

790 E. Colorado Boulevard, Suite 850
Pasadena, CA 91101-2109
Voice (213) 542-5700
Fax (213) 542-5710

COLANTUONO
HIGSMITH
WHATLEY, PC

David J. Ruderman
(530) 798-2417
DRuderman@chwlaw.us

SUPREME COURT COPY

June 27, 2017

Honorable Chief Justice Cantil-Sakauye and
Associate Justices of the California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Our File No. 52008.0004
SUPREME COURT
FILED

JUN 28 2017

Jorge Navarrete Clerk

Deputy

Re: *City of San Buenaventura v. United Water Conservation District and
Board of Directors of United Water Conservation District*
(Case No. S226036) – Notice of New Authority

Honorable Chief Justice and Associate Justices:

I represent the City of San Buenaventura (“City”) in the above-captioned appeal. I write under California Rules of Court, rule 8.520(d), to inform the Court of a new authority pertinent to this appeal: *San Diego County Water Authority v. Metropolitan Water District of Southern California* (Jun. 21, 2017, A146901) ___ Cal.App.5th ___ [2017 WL 2665185] (“SDCWA”).

In *SDCWA*, the Water Authority challenged the Metropolitan Water District’s water transportation rates based on Metropolitan’s allocation of system-wide transportation costs to the Water Authority. (Slip Op. at pp. 1–2.) *SDCWA*’s Proposition 26 rulings are relevant to the above-captioned appeal for the following two reasons.

First, *SDCWA* states the standard of review for Proposition 26 claims: “We review de novo the question whether the challenged rates comply with constitutional requirements. [Citations.] We review the trial court’s resolution of factual conflicts for substantial evidence.” (Slip Op. at p. 31, citing *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1440 (“*Newhall*”).)

Second, *SDCWA* concluded that Metropolitan can recover State Water Project costs in its rate to transport water from the Colorado River Aqueduct to the Water Authority under Proposition 26: “Metropolitan provides a specific service (use of the conveyance system) directly to the payor (a member agency) that is not provided to those not charged and which does not exceed the reasonable costs to Metropolitan of

providing the service (Cal. Const., art. XIII C, § 1, subd. (e)(2).)” (Slip. Op. at p. 31.) SDCWA distinguished Metropolitan’s rate from the rates in *Newhall*, explaining *Newhall* involved a charge for a service defendant district did not provide (groundwater management). (*Id.* at pp. 31–32.) A service an agency does not provide “cannot form the basis for a reasonable cost allocation method: one that is constitutionally required to be proportional to the benefits the rate payor receives from (or the burden it places on) the [wholesale] Agency’s activity.” (*Id.* at p. 32, citing *Newhall, supra*, 243 Cal.App.4th at p. 1442.)

As in *Newhall*, the facts in this appeal are distinguishable from SDCWA. The United Water Conservation District charges the City for many services it does not provide the City or provides only indirectly. (E.g., AR1:81:17 [“Santa Paula Basin doesn’t respond to recharge at United Water’s Saticoy spreading grounds.”]; AR1:22:144 [2011–2012 budget chart showing negligible recharge of Santa Paula Basin from Lake Piru releases]; see also 10JA:88:2131, 2137–2138, 2147.) In addition, as the City’s earlier briefing in this Court demonstrates, the record lacks any evidence that the 3:1 ratio of UWCD’s rates on municipal and industrial groundwater uses to its rates on agricultural water groundwater users is “proportional to the benefits the rate payor receives from (or the burden it places on) the [wholesale] Agency’s activity.” (Slip. Op. at p. 32.) Thus, if United’s groundwater charges are not subject to (and in violation of) Proposition 218, they violate Proposition 26. (See City’s Opening Brief of the Merits, pp. 53–61; City’s Reply Brief of the Merits, pp. 38–42; City’s Answer to Amicus Briefs, pp. 63–76.)

If the Court would prefer that the parties provide supplemental briefing that discusses the relevance of this new authority to this case, the City will be happy to do so.

Respectfully,



David J. Ruderman
SBN: 245989

Enclosure: Proof of service

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, Div. 6, Case No. B251810
Santa Barbara Superior Court Case Nos. VENCI 00401714 & 1414739

I, Ashley A. Lloyd, declare:

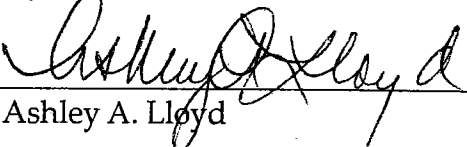
I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 420 Sierra College Drive, Suite 140, Grass Valley, California 95945. On June 27, 2017, I served the document described as **LETTER REGARDING NEW AUTHORITY** 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

K **BY MAIL:** The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at 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 June 27, 2017, 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, Div. 6, Case No. B251810
Santa Barbara Superior Court Case Nos. VENCI 00401714 & 1414739

<p>Jane Ellison Usher Cheryl A. Orr Musick, Peeler & Garrett LLP 624 S. Grand Avenue, Suite 2000 Los Angeles, CA 90017 Phone: (213) 629-7600 Fax: (213) 624-1376 <i>Attorneys for Defendant and Appellant United Water Conservation District and Board of Directors of United Water Conservation District</i></p>	<p>Dennis LaRochelle Susan L. McCarthy John M. Mathews Arnold LaRochelle Mathews Vanconas & Zirbel, LLP 300 Esplanade Dr., Suite 2100 Oxnard, CA 93036 Phone: (805) 988-9886 Fax: (805) 988-1937 <i>Attorneys for Intervener Pleasant Valley County Water District</i></p>
<p>Anthony H. Trembley William W. Carter Musick, Peeler & Garrett LLP 2801 Townsgate Road, Suite 200 Westlake Village, CA 91361 Phone: (805) 418-3100 Fax: (805) 418-3101 <i>Attorneys for Defendant and Appellant United Water Conservation District and Board of Directors of United Water Conservation District</i></p>	<p>Office of the Attorney General 1300 I Street Sacramento, CA 95814-2919</p>
<p>Clerk of the Court Santa Barbara Superior Court 1100 Anacapa Street Santa Barbara, CA 93121-1107</p>	<p>Clerk of the Court Court of Appeal Second District, Division 6 200 East Santa Clara Street Ventura, CA 93001</p>