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Exempt from Filing Fees
Government Code § 6103

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Citizens for Fair REU Rates, et al.
Plaintiffs and Appellants

vs.

City of Redding, et al.
Defendants and Respondents.

SUPREME COURT
FILED

MAR 3 - 2015

Fee Fighter LLC, et al.
Plaintiffs and Appellants

vs.

City of Redding, et al.
Defendants and Respondents.

Frank A. McGuire Clerk

Deputy

**MOTION FOR JUDICIAL NOTICE
IN SUPPORT OF PETITION FOR REVIEW
VOLUME II OF III**

Of a Published Decision of the
Third Appellate District, Case No. C071906

Reversing a Judgment of the Superior Court of
the State of California for the County of Shasta,
Case No. 171377 (Consolidated with Case No. 172960)
Honorable William D. Gallagher, Judge Presiding

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EXHIBIT D

Exempt from Filing Fees
Government Code § 6103

Case No. G048969

In the Court of Appeal, State of California
FOURTH APPELLATE DISTRICT, DIVISION THREE

COURT OF APPEAL-4TH DIST DIV 3
FILED

CAPISTRANO TAXPAYERS ASSOCIATION, INC., JAN 16 2014
Plaintiff and Respondent

vs.

Deputy Clerk _____

CITY OF SAN JUAN CAPISTRANO,
Defendant and Appellant

Appeal from the Superior Court of the State of California
County of Orange, Case No. 30-2012-00594579
Honorable Gregory Muñoz, Judge Presiding

PURSUANT TO RULE 8.25(b)(3)
CALIFORNIA RULES OF COURT
CONSTRUCTIVELY FILED
1-14-14

DEPUTY CLERK

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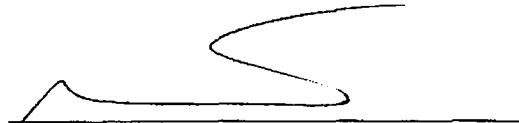
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

The following entities or persons have either (1) an ownership interest of 10 percent or more in the party or parties filing this certificate or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves:

None.

DATED: January 14, 2014

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INTRODUCTION

This case requires this Court to harmonize three constitutional principles: the requirement of article XIII D,¹ section 6 (Proposition 218) that water rates be proportional to service cost; article X, section 2's mandate that water not be wasted; and municipal power under article XIII C, section 1, subdivision (e)(5) and article XI, section 7 to penalize water waste. Specifically, the City of San Juan Capistrano ("City") appeals three findings for the Capistrano Taxpayers Association ("CTA") in this challenge to water rates the City adopted in 2010:

1. The trial court found "no evidence" in a lengthy and detailed administrative record to support distinctions among the rates' tiers, which charge progressively more per unit as water use grows from efficient to budgeted to wasteful. (4 CT 1159-1160.) The trial court therefore erroneously concluded the rates violate article XIII D, section 6, subdivision (b)(3)'s requirement that fees "imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel." (*Ibid.*)

¹All references to "articles" in this brief are to the California Constitution.

2. The trial court ruled under article XIII D, section 6, subdivision (b)(4) that the City may not fund its proposed recycled water service from domestic water rates because recycled water is not yet “immediately available” to domestic customers. (4 CT 1160.)
3. The trial court stated Tiers 3 and 4 rates for over-budget water use are “not penalties” — a terse finding which might be factual or legal, but is error in either case. (4 CT 1161.)

As to the first finding, the Administrative Record includes scores of documents supporting the rates. These include a Rate Model and Rate Study using audited financial data to relate price tiers to water supply cost. This is far more than “no evidence” and entirely sufficient to demonstrate compliance with Proposition 218.

The second finding reflects two fundamental errors. First, as a matter of fact, the City’s potable rates include no costs of the recycled water system: the trial court misread dense accounting tables which calculate the share of the water utility’s general overhead that will be assigned to recycled water customers in the future as though they were costs that must be assigned to non-existent recycled water customers² now. Moreover, even if the City

²The record reflects the City’s reasonable estimate in 2010 that it would not have a meaningful number of recycled water customers before fiscal year 2012–2013. Rate Study Table 1 shows zero recycled

did charge domestic customers costs of a nascent recycled water service, providing recycled water lowers the cost to supply potable water to those domestic customers just as conservation does and it is appropriate to charge them for that supply. Specifically, by freeing up potable water used for irrigation, the recycled water program will provide additional supplies to all customers more cheaply than increased reliance on imports through the environmentally sensitive Sacramento-San Joaquin Delta.

Still further, the trial court's conclusion requires utilities either to (i) blend all sources of water prior to delivery if they desire utility-wide rates, or (ii) set distinct rates for each source. This is impracticable given the multiple sources utilities maintain to ensure reliable supplies and frequent changes in use of sources.

Whether the "not penalties" finding is factual or legal, it is error. The City's water rates employ four tiers, with Tiers 3 and 4 intended— and justifiable— as penalties not subject to a cost limit. Moreover, this record shows they relate to service cost in any event.

water accounts before 2013, but shows customers moving from the landscape and non-potable classes to that class in that year. (19 AR 4591; 4592 ["The projected revenues shown in the Table 4 reflect[] conversion of landscaping and non-potable water customers to recycled water in FY12/13."].) That prediction proved overly optimistic; the City presently has 10 recycled water customers, none of them residential.

These errors invade the City Council's lawful discretion to operate an efficient and environmentally sound utility consistently with Proposition 218's cost-of-service principle and article X, section 2's conservation imperative.

Accordingly, the City urges this Court to reverse and to grant declaratory relief consistent with the law described here.

STATEMENT OF FACTS

I. THE CITY HAS RELIED ON CONSERVATION RATES SINCE 1991

During the 1989-1992 drought, the State Water Project cut deliveries 20 percent. (15 AR 3385.)³ Those affected included the Metropolitan Water District of Southern California ("Met"), which delivers imported water to the City via the Municipal Water District of Orange County ("MWDOC").⁴ (See *ibid.*; 17 AR 4138.) Met in turn "required all [its] member agencies to reduce demand by 30% or face surcharges and possibly curtailment of supply." (17 AR 4138.)

Rather than ration water — as other utilities did — the City adopted the tiered water rate structure it maintains today. (11 AR

³References to the Administrative Record are in this form: "volume AR page."

⁴For convenience, this brief refers to MWDOC and Met collectively as "Met."

2768 [AWWA Research Foundation paper]; 15 AR 3310 [workshop slides], 3385–3386 [Met-funded study of landscape water conservation].)

Even in 1991, it was a best management practice “to establish a strong nexus between volume-related system costs and volumetric commodity rates,” a practice since endorsed by statute. (17 AR 3935, 3985–3986 [1991 California Urban Water Conservation Council MOU]; see Wat. Code, § 10608.4, subd. (f) [endorsing CUWCC best management practices].) Indeed, the City is a leader in use of budget-based conservation rates. (See 18 AR 4278 [City achieves “substantial conservation”]; 17 AR 4137 [“One of the most mature water budget rate structure programs in the country has been implemented in the City of San Juan Capistrano since 1991.”].)

II. PRESSURE TO CONSERVE HAS INTENSIFIED

The imperative to reduce water use has grown since 1991, even before the current, three-years-and-counting drought. The Legislature’s “20x2020” mandate requires the City to reduce per capita water consumption by 20 percent by 2020. (See Wat. Code, § 10608.16.) This is measured from average consumption in the decade ended 2004, and thus demands more of the City — which made serious conservation efforts earlier — than of others. (*Ibid.*, § 10608.12, subd. (b) [defining “base daily per capita water use”].)

The Grand Jury recently warned of a “looming water crisis” threatening Met deliveries. (11 AR 2752, 2755.)

When the City adopted the rates challenged here in February 2010, the non-penalty rate for Met supplies was \$701 per acre-foot (“AF”), but the City knew it would increase substantially. (18 AR 4446; 19 AR 4508.) It did. Effective January 1, 2014, Met’s non-penalty rate is \$890 / AF — a 27 percent increase in four years.⁵ Moreover, Met imposes penalty rates on retailers which exceed consumption budgets just as the City penalizes residents who do. (See 18 AR 4446, 4459–4493.) Met penalty rates in 2010 were \$1,899 and \$3,077 / AF. (18 AR 4446.)

The City therefore has strong incentive to reduce demand and decrease imports from Met. Its rates must cover their high and increasing cost. Accordingly, the rates challenged here:

- Maintain a tiered structure to reduce demand and to fund expensive Met supplies to meet demand in excess of water budgets; and
- Propose a new recycled water program to be funded by grants and rates on recycled water customers. The program will free potable supplies for others, reducing dependence on expensive and unsustainable Delta imports. This

⁵Met Adopted Rates & Charges, available at <www.mwdh2o.com/mwdh2o/pages/finance/finance_03.html> (as of Jan. 12, 2014).

program did not exist when the City adopted water rates in February 2010 but was proposed to commence in 2012–2013. (See 13 AR 3164 [“No Recycled Water Accounts in FY 09/10”]; 19 AR 4591, 4592, 4594⁶ [projecting recycled water accounts, sales and revenue beginning FY 12/13].) The City expected grants to cover many of the start-up costs for the program. (See 19 AR 4605 [Rate Study: “Some of the CIP [Capital Improvement Plan] needs are offset by the potential receipt of recycled water grants.”], 4598 [lines 16–25 list recycled water improvements to be grant funded].) It also intended to issue debt to be repaid from recycled water rates (See 19 AR 4597.) That bond did not issue. (4 CT 1081–1084.)

III. THE RATES DREW LITTLE OPPOSITION

Neither CTA nor the trial court questions the City’s compliance with Proposition 218’s procedural requirements. (Art. XIII D, § 6, subd. (a).) The City mailed notices of a protest hearing to its 15,089 customers, advising them of the opportunity to protest the rates. (20 AR 5005–5006.) If a majority did so, Proposition 218 would bar adoption of the rates. (Art. XIII D, § 6, subd. (a)(2).)

⁶ For the convenience of the Court, the most central pages of the Administrative Record are attached to this Brief pursuant to California Rules of Court, rule 8.204, subdivision (d). Citations to those attached pages are **boldface**.

However, just 23 customers protested. (20 AR 5006.) The City Council therefore adopted the rates challenged here. (20 AR 5004–5010.)

IV. THE RATES COMPLY WITH INDUSTRY STANDARDS AND REFLECT SERVICE COST

The dearth of opposition to the City's rates supports the observation that budget-based rates are "an intrinsically more equitable way of charging water rates" than other methods. (18 AR 4270, 4278 [AWWA Journal].) Indeed, the City's tiered rates are popular with residents. (17 AR 4137 [AWWA Research Foundation paper].) Moreover, they are consistent with industry best practices and proportional service cost.

A. THE CITY FOLLOWED THE INDUSTRY-STANDARD M1 MANUAL

The American Water Works Association's Principles of Water Rates, Fees, and Charges (the "M1 Manual") is the industry standard for rate-making, endorsed by the Court of Appeal as compliant with Proposition 218. (20 AR 4794–4975;⁷ *Griffith v. Pajaro Valley Water Mgmt. Agency* (2013) 220 Cal.App.4th 586, 600–601 [petn. for review pending] ("*Griffith*").) The first step in rate-making under the M1 Manual is to determine a utility's "revenue requirement" — the

⁷The sixth edition is dated 2012. The Administrative Record includes the edition available in 2010 — the fifth edition, dated 2000.

difference between projected operating costs and non-rate revenues.
(See 20 AR 4805 et seq.; *Griffith, supra*, 220 Cal.App.4th at p. 600.)

The second step is “cost allocation”, by which a utility distributes costs among customer classes “commensurate with their service requirements.” (20 AR 4829; *Griffith, supra*, 220 Cal.App.4th at pp. 600–601 [calling this “apportionment”].) The M1 Manual notes:

The ideal solution to developing rates for water utility customers is to assign cost responsibility to each individual customer served and to develop rates to derive that cost. Unfortunately, it is neither economically practical nor often possible to determine the cost responsibility and applicable rates for each individual customer served. However, the cost of providing service can reasonably be determined for groups or classes of customers that have similar water-use characteristics and for special customers having unusual water-use or service requirements.

(20 AR 4836; see *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 438 [“The question of proportionality [under Prop. 13] is not measured on an individual basis. Rather, it is measured collectively, considering all rate payors.”] (*Farm Bureau*); *Griffith, supra*, 220 Cal.App.4th at p. 601 [same for Prop. 218].)

To allocate costs pursuant to the M1 Manual, therefore, a utility identifies classes of customers with common service characteristics and costs. (See 20 AR 4836–4839; *Griffith, supra*, 220 Cal.App.4th at p. 601 [“Given that Proposition 218 prescribes no particular method for apportioning a fee or charge other than the amount shall not exceed the proportional cost of the service attributable to the parcel, defendant’s method of grouping similar users together for the same augmentation rate and charging the users according to usage is a reasonable way to apportion the cost of service.”].)

A utility then identifies its essential functions (e.g.; metering; billing; supply, transmission, treatment; maintenance; etc.), accounts the costs of each, and allocates these costs among customer classes in proportion to their benefit from or burden on each function. (See 20 AR 4829–4842.)⁸ For example, because residential customers make more demands on billing and answering telephone inquiries than do others, the residential class bears a larger share of customer-service costs. (See 19 AR 4612 [Rate Study, Table 13, column 8, lines 3 & 5]; 20 AR 4836–4837, 4838.)

The third step is “rate design,” which the M1 Manual describes as “a function of many diverse and sometimes competing

⁸*Griffith* conflates “functionalizing costs” [i.e., allocating cost functions] and allocating them to customer classes as “apportionment.” (220 Cal.App.4th at pp. 600–601.)

objectives.” (20 AR 4844.) Accordingly, rate design is discretionary and legislative. (See *Pacific Telephone & Telegraph Co. v. Public Utilities Com.* (1965) 62 Cal.2d 634, 655 (PT&T).) There is no one right answer and the M1 Manual therefore identifies options. (See 20 AR 4843 et seq.)

The City employs “increasing block rates,” as to which the M1 Manual states:

Increasing block rate structures, when properly designed and differentiated by customer class, allow the utility to send consistent price signals to customers without overearning or underearning. For this reason, and the heightened interest in water conservation, increasing block rates have been increasingly favored, especially in relatively water-scarce regions.

(20 AR 4855.) The Court of Appeal found such rates reasonably related to service costs and therefore not special taxes requiring voter approval under Proposition 13. (*Brydon v. East Bay Mun. Utility Dist.* (1994) 24 Cal.App.4th 178, 182, 196 (“*Brydon*”).)⁹

In 2009, consultant Black & Veatch prepared a cost of service study (the “Rate Study”) for the City. (19 AR 4568–4681.) Black &

⁹The M1 Manual and this record refer to “increasing-block” rates, while *Brydon* refers to “inclining-block” rates. The terms are synonymous. (20AR 4854 [“Increasing block rates [are] also known as ascending, inclining or inverted block rates.”])

Veatch followed the M1 Manual, and the Rate Study's "basic methodology" is its three-step process: revenue requirement, cost allocation,¹⁰ and rate design. (19 AR 4588.) The Rate Study recommended the rates which CTA challenges here. (19 AR 4617; 20 AR 5004-5010.)

B. THE RATES ARE PROPORTIONAL TO COST

Underlying the Rate Study is a complex spreadsheet (the "Rate Model") Black & Veatch used to develop the challenged rates. (19 AR 4682-4793.) The 111-page Rate Model is essential evidence supporting the rates. It projects the City's operating costs and revenues from 2009-2010 to 2013-2014, although rates were adopted for 2010-2013. (20 AR 5008-5010.) The model begins with audited financial records of operating costs and revenues to determine revenue requirements; allocates costs among customer classes; and calculates rates to recover those costs. As detailed below, the trial court's conclusion "no evidence" supports the City's rates (4 CT 1159-1160) is error.

The Rate Model first reports data from the utility's audited financial records. It reports the utility's operational data, including:

¹⁰The Rate Study identifies the second step as "Cost of Service," but defines it as the M1 Manual defines "Cost Allocation." (Compare 19 AR 4588 with 20 AR 4829.)

- current cash position (19 AR 4684),
- customers' net irrigable area (*ibid.*),
- indoor water allocations (19 AR 4685),
- evapotranspiration ("EVO") factors to budget use in light of weather (*ibid.*),
- estimated growth in customers and service costs by budget line (19 AR 4686), and
- demand estimates, including "equivalency factors," which express use by non-residential customers as fractions or multiples of use by single-family residences (19 AR 4687).

To evaluate then-existing rates, the Rate Model analyzes actual utility expenses from 2008–2010. (19 AR 4690–4699 ["historic and Current Budget Line Items"].) It projects expenses through 2018, including debt payments through 2035. (19 AR 4700–4708 ["Project Revenue Requirements"]; 19 AR 4711 ["Annual Debt Service Requirements"].)

The Rate Model next analyzes data on customer classes, including billing frequency, number of customers ("connections") and consumption. (19 AR 4713–4740 ["Customer Connections and Service Characteristics"].) It projects revenues through 2018 under then-existing rates. (Compare 19 AR 4744–4746 [Rate Model] with 19 AR 4594 [Rate Study: "Table 4 — Revenues Under Existing Rates"].)¹¹ Based on City capital improvement plans, the Rate Model

¹¹ The Rate Study explains tables drawn from the Rate Model.

estimates costs to expand the Groundwater Recovery Plant and build a recycled water facility (Advanced Water Treatment plant ["AWT"]). (19 AR 4747 ["Capital Improvement Plan"].) The Rate Model next projects asset changes through 2018 resulting from increased rates. (19 AR 4748–4755 ["10-Year Projected Operating Results"].)

The Rate Model next analyzes water use by customer class. (19 AR 4757 ["Units of Service"] [compare Rate Study at 19 AR 4610].) It calculates the cost of service in 2010 from audited financial records and allocates it among customer classes. (19 AR 4758–4759 ["Determination of Water System Cost of Service (2010 Test Year)"] [compare Rate Study at 19 AR 4606], 4760–4761 ["Distribution of Water System Cost of Service (2010 Test Year)"] [compare Rate Study at 19 AR 4612].)

The Model adjusts initial allocations to reallocate to all customers costs that can be assigned to recycled water users when they exist. (19 AR 4762 ["Reallocation of Beneficial Use Categories"] [compare Rate Study at 19 AR 4613] ["Table 14–Comparison of Adjusted Cost of Service with Revenue under Existing Rates"].) Thus, recycled water costs currently allocated to potable water customers represent prospective rate relief to those customers: as recycled water customers come on-line, they will absorb a share of general costs borne till then by existing customers in all classes. This essential point is detailed in Section V.A. below.

The Rate Model next analyzes the rates in issue here. (19 AR 4763–4765 [compare Rate Study at 19 AR 4617].) It projects the effect of these rates on assets and organizes data from preceding pages. (19 AR 4766–4783 [compare 19 AR 4591–4592, 4594, 4596, 4598–4599, 4601–4602, 4606, 4608, 4610, 4611–4613, 4617, 4619].)

Crucially, the Rate Model plainly identifies the basis to allocate costs among rate tiers. It allocates costs of progressively more expensive water sources to progressively less efficient consumers to reward conservation and discourage waste. (See Section V below.) In an analysis entitled “Buildup of Rates” (19 AR 4709–4710), it proposes rates (red figures) slightly above those produced by dividing projected costs by historic sales (black figures) because increasing rates reduces sales. So, for example, the proposed Tier 1 rate for the most efficient water use by single-family-residential (SFR) customers with 5/8-inch meters is \$2.47 / CCF¹² rather than the \$2.41 produced by dividing projected costs by historic sales. (19 AR 4709.) This adjustment reflects the City’s twenty-year history – and its rate-making consultant’s professional experience – with the conservation impact of higher rates. (See 11 AR 2768 [City implemented conservation rates in 1991]; 20 AR 4883–4885 [M1 Manual chapter on price impact on water demand].)

¹²CCF means one hundred cubic feet – 748 gallons. (*Brydon, supra*, 24 Cal.App.4th at p. 184.)

C. THE CITY MAINTAINS THE 1991 TIERED STRUCTURE

Before adopting the rates challenged here, the City used three tiers rather than four. Residential tiers were:

- Tier 1: Up to an average total of 20 CCF,¹³ reflecting budgets of:
 - Indoor: 9 CCF.
 - Outdoor: Varies based on lot size and weather.
- Tier 2: Up to twice Tier 1. An initial penalty rate for those who exceed budget by up to 100 percent.
- Tier 3: All usage above Tier 2. A second penalty for the most inefficient consumers who exceed budget by more than 100 percent.

(14 AR 3227 [Nov. 17, 2009 staff report]; 15 AR 3318 [Dec. 2009 & Jan. 2010 workshop slides].)

The February 2010 rates divided the first tier into a low-volume tier for very efficient users (households with little outdoor use) and an average-volume tier for the balance of the previous first-tier budget:

¹³The City establishes water budgets for each parcel depending on its size and number of units and daily weather. For simplicity, this brief discusses only the budget for an average parcel in typical weather.

- Tier 1:¹⁴ Up to 6 CCF accounting only for indoor use.
- Tier 2: Up to an average of 17 CCF reflecting average consumption, indoor and out.
 - Indoor: More than 6 CCF and up to 9 CCF (i.e., the difference between new and old Tier 1).
 - Outdoor: 70% of previous allocation.
- Tier 3: Up to 200% of Tier 2.
- Tier 4: All usage in excess of Tier 3.

(15 AR 3317–3318 [workshop slides]; 19 AR 4615–4616 [Rate Study].)

Thus, the new tiers:

- (1) reduce the allocation for outdoor use by 30%, and
- (2) introduce a new Tier 1 for “super-conservers”. (15 AR 3317 [workshop slides]; 19 AR 4579 [Rate Study].) Indeed, as outlined in the Rate Model (19 AR 4709); rates reflect the proportional cost to supply water use at each tier.

- Tier 1 funds 35 percent of fixed costs the City must recover from rates, plus 22.5 percent of local well costs (the City’s cheapest water).
- Tier 2 funds an additional 35 percent of fixed costs and 52.5 percent of well costs.
- Tier 3 funds the remaining 30 percent of fixed costs, the remaining 25 percent of well costs, 82.5 percent of

¹⁴Over the time reflected in the Administrative Record, the City began referring to this new Tier 1 as the “Base Tier.”

Groundwater Recovery Plant ("GWRP") costs and 5 percent of the cost of Met supplies ("MWD"), reflecting a decision to assign more expensive water sources to over-budget water use.

- Tier 4 funds the balance of GWRP (17.5%) and Met costs (95%), plus 100 percent of the cost of a proposed recycled water supply (labelled "recycled") and conservation programs (labelled "penalty set aside"), assigning the most expensive sources to the most profligate users.

(19 AR 4709.)

Accordingly, because customers who exceed budgets and require use of more expensive supplies, Tiers 3 and 4 impose penalty rates to cover increased costs and encourage conservation. (See 10 AR 2287, 11 AR 2694–2695, 15 AR 3365 [upper tiers intended as penalties].)

D. THE RATE STUDY USED A RECYCLED WATER FUNCTIONALIZED COST TO DEVELOP RECYCLED WATER RATES

As required by Proposition 218's proportional cost-of-service principle (art. XIII D, § 6, subd. (b)(3)), the City establishes rates for 15 customer classes, including residential, agricultural, irrigation, non-potable, commercial, fire protection, and future recycled water customers. (19 AR 4617 [Rate Study]; 20 AR 5008 [rate resolution].) The proposed recycled water service will deliver treated wastewater from a regional wastewater plant for irrigation use. (10 AR 2288

[2005 UWMP § 5.2]; 11 AR 2626 [Non-Domestic / Recycled Water Master Plan].) Rates reflect costs assigned to six utility functions. These are “functionalized costs” in rate-making jargon, and are allocated to customer classes by Rate Study Table 14 (19 AR 4578, 4613):

- 1) base flow, or costs associated with the average volume demanded by each class;
- 2) maximum day demand;
- 3) peak hour demand, or costs to meet above-average demand (e.g., the cost to construct and maintain larger transmission mains and reservoirs);
- 4) billing costs;
- 5) fire protection (i.e., facilities to maintain pressures sufficient to fight fire); and
- 6) costs allocated to the future recycled water service.

(19 AR 4578, 4606–4607.)

The City’s rates include fire protection and recycled water **functionalized costs** as well as similarly named **customer classes**. Even though these concepts have similar names, we must look beyond labels to substance. All customers will benefit from additional supply generated by the proposed recycled water system, just as all customers with structures to protect from fire benefit from fire flows. However, some customers also obtain a discrete fire service — those with sprinklers and hydrants required by building

or fire codes — and other future customers will use reclaimed water for irrigation. Accordingly, it is necessary to account for distinct services some customers receive in the fire suppression and future recycled water customer classes. (See 19 AR 4613 [“Fire” and “Recycled Water” columns of Table 14].)

STATEMENT OF THE CASE

CTA filed its initial complaint August 29, 2012. (1 CT 21 et seq.) It sought declaratory, injunctive, and mandamus relief, claiming:

1. The challenged rates violate Proposition 218’s substantive requirements; and
2. Operation of the GWRP is an illegal waste of taxpayer funds under Code of Civil Procedure section 526a (“CCP 526a”).

(1 CT 26–35.)

The City demurred to the CCP 526a claim, and CTA filed its First Amended Complaint (“FAC”). (See 1 CT 47 et seq.; 1 CT 210 et seq.) The City renewed its demurrer, which the trial court overruled. (1 CT 242 et seq.; 3 CT 656.) Nevertheless, CTA voluntarily abandoned its CCP 526a claim, leaving only Proposition 218 allegations. (3 CT 879.)

The City then lodged its Administrative Record. (3 CT 680.) CTA moved to augment it with additional documents, many of

which post-date the February 2010 rate-making. (3 CT 683 et seq.) The trial court denied CTA's motion, finding the offered documents were not part of the record before the City Council when it acted. (3 CT 879.) Undeterred, CTA offered still further extra-record evidence, in a pleading labeled — frankly — "Extra-Record Evidence." (4 CT 1024 et seq.) The trial court granted the City's motion moved to strike this evidence. (4 CT 1092 et seq.; 4 CT 1161.)

The parties filed timely trial briefs and argued on July 29, 2013. (4 CT 996 et seq. [Opening Brief]; 4 CT 1056 et seq. [Opposition Brief]; 4 CT 1102 et seq. [Reply Brief]; RT 8–58.)¹⁵ The trial court took the matter under submission and issued a tentative statement of decision a week later. (4 CT 1131–1132, 1136–1142.)

The City objected to the tentative statement of decision, noting it failed to address the City's argument that Tier 3 and 4 rates withstand review as penalties not limited to cost. (4 CT 1148.) The final statement of decision (4 CT 1157–1162) found for CTA on the three points noted in the Introduction above. (*Ibid.*) On the penalty issue, the court added only two words in parentheses — ("not penalties") — to its tentative statement. (4 CT 1161 [line 23].)

¹⁵References to the one-volume Reporter's Transcript are in the form: RT page.

Judgment entered August 28, 2013; notice of entry was given September 3, 2013. (4 CT 1157–1162, 1164–1175.) The City timely appealed September 6, 2013. (4 CT 1188.)¹⁶

STATEMENT OF APPEALABILITY

Appeal is from a final judgment resolving all issues as to all parties and is authorized by Code of Civil Procedure section 904.1, subdivision (a)(1). (See 4 CT 1157–1162.)

STANDARD OF REVIEW

The trial court reviewed a “cold” administrative record — generally the only evidence permissible under *Western States Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559 in judicial review of legislative rate-making — and this Court is equally able to review it. Appellate review is therefore de novo. (*Kolender v. San Diego County Civil Service Comm’n* (2005) 132 Cal.App.4th 716, 721 [scope of review in administrative mandate is identical in trial and appellate courts]; *Stone v. Regents of University of California* (1999) 77 Cal.App.4th 736, 745 [same in traditional mandate].) As our Supreme Court recently stated:

¹⁶A post-judgment motion for attorney’s fees is presently set for February 18, 2014. That will likely result in a further appeal which might be conveniently consolidated with this appeal.

An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case, as in **other mandamus cases**, is the same as the trial court's: the appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo.

(Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova (2009) 40 Cal.4th 412, 426–427 [citations omitted, emphasis added].)

Moreover, under Proposition 218, courts no longer defer to rate-makers. Instead, courts exercise independent judgment whether revenue measures satisfy our Constitution. (*Silicon Valley Taxpayers Assn. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 450 [independent review of assessments under article XIII C] (*Silicon Valley*); *City of Palmdale v. Palmdale Water Dist.* (2011) 198 Cal.App.4th 926, 928 [extending *Silicon Valley* to water rates under Article XIII D] (*Palmdale*); *Griffith, supra*, 220 Cal.App.4th at p. 590 [same].) Accordingly, while the City bears the burden to demonstrate its water rates are lawful (Art. XIII D, § 6, subd. (b)(5)), this Court's review of both law and fact is independent and de novo.

ARGUMENT

I. THE RATES ARE PROPORTIONAL TO THE COST OF SERVICE THE CITY REASONABLY ATTRIBUTES TO EACH PARCEL

Proposition 218 limits water rates to the “proportional cost of the service attributable to the parcel.” (Article XIII D, § 6, subd. (b)(3); *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 216 [water rates “are fees and charges within the meaning of article XIII D”].) Proportionality to service cost may be shown class by class rather than customer by customer. (*Farm Bureau, supra*, 51 Cal.4th at p. 438 [“The question of proportionality [under Prop. 13] is not measured on an individual basis. Rather, it is measured collectively, considering all rate payors.”]; *Griffith, supra*, 220 Cal.App.4th at p. 601 [same under Prop. 218].)

Moreover, Proposition 218 does not strip the City of its legislative rate-making power. (See *Brydon, supra*, 24 Cal.App.4th at pp. 182, 196 [rate-making is “quasi-legislative,” and “inclining block rate structure” did not violate Prop. 13]; cf. *Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Com.* (2012) 209 Cal.App.4th 1182, 1195–1197 [Prop. 218 builds on Prop. 13] (CASB).) When Proposition 218 refers to the “proportional cost of the service **attributable** to the parcel” (emphasis added), without specifying who should make the attribution or how, it preserves the legislative discretion afforded the City Council by earlier law to determine the

types and characteristics of service to attribute to parcels, provided the Council acts reasonably in light of its record.

Accordingly, the City was entitled to employ tiered conservation rates that attribute local wells (its cheapest water source) to its most efficient users (those charged in Tiers 1 and 2). (See 19 AR 4709.) It was equally entitled to attribute more expensive sources to parcels owned by those who exceed reasonable water budgets (those charges in Tiers 3 and 4). (*Ibid.*) This encourages conservation. (See, e.g., *Brydon, supra*, 24 Cal.App.4th 178, 182, 196 [inclining-block water rates reasonably reflect service cost under Prop. 13]; see also Wat. Code, § 375, subd. (a) [water provider may adopt “water conservation program”].) The City was also entitled to assign, as it did, reasonable budgets to each parcel based on weather, number of residential units, square footage of non-residential buildings, and irrigable outdoor area.

Water suppliers’ power to regulate use to further the conservation mandate of article X, section 2 is well established.

Water rights:

were subject, from the beginning and as a matter of law, to the regulation under the police power and, subsequently, under article X, section 2 of the California Constitution. (See *Gin S. Chow v. City of Santa Barbara* (1933) 217 Cal. 673, 703, 22 P.2d 5.)⁹ As relevant here, article X, section 2, provides that the right to water or to the use of water from any natural stream is

“limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use” of water.

This constitutional limitation on unreasonable use of water is implemented in a myriad of ways but, as relevant here, it is implemented through Water Code section 22258 (section 22258), which provides that an irrigation district that provides water to users outside the district “may regulate the use of water so furnished.”

(*Turlock Irr. Dist. v. Zanker* (2006) 140 Cal.App.4th 1047, 1061.)

Footnote 9 to this passage states:

Because such rights and duties are always subject to regulation under the police power, exercise of the police power constitutes neither a constitutional “taking” nor an unconstitutional impairment of the obligation of contract. (See *Imperial Irrigation Dist. v. State Wat. Resources Control Bd.* (1990) 225 Cal.App.3d 548, 562–563, 275 Cal.Rptr. 250; *People ex rel. State Water Resources Control Bd. v. Forni* (1976) 54 Cal.App.3d 743, 753, 126 Cal.Rptr. 851.)

(*Id.* at p. 1061, fn. 9.)

Moreover, the City’s police power allows all regulation “not in conflict with general laws.” (Art. XI, § 7; *In re Maas* (1933) 219 Cal. 422, 425.) Those “general laws” allow the City to “enforce a water conservation program to reduce the quantity of water” its residents

use, and even allow special districts — which lack general police power — to **prohibit** waste during drought. (Wat. Code, §§ 375, 31026, 71640.) Surely, therefore, the City's police power allows it merely to **discourage** waste at other times.

CTA did not argue below that the City's rates generate more than the total cost of service. They argued only that those who use more water than budgeted should pay the same rates as those who do not. (4 CT 1006–1007 [summary of CTA's Prop. 218 claims], 1012 & 1109 [arguing City's rates "are unequivocally non-linear"], 1106 [arguing Met purchases are billed "at a **constant rate**" (emphasis original)].) That CTA may prefer flat rates does not mean that Proposition 218 can be read to mandate them in the teeth of article X, section 2. (Cf. *Palmdale*, *supra*, 198 Cal.App.4th at pp. 936–938 [Prop. 218 cost-of-service requirement can be harmonized with conservation mandate of article X, section 2 on an appropriate record].)

Article X, section 2 states that water rights "shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water." It is of equal force as Proposition 218's cost-of-service requirement. (Cf. *Brydon*, *supra*, 24 Cal.App.4th at p. 193 [article X, section 2, is "at least as compelling" as Prop. 13].) Even *Palmdale*, the only case the trial court cited, found

Proposition 218 and article X, section 2 can be harmonized provided an agency's record demonstrates no parcel pays more than the proportional cost of service attributed to it. (*Palmdale, supra*, 198 Cal.App.4th at pp. 936–937.) If “unreasonable” or “wasteful” water use creates the need for expensive marginal supplies — or for conservation by others — then the costs of those marginal supplies or conservation efforts are reasonably “attributable” to that wasteful use. This is precisely what the challenged rates accomplish.

II. PROPOSITION 13 PERMITS CONSERVATION RATES AND PROPOSITION 218 EXPRESSES NO CONTRARY INTENT

As this Court recently explained, Proposition 218 is intended to address perceived evasions of Proposition 13. (See *CASB, supra*, 209 Cal.App.4th at p. 1186 [Prop. 218 “was intended to prevent politicians from trying to circumvent Proposition 13”], 1196–1197 [Prop. 218 closed loopholes in Prop. 13].) Proposition 218 expressly rejects some of those practices and overrules some judicial constructions of the earlier measure, such as use of utility rate proceeds to fund other services. (Compare *Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172, 1176 [city entitled to reasonable rate of return on investment in water utility] with *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 637 [rate proceeds may fund only water service under Prop. 218]; compare *Oneto v. City of Fresno* (1982) 136 Cal.App.3d 460 [Fresno charter

provision authorizing water utility payment to general fund in lieu of property taxes did not violate Prop. 13] ("*Oneto*") with *Howard Jarvis Taxpayers Assn. v. City of Fresno* (2005) 127 Cal.App.4th 914 [same charter provision violates Prop. 218] ("*HJTA v. Fresno*").)

However, as this Court explained in *CASB*, to the extent the voters who approved Proposition 218 did not evidence intent to displace case law under Proposition 13, Proposition 218 does not. (*CASB, supra*, 209 Cal.App.4th at pp. 1192–1198 [annexation did not trigger Prop. 218 election requirement because no evidence of intent to displace *Metropolitan Water Dist. v. Dorff* (1979) 98 Cal.App.3d 109 (*Dorff*) decision under Prop. 13].)

The voters who approved Proposition 218 plainly intended to change **some** things about water rates. Rates must now recover only service cost (art. XIII D, § 6, subd. (b)(1));¹⁷ rate proceeds must be used only to provide service (*id.* at subd. (b)(2)); rates must be proportionate to the cost of service attributable to a parcel (*id.* at subd. (b)(3)); fees may not be charged for services which are not immediately available (*id.* at subd. (b)(4)); and "[n]o fee or charge may be imposed for [a] general governmental service[] ... available to the public at large in substantially the same manner as it is to property owners" (*id.* at subd. (b)(5)).

However, Proposition 218 did not change who sets rates, nor did it alter every detail as to how rates may be set: Water

¹⁷Which explains *HJTA v. Fresno*'s variance from *Oneto*.

rate-making remains a matter of — bounded, assuredly — legislative discretion under article XI, section 9, which Proposition 218 neither amends nor repeals. Proposition 218 is silent as to who may “attribute” service to a parcel, thus maintaining the earlier rule that rate-making is legislative. (See *PT&T, supra*, 62 Cal.2d at p. 655; *Durant v. City of Beverly Hills* (1940) 39 Cal.App.2d 133, 139 [“fixing water rates ... is legislative in character”].)

Proposition 218 also preserves *Brydon’s* finding that inclining-block water rates do not exceed service cost so as to be special taxes requiring two-thirds voter approval under Proposition 13. (*Brydon, supra*, 24 Cal.App.4th at pp. 190–195.) Rather, such rates are permissible fees under Government Code section 50076, which excludes from Proposition 13’s voting requirements a fee that “does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged.” (*Ibid.*)

If Proposition 218 were intended to displace the City Council’s legislative power to attribute water service to parcels, or to bar inclining-block water rates, it would have said something as to who might make that attribution. It does not, just as it provided no electoral rules for taxes upon annexation, as this Court observed in *CASB*. Proposition 218 simply acknowledges that someone “attributes” service to parcels, requires that rates be proportional to the cost of service reasonably so attributed, and requires independent judicial review of those rate-making judgments.

(Art. XIII D, § 6, subd. (b)(3); *Silicon Valley, supra*, 44 Cal.4th at p. 450 [independent judicial review under Prop. 218 of quasi-legislative assessment determinations]; *Palmdale, supra*, 198 Cal.App.4th at p. 928 [same as to property-related fees, including water rates]; *Griffith, supra*, 220 Cal.App.4th at p. 590 [same].)

Accordingly, just as *Dorff* survives Proposition 218 to allow annexations to cities without tax elections, *Brydon* survives Proposition 218 to allow inclining-block conservation rates. Provided that de novo judicial review demonstrates a rate-maker acted reasonably in light of its administrative record to attribute particular levels of water service to parcels and to design rates to recover the reasonable costs of those service levels, conservation rates are constitutional.

III. TIER 1 RECOVERS THE COST OF VERY EFFICIENT WATER USE, AND TIER 2 RECOVERS THE COST OF AVERAGE USE

CTA argued below that Tier 1 is acceptable because it is "based on the cost-of-service," and that this tier proves that Tier 2 through 4 rates exceed cost. (4 CT 1012, 1159 [trial court summary of CTA's argument].) Not so.

Rather, the City's tiers implement rates described in Water Code section 372. Tier 2 is a "basic use allocation," which "provides a reasonable amount of water for the customer's needs and property characteristics." (Wat. Code, § 372, subd. (a)(2).) Tier 1 is a lower rate

for less than the “basic use allocation” the City “has determined to represent superior or more than reasonable conservation efforts.” (*Id.*, subd. (a)(3); 19 AR 4579 [Tier 1 recognizes “those residents who do practice conservation”].)

If the trial court found evidence to support rates based on the City’s average cost of service, therefore, it found evidence to support rates for both Tiers 1 and 2. While the revenue recovered by the rate applicable to each tier is sufficient to cover the costs of service sold in that tier, the Tier 1 rate does not generate revenue sufficient to recover the cost of more service than used by “super-conservers”. CTA’s contrary argument (4 CT 1012) is simply wrong.

By design, Tier 1 and 2 rates recover almost all the City’s cost to operate its wells, including 70 percent of fixed costs and 75 percent of local well costs. (19 AR 4709–4710.) Moreover, Tier 2’s “basic use allocation” is more than reasonable — CTA has not argued otherwise. Average use for a regular residential lot is 12 CCF per month, but residential Tier 2 budgets on average allow 17 CCF — almost 42 percent above average. (15 AR 3318; 14 AR 3227.) Tier 2’s allocation of nine of these 17 CCF for indoor use reflects industry standards. (11 AR 2758 [Grand Jury Report], 2767 [City reply to same].)

The City Council reduced Tier 2’s outdoor allocation to 70 percent of the pre-2010 allowance because the Rate Study advised this was “an area where significant water savings may be achieved.”

(19 AR 4615–4616; 14 AR 3227; see 11 AR 2756, 2758 [Grand Jury states almost all outdoor use is landscaping and half is overwatering].) Indeed, efforts to reduce outdoor water use are industry dogma. (15 AR 3366–3367 [Met brochure encouraging less outdoor water use].)

IV. TIER 3 AND 4 RATES ARE PENALTIES EXEMPT FROM PROPOSITION 218

As demonstrated below, the trial court erred in concluding the Tier 3 and 4 rates are unrelated to service cost. However, even were that so, these rates are lawful penalties on those who exceed water budgets. (See Wat. Code, § 375 [agency may enforce “water conservation program”].)¹⁸ Penalties are entirely exempt from Proposition 218.

As our Supreme Court explained, Proposition 218 applies to basic water rates because water “is a property-related service within the meaning of article XIII D because water is indispensable to most uses of real property” (*Bighorn, supra*, 39 Cal.4th at p. 214.) However, as the City Council reasonably found in its legislative discretion, use of more than 17 CCF per month on a single-family parcel is not “indispensable to most uses of property.” Authorized budgets reflect national standards for water use and the great majority of City customers never pay Tier 3 and 4 rates — only those who consume

¹⁸ Of course, the City has such power even without this legislative authorization by virtue of article X, section 2 and article XI, section 7.

more than twice their budget pay Tier 4 rates. (10 AR 2287 [Dec. 2005 UWMP Update: 90% of water sold in Tiers 1 and 2].) Thus, the upper tiers apply to the few who use water so profligately that they exceed the allocations for "indispensable" use available in Tiers 1 and 2. Accordingly, the City's Tier 3 and 4 rates are not property related fees subject to Proposition 218 at all.

Indeed, the Court of Appeal has already observed that reconciliation of *Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830 ("*Apartment Association*"), *Richmond v. Shasta Community Services District* (2004) 32 Cal.4th 409 ("*Richmond*") and *Bighorn* appears to require this result. *Apartment Association*, the Supreme Court's first opportunity to construe Proposition 218, determined that a fee imposed on landlords to fund housing code enforcement was not a property related fee subject to Proposition 218 because it was not a fee on property ownership per se, but on voluntary decisions to use property as rental housing. (*Ibid.* at 838.) *Richmond*, the high Court's second Proposition 218 case, concluded a charge to recover infrastructure costs to serve new water connections was not subject to Proposition 218 because the district could not comply with the notice requirements of article XIII D, section 6, subdivision (a) because developers who will need new water service cannot be known when the fee is set.

Pajaro Valley Water Mgmt. Agency v. AmRhein (2007) 150 Cal.App.4th 1364 ("*AmRhein*") tested whether a groundwater

management agency's fee on wells was a fee for a "property related service" and therefore subject to Article XIII D, section 6. The court initially determined it was not, reasoning from *Apartment Association* that a fee on operation of a well is not a fee on property ownership per se. Two days later, however, the Supreme Court decided *Bighorn* and the *Pajaro* court granted rehearing sua sponte to consider its impact. The *Pajaro* court reversed its earlier conclusion, finding that groundwater charges — at least on used groundwater for domestic purposes — cannot be distinguished from the piped water service fee in *Bighorn*:

As we noted in our prior opinion, the Supreme Court cited *Apartment Association* with apparent approval in *Richmond* In *Bighorn*, however, it did not mention the case at all, even though it seems highly relevant to the question whether monthly delivery charges, and especially consumption-based charges, fall within Article 13D. This omission raises questions about the reach, if not the vitality, of *Apartment Association*. The juxtaposition of that decision with *Bighorn* suggests the possibility that a fee falls outside Article 13D to the extent it is charged for consumption of a public service for purposes or in quantities exceeding what is required for basic (i.e., residential) use of the property. In *Richmond* and *Bighorn* the court was clearly

concerned only with charges for water for “domestic” use. (See *Bighorn, supra*, 39 Cal.4th at p. 217, 46 Cal.Rptr.3d 73, 138 P.3d 220, italics added [“As we explained in *Richmond, ..., domestic* water delivery through a pipeline is a property-related service within the meaning of this definition”].) This leaves open the possibility that **delivery of water for irrigation or other nonresidential purposes is not a property-based service**, and that charges for it are not incidental to the ownership of property. A finding that such a fee is not imposed as an incident of property ownership might be further supported by a clearly established regulatory purpose, e.g., to internalize the costs of the burdened activity or **to conserve a supplied resource by structuring the fee in a manner intended to deter waste and encourage efficiency.**

(*Id.* at pp. 1389–1390 [bold emphases added; abridgements and italics original].) That is precisely the case here: the City imposes Tier 3 and 4 penalty rates to accomplish the conservation mandate of article X, section 2 — “to conserve a supplied resource by structuring the fee in a manner intended to deter waste and encourage efficiency.” (*Id.* at p. 1390.)

Further, a penalty is not a tax because it is intended to change behavior rather than to raise revenue. (*California Taxpayers’ Assn. v.*

Franchise Tax Bd. (2010) 190 Cal.App.4th 1139, 1148–1149 (*CalTax*).¹⁹ Under exemptions from the definition of “taxes” which require voter approval stated in Proposition 26’s recent amendments to article XIII C (adopted by Proposition 218), our Constitution specifically distinguishes between (i) property related fees subject to Proposition 218 and (ii) fines and penalties. (See art. XIII C, § 1, subds. (e)(5) [fines and penalties not taxes under Prop. 26] & (e)(7) [nor are property related fees subject to article XIII D].) Moreover, while other exemptions from Proposition 26’s definition of “tax” are limited to cost of service; fines and penalties are not. (Compare *id.* at subds. (e)(1)–(e)(3) [limiting fees for benefits, services and regulation to cost of service] with *id.* at subd. (e)(5) [stating no cost-limit for fines and penalties]; see *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 388–390 [applying *maxim expressio unius est exclusio alterius*].) Indeed, it would be senseless to limit fines or penalties to “cost of service,” as they are imposed to regulate conduct, not to recover costs. What costs are borne by a \$1,000 fine for littering in violation of Government Code section 68055.7? None, of course.

CalTax provides a useful analysis of the distinction between penalties and government revenue measures, the latter of which must be limited to cost or approved as taxes by voters or two-thirds

¹⁹Cf. *Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310 [fee retailers must impose to provide paper bags not a tax under Prop. 26 because government gains no revenue by the fee].

of the Legislature. During the depths of the Great Recession, the Legislature adopted — by simple majority vote — a 20 percent penalty on late corporate income taxes of more than \$1,000,000. CalTax sued, arguing the measure required two-thirds approval as a tax under Article XIII A, section 3 because it would generate \$1.4 billion in its first year. (*Id.* at p. 1148.) The Court of Appeal disagreed:

The question of whether an imposition is a “tax” is not simply a question of raising revenue. A penalty, of course, directly raises revenue by imposing penalties. A penalty, as well, regulates conduct (and indirectly raises revenue) by deterring those tempted not to pay their taxes fully.

(*Ibid.*) The Court identified two criteria to distinguish a revenue-raising measure (a tax or a cost-limited fee) from a penalty:

First, as the trial court aptly recognized, “there is one important distinction between a penalty and a tax: while a tax raises revenue if it is obeyed, a penalty raises revenue only if some legal obligation is disobeyed.” In line with being a penalty, section 19138 directly raises revenue only if a corporate taxpayer has disobeyed a legal obligation (by understating its actual tax liability by over \$1 million). Furthermore, the continuous decline, over time, in projected revenue from section 19138 concretely illustrates this aspect of

a penalty: As more corporations fully pay their taxes to avoid the penalty, the penalty revenue declines.

(*Id.* at 1148–1149.)

A second observation, and one that carries a certain irony, is found in the language of article 13A, section 3 itself, the very provision that CalTax relies upon to claim section 19138 is unconstitutional here. Article 13A, section 3, stated that “any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto *whether by increased rates or changes in methods of computation* must be imposed by an Act passed by [two-thirds of the Legislature].” (Italics added [by CalTax court].) Section 19138 imposes a penalty for understating tax liability. It does not impose an increase in the tax rate or a change in the method of tax computation.

(*Ibid.* at p. 1149 (footnote omitted); cf. Govt. Code, § 53750, subd. (h)(1) [using similar terms to define tax or fee “increase” under Prop. 218].)

Thus, *CalTax* teaches that a measure is a fine or penalty, and not a tax if:

- it is triggered by a violation of some rule;
- does not change the rate or base of the measure; and
- can be expected to produce declining revenues as regulated parties change behavior to avoid the charge rather than stable or growing revenues.

Although the case arises under Proposition 13's state taxation provisions, it is helpful in construing local revenue provisions Proposition 218 adopted to protect the earlier measure. (Proposition 218, uncodified Section 2 [Prop. 218 intended to serve goals of Proposition 13] [full text of Proposition 218 printed as appendix to *Keller v. Chowchilla Water Dist.* (2000) 80 Cal.App.4th 1006, 1018–1022]; see also *CASB, supra*, 220 Cal.App.4th at pp. 1195–1196 [detailing history linking Propositions 13 and 218].)

Like Proposition 13 before it (as *CalTax* holds) and Proposition 26 after it (article XIII C, section 1, subdivision (e)(5)), Proposition 218 excludes fines and penalties from the fees it limits to cost. Article XIII D, section 2, subdivision (e) defines the fee or charge to which the cost-limitation rule of section 6, subdivision (b)(3) applies as follows:

“Fee” or “charge” means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service. (Emphasis added.)

This is a closed definition (“‘fee’ or ‘charge’ means ” — not “includes”) and requires fees subject to Article XIII D, section 6 to be “imposed ... as an incident of property ownership, including a user fee ... for a property related service.” A fine is not imposed by virtue of service provision, but because someone violates a rule. If you

don't want to pay penalty rates for water, don't exceed your budget.
It's that simple.

The Supreme Court made a comparable point in *Apartment Association*:

But the city is correct that article XIII D only restricts fees imposed directly on property owners in their capacity as such. The inspection fee is not imposed solely because a person owns property. Rather, it is imposed because the property is being rented. **It ceases along with the business operation**, whether or not ownership remains in the same hands. For that reason, the city must prevail.

(*Apartment Association, supra*, 24 Cal.4th at p. 838 [emphasis added].) Thus, just as a landlord could avoid the housing inspection fee in *Apartment Association* (by leaving the rental market), excluding the fee from Proposition 218's reach; the City's water customers can avoid Tier 3 and 4 rates by using only budgeted amounts of water.

Thus, the Tier 3 and 4 rates are not property related fees subject to the cost limit of Article XIII D, section 6, subdivision (b)(3), but rather penalties intended to encourage conservation and thereby **reduce** revenue to the City. (12 AR 2772 [2008 Rate Study RFP stated City sought rates that encourage conservation]; 19 AR 4538 [February 2010 staff report states City wished rates to send "strong water conservation message"]; 11 AR 2768 [City reply to Grand Jury

report stated upper tiers designed to curtail excessive use, not to fund average use].)

Tiers 3 and 4 are designed to change behavior rather than raise revenue and are therefore “penalties” under *CalTax*. Accordingly, if the trial court’s cryptic addition of “(not penalties)” to its statement of decision is a conclusion of law, it is error. (See 4 CT 1161.)

Further, if a finding of fact, it is error still. The City has always intended upper-tier rates as penalties to encourage conservation; it recovers costs for prudent water use from Tier 1 and 2 rates, with revenue from Tier 3 and 4 rates used to address the consequences of wasteful use. The rate-making record is replete with evidence of that intent:

- 10 AR 2287: December 2005 update to the City’s Urban Water Management Plan (UWMP) includes a section 4.4 entitled “Penalties for Excessive Use,” which states: “Higher than allowable use results in either Tier II [now III] or Tier III [now IV] use charge. ... The tiered billing system has proven to be an effective way of reducing excessive water use. 90% of the water delivered is billed at the Tier I [now Tiers I and II] rate.”
- 11 AR 2690: November 20, 2007 staff report stated: “to generate the necessary [2007] increase in revenues from user rates without using excess revenue from wasted

water [sold at penalty tier rates], the increase for FY 2007/08 would be approximately 11.6%.”

- 11 AR 2695: Same report states objectives of tiered rates include: “Recover all costs from the prudent use of water throughout the system and earmark excess revenue from wasted water (Tier 2 [now 3] and Tier 3 [now 4] usage) to promote water conservation and provide for additional local sources of supply.” It also states: “Water used within Tier 1 is at the lowest cost. Water used in Tiers 2 and 3 is higher as usage in these tiers is considered wasted water.”
- 11 AR 2708: 2007 Rate Study restated objective from the November 2007 staff report quoted above and “recommended that the revenue generated from the higher portion of the commodity charge (the amount above the Tier 1 [now Tiers 1 & 2] charge) be earmarked to promote water conservation system-wide and providing funding for those future sources of supply. As discussed earlier, the Tier 1 [now Tiers 1 & 2] allocation is determined based on prudent water usage and is allocated to each parcel monthly based on weather conditions, lot size, house size and other factors. Currently the Tier 2 [now Tier 3] allocation is equal to the Tier 1 [now Tiers 1 & 2] allocation. Any

usage above this allocation, or 2 times what is considered prudent water usage[,] is in Tier 3 [now Tier 4].”

- 15 AR 3365: Summer 1993 newsletter states: “The District believes that conservation-minded customers will be able to purchase all of their water at the lowest rate If use exceeds the bi-monthly allocation, penalty prices of \$1.43 up to \$2.30 may apply.”²⁰
- 20 AR 4856: American Water Works Association M1 Manual advises: “Increasing block rate structures have found greater use in areas experiencing strong growth in water demand, threats to existing water supplies, or a regional impetus for improved water efficiency. In all of these areas, there can be payoff to using price as a demand management tool.”

Indeed, CTA does not claim otherwise. Paragraph 35 of its First Amended Complaint alleges the upper tiers are penalties: “the Rate Study states that Tiers 3 and 4 represent ‘wasted water’ and that the tiers are intended to force conservation. Therefore, Plaintiff

²⁰This is a newsletter of the Capistrano Valley Water District, which has since merged into the City, and dates from 1993–1994, shortly after the City adopted increasing-block conservation rates and when it billed bi-monthly rather than monthly.

is informed and believes that the charges for Tiers 2²¹ through 4 are a financial penalty intended to force conservation and are not a fee for service.” (1 CT 218 [¶ 35, lines 7–9].)

Thus, as explained below, although the City **did** calculate the Tier 3 and 4 rates to recover the cost of water supplied at these tiers, it was not obliged to do so. Instead, these rates are penalties on those who exceed reasonable budgets. These rates are not subject to Proposition 218’s cost-justification requirement.

Indeed, some argue that conservation rates are not merely **authorized** by article XI, section 9, but **required** by article X, section 2. An example appears as Exhibit BB to the City’s Motion for Judicial Notice filed with this brief (“MJN”), a petition to the State Water Resources Control Board arguing that a groundwater management agency violates article X, section 2 by failing to implement conservation rates. (MJN, Exh. BB at p. 48, ¶ 178 [“Respondent United has failed to implement a number of practical measures that would reduce its need to divert Santa Clara [River] flows and that would encourage conservation of water by its end users. These measures include **alterations in end user water pricing structure to encourage conservation**, requiring end user efficiency requirements, and the provision of subsidies for **delivery of adequately treated reclaimed wastewater** to United and for the use

²¹CTA confuses the average-cost Tier 2 rate with Tier 3 and 4 penalty rates.

of reclaimed water by United's end users." (Emphasis added)]. Groundwater augmentation charges are subject to Proposition 218. (*AmRhein, supra*, 150 Cal.App.4th at p. 1393.) Thus, what the trial court here erroneously found to be prohibited by article XIII D, section 6, subdivision (b)(3); competent counsel argue is required by article X, section 2.

In sum, the trial court erred when it rejected the City's argument that Tier 3 and 4 rates are penalties, whether that rejection was a finding of fact or a conclusion of law.

V. PENALTY RATES RECOVER THE COST TO DELIVER OVER-BUDGET WATER

However, even if this Court chooses not to break new ground by holding penalty rates are not property related fees subject to Proposition 218, Tier 3 and 4 rates nevertheless reflect the proportional cost of service.

The City imposes conservation charges "on all increments of water use" beyond the basic use allocation of Tiers 1 and 2. (Wat. Code, § 372, subd. (a)(4).)

Tier 3 and 4 rates reflect over-budget use and fund marginal supplies the City must obtain — from expensive Met imports, via the GWRP, or through conservation by others — to accommodate this excessive use. (See 11 AR 2768 [City reply to Grand Jury states 2007 upper tiers fund costs arising from excessive use]; 12 AR 2914

[replies to rate workshop questions state 2010 rate structure has same function as all rates since 1991].)

Tiers 3 and 4 mirror Met's "penalty rate blocks," which the Met imposes for consumption beyond its allocations. (18 AR 4445–4447 [May 2009 public meeting slides].) However, the City's penalty rates are less draconian than Met's. The City's rate for average use (Tier 2) is increased by 50% in Tier 3, and by 175% to reach the rarely applied Tier 4. (19 AR 4617 [Rate Study].) In 2010, Met's rate for average use increased by 169% to reach its first penalty tier, and by 339% to reach the second. (18 AR 4446 [May 2009 public meeting slides].)

While the City could penalize wasteful use by charging much more under the law described above, it tethers Tier 3 and 4 rates to the cost of service above Tier 2 to take a legally conservative approach in the absence of case law clarifying Proposition 218's demands. Accordingly, to account for costs the City expects to bear to serve consumption at twice budget, Tier 3 funds the portion of fixed costs and local wells costs not covered by Tiers 1 and 2, plus 82.5 percent of Groundwater Recovery Plant costs and percent of the cost of Met supplies — assigning costs from the City's relatively more expense sources to those who make resort to those sources necessary. (15 AR 3318 [workshop slides]; 19 AR 4709 [Rate Model].) To cover expected costs to serve consumption by the few customers who exceed Tier 3 (i.e., more than double the budget), Tier 4 funds

the balance of GWRP and Met costs and supplemental conservation programs. (15 AR 3318; 19 AR 4709.)

These rates are intended to be self-regulating: if no water is sold in Tiers 3 and 4, the marginal supplies and conservation efforts they would otherwise fund are not provided; if water is sold in these tiers, penalties fund those services. (See 11 AR 2768 [City reply to Grand Jury states penalty tier revenue funds cost to supply above-average use].) This is elegant public policy and does not detract from Proposition 218's goal to protect customers from excessive rates for water that is "indispensable to most uses of real property." (*Bighorn, supra*, 39 Cal.4th at p. 214.) Indeed, it protects most customers from the need to subsidize waste by the few. If Proposition 13 and its progeny support the "user pays" principle, Proposition 218 should not be read to require those who conserve to subsidize those who do. Indeed, Article XIII D, section 6, subdivision (b)(3) cannot sustain such a reading.

As shown in Table 1 below, if the City acceded to CTA demands and charged a flat rate, it would shift costs from water wasters to efficient users. It would compel the City — with no textual support in Proposition 218 — to "attribute" the same service to all users even though the cost to serve efficient consumers is much lower than the cost to serve the few who waste water.

TABLE 1
Flat Rates Shift Cost from
High-Volume to Low-Volume Water Users

Tier	Tier Rate (\$/CCF) ^a	Max Volume (CCF) ^b	Volumetric Price Using		Difference ^c
			Tiered Rates ^c	Average Cost of \$3.375 ^d	
1	\$2.47	6	\$14.82	\$20.25	\$5.43
2	\$3.29	11	\$36.19	\$37.13	\$0.94
3	\$4.94	17	\$83.98	\$57.38	(\$26.60)
4	\$9.05	1 ^f	\$9.05/CCF	\$3.375/CCF	(\$5.675)/CCF
CONSUMER TIER		Volume (CCF)	Price Using		Difference ^g
			Tiered Rates	Flat Rates	
Penalty Tier		35 ^h	\$144.04 ⁱ	\$118.13 ^j	(\$25.91)/mo
Average Consumer		12 ^k	\$34.56 ^l	\$40.50 ^m	\$5.94/mo

^a 20 AR 5008 [rate resolution].

^b 15 AR 3318 (workshop slides: Tier 1 allows 6 CCF; Tier 2 allows, on average, 17 CCF total, or 11 at this tier; Tier 3 allows, on average, 34 CCF total, or 17 at this tier; and Tier 4, on average, applies to consumption above 34 CCF per month).

^c This column is the sum of the two to its left so, for example, $\$2.47 \times 6 \text{ CCF} = \14.82 . (15 AR 3318 [workshop slide showing current and proposed rates for typical residential customers consuming 12 CCF per month through a 5/8-inch meter].)

^d This column is the product of the third column (water volume consumed) and \$3.375, the City's average cost of water. So, for example, $6 \text{ CCF} \times \$3.375 = \20.25 . The City's average cost of water for Residential-Regular Lot customers is calculated as follows: The total cost of service for this class is \$2,360,500. (19 AR 4613 [Rate Study Table 14, line 1, column 4], 4619 [Table 16, line 1, column 3].) Removing costs the City recovers through its fixed meter rate (\$697,400), the total cost it must recover through volumetric rates is

\$1,663,100. (See 19 AR 4592 [fixed rate recovers “meter reading, customer billing, and public fire protection”], 4612–4613 [Table 13, line 3, columns 7 & 8; Table 14, line 1, column 2; cost of service attributed to meters (\$165,600) + customer billing (\$344,900) + public fire (\$186,900) = \$697,400].) The Rate Study projected sales for this class at 492,800 CCF. (19 AR 4592 [Table 2, line 1, column 3 (fiscal year ended 2010)].) Thus, $\$1,663,100 / 492,800 \text{ CCF} = \$3.375/\text{CCF}$.

^e This column represents the difference between the two to its left and shows the impact of replacing increasing-block with flat rates. E.g., $\$20.25 - \$14.82 = \$5.43$. Numbers in parentheses are negative.

^f Tier 4 applies to all consumption above Tier 3. However, the City sells very little water at this tier. Accordingly, the point of Table 1 can be made by showing the subsidy per CCF that would accrue to these few customers by abandoning conservation rates for flat rates.

^g The two figures below are the difference between the two columns to their left. E.g., $\$118.13 - \$144.04 = -25.91$.

^h Very few customers reach Tier 4. (See 10 AR 2287 [90% of water consumed within budget].) This figure represents a hypothetical customer who consumes 1 CCF in Tier 4 — or 35 CCF per month.

ⁱ This figure is the sum of those above it.

^j \$118.13 is the sum of \$3.375 per CCF (average cost of water) times 35 CCF available in the first three tiers, plus one CCF in Tier 4: $6 \text{ (Tier 1)} + 11 \text{ (Tier 2)} + 17 \text{ (Tier 3)} + 1 = 35$. $35 \times 3.375 = \$118.125$, which we have rounded up to \$118.13.

^k 15 AR 3318–3319 [workshop slides].

^l 15 AR 3319 [workshop slide shows average use via 5/8-inch meter of 12 CCF].

^m This represents 12 CCF (average residential consumption) times average cost of $\$3.375 / \text{CCF}$. $12 \times \$3.375 = \40.50 . (15 AR 3319 [workshop slide showing average residential use of 12 CCF per month].)

Table 1 compares the City's volumetric charges to an average customer — who consumes 12 CCF of water a month through a 5/8-inch meter serving a regularly sized residential lot — to an identical customer who consumes 35 CCF — the lowest volume sufficient to trigger the Tier 4 rate. These charges are in addition to the fixed monthly meter charge²² of \$15.25 which — in this hypothetical at least²³ — is unaffected by changing increasing-block to flat rates. As Table 1 and the data it takes from the Administrative Record demonstrate, switching from increasing-block rates to the flat rates CTA advocates would cost typical customers \$5.94 more

²²The Rate Study notes: "The City's water sales are composed of two parts, a monthly service charge and a usage charge as shown in Table 3. The monthly service charge is an amount based on meter size that is designed to recover the fixed costs which do not vary with the volume of water used by a customer such as meter reading, customer billing, and public fire protection." (19 AR 4592.)

²³In fact, flat rates would eliminate much of the incentive to conserve water. As a result, water consumption would increase and the City would be forced to rely more heavily on its most expensive supplies — Met imports. That would require a fundamental reanalysis of water rates to allocate higher costs to higher water sales and might change the City's current policy decisions regarding the division of revenues between fixed and variable (volumetric) rate components.

per month to transfer \$25.91 a month to the few customers who use so much water as to trigger the Tier 4 rate.

Nothing in Proposition 218 requires this unfair result or abandonment of the most effective tool utilities have to encourage conservation — a price signal. The goal of Proposition 218 is to protect water customers, not to force most to fund waste by a few. The trial court's ruling was therefore error, intrudes without justification on the City Council's rate-making discretion, and undermines the Legislature's and our Constitution's commitments to conservation, reduced exports through the environmentally sensitive Delta, and development of local resources. (Art. X, § 2; Wat. Code, § 10608 et seq. [20x2020 statute].)

VI. THE CITY'S COST ACCOUNTING FOR PROPOSED RECYCLED WATER SERVICE COMPLIES WITH PROPOSITION 218

Proposition 218 requires fees for future services to be adopted as assessments, with mailed voting, under article XIII D, section 4 rather than as fees:

No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments,

shall be classified as assessments and shall not be imposed without compliance with Section 4.

(Art. XIII D, § 6, subd. (b)(4).) The trial court concluded that recycled water and domestic water are necessarily different services and that the cost to establish a recycled water utility cannot be covered by a fee charged to potable water customers. Instead these costs must be borne by customers who take recycled water when those customers exist at some future date. This, too, was error.

**A. Future Recycled Water Customers Alone
Bear Costs of the Recycled Water
Program**

The trial court's conclusion that the City requires its potable water customers to fund recycled water is factually mistaken.

The City recovers costs for its proposed recycled water utility in two ways. First, it imposes a rate for the "recycled water" customer class that will apply when it is able to deliver recycled water. (19 AR 4591 [Rate Study Table 1 showing no recycled water customers until FY 2012–2013] & 4617 [Recycled Water rates], 4594 [Table 4, line 15 predicts no recycled water revenues until FY 2012–2013].) Second, the City accounts for a recycled water **functionalized cost** to impose part of the utility's general operation costs on recycled water customers when they exist. (19 AR 4606–4607 [sentence in Rate Study which carries over from 4606 to 4607 proposes recycled water as "functional cost component"], 4613 [Rate

Study Table 14 shows \$1,864,200 of “beneficial use costs” allocated away from recycled water to other customer classes because this portion of existing utility overhead cannot be borne by customers who do yet exist[.] Those functionalized costs will be transferred to recycled water customers when they exist in meaningful numbers, as detailed further below. At present they are paid by the only customers who can do so: existing customers.

The City’s recycled water program is still nascent; it has essentially no customers.²⁴ Therefore, with few exceptions, the costs

²⁴The City serves 10 customers from a small recycled water system that can be served by an adjacent community’s sanitation plant, In addition, when these rates were made in 2010, the City expected to serve non-potable customers in part with recycled water purchased from sanitation agencies and budgeted \$296,600 to do so, a cost assigned to the recycled water class because non-potable customers were to move to that class in 2012–2013. (19 AR 4608 [line 13].) In fact, the City has not yet done so and augments insufficient non-potable groundwater supplies with potable water. However, rates are appropriately based on reasonable expectations when they are made. In any event, the planned (but not realized) recycled use for non-potable customers is distinct from the proposed recycled water service expected in 2010 to be supplied by a proposed Advanced Wastewater Treatment Plant (AWT). Unless otherwise stated,

the Rate Model and Rate Study suggest be allocated to the recycled water function are not costs the City incurs to operate a recycled water utility. Rather, they are general utility costs the City has accounted so it can transfer an appropriate portion from current customers to recycled water customers when they exist in meaningful numbers.

To appreciate this, close study of Tables 10 (19 AR 4608) and 14 (19 AR 4613) is required; copies of both are attached to this brief.

TABLE 10. Table 10 lists 42 lines of budgeted utility operating costs divided among operating expenses (lines 1 to 32), debt service (lines 22 — 36), and transfers between funds (line 37—39). The second column of this table (labelled “allocation basis”) states the basis by which each cost is allocated to five functions common to all customers and to two functions specific to fire and recycled water (the right-most seven columns). Most operating costs are allocated to the five functions common to all customers and only a few are allocated only as fire and recycled water costs.

Of interest here are those assigned to the recycled water function. Of the total of \$1,864,200 in test-year costs assigned to this function, all but two are proportionate shares of general costs such as administration, customer service, field services, maintenance, etc. This is seen in the recycled water column of Table 10 which lists

references in this brief to “recycled water” are to a proposed new service rather a more modest use of recycled water planned in 2010.

zeroes for many costs (which are distributed to all customers via the five common functions) and from the fact that all but two lines which do bear figures are proportionate shares of budgeted costs shown on these lines:

<u>Line</u>	<u>Description</u>	<u>Amount</u>
5	Utilities-General Services	\$227,800
8	Utilities-Field Customer Services	\$13,900
14	Utilities-Water Distribution	\$26,900
16	Cross Connection & Backflow	\$16,200
17	System Maintenance	\$75,600
20	Preventative Maintenance	\$24,100
21	Booster Facilities Maintenance	\$55,800
28	System Maintenance ²⁵	\$3,200
33-36	System-wide Debt Service	\$404,200 ²⁶

²⁵Lines 23-30 of the Table list costs budgeted for existing non-potable water service and thus have labels similar to budget lines above them in the table which apply to potable service.

²⁶These debts issued in 2009 and earlier and provided no funding for a recycled water utility not proposed to come on-line until 2012-2013. Recycled water capital costs were to be covered by grants and the "Phantom Bond," which the City did not issue (19 AR 4605 [Rate Study: "Some of the CIP [Capital Improvement Plan] needs are offset by the potential receipt of recycled water grants."]); 4 CT 1160-

These costs are all appropriately borne by all who benefit from the utility, including future recycled water customers.

Two costs are allocated to the recycled water function alone. Line 7, "Utilities-Water Conservation" reflects costs associated with the City's Water Conservation Coordinator and such conservation programs as a low-flow toilet replacement program. It is assigned to the recycled water class because this class will include many of the

1161 [Statement of Decision discussion of bond planned, but not issued in favor of pay-as-you-go financing].)

²⁷This reflects refunding the City's reserve fund, depleted by inadequate pre-2010 rates. The reserve is used for cash flow, rate stabilization, and to account for unexpected events, like earthquakes. (20 AR 4821 [M1 Manual states: "For utilities using the cash-needs approach, capital-related costs include debt principal and interest, **contributions to specific reserves**, and the cost of capital expenditures that are not debt-financed or contributed."] [emphasis added].) The City's UWMP also notes the use of reserves: "If the emergency period is not expect to last too long[,] the City's Water Fund Reserve would be available to meet the revenue shortfall. If the emergency period is longer, then an emergency water rate increase would be instituted until the time the emergency period is past." (10 AR 2287.)

City's most prolific water users and whose use is most easily made more efficient — present users of non-potable²⁸ and landscaping water. Accordingly, this class is asked to bear part of the City's conservation costs to offset their heavy and inefficient use. (19 AR 4591 [Rate Study Table 1 shows landscaping and irrigation customers, but no recycled water customers, until 2013 and the reverse thereafter].)

Line 13, "Recycled Water Operations" reflects the \$296,900 budgeted to buy recycled water for non-potable and irrigation customers, supplementing that inadequate supply with potable water. (11 AR 2613 ["the non-domestic water system supplies approximately 611 acre-feet per year (AFY) of a blend of lower quality groundwater and domestic water"]; 11 AR 2709 ["the blend is mostly import[ed]" potable water].) This, too, is appropriately a cost of the recycled water function.

Thus Table 10 identifies costs appropriately allocated to the recycled water function of \$1,864,200 — almost all of which is simply a share of system-wide operating costs.

²⁸The 2005 UWMP states: "In 1989, the City installed a separate non-potable water system to utilize lower quality groundwater supply for landscape irrigation of golf courses, parks, recreation areas, greenbelts, schoolyards, highway medians, and industrial uses. The non-potable water system supplies approximately 300 to 400 acre-feet per year to 63 connections" (10 AR 2288.)

TABLE 14. This Rate Study table appears at 19 AR 4613 and reallocates the \$1,864,200 in costs allocated to the recycled water class in Table 10 to all other customer classes in its column (3). The parentheses around the \$1,864,200 on line 16 show these costs allocated away from the recycled water customer class and the positive figures in the other lines show who is to absorb those costs until the recycled water class can bear these costs. As noted above in the discussion of Table 10, all the costs included in the \$1,864,200 are general system costs except two. Those are conservation costs (\$263,500), which generate supply for all customers and costs budgeted to buy recycled water to serve to irrigation and non-potable customers (\$296,900). This last figure is much smaller than the sum of the reallocation to the landscape (\$504,400) and non-potable (\$241,300) customer classes shown on lines 7 and 11 of column (3) of table 14. Thus, **no recycled water costs are borne by any customers who were not to benefit from recycled water purchases planned when these rates were made** — nor do rates fund construction of a recycled water utility — these capital costs were to be funded from grants and a bond which did not issue, as detailed in footnote 24 above.

What point is served by allocating recycled water costs to future recycled water customers before reallocating those costs to others? A more detailed version of the Rate Study's Table 14 in the Rate Model explains. (19 AR 4762.) The 18 numbered lines of this

table essentially restate Table 14 and show the reallocation of \$1,864,200 in recycled water costs to other customers in line 17 and the column entitled: "Reallocation of Beneficial Use Costs — Recycled Water." However, this page provides in lines below the table some helpful detail omitted from the Rate Study. The first three lines show the reallocation to all customers of the costs accounted for the fire and recycled water functions. The second and third of these lines are essential here:

Percent Recycled Water Reallocation 100.00% If we
have no recycled water customers as yet, then 100%, if
recycled water customers, then allocate 50%.

Split of RW to Landscape/Non-Potable 40.00

These terse notes mean this: All of the \$1,864,200 in costs that might be charged to future recycled water customers must be borne by others until these customers exist (i.e., 100 percent). Once recycled water customers exist in the numbers projected in Table 1 of the Rate Study (844 in FY 2012–2013 and 848 in FY 2013–2014)²⁹ that allocation will fall by half (50%) and new recycled water customers will bear some \$932,100 in general system costs existing customers must now bear. Until recycled water (RW) customers are numerous enough to bear all the costs which can logically be assigned them, landscape and non-potable customers will bear 40 percent of what is

²⁹19 AR 4591.

reallocated to non-recycled-water customers. This appears from the fact that 40 percent of \$1,864,200 is assigned to these classes by lines 7 and 11 of this table: $\$504,400 + 241,300 = \$745,700$ and 40 percent of $\$1,864,200 = \$745,680$. The negligible, \$20 difference results from rounding.

The last three lines of this page, labelled "Reallocation \$ — Recycled Water," confirm the 40 percent reallocation to the landscape and non-potable classes (\$747,700) of costs assigned to recycled water and the 60 percent allocation to "everyone else" (\$1,118,500). The sum of these two figures is the \$1,864,200 total.

Thus, the City calculates what a recycled customer class might bear so that it can charge appropriate rates to that class when it has members and thereby relieve other customers of a portion of the general cost to operate the utility. However, as that class does not yet exist, those costs are reallocated to existing customers for now.

Thus, the trial court's conclusion that the City asks customers to pay for a recycled water service they do not receive is simply wrong. The record reflects instead that the City is planning to transfer to future recycled water customers a proportional share of the cost to operate the water utility. Until those customers arrive, however, that cost must be borne by those who benefit from the utility now.

**B. Proposition 218 Does Not Require
Separate Pricing of Multiple Sources of
Supply**

Moreover, even if the City *did* charge to potable customers a part of the cost to operate a non-existent recycled water utility, the law would still require reversal.

“Water” service encompasses both recycled and domestic supplies. (Gov. Code, § 53750, subd. (m); *Griffith, supra*, 220 Cal.App.4th at pp. 594–595 [groundwater augmentation from storm flows and recycled wastewater plant effluent are “water service” exempt from election requirement of art. XIII D, § 6, subd. (c)].)

Moreover, the City Council has discretion to determine what services to offer and — within reason and evidentiary support — what service to “attribute” to a parcel. (Art. XI, § 9 [“A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with ... water”]; *Durant v. City of Beverly Hills, supra*, 39 Cal.App.2d at p. 137 [Art. XI, § 9 confers rate-making power].) As discussed above, Proposition 218 is silent as to who may “attribute” service to a parcel, but assumes someone will. (Art. XIII D, § 6, subd. (b)(3).)

While courts review these decisions independently to ensure Proposition 218’s purposes are met, the City Council is the rate-maker. (See *CASB, supra*, 209 Cal.App.4th at pp. 1192–1198 [Prop. 218 maintains Prop. 13 precedents unless it expressly provides otherwise]; *Brydon, supra*, 24 Cal.App.4th at pp. 190–195

[inclining-block rates not taxes under Prop. 13]; *Griffith, supra*, 220 Cal.App.4th at p. 601 ["Given that Proposition 218 prescribes no particular method for apportioning a fee or charge other than the amount shall not exceed the proportional cost of the service attributable to the parcel, defendant's method of grouping similar users together for the same augmentation rate and charging the users according to usage is a reasonable way to apportion the cost of service. That there may be other methods favored by plaintiffs does not render defendant's method unconstitutional. Proposition 218 does not require a more finely calibrated apportionment."].)

Most utilities have multiple sources of supply. Indeed, this is a common strategy to ensure a reliable supply, just as a diverse investment portfolio reduces financial risk. The City has three sources in addition to what is often called "the cheapest source" — conservation: local groundwater, Met imports, and its proposed recycled water system. Los Angeles has four: Met imports (59% of its supply), Owens Valley supplies of *Chinatown* fame via the Los Angeles Aqueduct (30%), local groundwater (10%), and recycled water (1%). (MJN, Exh. AA.) Few utilities can deliver water from every source to every customer because the necessary infrastructure would be prohibitively expensive — recycled water lines (or "purple pipe") cannot be efficiently run everywhere. Moreover, there is no need to plumb Los Angeles so that its harbor and the San Fernando Valley can each take water from all four sources. Rather, most

customers take water from one source or another. (*Ibid.*) The Los Angeles water supply map of which the City seeks notice demonstrates this fact graphically.

Despite supply diversity, agencies commonly account for supply costs in toto and attribute them to all customers so each funds the system from which all benefit. The M1 Manual supports this approach. (20 AR 4830 ["Costs are allocated to express the total utility cost of service," and are then distributed to customer classes based on requirements for service] & 4837 ["general service characteristics, demand patterns, and locations with regard to city limits are generally the principal considerations in customer classification"].) Indeed, given the variety of sources involved, to do otherwise would resemble the customer-by-customer (as opposed to class-by-class) approach *Farm Bureau* and *Griffith* reject as impracticable.

Still further, water supply is dynamic: Utilities reroute supplies from one area to another to address loss of a given source due to well failures, contamination, interruption of regional supplies for infrastructure maintenance, etc. Indeed, Met requires the City to maintain a seven-day local supply to allow such interruptions. (See 15 AR 3490.) Given this dynamism, it is not practicable to ascribe all costs of a source to one area of the City.

Thus, it is industry practice to allocate supply costs to all who benefit from them without proof that each source supplies every

customer all the time. The City's reliance on that industry practice to ascribe to all its potable water customers a new recycled water program that will make more potable water available for their use would be reasonable. Proposition 218 does not demand more. (*Griffith, supra* at pp. 600-601.) The record demonstrates that recycled water would be cheaper than Met imports. (11 AR 2709 [2007 Sanitary Sewer Master Plan – Financing Program Update: “the per unit cost of recycled water is approximately \$0.31/ccf less than potable import”].)

Accordingly, the trial court's conclusion the City violates article XIII D, section 6, subdivision (b)(4) by charging customers for a recycled water service they do not receive is wrong both factually and legally. It should be reversed.

CONCLUSION

The trial court plainly erred when it found “no evidence” to support the City's rates despite the detailed Rate Model and Rate Study, which provide ample evidentiary support for the City's conclusion that its four tiers of water rates reflect the cost of providing increasing volume to its customers.

The trial court also erred in concluding that the City's Tier 3 and 4 rates could not also be justified as penalties, without respect to cost of service, whether its two-word comment on this issue is a finding of fact or a conclusion of law.

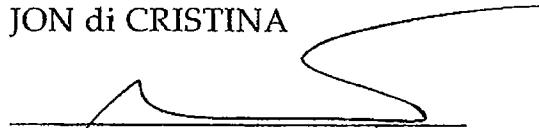
Finally, the trial court mistook the facts when it concluded the City charges potable customers for a recycled water service they do not receive. Even if the City did so, Proposition 218 would allow it because all customers benefit from the additional supply created when recycled water displaces existing use of scarce potable water supplies.

Upholding the City's rates adopted pursuant to authority granted by article XI, section 9 serves both Proposition 218's requirement the City levy rates proportionate to service cost and article X, section 2's mandate that it conserve water. The trial court failed to harmonize these three principles, needlessly construing Proposition 218 to trammel the others. The more plausible reading of article XIII D, section 6, subdivision (b)(3) offered here strikes a better balance.

For all of these reasons, the City respectfully requests this Court reverse the trial court judgment on the merits and provide declaratory relief that the City's rates are lawful and may be enforced.

DATED: January 14, 2014

COLANTUONO & LEVIN, PC
TIANA J. MURILLO
JON di CRISTINA



MICHAEL G. COLANTUONO
Attorneys for Respondent,
City of San Juan Capistrano

CERTIFICATION OF COMPLIANCE WITH

CAL. R. CT. 8.204, subd. (c)(1)

Pursuant to California Rules of Court, rule 8.204, subd. (c)(1), the foregoing Appellant's Opening Brief contains 13,553 words (including footnotes, but excluding the tables and this Certificate) and is within the 14,000 word limit set by rule 8.204, subd. (c)(1). In preparing this certificate, I relied on the word count generated by Word version 14, included in Microsoft Office Professional Plus 2010.

Executed on January 14, 2014, at Penn Valley, California.

COLANTUONO & LEVIN, PC
MICHAEL G. COLANTUONO



MICHAEL G. COLANTUONO

ATTACHMENT
(Cal. Rules of Court, rule 8.204(d))

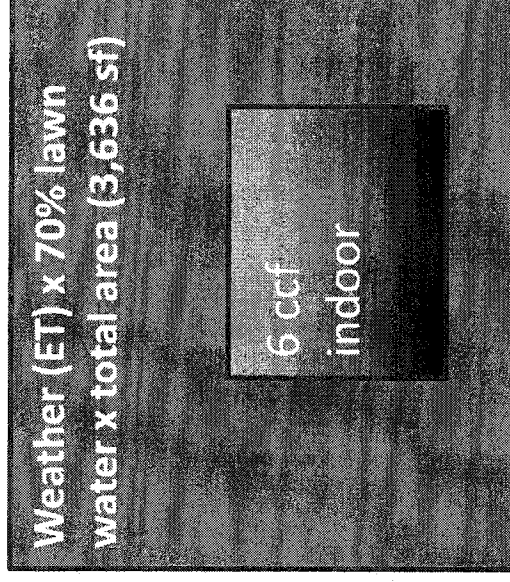
Regular Residential Lot (WCA)

Existing allocation



Tier 1 = 9 CCF + Outdoor
Tier 2 = up to 200% of Tier 1
Tier 3 = over 200% of Tier 1
Average water use: 12 CCF / month
Current allocation average = 20 CCF

Proposed allocation



Tier 1 = 6 CCF
Tier 2 = 3 CCF + Outdoor
Tier 3 = up to 200% of Tier 1+2
Tier 4 = over 200% of Tier 1 +2
Average water use: 12 CCF / month
Proposed allocation average = 17 CCF

Regular Lot: Average Water Bill

Currently:

Average use of 12 CCF
5/8" meter

Meter charge \$ 11.70
Water charge 32.40
TOTAL..... \$ 44.10

Proposed:

Average use of 12 CCF
5/8" meter

Meter charge \$ 15.25
Water charge 34.56
TOTAL..... \$ 49.81

\$5.71

WATER RATE STUDY

CITY OF SAN JUAN CAPISTRANO, CA
WATER AND WASTEWATER RATE STUDY

Table 4
Revenues under Existing Rates

Line	Description	Fiscal Year Ending June 30,				
		2010	2011	2012	2013	2014
		(\$)	(\$)	(\$)	(\$)	(\$)
Service Charge:						
1	5/8"	961,100	1,007,100	1,059,500	1,064,800	1,070,100
2	1"	582,600	610,500	642,200	645,400	648,700
3	1.5"	194,700	204,000	214,600	215,700	216,700
4	2"	325,100	340,700	358,400	360,100	361,900
5	3"	9,700	10,100	10,700	10,700	10,800
6	4"	28,200	29,500	31,000	31,200	31,300
7	6"	9,000	9,400	9,900	10,000	10,000
8	8"	3,500	3,700	3,900	3,900	3,900
9	Misc. Flat Rate Use	300	400	400	400	400
10	Mobile Homes	100	100	100	100	100
11	Temp Service - Jumper	100	100	200	200	200
12	Firelines	76,600	79,900	83,600	83,600	83,600
13	Construction	20,000	20,900	21,800	21,800	21,800
14	No Charge - Service	0	0	0	0	0
15	Recycled Water	0	0	0	42,100	42,400
16	Subtotal	2,211,000	2,316,400	2,436,300	2,490,000	2,501,900
Usage Charge:						
17	Residential - Regular Lot	1,410,500	1,457,700	1,503,500	1,346,900	1,354,300
18	Residential - Large Lot	3,751,900	3,875,800	3,995,600	3,579,100	3,596,500
19	Master Meter Residential	279,000	288,200	297,000	265,800	267,300
20	Multi w Own Irrigation	433,600	449,000	463,400	415,400	418,300
21	Multi w/o Irrigation - Regular	211,100	217,100	222,700	198,400	198,400
22	Multi w/o Irrigation - High Density	455,500	471,100	486,600	436,400	439,000
23	Landscape	1,789,300	1,848,700	1,905,700	0	0
24	Agriculture	135,700	139,600	143,200	127,600	127,600
25	Commercial	1,008,900	1,042,500	1,075,100	963,400	968,500
26	Construction	2,600	3,000	3,100	2,700	2,700
27	Non-Potable	807,000	834,600	863,600	0	0
28	No Charge	0	0	0	0	0
29	Firelines	0	0	0	0	0
30	City Farm	77,400	79,600	81,600	72,700	72,700
31	Recycled Water	0	0	0	2,512,000	2,524,600
32	Subtotal	10,362,500	10,706,900	11,041,100	9,920,400	9,969,900
33	Total	12,573,500	13,023,300	13,477,400	12,410,400	12,471,800

3.1.3 Operations and Maintenance Projections

In order to adequately adjust rates, it is necessary to project operation and maintenance (O&M) expenses. The City currently has three funds to track revenue and expenditures associated with different parts of the water enterprise. The funds are Operating, Debt Service and Groundwater Recovery Plant (GWRP). The Operating fund is used for day-to-day activities such as personnel, contractual obligation, supplies, etc. The Debt Service fund is used to capture debt proceeds and debt service payments. The GWRP fund is used to capture activities

WATER RATE STUDY

CITY OF SAN JUAN CAPISTRANO, CA
WATER AND WASTEWATER RATE STUDY

Table 10
Allocation of TY 09/10 O&M Expense and Capital Costs to Functional Cost Components, Scenario #2

Line	Description	Allocation Basis	Total Costs					Component to All Customers					Fire	Recycled Water
			(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)		
			Base	Max. Day	Max. Hour	Meters	Cost/Bill							
Operational Expenses														
1	Administration	Billing	483,700	0	0	0	483,700	0	0	0	0	0	0	0
2	Customer Service	Billing	505,600	0	0	0	505,600	0	0	0	0	0	0	0
3	CD-Code Enforcement	Administration	57,100	17,100	0	0	28,600	0	0	0	0	0	0	0
4	PW-Engineering/Admin	Water Treatment	26,200	26,200	0	0	0	11,400	0	0	0	0	0	0
5	Utilities-General Services	Average	1,095,600	333,600	173,300	54,700	1,117,800	0	0	0	0	0	0	0
6	Water Operation-Field	Transmission/Distribution	0	0	0	0	0	106,000	0	0	0	0	0	0
7	Utilities-Water Conservation	Recycled Water	263,500	0	0	0	0	0	0	0	0	0	0	0
8	Utilities-Field Customer Service	Net Plant	92,900	23,300	18,600	9,300	4,600	0	0	0	0	0	0	0
9	Utilities-Strategic Planning	Administration	272,200	81,700	0	0	136,100	0	0	0	0	0	0	0
10	Utilities-Regulatory Compliance	Water Treatment	83,100	41,500	41,600	0	0	0	0	0	0	0	0	0
11	Utilities-Domestic Water/Import	Water Treatment	180,700	90,300	90,400	0	0	0	0	0	0	0	0	0
12	Water Purchase	Supply	2,710,700	0	0	0	0	0	0	0	0	0	0	0
13	Recycled Water Operations	Recycled Water	296,900	0	0	0	0	0	0	0	0	0	0	0
14	Utilities-Water Distribution	Transmission/Distribution	269,300	40,400	80,800	26,900	0	0	0	0	0	0	0	0
15	System Water Quality	Water Treatment	141,300	70,600	70,700	0	0	0	0	0	0	0	0	0
16	Cross Connection & Backflow	Transmission/Distribution	161,700	24,200	48,500	0	0	0	0	0	0	0	0	0
17	System Maintenance	Net Plant	504,100	126,100	100,800	100,800	25,200	0	0	0	0	0	0	0
18	Well Maintenance	Supply	208,400	208,400	0	0	0	0	0	0	0	0	0	0
19	Reservoir Maintenance	Supply	137,900	137,900	0	0	0	0	0	0	0	0	0	0
20	Preventative Maintenance	Net Plant	160,400	40,100	32,100	32,100	8,000	0	0	0	0	0	0	0
21	Booster Facilities Maintenance	Transmission/Distribution	557,700	83,600	167,300	167,300	0	0	0	0	0	0	0	0
22	Emergency & After Hours Response	Administration	21,500	6,400	0	0	4,300	0	0	0	0	0	0	0
23	General Services	Supply	12,400	12,400	0	0	0	0	0	0	0	0	0	0
24	Water Conservation	Administration	2,200	700	0	0	1,100	0	0	0	0	0	0	0
25	Strategic Planning	Administration	9,900	2,900	0	0	5,000	0	0	0	0	0	0	0
26	Regulatory Compliance	Water Treatment	3,000	1,500	1,500	0	0	0	0	0	0	0	0	0
27	Distribution & Pumping	Transmission/Distribution	300	100	100	100	0	0	0	0	0	0	0	0
28	System Maintenance	Net Plant	21,600	5,400	4,300	4,300	1,100	0	0	0	0	0	0	0
29	Well Maintenance	Supply	53,400	53,400	0	0	0	0	0	0	0	0	0	0
30	Reservoir Maintenance	Supply	1,000	1,000	0	0	0	0	0	0	0	0	0	0
31	Advanced Water Treatment Plant	Water Treatment	0	0	0	0	0	0	0	0	0	0	0	0
32	Total O&M		8,364,500	4,139,500	856,200	507,200	1,327,600	355,300	507,200	174,800	1,003,900	0	0	0
Debt Service														
Senior Debt Service														
33	SICPFA Series 2002	Net Plant	656,200	164,200	131,200	131,200	32,800	0	0	0	0	0	0	0
34	SICPFA Series 2004	Net Plant	1,422,900	355,800	284,600	284,600	71,100	0	0	0	0	0	0	0
35	SICPFA Series 2009	Net Plant	616,200	154,200	123,200	123,200	30,800	0	0	0	0	0	0	0
36	Total Senior Debt Service		2,695,300	674,200	539,000	539,000	134,700	0	0	0	0	0	0	0
37	CIP Funded with Rate Revenue	Net Plant Debt w/ RW	0	0	0	0	0	0	0	0	0	0	0	0
38	Other Transfers	Average	3,533,900	1,803,900	557,100	175,800	378,600	0	0	0	0	0	0	0
39	Retained Rate Revenue	Average	2,201,900	668,000	347,100	109,500	255,900	0	0	0	0	0	0	0
40	Total Cost of Service		16,795,600	7,285,600	2,299,400	1,331,500	2,076,800	760,200	1,864,200	0	0	0	0	0
41	Less Other Revenue Sources		(1,455,900)	(331,300)	(15,900)	0	(883,000)	0	0	0	0	0	0	0
42	Cost of Service Net of Other Revenue		15,339,700	6,954,300	2,283,500	1,331,500	1,193,800	760,200	1,864,200	0	0	0	0	0

WATER RATE STUDY

CITY OF SAN JUAN CAPISTRANO, CA
WATER AND WASTEWATER RATE STUDY

3.2.5 Cost of Service Allocations

Costs of service are allocated to the customer classes by application of unit costs of service to respective service requirements. Unit costs of service are based upon the total costs previously allocated to functional components and the total number of applicable units of service. Dividing the costs allocated to functional cost components by the respective total units of service requirements develops unit costs of operation and maintenance expense, and net capital costs.

3.2.5.1 Unit Costs of Service

Table 12 presents total Test Year O&M expense and net capital costs allocated to functional cost component as taken from Table 11.

Table 12
TY 09/10 Unit Costs of Service, Scenario #2

Line	Description	Total Costs (\$)	Base (\$)	Common to All Customers			Cust/Bill. (\$)	Fire (\$)	Recycled Water (\$)
				Max. Day (\$)	Max. Hour (\$)	Meters (\$)			
1	Operating Expense	8,364,500	4,139,500	856,200	507,200	355,300	1,327,600	174,800	1,003,900
2	Capital Costs	8,431,100	3,146,100	1,443,200	824,300	822,600	749,200	585,400	860,300
3	Subtotal	16,795,600	7,285,600	2,299,400	1,331,500	1,177,900	2,076,800	760,200	1,864,200
4	Less Other Revenue	1,455,900	331,300	15,900	0	225,700	883,000	0	0
5	Net Cost of Service	15,339,700	6,954,300	2,283,500	1,331,500	952,200	1,193,800	760,200	1,864,200
6	Units of Measure		(per ccf)	(per ccf/day)	(per ccf/day)	(per ERC)	(per bill)	(per EH)	direct
7	Units of Service		3,702,600	14,272	25,838	26,000	135,272	1,648	1
8	Total Units Cost of Service		1.878	160.001	51.532	36.623	8.825	461.286	1,864,200

3.2.5.2 Distribution of Costs of Service to Customer Classes

The customer class responsibility for service is obtained by applying the unit costs of service to the number of units for which the customer class is responsible. This process is illustrated in Table 13, in which the unit costs of service are applied to the customer class units of service.

3.2.5.3 Adequacy of Existing Rates to meet Costs of Service

Presented in Table 14 is a comparison of the allocated cost of service and revenue under existing rates for the system in total. Adjustments to the allocated cost of service take place in Column 2 and 3. For the water enterprise, the cost of public fire protection and a portion of recycled water costs are allocated to all customers because it is viewed as a general benefit to all. The last column indicates the approximate adjustment rate levels necessary to recover 100 percent of the allocated costs of service.

WATER RATE STUDY

CITY OF SAN JUAN CAPISTRANO, CA
WATER AND WASTEWATER RATE STUDY

Table 15
Proposed Cost-of-Service Rates for TY 09/10, Scenario #2

Description	Service Charge (\$/month)
5/8"	15.25
1"	22.88
1.5"	34.31
2"	47.98
3"	80.83
4"	127.34
6"	244.00
8"	385.06
Misc. Flat Rate Use	38.28
Mobile Homes	1.53
Temp Service - Jumper	15.25
No Charge	0.00
Firelines	68.63
Construction	80.83
Recycled Water	15.25

Description	Commodity Charges			
	Tier 1 (\$/ccf)	Tier 2 (\$/ccf)	Tier 3 (\$/ccf)	Tier 4 (\$/ccf)
Residential - Regular Lot	2.47	3.29	4.94	9.05
Residential - Large Lot	2.47	3.29	4.94	9.05
Master Meter Residential	3.07	4.09	6.14	11.25
Multi w Own Irrigation	2.73	3.64	5.46	10.01
Multi w/o Irrigation - Regular	2.73	3.64	5.46	10.01
Multi w/o Irrigation - High Density	2.73	3.64	5.46	10.01
Landscape	2.12	2.83	4.25	7.78
Agriculture	2.18	2.90	4.35	7.98
Commercial	2.38	3.17	4.76	8.72
Construction	4.94	4.94	4.94	4.94
Non-Potable	2.08	2.77	4.16	7.62
No Charge	0.00	0.00	0.00	0.00
Firelines	4.94	4.94	4.94	4.94
City Farm	2.40	3.20	4.80	8.80
Recycled Water	2.08	2.77	4.16	7.62

Buildup of Rates:

Fixed Costs
 Tier 1
 Tier 2
 Tier 3
 Tier 4

20% in meter costs
 Fixed costs + Well water
 Fixed costs + well water + MWD
 Fixed Costs + MWD + GWRP
 Fixed costs + GRWP

				Unit cost	
Total Volume (ccf)	2,716,300		MWD	\$	3.49
SFR (reg lot + large Lot)	1,816,000		Wells	\$	0.98
			ALL GWRP	\$	3.03
Tier 1 Volume	660,200	1,154,800	Recycled Wells	\$	1.79
Tier 2 Volume	855,400	1,973,200	MNWD	\$	2.53
Tier 3 Volume	217,900	410,300	Penalty Set Aside	\$	2.64
Tier 4 Volume	82,500	164,300			
Single Family Meter Charge	15.25				
Tier 1	2.47				
Tier 2	3.29				
Tier 3	4.94				
Tier 4	9.05				
Fixed Costs		65.00%			
Total COS %	52.83%	7,118,600			
Fixed Costs		6,050,810	1,599,100	20.3%	
Variable Bills		1,067,790	6,268,000		
		83,889			
PUT RW Wells with City Wells		YES	25.00%		
Meter \$		1,599,100			
Tier 1					
	Fixed Costs	\$ 1.78	35.00%		35.00%
	Wells	\$ 0.62	22.50%		65.00%
	MWD	\$ -	0.00%		0.00%
	Recycled	\$ -	0.00%		0.00%
	GWRP	\$ -	0.00%		0.00%
\$	2.47	Total	\$ 2.41		
Tier 2					
	Fixed Costs	\$ 1.78	35.00%		58.50%
	Wells	\$ 1.46	52.50%		25.00%
	MWD	\$ -	0.00%		0.00%
	Recycled	\$ -	0.00%		0.00%
	GWRP	\$ -	0.00%		0.00%
\$	3.29	Total	\$ 3.24		
Tier 3					
	Fixed Costs	\$ 1.53	30.00%		6.50%
	Penalty Set Aside	\$ -	0.00%		0.00%
	Wells	\$ 0.69	25.00%		10.00%
	MWD	\$ 0.17	5.00%		50.00%
	Recycled	\$ -	0.00%		0.00%
	GWRP	\$ 2.50	82.50%		90.00%
\$	4.94	Total	\$ 4.90		
Tier 4					
	Fixed Costs	\$ -	0.00%		
	Penalty Set Aside	\$ 2.64	100.00%		100.00%
	Wells	\$ -	0.00%		0.00%
	MWD	\$ 3.32	95.00%		50.00%
	Recycled	\$ 2.53	100.00%		100.00%
	GWRP	\$ 0.53	17.50%		10.00%
\$	9.05	Total	\$ 9.02		

Customer Class Meter Size Typical Usage (ccf)	SFR 5/8" 12		
<i>Meter Charge</i>	\$	15.25	
Tier 1 Components			\$ 14.82
Fixed Costs		10.98	
Wells		3.84	
GWRP			
MWD			
<i>Subtotal</i>	\$	14.82	
Tier 2 Components			\$ 19.74
Fixed Costs		10.87	
Wells		8.87	
GWRP			
MWD			
<i>Subtotal</i>	\$	19.74	
Tier 3 Components			
Fixed Costs			
Wells			
GWRP			
MWD			
<i>Subtotal</i>	\$	-	
TOTAL	\$	49.81	

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MJN00248

Reallocation of Beneficial Use Categories

Line No.	Description	Cost of Service	Reallocation of Beneficial Use Costs		Adjusted COS	Revenue Under Existing Rates	Indicated Increase
			Public Fire	No Charge			
1	Regular Lot	\$ 1,949,100	\$ 186,900	\$ 0	\$ 2,360,500	\$ 1,921,600	\$ 2,136,000
2	Large Lot	4,546,300	436,300	0	5,506,100	4,453,200	4,982,600
3	Master Meter Residential	306,000	29,400	0	370,600	284,500	335,400
4	Multi with Own Irrigation	686,400	65,900	0	79,000	657,000	752,300
5	Multi w/o Irrigation - Regular	385,500	37,000	0	44,400	405,300	422,500
6	Multi w/o Irrigation - High Density	485,400	46,600	0	55,900	539,700	532,000
7	Landscape	1,765,100	169,400	0	504,400	1,974,700	1,934,500
8	Ag	134,600	107,200	0	15,500	141,400	134,600
9	Commercial	1,117,000	107,200	0	128,600	1,176,000	1,224,200
10	Construction	19,900	0	0	2,300	23,000	19,900
11	No Charge - Use	844,300	0	0	241,300	842,500	844,300
12	No Charge - Use	0	0	0	0	0	0
13	Private Firelines	67,600	6,500	0	74,100	75,900	74,100
14	City Farm (Ag rate, one tier)	83,100	0	0	92,700	78,600	83,100
15	Fire Protection - Private	0	0	0	0	0	0
16	Fire Protection - Public	1,085,200	(1,085,200)	0	0	0	0
17	Recycled Water	1,864,200	0	(1,864,200)	0	0	0
18	Total	\$ 15,339,700	\$ 0	\$ 0	\$ 15,339,700	\$ 12,573,400	\$ 13,475,500

Percent Public Fire Reallocation 100.00%
 Percent Recycled Water Reallocation 100.00% if we have no recycled water customers as yet, then 100%, if recycled water customers, then allocate 50%
 Split of RW to Landscape/Non-Potable 40.00%

Total Reallocated - No Charge 0
 Total Reallocated - Fire 1,085,200
 Total Reallocated - Recycled Water 1,864,200

Reallocation Base - Fire, No Charge 11,308,400
 Reallocation Base - Recycled Water 12,322,700 All customers
 2,609,400 Landscape and Non-Potable
 9,713,300 Everyone else

Reallocation \$ - Recycled Water 1,864,200 Total
 745,700 Landscape and Non-Potable
 1,118,500 Everyone else

PROOF OF SERVICE

Capistrano Taxpayers Association, Inc. v.

City of San Juan Capistrano

Fourth Appellate District, Division Three, Case No. G048969

I, Ashley A. Lloyd, declare:

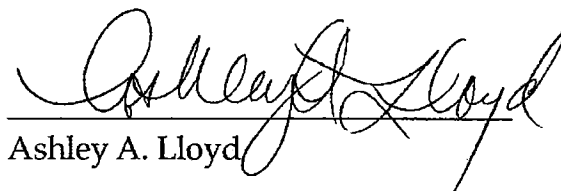
I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 11364 Pleasant Valley Road, Penn Valley, California 95946. On January 14, 2014, I served the document(s) described as **APPELLANT'S OPENING BRIEF** on the interested parties in this action as by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED

K **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 Penn Valley, 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 January 14, 2014, at Penn Valley, California.



Ashley A. Lloyd

SERVICE LIST

Capistrano Tax Payers Association, Inc. v. City of San Juan Capistrano
Fourth Appellate District, Division Three, Case No. G048969

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Juan Capistrano*

EXHIBIT E

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6/5/2016
9/20/16

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O'Donnell

FILED
Superior Court of California
County of Los Angeles

JAN 09 2015

Sherri R. Carter, Executive Officer/Clerk
By [Signature] Deputy
Shaunya Bolden

Attorneys for Petitioner and Plaintiff
GLENDALE COALITION FOR BETTER GOVERNMENT, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

GLENDALE COALITION FOR BETTER
GOVERNMENT, INC., a California non-profit
public interest corporation,

Petitioner and Plaintiff,

vs.

CITY OF GLENDALE, a California public agency;
and DOES 1 through 25, inclusive,

Respondents & Defendants.

Case No. [REDACTED]

JUDGE: **BS153253**

DEPT:

ORIGINAL
BY FAX

VERIFIED PETITION FOR WRIT OF
MANDATE UNDER ARTICLE XIID
OF THE CALIFORNIA
CONSTITUTION AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

Petitioner and Plaintiff Glendale Coalition for Better Government, Inc. (hereinafter the

"Coalition" or "Petitioner") alleges as follows:

INTRODUCTORY ALLEGATIONS

1. This action arises out of the City of Glendale's (hereinafter, "City" or "Respondent") failure and ongoing refusal to acknowledge and rectify that its 2014 water rate pricing (2014 Water Rate Structure") violates Article XIID of the California Constitution (aka Proposition 218) and is invalid.

2. Petitioner Coalition is a non-profit public interest organization incorporated and existing under the laws of the State of California. The Coalition is made up of numerous residents and taxpayers residing in Glendale, California, and its principal place of business is located in Glendale.

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SUPERIOR COURT
COUNTY OF LOS ANGELES
CASE NO. BS153253
FILED BY: [REDACTED]
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AMOUNT \$0.00
TOTAL \$435.00

1 3. The Coalition was formed by local residents in response to community concerns
2 about issues such as the rising cost of water, the imposition of discriminatory water rates, and
3 various other "fee" increases passed on to residents and businesses by the City of Glendale. The
4 Coalition's Mission is, in pertinent part, assuring that the residents of Glendale are charged the true
5 cost of water as required by Proposition 218 and that governing bodies such as the City comply with
6 the California Constitution, namely Article XIII D.

7 4. Petitioner is informed and believes that Respondent City of Glendale is a municipal
8 corporation that operates the City of Glendale.

9 5. The names and capacities of the respondents/defendants named as Does 1 through 25
10 are currently unknown to Petitioner. Petitioner will amend this Petition and Complaint to reflect
11 their true names and capacities when ascertained.

12 6. Petitioner brings this action on its own behalf, as well as in the public interest.
13 Specifically, the Coalition seeks to enforce important public duties and rights under the California
14 Constitution, recent authoritative state case law, and the rules and regulations of the City of
15 Glendale. Other beneficially interested individuals would find it difficult or impossible to seek
16 vindication of the rights herein asserted. The Coalition's interests in this action are in no way
17 competitive or commercial, and are instead entirely consistent with the public duties and rights it
18 asserts. The Coalition has a continuing interest in, and a well-established commitment to, the public
19 rights asserted.

20 7. Respondent's determinations are final, and no further administrative or appeal
21 procedures are available.

22 8. Petitioner is informed and believes, and based upon such information and belief
23 alleges, that each material issue and ground for non-compliance raised by this Petition and
24 Complaint was presented to Respondent at multiple public hearings and in writing prior to the filing
25 of this action.

26 9. Jurisdiction is proper under Code of Civil Procedure ("CCP") sections 1060, 1085
27 and/or 1094.5. Venue is proper under CCP section 393.

10170012015

1 10. This action is timely commenced. The City's continued imposition and collection of
2 illegal water delivery "charges" or "fees" is an ongoing constitutional violation (i.e., an
3 unconstitutional "tax"), upon which the statutory limitations period begins anew with each monthly
4 collection. (*Howard Jarvis Taxpayers Association v. City of La Habra* (2001) 25 Cal.4th 809).

5 11. Petitioner served Respondent with prior written notice of the commencement of this
6 proceeding. The written notice of intent to file litigation, and its proof of service, are attached hereto
7 as **Exhibit "1"**.

8 **THE PROPOSITION 218 MANDATE**

9 12. Building on the foundation laid earlier by Proposition 13 in 1978, Proposition 218 is a
10 further limitation on government's ability to impose taxes. (*Paland v. Brooktrails Township*
11 *Community Services Dist. Bd. of Directors* (2009) 179 Cal.App.4th 1358, 1365.) Growing weary of
12 "special taxes" under the guise of "assessments" without a two-thirds electorate vote, California
13 voters adopted Proposition in 218 curtailing assessments in these key ways (*Silicon Valley*
14 *Taxpayers Association, Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431,
15 446; *City of Palmdale v. Palmdale Water District* (2012) 198 Cal.App.4th 926, 931; *Howard Jarvis*
16 *Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 637, 640):

- 17 a. assessments could only be imposed on specific property-oriented "benefits" (Art.
18 XIIIID, §§ 2, subd. (b), 4, subd. (a), subd. (i));
- 19 b. property-oriented assessments must be strictly proportional, with assessments not
20 being imposed on any parcel "which exceeds the reasonable cost of the proportional special benefit
21 conferred on that parcel," specifically separating the general benefits from the specific benefits for
22 Proposition 218 purposes (Art. XIIIID, § 4 subd. (a));
- 23 c. "[r]evenues derived from the fee or charge shall not exceed the funds required to
24 provide the property-related services" and "the amount of the fee or charge imposed upon any parcel
25 or person as an incident of property ownership shall not exceed the proportional cost of service
26 attributable to the parcel" (Art. XIID, § 6, subs. (b)(1), (b)(3));
- 27 d. "no fee or charge may be imposed for a service unless that service is actually used by,
28 or immediately available to, the owner of the property in question," with "[f]ees or charges based on

1 potential or future use of a service [not being, or as the statute says, 'are not'] permitted" (Art. XIID,
2 § 6(b)(4));

3 e. "no fee or charge may be imposed for general governmental services including, but
4 not limited to, police, fire, ambulance or library services, where the service is available to the public
5 at large in substantially the same manner as it is to property owners" (Art. XIID, § 6, subd. (b)(5));
6 and

7 f. shifted traditional presumptions that had favored assessment validity, making local
8 agencies bear the burden "to demonstrate that the property or properties in question receive a special
9 benefit over and above the benefits conferred on the public at large and that the amount of any
10 contested assessment is proportional to, and no greater than, the benefits conferred on the property or
11 properties in question" (Art. XIID, § 6, subd. (b)(5)).

12 13. In addition, Proposition 218 has crucial procedural requirements, including the
13 germane requirement that the agency must conduct a public hearing that is "preceded by written
14 notice to affected owners setting forth, among other things, a 'calculat[ion]' of '[t]he amount of the
15 fee or charge proposed to be imposed upon each parcel'" (*Griffith v. Pajaro Valley Water*
16 *Management Agency* (2013) 220 Cal.App.4th 586, 594.)

17 14. Likewise, California Constitution, Article XIID, section 6(a)(1) further requires that
18 the advance notice to the public about water assessments like the one here must contain "the basis
19 upon which the amount of the proposed fee or charge was calculated," because, otherwise, no
20 member of the public would be able to appear and frame a meaningful objection to the calculation
21 data unless that data is vetted in the public arena.

22 15. Importantly, a constitutional amendment like Proposition 218 "shall be liberally
23 construed to effectuate its purposes of limiting the local government revenue and enhancing taxpayer
24 consent." (*Silicon Valley, supra*, 44 Cal.4th at p. 448; *Morgan v. Imperial Irrigation District* (2014)
25 223 Cal.App.4th 892, review denied.)

26 16. With respect to the imposition of any given water rate structure, conservation and
27 allocation based principles may be utilized "so long as, for example, conservation is attained in a
28 manner that 'shall not exceed the proportional cost of the service attributable to the parcel'" and there

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1 is adequate support "for the inequality *between tiers*, depending on the category of user." (*City of*
2 *Palmdale v. Palmdale Water Dist.* (2011) 198 Cal.App.4th 926, 936-937.)

3 17. Tiered water rates are water rate structures that (a) discretionally allocate certain
4 water use limits amongst the tiers and (b) progressively increase in pricing from the lowest tier to the
5 highest tier. Under Proposition 218, higher tier pricing must be the result of higher costs at higher
6 tiers and public agencies must not unfairly discriminate against certain customer groups in favor of
7 subsidizing others. (*City of Palmdale v. Palmdale Water Dist.* (2011) 198 Cal.App.4th 926.)

8 **RESPONDENT'S 2014 WATER RATE STRUCTURE VIOLATES PROPOSITION 218**

9 18. On or about August 5, 2014, the City approved its current water rate structure ("2014
10 Water Rate Structure") following a duly noticed Proposition 218 hearing that numerous ratepayers
11 attended and voiced their opposition to the City's arbitrary, punitive, and discriminatory water rate
12 scheme, including several Coalition members.

13 19. The City's 2014 Water Rate Structure is substantially based on a water rate study
14 performed by the City's water rate consultant Bartle Wells (dated July 15, 2014) for water rates that
15 became effective on or about September 1, 2014 ("Bartle Wells Water Rate Study").

16 20. The Bartle Wells Water Rate Study was made available to the public in advance of
17 the August 5, 2014, Proposition 218 hearing as part of the City's written notice to affected owners
18 presumably setting forth, among other things, a calculation of the amount of the fee or charge
19 proposed to be imposed upon each parcel. (*Griffith v. Pajaro Valley Water Management Agency*
20 (2013) 220 Cal.App.4th.586,.594.)

21 21. As evidenced in Tables 24 and 25 of the Bartle Wells Water Rate Study, a major
22 fallacy of the City's 2014 Water Rate Structure is that it arbitrarily assigns one cost with meeting a
23 given customer's average or normal demand for water and an increased cost when that user's demand
24 spikes higher. This spiking or peaking is expressed in the City's 2014 Water Rate Structure by a
25 "peaking factor," where 1.00 represents average demand and anything above 1.00 represents
26 "peaking."

27 22. The Bartle Wells Water Rate Study discriminates against single and multi-family
28 residential customers. For example, while single family residential customers and irrigation

1 customers have a nearly identical peaking factor (1.82 and 1.84, respectively), single family
2 residential customers are charged progressively punitive tiered rates and irrigation and commercial
3 customers are charged a flat rate.

4 23. More specifically, to allegedly capture the costs of supplying water to single family
5 homes, Bartle Wells created four (4) water pricing tiers for monthly charges. The first 6 units of
6 water fall in Tier 1 and for 2014/2015 are charged at \$2.31; the next 6 units in Tier 2 are charged at
7 \$2.84; the next 13 units fall into Tier 3 and are charged at \$3.22; and Tier 4 covers anything over 25
8 units and the charge is \$3.90. For multi-family customers, Bartle Wells created two (2) tiers; one for
9 consumption up to or equal to 5 units, and one tier for consumption above 5 units.

10 24. According to the Bartle Wells Water Rate Study, single family residential Tier 1
11 represents efficient *indoor* use of water for a family of 2.7, which translates to 135 to 148.5 gallons
12 of water per day. Tier 2 represents efficient *indoor* use of water for a family of 5.6, which translates
13 to 2.75 to 297 gallons of water per day. Efficient *indoor* use, according to Bartle Wells, is restricted
14 to 50-55 gallons per person per day.

15 25. When it comes to Tiers 3 and 4, the Bartle Wells Water Rate Study states (p.49):
16 "...peaking is estimated to occur in Tiers 3 and 4 which have been designated for *outdoor* water use
17 and therefore, *additional costs are allocated* to these higher tiers. Likewise, peaking for multi-
18 family residential occurs in Tier 2." (Emphasis added.)

19 26. Contrary to the these conclusions of Bartle Wells Water Rate Study, however,
20 customer consumption data found at page 151 of Appendix "A" of the Water Rate Study actually
21 shows that peaking on a per meter basis does not begin until 17.94 units of water is consumed, which
22 is almost halfway through the Tier 3 allocation, yet the City applies a peaking charge to Tier 2.

23 27. While Respondent City believes the foregoing methodologies of the Water Rate
24 Study justify the Tier 2, Tier 3, and Tier 4 charges, the Bartle Wells Water Rate Study does not
25 provide any cost-of-service data to support the inequality of fees charged between the four tiers; i.e.,
26 there is no cost-based financial data to support higher costs at higher tiers.

1 28. In addition, the Bartle Wells Water Rate Study provides no Proposition 218 rationale
2 for imposing progressively punitive tiered pricing on residential customers and charging irrigation
3 and commercial customers a flat rate.

4 29. The Coalition is informed and believes that the residential tiered rates are no more
5 than an arbitrary financial penalty intended to penalize residents for exceeding the City-directed
6 allocations of water. For example, irrigation customers, whose peaking factor is a bit greater than
7 for single family residential customers (1.84 versus 1.82), use their *entire* water supply for *outdoor*
8 use. However, in the Bartle Wells Water Rate Study irrigation customers are only charged \$2.95 for
9 each unit of water while single-family residential customers are charged either \$3.22 or \$3.90 for
10 outdoor use of water. Thus, the difference of \$2.95 compared to \$3.22 or \$3.90 appears to be more
11 in the nature of an illegal penalty rather than a method for capturing the actual proportional costs of
12 supplying water that is attributable to various customers.

13 30. Further, the Bartle Wells Water Rate Study makes no allowance for normal or
14 average outdoor water use for single-family residential customers. Rather, it relegates all water
15 designated for outdoor use as peaking water use. Thus, rather than capturing true costs, the charge
16 for all outdoor water use – as if it were peaking use – appears to be a penalty designed to discourage
17 outdoor water use by single-family customers while the Water Rate Study does not do the same for
18 irrigation and commercial customers' outdoor use.

19 31. Likewise, there is no cost-of-service justification for the City providing a 15%
20 discount on fixed charges for recycled water customers compared to potable water customers.

21 32. In addition, as evidenced in Table 17 of the Bartle Wells Water Rate Study, the City's
22 water rate scheme impermissibly "collapses" several of the user group categories that are not
23 residential or irrigation customers into a single peaking factor of 1.52, despite the fact that Bartle
24 Well Water Rate Study assigns these various groups widely disparate peaking factors (i.e., from as
25 low as 1.20 to as high as 2.19). These user groups include various commercial uses and multiple
26 uses designated to the City of Glendale, which raises serious Article XIID subsidization issues.

27 33. For example, as indicated in Table 17 of the Bartle Wells Water Rate Study, the
28 "Public Authority" user category, which is collapsed into a generalized "Commercial" category with

1 a peaking factor of 1.52, has the highest peaking factor (2.19) of the 15 user categories (i.e., 1.00
2 representing normal consumption and 1.19 representing peaking consumption).

3 34. In contrast, the "Small Business" user category, which has the second lowest peaking
4 factor, 1.25 (i.e., 1.00 for normal consumption; .25 peaking consumption), is also collapsed into the
5 generalized "Commercial" category with a peaking factor of 1.52 (i.e., 1.00 for normal consumption;
6 .52 for peaking consumption).

7 35. Because there is only one variable charge to cover both normal and peaking
8 consumption costs, the City's water rate scheme imposes illegal subsidies that financially benefit the
9 City at the expense of small business owners and other commercial and industrial owners that reside
10 and operate in the City. The "Small Business" category ratepayers, for example, must pay on the
11 basis that their contribution to the cost of peaking is 0.52 when in fact it is less than half of that
12 according to the Bartle Wells Study. In contrast, the "Public Authority" customers pay for the cost
13 of peaking on the basis that their contribution is 0.52 when in fact it is more than twice that (i.e.,
14 1.19).

15 36. Ultimately, a simple comparison of the City's peaking factors and water rate pricing
16 shows that the water fees charged by the City exceed the proportional cost of the service attributable
17 to certain ratepayers' parcels. Indeed, the City of Glendale, with one of the highest peaking factors
18 (2.06), pays one of the lowest per-unit costs for water (\$2.86), while master-metered Residential
19 customers with the lowest peaking factor (1.16) pay the highest per unit cost (\$3.51).

20 37. Curiously, the City did not adopt the exact rates specified in the 2014 Bartle Wells
21 Water Rate Study. However, although the actual rates adopted by the City are not exactly as those
22 noted in the Water Rate Study, they mirror those rates and the peaking multipliers are approximate.
23 More specifically, the actual rates charged to single-family residential customers, beginning
24 September 1, 2014, are \$2.27 (Tier 1), \$2.80 (Tier 2), \$3.18, and \$3.86 (Tier 4). In addition, multi-
25 family users are charged \$2.38 (Tier 1) and \$3.52 (Tier 2), while irrigation users are commercial
26 users are charge a flat rate of \$2.90 and \$2.81 per unit of water, respectively.

27 38. Finally, the 2014 Bartle Wells Water Rate Study earmarks a portion of fixed charges
28 to pay for fire services, including fire hydrants. These services are available to any member of the

1 (5) No fee or charge may be imposed for general governmental services including, but not
2 limited to, police, fire, ambulance or library services, where the service is available to the public at
3 large in substantially the same manner as it is to property owners. . . In any legal proceeding
4 contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate
5 compliance with this article."

6 43. In adopting its 2014 Water Rate Structure, the City violated the provisions of the
7 California Constitution, Article XIID, and, accordingly, the tiered water rates are unconstitutional,
8 illegal and invalid.

9 44. The Coalition is informed and believes and thereupon alleges that City's revenues
10 derived from its 2014 Water Rate Structure exceed the funds required to provide the property related
11 service and the 2014 Water Rate Structure adopted by Respondent therefore violates Article XIID,
12 §6(b)(1).

13 45. The Coalition is informed and believes and thereupon alleges that City's revenues
14 derived from the 2014 Water Rate Structure are used for purposes other than that for which the fee
15 or charge was imposed and that the 2014 Water Rate Structures adopted by Respondent therefore
16 violates Article XIID, §6(b)(2).

17 46. The Coalition is informed and believes and thereupon alleges that the inequality in
18 pricing between Tiers 1-4 in City's 2014 Water Rate Structure is unrelated to "the proportional cost
19 of the service attributable to the parcel," and therefore violates Article XIID, §6(b)(3).

20 47. The Coalition is informed and believes and thereupon alleges that, as approved, the
21 City's 2014 Water Rate Structure imposes a fixed monthly service charge based on the size of the
22 customer's meter and a commodity charge for the amount of water used. The customer pays a
23 progressively higher charge per unit of water used above the arbitrarily allocated amount as outlined
24 above and in the Bartle Wells Water Rate Study.

25 48. The Coalition is informed and believes and thereupon alleges that the Bartle Wells
26 Water Rate Study provides no cost of service data to support the disproportionate fees charged
27 amongst Tiers 1 through 4 to residential customers, while charging irrigation and commercial
28 customers a flat rate.

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1 49. The Coalition is informed and believes and thereupon alleges that the City's tiered
2 pricing for residential customers is a financial penalty intended to punish higher water users, while
3 subsidizing other customer groups, and is not a fee for service. (*City of Palmdale v. Palmdale Water*
4 *District* (2011) 198 Cal.App.4th 926, 934.)

5 50. The Coalition is informed and believes and thereupon alleges that the Bartle Wells
6 Water Rate Study impermissibly collapses several user groups with widely disparate peaking factors
7 into a single generalized "Commercial" user group, such that the City user groups, with the highest
8 peaking factors, are financially subsidized by residential, small business, and various other
9 commercial and industrial customers.

10 51. The Coalition is informed and believes and thereupon alleges that the Proposition 218
11 ballot Pamphlet makes it clear that the voters intended that no property owner's fee may be greater
12 than the actual cost to provide the service to the owner's land. (*City of Palmdale v. Palmdale Water*
13 *District* (2011) 198 Cal.App.4th 926, 934.) The City's water rate pricing for Tiers 1 through 4 bears
14 no relation to the costs of providing water service, and the City's peaking factors are arbitrarily and
15 illogically imposed to discriminate against residential customers.

16 52. The Coalition is further informed and believes and thereupon alleges that City's
17 revenues under its 2014 Water Rate Structures bears no relation to and exceed the costs of providing
18 water service in contravention of article XIID, section 6(b)(1), and instead "all but assures the
19 revenues the Respondent receives from customers in the higher tiers is more than is required to cover
20 the City's costs of service." (*City of Palmdale v. Palmdale Water District* (2011) 198 Cal.App.4th
21 926, 934.)

22 53. The Coalition is further informed and believes and thereupon alleges that the
23 earmarked portion of fixed charges to pay for fire services, including fire hydrants, is in direct
24 conflict with Article XIID, section 6(b)(5).

25 54. An actual controversy has arisen and now exists between the Coalition and the City in
26 that the Coalition contends that the 2014 Water Rate Structure is invalid and illegal in that the City
27 has failed in multiple respects to comply with the California Constitution, Article XIID, section 6,
28 and City continues to enforce its illegally tiered water rate scheme. The Coalition is informed and

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1 believes and thereon alleges that City takes the legal position that its above-referenced Water Rate
2 Structure is valid, legal, and enforceable in nature, including, but not limited to, compliant with
3 Proposition 218.

4 55. Unless and until the Court renders a judgment declaring the rights and responsibilities
5 of the parties under the law, the Coalition, the taxpayers of Glendale, and Respondent itself, will
6 operate in a state of uncertainty, with all interested parties unsure whether the water rates are
7 properly charged or payable by any ratepayer in Respondent's jurisdiction.

8 56. A judicial determination of the rights and obligations of the parties is necessary and
9 appropriate so that the parties hereto may ascertain those rights and act accordingly.

10 57. Petitioner has no plain, speedy, or adequate remedy at law for the harm that will be
11 caused by Respondent's continued imposition of the water charges/fees at issue in this case. By
12 continuing to impose its arbitrary tiered water rate scheme, Respondent is failing to perform the legal
13 duties required of it by Proposition 218. A judgment from this Court, declaring the rights and
14 responsibilities of the parties pursuant to Code of Civil Procedure section 1060, is therefore
15 necessary and appropriate.

16 **SECOND CAUSE OF ACTION**

17 **(Injunctive Relief – Unlawful Enforcement of Water Rate Structure)**

18 58. Petitioner incorporates all previous allegations as if fully set forth herein.

19 59. Petitioner is informed and believes and thereupon alleges that, unless enjoined and
20 restrained by this Court, Respondent will continue to impose its arbitrary tiered water rate scheme on
21 Petitioner and upon the residents of Glendale, in violation of the California Constitution, Article
22 XIIIID.

23 60. Petitioner has no plain, speedy, or adequate remedy at law with respect to the City's
24 unlawful policies and interpretations or its related patterns and practices.

25 61. Petitioner accordingly seeks preliminary and permanent injunctive relief prohibiting
26 the Respondent from continuing to implement or apply its arbitrary tiered water rate scheme,
27 discriminatory peaking factors, and illegal subsidization of certain customers.
28

1 **THIRD CAUSE OF ACTION**

2 (Writ of Mandate, CCP §1085, 1094.5 (Proposition 218))

3 62. Petitioner incorporates all previous allegations as if fully set forth herein.

4 63. Respondent has mandatory duty to correctly apply Article XIID of the California
5 Constitution; which requires that inequalities between water rates be based on cost of service and
6 that certain customer groups shall not be unfairly discriminated against to subsidize other customer
7 groups. (*City of Palmdale v. Palmdale Water District* (2011) 198 Cal.App.4th 926, 934.) Respondent
8 violates these mandatory duties.

9 64. Petitioner is informed and believes and thereupon alleges that Respondent's revenues
10 derived from its 2014 Water Rate Structures exceed the funds required to provide the property
11 related service and the 2014 Water Rate Structures adopted and implemented by Respondent
12 therefore violates Article XIID, §6(b)(1).

13 65. Petitioner is informed and believes and thereupon alleges that Respondent's revenues
14 derived from the 2014 Water Rate Structures are used for purposes other than that for which the fee
15 or charge was imposed and that the 2014 Water Rate Structures adopted by Respondent therefore
16 violates Article XIID, §6(b)(2).

17 66. Petitioner is informed and believes and thereupon alleges that the City's water rate
18 pricing for Tiers 1 through 4 bears no relation to the proportional costs of providing water service
19 attributable to residential customers, and the City's peaking factors are arbitrarily and illogically
20 imposed to discriminate against residential customers, therefore violating Article XIID, §6(b)(3).

21 67. Petitioner is informed and believes and thereupon alleges that the City earmarks a
22 portion of fixed charges to pay for fire services, including fire hydrants. These services are
23 available to any member of the public at large whose life, limb or property is threatened by fire,
24 irrespective of whether they are property owners within the meaning of Article XIID. Thus, using
25 a portion of the water fixed charge for fire service, on its face, is in direct conflict with Article
26 XIID, section 6(b)(5).

27 68. Petitioner consequently petitions for a writ of mandate under CCP §§1085 and/or
28 1094.5 compelling the Respondent to comply with its mandatory duties and prohibiting and

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1 correcting the Respondent's abuses of discretion. Petitioner has no plain, speedy or adequate
2 remedy at law.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioner respectfully requests:

5 1. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
6 that the City of Glendale's 2014 Water Rate Structure violates California Constitution, Article
7 XIIIID, §6(b)(1), and is invalid because the revenues derived from the Water Rate Structure bear no
8 relation to and/or exceed the funds required to provide the property related service.

9 2. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
10 that the City of Glendale's 2014 Water Rate Structure violates California Constitution, Article
11 XIIIID, §6(b)(2), and is invalid because revenues derived from the fee or charge are used for
12 purposes other than that for which the fee or charge was imposed.

13 3. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
14 that the City of Glendale's 2014 Water Rate Structure violates California Constitution, Article
15 XIIIID, §6(b)(3), and is invalid because the fees imposed on each parcel of property exceed the
16 proportional cost of the services attributable to each parcel.

17 4. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
18 that the City of Glendale's 2014 Water Rate Structure violates California Constitution, Article
19 XIIIID, §6(b)(5), and is invalid because the City impermissibly uses a portion of the fixed water
20 charge for fire service.

21 5. Preliminary and permanent injunctive relief prohibiting and restraining Respondent,
22 and each and all of its agents, employees, representatives, officers, directors, and all persons acting
23 in concert with it, from imposing, billing or collecting water charges/fees as currently being
24 imposed, in violation of the California Constitution, Article XIIIID.

25 6. A writ of mandate ordering the Respondent to abandon Respondent's current 2014
26 Water Rate Structure and base all rates on cost of service in conformance with the California
27 Constitution, Article XIIIID (Proposition 218).

28

1 7. For attorneys' fees as allowed by law, including but not limited to those pursuant to
2 Code of Civil Procedure section 1021.5.

3 8. For costs of suit herein.

4 9. For such other relief as the Court may deem just and proper.

5
6 DATE: January 9, 2015

ALVARADOSMITH APC

7
8 By: 

Benjamin T. Benumof, Ph.D., Esq.

William M. Hensley, Esq.

Attorneys for Petitioner and Petitioner

9
10 GLENDALE COALITION FOR BETTER
11 GOVERNMENT, INC.

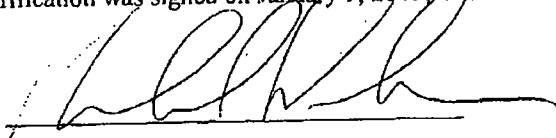
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VERIFICATION

I, Roland Kedikian, declare:

I am an Officer of the Glendale Coalition for Better Government, Inc. ("Coalition"), a California public interest corporation organized and existing under the laws of California. The Coalition is the Petitioner and Plaintiff in the above-entitled action, and I have been authorized to make this verification on its behalf. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE UNDER ARTICLE XIII D OF THE CALIFORNIA CONSTITUTION AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the contents thereof, except as to those matters alleged on information and belief, and to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this verification was signed on January 9, 2015, in Glendale, California.



Roland Kedikian

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01/00/2015

Exhibit 1



A PROFESSIONAL CORPORATION
INCLUDING PROFESSIONAL CORPORATIONS

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Suite 200
Santa Ana, California 92707
Phone: 714.852.6800
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Los Angeles
213.229.2400

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415.624.8665

Benjamin T. Benumof, Ph.D., Esq.
(714) 852-6800
bbenumof@AlvaradoSmith.com

Raymond G. Alvarado,
Retired

September 24, 2014

VIA OVERNIGHT MAIL

Scott Ochoa
General Manager, City of Glendale
c/o City Clerk
City of Glendale
613 E. Broadway Ave #110
Glendale, CA 91206-4393

Re: *Glendale Coalition For Better Government, Inc. v. City of Glendale*
Notice of Intent to File Litigation and Public Records Act Request

Dear Mr. Ochoa:

This law firm represents the Glendale Coalition For Better Government (the "Coalition"), a California non-profit 501(c)(4) (public benefit) corporation, with respect to the City of Glendale's ("City's") development, structuring, implementation, and enforcement of its 2014 Water Rate Structure, which is based on a 2014 Water Rate Study performed by Bartle Wells, following an August 5, 2014, public hearing regarding the newly proposed rate increases.

The purpose of this letter is to provide the City of Glendale with a good-faith opportunity to provide the Coalition and its member residents of the City with the back-up documentation and numerical/quantitative analysis showing that: (1) the inequality between the City's current residential water rate tiers (Tiers 1-4) is a product of higher cost-of-service at the higher tiers; and (2) the cost for the delivery of water increases as peak consumption increases in relationship to average or normal consumption; i.e., the higher a user category's peaking factor, the greater the cost of delivering the water, each of which is required by Proposition 218 (codified as Article XIIIID of the California Constitution). In addition, the Coalition requests that the City provide the financial cost-of-service justification for why: (3) the per-unit charge for normal or average consumption/demand for 15 categories of water users for which the City has consumption data is disproportionately higher than the charge for others; (4) the City charges commercial and irrigation users a flat rate, while discriminating against residential users; (5) the City provides a 15% discount on fixed charges for recycled water customers compared to potable water customers; and (6) the City earmarks a portion of fixed charges to pay for fire services, including fire hydrants, when these services are available to any member of the public, each of which is also required by the Proposition 218 mandate.

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MJN00269

As you may be aware, building on the foundation laid earlier by Proposition 13 in 1978, Proposition 218 indeed is a further limitation on government's ability to impose taxes. (*Paland v. Brooktrails Township Community Services Dist. Bd. of Directors* (2009) 179 Cal.App.4th 1358, 1365.) Growing weary of "special taxes" under the guise of "assessments" without a two-thirds electorate vote, California voters adopted Proposition in 218 curtailing assessments in these key ways (*Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 446; *City of Palmdale v. Palmdale Water District* 198 Cal.App.4th 926, 931; *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 637, 640):

- (1) assessments could only be imposed on specific property-oriented "benefits" (Art. XIID, §§ 2, subd. (b), 4, subd. (a), subd. (i));
- (2) property-oriented assessments must be strictly proportional, with assessments not being imposed on any parcel "which exceeds the reasonable cost of the proportional special benefit conferred on that parcel," specifically separating the general benefits from the specific benefits for Proposition 218 purposes (Art. XIID, § 4 subd. (a));
- (3) "[r]evenues derived from the fee or charge shall not exceed the funds required to provide the property-related services" and "the amount of the fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of service attributable to the parcel" (Art. XIID, § 6, subds. (b)(1), (b)(3));
- (4) "no fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question," with "[f]ees or charges based on potential or future use of a service [not being, or as the statute says, 'are not'] permitted" (Art. XIID, § 6(b)(4)); and
- (5) shifted traditional presumptions that had favored assessment validity, making local agencies bear the burden "to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question" (Art. XIID, § 6, subd. (b)(5)).

In addition, Proposition 218 has crucial procedural requirements, including the germane requirement that the agency must conduct a public hearing that is "preceded by written notice to

affected owners setting forth, among other things, a 'calculat[ion]' of '[t]he amount of the fee or charge proposed to be imposed upon each parcel' (*Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586, 594.) Likewise, California Constitution, Article XIID, section 6(a)(1) further requires that the advance notice to the public about water assessments like the one here must contain "the basis upon which the amount of the proposed fee or charge was calculated," because, otherwise, no member of the public would be able to appear and frame a meaningful objection to the calculation data unless that data is vetted in the public arena.

Importantly, a constitutional amendment like Proposition 218 "shall be liberally construed to effectuate its purposes of limiting the local government revenue and enhancing taxpayer consent." (*Silicon Valley*, supra, 44 Cal.4th at p. 448; *Morgan v. Imperial Irrigation District* (2014) 223 Cal.App.4th 892, review denied.) This, however, does not mean that salutary conservation efforts, and even other constitutional provisions and regulations that encourage conservation (such as California Constitution, Article X, section 2, and the emergency drought regulations recently passed by the State Water Board), are somehow unable to be harmonized with Proposition 218.

Indeed, with respect to the imposition of any given water rate structure, conservation and allocation based principles may be utilized "so long as, for example, conservation is attained in a manner that 'shall not exceed the proportional cost of the service attributable to the parcel'" and there is adequate support "for the inequality *between* tiers, depending on the category of user." (*City of Palmdale v. Palmdale Water Dist.* (2011) 198 Cal.App.4th 926, 936-937, emphasis in original.)

CITY OF GLENDALE'S WATER RATES ARE PROPOSITION 218 NON-COMPLIANT

As documented in Tables-24 and 25 of the Bartle Wells Water Rate Study, one of the fundamentally flawed principles of the City's Water Rate Structure is the arbitrary and creative notion that there is one cost associated with meeting a given customer's average or normal demand for water and an increased cost when that user's demand spikes higher, as in the summer months. This spiking or peaking is expressed in the City's Water Rate Structure by a "peaking factor," where 1.00 represents average demand and anything above represents "peaking." For example, single family residential customers are assigned a peaking factor of 1.82 and irrigation customers are assigned a peaking factor of 1.84. Thus, the City's so-called "peaking demand" placed on the water utility by these customers is almost identical; however, these user groups are treated disproportionately in how they are charged for the delivery of water, with single family residential users being discriminated against in contravention of Proposition 218.

More specifically, to capture the costs of supplying water to single family homes, Bartle Wells created a tiered system for monthly charges. The first 6 units of water fall in Tier 1 and for 2014/2015 are charged at \$2.31; the next 6 units in Tier 2 are charged at \$2.84; the next 13 units fall into Tier 3 and are charged at \$3.22; and Tier 4 covers anything over 25 units and the charge is \$3.90.

According to Bartle Wells, Tier 1 represents efficient *indoor* use of water for a family of 2.7, which translates to 135 to 148.5 gallons of water per day. Tier 2 represents efficient *indoor* use of water for a family of 5.6, which translates to 2.75 to 297 gallons of water per day. Efficient *indoor* use, according to Bartle Wells, is restricted to 50-55 gallons per person per day.

When it comes to Tiers 3 and 4, the Bartle Wells Water Rate Study states (p.49): "...peaking is estimated to occur in Tiers 3 and 4 which have been designated for *outdoor* water use and therefore, *additional costs are allocated* to these higher tiers. Likewise, peaking for multi-family residential occurs in Tier 2." (Emphasis added.) However, contrary to the Water Rate Study and the City's approval of its 2014 Water Rate Structure, Bartle Wells' customer consumption data actually shows that peaking on a per meter basis does not begin until 17.94 units of water is consumed, which is almost halfway through the Tier 3 allocation, yet the City applies a peaking charge to Tier 2.

While the City apparently believes that the foregoing methodology justifies the Tier 2, Tier 3, and Tier 4 charges, the Bartle Wells Water Rate Study does not provide any cost-of-service data to support the inequality of fees charged between the four tiers, and there is simply no Proposition 218 rationale for treating single-family/multi-family residential users and commercial/irrigation users so differently. Put simply, the residential tiered rates appear to be no more than an arbitrary financial penalty intended to penalize residents for exceeding the City-directed allocations of water.

Indeed, irrigation customers, whose peaking factor is a bit greater than for single family residential customers, use their *entire* water supply for *outdoor* use. However, in the Water Rate Study they are only charged \$2.95 for each unit of water while single-family residential customers are charged either \$3.22 or \$3.90 for outdoor use of water. Thus, the difference of \$2.95 compared to \$3.22 or \$3.90 appears to be more in the nature of an illegal penalty rather than a method for capturing the actual proportional costs of supplying water that is attributable to various customers.

Ultimately, the Bartle Wells Water Rate Study makes no allowance for normal or average outdoor water use for single-family residential customers. Rather, it relegates all water designated for outdoor use as peaking water use. What's more, rather than capturing costs, the charge for all outdoor water use – as if it were peaking use – appears to be a penalty designed to

discourage outdoor water use by single-family customers while the Study does not do the same for irrigation and commercial customers' outdoor use. Likewise, there is no cost-of-service rationale for the City providing a 15% discount on fixed charges for recycled water customers compared to potable water customers. As such, the City's Water Rate Structure appears to violate Proposition 218.

What's more, a simple comparison of peaking factors and rates shows that the City's own data doesn't support the conclusions of its own Water Rate Study. Indeed, the City of Glendale, with one of the highest peaking factors (2.06), pays one of the lowest per-unit costs for water (\$2.86), while master-metered Residential customers with the lowest peaking factors (1.16) pay the highest per unit cost (\$3.51). The Proposition 218 violations are clear. Under 218, water fees shall not exceed the proportional cost of the service attributable to the ratepayer's parcel.

Curiously, the City did not adopt the exact rates specified in the 2014 Bartle Wells Water Rate Study. However, although the actual rates adopted by the City are not exactly as those noted in the Water Rate Study, they mirror those rates and the peaking multipliers are approximate. More specifically, the actual rates charged to single-family residential customers, beginning September 1, 2014, are \$2.27 (Tier 1), \$2.80 (Tier 2), \$3.18, and \$3.86 (Tier 4). In addition, multi-family users are charged \$2.38 (Tier 1) and \$3.52 (Tier 2), while irrigation users are commercial users are charge a flat rate of \$2.90 and \$2.81 per unit of water, respectively.

Further, the 2014 Bartle Wells Water Rate Study earmarks a portion of fixed charges to pay for fire services, including fire hydrants. These services are available to any member of the public at large whose life, limb or property is threatened by fire, irrespective of whether they are property owners within the meaning of Article XIID. However, Article XIID, section 6(b)(5) expressly provides that "no fee or charge may be imposed for general government services including, but not limited to, ... fire... where the service is available to the public at large in substantially the same manner as to property owners." Thus, using a portion of the water fixed charge for fire service, on its face, is in direct conflict with Article XIID, section 6(b)(5).

PUBLIC RECORDS ACT REQUEST

PLEASE BE ADVISED that this letter shall also serve as a formal request under the Public Records Act (Gov't Code §§ 6250-6276.48) for any and all documents that form the basis upon which the amount of the water service fees or charges were calculated for the City of Glendale's 2014 Water Rate Structure.

Pursuant to Government Code section 6253(c), we request these documents, or confirmation that they do not exist, within 10 days (on or before October 6, 2014). If the City of Glendale cannot provide the Coalition with legitimate support for each of the five (5) requests



September 24, 2014
Page 6

outlined in the second paragraph of this Notice, then please be advised that the Coalition intends to commence legal action against the City of Glendale for Proposition 218 violations.

If you wish to discuss the foregoing, please call. If we do not hear from you on or before October 6, 2014, we will assume, as we believe to date, that no such back-up documentation or quantitative analysis exists and that the City of Glendale has no desire resolving these very important public interest matters without formal proceedings.

Sincerely,

ALVARADO SMITH
A Professional Corporation

Benjamin T. Benumof, Ph.D., Esq.

cc: William M. Hensley, Esq.

BTB: hk

01/09/2015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Benjamin T. Benumof (SBN 227340)
William M. Hensley (SBN 90437)
AlvaradoSmith, APC
1 MacArthur Pl., Suite 200
Santa Ana, CA 92707
TELEPHONE NO.: (714) 852-6800 FAX NO.: (714) 852-6899
ATTORNEY FOR (Name): Petitioner and Plaintiff

FOR COURT USE ONLY
FILED
Superior Court of California
County of Los Angeles
JAN 09 2015

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 111 North Hill St.
MAILING ADDRESS:
CITY AND ZIP CODE: Los Angeles 90012
BRANCH NAME: Stanley Mosk Courthouse

Sherri R. Carter, Executive Officer/Clerk
By [Signature] Deputy
Shaunya Bolden

CASE NAME: Glendale Coalition for Better Government v. City of Glendale

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)
Complex Case Designation
 Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: [Redacted]
JUDGE:
DEPT: **ES153253**

Items 1-6 below must be completed (see instructions on page 2)

1. Check one box below for the case type that best describes this case:
- | | | |
|--|---|--|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other P/PI/D/W/D (23)
Non-P/PI/D/W/D (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input checked="" type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|--|---|--|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. Large number of separately represented parties d. Large number of witnesses
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): (1) Declaratory Relief; (2) Injunctive Relief; (3) Writ of Mandate

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 9, 2015
Benjamin T. Benumof (TYPE OR PRINT NAME) [Signature] (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
File this cover sheet in addition to any cover sheet required by local court rule.
If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

BS153253

SHORT TITLE: Glendale Coalition v. City of Glendale

CASE NUMBER

MUNICIPAL

By Fax

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? [] YES CLASS ACTION? [] YES LIMITED CASE? [] YES TIME ESTIMATED FOR TRIAL [] HOURS/ [1] DAYS

Item II. Indicate the correct district and courthouse location (4 steps - If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- 1. Class actions must be filed in the Stanley Mosk Courthouse, central district.
2. May be filed in central (other county, or no bodily injury/property damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

Auto Tort
Other Personal Injury/Property Damage/Wrongful Death Tort

Table with 3 columns: A (Civil Case Cover Sheet Category No.), B (Type of Action), and C (Applicable Reasons). Rows include Auto (22), Uninsured Motorist (46), Asbestos (04), Product Liability (24), Medical Malpractice (45), and Other Personal Injury/Property Damage/Wrongful Death (23).

Non-Personal Injury/Property Damage/Wrongful Death Tort
 Employment
 Contract
 Real Property
 Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons (See Step 3 Above)
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice	1., 2., 3.
	<input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case	1., 2., 3.
	<input type="checkbox"/> A6109 Labor Commissioner Appeals	10.
Breach of Contract/Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	2., 5.
	<input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2., 5.
	<input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud)	1., 2., 5.
	<input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff	2., 5., 6.
	<input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud	1., 2., 3., 5.
	<input type="checkbox"/> A6031 Tortious Interference	1., 2., 3., 5.
	<input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure	2., 6.
	<input type="checkbox"/> A6032 Quiet Title	2., 6.
	<input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

SHORT TITLE: Glendale Coalition v. City of Glendale

CASE NUMBER

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons See Step 3 Above
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5.
Writ of Mandate (02)	<input checked="" type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2, 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8.
Provisionally Complex Litigation		
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8.
Enforcement of Judgment		
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 9. 2, 6. 2, 9. 2, 8. 2, 8. 2, 8, 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8.
Miscellaneous Civil Complaints		
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8. 2, 8. 1, 2, 8. 1, 2, 8.
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8.
Miscellaneous Civil Petitions		
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2, 3, 9. 2, 3, 9. 2, 3, 9. 2. 2, 7. 2, 3, 4, 8. 2, 9.

SHORT TITLE: Glendale Coalition v. City of Glendale	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected:

REASON: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case. <input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input checked="" type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.	ADDRESS: 613 E. Broadway Ave #110
CITY: Glendale	STATE: CA ZIP CODE: 91206

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Los Angeles District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subs. (b), (c) and (d)].

Dated: 1/9/15


 (SIGNATURE OF ATTORNEY/FILING PARTY)
 Benjamin T. Benimof

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

EXHIBIT F

ORIGINAL

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A PROFESSIONAL CORPORATION
SANTA ANA

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FILED
CIVIL BUSINESS OFFICE 10
CENTRAL DIVISION

2014 SEP 02 P 3:41

CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY CA
Clerk of the Superior Court

SEP 02 2014

By: _____ Deputy

6 Attorneys for Petitioner and Plaintiff
7 SWEETWATER AUTHORITY RATE PAYERS ASSOCIATION, INC.

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL

10 SWEETWATER AUTHORITY RATE PAYERS)
11 ASSOCIATION, INC., a California non-profit)
12 public interest corporation.)

Case No. 37-2014-00029611-CU-MC-CTL

13 Petitioner and Plaintiff,)

) JUDGE:
) DEPT:

14 vs.)

15 SWEETWATER AUTHORITY, a California)
16 publicly owned water agency; and DOLS 1 through)
25, inclusive.)

VERIFIED PETITION FOR WRIT OF
MANDATE UNDER ARTICLE XIII D
OF THE CALIFORNIA
CONSTITUTION AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

17 Respondents & Defendants.)

18
19 Petitioner and Plaintiff Sweetwater Authority Rate Payers Association, Inc. (hereinafter the
20 "SARPA" or "Petitioner") alleges as follows:

21 INTRODUCTORY ALLEGATIONS

22 1. This action arises out of the Sweetwater Authority's (hereinafter, "Respondent")
23 failure and ongoing refusal to acknowledge and rectify that its water rate structure – which has been
24 progressively ramped-up by yearly rate hikes since September 2010 (excepting 2011) – currently
25 violates Article XIII D of the California Constitution (aka "Proposition 218") and has done so for the
26 past four years.

27 2. Petitioner SARPA is a non-profit public interest organization incorporated and
28 existing under the laws of the State of California. SARPA is made up of numerous residents and

1 taxpayers of National City, Bonita, and Chula Vista, and its principal place of business is located in
2 Bonita, California.

3 3. SARPA was formed by local residents in response to community concerns about
4 issues such as the rising cost of water and various other "fee" increases passed on to residents and
5 businesses by the Sweetwater Authority. SARPA's Mission is, in pertinent part, assuring that the
6 residents of National City, Bonita, and Chula Vista are charged the true cost of water as required by
7 Proposition 218 and that governing bodies such as Respondent comply with the California
8 Constitution, namely Article XIID.

9 4. Petitioner is informed and believes Sweetwater Authority ("Respondent") is a
10 publicly-owned water agency with policies and procedures established by a seven-member Board of
11 Directors.

12 5. The names and capacities of the respondents/defendants named as Does 1 through 25
13 are currently unknown to Petitioner. Petitioner will amend this Petition and Complaint to reflect
14 their true names and capacities when ascertained.

15 6. SARPA brings this action on its own behalf, as well as in the public interest.
16 Specifically, SARPA seeks to enforce important public duties and rights under the California
17 Constitution, recent authoritative state case law, and the rules and regulations of the Sweetwater
18 Authority. Other beneficially interested individuals would find it difficult or impossible to seek
19 vindication of the rights herein asserted. SARPA's interests in this action are in no way competitive
20 or commercial, and are instead entirely consistent with the public duties and rights it asserts.
21 SARPA has a continuing interest in, and a well-established commitment to, the public rights
22 asserted.

23 7. Respondent's determinations are final, and no further administrative or appeal
24 procedures are available.

25 8. Petitioner is informed and believes, and based upon such information and belief
26 alleges, that each material issue and ground for non-compliance raised by this Petition and
27 Complaint was presented to Respondent at multiple public hearings and in writing.

28

1 d. "no fee or charge may be imposed for a service unless that service is actually used by,
2 or immediately available to, the owner of the property in question," with "[f]ees or charges based on
3 potential or future use of a service [not being, or as the statute says, 'are not'] permitted" (Art. XIID,
4 § 6(b)(4)); and

5 e. shifted traditional presumptions that had favored assessment validity, making local
6 agencies bear the burden "to demonstrate that the property or properties in question receive a special
7 benefit over and above the benefits conferred on the public at large and that the amount of any
8 contested assessment is proportional to, and no greater than, the benefits conferred on the property or
9 properties in question" (Art. XIID, § 6, subd. (b)(5)).

10 13. In addition, Proposition 218 has crucial procedural requirements, including the
11 germane requirement that the agency must conduct a public hearing that is "preceded by written
12 notice to affected owners setting forth, among other things, a 'calculat[ion]' of '[t]he amount of the
13 fee or charge proposed to be imposed upon each parcel . . .'" (*Griffith v. Pajaro Valley Water*
14 *Management Agency* (2013) 220 Cal.App.4th 586, 594.)

15 14. Likewise, California Constitution, Article XIID, section 6(a)(1) further requires that
16 the advance notice to the public about water assessments like the one here must contain "the basis
17 upon which the amount of the proposed fee or charge was calculated," because, otherwise, no
18 member of the public would be able to appear and frame a meaningful objection to the calculation
19 data unless that data is vetted in the public arena.

20 15. Importantly, a constitutional amendment like Proposition 218 "shall be liberally
21 construed to effectuate its purposes of limiting the local government revenue and enhancing taxpayer
22 consent." (*Silicon Valley, supra*, 44 Cal.4th at p. 448; *Morgan v. Imperial Irrigation District* (2014)
23 223 Cal.App.4th 892, review denied.)

24 16. With respect to the imposition of any given water rate structure, conservation and
25 allocation based principles may be utilized "so long as, for example, conservation is attained in a
26 manner that 'shall not exceed the proportional cost of the service attributable to the parcel'" and there
27 is adequate support "for the inequality *between* tiers, depending on the category of user." (*City of*
28 *Palmdale v. Palmdale Water Dist.* (2011) 198 Cal.App.4th 926, 936-937.)

1 RESPONDENT'S 2014 WATER RATE STRUCTURE EVOLVED FROM AN EQUALLY
2 ILLEGAL WATER RATE STRUCTURE IMPLEMENTED IN SEPTEMBER 2010

3 17. On or about August 25, 2014, Respondent approved its current water rate structure
4 ("2014 Water Rate Structure") following a duly noticed Proposition 218 hearing that numerous
5 ratepayers attended and voiced their opposition to Respondent's punitive tiered water rate scheme,
6 including several SARPA members.

7 18. Tiered water rates are water rate structures that (a) discretionally allocate certain
8 water use limits amongst the tiers and (b) progressively increase in pricing from the lowest tier to the
9 highest tier.

10 19. According to Respondent, the 2014 Water Rate Structure is substantially based on a
11 water rate study performed by Respondent's water rate consultant PBS&J in 2010 for tiered water
12 rates that became effective on or about September 1, 2010 ("PBS&J Water Rate Study").

13 20. The PBS&J Water Rate Study was distributed to the public at the August 25, 2014,
14 hearing as part of Respondent's written notice to affected owners setting forth, among other things, a
15 calculation of the amount of the fee or charge proposed to be imposed upon each parcel. (*Griffith v.*
16 *Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586, 594.)

17 21. As documented in Table 5-5 the PBS&J Water Rate Study, Tiers 1-4 are calculated
18 by an *arbitrary* percentage increase as follows:

19 a. The Tier 1 rate (\$0.35) is increased by an unidentified multiplier ("price differential"
20 as defined in Table 5-5) of 9.77 to calculate the Tier 2 rate (\$3.42)

21 b. The Tier 2 rate (\$3.42) is increased by an identified multiplier of 1.50 to calculate the
22 Tier 3 rate (\$5.13);

23 c. The Tier 2 rate (\$3.42) is increased by an identified multiplier of 2.00 to calculate the
24 Tier 4 rate (\$6.84);

25 22. The PBS&J Water Rate Study does not provide any cost-of-service data to support
26 the inequality of fees charged between the four tiers.

27 ///

28 ///

1 23. SARPA is informed and believes and thereon alleges that the charges for Tiers 2
2 through 4 are no more than an arbitrary financial penalty intended to penalize residents for
3 exceeding the Sweetwater Authority-directed allocations of water, while subsidizing Tier 1 users.

4 24. The PBS&J Water Rate Study treats multi-unit residential and business owners much
5 differently than single-family residential users, charging these users a uniform rate of \$4.31. There is
6 no Proposition 218 rationale for doing so as highlighted by the *Palmdale* court.

7 25. Curiously, in adopting and implementing the PBS&J Water Rate Study in September
8 2010, Respondent did not adopt the specific rates specified in the PBS&J Water Rate Study except
9 for the Tier 1 rate, which is greatly subsidized by the higher tier users.

10 26. The actual rates adopted by Respondent in September 2010 are not exactly as those
11 noted in the PBS&J Water Rate Study, however they mirror those rates and the multipliers are
12 approximate. More specifically, the actual rates charged beginning in September 2010 were:

- 13 a. \$0.35 (Tier 1);
- 14 b. \$3.61 (Tier 2; a 10.31 multiplier from Tier 1);
- 15 c. \$5.42 (Tier 3; a 1.50 multiplier from Tier 2); and
- 16 d. \$7.22 (Tier 4; a 2.00 multiplier from Tier 2); and with
- 17 e. A uniform rate of \$4.99 for commercial/multi-family users.

18 27. The 2014 Water Rate Structure, much like the interim tiered rate structures approved
19 in 2012 and 2013, has essentially the same percentage (multiplier) increases:

- 20 a. The jumps from Tier 2 to Tier 3 (\$4.10 to \$6.17) and Tier 2 to Tier 4 (\$4.10 to \$8.24)
21 are also based on multipliers of 1.50 and 2.00, respectively; and
- 22 b. The Tier 1 to Tier 2 jump (\$2.80 to 4.10) is based on a multiplier of approximately
23 1.50 instead of 10.31 (as adopted in September 2010).

24 28. SARPA is informed and believes and thereon alleges that the 2014 Water Rate
25 Structure is not based on any additional or further water rate studies. Rather, the rate jumps between
26 the tiers merely echo the rate jumps first presented in the PBS&J Water Rate Study and treat
27 commercial/multi-family users differently than single-family residential users, charging them a
28 uniform rate of \$5.85.

1 connection is made "are charges for a property-related service, whether the charge is calculated on
2 the basis of consumption or is imposed as a fixed monthly fee." (*Id.*)

3 34. Respondent is an "agency" as that term is defined in the California Constitution,
4 Article VIIIID, §2(a), and is therefore subject to the provisions of Proposition 218, the "Right to Vote
5 on Taxes Act," approved by the voters of California on November 5, 1996.

6 35. Section 6(b) of Article XIIIID of the California Constitution provides that an increased
7 fee or charge imposed by the Respondent must comply with the following requirements:

8 "(1) Revenues derived from the fee or charge shall not exceed the funds required to provide
9 the property related service.

10 (2) Revenues derived from the fee or charge shall not be used for any purpose other than
11 that for which the fee or charge was imposed.

12 (3) The amount of a fee or charge imposed upon any parcel or person as an incident of
13 property ownership shall not exceed the proportional cost of the service attributable to the parcel.

14 (4) No fee or charge may be imposed for a service unless that service is actually used by, or
15 immediately available to, the owner of the property in question. Fees or charges based on potential
16 or future use of a service are not permitted. Standby charges, whether characterized as charges or
17 assessments, shall be classified as assessments and shall not be imposed without compliance with
18 Section 4.

19 (5) . . . In any legal proceeding contesting the validity of a fee or charge, the burden shall be
20 on the agency to demonstrate compliance with this article."

21 36. In adopting its 2010-2014 Water Rate Structures, Respondent violated the provisions
22 of the California Constitution, Article XIIIID, and, accordingly, the tiered water rates are
23 unconstitutional, illegal and invalid.

24 37. Petitioner is informed and believes and thereupon alleges that Respondent's revenues
25 derived from the 2010-2014 Water Rate Structures exceed the funds required to provide the property
26 related service and the 2010-2014 Water Rate Structures adopted by Respondent therefore violate
27 Article XIIIID, §6(b)(1).

28

1 38. Petitioner is informed and believes and thereupon alleges that Respondent's revenues
2 derived from the 2010-2014 Water Rate Structures are used for purposes other than that for which
3 the fee or charge was imposed and that the 2010-2014 Water Rate Structures adopted by Respondent
4 therefore violates Article XIID, §6(b)(2).

5 39. Petitioner is informed and believes and thereupon alleges that the inequality between
6 Tiers 1-4 in Respondent's 2010-2014 Water Rate Structures is totally unrelated to "the proportional
7 cost of the service attributable to the parcel," and therefore violates Article XIID, §6(b)(3).

8 40. Petitioner is informed and believes and thereupon alleges that, as approved, the
9 Respondent's 2010-2014 Water Rate Structures impose a fixed monthly service charge based on the
10 size of the customer's meter and a commodity charge for the amount of water used. The customer
11 pays a progressively higher charge per unit of water used above the arbitrarily allocated amount as
12 outlined above and in the PBS&J Water Rate Study.

13 41. Petitioner is informed and believes and thereupon alleges that the PBS&J Water Rate
14 Study provided no cost of service data to support the disproportionate fees charged amongst Tiers 1
15 through 4. Therefore, Petitioner is informed and believes and thereupon alleges that the charges for
16 Tiers 2 through 4 are a financial penalty intended to punish higher water users, while subsidizing
17 Tier 1 users, and are not a fee for service.

18 42. Petitioner is informed and believes and thereupon alleges that Respondent's 2010-
19 2014 Water Rate Structures for Tiers 2 through 4 are not based on cost of service, but are instead
20 derived from an arbitrary mathematical progression using fixed percentages to calculate Tiers 2
21 through 4, while Tier 1 users are greatly subsidized. Consequently, the fee charged to customers
22 who use more than the allocated amount of water in Tiers 2 through 4 does not comply with the
23 Proposition 218 Article XIID. (*City of Palmdale v. Palmdale Water District* (2011) 198 Cal.App.4th
24 926, 934.)

25 43. Petitioner is informed and believes and thereupon alleges that the Proposition 218
26 ballot Pamphlet makes it clear that the voters intended that no property owner's fee may be greater
27 than the actual cost to provide the service to the owner's land. (*City of Palmdale v. Palmdale Water*
28

1 *District* (2011) 198 Cal.App.4th 926, 934.) Respondent's commodity charges for Tiers 1 through 4
2 bear no relation to the costs of providing water service.

3 44. Petitioner is further informed and believes and thereupon alleges that Respondent's
4 revenues under its 2010-2014 Water Rate Structures bears no relation to and exceed the costs of
5 providing water service in contravention of article XIID, section 6(b)(1), and instead "all but
6 assures the revenues the Respondent receives from customers in the higher tiers is more than is
7 required to cover the City's costs of service." (*City of Palmdale v. Palmdale Water District* (2011)
8 198 Cal.App.4th 926, 934.)

9 45. An actual controversy has arisen and now exists between Petitioner and Respondent
10 in that Petitioner contends that the Respondent's 2010-2014 Water Rate Structures are invalid and
11 illegal in that the Respondent has failed in multiple respects to comply with the California
12 Constitution, Article XIID, section 6, and Respondent continues to enforce its illegally tiered water
13 rate scheme. Petitioner is informed and believes and thereon alleges that Respondent takes the legal
14 position that its above-referenced Water Rate Structures are valid, legal, and enforceable in nature,
15 including, but not limited to, compliant with Proposition 218.

16 46. Unless and until the Court renders a judgment declaring the rights and responsibilities
17 of the parties under the law, SARPA, the taxpayers of National City, Bonita, and Chula Vista, and
18 Respondent itself, will operate in a state of uncertainty, with all interested parties unsure whether the
19 water rates are properly charged or payable by any ratepayer in Respondent's jurisdiction.

20 47. A judicial determination of the rights and obligations of the parties is necessary and
21 appropriate so that the parties hereto may ascertain those rights and act accordingly.

22 48. Petitioner has no plain, speedy, or adequate remedy at law for the harm that will be
23 caused by Respondent's continued imposition of the water charges/fees at issue in this case. By
24 continuing to impose its arbitrary tiered water rate scheme, Respondent is failing to perform the legal
25 duties required of it by Proposition 218. A judgment from this Court, declaring the rights and
26 responsibilities of the parties pursuant to Code of Civil Procedure section 1060, is therefore
27 necessary and appropriate.

28

1 SECOND CAUSE OF ACTION

2 (Injunctive Relief – Unlawful Enforcement of Water Rate Structure)

3 49. Petitioner incorporates all previous allegations as if fully set forth herein.

4 50. Petitioner is informed and believes and thereupon alleges that, unless enjoined and
5 restrained by this Court, Respondent will continue to impose its arbitrary tiered water rate scheme on
6 Petitioner and upon the residents of the National City, Bonita, and Chula Vista, in violation of the
7 California Constitution, Article XIID.

8 51. Petitioner has no plain, speedy, or adequate remedy at law with respect to the City's
9 unlawful policies and interpretations or its related patterns and practices.

10 52. Petitioner accordingly seeks preliminary and permanent injunctive relief prohibiting
11 the Respondent from continuing to implement or apply its arbitrary tiered water rate scheme.

12 THIRD CAUSE OF ACTION

13 (Writ of Mandate, CCP §1085, 1094.5 (Proposition 218))

14 53. Petitioner incorporates all previous allegations as if fully set forth herein.

15 54. Section 6(b) of Article XIID of the California Constitution provides that an increased
16 fee or charge imposed by Respondent must comply with the following requirements:

17 "(1) Revenues derived from the fee or charge shall not exceed the funds required to provide
18 the property related service.

19 (2) Revenues derived from the fee or charge shall not be used for any purpose other than
20 that for which the fee or charge was imposed.

21 (3) The amount of a fee or charge imposed upon any parcel or person as an incident of
22 property ownership shall not exceed the proportional cost of the service attributable to the parcel.

23 ...
24 (5) ... In any legal proceeding contesting the validity of a fee or charge, the burden shall be
25 on the agency to demonstrate compliance with this article."

26 55. Respondent has mandatory duty to correctly apply Article XIID of the California
27 Constitution, which requires that the inequality between water rate tiers be based on cost of service.
28

ALVARADO SMITH
A PROFESSIONAL CORPORATION
SANTA ANA

1 (City of Palmdale v. Palmdale Water District (2011) 198 Cal.App.4th 926, 934.) Respondent
2 violates these mandatory duties.

3 56. Petitioner is informed and believes and thereupon alleges that Respondent's revenues
4 derived from its 2010-2014 Water Rate Structures exceed the funds required to provide the property
5 related service and the 2010-2014 Water Rate Structures adopted and implemented by Respondent
6 therefore violate Article XIII D, §6(b)(1).

7 57. Petitioner is informed and believes and thereupon alleges that Respondent's revenues
8 derived from the 2010-2014 Water Rate Structures are used for purposes other than that for which
9 the fee or charge was imposed and that the 2010-2014 Water Rate Structures adopted by Respondent
10 therefore violates Article XIII D, §6(b)(2).

11 58. Petitioner is informed and believes and thereupon alleges that the inequality between
12 the City's water rate tiers is totally unrelated to "the proportional cost of the service attributable to
13 the parcel," and therefore violates Article XIII D, §6(b)(3).

14 59. Petitioner consequently petitions for a writ of mandate under CCP §§1085 and/or
15 1094.5 compelling the Respondent to comply with its mandatory duties and prohibiting and
16 correcting the Respondent's abuses of discretion. Petitioner has no plain, speedy or adequate
17 remedy at law.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Petitioner respectfully requests:

20 1. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
21 that the Sweetwater Authority's 2014 Water Rate Structure violates California Constitution, Article
22 XIII D, §6(b)(1), and is invalid because the revenues derived from the Water Rate Structure bear no
23 relation to and/or exceed the funds required to provide the property related service.

24 2. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
25 that the Sweetwater Authority's 2013 Water Rate Structure violates California Constitution, Article
26 XIII D, §6(b)(1), and is invalid because the revenues derived from the Water Rate Structure bear no
27 relation to and/or exceed the funds required to provide the property related service.

28

1 3. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
2 that the Sweetwater Authority's 2012 Water Rate Structure violates California Constitution, Article
3 XIIIID, §6(b)(1), and is invalid because the revenues derived from the Water Rate Structure bear no
4 relation to and/or exceed the funds required to provide the property related service.

5 4. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
6 that the Sweetwater Authority's 2011 Water Rate Structure violates California Constitution, Article
7 XIIIID, §6(b)(1), and is invalid because the revenues derived from the Water Rate Structure bear no
8 relation to and/or exceed the funds required to provide the property related service.

9 5. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
10 that the Sweetwater Authority's 2010 Water Rate Structure violates California Constitution, Article
11 XIIIID, §6(b)(1), and is invalid because the revenues derived from the Water Rate Structure bear no
12 relation to and/or exceed the funds required to provide the property related service.

13 6. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
14 that the Sweetwater Authority's 2014 Water Rate Structure violates California Constitution, Article
15 XIIIID, §6(b)(2), and is invalid because revenues derived from the fee or charge are used for
16 purposes other than that for which the fee or charge was imposed.

17 7. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
18 that the Sweetwater Authority's 2013 Water Rate Structure violates California Constitution, Article
19 XIIIID, §6(b)(2), and is invalid because revenues derived from the fee or charge are used for
20 purposes other than that for which the fee or charge was imposed.

21 8. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
22 that the Sweetwater Authority's 2012 Water Rate Structure violates California Constitution, Article
23 XIIIID, §6(b)(2), and is invalid because revenues derived from the fee or charge are used for
24 purposes other than that for which the fee or charge was imposed.

25 9. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
26 that the Sweetwater Authority's 2011 Water Rate Structure violates California Constitution, Article
27 XIIIID, §6(b)(2), and is invalid because revenues derived from the fee or charge are used for
28 purposes other than that for which the fee or charge was imposed.

1 10. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
2 that the Sweetwater Authority's 2010 Water Rate Structure violates California Constitution, Article
3 XIID, §6(b)(2), and is invalid because revenues derived from the fee or charge are used for
4 purposes other than that for which the fee or charge was imposed.

5 11. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
6 that the Sweetwater Authority's 2014 Water Rate Structure violates California Constitution, Article
7 XIID, §6(b)(3), and is invalid because the fees imposed on each parcel of property exceed the
8 proportional cost of the services attributable to each parcel.

9 12. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
10 that the Sweetwater Authority's 2013 Water Rate Structure violates California Constitution, Article
11 XIID, §6(b)(3), and is invalid because the fees imposed on each parcel of property exceed the
12 proportional cost of the services attributable to each parcel.

13 13. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
14 that the Sweetwater Authority's 2012 Water Rate Structure violates California Constitution, Article
15 XIID, §6(b)(3), and is invalid because the fees imposed on each parcel of property exceed the
16 proportional cost of the services attributable to each parcel.

17 14. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
18 that the Sweetwater Authority's 2011 Water Rate Structure violates California Constitution, Article
19 XIID, §6(b)(3), and is invalid because the fees imposed on each parcel of property exceed the
20 proportional cost of the services attributable to each parcel.

21 15. Judgment, pursuant to Code of Civil Procedure section 1060, finding and declaring
22 that the Sweetwater Authority's 2010 Water Rate Structure violates California Constitution, Article
23 XIID, §6(b)(3), and is invalid because the fees imposed on each parcel of property exceed the
24 proportional cost of the services attributable to each parcel.

25 16. Preliminary and permanent injunctive relief prohibiting and restraining Respondent,
26 and each and all of its agents, employees, representatives, officers, directors, and all persons acting
27 in concert with it, from imposing, billing or collecting water charges/fees as currently being
28 imposed, in violation of the California Constitution, Article XIID.

1 17. A writ of mandate ordering the Respondent to abandon Respondent's current 2014
2 Water Rate Structure and base all rates on cost of service in conformance with the California
3 Constitution, Article XIID (Proposition 218).

4 18. For attorneys' fees as allowed by law, including but not limited to those pursuant to
5 Code of Civil Procedure section 1021.5.

6 19. For costs of suit herein.

7 20. For such other relief as the Court may deem just and proper.

8
9 DATE: September 2, 2014

ALVARADOSMITH APC

10
11 By: 

12 Benjamin T. Benumof, Ph.D., Esq.
13 William M. Hensley, Esq.
14 Attorneys for Petitioner and Petitioner
15 SWEETWATER AUTHORITY
16 RATE PAYERS ASSOCIATION, INC.
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VERIFICATION

I, Michael M. Sampsel, declare:

I am an Officer of the Sweetwater Authority Rate Payers Association, Inc. ("SARPA"), a California public interest corporation organized and existing under the laws of California. SARPA is the Petitioner and Plaintiff in the above-entitled action, and I have been authorized to make this verification on its behalf. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE UNDER ARTICLE XIII D OF THE CALIFORNIA CONSTITUTION AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the contents thereof, except as to those matters alleged on information and belief, and to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this verification was signed on September 2, 2014, in Bonita, California.

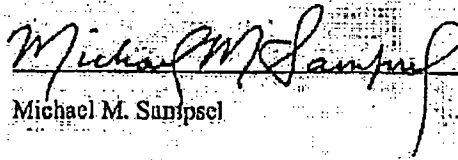

Michael M. Sampsel

Exhibit 1



A PROFESSIONAL CORPORATION
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Raymond G. Alvarado,
Retired

July 29, 2014

VIA U.S. MAIL

James L. Smyth
General Manager
Sweetwater Authority
P.O. Box 2328
Chula Vista, CA 91912-2328

Paula C. P. de Sousa, Esq.
Best Best & Krieger LLP
655 West Broadway
15th Floor
San Diego CA, 92101

Re: *Sweetwater Authority Rate Payers Association, Inc.*
Notice of Intent to File Litigation and Public Records Act Request

Dear Mr. Smyth & Ms. de Sousa,

This law firm represents the Sweetwater Authority Rate Payers Association ("SARPA"), a California non-profit 501(c)(4) (public benefit) corporation, with respect to the Sweetwater Authority's development, structuring, implementation, and enforcement of its tiered water rate structure, which is originally based on a Water Rate Study performed by PBS&J in or about January 2010, was increased in subsequent years using the same PBS&J methodology, and is scheduled to increase again on or about August 25, 2014, following a public hearing regarding the newly proposed rate increases.

The purpose of this letter is to provide Sweetwater Authority with a good-faith opportunity to provide SARPA and its member residents of National City, Bonita and Chula Vista with the back-up documentation and numerical/quantitative analysis showing that the *inequality* between the Sweetwater Authority's current and proposed water rate tiers (Tiers 1-4) is a product of higher cost-of-service at the higher tiers, as required by Proposition 218 (codified as Article XIID of the California Constitution).

As you may be aware, building on the foundation laid earlier by Proposition 13 in 1978, Proposition 218 indeed is a further limitation on government's ability to impose taxes. (*Paland v. Brooktrails Township Community Services Dist. Bd. of Directors* (2009) 179 Cal.App.4th 1358, 1365.) Growing weary of "special taxes" under the guise of "assessments" without a two-thirds electorate vote, California voters adopted Proposition 218 curtailing assessments in these key ways (*Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 446; *City of Palmdale v. Palmdale Water District* 198

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Cal.App.4th 926, 931; *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 637, 640):

- (1) assessments could only be imposed on specific property-oriented "benefits" (Art. XIID, §§ 2, subd. (b), 4, subd. (a), subd. (i));
- (2) property-oriented assessments must be strictly proportional, with assessments not being imposed on any parcel "which exceeds the reasonable cost of the proportional special benefit conferred on that parcel," specifically separating the general benefits from the specific benefits for Proposition 218 purposes (Art. XIID, § 4 subd. (a));
- (3) "[r]evenues derived from the fee or charge shall not exceed the funds required to provide the property-related services" and "the amount of the fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of service attributable to the parcel" (Art. XIID, § 6, subs. (b)(1), (b)(3));
- (4) "no fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question," with "[f]ees or charges based on potential or future use of a service [not being, or as the statute says, 'are not'] permitted" (Art. XIID, § 6(b)(4)); and
- (5) shifted traditional presumptions that had favored assessment validity, making local agencies bear the burden "to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question" (Art. XIID, § 6, subd. (b)(5)).

In addition, Proposition 218 has crucial procedural requirements, including the germane requirement that the agency must conduct a public hearing that is "preceded by written notice to affected owners setting forth, among other things, a 'calculat[ion]' of '[t]he amount of the fee or charge proposed to be imposed upon each parcel'" (*Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586, 594.) Likewise, California Constitution, Article XIID, section 6(a)(1) further requires that the advance notice to the public about water assessments like the one here must contain "the basis upon which the amount of the proposed fee or charge was calculated," because, otherwise, no member of the public would be able to appear and frame a meaningful objection to the calculation data unless that data is vetted in the public arena.

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Importantly, a constitutional amendment like Proposition 218 "shall be liberally construed to effectuate its purposes of limiting the local government revenue and enhancing taxpayer consent." (*Silicon Valley*, supra, 44 Cal.4th at p. 448; *Morgan v. Imperial Irrigation District* (2014) 223 Cal.App.4th 892, review denied.) This, however, does not mean that salutary conservation efforts, and even other constitutional provisions and regulations that encourage conservation (such as California Constitution, Article X, section 2, and the emergency regulations recently passed by the State Water Board), are somehow unable to be harmonized with Proposition 218.

Indeed, with respect to the imposition of any given water rate structure, conservation and allocation based principles may be utilized "so long as, for example, conservation is attained in a manner that 'shall not exceed the proportional cost of the service attributable to the parcel'" and there is adequate support "for the inequality between tiers, depending on the category of user." (*City of Palmdale v. Palmdale Water Dist.* (2011) 198 Cal.App.4th 926, 936-937, emphasis in original.)

As documented in Table 5-5 the 2010 PBS&J Water Rate Study, Tiers 1-4 are calculated by an arbitrary percentage increase as follows:

- The Tier 1 rate (\$0.35) is increased by an unidentified multiplier ("price differential" as defined in Table 5-5) of 9.77 to calculate the Tier 2 rate (\$3.42);
- The Tier 2 rate (\$3.42) is increased by an identified multiplier of 1.50 to calculate the Tier 3 rate (\$5.13);
- The Tier 2 rate (\$3.42) is increased by an identified multiplier of 2.00 to calculate the Tier 4 rate (\$6.84);

Importantly, the 2010 PBS&J Water Rate Study does not provide any cost-of-service data to support the inequality of fees charged between the four tiers. Therefore, SARPA believes the charges for Tiers 2 through 4 are no more than an arbitrary financial penalty intended to penalize residents for exceeding the Sweetwater Authority-directed allocations of water, while subsidizing Tier 1 users. What's more, the Water Rate Study treats multi-unit residential and business owners much differently, charging these users a uniform rate of \$4.31. There is no Proposition 218 rationale for doing so as highlighted by the *Palmdale* court.

Curiously, Sweetwater Authority did not adopt the exact rates specified in the 2010 PBS&J Water Rate Study except for the Tier 1 rate, which is greatly subsidized by the higher tier users. However, although the actual rates adopted by Sweetwater Authority are not exactly as those noted in the PBS&J Water Rate Study, they mirror those rates and the multipliers are

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approximate. More specifically, the actual rates charged in September 2010 were \$0.35 (Tier 1), \$3.61 (Tier 2; a 10.31 multiplier from Tier 1), \$5.42 (Tier 3; a 1.50 multiplier from Tier 2) and \$7.22 (Tier 4; a 2.00 multiplier from Tier 2), with a uniform rate of \$4.99.

Likewise, the newly proposed rate structure to be discussed and evaluated at the August 25, 2014, public hearing, much like the interim rate structure approved in 2012, has essentially the same percentage (multiplier) increases, with the jumps from Tier 2 to Tier 3 (\$4.10 to \$6.17) and Tier 2 to Tier 4 (\$4.10 to \$8.24) also being based on multipliers of 1.50 and 2.00, respectively, and the Tier 1 to Tier 2 jump (\$2.80 to 4.10) being based on a multiplier of approximately 1.50 instead of 10.31 (as adopted in September 2010). However, the newly proposed rates do not even appear to be based on a further water rate study at all. The rate jumps merely echo the 2010 PBS&J Water Rate Study and continue to treat Commercial/Multi-Family users differently, charging them a uniform rate of \$5.85.

Accordingly, this letter shall also serve as a formal request under the Public Records Act (Gov't Code §§ 6250-6276.48) for the following documents:

- Any and all documents that form the basis upon which the amount of the water service fees or charges were calculated for Sweetwater Authority's 2010 water rate structure;
- Any and all documents that form the basis upon which the amount of the water service fees or charges were calculated for Sweetwater Authority's 2012 water rate structure;
- Any and all documents that form the basis upon which the amount of the proposed water service fees or charges were calculated for Sweetwater Authority's newly proposed (2014) water rate structure.

Pursuant to Government Code section 6253(c), we request these documents, or confirmation that they do not exist, within 10 days (on or before August 8, 2014). If Sweetwater Authority cannot provide SARPA with legitimate support for the incremental pricing increases between its four tiers (i.e., real data that shows an incremental cost increase for service to ratepayers in the higher tiers), then please be advised that SARPA intends to commence legal action against Sweetwater Authority for Proposition 218 violations.



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If you wish to discuss the foregoing, please call. If we do not hear from you on or before August 8, 2014, we will assume, as we believe to date, that no such back-up documentation or quantitative analysis exists and that Sweetwater Authority has no desire resolving these very important public interest matters without formal proceedings.

Sincerely,

ALVARADOSMITH
A Professional Corporation

A handwritten signature in black ink, appearing to read 'Ben T. Benumof', with a long horizontal flourish extending to the right.

Benjamin T. Benumof, Ph.D., Esq.

cc: William M. Hensley, Esq.

BTB: th