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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.

Fee Fighter LLC, et al.
Plaintiffs and Appellants
vs.
City of Redding, et al.
Defendants and Respondents.

SUPREME COURT
FILED

MAR 3 - 2015

Frank A. McGuire Clerk

Deputy

MOTION FOR JUDICIAL NOTICE IN SUPPORT OF PETITION FOR REVIEW

VOLUME III 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 G

No. B251810

Service on Attorney General
required by Rule 8.29(c)(1)

Exempt from Filing Fees
Government Code § 6103

In the Court of Appeal, State of California

SECOND APPELLATE DISTRICT, DIVISION 6

CITY OF SAN BUENAVENTURA,
Plaintiff and Respondent / Cross-Appellant,

vs.

UNITED WATER CONSERVATION DISTRICT and BOARD OF DIRECTORS OF UNITED WATER CONSERVATION DISTRICT,
Defendants and Appellants / Cross-Appellees.

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

RESPONDENT'S BRIEF AND CROSS-APPELLANT'S OPENING BRIEF

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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: February 5, 2014

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INTRODUCTION

This case involves the reluctance of the groundwater agency which serves most of Ventura County to accept established law that requires the charges it imposes on groundwater users to comply with Proposition 218. That constitutional amendment was adopted in 1996 and the Court of Appeal found it to apply to groundwater charges in 2007. The measure requires charges be limited to the proportionate cost of serving each customer, yet Appellant United Water Conservation District ("District" or "UWCD") persists in requiring municipal and industrial (M&I) users of groundwater to pay three times what agricultural groundwater users pay with no evidence to support the practice in either of the two administrative records in issue here. The time for UWCD to comply with the demand of the voters has long since come and this Court should therefore affirm.

UWCD imposes on Respondent City of San Buenaventura (the "City") and other groundwater users a groundwater augmentation charge,[1] measured by the amount of groundwater

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[1] This charge is variously referred to in the record as a "groundwater charge," a "groundwater augmentation charge," or a "groundwater extraction charge." The statute authorizing them refers to "ground water charges." (See, e.g., Wat. C. § 75522.) In all cases, they are charges collected upon the production of groundwater to be used for

each pumps within the District. The charge funds UWCD's services to manage and augment groundwater. However, UWCD charges municipal and industrial ("M&I") water users such as the City three times what it charges agricultural users — as required by Water Code section 75594. This statute was enacted decades before California voters fundamentally narrowed the discretion of legislative rate-makers by adopting Propositions 13 (1978), 218 (1996) and 26 (2010). Together, these constitutional provisions require UWCD's rates be based on the cost of serving the City, not an arbitrary and archaic legislative mandate that municipal water users subsidize agriculture.

The trial court correctly concluded that UWCD's rates could satisfy the statutory 3:1 ratio only if they also met the substantive requirements of Proposition 218, including the mandate of article XIII D, section 6, subdivision (b)(3)[2] that charges not exceed the proportional cost of the service attributable to the City. Because

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authorized purposes. (See, Wat. Code, § 75523.) Article XIII D uses the terms "fee" and "charge," but provides a single definition of both. (Art. XIII D, section 2, subd. (e).) The terms appear to be synonymous for the purposes of Proposition 218. (*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 204, fn. 4.) In this brief, they are simply referred to as the "charge" or "charges."

[2] All references to articles in this brief are to the California Constitution.

the two records in the cases consolidated here are devoid of evidence that UWCD's rates are proportional to the cost of serving M&I groundwater users like the City, the trial court correctly invalidated them.

Seeking reversal, UWCD ambitiously asks this Court to remake the law in the image of its rate-making. It urges this Court to disagree with the controlling case, *Pajaro Valley Water Mgmt. Agency v. AmRhein* (2007) 150 Cal.App.4th 1364 (*Pajaro I*) and upset seven years of reliance on that settled appellate authority. It further asks this Court to break new ground under Proposition 26 — which applies here only if Proposition 218 does not — to interpret that new provision of our Constitution at odds with its text, apparent intent, and legislative history. The Court should decline these invitations, and decide this case on the settled law ably applied below.

Thus, this Court should affirm the trial court decision because:

- There is no reason to disagree with settled law that groundwater fees are subject to Proposition 218 or to unsettle established expectations arising from that law;
- The Supreme Court has already ruled that regulatory charges are not necessarily exempt from Proposition 218;
- No evidence in either record here can sustain the 3:1 ratio of M&I to agricultural charges;

- Water Code section 75594, adopted in 1966, is not a legislative determination of UWCD's costs in 2011–2012 and later and, even if it were, cannot stand in the face of Proposition 218;
- *Dahms v. Downtown Pomona Property* (2009) 174 Cal.App.4th 708 ("*Dahms*") is both distinguishable and unpersuasive;
- UWCD's fears that it cannot comply with Proposition 218 are mistaken;
- Proposition 26 would also invalidate UWCD's charges if this Court were to make new law by disagreeing with the cases holding groundwater charges subject to Proposition 218;
- UWCD failed to preserve in the trial court or adequately present in its Opening Brief its objections to the calculation of the City's refund remedy; and,
- Even if that claim were preserved and well presented, the trial court's remedy is supported by the evidence and precedent and any error would be offset by the errors in UWCD's favor noted in the cross-appeal.

On cross-appeal, the City asks this Court to declare three points of law to aid UWCD, as well as other rate-makers — including the City itself, which operates a retail water utility. First, this Court should declare that Water Code section 75594's arbitrary

3:1 ratio of M&I to agricultural rates violates article XIII D, section 6, subdivision (b) and is unenforceable. Second, the City asks this Court to declare that UWCD must limit the charges to the recovery of costs of services and programs that have a demonstrated relationship to groundwater use and fund through other means services and programs not demonstrated to have that relationship. Finally, the City seeks a declaration that UWCD's rate structure — on the present records, at least — must reflect the scientific evidence and well-documented differences in how its groundwater basins respond to recharge efforts and may not charge all groundwater users in disparate basins alike on the basis of a convenient fiction that the basins constitute a "common pool" despite decades of scientific evidence and rate-making practice to the contrary.

On the Appellant's appeal, this Court should affirm the trial court. On the cross-appeal, the City seeks only declaratory relief, which this Court may grant on its independent, de novo review of the administrative records. There is no need to remand.

STATEMENT OF FACTS

Because the case involves de novo review of legislative rate-making on two administrative records, a detailed summary of the facts is required. However, an initial summary of those facts can be stated. The records, years of scientific data, and UWCD's own long-standing rate-making practice demonstrate that the eight groundwater basins which make up the District are distinguished by

geologic features such as earthquake faults. (See, e.g., **AR2, Tab 165, at p. 21.**)[3] Because of these distinctions, the District's groundwater recharge efforts benefit some basins more than others. (AR1, Tab 16, at p. 122 ["The mountains and numerous faults are boundaries to groundwater flow."]; AR1, Tab 28, at pp. 62–63 ["groundwater elevation differences across the boundary between the Mound basin and Santa Paula basin are dramatic."].) The most significant overdraft occurs in agricultural areas of the Oxnard Plain and Pleasant Valley basins, but the City's wells are located elsewhere. (AR1, Tab 62, at p. 34 ["the majority of the overdraft in the Oxnard [P]lain aquifers has been caused by agricultural pumping in the eastern/southern part of the plain. Most of the M&I wells on the Oxnard Plain are located in the less-impacted north-western portion of the aquifer."]; AR2, Tab 53, at p. 34 [same];[4] see also **AR2, Tab 165,**

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[3] This appeal is from consolidated challenges to rates UWCD set for fiscal years 2011–2012 and 2012–2013. "AR1" refers to the 2011–2012 administrative record and "AR2" to the 2012–2013 administrative record. Citations are in this form: AR[1 or 2], Tab [#] at pp. [#–#]. Citations in bold denote portions of the record attached to this brief pursuant to California Rule of Court, ruled 8.204, subdivision (d).

[4] Almost all of the first administrative record is included in the second. This brief cites both records not to be prolix, but because two suits are in issue and the City defends the judgment on appeal in each case. AR2 cites that are identical to a preceding AR1 cite are

at p. 21 [groundwater flow map showing well locations].) Notwithstanding these facts, the District imposes uniform rates throughout its territory (AR1, Tab 62, at p. 30 [citing Water Code section 75592]; AR2, Tab 53, at p. 30 [same]). Even though the City benefits less from the services UWCD provides, UWCD requires the City and other M&I groundwater users to pay three times what agricultural groundwater users pay. (AR1, Tab 72, at p. 4 [Resolution 2011-12 setting rates]; AR2, Tab 149, at p. 4 [same].) In defense of this litigation, it resurrects a dated and debunked theory that all basins act as a "common pool" such that recharge anywhere amounts to recharge everywhere. (AR2, Tab 54, at p. 4–5 [Update to 2011 Water Rate Study].) The trial court properly rejected this fiction and this Court should affirm.

I. UWCD CHARGES GROUNDWATER PRODUCERS UNIFORMLY IN EIGHT DISTINCT BASINS

UWCD was formed under the Water Conservation District Law of 1931 (Wat. Code, § 74000 et seq.) to manage groundwater use within its boundaries. (AR1, Tab 22, at p. 36; AR2, Tab 106, at p. 21 [same].) UWCD serves central Ventura County and the Santa Clara River watershed. (*Ibid.*) UWCD imposes its charge on all who pump groundwater from eight basins in the District, including municipal and other retailers, agricultural users, and small domestic users.

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marked "[same]".

(AR1, Tab 62, at pp. 30 [list of 10 largest customers], 38 [nursery and residential customers]; AR2, Tab 53, at pp. 30, 38 [same].)

The City's water utility is among these. (AR1, Tab 62, at p. 30; AR2, Tab 53, at p. 30 [same].) It operates wells in four basins: 1) Mound; 2) Santa Paula; 3) northern Oxnard Plain; and 4) West Las Posas. (AR1, Tab 78, at pp. 8, 13; **AR2, Tab 165, at p. 21**.) The City relies on its groundwater rights to serve some 30,000 customers. (AR1, Tab 78, at p. 1 [June 2011 City protest letter]; AR2, Tab 165, at p. 1 [June 2012 City protest letter].)

The California Department of Water Resources defines a "groundwater basin" as "An alluvial aquifer or a stacked series of alluvial aquifers with reasonably well-defined boundaries in a lateral direction and having a definable bottom." (http://www.water.ca.gov/groundwater/groundwater_basics/gw_basic_terms.cfm [as of Feb. 4, 2014].) It defines "aquifer" as: "A body of rock or sediment that is sufficiently porous and permeable to store, transmit, and yield significant or economic quantities of groundwater to wells and springs." (*Ibid.*) Thus, a basin is a water-bearing body of rock or sediment bounded laterally by such geologic features as earthquake faults and bottomed by non-water-bearing rock. The eight basins within UWCD are defined by such features.

For example, the Department of Water Resources thus defines the "Santa Paula Subbasin of the Santa Clara River Valley Basin" (referenced in UWCD's records as "the Santa Paula Basin"):

> The northern boundary of the Santa Paula Subbasin is the contact between the Pleistocene and younger alluvium and impervious rocks of the Topatopa Mountains. The southern boundary is formed by impervious rocks of Oak Ridge and South Mountain, the Oak Ridge Fault, and the Saticoy fault (CSWRD 1956). The eastern edge of the subbasin is marked by a bedrock constriction, with the boundary placed at the position of maximum rising water (CDPW 1933; CSWRB 1956). The western boundary of the subbasin separates it from the Mound and Oxnard subbasins, with the western boundary placed where there is a distinction change in the slope of the water table (CSWRB 1956).

(Cal. Dept. of Water Resources, California's Groundwater Bulletin 118 [update February 27, 2004] at p. 1.) http://www.water.ca.gov/pubs/groundwater/bulletin_118/basindescriptions/4-4.04.pdf [as of Feb. 4, 2014].)[5] The parenthetical references in the quoted material are to the author and date of the scientific

[5] A copy of Groundwater Bulletin 118, update 2003, is included in the record at AR1, Tab 86. The February 27, 2004 update to its description of the Santa Paula Subbasin, quoted above, is attached to the accompanying Motion for Judicial Notice ("MJN") as Exhibit A.

papers on which the DWR relies for its description of the Santa Paula basin. Thus the hydrogeology of the basin is well documented, with major studies dating from 1933 and 1956.

Similar geological descriptions of the other seven basins in issue here are provided in the DWR Groundwater Bulletin, too. (http://www.water.ca.gov/groundwater/bulletin118/gwbasin_maps_descriptions.cfm [as of Feb. 4, 2014].)[6] A map of all eight basins appears in the record at **AR2, Tab 165, at p. 21**.

Although all users pump from the groundwater basins in common, UWCD distinguishes municipal and industrial ("M&I") from agricultural users. (See AR1, Tab 62, at p. 32 [discussing Water Code section 75594]; AR2, Tab 53, at p. 32 [same].) Agricultural use includes that for the production of crops, livestock and aquaculture. M&I use includes most other uses, including drinking water served by public and private utilities and irrigation of golf courses, parks and athletic fields. (*Ibid.*) M&I users are charged three times what agricultural users are charged. (AR1, Tab 72, at p. 4 [Resolution 2011-12]; AR2, Tab 149, at p. 4 [same].)

Agriculture consistently uses more than 80 percent of District groundwater, while M&I use accounts for less than 20 percent. (AR1, Tab 22, at p. 59 [FY 2011–2012 budgeted "Groundwater revenue"]; AR2, Tab 106, at p. 48 [same for FY 2012–2013].) These percentages

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[6] The basins in issue here are listed under the heading "South Coast" basins and are numbered 4-4.02 to .07 and 4-8.

have remained relatively constant for decades. (See AR1, Tab 35, at p. 14 [1985 budget data].) Due to the 3:1 ratio of M&I to agricultural rates, however; M&I groundwater users pay more than 42 percent of UWCD's charges.[7]

II. UWCD RECHARGES WATER AT PARTICULAR POINTS IN ITS HYDROGEOLOGICALLY COMPLEX SERVICE AREA

A. The Agricultural Oxnard Plain and Pleasant Valley Basins are Uniquely Affected by Overdraft and Saltwater Intrusion

UWCD spends much of its funds to combat seawater intrusion in agricultural areas of the Oxnard Plain and Pleasant Valley Basins southeast of the City. (See AR1, Tab 62, at p. 69 ["No other part of the

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[7] For 2011–2012, UWCD forecast $1,995,000 in agricultural Zone A charges, $1,490,550 in agricultural Zone B charges, $1,188,450 in M&I agricultural charges and $1,368,000 in M&I Zone B charges. (AR1, Tab 22, at p. 59.) Thus, agriculture was budgeted to pay $3,485,550 ($1,995,000 + $1,490,550 = $3,485,550) and M&I was budgeted to pay $2,556,450 ($1,188,450 + $1,368,000 = $2,556,450). Of the total budgeted for receipts from Zone A and Zone B charges in FY 2011–2012 of $6,042,000, then, agricultural customers would pay 57.7% ($3,485,550 / $6,042,000 = 57.7%) and M&I customers would pay 42.3% ($2,556,450 / $6,042,000 = 42.3%).

District receives so much attention and effort"]; AR2, Tab 53, at p. 69 [same].) Overdraft in the Oxnard Plain has been a problem for decades; indeed, the District was formed to control it. (AR1, Tab 14, at p. 1 [1950 resolution "giving precedence to the areas in greatest distress which are presently recognized to be on the Oxnard Plain"]; see also AR1, Tab 21, at p. 4 ["The overdraft and the subsequent seawater intrusion of the Oxnard Plain have persisted to varying degrees over the last half century."]; AR2, Tab 30, at p. 4 [same].)

The southeastern Oxnard Plain and Pleasant Valley Basins alone within the District suffer from long-term overdraft and seawater intrusion. (AR1, Tab 60, at p. 13 [2011 Groundwater Report]; AR2, Tab 94, at p. 14 [2012 Groundwater Report].) However, UWCD's efforts have only served to shift seawater intrusion from one groundwater stratum to another. (AR1, Tab 21, at p. 4 [1998 Groundwater Model noting Ventura County ordinance requiring shift in pumping]; AR2, Tab 30, at p. 4 [same]; see also AR1, Tab 29, at p. 8 [2000 Groundwater Report Supplement discussing groundwater conditions]; AR2, Tab 178, at p. 8 [same].)

The District's own reports conclude that "the majority of the overdraft in the Oxnard [P]lain aquifers has been caused by agricultural pumping in the eastern/southern part of the plain." (AR1, Tab 62, at p. 34; AR2, Tab 53, at p. 34 [same].) The City's wells in the Oxnard Plain, however, are at its northwestern edge, away

from the pumping hole.[8] (*Ibid.*; see also AR1, Tab 78, at p. 13.) The District acknowledges it spends significant resources addressing agricultural overdraft in these two basins, and its "current operations and long-range planning efforts are focused heavily on that area." (AR1, Tab 62, at p. 69 [2011 Water Rate Study]; AR2, Tab 53, at p. 69 [same]; see also AR2, Tab 54, at p. 4 [Update Memorandum].)

B. The City's Basins Benefit Little from UWCD's Recharge Efforts

UWCD's factual argument depends on a post hoc assumption that recharge in one basin benefits equally groundwater users in every basin. However, its administrative records contradict this assertion. The City draws water primarily from the Mound and Santa Paula Basins, which UWCD's own data show benefit little from recharge efforts elsewhere. (See, e.g., AR1, Tab 98, at p. 24 ["The Mound Basin in Ventura, which has little connectivity to the

[8] Pumping groundwater creates what hydrogeologists call a "cone of depression" where groundwater levels are depressed in a cone-shaped area near the well. (AR2, Tab 25, p. 103 [DWR Groundwater Bulletin references "pumping depressions around extraction wells"]; see also http://en.wikipedia.org/wiki/Cone_of_depression, last visited Feb. 4, 2014 [defining "cone of depression"].) A significant area of depressed groundwater arising from many wells is colloquially known as a "pumping hole."

other basins managed by United"]; AR2, Tab 176, at p. 24 [same]; AR1, Tab 81, at p. 17 ["Santa Paula Basin doesn't respond to recharge at United Water's Saticoy spreading grounds."]; *id.* at p. 22 [map showing Santa Paula Basin and Saticoy spread grounds separated by Santa Clara River]; AR2, Tab 164, at p. 6 [UWCD rebuttal to City protest letter essentially conceding limited benefit to Mound and Santa Paula basins].) Unlike the over-pumped (and under-replenished) southeastern Oxnard Plain and Pleasant Valley Basins, the basins from which the City draws water are generally unaffected by agricultural-induced overdraft and seawater intrusion.[9]

The City overlies much of the Mound Basin and pumps groundwater there. (See, e.g., AR1, Tab 98, at p. 24 [Mound Basin is in the City]; **AR2, Tab 165, at p. 21** [depicting City wells in Mound Basin].) Despite its proximity to the coast, this basin does not suffer from overdraft or seawater intrusion. (AR1, Tab 35, at p. 5 ["Overdraft has not been determined to be a problem in the Mound Basin"]; AR1, Tab 82, at p. 17 [City extractions from Mound Basin are less than the safe yield].) UWCD's administrative records do not demonstrate meaningful hydraulic connection between Mound and

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[9] The parties here dispute the existence of agriculture-induced overdraft in the Santa Paula Basin. The point is not well reflected in the record on appeal and is not material for the present case. However, the City does not wish to mislead.

neighboring basins, despite UWCD's belated claims to contrary. (See, e.g., AOB at p. 7.) The seminal work on the District's groundwater basins, for example, concluded "there is essentially no possibility of water moving from the Oxnard aquifer to the Mound Basin." (AR1, Tab 4, at p. 5; see also AR2, Tab 5, at p. 70 [1959 Mann Report: "the underflow from the Santa Paula Basin to the Mound Basin is very small"].) "Additional aquifer testing, geophysical, water chemistry, and groundwater level data may be necessary to adequately define the subsurface flow between Santa Paula Basin and the adjacent Mound and Montalvo [i.e., Oxnard Forebay] basins." (AR1, Tab 34, at p. 9; see also AR2, Tab 66, at p. 13 ["Although there is general agreement that there is some hydraulic connection between Santa Paula Basin and the Mound Basin, the degree of connection is uncertain."].) In fact, groundwater levels in the Mound and Santa Paula Basins differ by about 60 feet – and at times more than 100 feet – which confirms "[t]he mountains and numerous faults are boundaries to ground water flow" between the two. (AR1, Tab 16, at p. 122; AR1, Tab 28, at pp. 62–63.) If these basins were part of a District-wide common pool, as UWCD belatedly alleges, groundwater levels and quality should be comparable in adjacent basins. As to Mound, however, the scientific evidence in UWCD's records demonstrates otherwise. (*Ibid.*; AR2, Tab 169, at pp. 9–10 [Mound Basin salt levels at 1,000 to 1,200 milligrams per liter]; AR2, Tab 50, at pp. 121 [water in Santa Clara River at Freeman Diversion

rarely exceeds 150 mg/l].) Thus, water in the Mound Basin is saltier than river water and the basins that it readily recharges.

Although the Mound Basin may receive some recharge from the Oxnard Forebay Basin (AR1, Tab 35, at p. 5 [referencing the Oxnard Forebay Basin as the "Montalvo Forebay Basin"], "[t]he majority of the recharge to the [Mound] basin is likely from precipitation falling on the outcrops of the aquifer in the hills to the northeast of the Mound basin." (AR1, Tab 28, at p. 17; AR1, Tab 29, at p. 18.) As a result, the District's groundwater recharge facilities, which include "[t]he Santa Felicia Dam [which impounds Lake Piru], the Piru Diversion and Spreading Grounds [on the shore of Lake Piru], and the in-river conveyance of the Santa Felicia Dam's yield waters," provide "indirect recharge to the Mound Basin" — at best. (AR1, Tab 10, at p. 19.) UWCD's own report **excludes** Mound Basin from the basins benefiting from releases from Lake Piru. (AR1, Tab 22, at p. 144 [listing only Piru, Fillmore, Santa Paula and Freeman Diversion as benefiting from lake releases].) Indeed, the District acknowledges that the Mound Basin "has little connectivity to the other basins managed by United" and "receives little benefit from United's recharge operations, in contrast to the other basins managed by United." (AR1, Tab 98, at p. 24; AR2, Tab 176, at p. 24 [same]; AR1, Tab 62, at p. 29; AR2, Tab 53, at p. 29 [same].)

The City also pumps from the western part of the Santa Paula Basin. **(AR2, Tab 165, at p. 21.)** This basin is managed cooperatively

under a 1996 stipulated judgment. (E.g., AR1, Tab 30, at p. 3.) The City uses a very small percentage of groundwater pumped there, well below its entitlement under the judgment. (AR1, Tab 34, at p. 39 [City has a nearly 12,000 acre-feet cumulative 7-year surplus of entitlement over pumpage]; see also AR1, Tab 30, at p. 11 [in 2000, City pumped 1,621 AF from the Santa Paula basin while others pumped 25,069 AF]; AR1, Tab 31, at p. 12 [in 2003, figures are 316 AF and 21,974 AF]; AR1, Tab 32, at p. 12 [in 2005, the figures are 2,046 AF and 21,626 AF]; AR1, Tab 33, at p. 38 [City retained 11,000 AF entitlement surplus in 2007].)

The District also concedes "Santa Paula Basin doesn't respond to recharge of United Water's Saticoy spreading ground," which borders the Santa Paula Basin to its southeast.[10] (AR1, Tab 81, at pp. 17, 22; see also AR2, Tab 164, p. 6 [UWCD rebuttal to City protest: "UWCD concurs that the Santa Paula Basin does not respond to spreading operations in the Forebay and does not imply that it does"].) Although the Piru and Fillmore Basins – upstream from the Santa Paula Basin – receive groundwater recharge from surface water releases, the Oakridge Fault impedes recharge of the Santa Paula Basin. (AR1, Tab 62, at p. 50; see also AR1, Tab 34, at p. 9.) The administrative records indicate the Santa Paula Basin

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[10] This fact confirms the hydrogeology used to delineate the basin, because ample groundwater flow across that boundary would belie the geologic structures used to define it.

received only about five percent of the benefit of Lake Piru releases from 2008 to 2010, as compared to approximately 42 percent and 14 percent for the Piru and Fillmore Basins, respectively. (AR1, Tab 22, at p. 144; AR2, Tab 168, at p. 150 [graph attached to FY 2011–2012 budget showing minimal recharge of Santa Paula Basin and none of Mound Basin from Lake Piru Releases]; see also AR1, Tab 24, at p. 10 [only 9% of lake releases flow to Santa Paula Basin and Freeman Diversion collectively]; AR1, Tab 25, at p. 14 [failing to quantify benefit to Santa Paula from surface water releases]; AR1, Tab 26, at p. 3 [same]; AR1, Tab 27, at p. 10 [same].)

If nothing else, the overwhelming majority of data in the administrative records support the conclusion that each basin responds to recharge differently, such that recharge in one has little or no effect on water supply in another.

C. UWCD's "Common Pool" Theory Is Unsupported by its Own Administrative Records

In its ratemaking for fiscal year 2012–2013,[11] conducted after the City filed the first of the two suits at bar, the District disclosed newfound "evidence" suggesting the eight groundwater basins it

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[11] The District's principal act refers to "water years." (Wat. Code § 75574 [mandatory findings for groundwater charge levy].) The administrative records refer to "fiscal years." The terms are synonymous and this brief uses the latter.

(and the State Department of Water Resources) have distinguished for decades actually function as a "common pool." (AR2, Tab 54, at pp. 4–5 [Update to 2011 Water Rate Study].) The evidence cited for this theory dates from the 1950s, and was subsequently abandoned for half a century in light of the more accurate and recent studies cited above. (See AR1, Tab 10, at p. 19.)

Under this putative "common pool" theory, all eight basins are interconnected such that pumping in one affects equally every groundwater user in every other basin. (*Ibid.*) Although this simplistic theory may be convenient to defense of these suits, it cannot account for the hydrogeological conditions of the eight basins nor explain the District's own basin management activities. (See AR1, Tab 60, at p. 15 ["The balance for each groundwater basin is determined individually."].) For example, to comply with Water Code requirements, UWCD determines annual groundwater conditions by calculating the water balance of each basin. (*Ibid.*; AR2, Tab 94, at p. 17 [same].) It continues to define basins based on John Mann's 1959 "Plan for Groundwater Management." (AR1, Tab 60, at p. 16 ["The areas for groundwater basin (Piru, Fillmore, Santa Paula, Mound, Forebay, and Oxnard Plain) are from John Mann's 1959 report to the District."]; AR2, Tab 94, at p. 18 [same].) Unsurprisingly, conditions in the basins vary and the simplicity the District would find convenient does not exist.

According to the District's 1998 Surface and Groundwater Conditions Report, "The groundwater basins within the District vary in their water production and ability to be recharged rapidly. The hydraulic connection between basins also varies across the District." (AR1, Tab 28, at p. 16; AR2, Tab 177, at p. 16 [same].) UWCD cannot genuinely dispute this, as it acknowledges that long-term overdraft and seawater intrusion plague the Oxnard Plain and Pleasant Valley Basins, but not others. (9 JA, Tab 81, at pp. 1915–1916.)[12] Its records are replete with evidence, just a fraction of which is cited in this brief, that the basins do not respond uniformly to recharge, and that their hydrogeology is complex. (See **AR2, Tab 165, at p. 21** [groundwater flow map].) Indeed, were it otherwise, the basins would not have been delineated by hydrological reports and accepted by the Department of Water Resources in California's Groundwater Bulletin 118 or by decades of the District's own practice.

The District's novel "common pool" theory thus oversimplifies hydrogeology and groundwater availability and is unsupported by even the record of the FY 2012–2013 rates in which it was suggested for the first time in 50 years.

In UWCD's rate-making hearings, the City questioned the District's allocation of costs for recharge in one basin to all

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[12] Citations to the Joint Appendix are in this format: [Volume] JA, [Tab #], at p. [#].

groundwater users via the District-wide Zone A charge (but, inconsistently, not the costs of the Freeman Diversion Dam, charged to a smaller Zone B only). (AR1, Tab 78 [June 2011 City protest letter]; AR1, Tab 79 [second June 2011 City protest letter]; AR2, Tab 165 [June 2012 City protest letter].) Rather than calculating the proportional benefits to each basin — and thus to pumpers in those basins — as article XIII D, section 6, subdivision (b)(3)[13] requires, UWCD instead adopts a Procrustean model of hydrogeology, dusted off from its early history. However, this newly resurrected "common pool" theory cannot substitute for record evidence of the proportional cost to serve pumpers like the City.

III. UWCD'S GROUNDWATER EXTRACTION CHARGES BELIE ITS NEWFOUND COMMON-POOL THEORY

UWCD funds its services with:

- property taxes,
- the charges challenged here (identified in the record as "pump charges"),

[13] This provision of Proposition 218 states: "The amount of a fee or charge 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."

- fees on those who buy its surface water (identified as "water delivery fees"), and
- investment earnings.

(AR1, Tab 62, at p. 10; AR1, Tab 22, at p. 57.) UWCD requires all pumpers in its District-wide Zone A to pay a uniform fee per acre-foot ("AF") of water pumped without respect to the basin from which water is drawn, though UWCD requires M&I users to pay three times the fee charged agricultural users. (AR1, Tab 62, at pp. 30 [uniform fees], 32 [3:1 ratio].)

A. The District-Wide Zone A Charge Funds UWCD's "General Fund"

The Board established two rate zones under Water Code sections 75540 and 75591. (See AR1, Tab 72, at p. 3 [Reso. 2011-12]; AR2, Tab 149, at p. 3–4 [Reso. 2011-11].) Zone A includes the whole District. (AR1, Tab 72, at p. 3; AR2, Tab 149, at p. 3 [same]; see also **AR2, Tab 111** [map of UWCD Groundwater Finance Zones].) Zone A charges fund the District's "General Fund" and pay for facilities and operations it contends equally benefit all pumpers from Lake Piru to Point Mugu (AR1, Tab 62, at p. 12; AR1, Tab 65, at p. 2; AR1, Tab 72, at pp. 4–5); even while acknowledging, as it must, that not all basins benefit equally from its efforts. (AR1, Tab 62, at pp. 29 ["Mound Basin ... receives little benefit from United's recharge operations, in contrast to the other basins managed by United."]; *id.* at p. 69 ["No

other part of the District receives so much attention and effort" as "the eastern/southern Oxnard Plain"]). As detailed below, however, some expenses funded by this charge are entirely unrelated to groundwater use.

After the City filed the first of the two suits here, UWCD established three subfunds in its General Fund, introducing a Water Conservation subfund. (AR2, Tab 106, pp. 42–45 [FY 2012–2013 budget].) The District purports to devote this subfund to groundwater management activities. (*Id.*, at pp. 42–43.) The City would applaud UWCD had this response to the litigation actually made substantive change in its use of Zone A charges. However, despite labels, UWCD continues to treat the charges as discretionary monies to be used for any purpose. All three subfunds benefit from the proceeds of the charge and continue to be used for such expenses as property tax collection fees payable to Ventura County, the District's obligation for a share of the budget of the Ventura County Local Agency Formation Commission (LAFCO), and "[r]ecreational [a]ctivities (including potable water services) at Lake Piru." (*Id.*, at p. 44.). The Water Conservation subfund continues to cover expenses such as chemicals used to treat water delivered to Lake Piru's concessionaire and purchases of imported water piped to agricultural users — neither of which has meaningful benefit to groundwater pumpers like the City. (*Id.* at p. 49.) Thus, despite creating new subfunds, UWCD continues to use Zone A charges to

fund activities unrelated to groundwater management, and largely for the benefit of agricultural groundwater users. The bottles have new labels, but the wine is unchanged.

A uniform, district-wide charge cannot be justified in light of the disparate hydrogeology of the District's eight basins detailed above. Moreover, funds paid in common by pumpers throughout the District are expended so as to benefit only some. Indeed, there are **no** capital programs in the District's budget to benefit the basins from which the City draws water, but many expensive projects to benefit those which primarily benefit agricultural users in the Oxnard Forebay and Pleasant Valley Basins, including:

- Operation of the recharge projects described above. (AR1, Tab 22, at p. 21.)
- Studies of potential DWR imports to replace water used for recharge in agricultural areas. (AR1, Tab 62, at p. 110 [Policy Issue B) 9)]; AR2, Tab 53, at p. 110 [same].)
- A three-year investigation of seawater intrusion near Port Hueneme and Point Mugu — areas from which the City does not draw water. (AR1, Tab 22, at p. 25 [first whole bullet point].)
- Purchase of land for the Ferro-Rose Recharge Project "essentially an extension of the Freeman Diversion

project"[14] which will benefit agricultural groundwater users in the Oxnard Plain Basin. (AR1, Tab 62, at p. 46; see also AR1, Tab 22, at p. 14 ["the Board approved the following budget policies: ... 4) purchase costs for the Ferro property will be paid from the General Fund"]; AR2, Tab 106, at p. 106 [CIP summary of Ferro-Rose Recharge Project].)

- The environmental Impact Report for the Ferro-Rose Project. (AR1, Tab 62, at pp. 46–47 ["This is also called the 'Ferro-Rose Recharge Project.' It is a General Fund CIP [capital improvement project], with the EIR to be funded from the General Fund. The Board will decide in the future how to fund the actual construction of the project."]; AR2, Tab 106, at p. 105 [CIP summary of Ferro-Rose Recharge Project].)
- A security fence for the Ferro-Rose property. (AR1, Tab 22, at p. 129 [project to be funded from 2009 Certificates of Participation]; AR2, Tab 106, at pp. 119–

[14] The Zone B charge isolates Freeman Diversion expenses and charges them to agricultural groundwater users in this portion of the District. Why, then, is it appropriate to ask fee payors throughout the District to provide funds for an extension of this system from which UWCD admits they do not benefit?

120 [CIP summary of Ferro Rose Security Fencing project].)

- Certificates of Participation ("COPs") to finance the Noble Basin Reservoir in the Oxnard Forebay[15] and projects for other basins. (AR1, Tab 10, at pp. 15–16 [Certificates of Participation "will continue to repaid at least in part by groundwater extraction charges"].)
- A pilot seawater barrier well in the Oxnard Plain.[16] (AR1, Tab 22, at p. 14 ["the Board approved the following budget policies: ... 5) construction of the first pilot seawater barrier well will be paid from the General Fund".)

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[15] This project is designed to "recharge the aquifers underlying the Oxnard Forebay and Oxnard Plain" which, as detailed above, provide little benefit to the City. (AR2, Tab 50, at p. 16.)

[16] UWCD staff believes the larger seawater barrier well project, which is temporarily suspended, should not be funded by Zone A revenues. (AR1, Tab 62, at p. 47 ["since seawater intrusion is not an issue in the upstream basins, staff believes that the full-scale project should not be funded by the General Fund."].) Why, then, should preparations for it be funded by those revenues?

- New valves at the El Rio Spreading Ground. (AR2, Tab 106, at pp. 139–140 [CIP summary of El Rio Spreading Valve Control project].)

Furthermore, although agriculture uses over 80 percent of District groundwater, it pays just 57.7 percent the cost due to the 3:1 ratio of M&I to agricultural rates in issue here.[17] Thus, M&I pumps one-fifth the groundwater but pays more than two-fifths the groundwater charges.

B. The District Applies its Zone B Charge Only to those Who Benefit from the Freeman Diversion Dam

Zone B is the subarea of the District which UWCD asserts benefits from its Freeman Diversion Dam on the Santa Clara River. (AR1, Tab 72, at pp. 4–5; AR2, Tab 149, at pp. 4–5 [same]; see also **AR2, Tab 111** [map of Zones A & B].) Its principal act authorizes such subzones:

> The ground water charges are authorized to be levied upon the production of ground water from all water-producing facilities, whether public or private, within the district or a zone or zones thereof **for the benefit of all who rely directly or indirectly upon the ground water supplies of** the district or **a zone** or zones thereof

[17] This calculation appears in footnote 7 above.

and water imported into the district or a zone or zones thereof.

(Water Code section 75522 [emphasis added].)

Thus, UWCD's establishment of Zone B reflects its conclusion that only groundwater users in that zone benefit from operation and maintenance of the Freeman Diversion Dam. (AR1, Tab 72, at p. 3; AR2, Tab 149, at p. 3 [same].) If the entire District is a "common pool," how can this be? While the District defends its Zone A charge on its new-found "common pool" theory, its maintenance of a smaller Zone B indicts its own theory. UWCD does not explain this inconsistency.

The District applies the same 3:1 ratio to its Zone B charge as to the district-wide Zone A charge and M&I pays the same disproportionate share of revenues to the Freeman Diversion Fund as to the General Fund. (AR1, Tab 22, at p. 78 [FY 2011–2012 budget]; AR2, Tab 106, at p. 67 [FY 2012–2013 budget].) Wells in Zone B are subject to both the Zone A and Zone B extraction charges, including the City's wells in West Las Posas Basin. (See **AR2, Tab 111** [map of Zone B]; **AR2, Tab 165, at p. 21** [map locating City wells].)

C. UWCD Increased Rates 46 Percent in 2011–2012

On June 8, 2011, the Board adopted the charges for the 2011–2012 fiscal year, leaving Zone B rates unchanged from the previous year. (AR1, Tab 65; AR1, p. 1 [Reso. 2011-08 listing FY 2010–2011 and

2011–2012 rates]; AR 1, Tab 72, p. 4 [Reso. 2011-12 imposing new rates].) The Board increased Zone A charges 46 percent from $58.50 to $85.50 per AF for M&I users and from $19.50 to $28.50 per AF for agricultural users. (AR1, Tab 65, at p. 1.)

In doing so, the District purported to implement Proposition 218's notice and hearing procedures for new or increased property related fees under article XIII D, section 6. It did not hold the election required by subdivision (c) of that section. (AR1, Tab 64; AR1, Tab 65 at p. 1 [staff recommendation to adopt rates after protest hearing under art. XIII D, § 6, subd. (a); silence as to election under subd. (c)]; see also AR1, Tab 73, at pp. 11–12 [transcript of majority protest hearing in which Board President notes that Board will adopt rates following protest hearing; again no reference to election].)[18] UWCD has represented that Proposition 218 applies to increases in its charges. (E.g., AR1, Tab 10, at p. 17 [District Controller states at protest hearing: "These recommended charges proposed for adoption represent an increase from current groundwater charges, and are subject to Article XIII D Section 6,

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[18] A recent decision confirms that although groundwater charges are subject to Proposition 218's notice, hearing, and substantive, requirements; they are charges for "water service" exempt from the election requirement of article XIII D, section 6, subdivision (c). (*Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586, 596.)

Subdivision (b) ... .].) It has explained that "[a]ny increase in the District's two groundwater extraction charges must be done in adherence to Proposition 218 notification and qualification requirements." (AR2, Tab 168, at p. 14.) Indeed, UWCD's budget submittal policy requires additional time to provide notice "[w]hen a rate adjustment requires Proposition 218 (Article XIII D) compliance." (AR1, Tab 22, at p. 163 [7/1/2011 Budget Submittal Policy]; AR2, Tab 168, at p. 168 [same].) UWCD's 2011 Water Rate Study quoted its General Manager's reply to a question from a city as to the conflict between Proposition 218 and the Water Code: "We would have to obtain a legal opinion", but the two records reflect none. (AR1, Tab 62, at p. 101 [UWCD General Manager Mike Solomon's reply to Michelle Romney, City of Oxnard].) UWCD, of course, takes a different view of Proposition 218 in defense of these suits.

The City timely protested the fiscal year 2011–2012 rates under article XIII D, section 6, subdivision (a)(2). (AR1 Tabs 78, 79.) When its protest went unheeded, the City brought the first of two actions at bar. (1 JA, Tab 1.)

D. UWCD Increased Rates Another 39 Percent in 2012–2013

Despite its 46 percent rate increase a year earlier, on June 13, 2012, the Board increased Zone A charges a further 39 percent —

more than doubling the charges in two years. (See AR2, Tab 142, at p. 1 [Reso. 2012-07].) The new rates were $119.50 per AF for M&I and $39.75 per AF for agriculture. (*Ibid.*) It maintained the Zone B charges, including the 3:1 ratio benefiting agriculture at the expense of M&I. (AR2, Tab 149 at p. 4 [Reso. 2012-11].)

As in 2011, UWCD followed Proposition 218's procedures; again without the election subdivision (c) of article XIII D, section 6 requires of most fees. (AR2, Tab 142, at p. 2 [Reso. 2012-07 reciting majority protest proceeding, but silent as to election].) The City again protested and, after UWCD adopted the charges, the City brought the second action here. (4 JA, Tab 33, at p. 690.)

STATEMENT OF THE CASE

The City filed its first suit on August 5, 2011 to challenge UWCD's 2011–2012 charges in a "reverse-validation action" pursuant to Code of Civil Procedure section 663. (1 JA, Tab 1, at p. 1.) The City filed a Petition for Writ of Traditional Mandate (Code of Civ. Proc. § 1085), a Petition for Administrative Mandate (Code of Civ. Proc. § 1094.5), a Complaint for Declaratory Relief, and a Complaint for Determination of Invalidity (Code of Civ. Proc. § 863). (*Ibid.*) The City alleged that the 2011–2012 rates violated Propositions 218, 13, and 26, the common law of ratemaking, and Government Code section 54999.7 ("*San Marcos* legislation"). (*Ibid.*) The City filed in Ventura County Superior Court and moved for neutral venue pursuant to Code of Civil Procedure section 394; the case was transferred to Santa Barbara County. (2 JA, Tab 336). The California Federation of Farm Bureaus and the Ventura County Farm Bureau timely answered the validation complaint and intervened as to the other claims. (2 JA, Tab 256, at p. 257.) The Pleasant Valley County Water District, a municipality which serves agricultural water users in the over-drafted Pleasant Valley basin, did the same and the parties stipulated to its intervention. (1 JA, Tab 219.)

On August 7, 2012, the City brought its challenge to the charges imposed for fiscal year 2012–2013, which mirrored the first case. (4 JA, Tab 33, at p. 690.) The City related the two cases. (4 JA, Tab 39, at p. 795; 4 JA, Tab 40, at p. 800.) Again, the City filed in Ventura Superior Court, but the parties stipulated to Santa Barbara venue. Again, the Farm Bureaus and the Pleasant Valley County Water District timely answered the validation complaint and intervened as to the non-validation claims. (5 JA, Tab 54, at p. 968.)

UWCD prepared, certified, and lodged separate administrative records for the two cases, which the Court consolidated for trial. (4 JA, Tab 41, at p. 804 [Notice of Lodging of AR1]; 9 JA, Tab 73, at p. 1768 [Certification of AR2]; 5 JA, Tab 55, at p. 980 [Case Mgmnt. Order (10/23/12) § 7(A)].)[19]

The trial court divided trial into three[20] phases: Phase 1 to determine whether any or all of Propositions 13, 218 and 26,

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[19] Although consolidation was for trial only, the court treated them as consolidated for all purposes, issuing a single statement of decision and a single judgment, from which UWCD timely appealed and the City timely cross-appealed.

[20] Initially, the court ordered just two. (3 JA, Tab 28, at p. 595 [Case Mgmnt. Order (May 15, 2012) § 10(A)].) However, following briefing and argument of Phase 2, it ordered an additional phase to determine the City's remedy. (10 JA, Tab 88, at p. 2158.)

Government Code section 54999.7 or the common law of ratemaking applied to the charges; Phase 2 to apply the law as determined in Phase 1 to the facts evidenced in the administrative records; and Phase 3 to address remedy for violations determined in Phase 2.

The Court heard Phase 1 on October 2, 2012, deciding that identification of the applicable law required consideration of the administrative record in Phase 2. Following Phase 2 of trial, the trial court concluded:

(1) UWCD's charges were not subject to validation,

(2) The charges violated Proposition 218 (and therefore Proposition 26 was inapplicable),[21] and

(3) The charges did not violate the common law of rate making, Proposition 13, or the *San Marcos* legislation. (10 JA, Tab 88, at p. 2158 [Notice of Ruling Adopting Tentative Decision, May 1, 2013, p. 36].)

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[21] Proposition 26 — adopted in 2010 — amended Article XIII C, one of two articles adopted by Proposition 218 in 1996. It defines as taxes requiring voter approval all local government revenue measures not included in one of seven stated exceptions. The seventh excludes from Proposition 26 revenue measures governed by Proposition 218: "As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following: ... (7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D." (Art. XIII C, § 1, subd. (e)(7).)

Although Phase 2 was originally intended to address the City's remedy, the trial court requested further briefing to determine "the appropriate remedy or remedies consistent with the court's resolution" of the merits of the case. (*Ibid.*)

The trial court heard argument of Phase 3 on July 23, 2013. (12 JA, Tab 105, at p. 2501.) It adopted the second of two remedies suggested by the City: a refund of any charges in excess of what the City would have been charged if M&I and agricultural customers paid at equal rates plus seven percent, simple pre-judgment interest pursuant to article XV, section 1. (12 JA, Tab 112, at p. 2578.)

The refund was tallied according to a detailed calculation stated in the City's Phase 3 brief supported by copious citations to the administrative records. (See **10 JA, Tab 92, at pp. 2233–2234** [Tables 1 and 2]; *id.*, at pp. **2238–2245** [annotated excerpts of Administrative Records to support Tables].) UWCD's reply to the City's Phase 3 brief argued that no refund should be granted but that, instead, the court should simply remand to UWCD for renewed ratemaking. UWCD's opposition brief did not question the City's refund calculation. (11 JA, Tab 95, at p. 2285 [Table of Contents of UWCD Phase 3 Opposition Brief]; *Id.*, at pp. 2297–2298.) UWCD made its first objections to that calculation at oral argument following posting of Judge Anderle's tentative ruling on Phase 3.

(RT 48:11–15.)[22] In that oral argument, UWCD failed to offer a detailed calculation or citations to administrative record which would support its critique of the refund calculation. (*Ibid.* at pp. 2297–2298 [opposition to City's full-refund remedy; silent as to partial refund remedy].) Judge Anderle rejected the argument, adopting the refund calculation offered by the City's Phase 3 brief as stated in his tentative ruling. UWCD also objected to the court's statement of decision on this ground, seeking to introduce a declaration of its General Manager stating in conclusory terms that the refund calculation omitted a factor. (2 JA, Tab 106 [opposition], *id.,* Tab 107 [Solomon Declaration].) It did not file a motion for new trial, but rather appealed. (12 JA, Tab 114, at p. 2590.)

The lower court issued its final order and writ on September 6, 2013. (12 JA, Tab 112, at p. 2579.) UWCD paid the refunds and made an uncontested return to the trial court's writ, pursuant to the parties' stipulation that the City would repay these amounts should this Court reverse. The City gave notice of entry of judgment on September 12, 2013 (*ibid.*) and UWCD timely appealed on October 1, 2013. (12 JA, Tab 114, at p. 2590.) The City timely cross-appealed on October 21, 2013. (12 JA, Tab 116, at p. 2615.) Intervenors Farm Bureaus and Pleasant Valley Water District have not participated in this appeal.

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[22] Citations to the Reporter's Transcript are in the form: RT [page] : [lines].

SUMMARY OF TRIAL COURT RULINGS

The trial court made the following findings and conclusions:

- UWCD's Groundwater Extraction Charges are "property related fees" subject to Proposition 218. (10 JA, Tab 88, at p. 2123.)
- UWCD did not meet its burden to prove compliance with article XIII D, section 6, subdivision (b)(3) to the extent that groundwater extraction charges for 2011–2012 and 2012–2013 impose different rates on those who exploit groundwater rights for agricultural use and those who do so for M&I uses. (*Ibid.*)
- UWCD's records show the charges were based on Water Code section 75594's mandate of a 3:1 ratio of M&I fees to agricultural fees, not any demonstrated difference in the cost to serve these customer classes. (*Id.*, at p. 2157.)
- UWCD had met all other constitutional, statutory and common law standards raised in the complaints. (*Id.*, at pp. 2140 [Prop. 13], 2150 [Prop. 26], 2151 [common law of utility ratemaking and Gov. Code § 54999.7].)[23]

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[23] Because the trial court judgment can be sustained on any proper basis, the City need not restate arguments regarding validation, Proposition 13 and the common law of utility ratemaking that the trial court did not accept. Rather, this brief defends the appeal and the trial court's ruling arguing only Propositions 218 and 26,

The trial court refrained from concluding that Water Code section 75594's mandated 3:1 ratio of M&I to agriculture rates necessarily violates Proposition 218, concluding only that UWCD failed to demonstrate on these administrative records that the 3:1 ratio comports with article XIII D, section 6, subdivision (b)(3)'s requirement that each fee payor pay no more than the proportional cost of service reasonably attributable to its wells. (*Id.*, at p. 2157.)

In concluding that the District's charges in toto (as apart from their allocation as between M&I and agricultural groundwater users) reflected its cost of service, the trial court accepted UWCD's newfound "common pool" theory, allowing district-wide allocation of recharge costs, and not addressing the inconsistency of UWCD's Zone B charge — which limits cost recovery for the Freeman Diversion Dam to part of the District. (*Id.*, at pp. 2138, 2140.) The trial court also dismissed with very brief discussion the City's objections to UWCD's General Fund expenses which are not shown to benefit groundwater recharge. (*Id.*, at pp. 2137–2139.) The City challenges these last two conclusions by cross-appeal.

UWCD's principal act, and the *San Marcos* legislation (Gov. Code § 54999.7).

STANDARDS OF REVIEW AND BURDENS OF PROOF

The City largely shares UWCD's view of the standard and scope of this Court's review, but clarifies a few points.

I. BUT FOR REMEDY, THIS COURT'S REVIEW IS DE NOVO

In light of Proposition 218, courts no longer review the constitutionality of taxes, fees and assessments with deference to rate-makers. Instead, courts independently judge whether revenue measures satisfy the 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 subject to Article XIII D] (*"Palmdale"*); *Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586, 600–601 (*"Pajaro II"*).) [same].)

Review of factual issues is de novo, too. Because the trial court reviewed a "cold" administrative record, this Court is equally well placed to review it.[24] Appellate review is therefore de novo.

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[24] Under *Western States Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559, judicial review of legislative water rate-making is

(*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 as to traditional mandate].) As our Supreme Court recently stated:

> 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].)

A trial court sitting in equity[25] has broad discretion to fashion relief, and remedy is reviewed for abuse of discretion. (*In re Estates of Collins* (2012) 205 Cal.App.4th 1238, 1246.) Furthermore, this Court resolves all evidentiary conflicts in favor of an equitable judgment. (*Ibid.*)

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generally limited to the administrative record of the agency's proceedings.

[25] Mandamus is, of course, an equitable action. (*California Ass'n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 705.)

Thus, this Court's review is de novo as to all issues of fact and law except the appropriateness of the remedy, which is reviewed for abuse of discretion.

II. UWCD BEARS THE BURDENS OF PRODUCTION AND PERSUASION

The UWCD bore the burden at trial, as here, to provide an administrative record sufficient to demonstrate the lawfulness of its charges. (See *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 Cal.App.3d 227, 235 [agency bears the burden of production in challenge to water fee as special tax requiring voter approval under Prop. 13]; *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 436–437 [rate-maker bears burden to produce evidence to justify rate once plaintiff makes prima facie showing of invalidity].) Thus UWCD's charges fall if it does not present an administrative record adequate to demonstrate compliance with our Constitution. (See *Howard Jarvis Taxpayers Ass'n v. City of Fresno* (2005) 127 Cal.App.4th 914, 927 ("*Fresno*") [invalidating transfer from water utility to general fund under Prop. 218 because no cost justification in rate-making record].)

Both Propositions 218 and 26 expressly place the burden of persuasion upon UWCD.[26] (Art. XIII D, section 6(b)(5) ["In any legal

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[26] Although article XIII C, section 1, subdivision (e)(7) exempts from Prop. 26's definition of the taxes which require voter approval

action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article."]; art. XIII C, section 1(e), final unnumbered paragraph ["The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity."].)

"property-related fees imposed in accordance with the provisions of Article XIII D" [i.e., Proposition 218], it is not clear that voters intended to exempt property related fees from the burden of proof provision of Proposition 26.

ARGUMENT

I. NEITHER RECORD SHOWS THE CHARGES ARE PROPORTIONATE TO SERVICE COST AS PROPOSITION 218 REQUIRES

The trial court correctly concluded Proposition 218 governs UWCD's rates. Indeed, UWCD's claim a "regulatory fee" is necessarily outside Proposition 218 was rejected by the Supreme Court a decade ago. Further, the trial court correctly determined that the two administrative records here do not support the 3:1 ratio of M&I to agricultural rates.

A. UWCD Cannot Prove Its Rates Do Not Exceed the Proportional Cost of Serving the City

Proposition 218's places both procedural (art. XIII D, § 6, subd. (a)) and substantive (art. XIII D, § 6, subd. (b)) limits on property related fees. The City has no complaint with UWCD's procedural compliance in the cases at bar.

Substantively, however, UWCD fails. Article XIII D, section 6, subdivision (b) requires that:

1. UWCD's rates not raise more revenue than the cost to serve all customers (subdivision (b)(1)),
2. rate revenue not be used for any purpose other than the service for which rates are imposed (subdivision b)(2)),

3. the amount charged any parcel not exceed the proportional cost of the service attributable to that parcel (subdivision (b)(3)),

4. the service for which the rates are charged be actually used by, or immediately available to, each fee payor (subdivision (b)(4)), and

5. the rates not be imposed for "general governmental services ... available to the public at large in substantially the same manner as it is to property owners." (subdivision (b)(5).)

UWCD violated all of these.

B. The Trial Court Properly Concluded that Proposition 218 Applies to UWCD's Charges

The trial court correctly determined that UWCD's charges are property related fees subject to article XIII D, section 6, subdivision (b). (10 JA, Tab 88, at pp. 2123, 2146 [Phase 2 ruling]; 12 JA, Tab 105, at p. 2503 [Phase 3 ruling].) The trial court found UWCD's charge to be substantially the same as that considered in *Pajaro I.* Both are charges "not actually predicated upon the use of water but on its extraction, an activity in some ways more intimately connected with property ownership than is the mere receipt of delivered water." (*Pajaro I, supra,* 150 Cal.App.4th at p. 1391; compare 10 JA, Tab 88, at pp. 2144–2145 [Phase 2 Statement of Decision].) Accordingly, *Pajaro I* bound the trial court here. (*Auto*

Equity Sales, Inc. v. Superior Court (1962) 57 Cal.2d 450, 455 ["Decisions of every division of the District Courts of Appeal are binding upon ... all the superior courts of this state ...."].)

Contrary to UWCD's claims (AOB at p. 29), there is no meaningful difference between the groundwater fee authorized by UWCD's principal act — the Water Conservation District Law of 1931 — and that by the Pajaro Valley Water Management Agency Act. (West's Ann. Cal. Wat. Code App., § 124-1 et seq.) Both statutes authorize charges on those who operate groundwater wells to fund services to recharge and protect groundwater basins. The Water Conservation District Law authorizes the fee in issue here as follows:

> Ground water charges levied pursuant to this part are declared to be in furtherance of **district activities in the protection and augmentation of the water supplies** for users within the district or a zone or zones thereof which are necessary for the public health, welfare, and safety of the people of this state.

(Wat. Code, § 75521 [Emphasis added].)

> The ground water charges are authorized to be **levied upon the production of ground water from all water-producing facilities**, whether public or private, within the district or a zone or zones thereof **for the benefit of all who rely directly or indirectly upon the ground water supplies of the district**

or a zone or zones thereof and water imported into the district or a zone or zones thereof.

(Wat. Code, § 75522 [Emphasis added].)[27]

> The proceeds of ground water charges levied and collected upon the production of water from ground water supplies within the district or a zone or zones thereof shall be used exclusively by the board for the district purpose authorized by this division.

(Wat. Code, § 75523.)

The statute requires registration of ground water producing facilities (wells) and allows the board to require meters. (Wat. Code, §§ 75541 – 75544.) Failure to register a well, producing water from an unregistered well, and interfering with a meter are subject to criminal prosecution. (Wat. Code, §§ 75640 – 75642.)

Pajaro Valley Water Management Authority's ("PVWMA") authority is stated in similar terms:

> The agency may, by ordinance, levy groundwater augmentation charges on the extraction of groundwater

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[27] Water Code section 75504 defines "water-producing facility" as "any device or method, mechanical or otherwise, for the production of water from the ground water supplies within the district." In common parlance, a well.

> from all extraction facilities within the agency for the purposes of paying the costs of purchasing, capturing, storing, and distributing supplemental water for use within the boundaries of the agency.

(West's Ann. Cal. Wat. Code App., § 124-1001.)[28] The statute defines "supplemental water" as:

> "Supplemental water" means surface water or groundwater imported from outside the watershed or watersheds of the groundwater basin, flood waters that are conserved and saved within the watershed or watersheds which would otherwise have been lost or would not have reached the groundwater basin, and recycled water.

(*Ibid.*, § 124-316.) The law governing PVWMA authorizes registration of wells (*ibid.*, § 124-601) and establishes penalties for violations including injunctive relief and civil penalties of up to $1,000 per day. (*Ibid.*, §§ 124-1101, 124-1108.) Thus PVWMA, too, is empowered to impose a charge on those who operate wells to fund its efforts to protect and augment water supplies.

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[28] The PVMWA Act defines "extraction facility" as "any device or method for the extraction of groundwater within the groundwater basin." Again, in plain language, a well. (West's Ann. Cal. Wat. Code App., § 124-306.)

There is no meaningful distinction between the charges UWCD and PVWMA impose — each funds groundwater replenishment efforts for the benefit of agricultural, rural residential, and M&I users. UWCD imposes the challenged charges on all groundwater pumpers — including agricultural and small domestic users, municipal water utilities and other retailers — to fund groundwater recharge. (AR1, Tab 62, at pp. 36–38; AR1, Tab 72, at pp. 3–5.) PVWMA does the same. (*Pajaro I, supra,* 150 Cal.App.4th at pp. 1372–1374.)[29]

The charges contested in *Pajaro I,* like those here, are based on the volume of groundwater pumped. (See *id.,* at pp. 1385–1386; AR1, Tab 62, at pp. 36–38 [2011 Water Rate Study discussion of various methods used to measure or estimate volume].) Consumption-based charges like those imposed by PVWMA and UWCD, and other consumption-based water fees, are subject to Proposition 218. (*Pajaro*

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[29] Both UWCD and PVWMA charge rural residential users. (See AR1, Tab 38; *Pajaro I, supra,* 150 Cal.App.4th at p. 1374.) UWCD notes (at AOB p. 31) that it has "fewer" domestic wells than PVWMA, but makes no effort to explain the relevance of this fact, or to demonstrate that number of domestic wells had any impact on *Parajo I*'s analysis. In general, one's constitutional rights do not depend on the number who share them.

I, supra, 150 Cal.App.4th at p. 1388 [citing *Bighorn-Desert View Water Agency v. Verjil* (2006) 216 Cal.4th 205, 217.)

Contrary to UWCD's assertions (AOB at p. 31), PVWMA's charges are not for piped water delivery, but for "the purchase/acquisition, capture, storage and distribution of supplemental water through the supplemental water projects ... and ... basin management monitoring and planning to manage the existing projects and to identify and determine future water projects that would further reduce groundwater overdraft and retard seawater intrusion." (*Pajaro II, supra,* 220 Cal.App.4th at p. 591.) Both agencies also serve — and charge separately for — piped water. (*Id.* at pp. 590–591 (describing PVWMA's recycled water, groundwater recharge and piped water programs); see AR2, Tab 50, at p. 17 [2011 Groundwater Report describing Pleasant Valley and Pumping Trough Pipelines].)

C. Settled Expectations Based on *Pajaro I* Should Not Be Disturbed Seven Years Later

UWCD cannot distinguish *Pajaro I,* and therefore asks this Court to disagree with it. *Pajaro I* has been published for nearly seven years, the Supreme Court declined to review or depublish it, and groundwater management agencies throughout the state have relied on its terms. The Sixth District recently reaffirmed *Pajaro I* in *Pajaro II.* (220 Cal.App.4th at p. 595 [augmentation charge subject to Prop. 218 but exempt from election requirement of art. XIII D, § 6,

subd. (c) as a fee for "water service"].) The Pajaro agency spent years complying with *Pajaro I* and defending its renewed groundwater charge that resulted from those efforts.

Moreover, PVWMA is not alone in its reliance on *Pajaro I*. Trial courts in Santa Clara, Santa Cruz[30], San Joaquin[31] and Los Angeles Counties have all followed *Pajaro I* in the last six years, requiring Proposition 218 compliance by groundwater agencies serving millions of Californians. (*Water Replenishment District of Southern California v. City of Cerritos* (2013) 220 Cal.App.4th 1450 [challenge to groundwater charges imposed in Central and West Basins underlying Los Angeles County]; see also MJN, Decl. of Michael R. Cobden, Exhs. B [Los Angeles] and C [Santa Clara].)[32] This whole portion of the water industry has adapted to these new rules at considerable effort and expense since 2007. Accordingly, public policy counsels against unsettling these expectations now without real cause.

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[30] This refers to *Pajaro I*.

[31] See 5 JA Tab 46, at p. 884 [request for judicial notice of *North San Joaquin Water Conservation District v. Howard Jarvis Taxpayers' Association*, 3d DCA Case No. C059758].

[32] The trial court briefing in cases arising in Santa Clara and Los Angeles Counties is attached to the Declaration of Michael R. Cobden, filed concurrently with this Brief, as is a Motion for Judicial Notice of those materials.

Failing to apply *Pajaro I* would gain UWCD nothing; it would be out of the Proposition 218 frying pan and into the Proposition 26 fire. Even if this Court were to disagree with *Pajaro I* and thereby invite Supreme Court review, Proposition 26 would require the result the trial court reached here. That measure limits local government rates and charges adopted after November 2010,[33] as were the charges here, to the cost of service unless they are approved by voters as taxes. (Art. XIII C, § 1, subd. (e)(2).)[34] Given that UWCD will bear the burden to prove its rates do not exceed the cost of serving the City whether or not this Court disagrees with *Pajaro I*, little is to be gained by undermining the settled expectations reflected in that decision only to require this Court to freshly construe[35] Proposition 26 to reach the same result.

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[33] *Brooktrails Township Community Services District v. Board of Supervisors of Mendocino County* (2013) 218 Cal.App.4th 195, 205 concluded that the local government provisions of Proposition 26 are not retroactive, although its state government provisions are.

[34] Proposition 26's exception for fees imposed by virtue of a government conferred benefit, on which UWCD relies (AOB at pp. 22–23), also imposes a cost limitation. Such fees may "not exceed the reasonable costs to the local government of conferring the benefit". (Article XIII C, § 1, subd. (e)(1).)

[35] Proposition 26 has been the subject of just three published cases since its November 2010 adoption, none of which addresses

Among UWCD's attacks on *Pajaro I* is a claimed conflict between Proposition 218 and the water conservation mandate of article X, section 2. (See AOB at pp. 36–37.) However, this Court has already concluded that the two can be harmonized without allowing ratemakers to ignore the proportionality requirement of article XIII D, section 6, subdivision (b)(3). (*Palmdale, supra,* 198 Cal.App.4th at pp. 936–937 ["article X, section 2 is not at odds with Article XIII D 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.'"].)

UWCD also argues *Pajaro I* ought to have limited Proposition 218 to fees for piped water service. (AOB, at p. 29.) Nothing in the text or legislative history of Proposition 218 suggests that limit. Nor does the Proposition 218 Omnibus Implementation Act of 1997 ("the Omnibus Act"), adopted without a dissenting vote in the Legislature as urgency legislation in the immediate aftermath of the adoption of Proposition 218 in 1996, and signed into law by

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groundwater augmentation charges. (See *Brooktrails Township Community Services District v. Board of Supervisors of Mendocino County* (2013) 218 Cal.App.4th 195, 206 [sewer and water service fees] ["*Brooktrails*"]; *Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, 1322 [retailer charge for paper bags]; *Griffith v. City of Santa Cruz* (2012) 207 Cal.App.4th 982, 997 [housing code compliance fee].)

then-Governor Wilson, support that distinction. Government Code section 53750, subdivision (m) provides: "'Water' means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water." The courts have repeatedly cited the Omnibus Act to construe Proposition 218. (E.g., *Greene v. Marin County Flood Control and Water Conservation Dist.* (2010) 49 Cal.4th 277, 286 [article XIII D, 6(c) election on property related fee is not subject to ballot secrecy requirement of article II, section 7]; *Pajaro II, supra,* 220 Cal.App.4th at p. 595 [groundwater augmentation charge is a fee for water service within the meaning of Gov. Code, § 53750(m) and therefore article XIII D, § 6(c)].)

D. Property Related Regulatory Fees Are Subject to Proposition 218

UWCD vigorously claims its charges are "regulatory" in the apparent belief this label is a protective talisman that can defeat the City's claims. However, as Justice Mosk wrote for a unanimous Court more than a decade ago:

> The city also misses the mark when it contends (or at least implies) that a regulatory fee or a levy on the operation of a business necessarily falls outside the scope of article XIII D.

(*Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 838 ("*Apartment Ass'n*").)

Moreover, *Pajaro I* carefully considered the tension between *Apartment Ass'n,* — which concluded a fee on landlords to fund housing code compliance was a fee on those who opt to use property in a particular way (i.e., as rental housing) rather than on property ownership per se — and *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205 — which concluded that a consumption-based water charge is a fee for a property related service and therefore subject to Proposition 218. *Pajaro I* correctly resolved that tension in concluding groundwater extraction charges are also fees for a property related service. (*Pajaro I, supra,* 150 Cal.App.4th at pp. 1389–1391.)[36] As *Pajaro I* observed, there is no constitutional difference between water served to those who live at such densities that piped service is feasible and water delivered via groundwater recharge to those in rural areas who rely on domestic wells:

> It would appear that the only question left for us by *Bighorn* is whether the charge on groundwater extraction at issue here differs materially, for purposes of Article 13D's restrictions on fees and charges, from a charge on delivered water. We have failed to identify

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[36] *Pajaro I* was carefully considered on sua sponte rehearing promptly after the Supreme Court's decision in *Bighorn;* it includes not only Presiding Justice Rushing's decision for the panel, but a thoughtful concurrence by Justice Bammatre-Manoukian.

> any distinction sufficient to justify a different result, and the Agency points us to none.

(*Id.*, at pp. 1388–1389.) The court explained:

> Similarly, assuming *Apartment Association*'s capacity-based analysis retains vitality, we fail to see how it can validate the augmentation charge here. The charge is imposed not only on persons using water in a business capacity but also on those using water for purely domestic purposes. The extension of the charge to domestic wells cannot be attributed to unavoidable regulatory overbreadth. The Agency appears to have a good idea of who is extracting water for residential purposes and who is extracting it for irrigation purposes. Under *Bighorn,* a homeowner or tenant who uses extracted water for bathing, drinking, and other domestic purposes cannot be compared to a businessman who, as described in *Apartment Association,* elects to go into the residential landlord business.

(*Id.*, at p. 1390.)

Nor did *Bighorn* apply only to the provision of article XIII C, section 3 authorizing fiscal initiatives, as UWCD argues. (AOB at p. 29.) The claim amounts to willful blindness to the following holding:

> Thus, we agree that water service fees, being fees for property-related services, may be fees or charges within the meaning of article XIII D. But we do not agree that all water service charges are necessarily subject to the restrictions that article XIII D imposes on fees and charges. Rather, **we conclude that a water service fee is a fee or charge under article XIII D if, but only if, it is imposed "upon a person as an incident of property ownership.'"**

(*Bighorn, supra,* 39 Cal.4th at 215 [emphasis added].)

Moreover, were Justice Mosk's square rejection in *Apartment Ass'n* for a unanimous Supreme Court of the claim that regulatory fees are necessarily outside the reach of Proposition 218 somehow insufficient, other case law leads to the same result.

The concept of "regulatory fees" as a distinct class arose in application of Proposition 13, which requires two-thirds legislative or voter approval of special taxes. (Art. XIII A, §§ 3, 4.) The Legislature provided that special taxes exclude "any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which was not levied for general revenue purposes." (Gov. Code, § 50076.) Ample case law defines this exception, including *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866 ("*Sinclair Paint*"). *Sinclair Paint* concluded that a fee imposed on manufacturers of products

containing lead to fund health care services to children who ingest lead paint chips — and other efforts to mitigate the health, environmental, societal and economic consequences of the manufacture and sale of those products — were regulatory fees properly approved without two-thirds voter or legislative approval.[37]

However, the "regulatory fee" concept is of limited utility in determining the reach of Propositions 218 and 26 — further restrictions on taxing power adopted years after adoption of Proposition 13 and development of the *Sinclair Paint* rule. *Apartment Ass'n* disposed of any claim regulatory fees are necessarily outside the reach of Proposition 218.

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[37] Both Propositions 13 and 26 have parallel rules for state and local government that differ in their procedural details. (Article XIII A, § 3, subd. (a) [state special taxes require 2/3 approval in each chamber of the Legislature], § 4 [local special taxes require 2/3 voter approval]; Article XIII A, § 3, subd. (b) [all state revenue measures are taxes unless one of five exceptions applies; Article XIII C, § 1, subd. (e) [same as to local revenue measures, with two additional exceptions].) As UWCD is a local government under both measures, this brief focuses on the Constitution's local government provisions. (Gov. Code § 50075.5 [defining "local agency" and "special district" under Prop. 13]; Article XIII C, § 1, subd. (b) [defining "local government" under Propositions 218 and 26].)

As to Proposition 26, it was the very purpose of that measure to limit the *Sinclair Paint* rule. First, Proposition 26's own language makes the point:

> (e) As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following:
>
> ....
>
> (3) A charge imposed for the reasonable regulatory costs to a local government **for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders**, and the administrative enforcement and adjudication thereof.

(Art. XIII C, § 1, subd. (e)(3) [emphasis added].) Thus, Proposition 26 constitutes regulatory fees as taxes requiring voter (or super-majority legislative) approval unless they are limited to the reasonable costs of specified aspects of regulatory activity.[38] They are not immune from the measure due to their regulatory character, as

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[38] Charges for regulatory programs are intended to generate revenue for government operation and should not be confused with fines or penalties, which are intended to punish and are exempt from cost justification requirements for that reason. (Compare art. XIII C, § 1, subd. (e)(3) [regulatory fees] with *ibid.*, subd. (e)(5) [fines and penalties]).

they are from Proposition 13. Second, the Legislative Analyst's Impartial Analysis of Proposition 26 makes its intent unambiguous on this point.[39] In explaining Proposition 26 to voters, the Legislative Analyst begins by summarizing *Sinclair Paint*'s holding. (See 10 JA, Tab 91 at p. 2077 [Exh. 2 to City's Request for Judicial Notice in support of Phase 2 Reply Brief].) The Analyst then states:

> Generally, the types of fees and charges that would become taxes under the measure are ones that government imposes to address health, environmental, or other societal or economic concerns. ... This is because these fees pay for many services that benefit the public broadly, rather than providing services directly to the fee payor. The state currently uses **these types of regulatory fees** to pay for most of its environmental programs.

(*Id.* at p. 2078, emphasis added.) Thus, voters plainly understood Proposition 26 would limit costs that might be recovered by regulatory fees.

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[39] The Legislative Analyst's Impartial Analysis is, of course, persuasive evidence of the intent of the voters who approved Proposition 26 and therefore constitutes useful legislative history for its construction. (*Silicon Valley, supra,* 44 Cal.4th at p. 444–445 [citing Impartial Analysis to construe Proposition 218].)

Moreover, *Bighorn* made no reference to *Apartment Ass'n's* conclusion some regulatory fees are not property related fees subject to Proposition 218; concluding water service charges are, at least as applied to the volume of service associated with "normal ownership and use of property." (*Bighorn, supra,* 39 Cal.4th at p. 215.) Since *Bighorn,* no water rate case has relied on *Apartment Association* for this reason.

Still further, *Apartment Association* is factually distinguishable from the facts at bar, even if *Bighorn* did not supplant it entirely as to most ordinary charges for water service, including the replenishment services provided by UWCD. As the court explained in *Pajaro I*:

> 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.

We need not decide the soundness of these theories in the wake of *Bighorn,* because they cannot sustain the charge before us in any event. The charge is assessed on all persons extracting water, a large majority of whom are using it for residential or domestic purposes. Therefore even if a charge on nonresidential uses would fall outside the rationale of *Bighorn,* the present charge does not. Further, even if a predominantly regulatory purpose would save the charge, it is difficult to see how it might do so here, where the majority of users are charged on the basis not of actual but of estimated or presumptive use. Thus, while the augmentation charge may have some tendency to inhibit consumption and provide an incentive for efficient use by metered users, it can have little if any effect on the residential users who make up the majority of persons paying it. Nor is there any attempt to graduate the charge to further discourage the most intensive uses and encourage conversion to less intensive ones.

(*Pajaro I, supra,* 150 Cal.App.4th at pp. 1389–1390 [original emphases].)[40]

Like PVWMA, UWCD imposes its charges on those who pump water for residential use. (AR1, Tab 62, at p. 38 [2011 Water Rate Study discussion of need to estimate residential use].) UWCD, too, imposes flat rather than metered fees on residential water use. (*Ibid.*) These rates are uniform throughout the District, as Water Code section 74527 requires; so UWCD, too, makes no "attempt to graduate the charge to further discourage the most intensive uses and encourage conversion to less intensive ones." Indeed, UWCD's rates require M&I users to subsidize agriculture so deeply that it makes economic sense to tear out low water-intensity crops like orchards to grow water-hungry berry crops over a deep pumping hole. (AR1, Tab 22, at p. 139 [FY 2011–2012 budget exhibit demonstrating surge in October deliveries due to new berry crops].)

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[40] Of course, if the charge by a local agency for service to one type of water customer (e.g., residential) is subject to Proposition 218, substantive requirements of that provision require that the charge for the same service to another type of customer (e.g., agricultural) within the same local agency must also be subject to Proposition 218 because rate setting is a "zero sum game" and the rates for service must be set in consideration of the customers as a whole. "A zero sum game "is "a situation in which a gain by one must be matched by a loss by another." (*American Heritage College Dictionary* (3rd Ed. 2000).)

If UWCD rates actually had a regulatory purpose to disincentivize intense use of groundwater, they undermine rather than serve it.

While UWCD may argue in reply that the City does not use groundwater for residential purposes, three rejoinders can be made. First, many others subject to these same fees **do** make residential use of groundwater, and they pay the same rates and bear the same burden to subsidize agriculture via a 3:1 ratio of rates as does the City. How can UWCD apply a "uniform" rate as required by Water Code section 74527 that is lawful as to the City but unconstitutional as to rural residential groundwater users? The rates were adopted by the same resolutions and rise or fall together. Second, the City's customers use the groundwater it delivers for residential purposes and it is entitled to speak for its customers. (*Central Delta Water Agency v. State Water Resources Control Bd.* (1993) 17 Cal.App.4th 621, 630 [water agency entitled to sue on behalf of its customers].) Finally, the *San Marcos* legislation, discussed further below, requires UWCD to charge the City comparably to the charges it imposes on "comparable nonpublic users." (Gov. Code § 54999.7, subd. (b).) Any distinction between the City and rural residential groundwater users is simply unavailing to take these rates outside the rule of *Bighorn* and *Pajaro I.*

E. The Trial Court Properly Concluded UWCD's Rates Require M&I to Subsidize Agricultural Water Users

As the trial court properly concluded, neither Administrative Record provides a reasonable cost justification for charging M&I groundwater users three times what agricultural users pay. Indeed, the evidence suggests the cost to serve the City is less than the cost to serve farmers, as detailed below.

This violates Proposition 218. In particular, the 3:1 ratio imposes a charge on M&I users that:

(i) "exceed[s] the proportional cost of the service attributable" to the parcels from which the City draws groundwater,

(ii) results in revenues from M&I users that "exceed the funds required to provide" UWCD's services, and

(iii) results in revenue "used for a[] purpose other than that for which" UWCD charges the fee.

(Art. XIII D, § 6, subd. (b)(1)–(3).)[41]

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[41] And by charging the City's Mound and Santa Paula basin wells for recharge services of little benefit to them, it violates Article XIII D, section 6, subdivision (b)(4), too. Similarly, by using the proceeds of the Zone A charge for expenditures unrelated to groundwater replenishment, UWCD's rates violate article XIII D, section 6,

1. The FY 2011–2012 record shows agriculture is more costly to serve than M&I

The record of UWCD's 2011–2012 ratemaking demonstrates:

- Agricultural groundwater pumping in the southeastern Oxnard Plain Basin and the Pleasant Valley Basin causes the most overdraft and seawater intrusion in the District, and UWCD spends substantial sums to remediate these problems (AR1, Tab 62, at pp. 69–70 [United's current operations and long-range planning efforts are focused heavily on that area" referencing "the eastern/southern Oxnard Plan"]; AR2, Tab 53, at pp. 69–70 [same]);

- Agriculture uses far more groundwater — about 80 percent of that pumped in the District — than M&I, but pays only 57.7 percent the charges;[42]

- The most challenging areas for UWCD to serve, and those which command a disproportionate share of its attention and budget, are the agricultural areas of the southeastern Oxnard Plain and Pleasant Valley Basins (See AR1, Tab 62, at pp. 69–70 [United's current operations and long-range planning efforts are focused heavily on that area" referencing "the eastern/southern Oxnard Plain"]; AR2, Tab 53, at pp. 69–70 [same], AR1, Tab 14, at p. 1 [1950 Policy "giving precedence to the areas in greatest distress which are

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subdivision (b)(5). These points are developed in section IV.B. of the cross-appeal below.

[42] This calculation appears in footnote 7 above.

presently recognized to be on the Oxnard Plain]; AR1, Tab 21, at p. 4 [detailing efforts to address saltwater intrusion in Oxnard Plain aquifer]; AR2, Tab 30, at p. 4 [same]; AR1, Tab 60, at p. 13 [saltwater intrusion limited to Oxnard Plan and Pleasant Valley basins, "the [safe] yield of the [Santa Paula] basin is probably near the historic pumping amount"]; AR2, Tab 94, at p. 14 [same]; AR1, Tab. 21, at p. 4 [detailing efforts to address saltwater intrusion in Oxnard Plain aquifer]; AR1, Tab 29, at p. 8 [2000 Groundwater Report: "saline intrusion in the Lower Aquifer System [of the Oxnard Plain] north of Mugu Lagoon continues over a broad area. The intrusion is the result of chronically-depressed water levels in overdrafted areas of the southern Oxnard Plain and portions of the Pleasant Valley basin."]; AR2, Tab 178, at p. 8 [same]; AR1, Tab 62, at p. 34 [Rate Study states: "One reason for maintaining the current ratio [of 3:1 rather than increasing it] is that the largest M&I pumpers on the Oxnard Plain are already doing their share to limit overdraft by using costly imported water. In addition, M&I pumpers within the Fox Canyon GMA [Groundwater Management Agency] are subject to more stringent pumping restrictions than agriculture which can receive the water it needs through the efficiency provisions of GMA ordinances. Increasing the burden on M&I above the present 3:1 ratio under this scenario may not be supportable. [¶] A second reason for maintaining the current ratio is that the majority of the overdraft in the Oxnard [P]lain aquifers has been caused by

agricultural pumping in the eastern/southern part of the plain. Most of the M&I wells on the Oxnard Plain are located in the less-impacted north-western portion of the aquifer."]; AR2, Tab 53, at p. 34 [same]; see also 9 JA, Tab 75 at pp. 1804, 1812–1815 [City Phase 2 briefing of this evidence].)

- Most of UWCD's capital program benefits agricultural users in the southeastern Oxnard Plain and Pleasant Valley Basins (AR1, Tab 62, at p. 46 [Ferro-Rose Project]; AR2, Tab 106, at p. 106 [same]; AR1, Tab 10, at p. 15 [Noble Basin Reservoir]; AR1, Tab 22, at pp. 14–29 [pilot seawater barrier well]; AR2, Tab 106, at pp. 139–140 [El Rio Spreading Ground]; see also 9 JA, Tab 75, at pp. 1813–1814 [City Phase 2 Brief].)

- UWCD must use labor-intensive methods to estimate groundwater use by unmetered agricultural groundwater users, while M&I users — including the City — provide accurate, metered data at no cost to UWCD (AR1, Tab 8, p. 5 [City protest letter]; AR1, Tab 62, at p. 36 [Rate Study: "The Fox Canyon MA requires meters on all production wells within its management area, with the exception of small domestic wells with minor production."]; see also 9 JA, Tab 75, at pp. 1814–1815 [City Phase 2 Brief]); and

- When unfettered by legislative decree, the District's cost accounting distinguishes charges to its recreation concessionaire for potable and irrigation water at a ratio of 1.25:1, which reflects the

District's cost to treat water for drinking. (AR1, Tab 22, at pp. 15–16;[43] see also 9 JA, Tab 75, at p. 1811 [City Phase 2 Brief].) This demonstrates that the 3:1 ratio of M&I to agricultural groundwater charges the District imposes does not reflect its cost of service because UWCD does not provide the City any services related to the groundwater that it does not provide agriculture that might justify charging the City for services from which it does not benefit. (AR1, Tab 22, at pp. 15–16; see also 9 JA, Tab 75, pp. 1814–1815 [City Phase 2 Brief]). Indeed, as demonstrated above, the District's groundwater management activities provide **more** service to agricultural users in the over-drafted southeastern Oxnard Plain and Pleasant Valley Basins than to the City, yet it charges them **less**.

2. The FY 2012–2013 record does not show otherwise

The administrative record of the District's 2012–2013 ratemaking — conducted after the City filed the first case and obviously benefiting from greater legal attention — does not show that M&I is three times as costly to serve as agriculture. In fact, UWCD acknowledges it did not even attempt a cost of service analysis to justify its charges. (AR2, Tab 54, at p. 2 [Rate Study "not intended ... as an 'evidentiary' or 'cost of service' study in which many retail rate-setting public entities engage during a

[43] Recreation Potable Water Rate of $850.41 per AF is 1.25 times the Recreation Irrigation Water Rate of $680.33. (AR1, Tab 22, at p. 16.)

Proposition 218-type process"]; AR2, Tab 164, at p. 2 ["The water rate study was never intended to 'provide the rationale' for rate changes."].)[44] UWCD concedes "a more traditional quantitative cost of service analysis might not fully support such a [3:1] fee differential under the property related fee provisions of Proposition 218." (AOB at p. 38.) As UWCD thus concedes the Rate Study is not the basis for the District's charges, it begs the question — what does? Review of this record shows the District has **no** basis for charging M&I three times what it charges agriculture other than a dated statute which cannot survive Proposition 218.

The FY 2012–2013 record contains ample evidence that agricultural water users are **more** costly to serve than M&I users. As detailed above, the basins which support agricultural water users receive the lion's share of UWCD's recharge efforts, and those efforts have minimal "trickle-down" impact on basins which serve M&I users.

Additionally, UWCD bears costs to estimate and monitor agricultural groundwater use that it does not bear as to M&I customers. To pay the groundwater extraction charge, District

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[44] Although UWCD's counsel is eager to disavow the 2011 Water Rate Study; the District is not. It updated, rather than repudiated that Study. (AR2, Tab 54 [District General Manager's "Update Memorandum to 2011 Water Rate Study"].)

customers must report their usage, which they measure with "flow meters, electric meters, [or] crop factors." (AR1, Tab 62, at p. 36.)

Flow meters provide the most accurate measurement of groundwater use (*ibid.*), and are required of the City and other M&I users. Many agricultural users estimate use based on electricity[45] they use to power wells. (*Ibid.*) Alternatively, some agribusinesses "are using crop factors to determine their water usage. A crop factor enables a pumper to calculate the average water demand for a particular crop. Pumpers are usually consistent in their use of a crop factor from year to year." (AR1, Tab 30, at p. 48 [7th numbered point].) Although UWCD has considered requiring all non-trivial water users to use flow meters, the Board's current policy is that "water meters will be encouraged but not required." (AR1, Tab 22, at p. 14 [6th numbered point in first whole paragraph].)

Some agricultural users also buy District water delivered through the Pleasant Valley Pipeline and the Pumping Trough Pipeline ("PTP"). (See AR2, Tab 50, at p. 17 [2011 Groundwater Report describing these pipelines].) These pipelines deliver water diverted from the Santa Clara River, supplemented as necessary with groundwater, for agricultural use in severely over drafted areas of the Oxnard Plain and Pleasant Valley Basins. (*Ibid.*) The District

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[45] It is noteworthy that the electric utility meters agricultural and municipal customers alike, but UWCD does not.

pays to operate and maintain these pipelines with fees paid by water buyers, and accounts for these revenues separately from its General Fund. (See AR1, Tab 62, at pp. 16–20 [Rate Study discussion of PTP, Pleasant Valley Pipeline and State Water Import Funds].) In fiscal year 2009–2010, the Board adopted tiered PTP rates requiring customers to pay more when water deliveries go "above the established baseline limit defined for each customer." (AR1, Tab 22, at pp. 16–17.) The District intended tiered pricing "to minimize higher than normal usage during critical periods as the District has seen with PTP customers switching to growing strawberries and the resulting increased water demands in ... October." (*Id.*, at p. 17; see also AR1, Tab 22, at p. 139 [graph showing surge in October deliveries].)

The District sells PTP water at less than cost, as its enterprise funds are consistently in deficit. (AR1, Tab 22, at pp. 85, 87 [shortfalls in Pleasant Valley Pipeline and PTP Funds in five fiscal years from FY 2008–2009 through FY 2011–2012]; AR2, Tab 106, at p. 76 [same through FY 2012–2013].) "In addition, PVCWD,[46] the PTP Customers and the PV Pipeline customers receive more of their share of State Water than would be proportional to the property taxes paid in those areas." (AR1, Tab 62, at p. 70 [2011 Water Rate Study].) These

[46] This is a reference to intervenor Pleasant Valley County Water District, a municipality which serves agricultural water users in the Pleasant Valley basin.

agricultural users thus receive a benefit at the expense of groundwater users elsewhere. Thus, UWCD not only favors agriculture at the expense of M&I, it favors some farmers over others.

3. Water Code Section 75594 is not a cost justification

Despite its unpersuasive attempts to justify the 3:1 fee ratio, the District candidly acknowledges "[t]his ratio is simply a reflection of a mandate established by the California Legislature as part of the District's principal act." (AR2, Tab 54, at p. 6 [Update to 2011 Water Rate Study].) Water Code section 75594, adopted nearly 50 years ago, requires groundwater extraction charges to be between three and five times as much for M&I users as for agricultural users. (Stats. 1963, ch. 141, § 7, ¶ 3 [reprinted at AR1, Tab 61, at p. 37].)

No statute, however, can exonerate UWCD from the demands of article XIII D, section 6 or article XIII C, section 1, subdivision (e)(2). "Whenever statutes conflict with constitutional provisions, the latter must prevail." (*People v. Navarro* (1972) 8 Cal.3d 248, 260; see also *Hotel Employees and Restaurant Employees Intern. Union v. Davis* (1999) 21 Cal.4th 585, 602 ["A statute inconsistent with the California Constitution is, of course, void."].) When the general purpose of a voter-approved constitutional provision — understood as voters understood it — contradicts a statute, the statute must give way. (*Ventura Group Ventures, Inc. v. Ventura Port Dist.* (2001) 24 Cal.4th 1089, 1098–1099 [Proposition 13 bars additional property

tax to pay judgment against district]; *Arvin Union School Dist. v. Ross* (1985) 176 Cal.App.3d 189, 199 [Proposition 13 impliedly repealed statute authorizing property-tax override for schools].) Because section 75594's 3:1 ratio contradicts the Constitution's requirement (under either Proposition 218 or 26) that UWCD's rates be proportional to its cost of service, the statute must yield.

Nor can a statute enacted in 1966 constitute a legislative determination of benefits and burdens in 2013, as UWCD implausibly urges. (AOB, at p. 36.) In any event, even UWCD agrees that no deference is shown to such legislative determinations when they conflict with constitutional provisions. (AOB at p. 16.) No legislative determination — much less one made generations before voters enacted the "Right to Vote on Taxes Act" — can persuade a court to "lightly disregard or blink at ... a clear constitutional mandate." (*Silicon Valley, supra,* 44 Cal.4th at p. 448 [applying Prop. 218.)

4. The City does not benefit from UWCD's services in proportion to its payments

UWCD's Zone A / General Fund revenue pays for:

> traditional operations ... includ[ing] the water conservation efforts of operating / maintaining the District's various spreading grounds for groundwater recharge, the Santa Felicia Dam and hydro-electric

> plant, engineering services, groundwater management and meet[ing] ESA compliance activities.

(AR1, Tab 22, at p. 21 [FY 2011–2012 budget].) The City, however, does not benefit from many of these activities to the same extent as pumpers located elsewhere. For instance, UWCD uses Zone A revenue to fund operation and maintenance of spreading ponds and recharge facilities in Piru, El Rio and Saticoy. (AR1, Tab 62, at p. 12 [2011 Final Water Rate Study].) As discussed in Part II.B. of the Statement of Facts above, the two administrative records demonstrate the City's Mound Basin wells receive little benefit from these recharge efforts. (See AR1, Tab 28, at p. 17 [rainfall likely provides majority of recharge to Mound Basin]; AR1, Tab 10, at p. 19 [District Engineer states that UWCD activities provide only "indirect recharge to the Mound Basin"]; AR1, Tab 62, at p. 29 [2011 Water Rate Study concedes Mound Basin "receives little benefit from United's recharge operations"].)

UWCD also acknowledges, as discussed above in the Statement of Facts, Part II.B, that its recharge operations do not benefit the City's wells in the Santa Paula Basin as much as other basins. (E.g. AR1, Tab 81, at p. 17 ["Santa Paula Basin doesn't respond to recharge at United Water's Saticoy spreading grounds."]; AR1, Tab 22, at p. 144 [FY 2011–2012 budget chart showing negligible recharge of Santa Paula Basin from Lake Piru releases].)

UWCD thus acknowledges the basins from which the City draws water receive less benefit than others, though it charges the City three times what it charges agricultural users who receive greater benefit.

UWCD also set Zone A rates at levels sufficient to fund studies to determine whether it should import additional DWR supplies. (AR1, Tab 62, at p. 110 [2011 Water Rate Study, Policy Issue on Which Board Consensus Has Been Achieved B) 9)]; AR2, Tab 53, at p. 110 [same].) Yet this imported water would augment surface releases from Lake Piru, which the citations to the record stated above demonstrate provide only minimal benefit to the City's wells in the Santa Paula and Mound Basins. Finally, in fiscal year 2010–2011, the Board approved a three-year Saline Water Intrusion Study to investigate seawater intrusion near Port Hueneme and Point Mugu — again, areas from which the City does not draw water. (AR1, Tab 22, at p. 25 [first whole bullet point].)

By charging the City for services from which it cannot benefit and for services to the general public such as maintaining Lake Piru's recreational facilities; UWCD violates Article XIII D, section 6, subdivision (b)(4) and (b)(5).

5. *Dahms* cannot save UWCD's charges

Although UWCD recognizes that assessment cases are distinguishable (AOB at p. 46), it cites *Dahms v. Downtown Pomona Property* (2009) 174 Cal.App.4th 708, 715 which applies

Proposition 218's assessment provisions. As *Silicon Valley* makes clear, the special benefit which justifies an **assessment** is a very different concept than the cost of government services which justifies a **fee**. (*Silicon Valley, supra,* 44 Cal.4th at p. 457.)

Dahms deferentially reviewed allocation of an assessment among property owners, even allowing a discount for non-profits with no justification in terms of the relative benefit to those landowners, and upheld a determination that supplemental municipal services necessarily provide special benefit to property owners sufficient to justify assessing them without careful consideration of benefit to others. But, beyond the simple distinction that *Dahms* involves a different section of article XIII D, it is hard to justify *Dahms'* analysis in light of the specific requirements of article XIII D, section 4 and the searching independent review required by *Silicon Valley*.[47]

Subsequent cases make clear that Proposition 218's assessment provisions are far more demanding than *Dahms* concluded. *Town of Tiburon v. Bonander* (2009) 180 Cal.App.4th 1057, 1081–1085 invalidated a utility undergrounding assessment, concluding zones of benefit established by the Town Council on the advice of its

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[47] The *Dahms* decision may be affected by the quality of advocacy by the pro per litigant there. (*Id.* at 711, fn. 1 [detailing plaintiff's procedural errors].)

assessment engineer excluded properties that benefited from the undergrounding.

Beutz v. County of Riverside (2010) 184 Cal.App.4th 1516, 1530–1537 (*"Beutz"*) disapproved a determination that all benefit from a park maintenance program was special and could be allocated to assessed properties and that no general benefit accrued to others. *Beutz* distinguished *Dahms,* writing:

> Here, the County argues that the general benefits the public may enjoy from the use of the Wildomar parks is no different than the general benefits the public or outlying parcels enjoyed from the services assessment on the downtown Pomona properties in *Dahms*. For this reason, the County argues, the assessment on Wildomar residential properties is not required to be reduced by the general benefits that the use of the parks will confer on members of the general public. The County misreads the import of *Dahms.*
>
> Unlike *Dahms,* this is not a case in which services specifically intended for assessed parcels concomitantly confer collateral general benefits to surrounding properties. Rather, this case involves the failure to separate and quantify the general and special benefits that will accrue, respectively, to members of the general public and occupants of Wildomar residential

> properties from their common use and enjoyment of the Wildomar parks. The Wildomar parks, like all public parks, will be used by the public at large at least to some extent. The County acknowledges it was required to fund the general benefit portion of the Master Plan from nonassessment sources, and argues it did so. For the reasons explained, however, the Engineer's Report is insufficient to support the County's argument.

(*Id.* at p. 1537.)

The facts here are more like those in *Beutz* than *Dahms*: The City does not complain that it funds ground water replenishment that has collateral benefits such as a green river corridor and a water supply to support the City's economy. It complains that the fee is used to fund activities unrelated to groundwater replenishment such that the fee is necessarily disproportionate to service cost. Thus, its complaint is more like that of the successful plaintiff in *Beutz* rather than that of the unsuccessful plaintiff in *Dahms*.

Further, in *Golden Hill Neighborhood Assn, Inc. v. City of San Diego* (2011) 199 Cal.App.4th 416, 431–432, the court invalidated a supplemental municipal services assessment for failure to properly allocate special benefit because the City's record did not disclose the basis on which it assigned benefit to its own properties, for which it cast assessment ballots under article XIII D, section 4, subdivisions (d)–(e). Likewise, the evidentiary gaps in UWCD's

record — such as the absence of justification for questioned expenditures from the General Fund in which Zone A groundwater augmentation charges are accounted — justify invalidation of the charge.

Dahms cannot save UWCD's charges.

F. UWCD Can Comply with Proposition 218

UWCD seeks to persuade this Court to disagree with *Pajaro I,* claiming it simply cannot comply with Proposition 218. While it did not have the advantage of the *Pajaro II* decision when it made the rates tested here, that case disproves the claim, upholding the Pajaro agency's compliance with Proposition 218 for a charge like that in issue here.

Moreover, this case is not comparable to *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 419 in which a water provider could not comply with article XIII D, section 6, subdivision (a)'s notice requirements. "Because the capacity charge is imposed only on property owners who apply for a new service connection, the District cannot identify the parcels upon which the capacity charge will be imposed." (*Ibid.*) UWCD knows who pays its charges. While UWCD cannot predict how much groundwater its customers will use, *Pajaro I* provides the necessary work-around.

Bighorn made clear that volumetric charges for water delivery are subject to Proposition 218 even if the agency cannot predict how

much water customers will use to give the notice required by article XIII D, section 6, subdivision (a)(1) of the "amount of the fee or charge". (*Bighorn, supra,* 39 Cal.4th at p. 217; See also *Pajaro I, supra,* 150 Cal.App.4th at p. 1385.) *Pajaro I* specified how compliance can be shown: "*Bighorn* [compels] the conclusion that the notice requirements of Article 13D are satisfied if the agency apprises the owner of the proposed rate to be charged." (*Pajaro I, supra,* 150 Cal.App.4th at p. 1388, fn. 15.) Indeed, UWCD measures groundwater pumping and imposes its charges on a per-acre-foot-pumped, as does PVWMA, and as do other groundwater agencies. (See *Pajaro II, supra,* 220 Cal.App.4th at p. 592.)

Proposition 218 does not detail how services are to be attributed to a parcel. Article XIII D, section 6, subdivision (b)(3) merely assumes that services will be so attributed: "The amount of a fee or charge 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." (Emphasis added.) Thus, Proposition 218 does not displace the preexisting legal authority of rate-makers such as the City and UWCD to make those determinations, albeit subject to independent judicial review of the agency's action in light of its record under *Silicon Valley*. No impossibility arises.

Proposition 218 requires only reasonable cost-justification of rates supported by an adequate rate-making record. (See *Farm*

Bureau, supra, 51 Cal.4th at p. 438 [remanding for more searching trial court review of cost justification, which may proceed class-by-class rather than customer-by-customer].) *Pajaro II* makes the point explicitly:

> Apportionment is not a determination that lends itself to precise calculation. (*White v. County of San Diego* (1980) 26 Cal.3d 897, 903, 163 Cal.Rptr. 640, 608 P.2d 728.) In the context of determining the validity of a fee imposed upon water appropriators by the State Water Resources Control Board, the Supreme Court has recently held that "The question of proportionality is not measured on an individual basis. Rather, it is measured collectively, considering all rate payers." (*California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 438.)
>
> 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 apportion.

(*Pajaro II, supra,* 220 Cal.App.4th at p. 601.)

UWCD overstates (AOB at p. 38) Proposition 218's demands; complaining that it is impossible to predict water conditions in any given year and, therefore, impossible to accurately calculate cost of service. Indeed. Rate-making, like virtually all economic and budgetary activity, requires use of assumptions, projections, and estimates to account for such variables as weather, for customers use less water when it rains and prices of goods and services fluctuate. However, established law allows UWCD to estimate costs and expenses provided that it acts reasonably on its record. Inevitable surpluses or deficits need only be accounted for to reduce or increase the cost of future services. (See e.g., *Barratt American Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685, 703 [addressing Mitigation Fee Act].) Indeed, this is UWCD's practice. (AR1, Tab 62 at p. 10 [2011 Water Rate Study: "any revenue collected in one year that is not spent for designated purposes is carried forward to fund expenditures in future years."]

UWCD and the City are likewise entitled to recover the full cost of their services (but not unrelated costs). Rates may recover the cost of debt incurred to provide past and future services as well as fund efforts to plan for future services. (*Pajaro II, supra,* 220 Cal.App.4th at p. 598 [costs of service "necessarily include debt

service incurred to construct facilities to capture, store, and distribute supplemental water."]; *Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.App.4th 637, 648 [cost of service includes "all the required costs of providing service, short-term and long-term, including operation, maintenance, financial, and capital expenditures."]; *Fresno, supra,* 127 Cal.App.4th at p. 923 [City may recover "unbudgeted costs of utilities enterprises ... through rates proportional to the cost of providing service to each parcel."].)

The *San Marcos* Legislation, Government Code section 54999.7, demonstrates that the task of setting prospective consumption-based rates on the basis of similarly served classes of customers is not merely possible, but required. This legislation responded to the Supreme Court's invalidation of a public agency's sewer capacity fee imposed on a school district, concluding it amounted to prohibited intergovernmental taxation. (*San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 Cal.3d 154.)[48] The statute spells out specific criteria to judge the propriety of fees one government imposes on another and, for all the reasons cited above, UWCD's fees on the City fail this test, too — a point made in the Section IV.C of the cross-appeal below.

Government Code Section 54999.7, subdivision (b) states:

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[48]The Supreme Court recognized the abrogation of its decision by the statute in *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 363–364.

> A fee, including a rate, charge, or surcharge, for any product, commodity, or service provided to a public agency, shall be determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, based on customer classes established in consideration of service characteristics, demand patterns, and other relevant factors.

Thus, statutory guidance is also available to UWCD. It can establish rates for public agencies like the City provided those agencies are charged the same as "comparable nonpublic users" using "customer classes established in consideration of service characteristics, demand patterns, and other relevant factors." Agricultural use rather than M&I use of groundwater produced is not such a "relevant factor."

The City, too, is bound by Proposition 218 and therefore has strong incentive to construe the measure reasonably. Its position here will not cause the sky to fall on UWCD or on itself. However, UWCD chooses to throw its hands up and say "it cannot be done." (See AOB at p. 38.) As the Court of Appeal noted in *Fresno,* "[u]ndoubtedly this is a more complex process ... . Nevertheless, such a process is now required by the California Constitution." (*Fresno, supra,* 127 Cal.App.4th at p. 923 [invalidating transfer from water utility to City's general fund for lack of cost justification].)

II. PROPOSITION 26 WOULD ALSO LIMIT UWCD'S RATES TO COST

In November 2010, the voters approved Proposition 26, which amended Proposition 218 to provide the first legislative definition of the "taxes" for which voter approval is required by Propositions 13 (art. XIII A, § 4) and 218 (art. XIII C, § 2). Propositions 26 and 218 dove-tail; one or the other governs every revenue measure a local government may impose. Thus, if the charges here are not "property related fees" under Proposition 218 (as *Pajaro I* and *II* conclude), then they are necessarily "taxes" under Proposition 26 unless shown to be limited to service cost. Thus, regardless of whether Proposition 218 or Proposition 26 provides the rule, UWCD's charges must satisfy essentially the same substantive requirements.

Unless a local government revenue measure falls within one of seven exceptions stated in Proposition 26, it is a "tax" requiring voter approval. (Art. XIII C § 1(e).) Two exceptions[49] might apply here:

> (1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that

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[49] Of course, if Proposition 218 applies, the seventh exception applies: "Assessments and property-related fees imposed in accordance with the provisions of Article XIII D." (Art. XIII C, § 1, subd. (e)(7).)

> is not provided to those not charged, and which **does not exceed the reasonable costs** to the local government of conferring the benefit or granting the privilege.
>
> (2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does **not exceed the reasonable costs** to the local government of providing the service or product.

(Art. XIII C, § 1, subds. (e)(1), (2) [emphases added].) To avoid the conclusion that the charges are a tax — and consequently invalid unless approved by the voters — the District:

> bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction **is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity**, and that the manner in which those costs are allocated to a payor bear a **fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.**

(Article XIII C, § 1, subd. (e) [final, unnumbered paragraph]. (emphasis added).)

It is doubtful that the first exception — for government privileges — fits UWCD's groundwater charges. UWCD does not

grant the City a right or privilege to use groundwater any more than the County grants a homeowner the right to live in his or her home when collecting the property tax.[50] To allow a government to characterize a property right well recognized by case law as a "privilege" is to birth an unbounded rule that would swallow Proposition 13.

Groundwater users pumped water before UWCD, and their rights to do so are wholly independent of its services. UWCD concedes as much. (AOB at 32 ["in the event United ceased to exist, the ground water pumpers could still continue to pump water from their wells"].) Thus, the charge is best understood as a fee for service subject to article XIII C, section 1, subdivision (e)(2) rather than a fee imposed for the exercise of a privilege subject to subdivision (e)(1).

This distinction matters little, however. Under either exception, UWCD bears the burden to persuade this Court — exercising its independent judgment — that:

(i) the service or benefit is provided "directly to the payor"

(ii) the service or benefit "is not provided to those not charged";

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[50] An example of such a "fee for privilege" might be a fee on an investor-owned utility granted a franchise to use public rights of way for utility lines.

(iii) the fee does not exceed the reasonable costs to [UWCD] of conferring the benefit" or "providing the service"; and,

(iv) the fee "bears a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity."

(Art. XIII C, § 1, subd. (e)(1)–(2) and final, unnumbered paragraph.) The District did not make such a showing, as the trial court properly found.

First, UWCD cannot demonstrate that some of the services funded by the charge are provided "directly to the payor." UWCD deposits revenue from District-wide Zone A charges in its general fund (AR1, Tab 62, at p. 12 [2011 Water Rate Study description of General Fund]; AR1, Tab 65, at p. 2 [Rate Resolution language devoting Zone A charge to General Fund]), and uses that revenue for projects that it admits do not benefit all basins. (AR1, Tab 62, at p. 29 ["Mound Basin ... receives little benefit from United's recharge operations"]; *id.*, at p. 69 ["No other part of the District receives so much attention and effort" as the eastern Oxnard Plain].) This practice changed in form, but not in substance, after the City filed the first of the two complaints here. (See AR2, Tab 106, at pp. 42–45 [new labels in FY 2012–2013 budget].) In what sense does purchasing chemicals to treat water delivered to the recreational

concessionaire at Lake Piru constitute a "direct" service to the City's groundwater wells which do not benefit from releases from the lake?

Second, in its zeal to establish its charges as "regulatory," UWCD admits its services are provided to those not charged. (E.g., AOB at p. 9 [detailing habitat restoration work, dam safety studies, and generally ensuring water availability for "all users (not just pumpers)"].) "Rather, United's services are focused on the long-term district-wide water conservation, management and recharge efforts designed to mitigate the negative and harmful effects of the collective district-wide groundwater pumping **for the protection of public health and safety**." (AOB at p. 21, emphasis added.) This describes a service that benefits the whole public, not just groundwater users. UWCD does not attempt to describe its services as benefitting any specific subset of the population — it seeks to prove the opposite: "any reasonable examination of the long-term district-wide services provided by United shows that its ground water extraction fee is not intended to provide a service to any particular parcel." (AOB at p. 26, fn. 5.)

Third, as detailed above, UWCD cannot demonstrate on either record that its rates do not exceed the reasonable cost of serving the City. (Art. XIII C, § 1, subd. (e)(1) and (2).) This requirement is substantially the same as that under Proposition 218 (Art. XIII D, § 6, subd. (b)(3)) and, as the records are deficient for purposes of Proposition 218, they are deficient for Proposition 26, too.

Finally, UWCD cannot show the charges the City pays are reasonably related to its benefits from, and burdens on, UWCD's augmentation service. For all the reasons detailed above, the City pays thrice what agricultural users do with no justification in either rate-making record.

In short, if this Court disagrees with *Pajaro I* and *Pajaro II*, it must apply Proposition 26, which will be just as fatal to UWCD's charges as the trial court found Proposition 218 to be.

III. THE TRIAL COURT GRANTED THE CITY AN APPROPRIATE REMEDY

A. The Remedy UWCD Seeks — Remand for Renewed Ratemaking — is Unauthorized and Hollow

During Phase 3 of trial – regarding remedy – the City argued that, because the court found UWCD's rates to be invalid under Proposition 218, they are void *ab initio*. (10 JA, Tab 92, at p. 2226.) Thus, the City requested a refund of all it had paid in the two years in issue, conceding that UWCD would be free to make rates anew and to collect them against the City's use of groundwater retroactively to the statute of limitations. (*Ibid.*)

In the alternative, the City argued it was possible to use data in UWCD's administrative records to estimate UWCD's average

cost[51] to serve all groundwater customers — M&I and agriculture alike. (See **10 JA, Tab 92, at pp. 2232–2233.**) The City then applied that average cost to its groundwater production to determine what it would pay on these records absent the illicit 3:1 ratio and sought a refund of the difference between that amount and what it actually paid. (***Id.* at pp. 2234–2235.**)

In reply to the City's Phase 3 brief, UWCD sought to have its cake and eat it too: it argued that the City should receive no refund and that the trial court should remand to UWCD's for a new rate-making. (11 JA, Tab 95, at p. 2290.) Oral argument made plain how hollow such a remand would be:

> For all these reasons, your honor, we respectfully ask that the Court reconsider its tentative and remand the case for the sole purpose of reopening the 2011–2012 and 2012–2013 hearings to allow evidence relevant to

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[51] This flat "average cost" was appropriate because the trial court found UWCD's violation limited to charging M&I three times what it charged agricultural water users. The City maintains that an adequate cost of service analysis would demonstrate that M&I groundwater users are **more** costly for UWCD to serve than M&I users. Nonetheless, the City does not wish to reopen the refund remedy issue here and seeks only prospective, declaratory relief on cross-appeal.

> determine whether the three-to-one ratio approved in both of those hearings also complies with the proportionality requirements of Prop. 218.

(RT at 62:9–15.) The remand was to further rationalize — post-hoc — the illicit rates already twice imposed. A third bite at the rate-making apple is a one-sided remedy and certainly not the meaningful, backward-looking remedy that due process demands, as discussed below.

Even if UWCD had not tipped its hand, UWCD cannot ignore Water Code section 75594's demand for the 3:1 ratio until this Court rules otherwise:

> An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:
>
> (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional **unless an appellate court has made a determination that such statute is unconstitutional.**

(Article III, section 3.5 [emphasis added].) Thus, remand would have delayed a final trial court judgment and opportunity for appeal to this Court which alone can resolve the legal issues that divide the parties. It would not have changed the outcome.

Moreover, remand for renewed rate-making without relieving UWCD of the burden of the Water Code's unconstitutional mandate

for a 3:1 rate differential without respect to its service costs would be bootless. Although UWCD repeatedly assures this Court remand would serve the constitutional mandate (AOB at p. 45), it sees the goal of such a remand as merely to give UWCD "the opportunity to reopen the hearings to determine whether the 3:1 ratio complied with the proportionality requirements of Proposition 218." (*Ibid.*) That is, another bite at the apple for UWCD.

UWCD does not seek to reopen the hearings to determine its cost to serve the City. UWCD's obstinate devotion to the 3:1 ratio of M&I to agricultural rates is evidenced by the marginal differences between the two records in issue here: the second made after the first suit was filed and UWCD had detailed knowledge of the City's legal position. Even after trial court judgment in this case, UWCD persists with its current rates. Since this appeal was filed, the City has challenged the rates adopted for fiscal year 2013–2014. (MJN, Cobden Decl., Exh. D [protest letter for new rates].) UWCD maintains for FY 2013–2014 the very rates invalidated below. (MJN Exh. E [UWCD resolution setting FY 2013–2014 rates].) Plainly, the remand UWCD sought will not alter UWCD's chosen course until this Court speaks.

B. Due Process and Analogous Precedent Require a Meaningful Remedy, Such as the Refund Granted Here

With the exception of recent dicta from this Court, discussed below, no California case has yet addressed the proper remedy for a levy invalidated under Proposition 218. However, none limits such a remedy to prospective relief. (See, e.g., *Silicon Valley, supra,* 44 Cal.4th at p. 458 [remand for further proceedings following invalidation of assessment]; *Pajaro I, supra,* 150 Cal.App.4th at p. 1393 [simply concluding the charge was "invalid" under Prop. 218].)[52] Accordingly, the trial court's discretion to fashion this remedy was guided by sound precedent, and should survive review. (*Collins, supra,* 205 Cal.App.4th at p. 1246.)

Moreover, in a case handed down after this case went to judgment, this Court offers dicta suggesting that a partial refund is the appropriate remedy in a Proposition 218 challenge to a groundwater augmentation charge.

Water Replenishment District of Southern California v. City of Cerritos (2013) 220 Cal.App.4th 1450 (depublication request pending) ("*WRD*"), involves a Proposition 218 challenge to groundwater

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[52] On remand in *Pajaro I,* the parties agreed to a stipulated judgment providing for repeal of the groundwater augmentation charge fees, full refunds of charges collected, and a $1.8 million attorney's fee award. (*Eiskamp v. Pajaro Valley Water Management Agency* (2012) 203 Cal.App.4th 97, 102 [describing stipulated judgment].)

replenishment assessments imposed by the agency which manages groundwater in the Central and West Basins underlying the coastal plain of Los Angeles County. The Los Angeles Superior Court issued interlocutory writ and declaratory relief in April 2011 invalidating charges imposed for the 2010–2011 fiscal year. (*Id.* at p. 1455.) The case has yet to reach trial court judgment because of prolonged litigation over remedy. (*Ibid.*) In frustration, perhaps, municipal pumpers withheld payment of the apparently illegal fees and the District sued to collect. (*Id.* at p. 1453.) The trial court refused a preliminary injunction and the District appealed. (*Ibid.*) This Court reversed, concluding that the "pay first, litigate later" principle of Article XIII, section 32 required the pumpers to continue to pay the assessment while litigation is pending. (*Id.* at pp. 1468–1469.)

WRD's holding is of little interest here. The following dicta, however, is instructive:

> And while the City might ultimately prevail in the Proposition 218 Lawsuit, it is not likely that even after a final judgment the City will be allowed to continue to produce groundwater without having paid any assessment whatsoever. (*Simms v. County of Los Angeles* (1950) 35 Cal.2d 303, 316, 217 P.2d 936 [in action to recover taxes paid under protest, recovery limited to difference between tax actually paid and that which properly should have been exacted]; *Macy's Dept. Stores,*

Inc. v. City and County of San Francisco (2006) 143 Cal.App.4th 1444, 1459, 50 Cal.Rptr.3d 79 [where city tax violated federal and state Constitutions, non-local business entitled to refund in amount sufficient to remedy potential discriminatory burden, but not entitled to full refund which would place it in a more favorable position than local taxpayer].)

(*Id.* at p. 1464.) Thus, *WRD* suggests the trial court here got it exactly right — the appropriate remedy for a groundwater charge imposed in violation of Proposition 218 is a partial refund.

Moreover, federal due process requires a meaningful, backward-looking remedy. (*McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, Dept. of Business Regulation of Florida* (1990) 496 U.S. 18, 31) [remedy for tax violating dormant commerce clause].) It has been clear for more than a century that due process guarantees those subject to government revenue measures not only a fair opportunity to challenge their accuracy and validity, but also a "clear and certain remedy." (*Id.* at p. 38; *Atchison, T. & S.F. Ry. Co. v. O'Connor* (1912) 223 U.S. 280, 285 (opn. of Holmes, J.).)

McKesson identifies two possible remedies for tax discrimination in violation of the Dormant Commerce Clause:

(i) refund to the plaintiff taxpayer "the difference between the tax it paid and the tax it would have been assessed

were it extended the same rate reductions that its competitors actually received"; or

(ii) "a partial refund to petitioner and a partial retroactive assessment of tax increases on favored competitors, so long as the resultant tax actually assessed during the contested tax period reflects a scheme that does not discriminate against interstate commerce."

(*McKesson, supra,* 496 U.S. at pp. 40–41.)

California cases adopt these same options for invalid taxes, depending on the nature of the illegality and whether it is possible to calculate a partial refund. (See, e.g., *Ventas Finance I, LLC v. California Franchise Tax Board* (2008) 165 Cal.App.4th 1207, 1221–1222 [upholding partial refund after successful Commerce Clause challenge to state tax]; *Macy's Department Stores v. San Francisco* (2006) 143 Cal.App.4th 1444, 1452 [partial refund of discriminatory local tax].)

C. UWCD's Sole Authority is Distinguishable

UWCD can cite but one case for its favored "remedy" and that case involved not unconstitutional revenue-raising legislation, but inadequate findings to support quasi-judicial action. Courts can and do, of course, remand for correction of quasi-judicial decisions of administrative agencies. (See *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499 [Code Civ. Proc. § 1094.5 does not prohibit interlocutory remand of quasi-judicial

administrative decision] ("*Voices*").) Where the harm is inadequate findings, remand for new findings is, of course, appropriate. However, UWCD can cite no authority that such a remand is authorized as to illegal revenue measures.

Voices is limited to administrative mandate, which applies to quasi-judicial acts of administrative agencies. (*Ocean Park Associates v. Santa Monica Rent Control Bd.* (2004) 114 Cal.App.4th 1050, 1061 [Code Civ. Proc. § 1094.5 governs trial court review of quasi-judicial administrative decisions].) Quasi-**legislative** acts, by contrast, are reviewed in traditional mandate. (See e.g., *City of Santa Cruz v. Local Agency Formation Com.* (1978) 76 Cal.App.3d 381, 390 [traditional mandate under Code Civ. Proc. § 1085 governs quasi-legislative actions]; *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1408 [same].) Although the City pled these consolidated cases under administrative mandate in the alternative to avoid needless motion practice as to the proper writ to be pleaded, the City consistently contended they are governed by section 1085 of the Code of Civil Procedure. Interlocutory remand had no place in that context.

Nor was the trial court's refusal to remand "unfair" as UWCD claims. (AOB at p. 47.) UWCD claims that it had no idea that it was under an obligation to provide an adequate factual record to support its rates, in spite of decades of case law. (*E.g., Beaumont Investors, LLC v. Beaumont-Cherry Valley Water Dist.* (1985) 165

Cal.App.227 [water district bears burden to develop record to demonstrate its rates are not special taxes under Prop. 13].) Moreover, UWCD ignored the City's repeated reminders to UWCD of its obligations during the two rate-makings on review here. (E.g., AR1, Tabs 78, 79 [City protest letters].)

UWCD simply refused to acknowledge its duty, and refuses still to acknowledge the consequences of its failure to fulfill it.

The trial court ordered a partial refund. (12 JA, Tab 112, at p. 2578.) Selecting this "middle ground" between a full refund and no refund was reasonable in light of the options the parties urged. It was certainly was not an abuse of the trial court's "broad discretion" to fashion an equitable remedy for a constitutional violation. (*Collins, supra,* 205 Cal.App.4th at p. 1246 [equitable remedy reviewed for abuse of discretion].)

Merely telling UWCD to "go forth and sin no more" (John 8:11) would have been insufficient because due process requires a clear and meaningful remedy. (*McKesson, supra,* 496 U.S. at p. 41.) UWCD's "remedy" was not meaningful at all, and only clear in that it would have sent the message to all government agencies that the mandates of Proposition 218 can be safely ignored; the worst-case scenario is a do-over.

D. UWCD Failed to Preserve or Adequately Present on Appeal Its Objection to the Refund Calculation

In addition to objecting to the fact the City obtained a refund at all, UWCD claims error in its calculation. (AOB at pp. 47–49.) It failed to preserve this claim for review and the Court need not address it.

In its Opposition to the City's Phase 3 brief, UWCD offered no remedial option other than remand, and made no objection to the City's calculation of the refund. (11 JA, Tab 95, at p. 2285 [Table of Contents of UWCD Phase 3 Opposition Brief]; *Id.* at pp. 2297–2298.) UWCD's first objected at oral argument to the refund calculations detailed in the City's opening brief and adopted by the trial court's tentative ruling. UWCD characterizes its objections as "timely," yet omits citation to the record for its objection. (AOB at p. 48.)

UWCD essentially admits its procedural default:

> I think that the issues related both to the calculations that the Court has made in its tentative ruling. Our general manager was out of the country for several weeks and only recently had an opportunity [to] really look at that.

(RT 48:11–15.)

Second, it offered at trial essentially no argument as to the claimed errors in the refund calculation, specifying neither authority nor record facts to sustain an alternative calculation or even stating

what alternative result it sought. That detail came, in part, in UWCD's "Objection to Proposed Judgment" over two months after the City presented its refund calculation and almost three weeks after trial. (10 JA, Tab 92, at p. 2217 [City Opening Brief on Remedy filed 6/4/2013]; 12 JA, Tab 105, at p. 2501 [tentative ruling on remedy posted 7/23/2013]; 12 JA, Tab 106, at p. 2519 [UWCD Objection to Proposed Judgment filed 8/15/2013].) The City opposed the objections, arguing that UWCD was improperly attempting to relitigate remedy after the fact. (12 JA, Tab 109, at pp. 2549–2550; see generally *Heaps v. Heaps* (2004) 124 Cal.App.4th 286, 292 [objection to statement of decision may not reargue merits].)

The sum total of UWCD's argument on this point before the trial court confirmed its tentative decision was:

> There is [sic] some very minor errors in the calculation that we can discuss with the City relative to what you have in your tentative. I think we can also probably work out mathematically, assuming that the Court maintains its tentative, which I am, against many odds, hoping it won't. But, in any event, I am certain we can work through those calculations both with respect to the tentative calculations, as well as whatever is in the declaration.

(RT 48:16–24.)

Only in objections to the proposed form judgment did UWCD offer a detailed critique of the refund calculation. According to UWCD, the budget figures in the District's own administrative records, on which the City's refund calculation necessarily relied, failed to include "in-lieu" revenue paid by the City of Oxnard for delivered water. (See 12 JA, Tab 106, at pp. 2520–2521.) It asserts this omission overstates the City's refund. (*Ibid.*) UWCD cited the administrative record for the amount of the in-lieu payments, but could find no record support for its explanation why or how those figures affected the refund calculation. (*Ibid.*) Instead, UWCD sought — post-trial via objections to the form of judgment — to introduce a declaration of its General Manager purporting to explain the significance of the "in-lieu" payments. (12 JA, Tab 107, at pp. 2526–2541 [declaration of E. Michael Solomon].) This declaration concludes that adding the in-lieu payments to groundwater extraction charges will result in "correct average costs" but fails to explain why. In short, the District's untimely evidence is a bare conclusory statement made by its General Manager, without any support in the administrative record, presented without opportunity for the City to test it. This untimely evidence was no evidence at all.

Further, UWCD's objections contained not a single citation to legal authority, nor analysis of why and how the in-lieu revenue ought to affect the refund calculation. (Compare 12 JA, Tab 106, at p. 2521 with the City's detailed refund analysis at **10 JA 92, at**

pp. 2231–2235.) Even if the arguments UWCD relies upon here had been timely presented to the trial court, they were insufficient to undermine the trial court's refund calculation.

Thus, UWCD failed to preserve for appeal its objections to the calculation of the City's refund.

Indeed, UWCD repeats the error here. Its Opening Brief baldly asserts (at p. 48) the refund calculation erroneously excluded "in lieu water pumping delivery charges" and that this affected the refund calculation in a stated amount. But the Opening Brief does not explain what these charges are or how they should affect the refund calculation. Nor does it adequately cite record evidence to bear out the asserted error and the calculation of the appropriate result — the sole record citation in this entire argument is to 15 pages of the record. (AOB at p. 48, citing 12 JA, Tab 107, at pp. 2526–2541.) This evidence is the entirety of the belated declaration of the District's General Manager, which the trial court properly rejected as untimely. (12 JA, Tab 110, at p. 2557 [final judgment, maintaining original refund calculation].) This Court need not guess at UWCD's contention.

To fail to provide reasoned analysis of an issue and to cite authority and evidence for one's argument is to forfeit the point. (*Provost v. Regents of University of Cal.* (2011) 201 Cal.App.4th 1289, 1300.) Furthermore, any evidentiary conflicts in the record with

respect to the calculation of refund must be resolved in favor of the trial court's judgment. (*Collins, supra,* 205 Cal.App.4th at p. 1246.)

It is not enough to merely raise an argument; it must be raised timely, and supported by authority. (*Hepner v. Franchise Tax Bd.* (1997) 52 Cal.App.4th 1475, 1486 [even constitutional questions cannot be briefed and argued for the first time on appeal].) A judgment allegedly inconsistent with or not supported by the facts must be attacked by motion to set aside or vacate the judgment, not by objection to a proposed form of judgment. (See Code Civ. Proc., § 663.)

Thus, this Court need not entertain UWCD's critique of the refund calculation.

E. Even if UWCD's Objections Were Timely, the Refund Calculation Withstands Review

Even if this Court is inclined to reach the point, any error in the City's favor in calculating UWCD's service cost is more than offset by the errors in UWCD's favor raised by the City's cross-appeal below. That cross-appeal does not seek to reopen the retrospective remedy granted below, but only to obtain prospective, declaratory relief to guide UWCD and all who depend on its services as to its rate-making obligations. Nevertheless, the City may cite those errors by way of set-off if this Court wishes to revisit the refund calculus.

Moreover, UWCD demonstrates no error. The trial court properly exercised its discretion to craft an appropriate equitable remedy to cure a constitutional violation. If there was error in the data used to calculate the refund amount, the fault lies with UWCD, which bore the burden to produce a record to support its rates.

As the City noted in its Phase 3 opening brief below, it was necessary to approximate the District's costs for groundwater services based on the limited records the District prepared. (**10 JA, Tab 93, at pp. 2232–2235.**) As UWCD admits, and the trial court noted in Phase 2, the District never actually conducted a cost of service study. (10 JA, Tab 88, at p. 2156 ["The record contains no quantitative analysis of the proportional cost of service distinguishing between agricultural water use and non-agricultural water uses."].) The City therefore reasonably determined UWCD's average cost to augment groundwater by totaling the costs shown in its record and dividing that sum by the groundwater production reported in that same record.[53] If, as UWCD belatedly claimed, that number is incorrect because it omits in-lieu pumping charges that delivered water customers pay, the fault is the District's.

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[53] The City's detailed calculation appears in the record at **10 JA, Tab 92, at pp. 2230–2235** and is appended to this brief for the convenience of the Court. The Court need not retrace that analysis, but can note the detail with which it was stated; detail UWCD did not attempt in its critique.

(See *Beaumont, supra,* 165 Cal.App.3d at pp. 235–236.) The refund remedy was well within the trial court's equitable discretion.

F. The Trial Court's Remedy Will Not Bankrupt the District

UWCD fears compliance with Proposition 218 will bankrupt it. Not so. First, it does not face universal liability. Although a final judgment in this case invalidating UWCD's rates for fiscal years 2010–2011 and 2011–2012 may invite refund claims from other groundwater users, such claims must be made within the one-year period required by the Government Claims Act (Gov. Code § 910 et seq.). Although this record is silent on the point, to the City's knowledge, few M&I pumpers filed timely claims so as to be entitled to refunds — indeed, none chose to answer the validation complaints here.

Further, any deficit resulting from refunds can be recovered from future, lawful rates. (See *Roseville, supra,* 97 Cal.App.4th at p. 648 [cost of service includes repayment of debt]; *Fresno, supra,* 127 Cal.App.4th at p. 923 [same]; See also *McKesson, supra,* 496 U.S. at pp. 40–41 [due process allow taxing agency to remedy discrimination by charging those undercharged more rather than refunding those overcharged].)

Water rate-making is a zero-sum game in which the rate-maker can cover all its legitimate costs, as long as it apportions them lawfully. (*Pajaro II, supra,* 220 Cal.App.4th at p. 598 [rates may properly cover debt obligations under Prop. 218, including debt for abandoned projects].) The financial burden our Constitution places here does not fall on UWCD, but on those who benefit from its services and must fund them.

Whether or not that is good policy need not detain this Court. The Constitution demands what it demands. As *Silicon Valley* put it: courts "must ... enforce the provisions of our Constitution and may not lightly disregard or blink at ... a clear constitutional mandate. (44 Cal.4th at p. 448 [internal quotation omitted].)

The voters rejected arbitrary favoritism when they adopted Proposition 218. If the people of Ventura County wish to subsidize agriculture by their water rates, they can vote for a special tax on water bills to do so. However, our Constitution forbids UWCD to accomplishing such a taxation objective in the making of rates which our Constitution and other law limit to reasonable, proportionate cost of service.

There was no abuse of remedial discretion here, and no reason to disturb the trial court's order.

IV. THE TRIAL COURT FAILED TO FULLY IMPLEMENT THE COST LIMIT ON UWCD'S FEES

As our Supreme Court has recently made clear, the trial court was obligated "to make detailed findings focusing on the [agency's] evidentiary showing that the associated costs of the regulatory activity were reasonably related to the fees assessed on the payors." (*Farm Bureau, supra,* 51 Cal.4th at p. 442, citing *Sinclair Paint, supra,* 15 Cal.4th at p. 870 [addressing Prop. 13 challenge to regulatory fee on water use].) Under this standard, the trial court was obligated to more carefully consider the City's challenges to UWCD's newfound, and inconsistently applied, "common pool" theory and to its use of proceeds of Zone A charges for expenses unrelated to groundwater augmentation. The trial court's cursory rejection of these arguments was error.

However, because the Court of Appeal can review the Agency's rate-making record as easily as the trial court, it need not remand, but can simply grant the declaratory relief the City seeks.

A. Both Records Show the "Common Pool" Theory to be a Convenient Fiction

The District's charges do not reflect the obvious and well-documented differences in how its services benefit those who draw groundwater from the District's eight basins. As noted above,

UWCD developed (and promptly abandoned for 50 years) the "common pool" theory when it was founded in the 1950s and ad valorem property taxes were its sole funding source. (AR1, Tab 10, at p. 19.)[54] It was therefore in the District's interest to assume "a common pool water supply" to provide a rational basis for its property tax. (See AR1, Tab 61, at pp. 262–264 [District Engineer: "United was created in the early 1950s .... At that time ... the District treated the problems within the District as common problems, and, as result of that, developed the concept of a common pool."].) UWCD then revived the theory decades later in response to the first of the City's lawsuits despite years of contrary practice and scientific evidence. (AR2, Tab 54, at pp. 4–5 [Update to 2011 Water Rate Study].) As described in the Statement of Facts above, this theory cannot account for the unique hydrogeological conditions of the eight basins nor explain the District's own basin management activities. (See AR1, Tab 60, at p. 15 [2011 Groundwater Report: "The balance for each groundwater basin is determined individually."].)

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[54] Taxes, of course, need only satisfy a very low standard of minimum rationality; they need not be proportionate to cost of, or benefit from, service. (E.g., *Armour v. Indianapolis* (2012) 132 S. Ct. 2073, 2081–2082 [forgiving sewer assessments on those who paid over time, but not those who paid up-front, survived minimum rationality review].)

UWCD demonstrates its own lack of confidence in this post-hoc rationalization by establishing a Zone B and charging only those who pump groundwater there the costs of the Freeman Diversion Dam. If UWCD truly believed — and its records were competent to show — that all the groundwater in its bounds is part of a "common pool" such that recharge anywhere is recharge everywhere, what justification has it for Zone B? Moreover, why would the Legislature include a requirement that UWCD establish zones of benefit and separately account for costs in each if the common pool theory is worthy of credence?[55]

UWCD concedes this reading of its statute: "The purpose of establishing zone(s) is to ensure that the ground water fee charged in a zone is fairly allocated to the pumpers within a particular zone." (AOB, at p. 6.) Thus, the new-found "common pool" theory violates not just Proposition 218, but also UWCD's principal act. Furthermore, UWCD's claim that it is "absurd" to "define United's services as a property related service" (AOB, at p. 28) seems to

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[55] Contrast the records here with those at issue in *Pajaro I* and *Pajaro II* which demonstrate a single ground-water basin with coastal pumping affecting upland wells. (*Pajaro I, supra,* 150 Cal.App.4th at p. 1370 ["This area lies atop the Pajaro Valley Groundwater Basin, which the trial court found to be 'a single, interconnected basin of fresh groundwater to supply the whole region.'"]; *Pajaro II,* 220 Cal.App.4th at pp. 590–591.)

ignore its own practice and its statutory mandate that it identify zones of benefit within the district and set rates accordingly.

The "common pool" theory is a mere post hoc rationalization — used to justify the absence from either administrative record of a careful and accurate accounting of costs — at the expense of both UWCD's constitutional and statutory obligations. But even UWCD acknowledges that it does not reflect available hydrogeological science. For example, UWCD admits that the degree of interconnection varies from one basin to another. (See, e.g., AOB, at p. 7 ["[a]ll of these basins are hydrogeologically interconnected to one degree or another ..."].) Thus impact pumping or recharge in one basin will not have the same effect as to all others. Pumping over the pumping hole in the Oxnard Plain and Pleasant Valley Basins is more damaging that pumping upstream; recharge in the Oxnard Plain is of little benefit to the Mound and Santa Paula Basins, where the City takes much of its water. UWCD's position is therefore internally inconsistent and ought not to have survived the searching, independent scrutiny our Supreme Court found to be required in *Farm Bureau*.

The District candidly admitted below its "common pool" theory is just that — a theory neither proven nor consistently applied. (See 9 JA, Tab 81, at p. 1914 [referencing "the common pool concept"].) It postulates that one pumper affects every other pumper to "**some**" degree, but does not quantify the degree of hydraulic

connection or demonstrate a reasoned basis for the rates it imposes. (*Ibid.*) It thus concedes its common pool theory is not workable: "[T]he District does not claim that all eight basins are interconnected such that pumping in one basin will affect every groundwater user to an **equal** degree." (*Ibid.*, italic emphasis in original; see also AR2, Tab 164, at p. 6 [Rebuttal to City's 2012 protest; comment marked G – Pg 3: "UWCD does not contend that each basin benefits equally from its management activities."]) Yet it imposes District-wide rates that assume an equal degree of service to pumpers throughout its basins and three times the service to M&I as to agriculture.

Groundwater flow and recharge varies significantly among the District's eight groundwater basins. (E.g., AR1, Tab 28, at p. 16 [1998 Groundwater Report: "The groundwater basins within the District vary in their water production and ability to be recharged rapidly."]; AR2, Tab 177, at p. 16 [same].) The Oxnard Forebay (where the District operates spreading grounds), for instance, does not recharge the Santa Paula Basin. (AR1, Tab 81, at p. 17 ["Santa Paula Basin doesn't respond to recharge at United Water's Saticoy spreading grounds."]; *id.*, at p. 22 [Depicting Santa Paula Basin and Saticoy Spreading Grounds as separated by Santa Clara River].) The District spreading operations, at best, recharge the Mound Basin only indirectly. (AR1, Tab 10, at p. 19 [District Engineer reports only "indirect recharge to the Mound Basin"].) The northwest Oxnard Plain (the site of some City wells) can sustain additional pumping

that does not affect the southeastern portion of the basin due to "[t]he presence of [a] subsurface feature that reduces groundwater flow" from the District's spreading operations to the southeastern Oxnard Plain and Pleasant Valley Basins. (AR2, Tab 9, at pp. 20–21 [2007 Update to Fox Canyon GMA Groundwater Management Plan]; see also AR1, Tab 8, at p. 87 ["Shifting Pumping to Northwest Oxnard Plain"].)

By advancing its post-hoc "common pool" rationalization for its rates, UWCD suggests "**some**" interconnection amounts to universal water availability throughout the District in the teeth of ample record evidence to the contrary. (See **AR2, Tab 165, at p. 21; AR2, Tab 113** [groundwater flow maps].) The District's "common pool" theory thus oversimplifies physical conditions and groundwater availability in the District's aquifers and is unsupported by even the record of the FY 2012–2013 rates in which it was first suggested since the 1950s.

Acknowledging the unique hydrogeology of the eight basins does not mean the District must trace each water molecule. Instead, UWCD must account for the known differences between the basins as demonstrated by hydrological science, such as that the District summarized in its own (now disowned) Rate Study (AR1, Tab 62) and elsewhere in each ratemaking record. The "common pool" theory must therefore be expressly rejected, and the District must be directed to allocate its costs to the City in a way that bears a fair or

reasonable relationship to the City's burdens on, or benefits received from, District activities — as the Constitution requires. (Art. XIII C, § 1, subd. (e) [final, unnumbered para.].) While our Constitution does demand perfection, it demands reasonable rate-making in light of an adequate administrative record. (*Pajaro II, supra,* 220 Cal.App.4th at p. 6012.)

B. The Trial Court Erred in Approving Zone A Costs Questioned by the City

1. Proposition 218 requires fees to be used only for costs of service

Proposition 218 prohibits spending "[r]evenues derived from the fee or charge ... for any purpose other than that for which the fee or charge was imposed." (Art. XIII D, § 6, subd. (b)(2).) At trial, the City identified three expenditures of Zone A groundwater charge revenues unrelated to groundwater augmentation and management:

- treating and delivering **surface** water to over-drafted coastal areas. (AR2, Tab 106, at p. 49 [water treatment chemicals].)
- "State Water Import Costs" used to serve delivered water customers. (*Ibid.;* AR2, Tab 106, at p. 58 [State Water Import Fund].)
- "Recreation Activities subfund," which includes potable water delivery to the concessionaire at Lake Piru. (AR2, Tab 106, at p. 51 [budgeting for "water treatment chemicals" and "water quality services"].)

In its Opening Brief, UWCD identifies others: expenditures for habitat restoration, public health and safety, and other projects unrelated to groundwater management. (AOB at pp. 3–4, 9.) These costs should be borne by UWCD's property tax revenues which can be spent for any lawful purpose of the District or by fees on those who benefit from these expenditures; such as users of recreational facilities, concessionaires at those facilities, and buyers of piped water.

UWCD makes only passing reference to these improper costs in its brief. (AOB at pp. 7–8.) It does not specifically address any of these items, and merely states that "Ground water extraction revenue is not used for general governmental purposes; rather it is restricted to United's district-wide water conservation, management and replenishment activities, as required by [its principal] Act." (*Ibid.*) Merely saying so, however, is not sufficient to meet UWCD's burden of proof. UWCD has never meaningfully responded to the City's critique of these expenditures, either in the trial court or here. (9 JA, Tab 81, at pp. 1927–1931 [UWCD Phase 2 brief summary of budget data, failing to refute City's demonstration that some expenditures to do not amount to groundwater service].)

UWCD has not even correctly identified the constitutional provision it has violated. UWCD asserts compliance only with article XIII D, section 6(b)(5): "No fee or charge may be imposed for general governmental services … available to the public at large in

substantially the same manner as it is to property owners." (See AOB, at pp. 7–8.) Yet it must comply with **all** provisions of Proposition 218, including the requirement that proceeds of the augmentation charge not be used for unrelated expenses. (Art. XIII D, § 6, subd. (b)(2).) UWCD does not explain why it uses Zone A revenue to pay for treated water at the Lake Piru concession, to subsidize water piped to agricultural customers in one portion of the District, or how its general public health and safety projects relate to groundwater use.

Its citations to the record do not support its claim that the funds are "restricted." For example, UWCD cites (AOB at pp. 7–8) AR2, Tab 106, at p. 44, which describes how revenue from Zone A Groundwater Extraction Charges funds "Recreation Activities (including potable water services) at Lake Piru," and that Zone A charges are used to fund "boating safety and enforcement of District established park rules" and construction, maintenance, and operation of a potable water system for lake visitors. UWCD cites various pages from the relevant budgets (e.g., AR1, Tab 22, at pp. 56–60 [cited at AOB at p. 8]) but these documents do not show that Zone A revenue is exclusively spent on groundwater services or relates to groundwater at all. In fact, the record plainly shows that UWCD comingles its Zone A funds with other revenues, which hardly demonstrates the funds are "restricted." (See AR2, Tab 106, at pp. 42–45 [describing "General / Water Conservation Fund

(Zone A") as encompassing "Water Conservation Activities (Zone A)," "General Operating Activities," and "Recreation Activities].)"

Our Constitution requires UWCD make some effort to account for expenditures of rate revenue, and to show those expenditures relate to the service for which the rate is charged. (Art. XIII D, § 6, subd. (b)(2) and (3); cf. *Fresno, supra,* 127 Cal.App.4th at p. 927 [invalidating general fund transfer from water utility for public safety and street costs because no cost analysis included in administrative record]; *Farm Bureau, supra,* 51 Cal.4th at p. 438 [remanding for more searching trial court review of cost justification of fee under Prop. 13].) UWCD's records are opaque on the challenged costs and its briefing nearly conclusory. It has never made any meaningful attempt to justify the costs the City questions, nor identified record evidence to justify them as fairly related to the cost of serving groundwater to the City's wells.

2. The *San Marcos* legislation imposes a similar duty to limit expenditures to service costs

As noted above, Government Code section 54999.7 imposes two duties on the District — in addition to its constitutional obligations — as to fees on public agencies. Such charges must:

(i) "not exceed the reasonable cost of providing the public utility service" and;

(ii) be "determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, based on customer classes established in consideration of service characteristics, demand patterns, and other relevant factors."

(Gov. Code, § 54999.7, subds. (a)–(b).) The District fulfills neither.

"Public utility service" means "service for water." (Gov. Code, § 54999.1, subd. (h).) UWCD provides "service for water" because its groundwater extraction charges fund water-quality protection, the construction of reservoirs, recharging facilities, dams for water storage, and pump stations. (See, e.g., AR1, Tab 10, at pp. 15–16 [Noble Basin Reservoir]; AR1, Tab 22, at p. 36 [FY 2011–2012 exhibit listing district facilities]; *id.*, p. 57 [General Fund pays for "maintaining various spreading grounds, ... expenses of the Santa Felicia Dam, Saticoy Well Field Maintenance ... [and] to account for maintenance and operation costs of the Hydroelectric Plant at the Santa Felicia Dam ..."]; *id.*, at pp. 121–122 (CIP summary of New SFD [Santa Felicia Dam] Intake Structure and SFD Tunnel Fish Release Pipe]; *id.*, at pp. 124–125 [CIP summary of New Santa Felicia Dam Shop and Santa Felicia Dam PMF [probable maximum flood] Containment]; *id.*, at p. 134 [CIP summary of SFD Asphalt Repair]; AR1, Tab 62, at pp. 42–43 [2011 Water Rate Study summary of Zone A charge expenditures to pay debt and operation costs of Saticoy Well Field].) UWCD also "provides wholesale water to the City of Oxnard, Port Hueneme Water Agency, Pleasant Valley County Water

District, agricultural users on the Pumping Trough Pipeline, approximately 12 mutuals [i.e., mutual water companies], and numerous other retail customers." (AR1, Tab 22, at p. 36 [2011–2012 budget exhibit].) Indeed, the District itself acknowledges it provides "service for water" because its budget needs are driven not by the water, "but [by] the facilities and operations to move, deliver and store water, along with the regulations and mandates that must be adhered to in order to provide these services." (*Id.*, at p. 8 [2011–2012 budget cover memo].)

The Legislature plainly intended to include these activities in the broad phrase, "service for water." Had it intended a narrower meaning, it would have used terms like "retail water supplier" or "domestic water supply" that appear elsewhere in the Water Code. (E.g., Wat. Code, § 13575, subd. (b)(6) ["Retail water supplier" in Water Recycling Act of 1991]; Wat. Code, § 14003 ["domestic water supplies" in Safe Drinking Water Bond Law of 1988].) Nor does the stated purpose of Government Code section 54999.7 — equity among public agencies — suggest a narrow sweep for this phrase.

"Service for water" — when read in conjunction with Water Code section 515's definition of "water service" and article X, section 2's conservative mandate — includes UWCD's groundwater services. Indeed, UWCD's compliance with Proposition 218, without the election required by article XIII D, section 6, subdivision (c), suggests it shares this view. That subdivision requires a property-

owner or registered-voter election to adopt or increase a property related fee other than one for "sewer, **water**, and refuse collection **services**." (Art. XIII D, § 6, subd. (c), emphasis added.) Its decision not to conduct an election on its fees reflects its view that it provides "water service" within the meaning of article XIII D, section 6, subdivision (c).[56] Thus, by word and deed, UWCD concedes it provides water service within the sweep of Government Code section 54999.7, yet it fails to comply with that statute's demands.

3. The trial court erred in approving expenditures of Zone A rate proceeds for costs unrelated to groundwater service

The trial court erred by refusing to invalidate UWCD's expenditures of Zone A augmentation charges for unrelated purposes. Its statements of decisions are nearly silent on the issue, stating only a bare conclusion in favor of UWCD: "the court concludes that UWCD has met its burden of showing compliance with article XIII D of the California Constitution for groundwater extraction charges in the aggregate." (10 JA, Tab 88, at p. 2149 [Phase 2 Statement of Decision].) The statements of decision do not support this conclusion or provide any analysis of the specific

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[56] Recent case law confirms the view that groundwater services are "water services" exempt from the election requirement of Art. XIII D, section 6, subdivision (c). (*Pajaro II, supra,* 220 Cal.App.4th at p. 595.)

expenditures in issue. (See *id.*, at pp. 2146–2148; *id.*, at p. 2148 ["Allocation on a district-wide basis for services which have district-wide effects, as here done by UWCD, must therefore be constitutionally permissible because no more specific proration is feasible"].) This contradicts the evidence and does not evidence the searching review *Farm Bureau* requires.

However, the City does not wish to reopen the refund calculation to address this failure. Instead, it seeks only prospective relief, asking this Court to declare that:

(i) UWCD cannot spend proceeds of the Zone A charge for expenses unrelated to the groundwater service for which the charge is levied; and,

(ii) UWCD must make a record in future rate-makings to justify each and every expenditure of those funds adequate to support the searching, independent judicial review our Constitution requires.

UWCD and all its customers — indeed all groundwater agencies and users in California — will benefit from this clarification of the law.

V. WATER CODE SECTION 75594 IS UNCONSTITUTIONAL

The City agrees with UWCD, that "[a]ny attempt to satisfy both the statutory mandate to impose different rates per acre-foot as

between agricultural users and non-agricultural users and the requirement under Proposition 218 that such costs to proportional to the cost of service to the parcel is inherently problematic." (AOB, at p. 38.) UWCD urges this Court to resolve this conflict by setting aside the Constitution. However, it is the Water Code that must give way. The trial court erred by failing to recognize that this case demonstrates irreconcilable conflict between the Water Code and the Constitution. (10 JA, Tab 88, at p. 2158 [Phase 2 Statement of Decision refraining from finding section 75594 unconstitutional].)

Maintaining Water Code section 75594 on the books will produce a result the Legislature could not have intended — that UWCD has no rate-making power at all. If UWCD must comply both with the 3:1 to 5:1 mandate of section 75594 and the proportional cost of service mandates of our Constitution, it will only be authorized to set rates during periods in which, by chance or artifice, the costs to serve M&I consumers are at least three times higher and not less than five times higher than the costs to serve agricultural users. Conversely, UWCD will have no ratemaking power in years in which its costs do not — like those in issue here and every conceivable year hereafter in light of the two records here.

This Court might well conclude that the legislative intent of both the Legislature in 1966 and the voters thirty years later is best served by reading Proposition 218 to displace Water Code section 75594. (*Ventura Group, supra,* 24 Cal.4th at pp. 1098–1099

[conflict between Prop. 13 and statute must be resolved in favor of Constitution].) That will allow UWCD to fund its important services by rates proportionate to service cost even when, as these records demonstrate, M&I groundwater users are less costly to serve than agricultural groundwater users.

Accordingly, the City also seeks declaratory relief that Water Code section 75594 is unconstitutional under article XIII D, section 6, subdivision (b)(3).

CONCLUSION

For the reasons stated above, the City respectfully submits this Court should affirm the trial court's conclusion that the charges exceed the cost of serving the City on the records in issue, whether it deems Proposition 218 or 26 the controlling authority. The refund, declaratory and writ relief awarded the City should also be affirmed.

However, the City urges this Court to grant the declaratory relief the trial court would not, as follows:

1. On the present administrative records, UWCD's charges violate Proposition 218 because they fail to reflect the differing costs to serve users of groundwater in different basins and the differing benefit pumpers in those basins receive from UWCD's recharge efforts; the "common pool" theory cannot be sustained on either record here;

2. UWCD's use of proceeds from the Zone A charge to pay for expenses unrelated to groundwater management violates Proposition 218 and the *San Marcos* Legislation; and

3. Water Code section 75594 is facially unconstitutional because the District cannot comply with both its terms and those of the Constitution.

DATED: February 5, 2014

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MICHAEL R. COBDEN
Attorneys for Respondent and Cross-Appellant
CITY OF SAN BUENAVENTURA

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 Respondent's Brief and Cross-Appellant's Opening Brief contains 24,964 words (including footnotes, but excluding the tables and this Certificate) and is within the 28,000 word limit set by rule 8.204, subd. (c)(4). In preparing this certificate, I relied on the word count generated by Word version 14, included in Microsoft Office Professional Plus 2010.

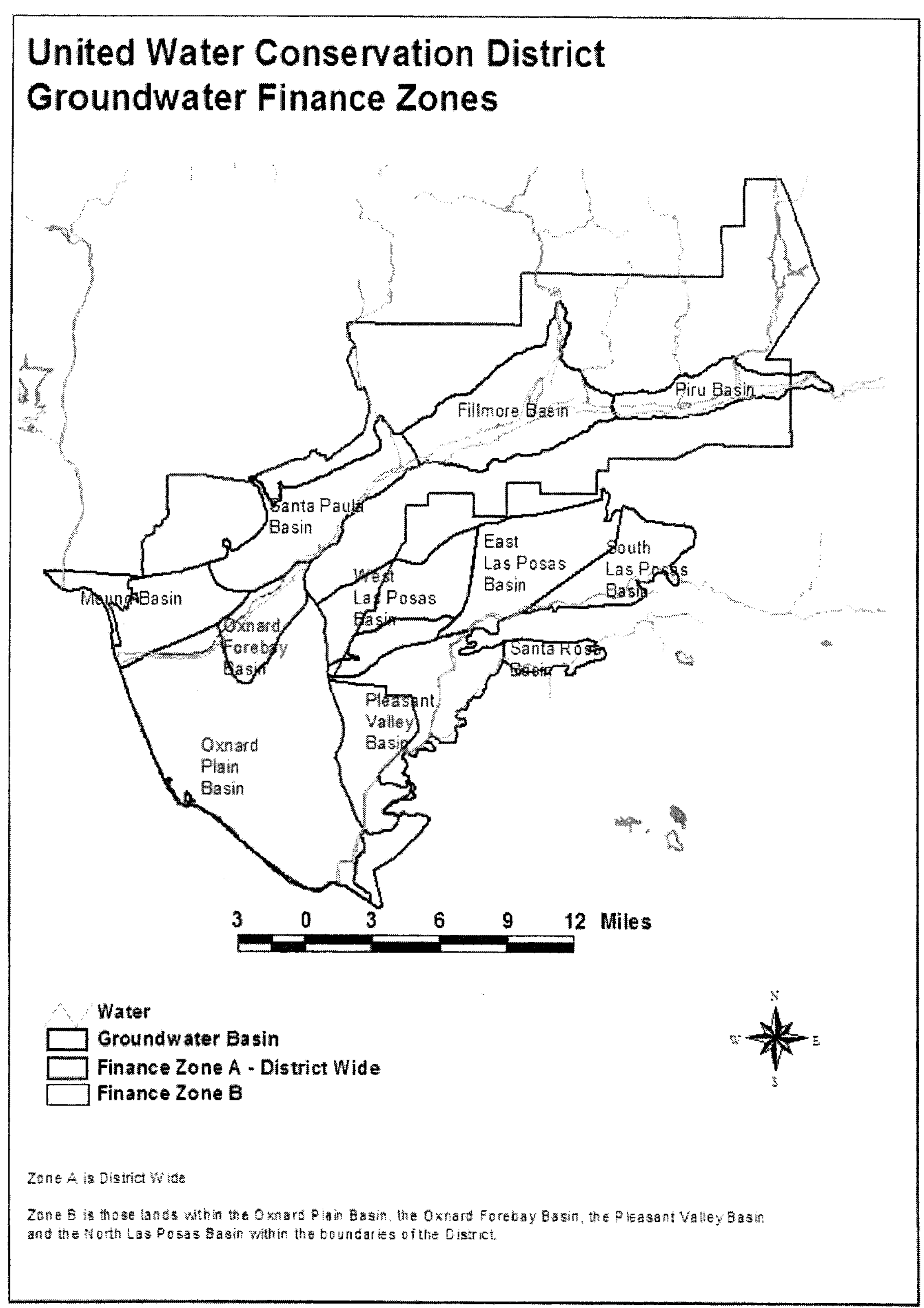
Executed on February 4, 2014, at Penn Valley, California.

COLANTUONO & LEVIN, PC
MICHAEL G. COLANTUONO

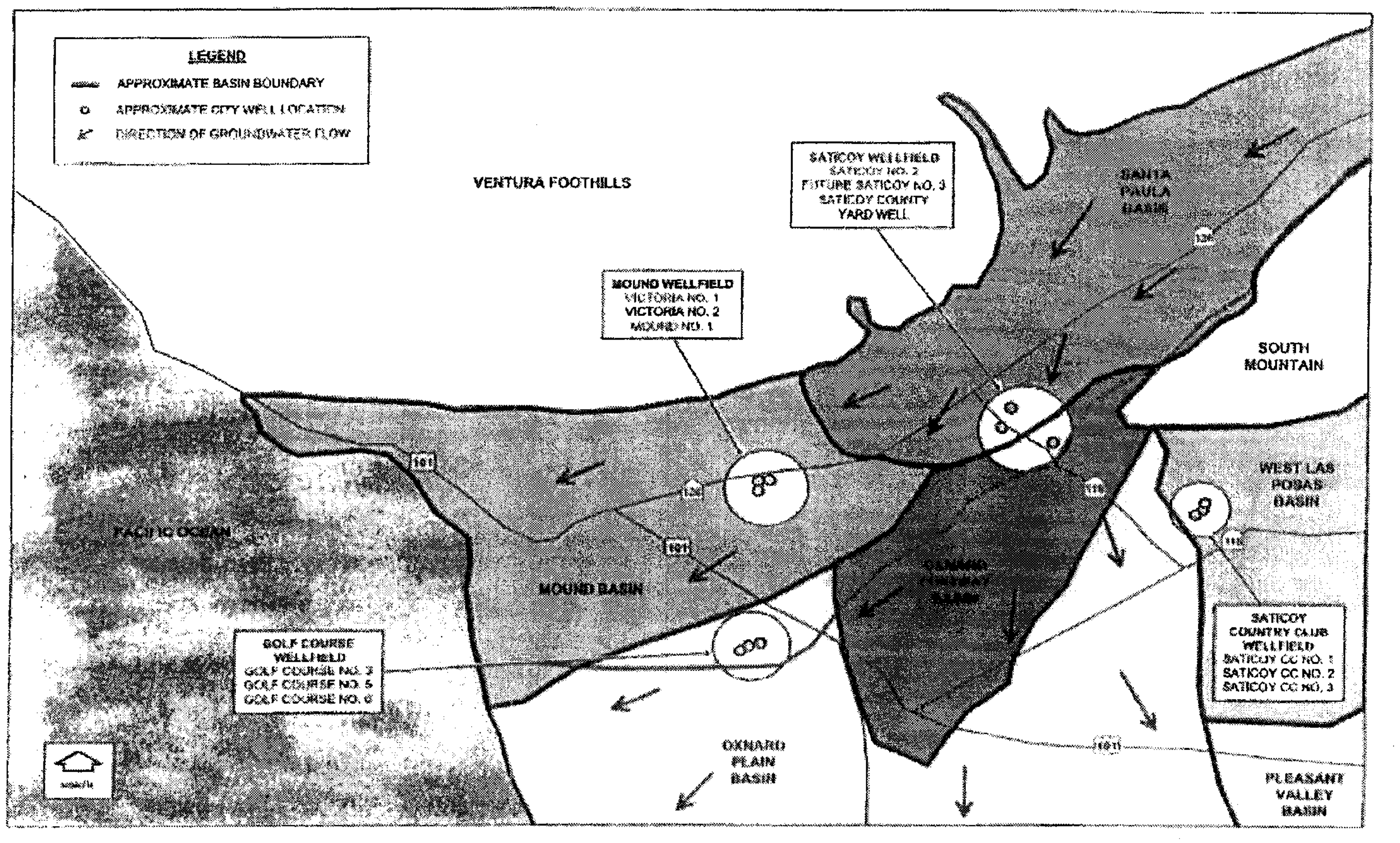
MICHAEL G. COLANTUONO

ATTACHMENT

Exhibit U111



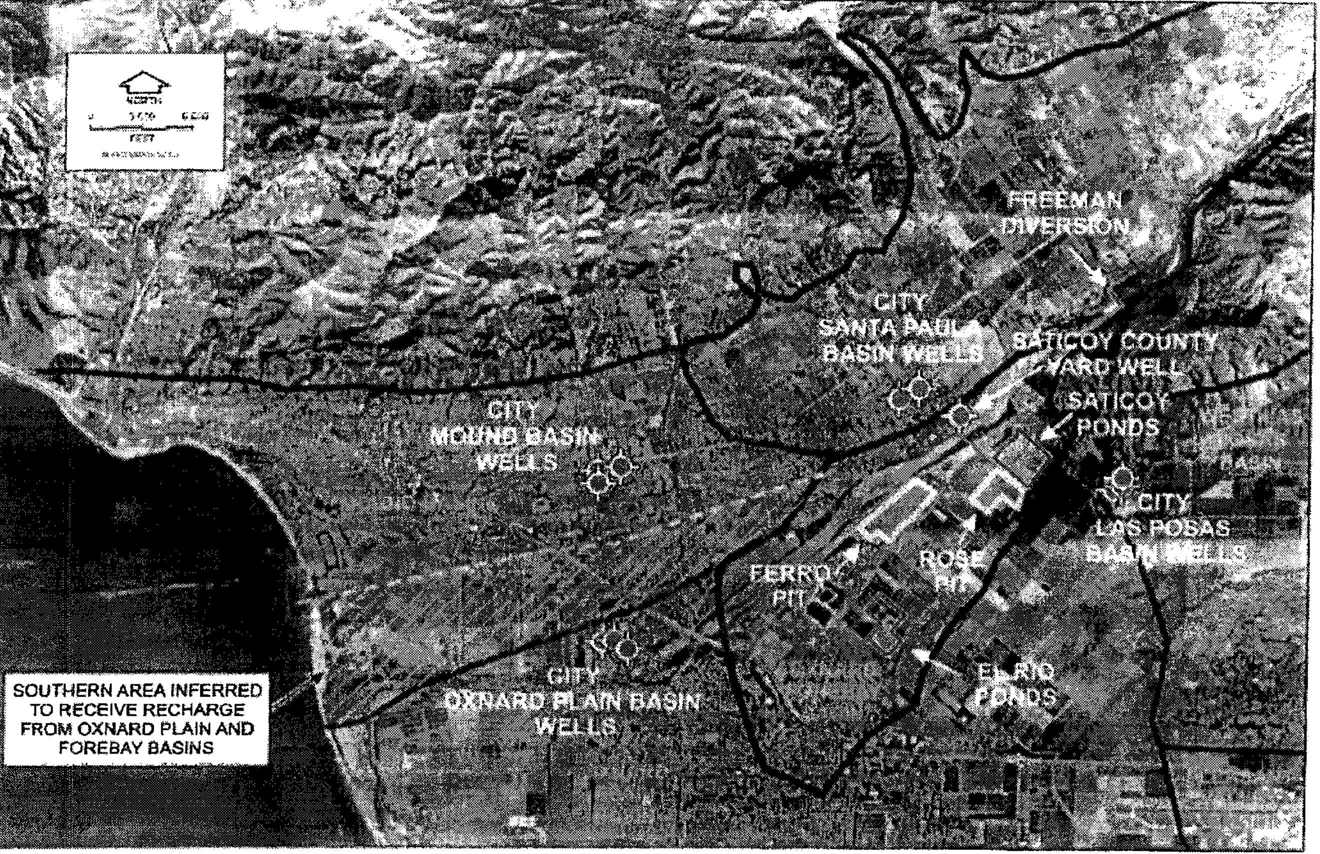
HOPKINS
GROUNDWATER
CONSULTANTS



CITY WELLFIELDS AND BASIN BOUNDARY LOCATION MAP
City of San Buenaventura
Ventura, California

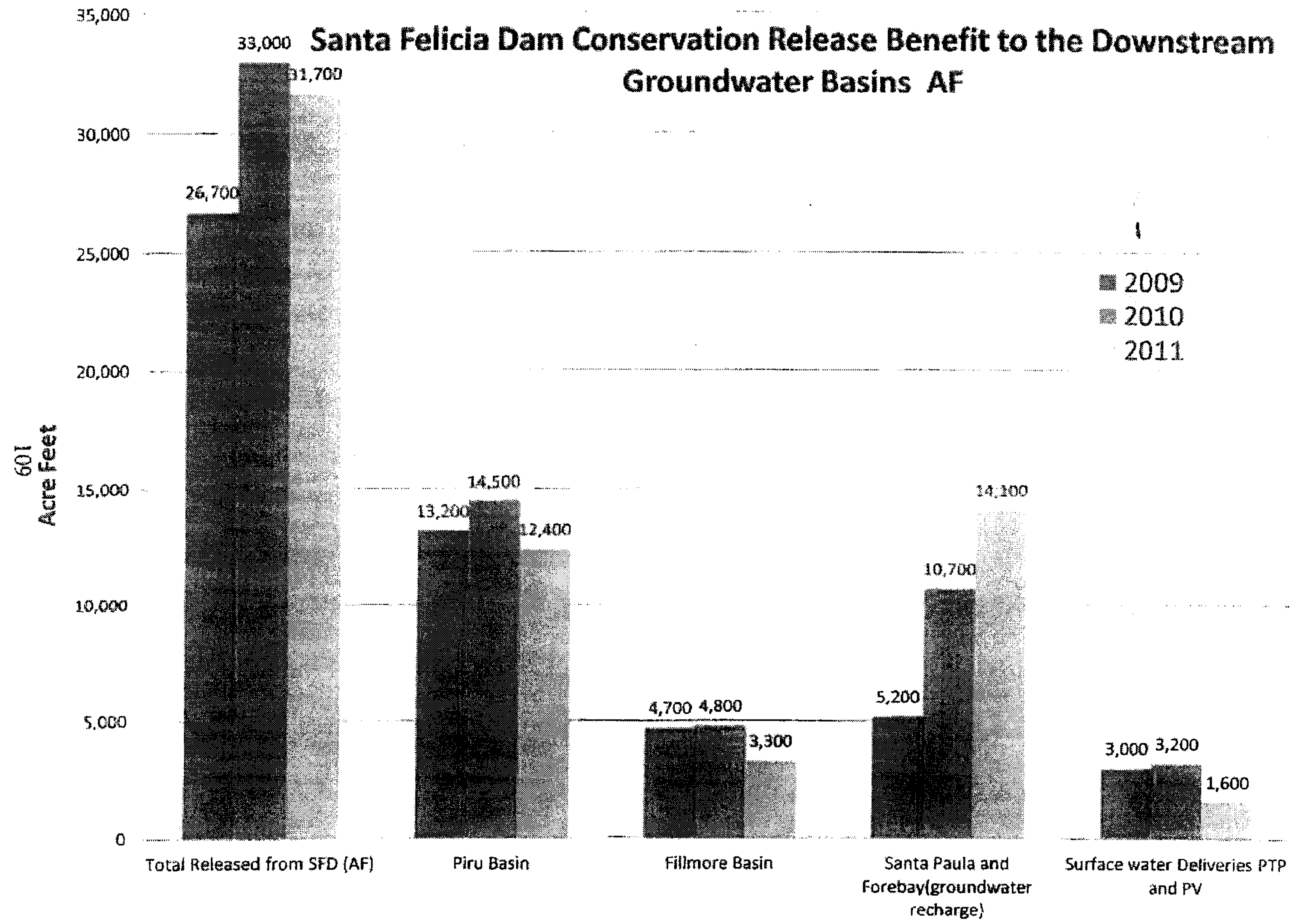
PLATE 2

MJN00441



UWCD EXISTING AND PROPOSED RECHARGE FACILITIES LOCATION MAP
City of San Buenaventura
Ventura, California

PLATE 4



Attachment C

acre-feet of groundwater the District expected to produced, District-wide.[10] This calculation is reflected in Table 1 below.

TABLE 1: PROPOSED LAWFUL RATE CALCULATIONS				
FY	**Zone**	**Total Service Cost**[11]	**Groundwater Production (AF)**	**Average Cost/AF**
2011–12	Zone A	$6,042,000[12]	152,200[13]	$39.70
	Zone B	$1,805,400[14]	68,300[15]	$26.43
	Sum of A & B			**$66.13**
2012–13	Zone A	$8,330,625[16]	151,500[17]	$54.99
	Zone B	$1,791,000[18]	67,500[19]	$26.53
	Sum of A & B			**$81.52**

Thus, to cover the revenue UWCD budgeted from groundwater charges, the average rate per acre-foot for FY 2011–2012 is $39.70 for wells in the District-wide Zone A and $66.13 per acre-foot for wells in Zone B, which pay the sum of the $39.70 per acre-foot Zone A charge plus the $26.43 Zone B charge. The Court will recall that wells in Zone B are those benefited by the Freeman Diversion Dam, which are necessarily also in the district-wide Zone A and therefore pay the sum of

[10] The City preserves, of course, its objection to the Court's determination that Proposition 218 and other law permit a flat rate District-wide.

[11] The revenue data listed in this column appear in the cited pages of District's budgets in columns labeled "FY 20XX–XX Budget," "Forecasted Revenue" and "Acre Feet" in the row labeled "Total Groundwater Revenue." To aid the Court's analysis, we attach to this brief copies of the relevant pages, highlighting the data on which we rely.

[12] AR2 168-63 (Adopted 2011–12 budget, attached hereto as Attachment No. 1).

[13] *Ibid.*

[14] AR2 168-84 (Adopted 2011–12 budget, attached hereto as Attachment No. 2).

[15] *Ibid.*

[16] AR2 106-48 (Proposed 2012–13 budget, attached hereto as Attachment No. 3).

[17] *Ibid.*

[18] AR2 106-67 (Proposed 2012–13 budget, attached hereto as Attachment No. 4).

[19] *Ibid.*

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the two charges. For FY 2012–13, the rate for Zone A calculated in this manner would be $54.99 and the sum of Zone A and Zone B rates charged to production from wells in Zone B would be $81.52.

Using these rates, and applying them to the charges the City has paid under protest, this Court could potentially calculate a partial refund to the City as shown in Table 2. This table reflects each of the City's wells in the District, the groundwater production the City has reported to UWCD to date and applies the appropriate Zone A or Zone B charge to each. Only three half-years are shown because the second half of the current fiscal year is not yet closed and the City has not yet paid the charge for the current period or reported groundwater production.

TABLE 2: CALCULATION OF LAWFUL CHARGES TO CITY

Well[20]	July – December 2011			January – June 2012			July – December 2012		
	Use[21] (AF)	Rate[22]	Charge	Use[23] (AF)	Rate[22]	Charge	Use[24] (AF)	Rate[22]	Total
SCC #1	0.56	$66.13	$37.03	0.93	$66.13	$61.50	2.88	$81.52	$234.78
SSC #2	175.56	66.13	11,609.78	188.80	66.13	12,485.34	203.08	81.52	16,555.08
GOLF #2	0.00			0.00			0.00		
GOLF #6	1,356.73	66.13	89,720.55	1,307.38	66.13	86,457.04	1,511.43	81.52	123,211.77
GOLF #5	1,361.81	66.13	90,056.50	1,359.93	66.13	89,932.17	1,421.83	81.52	115,907.58
GOLF #3	0.00			0.00			0.00		
OLIVAS PARK	0.00			0.00			0.00		
VICTORIA WELL #1	0.00			0.00			0.00		
MOUND WELL #1	661.52	39.70	26,262.34	925.18	39.70	36,729.65	625.56	54.99	34,399.54
VICTORIA WELL #2	0.00			359.70	39.70	14,280.09	884.90	54.99	48,660.65
NEW SATICOY #2	516.19	39.70	20,492.74	294.92	39.70	11,708.32	459.81	54.99	25,284.95
VALID CHARGES			**$238,178.94**			**$251,654.11**			**$364,254.35**
ACTUAL CHARGES			504,499.29[25]			533,629.98[23]			778,824.54[24]
REFUND DUE			**$266,320.35**			**$281,975.87**			**$414,570.19**
REFUND GRAND TOTAL									**$962,866.41**

[20] Each well was assigned a new rate based on the rate currently charged. (E.g., AR2 96 [#6 total non-ag water usage amount]; see also AR2 111 [Zone B area]; AR2 165-21 [City well locations].)
[21] Data from Semi-Annual Groundwater Production Statements ("Statement") at AR2 96-23 to 33.
[22] All rates were calculated according to Table 1, above.
[23] Data from City's Statements at Rungren Decl. Exh. A; total actual charge at Exh. A, p. 1.
[24] Data from City's Statements at Rungren Decl. Exh. B; total actual charge at Exh. B, p. 1.
[25] Total actual charge based on totals at AR2 96-23 to 33: $189,972.50 + $56,559.96 + $44,134.25 + 189,263.84 + $24,490.62 + $78.12 = $504,499.29.

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General Fund

Cash Reserves/Working Capital:	Actual FY 2008-09	Actual FY 2009-10	Adjusted Budget FY 2010-11	Projected FY 2010-11	Budget FY 2011-12
	$ 3,981,159	$ 3,379,500	$ 5,596,912	$ 5,596,912	$ 4,408,958
Net Surplus / (Shortfall)	(601,659)	2,217,412	(1,313,232)	(1,187,954)	(486,179)
Ending Balance June 30	$ 3,379,500	$ 5,596,912	$ 4,283,680	$ 4,408,958	$ 3,922,779
Reserves:					
Current debt service 09 COP		-	(399,099)	(425,457)	
Future debt service 09 COP	-	-	(1,053,170)	(1,053,170)	(1,053,170)
Net Available	$ 3,379,500	$ 5,596,912	$ 2,831,411	$ 2,930,331	$ 2,869,609

Water rate summary:

	FY 2010-11 Budget			FY 2011-12 Budget		
Groundwater revenue:	**GW Replenishment Charge**	**Acre Feet**	**Forecasted Revenue**	**GW Replenishment Charge**	**Acre Feet**	**Forecasted Revenue**
Zone A - Agriculture	$19.50	74,000	$ 1,443,000	$28.50	70,000	$ 1,995,000
Zone A - Municipal & Industrial	$58.50	12,600	737,100	$85.50	13,900	1,188,450
Zone B - Agriculture	$19.50	48,000	936,000	$28.50	52,300	1,490,550
Zone B - Municipal & Industrial	$58.50	15,000	877,500	$85.50	16,000	1,368,000
Zone C - Agriculture	$19.50	1,620	31,590			-
Zone C - Municipal & Industrial	$58.50	4,500	263,250			
Total Groundwater Revenue		155,720	$ 4,288,440		152,200	$ 6,042,000

Table 1, fn 12

Table 1, fn 13

Water deliveries:	**In Lieu of Replen. Charge**	**Acre Feet**	**Forecasted Revenue**	**In Lieu of Replen. Charge**	**Acre Feet**	**Forecasted Revenue**
OH Pipeline - Municipal & Industrial	$58.50	15,175	887,742	$85.50	14,996	1,282,162
OH Pipeline - Agriculture	$19.50	1,290	25,155	$28.50	1,165	33,204
PV Pipeline - Agriculture	$19.50	10,330	201,435	$28.50	10,380	295,830
PT Pipeline - Agriculture	$19.50	8,925	174,038	$28.50	8,700	247,950
Total Pipeline Deliveries Revenue		35,720	$ 1,288,370		35,241	$ 1,859,146

	Delivery Charge	**Acre Feet**	**Forecasted Revenue**	**Delivery Charge**	**Acre Feet**	**Forecasted Revenue**
Saticoy Well Field Delivery Charge	$30.00	2,200	$ 66,000	$30.00	2,000	$ 60,000

	Forecasted Revenue	**Forecasted Revenue**
Recreation water deliveries	$ 24,500	$ 24,000
Total Water Deliveries Revenue	$ 1,378,870	$ 1,943,146

Freeman Diversion Fund - 420

Cash Reserves/Working Capital:	Actual FY 2008-09	Actual FY 2009-10	Adjusted Budget FY 2010-11	Projected FY 2010-11	Budget FY 2011-12
Beginning balance July 1	$ 1,736,735	$ 763,639	$ 1,166,878	$ 1,166,878	$ 1,441,722
Net Surplus / (Shortfall)	(1,333,537)	40,118	143,016	(91,033)	965,671
Add Back Non-cash Depreciation	360,441	363,121	361,500	365,877	366,900
Ending balance June 30	$ 763,639	$ 1,166,878	$ 1,671,394	$ 1,441,722	$ 2,774,293
Reserves:					
Reserved for BUREC Reserve	(254,991)	(260,534)	-	-	-
Reserved for Prop 44 Reserve	(710,011)	-	-	-	-
Net Available	$ (201,363)	$ 906,344	$ 1,671,394	$ 1,441,722	$ 2,774,293

Table 1, fn 14

Rate Summary:	FY 2010-11 GW Replenishment Charge	FY 2010-11 Acre Feet	FY 2010-11 Forecasted Revenue	FY 2011-12 GW Replenishment Charge	FY 2011-12 Acre Feet	FY 2011-12 Forecasted Revenue
Groundwater Revenue:						
Zone B - Agriculture	$18.00	48,000	$ 864,000	$18.00	52,300	$ 941,400
Zone B - Municipal & Industrial	$54.00	15,000	810,000	$54.00	16,000	864,000
Zone C - Agriculture	$6.00	1,620	9,720	-		-
Zone C - Municipal & Industrial	$18.00	4,500	81,000			
Total Groundwater Revenue		69,120	$ 1,764,720		68,300	$ 1,805,400

Table 1, fn 15

	In Lieu of Replen. Charge	Acre Feet	Forecasted Revenue	In Lieu of Replen. Charge	Acre Feet	Forecasted Revenue
Water Deliveries:						
OH Pipeline - Municipal & Industrial	$54.00	15,175	$ 819,453	$54.00	14,996	$ 809,787
OH Pipeline - Agriculture	$18.00	1,290	23,220	$18.00	1,165	20,970
PV Pipeline - Agriculture	$18.00	10,330	185,940	$18.00	10,380	186,840
PT Pipeline - Agriculture	$18.00	8,925	160,650	$18.00	8,700	156,600
Total Pipeline Water Deliveries Revenue		35,720	$ 1,189,263		35,241	$ 1,174,197

General/Water Conservation Fund

Cash Reserves/Working Capital:	Actual FY 2009-10	Actual FY 2010-11	Adjusted Budget FY 2011-12	Projected FY 2011-12	Budget FY 2012-13
	$ 3,379,500	$ 5,600,523	$ 3,345,215	$ 3,345,215	$ 3,141,746
Net Surplus / (Shortfall)	2,217,412	(2,255,308)	(795,129)	(203,469)	2,031,464
Ending Balance June 30	$ 5,596,912	$ 3,345,215	$ 2,550,086	$ 3,141,746	$ 5,173,210
Reserves:					
Projected c/o encumbrances					(200,000)
Debt service 09 COP	(1,873,625)	(1,411,729)	(1,053,170)	(917,619)	(917,619)
Net Available	$ 3,723,287	$ 1,933,486	$ 1,496,916	$ 2,224,127	$ 4,055,591

Water rate summary:

Departmental Rate Breakdown:	FY 2011-12 Budget AG Rate	FY 2011-12 Budget M&I Rate	FY 2012-13 Budget AG Rate	FY 2012-13 Budget M&I Rate
Environmental Department	$ 6.75	$ 20.25	$ 6.30	$ 18.90
Groundwater Department	$ 7.30	$ 21.90	$ 7.75	$ 23.25
Water Conservation Operations	$ 14.45	$ 43.35	$ 25.70	$ 77.10
	$ 28.50	$ 85.50	$ 39.75	$ 119.25

Groundwater revenue:	Water Conservation Extraction Charge	Acre Feet	Forecasted Revenue	Water Conservation Extraction Charge	Acre Feet	Forecasted Revenue
Zone A - Agriculture	$28.50	70,000	$ 1,995,000	$39.75	71,000	$ 2,822,250
Zone A - Municipal & Industrial	$85.50	13,900	1,188,450	$119.25	13,000	1,550,250
Zone B - Agriculture	$28.50	52,300	1,490,550	$39.75	51,500	2,050,12[illegible]
Zone B - Municipal & Industrial	$85.50	16,000	1,368,000		16,000	1,908,000
Total Groundwater Revenue		152,200	$ 6,042,000		151,500	$ 8,330,625

Table 1, fn 16

Table 1, fn 17

Water deliveries:	In Lieu of Extraction Charge	Acre Feet	Forecasted Revenue	In Lieu of Extraction Charge	Acre Feet	Forecasted Revenue
OH Pipeline - Municipal & Industrial	$85.50	14,996	1,282,162	$119.25	12,899	1,538,191
OH Pipeline - Agriculture	$28.50	1,165	33,204	$39.75	1,200	47,701
PV Pipeline - Agriculture	$28.50	10,380	295,830	$39.75	11,150	443,215
PT Pipeline - Agriculture	$28.50	8,700	247,950	$39.75	8,450	335,890
Total Pipeline Deliveries Revenue		35,241	$ 1,859,146		33,699	$ 2,364,997

	Delivery Charge	Acre Feet	Forecasted Revenue	Delivery Charge	Acre Feet	Forecasted Revenue
Saticoy Well Field Delivery Charge	$30.00	2,000	$ 60,000	$30.00	1,500	$ 45,000

	Forecasted Revenue	Forecasted Revenue
Recreation water deliveries	$ 24,000	$ 24,000
Total Water Deliveries Revenue	$ 1,943,146	$ 2,433,997

Freeman Diversion Fund (Zone B) - 420

Cash Reserves/Working Capital:	Actual FY 2009-10	Actual FY 2010-11	Adjusted Budget FY 2011-12	Projected FY 2011-12	Budget FY 2012-13
Beginning balance July 1	$ 763,641	$ 1,166,880	$ 1,511,574	$ 1,511,574	$ 2,457,100
Net Surplus / (Shortfall)	40,118	(20,973)	940,671	577,076	187,166
Add Back Non-cash Depreciation	363,121	365,667	366,900	368,548	373,000
Ending balance June 30	$ 1,166,880	$ 1,511,574	$ 2,819,145	$ 2,457,198	$ 3,017,266
Reserves:					
Reserved for BUREC Reserve	(260,534)	(260,534)		-	-
Designated for capital improvements	-	-	-	(1,200,098)	(2,773,000)
Net Available	$ 906,346	$ 1,251,040	$ 2,819,145	$ 1,257,100	$ 244,266

Water rate summary:

Departmental Rate Breakdown:	FY 2011-12 Budget AG Rate	FY 2011-12 Budget M&I Rate	FY 2012-13 Budget AG Rate	FY 2012-13 Budget M&I Rate
Environmental Department	$ 1.40	$ 4.20	$ 4.50	$ 13.50
Water Conservation Operations	$ 16.60	$ 49.80	$ 13.50	$ 40.50
	$ 18.00	$ 54.00	$ 18.00	$ 54.00

Groundwater Revenue:	FY 2011-12 Water Conservation Extraction Charge	FY 2011-12 Acre Feet	FY 2011-12 Forecasted Revenue	FY 2012-13 Water Conservation Extraction Charge	FY 2012-13 Acre Feet	FY 2012-13 Forecasted Revenue
Zone B - Agriculture	$18.00	52,300	$ 941,400	$18.00	51,500	$ 927,000
Zone B - Municipal & Industrial	$54.00	16,000	864,000	$54.00	16,000	864,000
Total Groundwater Revenue		68,300	$ 1,805,400		67,500	$ 1,791,000

Water Deliveries:	FY 2011-12 In Lieu of Extraction Charge	FY 2011-12 Acre Feet	FY 2011-12 Forecasted Revenue	FY 2012-13 In Lieu of Extraction Charge	FY 2012-13 Acre Feet	FY 2012-13 Forecasted Revenue
OH Pipeline - Municipal & Industrial	$54.00	14,996	$ 809,787	$54.00	12,899	$ 696,540
OH Pipeline - Agriculture	$18.00	1,165	20,970	$18.00	1,200	21,600
PV Pipeline - Agriculture	$18.00	10,380	186,840	$18.00	11,150	200,700
PT Pipeline - Agriculture	$18.00	8,700	156,600	$18.00	8,450	152,100
Total Pipeline Water Deliveries Revenue		35,241	$ 1,174,197		33,699	$ 1,070,940

PROOF OF SERVICE

Court of Appeal, Second Appellate District, Division 6
City of San Buenaventura v. United Water Conservation District, et al.
Case No. B251810

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 94946. On February 6, 2014, I served the document described as **RESPONDENT'S BRIEF AND CROSS-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 LIST
(Method of Service is indicated on attachment)

_X_ **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.

_X_ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on February 6, 2014 from e-mail address: ALloyd@CLLAW.US. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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

Executed on February 6, 2014, at Penn Valley, California.

Ashley A. Lloyd

SERVICE LIST

Court of Appeal, Second Appellate District, Division 6
City of San Buenaventura v. United Water Conservation District, et al.
Case No. B251810

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EXHIBIT H

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

CASE NO. H035260

GREAT OAKS WATER COMPANY,
Plaintiff and Respondent,
vs.
SANTA CLARA VALLEY WATER DISTRICT,
Defendant and Appellant.

On Appeal From a Judgment by the Superior Court, Santa Clara County, Case No. 1-05-CV053142, Hon. Kevin J. Murphy

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ASSOCIATION OF CALIFORNIA WATER AGENCIES APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF AND AMICUS BRIEF ON BEHALF OF DEFENDANT & APPELLANT

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APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

Pursuant to California Rules of Court, rule 8.200(c), the Association of California Water Agencies ("ACWA") respectfully requests leave to file the attached brief as amicus curiae in support of Defendant and Appellant Santa Clara Valley Water District ("District"). This application is timely, as it is made within 14 days after the filing of the last brief on the merits (September, 2011), and pursuant to California Rules of Court, rule 8.25(b).

ACWA is a non-profit public benefit corporation organized and existing under the laws of the state of California since 1910. ACWA is comprised of over 450 water providers, including cities, municipal water districts, irrigation districts, county water districts, and other local government agencies. ACWA's Legal Affairs Committee, comprised of attorneys from each of ACWA's regional divisions throughout the State, monitors litigation and has determined that this case involves issues of significance to ACWA's member agencies.

The outcome of this case will impact ACWA's public agency members because each is a local government authorized to provide water services subject to the requirements of various statutes governing the setting of service fees and charges, as well as to article XIII D, section 6. (See Cal. Const. art. XIII C, § 1(b) and XIII D, § 2(a) (defining the "local agencies" to which Proposition 218 applies).) The local agencies represented by ACWA have a significant interest in cases, such as this one, which involve statutory and constitutional limitations on the ability of local public agencies to

establish budgets, allocate fiscal resources, and levy property related fees. ACWA and its members play an active role in managing the state's water resources and promoting investments in water use efficiency, water recycling, groundwater and surface water management and conservation, and providing water services to property owners and consumers throughout the state.

In fulfilling its role, ACWA identifies issues of concern to the water industry and the public it serves; accumulates and then communicates the best available scientific and technical information to the public and policy makers; facilitates consensus building; develops reasonable goals and objectives for water resources management; advocates sound legislation; promotes local agencies as the most efficient means of providing water services; and fosters cooperation among all interest groups concerned with the stewardship of California's water resources.

ACWA's board of directors and executive committee are advised by its Legal Affairs Committee, which is comprised of member agency attorneys from all regions of the State. The Legal Affairs Committee monitors litigation of concern to ACWA members and identifies those cases that may have a substantial statewide impact. The Committee has identified this case as being of such significance.

INTEREST OF AMICUS CURIAE

Article XIII D, section 6, subdivision (c), of the California Constitution provides, "Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall

be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area." However, all property related fees and charges, including those exempt from the election requirement, are subject to the notice, hearing, and majority protest procedures of article XIII D, section 6, subdivision (a), as well as the substantive requirements of section 6 subdivision (b).

This case presents critical questions affecting all of ACWA's members: What is the scope of the exemption from the voter approval requirement in article XIII D, section 6(c) as it pertains to water? While it is aware that this case presents the question whether the District's ground water charges are subject to article XIII D at all for a variety of reasons briefed by District, ACWA takes no position on that issue. ACWA argues only that, if the District's groundwater charges are subject to article XIII D, they are also subject to the exemption from the election requirement.

ACWA's members include domestic water providers, agricultural water providers, urban water suppliers, rural water suppliers, suppliers that rely on pipes, suppliers that rely on canals, suppliers that manage and replenish groundwater basins, suppliers that provide a combination of various types of water delivery service, water wholesalers, and water retailers that supply municipal and industrial users. In short, ACWA's member public agencies provide every conceivable type of water services to their property owners,

tenants, businesses, and other customers throughout the state. Many of the fees and charges imposed by ACWA's members are subject to the procedural and substantive requirements of article XIII D, section 6 subdivisions (a) and (b) because the fees or charges are imposed on property or upon persons as an incident of property ownership, including user fees for property related water services. However, ACWA's members believe that most if not all of these property related fees and charges may be imposed without voter approval because of the clear exemption under section 6, subdivision (c) for "sewer, water, and refuse collection services."

Specifically at issue here is the important question of whether a groundwater pumping and replenishment charge, which is one method of providing water and water services, falls within the express exemption from the voter approval requirement. Respondent contends and the trial court improperly found that the voter approval exemption applies only to fees and charges for water delivered directly to property through pipes or other conveyance facilities, and not to water that is provided indirectly through other means such as groundwater replenishment. Because ACWA's members serve water to their customers by a variety of different means, sometimes within the boundaries of individual agencies, this narrow view of the exemption from voter approval has potential to create significant legal confusion throughout the State. As discussed in this amicus brief, the trial court's conclusion makes no sense either practically or as a matter of statutory construction.

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Because many of ACWA's member public agencies rely on fees and charges as the primary source of revenue, they are vitally interested in the outcome of any litigation relating to the scope of article XIII D. Clarity on this issue is necessary so that ACWA's members can comply with the law, budget accordingly, and continue to provide quality service to their constituents. As discussed in the amicus brief on the merits, the plain language of article XIII D, section 6, subdivision (c) establishes a uniform rule exempting from voter approval all property related charges imposed to pay for water, regardless how it is served.

FUNDING AND AUTHOR

This Amicus Brief was authored by Daniel S. Hentschke, Vice-Chair of ACWA's Legal Affairs Committee, without charge to ACWA.

Dated: Sept. 21, 2011

Respectfully submitted:

Daniel S. Hentschke
Attorney for Amicus Curiae
Association of California Water Agencies

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BRIEF OF AMICUS CURIAE

I. INTRODUCTORY STATEMENT

Proposition 218, adopted by the voters in November 1996, added article XIII D to the California Constitution and, among other things, fundamentally changed the law relating to imposition of property related fees and charges.[1] It added new notice, hearing, protest, and, in some instances, voter approval requirements. This case involves the scope of the exemption from voter approval for property related fees imposed by public agencies that provide the water for domestic, commercial, industrial, and agricultural purposes throughout the state. It arises in the context of an agency that, in meeting its primary mission of providing water to customers, also provides water that replenishes a groundwater basin from which overlying property owners and appropriators draw water for ultimate consumption. The fee in this case is imposed on the act of pumping water out of the groundwater basin and revenue from the fee is used to pay the cost of providing for water import and groundwater basin recharge services. In this way, the agency keeps the common pool full; without the agency's services, water would be unavailable for consumption.

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[1] As noted by the Supreme Court, article XIII D provides a single definition that includes both "fee" and "charge," and the terms appear to be synonymous for the purposes of Proposition 218. (*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal. 4th 205, 214, fn. 4.)

Local government agencies responsible for providing reliable supplies of water must manage the resource so there is enough to go around from day to day, season to season, year to year, and generation to generation. Modern experience shows that water is not a perfectly renewable resource, and the hydrologic cycle is much more complicated than what we learned in elementary school. Providing water to meet the needs of California requires, among other things: a complex system of statewide, regional, and local water facilities (dams, reservoirs, aqueducts, canals, pipes, tanks, pumps, treatment plants, and the like); integration of groundwater and surface water resources; and development of new water sources through recycling, storm water capture and reuse, and new technologies for seawater desalination. ACWA's members are resource managers charged with responsibility for ensuring a sustainable supply of water for California, regulating water use, and providing, operating, and maintaining the facilities to do so. How this is done within the various parts of the state -- and at times within each public water provider -- varies based on geography, topography, geology, land use patterns, and a variety of other local variables. Part of the responsibilities of local agencies as resource managers is to set rates that appropriately allocate the "full cost" of water, including not only costs to operate and maintain a water delivery system, but the full cost of sustaining the supply of water from day to day, season to season, year to year, and generation to generation.

Article XIII D, section 6, subdivision (c) of the California Constitution provides, "Except for fees or charges for sewer, water,

and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area." (Referred to herein as "the 6 (c) exemption.") This provision plainly establishes a uniform rule exempting from voter approval all property related charges imposed to pay for water, regardless of how the water is served.

Respondent in this case, Great Oaks Water Company ("Company") argues that in the case of water related fees and charges the 6 (c) exemption encompasses only one thing -- water service charges that pay for water delivered directly to the payer's property. Essentially, the Company is attempting to narrowly confine the 6(c) exemption to fees and charges imposed for "water service" by agencies that deliver water through pipes or other infrastructure directly to property owners. According to the Company, if a water agency provides any service other than direct delivery of water to customers, charges for those other water services it will not qualify for the 6(c) exemption.

But that is not what the Constitution provides. The Constitution exempts from the voter approval requirement "fees and charges for sewer, water, and refuse collection services." Regardless whether this provision is interpreted broadly to exempt "water" generally, or more narrowly to exempt "water services," the result is the same. "Water" and "water services" are, if not identical, still broad enough

terms to cover the type of governmental service that is in question in this case, as well as the variety of different methods that public agencies throughout the state use to provide water to customers. For purposes of the Constitution, regardless of the links in the public agency's service chain, whether the public agency provides water through pipes directly to a customer's tap or instead uses its facilities to place water into an underground basin from which it is then pumped-- it's all the provision of water and the charges for it, if they are property-related under article XIII D, they also fall within the 6(c) exemption.

There are three fundamental problems with the Company's argument. First, it ignores the holding of *HJTA v. City of Salinas* (2002) 98 Cal. App. 4th 1351 and the plain language and legislative history of Government Code section 53750 subdivision (m), one of Proposition 218's enabling statutes. The Company's theory ignores the fact that the "direct/indirect" service dichotomy has never been accepted by the courts, and indeed, the only court to have considered the issue at all (albeit indirectly) has implied that no such construct exists. Second, it ignores the fact that water is served by public agencies throughout the State by a variety of different means and methods. The argument neglects to take into account the complex nature of water services, reflected in the Legislature's creation of many different kinds of water agencies to manage California's precious and diminishing water resources. Finally, the voter approval structure that Company proposes is overbroad and unworkable. It creates a situation in which the determination whether neighboring

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property owners vote on fees for water delivery depends on the specific method of delivery (i.e., by service connections to their property or through pumping out of a common pool). In short, the Company's argument is invalid, and the lower court's judgment agreeing with the Company's argument should be reversed.

II. ARGUMENT: "WATER" OR "WATER SERVICES" ENCOMPASSES MANY DIFFERENT MEANS OR METHODS OF PROVIDING WATER, NOT JUST "INFRASTRUCTURE TO TAP" SERVICE

A. *HJTA v. City Of Salinas* And Government Code Section 53750 subdivision (m) Support the Conclusion that Water Services Encompasses Groundwater Pumping Charges

The 6(c) exemption is for "sewer, water, and refuse collection services." Relying primarily on *Salinas,* the Company argues that the exemption is for "water services" alone, and not "water." Reliance on *Salinas,* however, is misplaced. Both *Salinas,* and the statute it discusses, Government Code section 53750, support ACWA's and the District's position, but not the Company's.

In *Salinas,* this Court considered whether a storm drainage fee imposed by the city for management of storm water runoff from certain areas of each parcel in the city was a property related fee that required voter approval under section 6(c), or whether it was an exempt water or sewer service charge. (*Id.,* at p. 1352-1354.) In

holding that the fee was subject to the voter approval requirements, this Court characterized the trial court's ruling as follows: The trial court held that the fee did not violate section 6(c) because "it met the exemption for fees for sewer and water services." *Id.,* at pp. 1353.

The Company seizes on this language, arguing that a fee for "water services" is the only fee encompassed by section 6, subdivision (c)'s voter exemption. This argument ignores the rest of the ruling in *Salinas*. Citing Government Code section 53750, this Court in *Salinas* held that the "average voter would envision 'water service' as the *supply of water for personal, household, and commercial use,* not a system or program that monitors storm water for pollutants, carries it away [from property], and discharges it into the nearby creeks, rivers and ocean." (*Id.*, at p. 1358 emphasis added.)

As an initial matter, it is unclear that *Salinas* controls the outcome here because it is so factually different from this case. *Salinas* involved a fee imposed for collecting and disposing of stormwater drainage. It did not involve delivery or management of water for beneficial use or consumption; rather, it involved the problem of handling of water that falls on and drains off of property.

To the extent that *Salinas* might govern or be instructive in this case, however, it fully supports the District's position. Here, the charge pays for either infrastructure or a supply of water that ultimately reaches an end user. As such it fits squarely within the definition of water service set forth in *Salinas*. To explain, the groundwater basin here is drawn upon or used by the many different commercial businesses, agricultural concerns, and residents within the

District's boundaries, including the Company. The District's charge is a charge levied to replenish (or recharge) a groundwater basin that without the District's services would be unable to sustain a safe yield from year to year, or, in certain cases, to provide for infrastructure that will carry water to the end user.[2] As such, the water services, in this case, is partly the conveyance of water to property owners, and partly the resupply of water to a groundwater basin that others then tap into via wells or their own infrastructure. In either case, it constitutes the "supply of water for personal, household, and commercial use."[3] (*Salinas, supra,* 98 Cal. App. 4th at p. 1358.) *Salinas* makes no distinction between the supply being brought to the ultimate user via infrastructure or taps, or whether it is placed in the ground and then withdrawn by a private party. The service at issue has still been provided -- the groundwater basin has been replenished by water provided by the District. The same would be true of all of ACWA's members that are local government agencies charged with managing groundwater basins or storing water.

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[2] Replenishing (also known as recharging) a groundwater basin may be accomplished using surface water through facilities that provide for percolation, well injection, or in lieu recharge. In lieu recharge occurs when surface water is directly delivered for consumption in lieu of pumping groundwater. (See, e.g., Water Code §§ 12879.2 (f), (g); 13452 (f), (g); 78670 (a), (b).)

[3] Indeed, the Company is a "commercial" user and benefits from the District's efforts to re-supply the groundwater basin from which the Company pumps water that it then sells to its retail customers.

This interpretation of *Salinas* also reflects the definition of water in Government Code section 53750(m). Government Code section 53750, which was "enacted to explain some of the terms used in article[] ... XIII D, defines 'water' as 'any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water.'" (*Salinas,* 98 Cal. App. 4th at p. 1358, citing Gov. Code, § 53750, subd. (m).) As a general rule, the "water" provided by public agencies in California is not simply the wet substance we all drink. Rather, it is the pumps, pipes, aqueducts, canals, injection wells, extraction wells, dams, reservoirs, lakes, flumes, treatment plants, desalination plants, and other facilities, by which water is produced, stored, supplied, treated, and distributed throughout the state. In the context of public water agencies, "water" is "water services." It is that simple.

As the plain language of section 53750 makes clear, the "production" and the "supply" of water is included within the scope of "water" in section 6, subdivision (c), along with the provision of infrastructure to provide water to the end user. This definition reflects the definition of water service as set forth in the Water Code: "Water service means the sale, lease, rental, furnishing, or delivery of water for beneficial use, and includes, but is not limited to, contracting for that sale, lease, rental, furnishing, or delivery of water, except bottled water." (Cal. Wat. Code, § 515.)

The California Supreme Court recently confirmed that statutes adopted by the Legislature help to clarify the meaning of Proposition 218. In *Greene v. Marin County Flood Control & Water*

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Conservation Dist. (2010) 49 Cal. 4th 277, the California Supreme Court was required to reconcile the secret-ballot provisions of California Constitution article II, section 7 with the voter approval process for certain property-related fees under of article XIII D, section 6. The Court looked to statutes adopted to implement Proposition 218 and adopted a construction that was consistent with the legislation. (*Id.* at 290-292.)

Government Code section 53750 (m), which is part of the legislation adopted in 1997 designed to clarify the implementation of Proposition 218 (*Id.* at 286), defines water service to be a supply of water, and it makes no distinction between the supply of water directly to the end user through pipes and the supply of water indirectly to the basin from which an end user (or a middleman such as the Company) then pumps the water from a well.[4] Here, like many of ACWA's members, the District imposed a charge that is used both to construct infrastructure to carry water to the end user and to re-supply the water in the basin. That the end retail customer may not get the water directly from District's infrastructure is immaterial to whether the charge the District imposes to pay for the costs of providing that water is subject to the voter approval requirement – the 6 (c) exemption applies to charges for water provided by either method.

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[4] Water Code § 53750 (m) reads as follows:

> (m) "Water" means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water.

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B. Case Law Fails To Support Treating One Water Service Differently From Another

The issue of voter approval should not turn on whether water is delivered as a commodity directly to property owners. Certainly, case law interpreting Proposition 218 suggests as much.

Water is a commodity, and "[u]nder California case law, water rates are considered user or commodity charges because they are based on the actual consumption of water." (*Rincon Del Diablo Municipal Water Dist. v. San Diego County Water Authority* (2004) 121 Cal. App. 4th 813, 819; *see, also, Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal. App. 4th 1364, 1387 (describing water as a commodity).) Retail commodity rates and user fees for water are subject to article XIII D. (*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal. 4th 205, 217.) [5]

To date, many of the cases considering whether the particular water service at issue is subject to the voter approval requirement in

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[5] In *Bighorn*, the Supreme Court rejected the argument that fees triggered by a voluntary decision of the user to consume water were not property related merely because they were based on consumption. (*Id.* at 216 - 217.) Thus, some charges within a rate structure, such as new service connection charges are not subject to Proposition 218 (*Richmond v. Shasta Community Services Dist.* (2004) 32 Cal. 4th 409) , but others are, such as charges for on-going water service to an existing account. As mentioned in the application for permission to file this brief, ACWA is aware that this case presents the question whether the District's ground water charges are subject to article XIII D at all for a variety of reasons briefed by District, but takes no position on that issue.

section 6(c) have focused on the provision of "direct" water services such as charges for water delivery from a pipeline to land, or from a water system to the tap. (*See, e.g., Bighorn, supra,* 39 Cal. 4th at p. 217; *Richmond v. Shasta Community Services District* (2004) 32 Cal. 4th at pp. 409, 426-427.) The cases have concluded that only the notice and hearing provisions of Proposition 218 apply to these charges.

But none of the published Court of Appeal or Supreme Court cases to date have considered this particular theory advanced by the Company, namely, that when the water service is indirect or provided to property owners in a manner other than via a pipeline or tap directly to the property in question, the service is therefore subject to the voter approval requirement.

The only case that has come close to considering this issue is *Pajaro, supra,* 150 Cal. App. 4th 1364. In *Pajaro*, the court held that there was *no material difference* between a charge on groundwater extraction and a charge on delivered water for the "purposes of article XIII D's restrictions on fees and charges" and that the groundwater extraction charges were subject to Proposition 218. (*Id.* at p. 1389.) The court explained further that its holding should "*not* be understood to imply that the charge is necessarily subject to all of the restrictions imposed by article XIII D on charges incidental to property ownership. This case presents no occasion to determine whether this or a similar charge may fall within any of the express exemptions or partial exemptions set forth in" section 6(c). (*Id.,* at 1394 n. 21; emphasis added.)

Pajaro implies that the Company's proffered theory is invalid. If charges for delivered water (through a tap or pipeline or canal to property) and charges for groundwater extraction are not materially different, then there is no justification at all for the distinction between direct "pipeline to tap" and indirect "water importation to basin" water services such as the ones at issue here. The provision of water remains just that, the provision of water, no matter how it is delivered to the end user.

C. What Constitutes "Water Services" Ranges Widely From District To District, But It Still Remains "Water Services"

As discussed above, water service takes a variety of forms. The Company's argument flatly ignores the varied nature of what constitutes water services varies from district to district, and among agencies, depending on the kind of service provided.

California has various different kinds of water agencies and water management agencies, including but not limited to groundwater management agencies, water wholesalers, and water retailers that sell directly to end water users. Water service varies with the needs of a particular community, and it is not confined to service to those who can tap in directly to the water by turning on the faucet. Water services in California clearly include the management of a scarce resource: water. Common sense dictates that water services, whether it is providing water by direct delivery to customers, or involves an

intermediate step of delivery into a common pool such as a groundwater basin, are all water services.[6]

D. The Company's Proposed Scheme Is Unworkable

The Company essentially proposes a fee model that not only has no support in law and makes no sense, but which would also be unworkable for many of ACWA's members. The Company's theory of water service would require two separate kinds of water charges for many water providers: one levied on end users who take water directly from the provider through pipelines to their properties (and exempt from the voter approval requirement) and one levied on those that take water recharged into a groundwater basin through wells (and subject to voter approval).

The problem with this system is threefold. First, it defies common sense. As set forth above, many of ACWA's member agencies provide water both directly to property owners through agency pipes and service connection, and also through refilling of the groundwater basin from which other overlying property owners or appropriators pump. In some cases, the appropriators then deliver the water to others for ultimate consumption. But it's all the same water, so it makes no sense to say that "water" or "water services" for the purpose of the exemption includes one type of water delivery, but

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[6] This common sense conclusion that water and water services are the same thing for purposes of Proposition 218 is consistent with the Legislature's definition of water as the system of improvements that make the water available for actual beneficial use.

excludes another means of providing the same water for ultimate consumption. Such a construction would mean that among water agencies, and sometimes even within an agency, some property related water fees are exempt from the election requirement, yet others may be imposed only after an election. It is unlikely that the voters, when adopting Proposition 218, intended to create this type of confusion. It is far more likely that the voters intended the 6(c) exemption to apply to all property related fees related to the provision of water, regardless of the method.

Second, the water generally comes from the same place, it is imported and either directly delivered or placed by the agency into the groundwater basin, and then is drawn from the basin for ultimate consumption. The water in the groundwater basin is there in part because the District levies a charge on all groundwater users so that it can buy replacement water to put back into the basin. Whether the end user taps into that replacement water by using a well or an irrigation canal makes no difference to the end result, which is that the end user uses water from the groundwater basin that is replenished by the district. It would be inequitable for some users to be subject to a fee without voter approval, yet others only be subject to a fee for the same water after compliance with the voter approval requirements.

Finally, the system the Company essentially proposes would cause increased expenses for ACWA's members. In any system where there would be an individual who draws water from a basin via a well on his or her own property and another individual who gets water from a canal or pipe, there would be one charge that is subject

simply to notice and hearing procedures, and another subject to a vote. Balloting and running an election is an expensive undertaking. Many districts have very limited budgets, particularly in this difficult economic climate. For many, the system would be far too expensive to maintain, and small districts would be unable to fulfill their legislative mandates of preserving and managing a rapidly-dwindling natural resource.

III. CONCLUSION

ACWA's member agencies provide different kinds of water services, many of which are within the scope of Proposition 218. These various kinds of water services that fall within Proposition 218's purview can include groundwater management and replenishment as well as direct service to rate payers through irrigation canals, infrastructure and taps. Because the definition of water services in the Water Code and the Government Code is much broader than simply services to users who can turn on a tap or plug into an irrigation system, all of these water service charges are exempt from the voter requirement of article XIII D, section 6, subdivision (c). Accordingly, the lower court's decision must be reversed.

Dated: September 21, 2011 By: ______________________

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RULE 14(c)(1) CERTIFICATION

As required by Rule 14(c)(1) of the California Rules of Court, I certify that this brief and the application contains 5,237 words. In making this certification, I have relied upon the word count function of Microsoft Word, the computer program used to prepare the brief.

Dated: September 21, 2011

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Attorney for Amicus Curiae
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PROOF OF SERVICE

Great Oaks Water Company v Santa Clara Valley Water District
Court of Appeal, Sixth Appellate District, Case No. H035260

I, the undersigned, say: I am a citizen of the United States and a resident of the County of San Diego, State of California. I am over the age of 18 years and not a party to the within action. My business address is: 4677 Overland Avenue, San Diego, CA 92123.

On September 22, 2011 I placed a true and correct copy of the:

ASSOCIATION OF CALIFORNIA WATER AGENCIES APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF AND AMICUS BRIEF ON BEHALF OF DEFENDANT & APPELLANT

in the U.S. Mail addressed as indicated to the following:

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Supreme Court (4 copies)

I declare under penalty of perjury that the forgoing is true and correct.
Executed this 22nd day of September, 2011, at San Diego, California.

Audrey Rene Kroeger
Audrey Rene Kroeger

PROOF OF SERVICE

CITIZENS FOR FAIR REU RATES v. CITY OF REDDING
Third District Court of Appeal Case No. C071906

I, Ashley L. 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 March 2, 2015 I served the document(s) described as **MOTION FOR JUDICIAL NOTICE IN SUPPORT OF PETITION FOR REVIEW** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED LIST

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 March 2, 2015 at Penn Valley, California.

Ashley L. Lloyd

148411.2

SERVICE LIST

CITIZENS FOR FAIR REU RATES v. CITY OF REDDING
Third District Court of Appeal Case No. C071906
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