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File No. 09998.00214

February 14, 2019

**VIA TRUEFILING**

Presiding Justice Arthur Gilbert  
Justice Steven Z. Perren  
Justice Kenneth R. Yegan  
California Court of Appeal  
Second Appellate District, Division 6  
Court Place  
200 East Santa Clara Street  
Ventura, California 93001

Re: Request for Publication -- *Goleta Ag Preservation v. Goleta Water District*, No. B277227; Unpublished Opinion Filed January 28, 2019  
(California Rules of Court, rules 8.1105 and 8.1120.)

Honorable Justices:

The League of California Cities, California State Association of Counties, California Special Districts Association, and Association of California Water Agencies (“Agency Amici”) respectfully request this Court order publication of the unpublished opinion filed in this matter (the “Opinion”). Publication of the Opinion will provide important guidance to public agencies providing essential public services and ratepayers receiving and paying for those services regarding application of California Constitution article XIII D, section 6 to fees for essential government services and regarding judicial challenges to those fees. The Agency Amici represent public agencies throughout California subject to the requirements of the provisions of the California Constitution commonly referred to as “Proposition 218,” including article XIII D. They have participated, either individually or collectively, as amici curiae in many of the cases litigating the contours of Proposition 218, including this one. Even though it has been more than 20 years since Proposition 218 was adopted, uncertainty (and consequently litigation) over its meaning and scope continues. Publication of the Opinion will add to the law interpreting Proposition 218.



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This request is timely filed within 20 days of the Clerk’s filing the unpublished opinion on January 28, 2019. (Cal. Rules of Court, rule 8.1120(a)(3). The Opinion meets several of the standards for publication. It “applies an existing rule of law to a set of facts significantly different from those stated in published opinions;” it “advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule;” and it “involves a legal issue of continuing public interest.” (Cal. Rules of Court, rules 8.1105(c)(2), 8.1105(c)(4), 8.1105(c)(6).)

The Opinion is the first to address a Proposition 218 challenge to a flat rate drought surcharge. Even though Proposition 218 was enacted over 20 years ago, cases involving its particular application to various rate structures and differing circumstances of public agencies throughout the state are just now making their way through the courts. Both public agencies and their constituents have a vital interest in knowing how Proposition 218’s requirements apply in different rate setting scenarios. This case involves several Proposition 218 challenges to the rates adopted by the Goleta Water District, including its flat rate drought surcharge. The plaintiff, whose members preferred a different surcharge modelled after one adopted by a different public agency, alleged that the flat rate violated the cost of service principles of Proposition 218. The plaintiff also alleged violations of certain procedural notice requirements of the Proposition. The trial court had rejected Plaintiff’s challenges.

The Court’s opinion affirming the trial court’s determination contains a detailed discussion of the facts and careful application of the law that will provide important guidance regarding the ability of public agencies to levy drought surcharges, the ability of public water providers to choose among various rate structure options, and the substantive and procedural requirements of Proposition 218. Publication of the opinion would be an important addition to Proposition 218 jurisprudence, will provide guidance to local agencies and ratepayers, and could potentially limit future litigation of the same issue.

The Opinion also adds to the law interpreting Proposition 218 by holding that that plaintiff could not challenge the manner of notice provided by the Goleta Water District because its members had received timely notice and therefore lacked standing to challenge the adequacy of notice provided to others. Likewise, the court’s conclusion that plaintiff lacked standing to challenge the constitutionality of rates paid by others but not by plaintiff has not been addressed in previous reported opinions.



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For the forgoing reasons, Agency Amici respectfully request this Court order publication of the Opinion in its entirety.

Respectfully submitted,

Daniel S. Hentschke (76749)  
Law Office of Daniel Hentschke

A handwritten signature in blue ink, reading 'Kelly J. Salt'.

Kelly J. Salt (120712)  
Best Best & Krieger

Attorneys for Agency Amici

KJS:lma

**SERVICE LIST**

*Goleta Ag Preservation v. Goleta Water District, et al.*  
Second District Court of Appeals, Division Six, Case No. B277227  
Santa Barbara County Superior Court Case No. 15CV02489

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Honorable Thomas P. Anderle  
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**CERTIFICATE OF SERVICE**

I, Lisa Atwood, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 655 West Broadway, Fifteenth Floor, San Diego, California 92101-3542. On February 14, 2019, I served the within document(s):

**REQUEST FOR PUBLICATION -- GOLETA AG  
PRESERVATION V. GOLETA WATER DISTRICT, NO.  
B277227; UNPUBLISHED OPINION FILED JANUARY 28,  
2019 (CALIFORNIA RULES OF COURT, RULES 8.1105 AND  
8.1120.)**

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth on the attached service list.

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 in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I further declare that this same day I electronically submitted one copy of the within document to the California Court of Appeal, Second Appellate District, Division Six (per Rule 8.70.)

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 14, 2019, at San Diego, California.

  
\_\_\_\_\_  
Lisa Atwood

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