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

Re: In Support of Petition for Review
*Coachella Valley Water District v. Superior Court of the State of California
for the County of Riverside* (S264391)

Your Honors:

Under Rule 8.500(g) of the California Rules of Court, the Association of California Water Agencies, California Special Districts Association and California Association of Sanitation Agencies (“Supporters”) submit this letter in support of defendant and appellant Coachella Valley Water District’s (“District”) petition for review *in Coachella Valley Water District v. Superior Court of the State of California for the County of Riverside* from the Fourth Appellate District, Division Two, Case No. E075411 Denying Writ Review of an Order Overruling Demurrer to First Amended Complaint entered June 30, 2020 in Riverside Superior Court Case No. RIC 1904943 (the “Order”).¹ This case raises an important question of statewide interest as to the standing necessary to challenge a water rate set by a public agency. The Supporters request that review be granted to settle the question of whether a plaintiff has standing to challenge rates the District imposes on those who take raw water from its canals, even though Plaintiff does not take raw water, simply because the District uses those rates as part of the calculation of the domestic water rates Plaintiff does in fact pay. The case poses the related question whether a plaintiff may challenge a rate of which he bears only the economic incidence as opposed to legal incidence.

At issue in the case is the validity of water rates charged by the District, specifically canal rates charged to those who take non-potable water from the District’s canals. Plaintiff real party in interest Randall C. Roberts (“Roberts”) is not a canal water user and does not pay these rates directly. Rather, he pays domestic water rates. Roberts has argued that he has standing to challenge the canal rates because he pays them as part of his domestic water

¹ The entities involved in the preparation of this letter are the undersigned counsel at Aleshire & Wynder with approval by CASA, CSDA, and ACWA. It was prepared pro bono.

rates (i.e., he bears part of the economic burden of those rates) even though, under the resolution imposing the canal rates, he is not legally obliged to pay them. Both the trial court and the Court of Appeal ruled without addressing whether Roberts has standing. Mr. Roberts' broad view of standing would open the door for thousands of potential water rate challenges, based on the same alleged standing, by those challenging rates they do not pay directly. One example would be every end-user of State Water Project water in Southern California having the ability to sue a wholesaler they do not buy water from directly--even though they only pay retail rates to a local water agency. Direction from this Court is necessary to avoid serious harm to public agencies which cannot effectively engage in fiscal planning without knowing the universe of entities entitled to challenge rates.

The Supporters' interest in the present petition for review arises out of their members' part in setting water and/or wastewater rates. The Association of California Water Agencies ("ACWA") is the largest statewide coalition of public water agencies in the country. Its nearly 450 public agency members collectively are responsible for 90% of the water delivered to cities, farms and businesses in California. ACWA's assists its members in promoting the development, management and reasonable beneficial use of quality water at the lowest practical cost in an environmentally balanced manner. California Special Districts Association ("CSDA") is a statewide association representing approximately one thousand independent special districts including irrigation, water, park and recreation, cemetery, fire, police protection, library, utility, harbor, healthcare, and community services districts. California Association of Sanitation Agencies ("CASA") represents over 100 public agencies that engage in the collection, treatment or disposal of wastewater, resource recovery or water recycling.

The standing necessary to bring a water rate challenge directly effects all manner of public agencies, including special districts, cities, and counties which set rates subject to challenge by Propositions 218 and/or 26. Left undisturbed, trial courts may interpret the reasoning behind the Order as allowing challenges to water rates based on economic burden alone absent standing. This would have the following detrimental impacts on the Supporters and their members who provide water service to the vast majority of Californians:

1. *Allowing a Rate Challenge Based on Economic Burden Alone Would Expand the Scope of Challengers to Unpredictable Levels*

Existing law limits the pool of potential challengers to a ratemaking by requiring that a potential challenger to a rate actually pay that rate. Only an “interested person” has standing to bring a reverse validation proceeding necessary to challenge a rate. (See Torres v. City of Yorba Linda (1993) 13 Cal.App.4th 1035, 1041 [holding plaintiffs were not sufficiently “interested” in neighboring city’s redevelopment plans, and fact that they paid sales tax in the city was insufficient to establish standing in a reverse validation case].) In addition, under the “pay first, litigate later” rule, plaintiffs must first pay a tax or fee before filing suit. (See Cal. Const., art. XIII, § 32; Loeffler v. Target Corp. (2014) 58 Cal.4th 1081, 1101-1102 (Loeffler); Delta Airlines, Inc. v. State Board of Equalization (1989) 214 Cal.App.3d 518, 525-526; see also Water Replenishment Dist. of So. Cal. v. City of Cerritos (2013) 200 Cal.App.4th 1450, 1455, 1469-1470 [applying the “pay first, litigate later” rule to government fees challenged under Proposition 218].) Standing based on these rules creates a definite set of potential challengers for each rate, based on a clear and equitable set of rules - only those directly affected and subject to the rates may challenge them. This standing issue is currently pending before this Court in Zolly v. City of Oakland, Case No. S262634 (in which the California League of Cities provided amicus support). This Court also granted review in 2015 in Jacks v. City of Santa Barbara (2017) 3 Cal.5th 248, in which standing was an issue, although the Court’s opinion did not address the standing issue.

Unless this issue of legal standing that is of critical statewide importance is settled by this Court, the floodgates of litigation could be opened. Trial courts will interpret the reasoning behind the Order as allowing a challenge to a water rate by an entity which does not pay the water rate based on nothing more than an alleged economic burden, a concept which has no clear limits. Roberts has argued that he has standing simply because the rates imposed on the use of non-potable water from canals affects his own rates. This same logic could apply to any number of potential challengers, even extending as far as the customers of the actual rate payers. In contrast to existing law, the logic proposed by Roberts creates no reasonable way to predict the pool of challengers and should be rejected in favor of the clear and equitable rules established by existing law.

2. *The Order Would Disrupt the Ability of Public Agencies to Conduct Reasonable Financial Planning.*

Under existing law, public agencies can plan for potential water rate challenges due to the definite and predictable pool of challenges for each ratemaking process, i.e. those who directly pay the amounts in question. The funding needed to respond to and address potential challenges can be properly considered as part of the public agency’s yearly budget process. A broadened view of standing would destroy any semblance of predictability in the costs and potential liabilities a public agency faces following a ratemaking. (See Chiatello v. City & County of San Francisco (2010) 189 Cal.App.4th 472, 496-497 [noting the absurd results and “chaos” that would result if a tax challenge could be raised by individuals who were not required to pay it].) Unless this critical issue of legal standing is settled by this Court, a broader, incalculably large group of challengers who are only indirectly economically burdened by a rate may be allowed to commence legal action to challenge that rate. For example, would millions of end users of water in Southern California be permitted to challenge the amounts charged by the largest wholesalers to other wholesalers or charged by a wholesaler to a retailer? Presently, end users of water paying a water rate to a retail water provider have the right to file Proposition 218 lawsuits against the retail agencies they pay, but not against the wholesaler they do not pay.

In addition, public agencies frequently pledge water and/or wastewater rates to the repayment of bonds or other debt. If allowed to stand, the reasoning in the Order may jeopardize public agencies’ ability to issue bonds to fund much needed infrastructure improvements. They would also face adverse effects to their credit ratings and potential default on bonds if any legal challenges are successful and rates were invalidated—which would be an absurd result if the legal challenges were brought by those without true standing.

3. *The Reasoning in the Order May Result in Decreased Financial Ability to Respond to Water Needs, Drought and Water Quality Issues.*

Under normal conditions, public agencies already struggle to ensure proper levels of staffing with limited resources. A significant increase in litigation that could result from the broadening of standing could force public agency water suppliers to cut staff and water quality protections due to the increased financial pressure and unpredictability of ratemaking and the need to build up a war-chest for litigation by any rate-payer, any wholesaler, or any retailer. Many agencies only have approximately 5 months of operating

reserves. Faced with the potential of thousands (or, for the largest wholesalers, millions) of end-users challenging rates and requesting orders invalidating rates before new rates are set, these agencies will be faced with the decision to immediately cut staff and operations pending a new rate-setting. Depending on the size of an agency, the rate-setting process typically takes approximately a year, because it involves hiring consultants, providing such consultants data, obtaining a draft cost of service study and eventually a final cost of service study, holding workshops, providing notice of a public hearing and the hearing process itself.

The largest problem facing such public agencies is how it will effectively respond to drought conditions and water quality emergencies. Such circumstances require flexibility to address changes in available water supplies and water needs. Public agencies must be able to direct funds and personnel to address deficiencies and urgent needs, and work cooperatively with other public agencies and private actors. None of this is possible if an agency faces constant litigation and cannot reasonably engage in financial planning.

4. *Whether a Plaintiff Can Challenge Rate Components as Opposed to Rates Should Be Reviewed by the Court.*

This case poses the question of whether the components of an agency's water rates, as opposed to the rate itself, are subject to challenge. This case also poses the question whether Plaintiff has standing under article XIII C, section 1 [Proposition 26] and article XIII D, section 6 [Proposition 218] of the California Constitution to challenge the District's use of proceeds of domestic water rates to recover costs the District incurs to replenish groundwater (using raw water delivered via its canals) on the sole ground that Plaintiff has paid the domestic water rates. Thus, the Petition for Review poses the question whether expenditures of the proceeds of a fee categorically not subject to Propositions 26 or 218 may be challenged under Proposition 26 or 218. Allowing standing for such challenges to underlying components or use of proceeds creates a situation where exactions that are not even subject to challenge under article XIII C, section 1 [Proposition 26] and article XIII D, section 6 [Proposition 218] of the California Constitution are allowed to be challenged under those provisions.

Article XIII C of the California Constitution prohibits local governments from imposing, increasing, or extending any tax without voter approval. There are seven exceptions, one of which is any charge imposed for a service or product that does not exceed the reasonable costs of providing it. In Citizens for Fair REU Rates v. City of

Redding (2015) 6 Cal.5th 1, 12, 16, Redding operated an electric utility as a department of its city government. Redding's budget included a transfer from the utility's enterprise fund to the city's general fund designed to compensate the general fund for the costs of services that other city departments provide to the utility. This Court determined such a budgetary transfer itself is not a tax. That is, it is not the type of exaction that is subject to article XIII C. The rate the city charged its utility customers fell under the exception mentioned above. Because the challenged rates were not taxes, voter approval was not required. Similarly, in Webb v. City of Riverside (2018) 23 Cal.App.5th 244, 259, the Court of Appeal found article XIII C did not apply to an interfund transfer which fell under the exception for a service or product that does not exceed the reasonable costs of providing it. Roberts' view of standing is so broad that it would undermine this well-established case law. A clear statement of law limiting challenges to a rate itself and not its components or uses of its proceeds — will allow fewer suits, on complete records, and give the government the benefit of offsetting errors in favor of and against a ratepayer.

Accordingly, for all of the foregoing reasons, the Court should grant review to clarify whether the use of proceeds of a water rate may be challenged based on standing through economic burden alone, without paying a rate or charge directly to the respondent agency in question.

Respectfully submitted,

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