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Government Code § 6103

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

\_\_\_\_\_  
Citizens for Fair REU Rates, et al.  
*Plaintiffs and Appellants*  
vs.  
City of Redding, et al.  
*Defendants and Respondents.*

SUPREME COURT  
FILED

MAR 3 - 2015

Frank A. McGuire Clerk  
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Deputy

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

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

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

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

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# **EXHIBIT G**

No. B251810

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

Exempt from Filing Fees  
Government Code § 6103

In the Court of Appeal, State of California  
SECOND APPELLATE DISTRICT, DIVISION 6

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

vs.

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

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

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

---

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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

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

None.

DATED: February 5, 2014

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## INTRODUCTION

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

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

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

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

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

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

<sup>2</sup> All references to articles in this brief are to the California Constitution.



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

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

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

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

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

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

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

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

## **STATEMENT OF FACTS**

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

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

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

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

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

**I. UWCD CHARGES GROUNDWATER PRODUCERS UNIFORMLY IN EIGHT DISTINCT BASINS**

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

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marked “[same]”.

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

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

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

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

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

(Cal. Dept. of Water Resources, California's Groundwater Bulletin 118 [update February 27, 2004] at p. 1.) [http://www.water.ca.gov/pubs/groundwater/bulletin\\_118/basindescriptions/4-4.04.pdf](http://www.water.ca.gov/pubs/groundwater/bulletin_118/basindescriptions/4-4.04.pdf) [as of Feb. 4, 2014].)<sup>5</sup> The parenthetical references in the quoted material are to the author and date of the scientific

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

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

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

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

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

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<sup>6</sup> The basins in issue here are listed under the heading “South Coast” basins and are numbered 4-4.02 to .07 and 4-8.



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

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

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

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

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

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

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

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