groundwater Charges Fund UWCD's Well Registration and Monitoring Programs

It is illegal to pump groundwater within UWCD without registering the water producing facility and paying a groundwater charge to UWCD. (Water Code §§ 75640, 75641 and 75642.) A portion of the groundwater charges go towards registration and monitoring of wells and performing

investigations and inspections related to groundwater management of the basin in accordance with Article XIIIC, Section 1, subdivision (e)(3).

D. UWCD's Groundwater Charges do not Exceed the Reasonable Costs to UWCD of Providing the Benefits and Services and the Fee Ratio Mandated by Water Code Section 75594 is Constitutional as Applied

Because groundwater charges are properly characterized as regulatory fees rather than property related fees, the amount of the fee charged does not need to be proportional to the benefit received by any particular payor; instead, so long as the fee is reasonably related to the government regulation and does not generate a surplus for general revenue purposes, the fee meets the requirements of Proposition 26. (Article XIIIC, § 1.)

The ratio that requires groundwater charges for municipal and commercial water be set at a higher rate than agricultural water is mandated by the Legislature. (Water Code § 75594.) In adopting Water Code section 75594, the Legislature determine that for policy reasons, municipal and commercial users should bear a greater proportional percentage of the regulatory burden of groundwater management. Because regulatory fees under Proposition 26 are not required to be proportional to any particular fee payor's benefit or burden, it is immaterial that Water Code section 75594 requires municipal and industrial users to pay more towards regulation so long as the overall fees collected from UWCD's groundwater charges do not exceed the cost of its regulatory activities.

The City argues that Section 75594 is over 50 years old and should be ignored whereas the eight year old *Pajaro I* is established and should be followed. (City's Opening Brief, pp. 62-64 and 35-37.) However, time alone does not make a good law bad just like it does not set a judicial

determination in stone: age is a poor argument against the validity of Water Code section 75594.

As admitted by the Trial Court and the City, UWCD continues to be constitutionally mandated to impose Water Code section 75594's rate requirements until it is deemed unconstitutional. (JEA, Vol. 12, Ex. 105, pp. 2504; City's Reply Brief, p. 43.) The Trial Court admitted to this unfairness, but chose to impose an inequitable remedy. (JAE, Vol. 12, Ex. 105, p. 2511.) Even if groundwater charges are determined to be property related service fees, Water Code section 75594 is constitutionally valid as it discriminates against types of use and not parcels and it would be proper to allow UWCD the opportunity to demonstrate compliance on remand.

E. Public Policy Favoring Conservation Requires Groundwater Charges be Characterized as Regulatory Fees

California has a constitutionally stated public policy favoring the conservation of groundwater as a natural resource. (see Article X, § 2; Water Code § 100, 370-374, 12992 and 78500.2.)

This Court recently denied a request for depublication of *Capistrano Taxpayers Association v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493 ("*Capistrano*"). As a result of *Capistrano*, classification of groundwater charges as regulatory fees is one of the only monetary methods left to encourage conservation. (*Ibid.*)

Capistrano made two holdings that inconvenience groundwater conservation efforts. (*Capistrano, supra,* 235 Cal.App.4th 1493). First, it held that if property related service fees are charged in tiers, Proposition 218 requires that charges to the higher consumption tiers not exceed the proportional cost of providing service to that tier. (*Id.* at pp. 1504-1511.) Should this Court determine groundwater charges are property related

service fees, this holding in *Capistrano* will have a chilling effect on promoting groundwater conservation.

It is true, theoretically, that a user in a higher consumption tier could pay more for water. However, there is no guarantee a public agency imposing the fee will have the confidence to impose a tier structure given the difficulty of adequately demonstrating that servicing those higher consumption tiers actually does cost more than servicing base tiers (especially given the difficulties in doing any proportionality analysis for groundwater management activities as discussed in Section I(D) of this brief).

As an example of the chilling effect, if a public agency had sufficient water available to it at a fixed rate, it likely could not justify imposing consumption-based tiers under the current interpretation of Proposition 218's requirements because the water it purchased would never cost more than the fixed rate.

A further issue is that even if tiered pricing is imposed, the high consumption user never pays more than the actual cost of the water. Such a scenario would be analogous to a consumer being able to purchase any vehicle from the dealer at the dealer's cost, which is a much better deal on a fully loaded vehicle than it is on a base model. While the higher consumptive user pays more, it receives more value from what it does pay than a low consumptive user. Essentially, the more a user consumes, the better a bargain she receives due to the public agency's organization and efficiency in keeping costs low. The bargain only gets better the more efficient the public agency becomes at supplying water.

Second, *Capistrano* held that the penalty provision of Proposition 26 could not be relied upon to encourage conservation as this would open up

too big a loophole in Proposition 218. (*Capistrano, supra,* 235 Cal.App.4th at pp. 1514-1515; Article XIIIC, §1, subd. (e)(5).)

Thus, after *Capistrano,* regulatory fees are the only remaining fiscal method to promote conservation. Luckily, regulatory fees are also the best and most fair method to promote conservation.

Groundwater charges promote the public policy interest in conservation by charging groundwater extractors the costs of the regulatory programs necessary to mitigate the negative effects on the groundwater basin caused by the fee payor's exercise of its privilege to extract groundwater. The fees must be related to the regulation, imposed to provide a privilege, benefit, service or registration requirements, and cannot be used to generate a surplus for general revenue purposes. Therefore, classification of groundwater charges as regulatory fees provides the perfect mix of protection to fee payors between Proposition 218 and the penalty provision of Article XIIIC, Section 1, subdivision (e)(5).

III. CLARITY REGARDING GROUNDWATER CHARGES IS PARAMOUNT

Should this Court determine that UWCD's groundwater charge is subject to Proposition 218, its guidance on how to properly proportion the costs attributable to the parcel is desperately needed due to the issues discussed in Section I(D) of this brief. In addition, while not directly before this Court, it would be very helpful if this Court would discuss examples of when a groundwater charge could qualify as a regulatory fee as suggested in *Pajaro I.* (*Pajaro I, supra,* 150 Cal.App.4th at p. 1390.)

Such guidance would be greatly beneficial not solely to water conservation districts, but to all public agencies with groundwater management authority and particularly to groundwater sustainability agencies, whose principal act provides the option of charging fees either

under Proposition 218 or Proposition 26. (Water Code §§ 10730 and 10730.2.)

IV. SUBSTANTIAL EVIDENCE IS THE PROPER STANDARD OF REVIEW OF THE TRIAL COURT'S FACTUAL DETERMINATIONS

The proper standard of review regarding factual determinations made by the Trial Court is at dispute and bears mention as the Trial Court's factual determinations support a determination that UWCD's groundwater charges were constitutional as applied.

The City challenged the constitutional compliance of UWCD's groundwater charges by traditional writ of mandate, by administrative writ of mandate, by complaint for declaratory relief, and by complaint for determination of invalidity pursuant to Code of Civil Procedure section 860 *et seq.* (a reverse validation action). (JAE, Vol. 10, Ex. 88, p. 2134.) The Trial Court concluded that the City could not bring its challenges as a reverse validation action and tried the case as a traditional writ of mandate. (JAE, Vol. 10, Ex. 88, p. 2137; Appellate Court Opinion, p. 11, fn. 6.)

In a writ of mandate action, whether the fee violates a constitutional provision is reviewed *de novo*, as both UWCD and City agree. However, as both the City and the cases it relies on readily admit, *de novo* review over a Trial Court's factual determinations is not appropriate where the evidence is in conflict; in those instances, substantial evidence review applies. (City's Opening Brief, p. 25; City's Reply Brief, p. 12.)

In *Moore v. City of Lemon Grove* (2015) 237 Cal.App.4th 363, cited favorably by City, a sanitation fee ratepayer appealed a judgment denying his petition for writ of mandate challenging the Lemon Grove Sanitation District's transfer of certain sewer service fees to the City of Lemon Grove as violating Proposition 218. (*Ibid.*; City's Opening Brief, p. 26.) The

Moore Court acknowledged that whether a fee violates Proposition 218 is subject to *de novo* review; however, it clarified that that the trial court's judgment is presumed correct and that "even when we exercise our independent judgment in reviewing the record, we do not decide disputed issues of fact." (*Moore, supra*, 237 Cal.App.4th at pp. 368-369 citing *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 and *Morgan v. Imperial Irrigation District* (2014) 223 Cal.App.4th 892, 912 ["the power of an appellate court begins and ends with the determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the finding of fact."])

The record contains evidence on the hydrology of the basin and subbasins in UWCD's boundaries that lends itself to conflicting inferences. The City cites to evidence supporting its theory that the subbasins are not sufficiently connected to support the establishment of a district-wide Zone A. (City's Opening Brief, pp. 18-23.) UWCD cites to evidence supporting its argument that all basins are sufficiently connected such that pumping or recharge in one benefits or affects all others to some degree. (UWCD's Answer Brief, pp. 12-14.)

The Trial Court weighed the competing evidence and determined that:

> "The record amply demonstrates that the basins are hydrogeologically interconnected. The interconnection is not simple, such as if each person pumping water was pulling from the same well or as if UWCD was replenishing the water to that same well. The interconnection is also not completely understood or precisely modeled." (JAE, Vol. 10, Ex. 88, p. 2138; see also JAE, Vol. 10, Ex. 88, pp. 2125-2126.)

In addition, the Trial Court reviewed evidence as to the use of Zone A funds and determined the fees met Proposition 26's

reasonableness requirements and did not generate a surplus for general revenue purposes:

> "Viewed from the perspective of UWCD's district-wide mission of water conservation within the interconnected basins under its jurisdiction, the fees meet the reasonable costs of regulation without generating surpluses for general revenue purposes." (JAE, Vol. 10, Ex. 88, p. 2140.)

The Appellate Court determined that substantial evidence in the record supports the Trial Court's factual conclusions and, as required, relied on those conclusions in forming its decision. (Appellate Court Opinion, pp. 12 and 26).

The City makes two arguments for *de novo* review of the facts: that the facts were "constitutional" and that the record was "cold." (City's Opening Brief, p. 25; City's Reply Brief, p. 12).

If constitutional facts are present, *de novo* review applies only to the extent those facts exist and are relevant to determining whether a constitutional violation occurred—the remainder of the factual conclusions are still subject to review for substantial evidence. (*McCoy v. Heart Corp.* (1986) 42 Cal.3d 835, 842 ["this court must make an independent assessment of the entire record, but *only as it pertains to actual malice*. Issues apart from this constitutional question need not be reviewed *de novo* and are subject to the usual rules of appellate review.] [emphasis added].) The City makes no effort to distinguish which facts have constitutional significance.

The Appellate Court correctly dismissed the City's "cold" record argument. (Appellate Court Opinion, p. 12, fn. 7.) Generally in traditional mandamus, the court reviews an administrative agency's quasi-legislative determination for abuse of discretion and gives great deference to that agency's conclusions. (*Lowe v. California Resource Agency* (1991) 1

Cal.App.4th 1140, 1149.) However, as *Moore v. City of Lemon Grove* demonstrates, that is not the case where the traditional mandamus action concerns the constitutional compliance of the agency. (*Moore, supra*, 237 Cal.App.4th at pp. 368-369.)

The Trial Court did not give deference to UWCD: instead, it reviewed the conflicting evidence in the record independently and reached its own conclusions as to the facts. The Appellate Court correctly reviewed the Trial Court's independent factual determinations for substantial evidence and exercised its independent judgment only as to the legal issues.

To the extent this Court needs to consider the Trial Court's factual determinations to answer the issues before it, it should rely on those conclusions supported by substantial evidence. Thus, the subbasin must be considered interconnected and the regulatory fees must be determined to be reasonable and to not general a surplus for general revenue purposes under Proposition 26.

CONCLUSION

For all the foregoing reasons, the Appellate Court's decision should be affirmed.

Dated: November 17, 2015

Respectfully submitted:

The Law Offices of Young Wooldridge, LLP

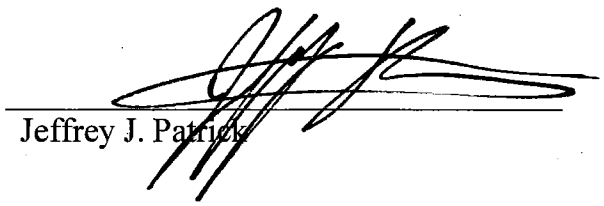
By: _____

Jeffrey J. Patrick, Esq.
Attorneys for Applicant and Amicus Curiae:
Santa Ynez River Water Conservation District

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed Amicus Curiae Brief is produced using 13-point Roman type including footnotes and contains approximately 6,067 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: November 17, 2015



Jeffrey J. Patrick

DECLARATION OF SERVICE

I declare that I am, and was at the time of service hereinafter mentioned, at least 18 years of age and not a party to the above entitled action. My business address is 1800 30th Street, 4th Floor, Bakersfield, CA 93301. I am a citizen of the United States and am employed in the City of Bakersfield, County of Kern. On November 17, 2015, I caused to be served the following document(s):

APPLICATION FOR PERMISSION TO FILE AN AMICUS CURIAE BRIEF AND ACCOMPANYING AMICUS CURIAE BRIEF IN SUPPORT OF UNITED WATER CONSERVATION DISTRICT

Upon the parties in this action by placing a true and correct copies thereof in a sealed envelope(s) as follows:

FOR COLLECTION VIA UNITED PARCEL SERVICE:

Clerk of the California Supreme Court 350 McAllister Street San Francisco, CA 94102-4797	1 Original plus 8 Copies *(E-File Courtesy Copy)* Amicus Brief

FOR COLLECTION VIA U.S. MAIL:

Clerk of the Santa Barbara County Superior Court Anacapa Building P.O. Box 21107 Santa Barbara, CA 93121	1 Copy
Clerk of the Court of Appeal Division 6 200 E. Santa Clara Street Ventura, CA 93001	1 Copy
Office of the Attorney General Consumer Law Section 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102	1 Copy

Gregory G. Diaz Assistant City Attorney City of San Buenaventura P.O. Box 99 Ventura, CA 93002-0099	1 Copy *Attorneys for Respondent and Cross-Appellant City of San Buenaventura*
Michael G. Colantuono David J. Ruderman Michael R. Cobden Colantuono, Highsmith & Whatley, PC 300 South Grand Avenue, Suite 2700 Los Angeles, CA 90071-3137	1 Copy *Attorneys for Respondent and Cross-Appellant City of San Buenaventura*
Anthony H. Trembley Musick, Peeler, & Garrett LLP 2801 Townsgate Road, Suite 200 Westlake Village, CA 91361 Jane Ellison Usher Cheryl A. Orr Musick, Peeler, & Garrett LLP 624 S. Grand Avenue, Suite 2000 Los Angeles, CA 90017	2 Copies *Attorneys for Defendant and Appellant United Water Conservation District and Board of Directors of United Water Conservation District*
Dennis Larochelle Arnold Bleuel LaRochelle Mathews 300 Esplanade Drive, Suite 2100 Oxnard, CA 93036	1 Copy *Attorneys for Defendant, Cross-Complainant and Appellant Pleasant Valley Water District*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 17, 2015, at Bakersfield, California.

Kristen L. Moen