

No. S243360

Exempt from Filing Fees  
Government Code § 6103

In the Supreme Court of California

SUPREME COURT  
FILED

MAR 01 2018

Jorge Navarrete Clerk

**Eugene G. Plantier, et al.,**  
*Plaintiffs and Appellants*

Deputy

vs.

**Ramona Municipal Water District,**  
*Defendant and Respondent*

After a Published Decision by the Court of Appeal  
Fourth District, Division One, Case No. D069798

On Appeal from the Superior Court of the State of California  
County of San Diego, Case No. 37-2014-00083195-CU-BT-CTL  
Honorable Timothy Taylor, Judge Presiding

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE  
BRIEF; AMICUS CURIAE BRIEF IN SUPPORT OF  
DEFENDANT/RESPONDENT RAMONA MUNICIPAL  
WATER DISTRICT**

DANIEL S. HENTSCHKE (76749)  
411 E. Cliff Street  
Solana Beach, California 92075  
Telephone: (619) 518-3679  
danhentschke@gmail.com

\*MICHAEL G. COLANTUONO (143551)  
MColantuono@chwlaw.us  
**COLANTUONO, HIGHSMITH &  
WHATLEY, PC**  
420 Sierra College Drive, Suite 140  
Grass Valley, California 95945-5091  
Telephone: (530) 432-7357  
Facsimile: (530) 432-7356

Attorneys for Applicants — Amici Curiae League of California Cities,  
California State Association of Counties, California Association of Sanitation  
Agencies, California Special Districts Association, and  
Association of California Water Agencies

No. S243360

In the Supreme Court of California

---

**Eugene G. Plantier, et al.,**  
*Plaintiffs and Appellants*

vs.

**Ramona Municipal Water District,**  
*Defendant and Respondent*

---

After a Published Decision by the Court of Appeal  
Fourth District, Division One, Case No. D069798

On Appeal from the Superior Court of the State of California  
County of San Diego, Case No. 37-2014-00083195-CU-BT-CTL  
Honorable Timothy Taylor, Judge Presiding

---

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE  
BRIEF; AMICUS CURIAE BRIEF IN SUPPORT OF  
DEFENDANT/RESPONDENT RAMONA MUNICIPAL  
WATER DISTRICT**

---

DANIEL S. HENTSCHE (76749)  
411 E. Cliff Street  
Solana Beach, California 92075  
Telephone: (619) 518-3679  
danhentschke@gmail.com

\*MICHAEL G. COLANTUONO (143551)  
MColantuono@chwlaw.us  
**COLANTUONO, HIGHSMITH &  
WHATLEY, PC**  
420 Sierra College Drive, Suite 140  
Grass Valley, California 95945-5091  
Telephone: (530) 432-7357  
Facsimile: (530) 432-7356

Attorneys for Applicants — Amici Curiae League of California Cities,  
California State Association of Counties, California Association of Sanitation  
Agencies, California Special Districts Association, and  
Association of California Water Agencies

**TABLE OF CONTENTS**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS ..... 10

APPLICATION FOR PERMISSION TO FILE AMICI CURIAE BRIEF ..... 11

STATEMENT OF INTEREST OF AMICIS CURIAE..... 11

INTRODUCTION..... 14

ARGUMENT ..... 16

I. THE EXHAUSTION REQUIREMENT PROMOTES EFFICIENCY,  
PUBLIC PARTICIPATION, AND JUDICIAL REVIEW..... 16

A. When an Administrative Remedy is Provided,  
It Must Be Invoked ..... 16

B. Policies Underlying the Exhaustion Doctrine ..... 18

C. The Exhaustion Doctrine Serves the Separation of  
Powers..... 19

D. Exhaustion Affords Agencies An Opportunity to  
Address Public Concerns Before Courts Must ..... 21

E. If Multiple Remedies Are Provided — All Must Be  
Exhausted ..... 22

II. SECTION 6 ESTABLISHES AN ADMINISTRATIVE REMEDY  
FOR PROPERTY RELATED FEES..... 23

A. Section 6 Establishes Minimum Notice and Hearing  
Requirements ..... 23

B. Section 6 Requires Agencies to “Consider All  
Protests” ..... 24

C. Local or Statutory Protest Procedures Do Not  
Displace Section 6 ..... 25

III. SECTION 6’s ADMINISTRATIVE REMEDY MUST  
BE EXHAUSTED ..... 26

A.	<i>Wallich’s Ranch</i> Applies Exhaustion to Proposition 218 Challenges .....	26
B.	Proposition 218 Does Not Displace the Exhaustion Doctrine.....	28
C.	Satisfying the District’s Local Administrative Process or the Government Claims Act Does Not Exhaust Administrative Remedies Under Section 6.....	30
IV.	NEITHER FUTILITY NOR EXHAUSTION BY OTHERS SAVE RESPONDENTS HERE .....	32
A.	Exhaustion Would Not Have Been Futile .....	32
B.	Others Did Not Exhaust The Claims Plaintiffs Would Raise .....	35
V.	THE OPINION ON REVIEW MISTAKES AND CONFUSES ESTABLISHED LAW .....	38
A.	The Opinion Mistakes the Purpose of the Majority Protest Process.....	38
B.	The Opinion Incorrectly Suggests Plaintiffs Need not Participate in the Section 6 Hearing Because a Majority Protest is Unlikely.....	40
C.	The Opinion Mistakenly Applies the “Comprehensive Scheme of Dispute Resolution” Required of Quasi- Judicial Processes to Legislative Processes .....	42
D.	The Opinion Erroneously Suggests Rate-Making is Not Legislative .....	43
	CONCLUSION.....	45
	CERTIFICATE OF COMPLIANCE.....	48

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Acme Fill Corp. v. San Francisco Bay Conservation etc. Com.</i> (1986) 187 Cal.App.3d 1056 .....	22, 26, 32
<i>Ardon v. City of Los Angeles</i> (2011) 52 Cal.4th 241 .....	30
<i>Bighorn-Desert View Water Agency v. Verjil</i> (2006) 39 Cal.4th 205 .....	15, 16, 24, 46
<i>Bockover v. Perko</i> (1994) 28 Cal.App.4th 479 .....	27
<i>Bozaich v. State of California</i> (1973) 32 Cal.App.3d 688, 108 Cal.Rptr. 392 .....	31
<i>Brydon v. East Bay Muni. Utility Dist.</i> (1994) 24 Cal. App. 4th 178 .....	20
<i>California Cannabis Coalition v. City of Upland</i> (2017) 3 Cal.5th 924 .....	45
<i>California Native Plant Society v. City of Rancho Cordova</i> (2009) 172 Cal.App.4th 603 .....	18
<i>Capistrano Taxpayers Ass'n v. City of San Juan Capistrano</i> (2015) 235 Cal.App.4th 1493 .....	20
<i>Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Com.</i> (2012) 209 Cal.App.4th 1182 .....	29
<i>Citizens for Open Government v. City of Lodi</i> (2006) 144 Cal.App.4th 865 .....	41

<i>City of San Buenaventura v. United Water Conservation Dist.</i> (2017) 3 Cal.5th 1191 .....	45
<i>City of San Jose v. Operating Engineers Local Union No. 3</i> (2010) 49 Cal.4th 597 .....	17
<i>Coalition for Student Action v. City of Fullerton</i> (1984) 153 Cal.App.3d 1194 .....	18, 21
<i>Coastside Fishing Club v. California Fish &amp; Game Commission</i> (2013) 215 Cal.App.4th 397 .....	25, 26
<i>County of Contra Costa v. State of California</i> (1986) 177 Cal.App.3d 62 .....	16, 19
<i>Doyle v. City of Chino</i> (1981) 117 Cal.App.3d 673 .....	33
<i>Durant v. Beverly Hills</i> (1940) 39 Cal.App.2d 133 .....	19
<i>Economic Empowerment Foundation v. Quackenbush</i> (1997) 57 Cal.App.4th 677 .....	33
<i>Evans v. City of San Jose</i> (2005) 128 Cal.App.4th 1123 .....	21, 35, 36
<i>Graham v. DaimlerChrysler Corp.</i> (2004) 24 Cal.4th 553 .....	33
<i>Grant v. Comp USA, Inc.</i> (2003) 109 Cal.App.4th 637 .....	18
<i>Greene v. Marin County Flood Control and Water Conser. Dist.</i> (2010) 49 Cal. 4th 277 .....	23

<i>Hensel Phelps Const. Co. v. San Diego Unified Port Dist.</i> (2011) 197 Cal.App.4th 1020 .....	24
<i>Howard v. County of San Diego</i> (2010) 184 Cal.App.4th 1422 .....	43
<i>Kahn v. East Bay Mun. Util. Dist.</i> (1974) 41 Cal.App.3d 397 .....	19
<i>Leff v. City of Monterey Park</i> (1990) 218 Cal.App.3d 674 .....	35
<i>LeFrancois v. Goel</i> (2005) 35 Cal.4th 1094 .....	29
<i>People ex rel. Lockyer v. Sun Pacific Farming Co.</i> (2000) 77 Cal.App.4th 619 .....	22, 28, 42
<i>Lozada v. City and County of San Francisco</i> (2006) 145 Cal.App.4th 1139 .....	31
<i>Moore v. City of Lemon Grove</i> (2015) 237 Cal.App.4th 363 .....	20
<i>Morgan v. Imperial Irrigation Dist.</i> (2014) 223 Cal. App. 4th 892 .....	29
<i>Mountain View Chamber of Commerce v. City of Mountain View</i> (1978) 77 Cal.App.3d 82 .....	17, 42
<i>Napa Citizens for Honest Government v. Napa County Bd. of Supervisors</i> (2001) 91 Cal.App.4th 342 .....	17
<i>Ralph's Chrysler-Plymouth v. New Car Dealers Policy &amp; Appeals Bd.</i> (1973) 8 Cal.3d 792 .....	17

<i>Richmond v. Shasta Community Services Dist.</i> (2004) 32 Cal.4th 409 .....	38
<i>Rojo v. Kliger</i> (1990) 52 Cal.3d 65 .....	18
<i>Roth v. City of Los Angeles</i> (1975) 53 Cal.App.3d 679 .....	17
<i>San Diego County Water Authority v. Metropolitan Water District of Southern California</i> (2017) 12 Cal.App.5th 1124 .....	20
<i>San Franciscans Upholding the Downtown Plan v. City &amp; County of San Francisco</i> (2002) 102 Cal.App.4th 656 .....	18
<i>Sea &amp; Sage Audubon Society, Inc. v. Planning Com.</i> (1983) 34 Cal.3d 412 .....	33
<i>Sierra Club v. San Joaquin Local Agency Formation Com.</i> (1999) 21 Cal.4th 489 .....	17, 18, 21
<i>Silicon Valley Taxpayers Ass'n v. Santa Clara Open Space Auth.</i> (2008) 44 Cal. 4th 431 .....	20, 29
<i>Sparks v. Kern County Bd. of Supervisors</i> (2009) 173 Cal.App.4th 794 .....	31
<i>Steinhart v. County of Los Angeles</i> (2010) 47 Cal.4th 1298 .....	33
<i>Wallich's Ranch v. Kern County Pest Control District</i> (2001) 87 Cal.App.4th 878 .....	16, 22, 26, 27, 28, 34
<i>Western States Petroleum Ass'n. v. Superior Court</i> (1995) 9 Cal. 4th 559 .....	20, 42, 45



<i>Yamaha Motor Corp. v. Superior Ct.</i> (1987) 195 Cal.App.3d 652 .....	17, 41
--	--------

**California Constitution**

Article XIII C.....	12, 14
Article XIII C, § 1.....	45
Article XIII D .....	12, 14, 39
Article XIII D, § 1 .....	25
Article XIII D, § 2 .....	45
Article XIII D, § 4 .....	23
Article XIII D, § 4, subd. (f) .....	28
Article XIII D, § 6 .....	<i>passim</i>
Article XIII D, § 6, subd. (a).....	23, 32, 38, 39, 40
Article XIII D, § 6, subd. (a)(1) .....	38, 39
Article XIII D, § 6, subd. (a)(2) .....	24, 38, 39, 40
Article XIII D, § 6, subd. (b).....	15, 28, 38
Article XIII D, § 6, subd. (b)(1).....	39
Article XIII D, § 6, subd. (b)(2).....	39
Article XIII D, § 6, subd. (b)(3).....	38, 39
Article XIII D, § 6, subd. (b)(4).....	39
Article XIII D, § 6, subd. (b)(5).....	39
Article XIII D, § 6, subd. (c).....	39

**Statutes**

Code of Civil Procedure, § 1021.5 ..... 33

Food & Agriculture Code, § 5401 ..... 26

Food & Agriculture Code, § 8563 ..... 26

Food & Agriculture Code, § 8564 ..... 27

Food & Agriculture Code, § 8565 ..... 27

**Rules**

California Rules of Court, rule 8.204(c) ..... 48

California Rules of Court, rule 8.488 ..... 10

California Rules of Court, rule 8.520(b) ..... 48

California Rules of Court, rule 8.520(f) ..... 11

**Other Authorities**

Ramona Municipal Water District Legislative  
Code, § 7.52.050, subds. D–F ..... 30

Ramona Municipal Water District Legislative  
Code § 7.52.170 ..... 30

**CERTIFICATE OF  
INTERESTED ENTITIES OR PERSONS**

Other than property owners and residents receiving sewer services from the Ramona Municipal Water District, there are no entities or persons that must be listed in this certificate under California Rules of Court, rule 8.488.

DATED: February 13, 2018

DANIEL S. HENTSCHE

**COLANTUONO, HIGHSMITH &  
WHATLEY, PC**



MICHAEL G. COLANTUONO

Attorneys for Applicants — Amici  
Curiae League of California Cities,  
California State Association of  
Counties, California Association of  
Sanitation Agencies, California  
Special Districts Association, and  
Association of California Water  
Agencies

**APPLICATION FOR PERMISSION TO FILE  
AMICI CURIAE BRIEF**

**To the Honorable Chief Justice Tani G. Cantil-Sakauye:**

Pursuant to California Rules of Court, rule 8.520(f), the League of California Cities (“League”), the California State Association of Counties (“CSAC”), the California Association of Sanitation Agencies (“CASA”), the California Special Districts Association (“CSDA”), and the Association of California Water Agencies (“ACWA”) (collectively, “Local Government Amici”) respectfully request permission to file an amicus curiae brief in support of Petitioner Ramona Municipal Water District. This application is timely made within 30 days of filing of the reply brief on the merits.

**STATEMENT OF INTEREST  
OF AMICI CURIAE**

Local Government Amici represent cities, counties, and special districts throughout California. The League is an association of 475 California cities. CSAC is a non-profit corporation composed of California’s 58 counties. CASA is a non-profit corporation representing more than 100 sewer agencies. CSDA is a non-profit corporation with a membership of over 800 special districts. ACWA is a statewide coalition of 450 public water agencies. The public agencies which are members of Local Government Amici fund

essential public services to millions of Californians through user and other fees subject to the notice and hearing procedures established by Proposition 218. (Cal. Const., art. XIII C & D.)<sup>1</sup> Local Government Amici's members often rely on property related fees like those at issue here — fees subject to article XIII D, section 6.

Each Local Government Amici has a process for identifying cases affecting their members, such as this one, that warrant their participation. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the state. The Committee monitors litigation of concern to municipalities, identifying those cases that have statewide or nationwide significance. CSAC sponsors a Litigation Coordination Program administered by the California County Counsels' Association. CSAC's Litigation Committee monitors litigation of concern to California's counties. ACWA has a Legal Affairs Committee, composed of attorneys from each of its regional divisions throughout the state. The Committee monitors litigation of significance to ACWA's members. CASA and CSDA similarly determined this case to be of significance to their members. Accordingly, the League, CSAC, CASA, CSDA, and ACWA

---

<sup>1</sup> References to articles and sections of articles are to the California Constitution.

respectfully request leave to file the brief combined with this application.

DATED: February 13 , 2018

DANIEL S. HENTSCHE

**COLANTUONO, HIGHSMITH &  
WHATLEY, PC**



---

MICHAEL G. COLANTUONO

Attorneys for Applicants — Amici  
Curiae League of California Cities,  
California State Association of  
Counties, California Association of  
Sanitation Agencies, California  
Special Districts Association, and  
Association of California Water  
Agencies

## INTRODUCTION

California courts have long held that a person challenging an agency's decision — whether legislative or quasi-judicial — must participate in its decision-making process and demonstrate that the judicial challenge is on the same grounds and evidence as presented to the decision-maker. This exhaustion of administrative remedies requirement applies whenever the law requires that those affected be given notice and opportunity to be heard before a decision is made. Generally, when a noticed opportunity to be heard is provided, persons affected by the decision must participate by appearing at the hearing and providing the agency with specific reasons and evidence why a challenged decision is wrong.

Exhaustion of remedies applies whether the decision-making is judicial or legislative in character. It ensures informed decision-making, encourages public participation, and allows agencies to respond to criticism and concerns, apply their expertise, and develop records for judicial review. It provides a basis for judicial review and protects courts from being drawn too readily and too soon into disputes the political branches might resolve without judicial assistance.

In 1996, California adopted Proposition 218, empowering voters by enacting limitations on local government taxes, assessments, and property related fees. (Cal. Const., arts. XIII C & XIII D.) Property related fees cannot be adopted unless the local

government complies with specific procedural and substantive requirements, including conducting a public hearing noticed to property owners. (Cal. Const., art. XIII D, § 6 (“Section 6”).) These procedural requirements “facilitate communications between a public water agency’s board and its customers, and the substantive restrictions on property-related charges in subdivision (b) of the same section should allay customers’ concerns that the agency’s water delivery charges are excessive.” (*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 220–221 (“*Bighorn*”).)

Section 6’s robust hearing requirements have led agencies to implement expensive and time-consuming legislative procedures to impose new or to increase existing property related fees, including:

- retention of legal and financial advisors, including professional ratemaking consultants and cost-of-service experts;
- preparation of cost-of-service analyses (COSAs);
- preparing and mailing detailed notices to property owners;
- making public presentations or conducting workshops to educate the public as to the need for a new or increased fee;
- responding to public comments; and
- inviting a majority protest and holding at least one public hearing at which written protests may be submitted and counted.



Often set in conjunction with the adoption of annual budgets, fee hearings are commonly local agencies' most heavily attended meetings. (E.g., *Wallich's Ranch v. Kern County Pest Control District* (2001) 87 Cal.App.4th 878 ("*Wallich's Ranch*") [requiring exhaustion in budget hearing before challenge to assessment levied to fund that budget].)

Section 6's legislative process fosters informed local decision-making, encourages fee-payor participation, and ensures local governing bodies have adequate information upon which to make decisions. It allows decision-makers to review the entire record, respond to fee-payor concerns, and apply their expertise before making decisions. It strengthens "the power-sharing arrangement" between local legislators and fee-payers envisioned by Proposition 218. (*Bighorn, supra*, 39 Cal.4th at p. 220.)

## **ARGUMENT**

### **I. THE EXHAUSTION REQUIREMENT PROMOTES EFFICIENCY, PUBLIC PARTICIPATION, AND JUDICIAL REVIEW**

#### **A. WHEN AN ADMINISTRATIVE REMEDY IS PROVIDED, IT MUST BE INVOKED**

The exhaustion of administrative remedies requirement is well settled. "The cases which so hold are legion." (*County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 73.) If an

administrative remedy is provided, it must be exhausted before judicial review is available. (*Ralph's Chrysler-Plymouth v. New Car Dealers Policy & Appeals Bd.* (1973) 8 Cal.3d 792, 794.) It is jurisdictional and applies whether or not it may afford complete relief. (*Yamaha Motor Corp. v. Superior Ct.* (1987) 195 Cal.App.3d 652, 657 ("Yamaha"); *Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 496–501 ("Sierra Club").)

The doctrine applies to constitutional challenges to legislative action, such as the Proposition 218 challenge to retail sewer rates here. (*Mountain View Chamber of Commerce v. City of Mountain View* (1978) 77 Cal.App.3d 82, 93 ("Mountain View") [exhaustion applies to constitutional challenge to zoning ordinance].) The decision-making body "is entitled to learn the contentions of interested parties before litigation is instituted." (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 384 [exhaustion under CEQA].) Exhaustion requires full presentation to the agency of all issues later to be litigated and the essential facts on which they rest. (*City of San Jose v. Operating Engineers Local Union No. 3* (2010) 49 Cal.4th 597, 609 [duty to exhaust PERB remedies before suing to enjoin strike].) Because it is jurisdictional, the rule is not a matter of judicial discretion. (*Roth v. City of Los Angeles* (1975) 53 Cal.App.3d 679, 687 [lawsuit barred even as to constitutional challenges because plaintiffs failed to object at city council hearing to assessment to abate public nuisance].)

## B. POLICIES UNDERLYING THE EXHAUSTION DOCTRINE

“[E]xhaustion of administrative remedies furthers a number of important societal and governmental interests, including: (1) bolstering administrative autonomy; (2) permitting the agency to resolve factual issues, apply its expertise, and exercise statutorily-delegated remedies; (3) mitigating damages; and (4) promoting judicial economy.” (*Grant v. Comp USA, Inc.* (2003) 109 Cal.App.4th 637, 644, citing *Rojo v. Kliger* (1990) 52 Cal.3d 65, 72.) Exhaustion is required even of an administrative remedy that cannot resolve all issues or provide the precise relief sought, “because it facilitates the development of a complete record that draws on administrative expertise and promotes judicial efficiency. It can serve as a preliminary administrative sifting process, unearthing the relevant evidence and providing a record which the court may review.” (*Sierra Club, supra*, 21 Cal.4th at p. 501, citations omitted.)

Exhaustion requires more than generalized objections at a public hearing — specific grounds must be raised. (*Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197; *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 615–616 [hearing participants not held to same standards as lawyers in court, but must make known what facts are contested].) For example, *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656

rejected an attack on reports drafted by that city's financial expert because plaintiffs did not present a contrary financial analysis at the administrative hearing:

If a party wishes to make a particular methodological challenge to a given study relied upon in planning decisions, the challenge must be raised in the course of the administrative proceedings. Otherwise, it cannot be raised in any subsequent judicial proceedings.

(*Id.* at 686.)

These important public interests necessitate application of the exhaustion doctrine to rate-making to fund essential public services.

### **C. THE EXHAUSTION DOCTRINE SERVES THE SEPARATION OF POWERS**

The doctrine is jurisdictional due to the separation of powers principle fundamental to our democracy. (*County of Contra Costa, supra*, 177 Cal.App.3d at p. 76.) The legislative bodies of local agencies often make discretionary, policy choices from a range of lawful options. It is long settled that the establishment of service fees, such as those now subject to Section 6, is a legislative act. (*Kahn v. East Bay Mun. Util. Dist.* (1974) 41 Cal.App.3d 397, 409 [retail water rates]; *Durant v. Beverly Hills* (1940) 39 Cal.App.2d 133, 139 [“The universal rule is that in these circumstances the court is not a rate-fixing body, that the matter of fixing water rates is not judicial,

but is legislative in character”].) Neither Proposition 218, nor Proposition 13 before it, changed the legislative character of local rate-making. (*Silicon Valley Taxpayers Ass’n v. Santa Clara Open Space Auth.* (2008) 44 Cal. 4th 431, 444 [open space assessment]; *Brydon v. East Bay Muni. Utility Dist.* (1994) 24 Cal. App. 4th 178, 196 [retail water rates]; *Moore v. City of Lemon Grove* (2015) 237 Cal.App.4th 363, 368 [sewer rate-making is discretionary].) While Proposition 218 changed the substantive requirements for utility charges, it did not change the respective roles of local legislators and courts. (*Capistrano Taxpayers Ass’n v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1512–1513 (“*Capistrano*”); see *San Diego County Water Authority v. Metropolitan Water District of Southern California* (2017) 12 Cal.App.5th 1124, 1149 “[T]he courts do not weigh competing methodologies to determine the best water rates” but apply the appropriate standard of review to the agency’s record] [applying Prop. 26].)

In light of the different institutional competencies of legislators and courts, judicial review of legislation is limited to the agency’s record. (*Western States Petroleum Ass’n. v. Superior Court* (1995) 9 Cal. 4th 559, 573 (“*Western States*”).) The exhaustion doctrine and the *Western States* rule enhance judicial review by, inter alia, providing courts the benefit of an agency’s expertise in preparing a full record, sifting the evidence, and, in some cases, evaluating the reports of competing experts. Further, it prevents parties from

embroiling courts in political and policy disputes and imposing on them a function to which they are ill-suited — legislating rather than adjudicating. By distinguishing between record-making and record-reviewing, the exhaustion of administrative remedies doctrine protects both legislative and adjudicative functions. It allows legislative bodies to hear the evidence, apply their reasoned discretion, and create records to facilitate judicial review, and it allows courts to review an agency decision on an adequate record supported by agency expertise.

#### **D. EXHAUSTION AFFORDS AGENCIES AN OPPORTUNITY TO ADDRESS PUBLIC CONCERNS BEFORE COURTS MUST**

The “essence of the exhaustion doctrine is the public agency’s opportunity to receive and respond to articulated factual issues and legal theories before its actions are subjected to judicial review.” (*Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1137 [charter city assessment], citing *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1198.) Under the exhaustion doctrine, “administrative agencies must be given the opportunity to reach a reasoned and final conclusion on each and every issue upon which they have jurisdiction to act before those issues are raised in a judicial forum.” (*Sierra Club, supra*, 21 Cal.4th at p. 510.)

For example, *People ex rel. Lockyer v. Sun Pacific Farming Co.* (2000) 77 Cal.App.4th 619, 641 (“*Sun Pacific*”) involved a statute

allowing the adoption of a citrus vector control district's budget only after a noticed protest hearing. A defendant who failed to object to a citrus pest eradication plan during such a hearing could not later challenge the plan in court. By failing to raise issues during the hearing, the challenger deprived the district of the "opportunity to address the merits of the protest and to modify the plan (and the budget) accordingly." (*Ibid.*) The district was "prejudiced by Sun Pacific's failure to raise its objection to the plan prior to its implementation, when the District could have addressed Sun Pacific's concerns and still made changes." (*Id.* at 642.)

*Wallich's Ranch, supra*, 87 Cal.App.4th at p. 880, cited *Sun Pacific* in rejecting a Proposition 218 challenge to another citrus pest assessment for failure to exhaust administrative remedies in the district's budget hearing. We discuss *Wallich's Ranch* further *infra*.

## **E. IF MULTIPLE REMEDIES ARE PROVIDED — ALL MUST BE EXHAUSTED**

*Acme Fill Corp. v. San Francisco Bay Conservation etc. Com.* (1986) 187 Cal.App.3d 1056, 1064 ("*Acme*") holds that when multiple remedies are provided, all must be exhausted. The plaintiff there was required to exhaust all local and federal remedies before seeking judicial review. (*Ibid.*) Thus, for example, and as further discussed in Section II C *infra*, even assuming the existence and application of a statutory claim filing requirement to a suit for refund of a fee, the exhaustion doctrine independently requires

participation in the rate-making hearing. Moreover, as discussed in Section III C *infra*, claim and exhaustion requirements serve different policies and one cannot substitute for the other.

## **II. SECTION 6 ESTABLISHES AN ADMINISTRATIVE REMEDY FOR PROPERTY RELATED FEES**

### **A. SECTION 6 ESTABLISHES MINIMUM NOTICE AND HEARING REQUIREMENTS**

Section 6 establishes in considerable detail the minimum notice and hearing requirements for new or increased property related fees. (*Greene v. Marin County Flood Control and Water Conser. Dist.* (2010) 49 Cal. 4th 277, 285–286 [discussing article XIII D, §§ 4 & 6].) Under Section 6:

Once the amount of the fee per parcel is calculated, the agency must provide written notice to each affected property owner and the opportunity to protest the fee. At the public hearing, the government agency is to tabulate all the written protests to the proposed fee, and if a majority of owners of the identified parcels protest, the fee will not be imposed.

(*Id.* at p. 286 [construing Cal. Const., art. XIII D, § 6, subd. (a)].)



## **B. SECTION 6 REQUIRES AGENCIES TO “CONSIDER ALL PROTESTS”**

An agency must “consider all protests,” oral or written — even in the absence of a majority protest. (Cal. Const., art. XIII D, § 6, subd. (a)(2).) The requirement ensures the consideration will be legally meaningful and prevents local governments from brushing aside protests for mere political expedience. The requirement also provides a local legislative body and the public opportunity to address and investigate cost-of-service issues before costly litigation. In other words, the power sharing between governors and the governed that Proposition 218 established promotes rate-making decisions that are “mutually acceptable and financially and legally sound.” (*Bighorn, supra*, 39 Cal.4th at p. 220.) Exhaustion advances this objective by requiring those who would hold government accountable to give government an opportunity to be accountable before asking courts to compel it.

Thus, the phrase “consider all protests” cannot be ignored, but rather must be construed to establish the Section 6 protest hearing as a meaningful opportunity to make and to consider objections to new or increased fees. (E.g., *Hensel Phelps Const. Co. v. San Diego Unified Port Dist.* (2011) 197 Cal.App.4th 1020, 1034 [“[w]e will not adopt a statutory interpretation that renders meaningless a large part of the statutory language”].)

Thus, the Opinion on review here erred by dismissing the Section 6 protest hearing as “inadequate” to trigger the duty to exhaust. (*Plantier v. Ramona Municipal Water District* (2017) 12 Cal.App.5th 856, 868, review granted (“the Opinion”).)

**C. LOCAL OR STATUTORY PROTEST  
PROCEDURES DO NOT DISPLACE  
SECTION 6**

Plaintiff rate-payers cite *Coastside Fishing Club v. California Fish & Game Commission* (2013) 215 Cal.App.4th 397, 415 (“*Coastside*”) to argue defendant Ramona Water District’s (“Ramona” or “District”) ordinances, rather than Proposition 218, establish the administrative procedure to challenge its fees. (Answer Brief at pp. 16, 27.) They quote *Coastside* as follows: “[i]n cases applying the exhaustion doctrine, the administrative procedure in question generally is provided by the statute or statutory scheme under which the administrative agency is exercising the regulatory authority challenged in the judicial action.” (Answer Brief at p. 29, citing *Coastside, supra*, 215 Cal.App.4th at p. 415.) This sentence supports the **District’s** position, not the Plaintiff rate-payors’.

Article XIII D, section 1 states, “[n]otwithstanding 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.” Thus, the Constitution itself provides the administrative procedure — or, in

the parlance of the exhaustion cases, the “scheme” — by which the District imposed the challenged fees. Moreover, *Acme* demonstrates that, when multiple remedies are provided — all must be exhausted. (See discussion of *Acme* in section I E *supra*.) *Coastside* gives the Plaintiff rate-payers no basis to sue without first exhausting the administrative remedy voters provided in Section 6.

### **III. SECTION 6’S ADMINISTRATIVE REMEDY MUST BE EXHAUSTED**

#### **A. WALLICH’S RANCH APPLIES EXHAUSTION TO PROPOSITION 218 CHALLENGES**

*Wallich’s Ranch* applies the exhaustion doctrine to a Proposition 218 challenge to an assessment imposed under the Citrus Pest District Control Law (Food & Agric. Code §§ 5401 et seq.) (“Pest Control Law”).

That statute establishes a procedure for imposing annual pest control assessments on benefitted citrus groves. An assessment funds district operations and is based on a district’s annual budget. (*Wallich’s Ranch, supra*, 87 Cal.App. 4th at 884.) The Pest Control Act provides for notice, opportunity to protest, and a hearing on the budget before assessments may be levied. (*Id.* at p. 885.) After a county assessor certifies the assessed value of all citrus trees in a district, the district board adopts a preliminary budget, and provides notice of intent to adopt a final budget and to levy an assessment to fund it. (Food & Agric. Code, § 8563.) Assessed

landowners may submit written protests “at any time not later than the hour set for hearing objections to the proposed budget.” (Food & Agric. Code, § 8564.) Like Section 6’s requirement to “consider all protests,” the Pest Control Law obliges a district board “to hear and pass upon all protests so made” before adopting the budget and levying the assessment. (Food & Agric. Code, § 8565.)

Thus, “[t]he appropriate procedure for challenging the assessments imposed pursuant to the Pest Control Law is to first exhaust one’s remedies by challenging the budget before the district.” (*Wallich’s Ranch, supra*, 87 Cal.App.4th at p. 884.) The Court of Appeal emphasized the point:

[T]he appropriate procedure to oppose the assessment is to challenge the district budget, at which time the district has an opportunity to address the perceived problems and formulate a resolution. Here, the District was denied any opportunity to address the merits of Wallich’s Ranch’s claims. We reject the contention of Wallich’s Ranch that exhaustion of administrative remedies was not required because the complaint related to constitutional arguments and protesting at the District’s budget hearing would have been fruitless. (See *Bockover v. Perko* (1994) 28 Cal.App.4th 479, 486 [34 Cal.Rptr.2d 423] [general rule of exhaustion forbids a judicial action when administrative remedies have not