S226036

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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

vs.

UNITED WATER CONSERVATION DISTRICT AND BOARD OF DIRECTORS OF UNITED WATER CONSERVATION DISTRICT,
Defendants, Cross-Complainants, and Appellants/Cross Respondents.

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF OF *AMICUS CURIAE* GREAT OAKS WATER COMPANY IN SUPPORT OF APPELLANT CITY OF SAN BUENAVENTURA

After a Decision by the Second Appellate District, Division Six
Case No. B251810

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

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF *AMICUS CURIAE* GREAT OAKS WATER COMPANY IN SUPPORT OF APPELLANT CITY OF SAN BUENAVENTURA

Pursuant to Rule 8.520(f) of the California Rules of Court, Great Oaks Water Company, a California Corporation ["Great Oaks"] respectfully requests permission to file the attached *Amicus Curiae* Brief in *City of San Buenaventura v. United Water Conservation District*, State of California Supreme Court Case No. S226036 ["*Buenaventura*"].[1]

I. GREAT OAKS HAS A SUBSTANTIAL INTEREST IN THE UNDERLYING APPEAL.

Great Oaks is an investor-owned water company regulated by the California Public Utilities Commission. Great Oaks produces groundwater from wells located on parcels of land owned by it, and provides water service to more than 20,000 residential, commercial and industrial service

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[1] In this application and attached proposed *amicus* brief, appellant City of San Buenaventura will be referred to as "the City" or "appellant," and respondent United Water Conservation District will be referred to as "respondent."

connections. The total population served in Santa Clara County is nearly 100,000.

Great Oaks provides its customers with water service at the lowest possible rates for a regulated water utility. Great Oaks' water rates include a usage charge based upon the volume of water used by its customers. The Santa Clara Valley Water District [District] imposes a per acre-foot (p.a.f) volumetric charge upon all produced[2] groundwater ["groundwater charge"]. The groundwater charge imposed by the District is substantially similar to the groundwater charge imposed by respondent. Great Oaks passes through the District's groundwater charge to its customers. The groundwater charge accounts for more than 50% of a customer's water bill.

Great Oaks has a direct interest in this case because its outcome affects the validity of the groundwater charge imposed by the District. In providing essential water service to approximately 100,000 customers, Great Oaks strives to insure that its customer's water bills are not inflated by unnecessary or improper charges.

Great Oaks has filed a sequence of lawsuits against the District contesting the constitutionality of the groundwater charge. The first such lawsuit is *Great Oaks Water Company v. Santa Clara Valley Water District*, Santa Clara Superior Court Case No. 1-05-CV053142 ["*Great Oaks*"].[3] Many of the contentions being made by the plaintiff in *Great Oaks* are the same as the contentions being made by the City in *Buenaventura*, including that the groundwater charge is imposed as an

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[2] The terms "production" and "extraction" are synonymous.

[3] It should be noted that counsel for the Santa Clara Valley Water District has filed a request for an extension to file an application for leave to file an amicus curie brief in this matter. (Docket 11/12/2015) Clearly, they also see that the issues in the instant case are substantially similar to the issues raised in the *Great Oaks* case.

"incident of property ownership," as that term is used in Proposition 218.[4]

In *Pajaro Valley Water Mgmt. Agency v. Amrhein* (2007) 150 Cal. App. 4th 1364, the Sixth District Court of Appeal determined that a charge upon the extraction of groundwater by a local water management agency was imposed "as an incident of property ownership" subject to the restrictions imposed upon such charges by Proposition 218 [*Amrhein*, p. 1393]. In *Great Oaks*, the trial court determined that a charge upon a commercial extractor of groundwater for off-site sale was imposed as an incident of property ownership. The trial court's Statement of Decision relied upon *Amrhein* in making such determination.

The *District* appealed the trial court's judgment to the Sixth District (Case No. H035260). The Sixth District filed its first published decision in *Great Oaks* on March 25, 2015 [*Great Oaks Water Company v. Santa Clara Valley Water District* (2015) 235 Cal.App.4th 523; 185 Cal.Rptr.3d 621]. One of the holdings in the published decision involved whether or not charges on the extraction of groundwater by a commercial extractor for off-site sale are imposed as an incident of property ownership.[5] Both Great Oaks and the District filed Petitions for Rehearing.[6] Both petitions for

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[4] Proposition 26 was enacted subsequent to the filing of *Great Oaks,* and is not at issue in the cases filed before enactment of Proposition 26. Even so, Great Oak has great interest in the proper application of Proposition 26 to groundwater charges. The District imposes its groundwater charge on an annual basis. Great Oaks has filed annual lawsuits against the District alleging that each year's groundwater charge is violative of Proposition 26, as well as Proposition 218. The prosecution of such lawsuits has been stayed by the Santa Clara County Superior Court pending a final judgment in *Great Oaks*.

[5] The holding in *Great Oaks* cannot be cited per California Rule of Court 8.1115.

[6] Great Oaks' petition for rehearing did not challenge the Sixth District's determination regarding whether or not a groundwater charge is imposed as an incident of property ownership.

rehearing were granted on April 24, 2015. *Great Oaks* was ordered resubmitted on May 22, 2015.

The Sixth District filed its second published decision in *Great Oaks* on August 12, 2015 [*Great Oaks Water Company v. Santa Clara Valley Water District* (2015) 239 Cal.App.4th 456 191; Cal.Rptr.3d 352]. The Sixth District's opinion in the second published decision was almost identical to its opinion in the first published decision. Once again, one of the holdings in the second published decision involved whether or not charges on the extraction of groundwater by a commercial extractor for off-site sale are imposed as an incident of property ownership. Great Oaks filed a second Petition for Rehearing on August 27, 2015.[7] Great Oaks' second Petition for Rehearing was granted on September 10, 2015.[8] *Great Oaks* was ordered resubmitted on October 2, 2015.

Because many issues under consideration in *Buenaventura* are identical or substantially similar to issues under consideration in *Great Oaks,* Great Oaks had intended to seek review of the Sixth District's opinion in *Great Oaks* at approximately the same time that the City sought review in *Buenaventura*.[9] However, seeking simultaneous review became impossible after the Sixth District granted two consecutive petitions for rehearing. Each rehearing delayed the filing of a petition for review by approximately five (5) months.[10]

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[7] Great Oaks' second petition for rehearing once again did not challenge the Sixth District's determination regarding whether or not a groundwater charge is imposed as an incident of property ownership.

[8] The granting of the second Petition for Rehearing clearly confirms the significant statewide importance of the *Great Oaks* case.

[9] Great Oaks surmises that the District also intended to seek review simultaneously with *Buenaventura*.

[10] Great Oaks anticipates that the Sixth District will issue its third opinion around the end of calendar year 2015, since the matter was ordered submitted on October 2, 2015. Great Oaks intends to seek review of the

Proposition 218 is intended to "protect taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent," and circumvent the ability of local governments to impose excessive fees, assessments, and taxes. Its provisions are to be liberally construed to effectuate its dual purposes of "limiting local government revenue and enhancing taxpayer consent." (Ballot Pamp., text of Prop. 218, § 2 & 5, p. 108-109; Historical Notes, p. 85.)

Buenaventura turns Proposition 218 on its head by: (1) ignoring Proposition 218's limitations on the imposition of fees and charges; and (2) disregarding its mandate that taxpayer consent be obtained for any new or increased fee or charge. Since Great Oaks filed its original complaint in 2005, the District has enacted yearly double-digit increases in the groundwater charge. Groundwater charges for residential water have increased from $260 p.a.f to $894 p.a.f. During the same 10-year period, the groundwater charge for agricultural water has decreased from $26 p.a.f to $21.36 p.a.f. [the groundwater charge for residential water is now more than 40 times higher than for agricultural water].[11] Even though the District's "cost of service" is the same for both agricultural and residential water (i.e., all costs associated with the extraction of groundwater are paid by the property owner), the District effectively causes non-agricultural water producers to pay more than the cost of service in order to fund the "discount" for agricultural producers.

Buenaventura not only sanctions unrestrained future increases in the groundwater charge, it also sanctions the ever-growing disparity between

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third *Great Oaks* opinion if it is substantially similar to the Sixth District's prior two published opinions.

[11] Similar to Water Code § 75594 which is at issue in *Buenaventura*, Chapter 60, § 26.7 (a)(3)(D) of the California Water Code Appendix requires that the District's groundwater charge for agricultural water not exceed one-fourth the rate for residential, commercial and industrial water.

residential and agricultural groundwater charges. *Buenaventura* removes groundwater charges from all constitutional restraints required by Proposition 218 and Proposition 26. No taxpayer consent of any type is required to increase a groundwater charge. If the holding in *Buenaventura* remains the law, trial courts will be without any means to control unlimited increases in groundwater charges. *Buenaventura*'s continued vitality will make groundwater charges somewhat unique within the state of California, in that almost every other significant tax, assessment, fee, or charge imposed by a local governmental agency is subject to some form of constitutional or other restraint. *Buenaventura*'s holding is detrimental to all water users within the Santa Clara Valley.[12]

As set forth in the attached *amicus* brief, the holding in *Buenaventura*: (1) ignores the voters' stated purposes in enacting Proposition 218; (2) replaces voter intent with judicial fiat; (3) misapplies the proportionality requirements contained in Proposition 218; and (4) ignores established precedent by construing Proposition 218 in an incredibly restrictive and distorted manner. *Buenaventura's* analysis of Proposition 26 is similarly flawed.

Each of the following issues involved in *Buenaventura* greatly impact Great Oaks, and its 100,000 customers: (1) whether a groundwater charge is imposed as an incident of property ownership; (2) the constitutionality of imposing a materially higher groundwater charge upon residential water users than the charge imposed upon agricultural water users; (3) the proper application of the proportionality and other restrictions

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[12] Groundwater charges imposed by the District which Great Oaks passes through to its customers are expected to exceed $8,000,000 per year, beginning in 2016. Under *Buenaventura*, unlimited future increases can be imposed regardless of the objections by the property owners paying the charges.

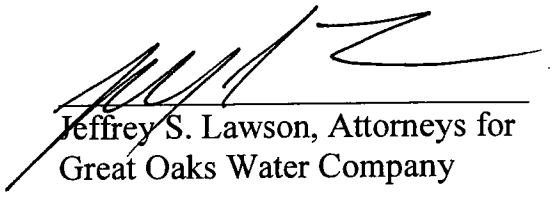
set forth in Art. 13D, §§ (b)(1) to (5); and (4) the proper application of Proposition 26 to groundwater charges.

The proposed *amicus* brief will assist this Court in deciding these important issues because, to date, this Court has only received briefs from local governmental agencies [i.e., the City and the respondent]. Great Oaks, on the other hand, is a taxpayer and property owner. Proposition 218 and Proposition 26 are intended to protect taxpayers such as Great Oaks' and its customers from excessive charges imposed by local governmental agencies such as the appellant and respondents. In several areas, Great Oaks' proposed brief will offer this court a different perspective on the issues from that presented by either the appellant or the respondent. Before this court issues its final decision on these extremely important issues, it should receive input from at least one representative member of the class of persons intended to be protected by Proposition 218 and Proposition 26 [i.e., a taxpayer].

II. CONCLUSION.

For the foregoing reasons, Great Oaks respectfully requests permission to file the attached *amicus curiae* brief.

Dated: November 17, 2015 SILICON VALLEY LAW GROUP

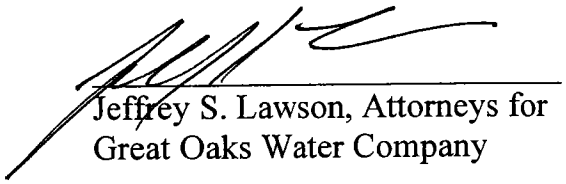


Jeffrey S. Lawson, Attorneys for
Great Oaks Water Company

CERTIFICATE OF AUTHORSHIP

In accordance with Rule 8.520(f)(4), the undersigned hereby states that the proposed *amicus* brief herein was authored solely by counsel for Great Oaks Water Company, and no person or entity outside of Great Oaks Water Company made any monetary contribution to assist its preparation.

Dated: November 17, 2015 SILICON VALLEY LAW GROUP



Jeffrey S. Lawson, Attorneys for
Great Oaks Water Company

BRIEF OF *AMICUS CURIAE* GREAT OAKS WATER COMPANY IN SUPPORT OF APPELLANT CITY OF SAN BUENAVENTURA

I. THE GROUNDWATER CHARGE IS EITHER A FEE OR SPECIAL TAX IMPOSED AS AN INCIDENT OF PROPERTY OWNERSHIP.

A. THIS COURT SHOULD DETERMINE IF THE GROUNDWATER CHARGE IS AN EXCISE TAX OR FEE.

In *Buenaventura*, the City contended that the groundwater charge is a property related fee, and respondent disputed the City's contention. *Buenaventura* agreed with the respondent, finding that groundwater charges are not fees imposed as an incident of property ownership within the meaning of article XIII D, § 6. Great Oaks agrees with the City that the groundwater charge is imposed as an incident of property ownership, and that *Buenaventura* was incorrectly decided.

However, neither the City, the respondent, nor the *Buenaventura* court considered whether the groundwater charge is a special tax as that term is used in article XIII D, § 3(a)(2).[1] Great Oaks requests that this Court make a determination whether the groundwater charge is a special tax or a fee, as those terms are used in article XIII D, as part of its review of *Buenaventura*.[2]

Article XIII D, § 3(a)(2) provides, " No tax, assessment, fee, or

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[1] Respondent and the City briefed, and *Buenaventura* decided [incorrectly], the issue of whether the groundwater charge is a tax within the meaning of article XIII C (Proposition 26). The chief distinction between taxes subject to article XIII C, and those subject to article XIII D, is that article XIII C applies to all taxes, subject to certain specified exceptions, while article XIII D only applies to those taxes which are imposed as an incident of property ownership, but without any exceptions.

[2] See section 1D, *infra*, for Great Oaks' standing to raise this issue.

charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership..."

Pajaro Valley Water Mgmt. Agency v. Amrhein (2007) 150 Cal.App.4th 1364 ("*Amrhein*") considered whether a groundwater charge substantially similar to the one at issue in this case qualified as either a special tax, assessment, or a property related fee. The appellants in *Amrhein* contended that the groundwater charge was either a special tax under section 3(a)(2), or a section 6 fee, imposed as an incident of property ownership. On the question of whether the groundwater charge was a special tax, appellants relied, in part, upon the decision in *Orange County Water District v. Farnsworth* (1956) 138 Cal.App.2d 518 ("*Farnsworth*"). The *Farnsworth* decision held that a charge imposed upon the operators of water producing facilities was in the nature of an excise tax levied upon the activity of pumping groundwater [*Farnsworth*, p. 530]

According to the court in *Amrhein*, the *Farnsworth* court characterized the pump fee as an excise tax for convenience. *Amrhein* determined that *Farnsworth* used the term "excise tax" because the term "user fee" had not yet come into vogue when the case was decided in 1956 [*Amrhein,* p.1380]. Citing this Court's decision in *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866 ("*Sinclair*"), *Amrhein* found the groundwater charge to be a property related fee rather than a tax because: "Under modern law, the central distinction between a tax and a fee appears to be that a tax is 'imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted.'" [*Id.*, 1381, citing *Sinclair* at p. 874][3] Because *Amrhein* considered the charge in

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[3] *Sinclair* contains the admonition, "We are not here concerned with issues arising under constitutional amendments effected by a recent initiative measure (Proposition 218) adopted at the November 5, 1996, General Election. That measure contains new restrictions on local agencies'

Farnsworth to be a "user fee," it did not consider whether an "excise tax" qualifies as a special tax within the meaning of article XIII D, § 3(a)(2).

If this Court agrees with *Amrhein* that the groundwater charge is in the nature of a "user fee," rather than an excise tax, such determination in and of itself makes the groundwater charge subject to article XIII D, § 6, since "'[f]ee' or 'charge' means any levy... imposed by an agency upon a parcel or upon a person as an incident of property ownership, **including a user fee** or charge for a property related service." [Art. 13D, § 2(e)].[4]

Buenaventura found exactly the opposite of *Amrhein*, holding that groundwater charges are not property related fees. In arriving at this conclusion, *Buenaventura* found groundwater charges to be similar to the pump fee at issue in *Farnsworth*. *Buenaventura* agreed with *Farnsworth* that the activity of producing water by pumping is in the nature of an excise tax. [*Buenaventura*, p. 223].

Buenaventura concluded that excise taxes are levied on the activity of producing groundwater, rather than being imposed solely upon the ownership of property [*Buenaventura*, p. 223]. Following this reasoning, *Buenaventura* concluded that the groundwater charge, as an excise tax, could not be a property related fee because such fee is imposed upon the use of property rather than solely upon its ownership [*Id.*, p. 223]. *Buenaventura* failed to consider whether excise taxes are imposed as an incident of property ownership [versus imposed solely upon its ownership], and therefore within the purview of article XIII D.

Amrhein and *Buenaventura* disagree upon whether the groundwater charge is an excise tax, or a user fee. However, both are

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power to impose fees and assessments." (*Sinclair*, p. 873, fn. 2) However, *Amrhein* is not alone in citing *Sinclair* when analyzing Proposition 218.

[4] All emphasis in this brief is added.

imposed as an incident of property ownership, and, therefore, subject to article XIII D. If this Court agrees with *Buenaventura*, *Farnsworth*, and the respondent that the groundwater charge is an excise tax, then the groundwater charge is a special tax subject to article XIII D, § 3(a)(2). On the other hand, if this Court agrees with *Amrhein* that the groundwater charge is more in the nature of a user fee, then the groundwater charge is a fee subject to article XIII D, § 6 [see Art. 13D, § 2(e), *supra*]. However, in either case, *Buenaventura's* holding that the groundwater charge is not imposed as an incident of property ownership is incorrect.

Thomas v. City of East Palo Alto (1997) 53 Cal.App.4th 1084, 1088 ("*Thomas*")[5] succinctly explains the distinction between property taxes imposed upon the ownership of property, and excise taxes imposed as an incident of property ownership:

> "The City tax in issue here is legally indistinguishable from the unconstitutional property tax we invalidated in *Digre*. It is not a proper excise tax, because it simply taxes property owners for the mere ownership of property, and is not imposed as **a valid excise tax would be on any of the incidents of ownership**, such as sale, transfer, rental, **special use** of certain city services, and so on....
>
> "'Real property taxes are imposed on the ownership of property as such....' **An excise tax, by contrast, is a tax whose imposition is triggered not by ownership but instead by some particular use of the property or privilege associated with ownership**...".[6]

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[5] The complaint in *Thomas* was filed before the effective date of Proposition 218.

[6] See also *City and County of San Francisco v. Flying Dutchman Park, Inc.* (2004) 122 Cal.App.4th 74, 88, "[A] tax on the separate use of

A tax imposed upon some particular use of property, or a tax associated with the ownership of property[7], is usually considered an excise tax. *Buenaventura* acknowledges that the groundwater charge is imposed upon a particular use of the City's property ["The [pump] fee is not imposed solely because a person owns property. Rather, it is imposed because the property is being [used to extract groundwater]." [*Buenaventura*, p. 223; brackets in original]. Under *Buenaventura's* analysis, the groundwater charge would be an excise tax, rather than a user fee as determined in *Amrhein*. Excise taxes are imposed as an incident of property ownership. [*Thomas*, p. 188]. All taxes, including excise taxes, imposed as an incident of property ownership come within the mandatory voter requirements set forth in article XIII D, § 3(a)(2). Therefore, whether the groundwater charge is characterized as an excise tax, or a user fee, such charge is imposed as an incident of property ownership.

B. THE GROUNDWATER CHARGE IS NOT A FEE WITHIN THE DEFINITION USED IN *APARTMENT ASSOCIATION*.

In addition to *Farnsworth*, *Buenaventura* places great reliance upon this Court's decision in *Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830 (*Apartment Assn.*), finding *Apartment Assn.*'s facts to not be materially different from the instant action. *Buenaventura* concludes that under *Apartment Assn.*, a groundwater charge must be imposed solely because a person owns property in order for the charge to be subject to article XIII D. [*Buenaventura*, p. 223][8].

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the property, known as an excise tax, is permissible..."

[7] See section B, *infra*, for discussion why the groundwater charge is both a tax on a particular use of property, as well as a tax on the ownership of property.

[8] *Buenaventura* never fully addresses why the express language of article XIII D only requires that taxes, assessments, fees, and charges be imposed upon a property or person as an incident of property ownership in order to fall within article XIII D, but *Buenaventura* requires such taxes,

According to respondent, groundwater charges are imposed "on" an incident of property ownership, rather than "as" an incident of property ownership. Respondent argues, "This one-word distinction was and remains pivotal." Like the court in *Buenaventura*, respondent sees no purpose in this Court considering voter intent or real property law, since any tax, assessment or fee is outside the purview of article XIII D, if such tax, assessment or fee is not imposed solely upon the ownership of property. According to the respondent, the groundwater charge has no connection to the ownership of property.[9]

The facts in *Apartment Assn.*, which *Buenaventura* finds to be substantially similar to the facts in the instant action, involve a challenge to a fee charged on rental housing to fund periodic inspections of such properties. *Apartment Assn.* found the inspection fee to be "more in the nature of a fee for a business license than a charge against property." *Buenaventura* expands *Apartment Assn.*'s limited exclusion for regulatory license fees, to a blanket exclusion for all fees which are not "imposed solely because a person owns property." (*Id.*, 223)

In *Howard Jarvis Taxpayers Ass'n v. City of Fresno* (2005) 127 Cal.App.4th 914 (*City of Fresno*), the city made essentially the same contention made by *Buenaventura* and the respondent; namely, that *Apartment Assn.* requires all charges subject to article XIII D be imposed solely because a person owns property. The city's reading of *Apartment Assn.* was rejected by the *City of Fresno* court:

> In a broader sense of arguing the in lieu fee is not an "incident of ownership" fee, Fresno cites to *Apartment Assn. of Los Angeles County, Inc.*

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assessments and fees be imposed solely because a person owns property to fall within article XIII D.

[9] Respondent arrives at this conclusion even though it did not make any analysis of real property law.

> *v. City of Los Angeles* (2001) 24 Cal.4th 830 (*Apartment Assn.*). *Apartment Assn.* involved a challenge to a fee charged to each unit of multifamily rental housing; the fee funded periodic inspections of such properties to prevent deterioration of the housing stock. (*Id.* at p. 835) The Supreme Court held that the fee was not subject to article XIII D. (*Apartment Assn. supra,* at p. 840.) The court determined the fee was "more in the nature of a fee for a business license than a charge against property." (*Ibid.*) In doing so, Justice Mosk used certain broad language upon which Fresno has focused: "The inspection fee is not imposed solely because a person owns property." (*Id.* at p. 838) **Fresno points out that the in lieu fee is not imposed on water users solely because they own property but, instead, because they use water, whether they own property or not**....the context in which Justice Mosk used the broad language upon which Fresno relies was entirely different from the present context; particularly in light of *Richmond, supra,* 32 Cal.4th 409, 9 Cal.Rptr.3d 121, 83 P.3d 518, discussed above, **we cannot conclude the *Apartment Assn.* court intended to exempt from article XIII D precisely the type of fees to which Proposition 218 was directed.** (See also *Apartment Assn., supra,* at p. 839) (*Fresno*, p. 926, fn. 3)

Buenaventura failed to consider real property law in arriving at its determination that a groundwater charge is substantially similar to the inspection fee in *Apartment Assn.* Respondent's analysis of *Apartment Assn.* is similarly flawed. Had such a consideration been undertaken, it would have belied that the groundwater charge exhibits any of the characteristics of the business license at issue in *Apartment Assn.* Under property law, groundwater rights constitute an interest in real property, and are akin to the ownership of land.

Amrhein held that the extraction of groundwater is "an activity in some ways more intimately connected with property ownership than is the mere receipt of delivered water...There appears to be no doubt, however, that an overlying owner possesses 'special rights' to the reasonable use of groundwater under his land (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1237, fn. 7) **These rights are said to be 'based on the ownership of the land and ... appurtenant thereto.'** (citations) Thus, even if an overlying landowner does not strictly 'own' the water under his land, his extraction of that water (or its extraction by his tenant) represents an exercise of rights derived from his ownership of land. In that respect a charge imposed on that activity is at least as closely connected to the ownership of property as is a charge on delivered water." (*Amrhein*, supra, pp. 1391-1392)

> "The concept of an appropriative water right is a real property interest incidental and appurtenant to land.' (citations) The following quotation from *Stanislaus Water Co. v. Bachman* (1908) 152 Cal. 716, 726-727, leaves no room for doubt that such rights are appurtenant to and run with the land...." *Nicoll v. Rudnick* (2008) 160 Cal.App.4th 550, 558.

Waterford Irr. Dist. v. Stanislaus County (1951) 102 Cal.App.2d 839 (*Waterford*), involved the proper characterization of water rights for taxation purposes under article XIII, § 1. In *Waterford,* the county sought to tax an irrigation district's right to divert water from a river. *Waterford*, quoting from 1 Wiel, Water Rights in the Western States (3d ed.), states: '**The right to the** flow and **use of water**, being a right in a natural resource, **is real estate.** [Citation.] ... The statute of frauds, concerning conveyances of real estate, applies to it, and transfers must be by deed. [Citations.]....an action to settle rights is one to quiet title to realty. [Citation.]....'

(*Waterford, supra,* at pp. 844-845, 228 P.2d 341, quoting 1 Wiel, *supra,* § 283, pp. 298–300.) *Waterford* also declares, "**[a] water-right by appropriation is not only real estate, but has all the dignity of and is an estate of fee simple, or a freehold.**" (*Waterford, supra,* at p. 845, 228 P.2d 341, quoting 1 Wiel, *supra,* § 285, p. 301.) See also *City and County of San Francisco v Alameda County* (1936) 5 Cal.2d 243.

Under real property law, at a minimum, the legal right to extract groundwater is a species of property ownership. Therefore, even if *Bueneventura* is correct that a charge must be imposed solely because a person owns property to fall within article XIII D, the groundwater charge qualifies as such a charge.[10] Paraphrasing *Apartment Assn.*, respondent's groundwater charge is "more in the nature of a charge against property than a fee for a business license."

In summary, the right to extract groundwater is "an interest in real estate." Therefore, the groundwater charge is either a tax or fee imposed upon the City "as" an incident of property ownership.

Buenaventura not only failed to consider property law, but it also failed to consider voter intent.[11] Had the *Buenaventura* court considered voter intent, it could not have arrived at its conclusion that the holding in *Apartment Assn.* excludes from article XIII D all fees imposed upon the use of property. As previously noted, the definition of a fee or charge set forth in article XIII D, § 2(e), specifically includes "any levy... imposed by an agency upon a parcel or upon a person as an incident of property

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[10] In other words, even under *Buenaventura's* extremely narrow holding, the groundwater charge qualifies as a tax or fee under article XIII D.

[11] "We are obligated to construe constitutional amendments in accordance with the natural and ordinary meaning of the language used by the framers—in this case, the voters of California—in a manner that effectuates their purpose in adopting the law." (*Howard Jarvis Taxpayers Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1355)

ownership, including a user fee or charge for a property related service." A "user fee," by its very definition, cannot "be imposed solely because a person owns property;" rather it is imposed because of a person's use of his or her property. *Amrhein* finds the groundwater charge to be in the nature of a user fee, and *Buenaventura* finds it to be in the nature an excise tax imposed upon the use of property. Under article XIII D, both are imposed as an incident of property,

C. THE GROUNDWATER CHARGE QUALIFIES AS A SPECIAL TAX WITHIN THE MEANING OF ARTICLE XIII D, § 3(a)(2) EVEN IF IT IS NOT AN EXCISE TAX.

Even if the groundwater charge is not an excise tax, it may still be a special tax, rather than a fee, for purposes of article XIII D. *Sinclair* defines the distinction between a tax and fee as: "Under modern law, the central distinction between a tax and a fee appears to be that a tax is 'imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted.'" [*Sinclair,* p. 874; quoted with approval in *Amrhein*, at p. 1381].

The Water Conservation District Law of 1931, defines the purposes for which respondent's groundwater charge is imposed as follows:

Water Code § 75521:

> "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."

Water Code § 75522:

> "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."[12]

Thus, under respondent's governing act, the statutory purposes of the groundwater charge are to: (1) protect and augment the water supplies for all water users' health, welfare, and safety; and (2) benefit all who rely directly or indirectly upon ground water supplies. Therefore, the groundwater charge is imposed to generate revenue for the public's benefit, rather than for any specific benefit conferred, or privilege granted, to those against whom the charge is imposed. As such, the groundwater charge is in the nature of a special tax imposed as an incident of property ownership.

D. THIS COURT SHOULD DETERMINE WHETHER THE GROUNDWATER CHARGE IS A SPECIAL TAX OR FEE WITHIN THE MEANING OF ARTICLE XIII D.

Neither respondent nor the City addresses that the groundwater charge may be special tax, rather than a fee. Great Oaks is mindful that appellate courts will not usually consider issues raised for the first time on appeal, and that *amicus curiae* must accept the issues as framed by the appealing parties. *Lavie v. Procter & Gamble Co.* (2003) 105 Cal.App.4th 496, 502 ("*Lavie*") "However, the rule is not absolute. An appellate court has discretion to consider new issues raised by an *amicus*. (See *Fisher v. City of Berkeley, supra,* 37 Cal.3d 644, 654-645. The Supreme Court has justified consideration of a new issue on appeal for the first time 'when the issue posed is purely a question of law based on undisputed facts, and

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[12] *Buenaventura* describes the services provided by the District as "manage, protect, conserve and enhance the water resources of the Santa Clara River." [*Buenaventura*, p. 225

involves important questions of public policy. [Citations.]'" *Lavie*, *supra*, p. 502.

> Although 'appellate courts will not ordinarily consider matters raised for the first time on appeal... whether the rule shall be applied is largely a question of the appellate court's discretion.' Since the point is but one aspect of the larger constitutional question, the matter will be addressed in this opinion." *Canaan v. Abdelnour* (1985) 40 Cal.3d 703, 721.[13]

> That discretion [to consider new issues] is more likely to be exercised in favor of considering the new argument when public policy or the public interest is concerned. (citation). *Taye v. Coye* (1994) 29 Cal.App.4th 1339, 1344.

The claimed deprivation of the right to vote unquestionably affects a strong public policy and has great public interest. "Cases affecting the right to vote and the method of conducting elections are obviously of great public importance." *Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565, 570. Cases attempting to circumvent the voting rights established by Proposition 218 are especially important. Proponents of Proposition 218 argued that the initiative would "guarantee [ ] your right to vote on local tax increases—even when they are called something else, like 'assessments' or 'fees'...." (Ballot Pamphlet., Gen. Elec., argument in favor of Prop. 218, p. 76.) After describing how local politicians had used fees and assessments to create loopholes in Proposition 13's requirement of voter approval for taxes, the proponents argued, "TAXPAYERS HAVE *NO RIGHT TO VOTE* ON THESE TAX INCREASES AND OTHERS LIKE THEM UNLESS PROPOSITION 218 PASSES!" (Ballot Pamp., supra, at p. 76). See

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[13] Overruled on other grounds in *Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164, 183.

Greene v. Marin County Flood Control and Water Conservation Dist. (2010) 49 Cal.4th 277, 296.

The proper characterization of the groundwater charge as a fee or tax is a *de novo* issue for this Court. "[W]hether impositions are 'taxes' or 'fees' is a question of law for [this Court] to decide on independent review of the facts." (*Sinclair*, *supra*, p. 873). The proper characteristic of a tax or fee as being imposed as an incident of property ownership is also a question of law for this Court (*Greene*, *supra*, p. 287).

Proposition 218 was intended to limit the ability of local governmental agencies to extract revenue from taxpayers by disguising property related taxes as fees. Proposition 218 and Proposition 26 became necessary because government agencies continued to find new and crafty ways to raise revenues without voter involvement or consent. For obvious reasons, local governmental agencies want to deprive their constituents of their constitutional right to vote against the taxes and fees which fund the local agencies' programs. Respondent is one such local governmental agency which has a vested interest in circumventing Proposition 218's right to vote.

Because groundwater charges regularly account for over 50% of a customer's water bill, and, according to *Buenaventura*, can be increased without restraint, millions of water users, as well as all private water companies, have a significant economic stake in ascertaining the proper characterization of the groundwater charge. "The distinction between taxes and fees is frequently 'blurred,' taking on different meanings in different contexts." [*Sinclair*, *supra*, p. 874] Great Oaks respectfully requests that this Court, as part of its independent review, determine if the groundwater charge is a special tax, as that term is used in article XIII D, or if it is a fee.

II. BUENAVENTURA INCORRECTLY DETERMINES THAT THE GROUNDWATER CHARGE IS NOT IMPOSED AS AN INCIDENT OF PROPERTY OWNERSHIP.

As set forth in section I, above, *Buenaventura* incorrectly determined that the groundwater charge is not imposed as an incident of property ownership. In addition to the authorities cited above, Great Oaks submits the following:

Buenaventura found *Amrhein* to be distinguishable because it was based upon a "unique set of facts." The unique facts, according to *Buenaventura*, are that the vast majority of property owners in *Amrhein* obtain their water from wells, while substantial numbers of residential customers in *Buenaventura* receive delivered water from commercial suppliers such as the City. [*Buenaventura,* p. 248]. In actuality, the facts in *Amrhein* cannot be meaningfully distinguished from the facts in *Buenaventura*; nor can the holding in *Amrhein* be reconciled with *Buenaventura.*

Buenaventura's conclusion that the vast majority of property owners in *Amrhein* obtain their water from wells in inaccurate. In *Amrhein,* approximately half of the agency's 80,000 residents reside in the City of Watsonville. [*Amrhein,* 1370] The City of Watsonville extracts and sells groundwater to its residents and commercial users, exactly the same as the City of San Buenaventura extracts and sells groundwater to its residents and commercial users. Under these competing decisions, two identically-postured retail groundwater extractors are treated very differently; one is subject to Proposition 218's safeguards [i.e., City of Watsonville], and the other exempt [i.e., City of San Buenaventura].

Amrhein determined that the groundwater charge did not serve a regulatory purpose. However, *Amrhein* left open the possibility that a "clearly established" regulatory purpose could place the groundwater

charge outside of article XIII D (*Amrhein*, p. 1390). For example, according to *Amrhein*, a fee might not be subject to Proposition 218 if the fee is plainly not meant to generate revenue, and is structured in such a way as to regulate, through market forces, the consumption or use of a scarce or protected commodity or service so as to deter waste and encourage efficiency (*Id.*, p. 1390). *Buenaventura* found that respondent's groundwater charge fit within such "clearly established" exception, determining that the groundwater charge "serves the valid regulatory purpose of conserving water resources," (*Buenaventura*, p. 222) But there were no facts in *Buenaventura* which compelled, or even permitted, a finding that respondent's groundwater charge fell within the hypothetical regulatory exception posited in *Amrhein*.

Buenaventura also seeks to distinguish *Amrhein* on the basis of the end use of groundwater as either residential or commercial: "[T]he fact that a large majority of pumpers [in *Amrhein*] were using the water for residential or domestic uses was dispositive." (*Buenaventura*, p. 247)

First, as previously stated, the City of Watsonville is a commercial pumper in the exact same position as the City of San Buenaventura. Additionally, *Amrhein* rejected the very distinction relied upon by *Buenaventura*: "We doubt that [the distinction between a person who owns land or engages in certain activity on his land] is satisfactorily captured by a distinction between business and domestic uses or purposes." (*Amrhein*, p. 1391, fn. 18) When a landowner operates a waterworks for commercial distribution of water to persons beyond his or her property, both the works and any distribution system connected to it are appurtenances to the owner's property. (*Trask v. Moore* (1944) 24 Cal.2d 365, 370; see also *Garden Water Corp. v. Fambrough* (1966) 245 Cal.App.2d 324, 327 [trial court properly found water system for distribution to subdivision was real property.])

There is no meaningful distinction between the right to use water on the parcel from which it is drawn (overlying water right) and the right to distribute it (appropriative water right); both are appurtenant to the land on which the well is sited. (*Trask*, *supra*, p. 370.) Thus, a charge that burdens appropriative water rights is necessarily incidental to property ownership.

Article XIII D itself allows no distinction or exception between fees and charges for residential and commercial use. Quite the contrary. "Notwithstanding any other provision of law, the provisions of this article **shall apply to all** assessments, **fees and charges**, whether imposed pursuant to state statute or local government charter authority..." [Art. 13D, § 1] "...An agency shall follow the procedures pursuant to this section in imposing or increasing **any fee or charge** as defined pursuant to this article." [Art. 13D, § 6 – emphasis added] Proposition 218 does not permit a charge to be unlawful as to the public water company and its residential customers, but lawful as to rural, residential groundwater users paying the same charge.

Further, Propositions 218 and due process require similar rates be charged to similarly situated ratepayers. Respondent may not penalize commercial pumpers over residential pumpers. Great Oaks is unaware of any other published opinion that sanctions an agency charging different rates to similarly situated persons.

Lastly, *Buenaventura* is extremely critical of *Amrhein's* holding that the Pajaro Water Management Agency provides a property related service to those paying the groundwater charge. *Buenaventura* finds no correlation between the service provided in *Amrhein*, and the services provided in other reported cases, such as *Bighorn* [*Buenaventura*, p. 252]. *Buenaventura* does not consider "securing the water supply for everyone in the basin" to qualify as a property related service because, by securing the water supply for everyone, the agency could not satisfy the substantive requirements of

Art. 13D, § 6(b) [*Buenaventura,* p. 251-252]

Buenaventura puts the cart in front of the horse by holding that an agency is not providing a property related service unless that service satisfies the substantive requirements of section 6(b). In so holding, *Buenaventura* reverses the usual sequence for determining if a charge is property related. In other Proposition 218 cases, the court first determines the nature of the service being provided, and then determines if such service is property related. Only then can the court determine if the charge satisfies the substantive requirements of Section 6(b).

A property related service remains property related irrespective of whether or not the property related service satisfies the requirements of section 6(b). Failure to satisfy section 6(b) does not transform a property related service into a non-property related service; rather, the property related fee or charge cannot be imposed, or increased because of its failure to comply with section 6(b).

III. THE GROUNDWATER CHARGE CONSTITUTES A TAX UNDER PROPOSITION 26.

A. THE CITY DOES NOT RECEIVE A SPECIFIC BENEFIT OR PRIVILEGE FROM RESPONDENT IN EXCHANGE FOR THE PAYMENT OF THE GROUNDWATER CHARGE.

Buenaventura holds that Proposition 26 does not apply to the groundwater charge because it falls within the exception set forth in article XIII C, § 1(e)(1).[14] *Buenaventura* finds that "[District] pumpers receive an obvious benefit—they may extract groundwater from a managed basin."

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[14] "(e) As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following: (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."

[*Buenaventura,* p. 253]. As such, *Buenaventura* finds the groundwater charge to be essentially the same as an "entrance fee to a state or local park." [*Buenaventura,* p. 254]

As set forth in section 1 B, *supra*, groundwater rights constitute an interest in real property, and are akin to the ownership of land [see *City of Barstow*, *supra*, *Nicoll*, *supra*, and *Waterford*, *supra*].[15] The right to extract groundwater is not a benefit conferred by respondent. Rather, it is a property right based upon the ownership of land, and "has all the dignity of ownership in fee simple." (*Waterford*, *supra*, p. 845) The respondent did not, and does not, confer any benefit upon the City, or grant any privilege to the City, that the City did not and does not already have.

Buenaventura acknowledges in an earlier part of its decision that the court's "paramount task is to ascertain the intent of those who enacted [Proposition 26]," and that it must look first to the proposition's language as the best indicator or the voters' intent." [*Buenaventura*, p. 243] [see *Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 448 (*Silicon Valley*)] Despite such concession, *Buenaventura* never considers the intent of the voters who enacted Proposition 26.[16]

Had the voter's intent been considered, no voter would consider a charge upon pumping groundwater from the voter's own well, on his or her

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[15] "There appears to be no doubt, however, that an overlying owner possesses 'special rights' to the reasonable use of groundwater under his land. (citation)" (*Amrhein*, *supra*, 1391).

[16] As when *Buenaventura* construed Proposition 26, the court made no attempt to ascertain the intent of the voters when it determined the groundwater charge is not imposed as an incident of property ownership within the meaning of article XIII D. Any time a court construing Proposition 218 or Proposition 26 fails to ascertain and apply the intent of the voters, the court fails to apply to correct legal analysis.

own property, to be the same as the payment of an entrance fee to a state park. No voter would consider the respondent to be conferring a specific benefit or privilege upon a ratepayer by allowing the ratepayer to extract groundwater from his or her own well. No voter would consider that by managing, protecting, conserving and enhancing the water resources of the Santa Clara River basin[17], the respondent was bestowing a specific benefit upon the ratepayer not provided to those not paying the charge. No voter could possibly consider the groundwater charge to fall within the exception set forth in article XIII C, § 1(e)(1).

Buenaventura's determination that the groundwater charge fits within article XIII C, § 1(e)(1)'s exception, conflicts with an earlier part of its own decision. In one portion of the opinion, *Buenaventura* chides *Amrhein* for finding the service provided to ratepayers is "the benefit of ongoing groundwater extraction and...securing the water supply for everyone in the basin." [*Buenaventura*, p. 247]. *Buenaventura* finds that the Pajaro Valley Water Management Agency is not providing any Proposition 218 service to ratepayers by securing the water supply for everyone in the basin because any such service is "available to the public at large in substantially the same manner as it is to property owners." [*Buenaventura*, p. 252].

The services provided by the respondent in *Buenaventura* ["manage, protect, conserve and enhance the water resources of the Santa Clara River"] are essentially the same as the services provided in *Amrhein* ["the benefit of ongoing groundwater extraction"[18]]. "The [respondent's] ground water charges are....for the benefit of all who rely directly or indirectly upon the ground water supplies of the district...." [Water Code § 75522],

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[17] *Buenaventura*, p. 225.
[18] *Buenaventura*, p. 247

and "the protection and augmentation of the water supplies for users within the district...which are necessary for the public health, welfare, and safety of the people...." [Water Code § 75521].

If *Amrhein's* service is "available to the public at large in substantially the same manner as it is to property owners," then respondent's service is similarly available to the public at large. Respondent confers no specific benefit upon the City by using the funds generated by the groundwater charge to manage, protect, conserve and enhance district wide water resources for all water users. Using the groundwater charge for the benefit of all water users makes it impossible for the respondent to satisfy its burden of proof by establishing that the cost of its activity "bears a fair or reasonable relationship to the [City's] burdens on, or benefits received from, the governmental activity."

In making its determination, *Buenaventura* directly conflicts with Proposition 26's declaration of purpose: "Since the enactment of Proposition 218 in 1996, the Constitution of the State of California has required that increases in local taxes be approved by the voters. [¶] (c) Despite these limitations, California taxes have continued to escalate. [¶] (e) This escalation in taxation does not account for the recent phenomenon whereby the Legislature and local governments have disguised new taxes as 'fees' in order to exact even more revenue from California taxpayers without having to abide by these constitutional voting requirements. Fees couched as 'regulatory' but which exceed the reasonable costs of actual regulation or are simply imposed to raise revenue for a new program and are not part of any licensing or permitting program are actually taxes and should be subject to the limitations applicable to the imposition of taxes. [¶] (f) In order to ensure the effectiveness of these constitutional limitations, this measure ... defines a 'tax' for state and local purposes so that neither the Legislature nor local governments can circumvent these restrictions on

increasing taxes by simply defining new or expanded taxes as 'fees.' " (Prop. 26, § 1, subds. (b), (c), (e), (f), reprinted at Historical Notes, 2B West's Ann. Cal. Codes (2013) foll. art. 13A, § 3, pp. 296–297; see also *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 637, 645, fn. 17 [noting courts may use ballot summary, arguments, and analysis to construe voter-approved initiatives].)

B. THE RESPONDENT'S GROUNDWATER CHARGE EXCEEDS THE REASONABLE COST OF THE SO-CALLED BENEFIT TO THE CITY.

Buenaventura cites *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421 (*Farm Bureau*), for the proposition that under Proposition 26, fees are not measured on an individual basis, but collectively. According to *Buenaventura*, *Farm Bureau* commands that the precise benefit each ratepayers derives from the groundwater charge be ignored under Proposition 26; rather the court need only inquire into whether the fee exceeds the reasonable cost of regulation.

Farm Bureau was not decided under either article XIII C, or article XIII D. The portion of *Farm Bureau* cited by *Buenaventura*, discusses the "somewhat flexible proportionality" requirements for regulatory fees. *Buenaventura* fails to explain why it applies *Farm Bureau's* "flexible" regulatory fee standard to an article XIII C tax case. Under Article XIII C, the burden is upon the respondent to prove the specific benefit it provided to the City; the so-called "collective" benefits it provides to all ratepayers are irrelevant.[19] *Buenaventura* does not cite any evidence establishing that

[19] The analysis applied by this Court in *Silicon Valley* is much more applicable to the instant action that *Farm Bureau.* In rejecting the pre-Proposition 218 deferential standard, *Silicon Valley* states, in regard to assessments: "[A] special benefit must affect the assessed property in a way that is particular and distinct from its effect on other parcels and that real

respondent met its burden under article XIII C, § 1.19. Instead, *Buenaventura* allows the respondent to circumvent article XIII C by merely showing that the total district-wide funds collected from the groundwater charge were used to fund the management, protection, conservation and enhancement of the water resources of the Santa Clara River.

In focusing on the total costs of the so-called regulatory activity, *Buenaventura* once again ignores Proposition 26's mandate that: (1) the charge must be "imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged;" and (2) the amount of the charge "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." [Art. 13 C, § 1, (last para.)]

Proposition 218 was enacted to close legislative and judicially created loopholes in Proposition 13. Proposition 26 was enacted to close legislative and judicially created loopholes in Proposition 218. Proposition 26's declaration of purpose requires that neither the Legislature nor local governments circumvent constitutional restrictions on tax increases by simply defining new or expanded taxes as "fees." *Silicon Valley* requires that courts enforce "the provisions of our Constitution and 'may not lightly disregard or blink at ... a clear constitutional mandate" and "must construe constitutional amendments in a manner that effectuates the voters' purpose in adopting the law." (*Silicon Valley*, p. 448) By reversing article XIII C's burden of proof and ignoring voter intent, *Buenaventura*, in one fell swoop,

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property in general and the public at large do not share." [*Silicon Valley*, p. 452]

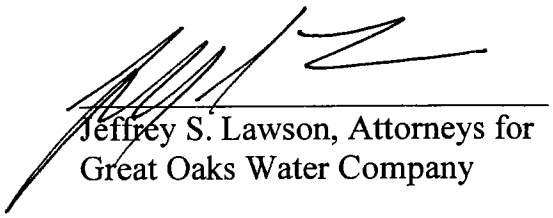
emasculates Proposition 26 by creating an exception which swallows the rule.

In summary, the groundwater charge is exactly the type of tax disguised as a fee which Proposition 26 sought to eliminate. *Buenaventura*'s determination that groundwater charges escape all constitutional restraint totally frustrates the voters' intent in enacting Propositions 26.

IV. CONCLUSION.

Great Oaks respectfully requests that this Court reverse the Court of Appeal, and affirm that the groundwater charge violates both Proposition 218, and Proposition 26. Great Oaks also respectfully requests that this Court determine whether the groundwater charge is a tax or fee, as those terms are used in Proposition 218.

Dated: November 17, 2015 SILICON VALLEY LAW GROUP

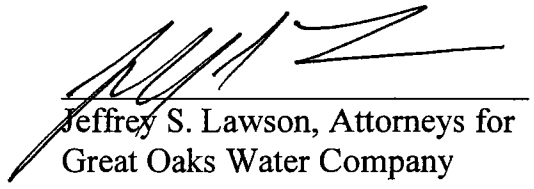


Jeffrey S. Lawson, Attorneys for
Great Oaks Water Company

CERTIFICATION OF WORD COUNT

The text of the brief consists of 6,820 words as counted by Word version 2013 used to generate this brief.

Dated: November 17, 2015 SILICON VALLEY LAW GROUP



Jeffrey S. Lawson, Attorneys for
Great Oaks Water Company

PROOF OF SERVICE

I am employed in the City of San Jose, County of Santa Clara, California. I am over the age of 18 years and not a party to the within action. My business address is 50 W. San Fernando Street, Suite 750, San Jose, California 95113.

On the date indicated below I served the following documents with all exhibits, if any:

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF OF *AMICUS CURIAE* GREAT OAKS WATER COMPANY IN SUPPORT OF APPELLANT CITY OF SAN BUENAVENTURA

[x] MAIL: By following ordinary business practices at my place of business and placing for collection and mailing with the United States Postal Service, the above listed documents enclosed in a sealed envelope; with postage thereon fully prepaid.

[ ] OVERNIGHT DELIVERY: I enclosed said documents(s) in an envelope or package addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at a regularly utilized drop box of the overnight server carrier or delivered such documents(s) to a courier or driver authorized by the overnight service carrier to receive documents.

on the following parties:

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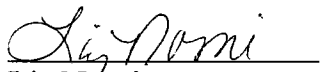
I declare under penalty of perjury that the foregoing is true and correct, and this declaration was executed on November 18, 2015, at San Jose, California.



Liz Nomi