No. S226036

Exempt from Filing Fees
Government Code § 6103

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

United Water Conservation District and Board of Directors of United Water Conservation District
Defendants and Appellants / Cross-Respondents
vs.
City of San Buenaventura
Plaintiff and Respondent / Cross-Appellant

REPLY BRIEF ON THE MERITS

Of a Published Decision of the
Second Appellate District, Case No. B25180

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

*MICHAEL G. COLANTUONO (143551)
MColantuono@chwlaw.us
DAVID J. RUDERMAN (245989)
DRuderman@chwlaw.us
MEGAN S. KNIZE (257970)
MKnize@chwlaw.us
COLANTUONO, HIGHSMITH & WHATLEY, PC
300 S. Grand Avenue, Suite 2700
Los Angeles, California 90071-3137
Telephone: (213) 542-5700
Facsimile: (213) 542-5710

GREGORY G. DIAZ (156318)
GDiaz@cityofventura.net
City Attorney
CITY OF SAN BUENAVENTURA
P.O. Box 99
Ventura, California 93002-0099
Telephone: (805) 654-7818
Facsimile: (805) 641-0253

Attorneys for Respondent and Cross-Appellant City of San Buenaventura

No. S226036

Exempt from Filing Fees
Government Code § 6103

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

United Water Conservation District and Board of Directors of United Water Conservation District
Defendants and Appellants / Cross-Respondents
vs.
City of San Buenaventura
Plaintiff and Respondent / Cross-Appellant

REPLY BRIEF ON THE MERITS

Of a Published Decision of the
Second Appellate District, Case No. B25180

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

---

*MICHAEL G. COLANTUONO (143551)
MColantuono@chwlaw.us
DAVID J. RUDERMAN (245989)
DRuderman@chwlaw.us
MEGAN S. KNIZE (257970)
MKnize@chwlaw.us
COLANTUONO, HIGHSMITH & WHATLEY, PC
300 S. Grand Avenue, Suite 2700
Los Angeles, California 90071-3137
Telephone: (213) 542-5700
Facsimile: (213) 542-5710

GREGORY G. DIAZ (156318)
GDiaz@cityofventura.net
City Attorney
CITY OF SAN BUENAVENTURA
P.O. Box 99
Ventura, California 93002-0099
Telephone: (805) 654-7818
Facsimile: (805) 641-0253

Attorneys for Respondent and Cross-Appellant City of San Buenaventura

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

California Constitution

Statutes

Rules

Other Authorities

INTRODUCTION

The Answer Brief is remarkable for it omits. Appellants and Cross-Respondents United Water Conservation District and its Board of Directors (collectively, "UWCD") barely acknowledge that UWCD legislated a separate rate for customers overlying certain groundwater basins — the Zone B rate — to recover its cost to construct and operate its Freeman Diversion Dam. This cannot be reconciled with UWCD's claim it cannot allocate its costs in proportion to the benefits its services provide, as Propositions 218 and 26 demand. (Answer Brief ("AB") at pp. 13, 38.)

The Answer Brief also barely mentions UWCD charges non-agricultural groundwater users three times what it charges agricultural users. UWCD offers no defense of this 3:1 ratio under the cost-allocation requirements of Proposition 218 or Proposition 26. These omissions cannot justify UWCD's mandate that non-agricultural groundwater users subsidize agriculture.

The Answer Brief defends claims Respondent and Cross-Appellant City of San Buenaventura ("the City") does not make, ignoring those it does. The City does not challenge UWCD's authority to recharge groundwater. Nor does the City denigrate the value of UWCD's services. Or claim it does not benefit from those services. Rather, the City challenges the 3:1 rate ratio. It asks UWCD to properly account for its costs, use rate proceeds lawfully, and reasonably allocate costs among customers. The City will happily

pay its share of UWCD's charges, but cannot subsidize agriculture in violation of our Constitution.

Finally, remand is not appropriate. UWCD is not entitled to yet another opportunity to make a record to sustain its rates. The law does not permit one-sided reopening of rate-making disputes. Otherwise, such cases would never end. UWCD bore the burden to make a record adequate to sustain its rates and failed to do so. Moreover, remand would be futile, as **two** administrative records are present here. UWCD made the second with detailed knowledge of the City's arguments. That UWCD made no better record in the second year suggests a third bite at this apple is unwarranted. Moreover, it would be fifth bite at the apple — UWCD made rates in each of five fiscal years since this dispute arose. It will do so yet again next June, likely before this case is resolved. Remand is simply not warranted.

Accordingly, this Court can confidently reverse the Court of Appeal and affirm the trial court's conclusions that the 3:1 rate ratio cannot satisfy our Constitution's demands regardless of whether Proposition 218 or Proposition 26 controls. Further, this Court can grant the declaratory relief sought by the City's cross-appeal to enforce UWCD's other constitutional duties.

LEGAL DISCUSSION

I. UWCD MISSTATES THE STANDARD OF REVIEW

This Court's guidance as to the mechanics of Propositions 218 and 26 challenges is plainly necessary. Although the Opening Brief on the Merits ("OB") describes a rational system that respects precedent but requires de novo review of UWCD's records, language from recent cases allows UWCD to argue for deferential appellate review. (AB at pp. 16–18.)

A rate-maker has two burdens when its rates are challenged. First, it must produce a record adequate to support its rates. (*Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 Cal.App.3d 227, 236–237 [applying Prop. 13] (*Beaumont*).) Second, it has the burden of persuasion that its rates are not taxes. (Cal. Const., art. XIII D, § 6, subd. (b)(5) [Prop. 218]; art. XIII C, § 1, subd. (e) [final paragraph].)[1] A challenger must make a prima facie case that rates are unlawful. Doing so triggers the rate-maker's burden of persuasion. (*California Farm Bureau Federation v. State Water Resources Control Board* (2011) 51 Cal.4th 421, 436 (*Farm Bureau*) [applying Prop. 13]; see also *Morgan v. Imperial Irrigation District* (2014) 223 Cal.App.4th 892, 913 [appellant must identify errors on appeal under Prop. 218] (*Morgan*); *Moore v. City of Lemon Grove* (2015) 237 Cal.App.4th 363, 368 [same, citing *Morgan*] (*Moore*).)

---

[1] References to articles and sections of articles in this Brief are to the California Constitution.

Under *Western States Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559 (*Western States*), judicial review of rate-making is generally limited to the administrative record. Review of factual findings on conflicting evidence, however, is for substantial evidence. (*People v. Cromer* (2001) 24 Cal.4th 889, 994.) But, if a trial decision did not turn on disputed facts, de novo review is appropriate. (See *Kolender v. San Diego County Civil Service Comm'n* (2005) 132 Cal.App.4th 716, 721 [trial and appellate scope of review identical in administrative mandate].) Thus, if the trial court reviewed a "cold" administrative record, review is de novo. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2009) 40 Cal.4th 412, 427 [de novo appellate review of administrative record].)

These standards apply unless a rate-making agency waives the *Western States* rule and offers — or allows a petitioner to offer — extra-record evidence. Then, trial court findings are reviewed for substantial evidence. (*Morgan, supra,* 223 Cal.App.4th at p. 915).) This Court can assist litigants and the lower courts by plainly stating these rules here.

UWCD's desire for appellate deference to lower court findings is partial, however. It attacks Judge Anderle's conclusion that neither administrative record here supports the 3:1 ratio of non-agricultural to agricultural rates, while seeking deference to his findings on cost-accounting issues. (AB at pp. 14–15, 17.) The law is more consistent.

Only *Morgan* supports UWCD's argument for deference and the agency there waived the *Western States* rule. (*Id.* at p. 17.) Although this Court does not grant review to resolve factual disputes, on review, it has the same role as the Court of Appeal. (Cal. Rules of Court, rule 8.500(c)(2) [rehearing required to preserve factual issues for Supreme Court].) The City did, of course, seek rehearing here to question facts stated in the Court of Appeal's opinion unsupported by the records. (Petition for Rehearing ("Petn.") at pp. 16–20.)

Because the City asserted the *Western States* rule, Judge Anderle properly tried these cases on UWCD's administrative records. (11JA:103:2473–2474; 10JA88:2134.) Accordingly, no facts are disputed here, despite UWCD's contrary claim. (AB at p. 11.) Instead, the parties dispute the weight and legal significance of the evidence, not the records' authenticity or accuracy.

Whether a charge is a tax or a fee is a question of law reviewed de novo. (*Kavanaugh v. West Sonoma Union High School Dist.* (2003) 29 Cal.4th 911, 916; *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1032; *Moore, supra,* 237 Cal.App.4th at p. 369.)

The doctrine of constitutional facts is not limited to federal constitutional claims, as UWCD urges. (AB at pp. 17–18.) This doctrine allows de novo review of factual issues on which constitutional rights turn, recognizing the "important judicial role in preserving the constitutional order is adequately insured by the

universal judicial duty to expound and refine the applicable constitutional law." (Monaghan, *Constitutional Fact Review* (1985) 85 Colum. L.Rev. 229, 268 [Monaghan]; see *In re D.S.* (2014) 230 Cal.App.4th 1238, 1245 [mixed questions of law and fact (such as constitutional right to due process before terminating parental relationship) are reviewed de novo if the inquiry requires "a critical consideration, in a factual context, of legal principles and their underlying values [and thus] is predominantly legal"].)

> That constitutional tort actions have remained exemplars of the de novo model of review seems entirely appropriate, not only because of their common-law antecedents, but also because "[i]n constitutional adjudication, *Marbury* indicates that the court's [interpretive] duty is that of supplying the full meaning of the relevant constitutional provisions (except for 'political questions')."

(Woolhandler, *Judicial Deference to Administrative Action—A Revisionist History* (1991) 43 Admin. L.Rev. 197, 239.)

Deferential review of trial court fact finding would frustrate judicial development of constitutional norms. Questions of law and fact commonly intertwine. (Borgmann, *Appellate Review of Social Facts in Constitutional Rights Cases* (2013) 101 Cal. L.Rev. 1185, 1209–1210; Woolhandler, *supra,* at p. 240 ["Policing of the law necessarily

requires some policing of the facts, and especially the application of law to fact." (citations omitted)].)

Finally, de novo review of constitutional facts serves a "need to guard against systemic bias brought about or threatened by other actors in the judicial system." (Monaghan, *supra,* at p. 272.) This review will ease fears of "systemic distortion of fact finding and law application." (*Ibid.*) Moreover, trial and appellate judges "share parallel responsibilities for resolving contested constitutional questions" to prevent "the idiosyncrasies of a single judge or jury from having far-reaching effects." (Heise & Sisk, *Religion, Schools, and Judicial Decision Making: An Empirical Perspective,* (2012) 79 U. Chi. L.Rev. 185, 192.)

None of these considerations —the courts' role in declaring law under *Marbury*'s, the need to develop constitutional norms consistently and authoritatively, or institutional competence — is unique to the federal Constitution. This Court, too, has followed *Marbury v. Madison* (1803) 5 U.S. 137. (E.g., *State Bldg. and Const. Trades Council of Cal., AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 565.) Our Constitution also embodies the separation of powers. (Cal. Const., art. III, § 3.) Our legislators, administrators, trial and appellate courts have institutional competencies comparable to their federal peers. Thus, UWCD's fails to persuade that the doctrine of constitutional fact is limited to federal constitutional questions.

Accordingly, this Court should not insulate fact finding as to our Constitution's demands for government rate- and fee-making from appellate review, but should employ de novo review — especially on review of cold administrative records as to which trial and appellate courts have equal vantage.

In any event, the City respectfully urges this Court to clarify the standard of appellate review of Proposition 218 and 26 challenges both when the *Western States* rule has been applied and when it has not.

II. UWCD MISCONSTRUES THE FACTS

A. UWCD Cannot Prove Its Fees Do Not Exceed Cost of Service

UWCD claims "the fee did not exceed UWCD's reasonable groundwater protection costs." (AB at p. 1.) However, what little evidence it marshals for the claim does not outweigh contrary evidence.

The claim seawater intrusion is "primarily an urban problem" based on a bald, half-century-old, legislative declaration is simply untenable. (AB at pp. 6–7 [citing Stats. 1965, ch. 1836, § 2].) As the Opening Brief notes, UWCD's records demonstrate otherwise. (OB at pp. 10–11; AR1:62:0034 ["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"]; AR2:53:0034 [same].) The City's

Oxnard Plain wells, however, are at its northwestern edge, far from the pumping hole. (*Ibid.*; see also AR1:78:0013.) UWCD's records further show it spends much to address agricultural overdraft, and its "current operations and long-range planning efforts are focused heavily on [the eastern/southern Oxnard Plain] area." (AR1:62:0069; AR2:53:0069 [same]; see also AR2:54:0004.)

UWCD claims it funds state water import costs by a voter-approved assessment, citing its 2011 Water Study and its special fund balance sheet for the FY 2011–2012 Proposed Annual Budget. (AB at pp. 8 [citing AR1:22:0026; *id.* at pp. 0071–0073; AR1:62:0020; *id.* at p. 0047].) UWCD also cites the water fund's balance sheet in the FY 2012–2013 Proposed Annual Budget, concluding "[n]either the City nor its residents pay this assessment." (AR2:106:0058.) However, these record citations do not address the City's arguments. (OB at p. 48.) If the City does not pay UWCD's state water costs, why are "State Water Import Costs" a budgeted expenditure from UWCD's General Fund/Water Conservation Budget — funded by Zone A revenues? (AR2:106:0043 [General Operating Activities Fund accounts for all expenditures for conservation in Zone A]; *id.* at p. 0049.)

Moreover, UWCD's terse defense of its cost accounting does not persuade. (AB at pp. 48–49.) The Court of Appeal opinion which UWCD cites (*id.* at p. 48) is not evidence, especially as the City's Petition for Rehearing apprised the Court of Appeal its factual

recitation was unsupported by the records. (Petn. at pp. 16–20.) Unhelpful, too, is UWCD principal act. (AB at p. 49.) That UWCD has a duty to limit its charges to cost is not evidence it did. These statutes show only that the failure of cost accounting the Opening Brief demonstrates is both a statutory and a constitutional violation. (OB at pp. 42–52.)

UWCD's record citations are equally unconvincing. UWCD claims it uses fee proceeds only for "water conservation, management, and replenishment activities," citing resolutions and its FY 2012–2013 Proposed Annual Budget. (AB at p. 48 [citing AR1:71:0006; AR1:72:0003–0004 [resolutions]; AR1:22:0056–0060; AR2:106:0041–45 [budget text].) However, the budgets appropriate Zone A revenues for water treatment chemicals and water imports. (See AR1:22:0058.) Further, UWCD claims groundwater revenues were "appreciably less" than budgeted in FYs 2011–2012 and 2012–2013. (AB at p. 48.) However, FY 2012–2013 revenue produced a budget surplus. (AR2:106:0047.) UWCD's unexplained string cites to the records simply do not convince that it uses proceeds of the Zone A charge only to serve those who pay it.

UWCD also cites a single page of the transcript of its June 13, 2012 hearing to claim fees on Zone A producers pay only for services that benefit them. (OB at pp. 48–49 [citing AR2:175:0075].) This isolated, self-serving statement that rates do not exceed the cost of service does not refute the record evidence the City cites to show

UWCD commingles Zone A proceeds with unrestricted funds and uses the balance for a range of purposes unrelated to groundwater augmentation. (OB at pp. 55–57.)

Additionally, UWCD argues it serves the City and others at no cost, using non-rate revenue. (AB at p. 49 [citing AR1:22:0071–0073; AR2:106:0058–0060].) UWCD's Board, however, did not find the City benefits from programs for which it does not pay. (AR1:72:0004–0005; AR2:149:0004–0006.) UWCD thus impeaches its own rates, especially if — as it contends — Proposition 26 provides the rule of decision here. (Cal. Const., art. XIII C, § 1, subd. (e)(2) [fees may fund only a service "that is not provided to those not charged"].) UWCD cannot explain why non-agricultural users alone benefit from services funded from non-rate revenue. That the City does not pay for these services does not justify higher groundwater charges on it if agriculture receives those services, too, and also pays groundwater rates at one-third the rates charged the City.

UWCD's citation of proposed budgets for FYs 2011–2012 and 2012–2013 to claim the Freeman Diversion Fund "contains all revenue in Zone B" is equally puzzling. (AB at p. 49.) Those pages do not show **how** capital expenses are allocated to the Zone A (District-wide) and Zone B (Freeman Diversion) funds, but only that they **are** allocated. As discussed in Part V.C below, the law requires more.

Thus, UWCD does not provide "detailed analysis of anticipated costs and a fair allocation of the fees necessary to fund UWCD's regulatory purposes." (AB at p. 29.) It bears the burden under either Proposition 218 (Cal. Const., art. XIII D, §6, subd. (b)(3)) or Proposition 26 (*id.*, § 1, subd. (e) [final paragraph]) to prove its fees do not exceed its service cost, but the City has shown otherwise.

B. UWCD Provides a Service; It Does Not Regulate

UWCD also errs to argue it regulates groundwater use. (AB at p. 29.) It does not. Groundwater management is reserved to the Fox Canyon Groundwater Management Agency in the southern portion of UWCD's territory and to a yet-to-be-designated Sustainable Groundwater Management Agency elsewhere. (City's Sept. 26, 2014 Supplemental Letter Brief at pp. 4–5 [citing Wat. Code, § 10723, subd. (c)(1)(D) & (2)].) Obtaining and delivering water is a "service" under any reasonable definition of the term.

Moreover, for all its prolix discussion of the values of water conservation under article X, section 2 and its principal act, UWCD has no reply to the City's observation UWCD's rates do not encourage conservation. (AB at pp. 4–5; 38–40.) Rather, they promote such wasteful practices as replacing water-efficient orchards with water-hungry berry crops over a deep, coastal, pumping hole. (OB at p. 39 [citing AR1:22:0139].) UWCD's flat rates thus arguably violate its obligation under article X, section 2 to avoid waste.

Conservation rates to serve a regulatory purpose as hypothesized in *Pajaro Valley Water Mgmt. Agency v. AmRhein* (2007) 150 Cal.App.4th 1364 (*Pajaro I*) would look more like the tiered rates challenged in *Brydon v. East Bay Municipal Utility District* (1994) 24 Cal.App.4th 179, 195 (inclining block rates not taxes under Prop. 13), *City of Palmdale v. Palmdale Water District* (2011) 198 Cal.App.4th 926, 934–938 (such rates require cost justification under Prop. 218) and *Capistrano Taxpayers Association v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1505–1507, 1515–1516 (same) than UWCD's flat rates with deep subsidies for agriculture. UWCD's claim its rates serve such a regulatory purpose (AB at pp. 32–33) cites only the trial court's conclusion UWCD's charges have a regulatory purpose. (AB at p. 33, fn. 8.) However, this is not proof the charges serve that purpose so as to escape Proposition 218.

Nor is UWCD distinct from retailers subject to Proposition 218 in its responsibility to conserve water. (AB at p. 30.) All water providers have a range of duties. (E.g., *Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586, 595 (*Pajaro II*) ["water service" includes producing, storing, supplying, treating, or distributing water]; Gov. Code, § 53750, subd. (m) [defining "water" under articles XIII C and XIII D].) Article X, section 2's broadly stated prohibition on waste applies to all water use —wholesale or retail. UWCD's distinction is not even a difference. It therefore

cannot marshal evidence that its charges escape Proposition 218 as regulatory, rather than service, fees.

III. UWCD MISAPPREHENDS THE CITY'S ARGUMENTS

The City does not question the value of UWCD's services. (AB at p. 36, fn. 9.) Nor does it claim it receives no benefit from them. (AB at pp. 6, 9.) Or question UWCD's authority to recharge groundwater. (*Id.* at p. 40.) The City has no doubt there is "some" hydrological link among the eight basins. (*Id.* at pp. 8, 13, 47.) Rather, the City notes the records here show the eight basins benefit disparately from UWCD's services and argues it must apportion its costs among users in each basin in proportion to that disparate benefit. (OB at pp. 10–17; Respondent's Brief and Cross-Appellant's Opening Brief at pp. 11–21; Cross-Appellant's Reply Brief at pp. 5–11.)

UWCD's own records — and the very existence of the Freeman Diversion Dam Zone B — show that flow from basin to basin varies greatly. For example, the seminal work on these basins concluded "there is essentially no possibility of water moving from the Oxnard aquifer to the Mound Basin." (AR1:4:0005; AR2:5:0070.) Nor does groundwater from the Santa Paula Basin meaningfully recharge the neighboring Mound Basin; instead

> [a]dditional 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 [a.k.a. Oxnard Forebay] basins.

(E.g., AR1:34:0009; AR2:66:0013.)

Moreover, because the Mound Basin is relatively isolated, conservation releases do nothing for it. (AR2:165:0021 [depicting City's Mound Basin wells]; AR1:22:0144 [water releases provide no benefit to Mound Basin].) Moreover, UWCD's rate study shows the Mound Basin receives little benefit from Lake Piru releases. (*Ibid.* [Mound Basin not among basins benefitting from lake releases].) Yet the City's production there funds those releases in equal measure with production in other (primarily agricultural) basins which **do** benefit from those releases. (OB at pp. 13–14 [citing AR1:22:0144].) Indeed, UWCD concedes the point. (AB at p. 13.)

Similarly, the Santa Paula Basin does not respond to recharge at the Saticoy spreading ground. (AR1:81:0017, 0022.) As the Opening Brief notes, groundwater levels in the Mound and Santa Paula Basins differ by more than 100 feet, confirming that mountains and faults are boundaries to groundwater flow between the two. (OB at pp. 9, 23–24 [citing AR1:16:0122 (identifying boundaries to groundwater flow); AR1:28:0062 ("dramatic" groundwater elevation differences)].)

UWCD claims underflow from Santa Paula Basin supplies Mound Basin. (AR2:164:0005–0006.) But UWCD overlooks its citation to the Combined 2009 and 2010 Santa Paula Basin Annual Report, which states "[a]dditional testing may be necessary to adequately define the subsurface flow between Santa Paula basin and the adjacent Mound and Montalvo basins ... ." (AR2:66:0013.) UWCD also cited maps of Mound Basin to claim the basins are connected, but fails to note these are of "generalized conceptual groundwater flow paths." (AR2:52:0045; AR1:113.) UWCD grasps at straws.

The issues become, then, how UWCD allocates the cost of its services among beneficiaries, how it spends rate proceeds, and its utter inability to demonstrate that agricultural customers can be served at one-third the cost of others who draw the same water from the same basins replenished by the same facilities.

IV. UWCD MAKES *PAJARO I* A STRAWMAN

Some of the difficulty of this case arises from the hybrid nature of groundwater recharge. To a water retailer like the City, UWCD acts like a wholesaler. As to a rural residential groundwater user, however, UWCD acts like a retailer. This confounds the usual rules that wholesale water providers are subject to Proposition 26 because they do not provide a property related service and retail water providers are subject to Proposition 218 because they do. (*Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409,

428 (*Richmond*) [water connection charges not subject to Proposition 218, dicta suggesting water service fees are]; *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 216 (*Bighorn*) [initiative reduction of water service fees within Proposition 218 because fees paid for property related service].)

A. Groundwater Charges Are Property Related

The Sixth District found groundwater augmentation charges subject to Proposition 218 in disputes brought by residential groundwater users. (*Pajaro I, supra,* 150 Cal.App.4th at p. 1364; *Pajaro II, supra,* 220 Cal.App.4th at p. 586.)[2] The Second District disagreed here. (*City of San Buenaventura v. United Water Conservation District* (2015) 185 Cal.Rptr.3d 207 (*Buenaventura*).) Like the proverbial blind men and the elephant, which part of the problem one grasps influences how one perceives it.

The City respectfully submits the Sixth District's conclusions are more persuasive. The right to use groundwater is a property right. (*Trask v. Moore* (1944) 24 Cal.2d 365, 370; *Garden Water Corp. v. Fambrough* (1966) 245 Cal.App.2d 324, 327.) There is no meaningful distinction between the right to use water on the parcel from which

---

[2] As both parties note, the Sixth District will review these issues a third time in a case, reheard a second time: *Great Oaks Mutual Water Company v. Santa Clara Valley Water District.* (H035260, rehg. granted Apr. 24, 2015 & Sept. 10, 2015 [2015 WL 1393289].)

it is drawn (an overlying water right) and the right to distribute it (an appropriative water right); both are appurtenant to the well site. (OB at pp. 34–35; *Trask, supra,* 24 Cal.2d at p. 370.) Indeed, water extraction is "more intimately connected with property ownership" than is receiving delivered water. (*Pajaro I, supra,* 150 Cal.App.4th at p. 1391.)

UWCD omits a critical part of Water Code section 102 to argue the City does not own its water rights. (AB at p. 35.) That section provides:

> All water within the State is the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided by law.

Thus, the right to use water is connected with property ownership. UWCD grants no privilege here. It provides a service for which may recover its costs in compliance with our Constitution's cost-of-service limits (Cal. Const., art. XIII D, § 6, subds. (b)(1), (2) or *id.*, art. XIII C, § 1, subd. (e)(2)) and its cost-allocation requirements (Cal. Const., art. XIII D, § 6, subd. (b)(3) or *id.*, art. XIII C, § 1, subd. (e) [final paragraph]). Its contrary claim (AB at p. 1) is simply wrong.

Reliance on *Orange County Water District v. Farnsworth* (1956) 138 Cal.App.2d 518 (*Farnsworth*), a post-World War II authority characterizing groundwater charges as an excise tax rather than a service fee, is unavailing. (AB at p. 26; *Buenaventura, supra,* 185

Cal.Rptr.3d at p. 222.) This dated case cannot teach much about distinctions between taxes and fees established by 1978's Proposition 13, 1996's Proposition 218, and 2010's Proposition 26. *Farnsworth*'s broad language simply does not account for legal categories established decades later.

UWCD seeks shelter in *Apartment Association of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830. (AB at pp. 21–22, 25–28.) It rejects *Pajaro I*'s compelling, contrary analysis, suggesting its reasoning is "odd." (AB at p. 31.) But *Pajaro I* persuasively demonstrates logical tension between *Apartment Association* and *Bighorn* which this Court may wish to address.

Surely the rural residents who pay the charges challenged here need not vacate their homes to avoid UWCD's fees as an apartment owner might be expected to exit the multi-family housing market to avoid regulation of that market. UWCD ignores that the fees here apply to rural householders and the City alike. (AB at pp. 23, 27.) UWCD simply overlooks this Court's essential insight in *Richmond* and *Bighorn* that property ownership is meaningless without use, and most land uses require water. (*Richmond, supra,* 32 Cal.4th at p. 426 [supplying water a property related service]; *Bighorn, supra,* 39 Cal.4th at pp. 216–217 [ongoing water delivery a property related service].)

Recognizing that *Bighorn* is a problem for its case, UWCD labels its essential holding "dicta." (AB at p. 31.) It was not dicta to

hold that water service charges are property related fees subject to Proposition 218 even if based on measured consumption. (*Pajaro I, supra,* 150 Cal.App.4th at p. 1398.) Those facts were essential to the cases and defeat UWCD's contrary argument there.

For rural residents, UWCD's groundwater augmentation is a vital water source. (AR1:62:0030, 0038 [District charges residential customers]; *id.* at 72:0004 [reference to residential customers]; 4JA:32:0683.) Why should they be denied the protection Proposition 218 affords their neighbors in Ventura County's cities?

UWCD argues there are too few residential groundwater users here to justify application of Proposition 218. (AB at pp. 32–33.) Its only support is citation to the opinion below. (*Buenaventura, supra,* 185 Cal.Rptr.3d at pp. 221–222.) As the Opening Brief demonstrated, the Court of Appeal's statement cannot be sustained on this record. (OB at pp. 30–31.)

Similarly, UWCD's efforts to limit *Palmdale* and *San Juan Capistrano* to urban water systems are unpersuasive in light of *Pajaro I.* (AB at pp. 14, 38, 41.) Mere observation that many Proposition 218 cases involved retail rates for piped, treated water does not distinguish Proposition 218 here. (AB at p. 41.) As Justice Gilbert aptly put it: "The *Palsgraf* rule, for example, is not limited to train stations." (*Harris v. Superior Court* (1992) 3 Cal.App.4th 661, 666.) That this Court has not yet addressed whether Proposition 218 applies to groundwater charges does not decide the point. UWCD

provides no persuasive rebuttal of *Pajaro I*'s reasoning which brings this case within Proposition 218.

Nor does it answer *Pajaro I* to observe it predates Proposition 26. (AB at p. 42.) That latter measure expressly exempts revenue measures subject to Proposition 218. (Cal. Const., art. XIII C, § 1, subd. (e)(7).) Thus, if UWCD's rates are subject to Proposition 218, Proposition 26 does not change that fact.

B. Proposition 218, Like Proposition 13, Impliedly Repeals Statutes Allowing Rates to Exceed Cost

UWCD correctly notes that implied repeal of statutes is disfavored. (AB at p. 1.) Indeed, the rule has been applied to a dispute under Proposition 218 regarding a statute of limitations — a topic as to which Proposition 218 is silent. (*Barratt American, Inc. v. City of San Diego* (2004) 117 Cal.App.4th 809, 817.) It is no great task to harmonize a statute with constitutional silence.

However, when voters amend our Constitution to adopt fundamentally new rules, inconsistent statutes must give way. This is true as to Proposition 13 and its progeny, Propositions 218 and 26. *Ventura Group Ventures, Inc. v. Ventura Port Dist.* (2001) 24 Cal.4th 1089 (*Ventura Group Ventures*) considered whether Proposition 13 vitiated statutes authorizing the port to impose a property tax. This Court held "the question is what the **voters** intended when they adopted Proposition 13," and concluded voters intended to discontinue the port's power to tax. (*Id.* at p. 1099, original

emphasis.) Legislation implementing Proposition 13 superseded the Port's principal act where the two were inconsistent. (*Ibid.*)

Here, as UWCD admits, it must impose "uniform" rates on rural residents and the City under Water Code section 75594. (AB at p. 5.) However, those rural residents are entitled to the same protection against excessive water rates Proposition 218 requires for those served piped water. (*Pajaro I, supra,* 150 Cal.App.4th at pp. 1388–1389.) Thus Proposition 218 applies to protect UWCD's residential customers, and the City is protected by the uniform-rates requirement of UWCD's principal act. The City may "not stand in the same shoes as" UWCD's residential customers (AB at p. 33, fn. 7), but need only pay rates "uniform" with theirs.

Moreover, UWCD overlooks article XIII D, section 2, subdivision (g):

> "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

Thus, rural residents who use groundwater for domestic purposes receive a property related service from UWCD just as did urban customers in *Bighorn* — as *Pajaro I* explains. "Property ownership" under Proposition 218 includes owner occupants and tenants alike. This case **does** involve a fee "imposed on a property owner to pay for the costs of providing a service to a parcel of property," (AB at pp. 2, 35) and UWCD's contrary argument fails.

Similarly, it is not possible to "harmonize" a statutory obligation to charge non-agricultural groundwater users three times what agriculture pays without respect to cost with our Constitution's cost-allocation requirements. (AB at p. 10.) This is so under either the relatively more demanding Proposition 218 (Cal. Const., art. XIII D, § 6, subd. (b)(3)) or the somewhat less demanding Proposition 26 (*id.*, art. XIII C, § 1, subd. (e) [final paragraph].) Flatly inconsistent duties to account for — and to ignore — cost cannot be harmonized. Indeed, UWCD seems to concede the point, observing Water Code sections 75593 and 75594 "tak[e] any discretion away from UWCD" as to both non-uniform rates and the 3:1 ratio. (AB at p. 36.) Thus, statute forbids what our Constitution commands. (*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"].) The constitutional demands of Propositions 218 and 26 control over a dated statute.

C. *Richmond* Found Water Connection Charges Outside Proposition 218 Because Procedural Compliance Was Impossible

UWCD claims its groundwater charges are not subject to Proposition 218 because of feigned inability to implement its procedures. (AB at pp. 27–28.)

Richmond held Proposition 218's scope can be determined by its procedural requirements. (*Richmond, supra,* 32 Cal.4th at p. 428.)

Richmond considered whether a charge for a new connection to a water system to finance capital improvements was subject to Proposition 218. (*Id.* at p. 415.) This Court concluded the district could not determine on which parcels new connections would be made to send notice required by article XIII D, section 6, subdivision (a). (*Id.* at p. 419.) Impossibility of complying with the measure's procedures warranted a conclusion that water connection charges are not subject to Proposition 218 at all. (*Ibid.*)

No comparable procedural obstacle appears here: UWCD knows who its customers are, and admits it complied with Proposition 218's procedures. (AB at p. 10.) The City has never argued to the contrary. Only UWCD's substantive compliance with Proposition 218 is in issue — i.e., its allocation of costs to rate-payers and its use of fee proceeds.

D. UWCD Can Comply with Proposition 218's Cost Principles

UWCD argues it cannot allocate costs as Proposition 218 demands. (AB at pp. 13, 40.) *Pajaro I* demonstrates otherwise. That court found a fee based on water consumption can comply with Proposition 218 even though "it quite probably **will** be impossible to predict the **quantity** consumed, and thus to forecast the precise 'amount of the fee or charge proposed to be consumed'" as article XIII D, section 6, subdivision (a)(1) requires. (*Pajaro I, supra,* 150 Cal.App.4th at pp. 1388–1389 [original emphasis].) It concluded

"the notice requirements of Article 13D are satisfied if the agency apprises the owner of the proposed **rate** to be charged." (*Id.* at p. 1388, fn. 15 [original emphasis].)

UWCD's establishment of a Zone B charge to fund its Freeman Diversion Dam demonstrates UWCD can segregate its costs by recharge facility, identify who benefits from each, and allocate costs accordingly. UWCD has no counter to this argument. The Answer Brief's sole reference to Zone B is a fleeting statement at page 59. Its claim Zone B was not at issue at trial is wrong. (AB at p. 49; 4JA:30:0625 [defining Zone B in Phase 1 trial brief]; 5JA:44:0840–0841 [establishment of Zone B shows not all activities affecting groundwater have District-wide impact; allocations apply to Zone B charges as well]; 9JA:75:1809–1810, 1812, 1834; 10JA:84:2039– 2040 [rates vary by zone and by user; Zone B disproves District-wide utility of services].)

UWCD observes the Opening Brief provides no record cite at page 58 to support argument UWCD charges more than cost. (AB at p. 49.) Indeed. To avoid repetition, the City referenced argument at pages 42–52 in the brief which UWCD fails to rebut. That UWCD offers no response to that evidentiary discussion — replete with record citations — is admission it has none.

The City's request that UWCD allocate costs for Lake Piru and its spreading grounds to those who pump from basins those facilities recharge is thus well within UWCD's demonstrated

competence. Neither Judge Anderle nor the City reads Proposition 218 to require UWCD to trace each water molecule from recharge source to wellhead. (AB at pp. 13–14.) If justification of the 3:1 ratio is "quixotic" (AB at p. 14), then the statutory requirement of that ratio falls to Proposition 218's (and Proposition 26's) demand that customers pay no more than their fair share of the cost of service. (OB at p. 61.) UWCD's claim that effort to justify the 3:1 ratio would be quixotic concedes the City's claim it is overcharged.

The City does not argue UWCD must "attribute the cost of [its] environmental compliance efforts to a specific parcel." (AB at pp. 9, 46.) Instead UWCD can identify which of its facilities triggers a compliance cost. Indeed, its own briefing does so, noting Lake Piru triggers many such costs. (Appellants' Reply Brief and Cross-Respondents' Brief at pp. 27–28.) As UWCD's records show, it **can** identify the basins each facility benefits. (AR2:168:0150; AR1:22:0144.)

It is a simple matter to apportion costs to basins and to charge those who draw water from each. Each basin's customers amount to a reasonably drawn class of customers who may pay similar rates under *Pajaro II* and *Farm Bureau, supra* (applying Prop. 13). Indeed, UWCD cites these cases to argue for class-by-class cost allocation. (AB at p. 38.) What UWCD can do for the Freeman Diversion Dam, it can do for all its facilities. What UWCD can do for one basin, it can do for eight.

Indeed, UWCD developed an "environmental activity cost allocation policy to fairly and proportionately allocate" those costs after this litigation commenced. (AB at pp. 8–9.) That policy charges "environmental related activities" with a "District-wide benefit" to the General Fund which Zone A charges fund. (AR2:106:0208.) UWCD acknowledges some "environmental activities provide benefit to all District customers (Zone A) but a proportionately greater benefit to customers downstream of the Freeman Diversion (Zone B)." (*Ibid.*) These are equally divided between the two zones as an "equitable representation of the benefit." (*Ibid.*) If UWCD can distinguish areas benefited by the Freeman Diversion Dam, it can create similar zones for Lake Piru and other facilities. Its failure to do so reflects its preference, not the limits of accounting practice.

Indeed UWCD suggests the Ferro-Rose Recharge Project and the Noble Basin benefit only the Oxnard Forebay and Oxnard Plain basins. (AB at pp. 9–10.) Yet it offers no explanation for recovering those facilities' costs from the District-wide Zone A. Why charge those costs to the City's wells in the upstream Santa Paula and Mound Basins that cannot benefit from those facilities? Proposition 218 and Proposition 26 forbid UWCD to do so.

Nor need we be detained by UWCD's terse claim article XIII D, section 6, subdivision (b)(4) precludes application of Proposition 218 here. (AB at p. 35.) That section states:

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

(Cal. Const., art. XIII D, § 6, subd. (b)(4).) *Pajaro II* persuasively explains that the current water service for which a property related fee may be imposed includes costs incurred to ensure service over time. (*Pajaro II, supra,* 220 Cal.App.4th at p. 595.) Water service is not a one-time delivery of some water molecules; UWCD does not sell bottled water. It is an ongoing, reliable service of water of adequate quantity and quality. (*Ibid.*; see also Gov. Code, § 53750, subd. (m) [defining "water" for articles XIII C and XIII D].)

Nor is the remedy for a failure to allocate costs as our Constitution demands the debilitating full refund UWCD fears. (AB at p. 39.) No law requires UWCD to serve its customers for free or to recover less than its costs. Rather, the remedy is what Judge Anderle granted here —refund of the difference between what the City paid and what it would have paid under a lawful rate supported by the administrative records here. (12JA:112:2570–2585 [Sept. 6, 2013 judgment]; see also *Water Replenishment District of*

Southern California v. City of Cerritos (2013) 220 Cal.App.4th 1450, 1464 [remedy for unconstitutional groundwater fee is partial refund].)

Nor need UWCD endure a "deficit." (AB at p. 40.) It may recover the full cost of its services, but must allocate that cost constitutionally. (*Howard Jarvis Taxpayers Ass'n v. City of Fresno* (2005) 127 Cal.App.4th 914, 927 [utility rates can recover all costs under Prop. 218]; *Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.App.4th 637, 648 [same]; *Pajaro II, supra,* 220 Cal.App.4th at p. 600 [same]; *Morgan, supra,* 223 Cal.App.4th at p. 923 [same].) If UWCD and other rate-makers risk "'cost of service' battles," (AB at p. 40) that results from constitutional amendments requiring de novo review of legislative rate-making and shifting the burden of proof from to rate-makers.

As this Court wrote of Proposition 218:

> We must ... enforce the provisions of our Constitution and may not lightly disregard or blink at ... a clear constitutional mandate. In so doing, we are obligated to construe constitutional amendments in a manner that effectuates the voters' purpose in adopting the law.

(*Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 448, internal quotations and citations omitted.)

Moreover, the current spate of water-rate litigation can be expected to abate with this Court's guidance here and in other cases now on review. Local governments will adapt to rulings clarifying what our Constitution demands. We need not endure the Hobbesian world of constant litigation UWCD fears.

V. UWCD IGNORES BOTH *SINCLAIR PAINT* AND PROPOSITION 26

UWCD asks this Court to rely on the Court of Appeal's reasoning that compliance with the total cost requirement of Proposition 26 is sufficient to comply with its command

> that the manner in which ... 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.

(AB at pp. 44–45; Cal. Const., art. XIII C, § 1, subd. (e) [final paragraph].) Compliance with the total cost limit, of course, tells us nothing about compliance with the duty to allocate costs among payors in proportion to their benefits from or burdens on governmental activity.

A. *Sinclair Paint* Requires a Fair or Reasonable Allocation of Service Costs

Sinclair Paint articulates this test to distinguish regulatory fees from special taxes under Proposition 13, requiring government to prove:

1. the estimated costs of the service or regulatory activity, and
2. the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity.

(*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 879 (*Sinclair Paint*); see also *Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, 1321–1322, 1326 [citing *Sinclair Paint* to construe Prop. 26].) *Sinclair Paint* limits a fee to the reasonable cost of providing the service for which it is charged. (*Sinclair Paint, supra,* 15 Cal.4th at pp. 870, 881.) Charges must bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. (*Id.* at pp. 878, 881.)

UWCD asserts it need only show "reasonable proportionality" of its fees on a "collective basis." (AB at p. 44.) *Sinclair Paint* demands more. UWCD has yet to cost-justify the 3:1 rate ratio (10JA:88:2123.) or to demonstrate a fair or reasonable allocation of Zone A charges, which distribute equally costs for services that do not benefit pumpers equally. Instead, it commingles Zone A revenue

with discretionary revenue to serve non-payors. UWCD must show its charges to non-agricultural and to agricultural users are proportionate to each group's benefits from, and burdens on, UWCD's services. (Cal. Const., art. XIII C, § 1, subd. (e) [final paragraph].)

B. Proposition 26 Does, Too

Proposition 26 defines "taxes" requiring voter approval under Propositions 13 and 218. It provides seven exceptions to that definition. Some codify *Sinclair Paint*. For example, "tax" excludes a charge that "does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege" or which "does not exceed the reasonable costs to the local government of providing the service or product." (Cal. Const., art. XIII C, § 1, subd. (e)(1), (2).)

Charges subject to Proposition 218 are exempt from Proposition 26. (*Id.* at § 1, subd. (e)(7).) Thus, if the fees here are not subject to Proposition 218, Proposition 26 applies. UWCD defends its fees (AB at pp. 43–44) under article XIII C, section 1, subdivision (e)(1):

> (1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not

> exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

(Cal. Const., art. XIII C, § 1, subd. (e)(1.) Under the final unnumbered paragraph of article XIII C, section 1, subdivision (e), UWCD must also show:

> the manner in which ... 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.

UWCD cannot.

C. Proposition 26 Requires Service Fees Be Imposed Only for Services Provided "Directly" to a Payor Without Free Riders

UWCD criticizes the City's argument for "a 'direct' correlation between the fee charged and the benefits conferred on the payor." (AB at p. 45 [citing OB at pp. 55–57].) Those pages of the Opening Brief do not argue that point. Instead, they argue that Proposition 26 allows service fees only for a service provided "directly to the payor that is not provided to those not charged." (Cal. Const., art. XIII C, § 1, subd. (e)(2).) UWCD argues its services are of general social benefit. (AB at pp. 3–4; Appellant's Opening Brief at p. 17; 4JA:32:0656–0665; 5JA:45:0863–0873.) Therefore, it has no answer to this point.

That UWCD's principal act authorizes it to provide services "for the benefit of all who rely directly or indirectly upon the groundwater supplies of a district" is problematic under Proposition 26. (Wat. Code, § 75522 [cited in AB at pp. 4–5].) Unless UWCD seeks voter approval, Proposition 26 requires it to charge only for services provided to fee payors alone, without free riders.

VI. REMAND IS INAPPROPRIATE

UWCD argues the trial court erred by refusing to consider extra-record evidence "to show that evidence could be had to justify the 3:1 fee differential and demonstrating proportionality" and by "refusing remand to allow introduction of additional cost of service calculations justifying its ratemaking." (AB at p. 42.) UWCD argues that if this Court finds the charges subject to Proposition 218, it should remand for "reconsideration of all the evidence justifying the rate differential." (*Ibid.*)

However, *Western States, supra,* 9 Cal.4th at p. 578 forbids UWCD to rely on extra-record evidence it could have presented at its own hearings. Moreover, remand would allow further attempts to rationalize — post hoc — noncompliant rates UWCD imposed in each of five fiscal years since this dispute arose. If UWCD could not justify its rates in the second record here, made with knowledge of the first case, why grant a further opportunity now? The Court of Appeal recently noted the implications of such a remand:

> If we accepted the City's contention, a local agency could avoid refunding unexpended development fees by making any findings, no matter how inadequate, and the only repercussion would be another opportunity to repeat the process.

(*Walker v. City of San Clemente* (2015) 239 Cal.App.4th 1350, 1370.)

Moreover, remand would be bootless. Water Code section 75594 demands UWCD apply the 3:1 ratio "unless an appellate court has made a determination that such statute is unconstitutional." (Cal. Const., art. III, § 3.5, subd. (a).)

Accordingly, the trial court properly refused notice of portions of the record of UWCD's June 2013 rate-making. (12JA:105:2505.) It was UWCD's burden to make a record on which to defend its rates. (*Beaumont, supra,* 165 Cal.App.3d at pp. 236–237; *Homebuilders Ass'n of Tulare/Kings Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554, 562–563.) Moreover, extra-record evidence can never be used to attack or bolster legislative action or to impeach the record. (*Western States, supra,* 9 Cal.4th at p. 574.)

The common law fair hearing doctrine requires the same result. That rule requires the public have opportunity to respond to an agency's evidence. (*California Assn. of Nursing Homes, etc., Inc. v. Williams* (1970) 4 Cal.App.3d 800, 810.) UWCD's principal act requires the same. (See Wat. Code, § 75571 [notice of hearing], § 75573 [right to rebut evidence].)

Given that *Western States* forbids the City to rely on extra-record evidence, it would be unfair to allow UWCD to do so on remand. As *Walker* warns, such a rule would disincentivize compliance with law; as *Western States* warns, it would mean administrative process without end.

Finally, UWCD cites *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 532. That CEQA case held that Code of Civil Procedure section 1094.5, subdivision (e) authorizes a court to:

> remand for agency consideration of **such evidence**, or may consider the evidence itself, only if **that evidence** could not have been presented, or was improperly excluded, at the administrative proceeding.

(*Id.* [original emphasis].) This is not the case here, nor does UWCD claim it is. Rather, UWCD seeks to remedy its constitutional failure by resort to evidence generated post hoc. It seeks a mulligan. Remand should be denied.

CONCLUSION

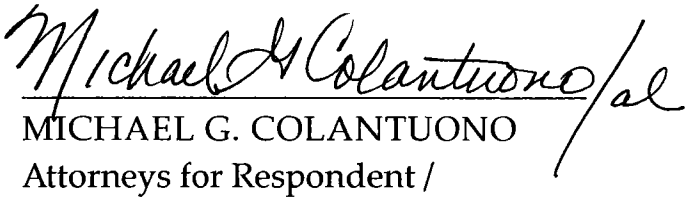
The Answer claims UWCD's fees do not exceed service cost, yet cannot muster record evidence to convincingly support the claim. It fails to justify the 3:1 rate ratio under either Propositions 218 or 26.

Accordingly, the City respectfully urges this Court to reverse the Court of Appeal and affirm the trial court's judgments for the City and to provide the declaratory relief sought on cross-appeal:

1. On the present administrative records, UWCD's charges violate Proposition 218 (or Proposition 26) 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, e.g., 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 (or Proposition 26); and
3. Water Code section 75594 is facially unconstitutional.

DATED: October 16, 2015

COLANTUONO, HIGHSMITH & WHATLEY, PC



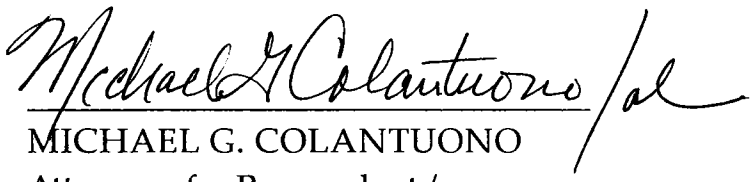
MICHAEL G. COLANTUONO
Attorneys for Respondent / Cross-Appellant
CITY OF SAN BUENAVENTURA

CERTIFICATION OF COMPLIANCE WITH CAL. R. CT. 8.520(B) & 8.204(C)(1)

Pursuant to California Rules of Court, rules 8.204(a)(1) and 8.520(c)(1), I hereby certify that the foregoing Reply Brief on the Merits contains 8,101 words (including footnotes, but excluding the tables and this Certificate) and is within the 8,400 word limit set by California Rules of Court, rule 8.520(c). In preparing this certificate, I relied on the word count generated by Word version 14, included in Microsoft Office Professional Plus 2010.

DATED: October 16, 2015

COLANTUONO, HIGHSMITH & WHATLEY, PC



MICHAEL G. COLANTUONO
Attorneys for Respondent / Cross-Appellant
CITY OF SAN BUENAVENTURA

PROOF OF SERVICE

City of San Buenaventura v. United Water Conservation District, et al.
Supreme Court Case No. S226036
Court of Appeal, Second Appellate District, Division 6, 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 420 Sierra College Drive, Suite 140, Grass Valley, California 95945. On October 16, 2015, I served the document described as **REPLY BRIEF ON THE MERITS** 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

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 Grass 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 October, at Grass Valley, California.

Ashley A. Lloyd

SERVICE LIST

City of San Buenaventura v. United Water Conservation District, et al.
Supreme Court Case No. S226036
Court of Appeal, Second Appellate District, Division 6, Case No. B251810

Anthony H. Trembley Jane E. Usher Musick, Peeler & Garrett LLP 2801 Townsgate Road, Suite 200 Westlake Village, CA 91361 Phone: (805) 418-3100 Fax: (805) 418-3101 E-mail: A.Trembley@mpglaw.com; J.Usher@mpglaw.com; Y.Dubeau@mpglaw.com *Attorneys for Defendant and Appellant United Water Conservation District and Board of Directors of United Water Conservation District*	Dennis LaRochelle Susan L. McCarthy John M. Mathews Arnold LaRochelle Mathews Vanconas & Zirbel, LLP 300 Esplanade Drive, Suite 2100 Oxnard, CA 93036 Phone: (805) 988-9886 Fax: (805) 988-1937 E-mail: dlarochelle@atozlaw.com; jmathews@atozlaw.com *Attorneys for Intervener Pleasant Valley County Water District*
Office of the Attorney General 1300 I Street Sacramento, CA 95814-2919	Nancy McDonough Chris Scheuring Associate Counsel California Farm Bureau 2300 River Plaza Drive Sacramento, CA 95833 Phone: (916) 561-5500 Fax: (916) 561-5699 E-mail: cscheuring@cfbf.com; dchasteen@cfbf.com *Attorneys for California Farm Bureau Federation and Farm Bureau of Ventura County, Amicus Curiae for Appellant*

Paul N. Singarella Latham & Watkins 650 Town Center Drive, 20th Floor Costa Mesa, CA 92626 *Attorneys for Water Replenishment District of Southern California, Amicus Curiae*	Patricia J. Quilizapa Alshire & Wynder, LLP 18881 Von Karman Ave., Suite 1700 Irvine, CA 92612 *Attorneys for Cerritos, City of Downey and City of Signal Hill, Amicus Curiae*
Clerk of the Court Santa Barbara Superior Court 1100 Anacapa Street Santa Barbara, CA 93121-1107	Clerk of the Court Court of Appeal Second District, Division 6 200 East Santa Clara Street Ventura, CA 93001