

FILED
KERN COUNTY
SUPERIOR COURT

MAY 11 2016

TERRY McNALLY, CLERK
BY _____ DEPUTY

ENDORSED

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

DELANO GUARDIANS COMMITTEE,
an unincorporated association,

Petitioner,

vs.

CITY OF DELANO, and DOES 1 through
10, inclusive,

Respondents.

Case No. S-1500CV-280116-SPC

JUDGMENT

DEPT.: 4

JUDGE: Honorable Sidney P. Chapin

This action came before this court on March 2, 2015, and August 7, 2015, in Department 4 of the Superior Court of California, County of Kern, the Honorable Sidney P. Chapin presiding. Ingrid Brostrom appeared as attorney for Petitioner/Plaintiff, DELANO GUARDIANS COMMITTEE ("Petitioner"). Chaka Okadigbo appeared as attorney for Respondent/Defendant, CITY OF DELANO ("Respondent").

On the Court's receipt and consideration of the operative pleadings, the Administrative Record as corrected by the Court's January 23, 2015, Minute Order, briefs filed in support and in opposition to the operative pleadings, documentary evidence submitted by both parties and oral argument presented by both parties on March 2, 2015, and August 7, 2015,

1 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

2 1. The Court's April 5, 2016, Ruling On: First Amended Petition for Writ of
3 Mandate and Complaint, including the Discussion on Petition for Writ of Mandate attached
4 thereto, is attached and incorporated into this Judgment as part of the Judgment.

5 2. The 1st cause of action of the First Amended Petition for Writ of Mandate and
6 Complaint for violation of Article XIII D, Section 6(a)(1) of the California Constitution, for
7 failure to include information as required by that provision in the Notice of proposed fee
8 rate increase **is DENIED** for the reasons indicated in the Discussion on Petition for Writ of
9 Mandate attached to the Court's April 5, 2016, Ruling On: First Amended Petition for Writ
10 of Mandate and Complaint.

11 3. The 2nd cause of action of the First Amended Petition for Write of Mandate
12 and Complaint for violation of Article XIII D, Section 6(c) and (b)(5) of the California
13 Constitution, for including **street sweeping service fees** as part of the utility fee increases
14 **is MOOT** for the reasons indicated in the Discussion on Petition for Writ of Mandate
15 attached to the Court's April 5, 2016, Ruling On: First Amended Petition for Writ of
16 Mandate and Complaint.

17 4. The 2nd cause of action of the First Amended Petition for Write of Mandate
18 and Complaint for violation of Article XIII D, Section 6(c) and (b)(5) of the California
19 Constitution, for including **fire suppression fees** in the water rate increases **is GRANTED**.

20 The Court finds that the water rate increases included a fire suppression fee which
21 was improper under and a violation of Article XIII D, Section 6(c) and (b)(5) of the California
22 Constitution. Therefore, fees collected under the water rate increases for fire suppression
23 shall be set aside and refunded or credited to the water utility customer.

24 5. The 3rd cause of action of the First Amended Petition for Write of Mandate
25 and Complaint for violation of Article XIII D, Section 2(b) of the California Constitution, and
26 Government Code § 53750(b), for including capital improvement costs in the utility rate
27 increase **is DENIED** for the reasons indicated in the Discussion on Petition for Writ of

28 ///

1 Mandate attached to the Court's April 5, 2016, Ruling On: First Amended Petition for Writ
2 of Mandate and Complaint.

3 6. The 4th cause of action of the First Amended Petition for Write of Mandate
4 and Complaint for violation Article XIII D, Section 6(a)(2) of the California Constitution, and
5 Government Code § 52755(b), for inappropriately rejecting purported valid protests **is**
6 **DENIED** for the reasons indicated in the Discussion on Petition for Writ of Mandate
7 attached to the Court's April 5, 2016, Ruling On: First Amended Petition for Writ of
8 Mandate and Complaint.

9 7. A peremptory writ of mandate issued under the seal of this Court shall be
10 directed to the City of Delano ordering that City of Delano set aside and refund fees
11 collected for fire suppression as part of the water rate increase.

12 8. The Court shall retain jurisdiction over the proceedings by way of return to
13 writ over the City of Delano until the Court has determined that the City has complied with
14 Article XIII D of the California Constitution and this Court's peremptory writ.

15 9. The Court does not make a determination of "prevailing party".
16 Determination of "prevailing party" and any entitlement to recovery of costs and/or fees as
17 costs, and amounts thereof will be pursuant to applicable statutes and Rules of Court as
18 post judgment motions.

19
20 Dated: May 11, 2016.

SIDNEY P. CHAPIN

The Honorable Sidney P. Chapin



Superior Court of California
County of Kern
Bakersfield Department 4

Date: April 05, 2016

Time: 2:05 PM

S1500CV280116

DELANO GUARDIANS VS CITY OF DELANO

Courtroom Staff

Honorable: Sidney P. Chapin

Clerk: Julie Whitworth

Court reporter: NONE

Bailiff: NONE

Interpreter:

Language of:

PARTIES:

CITY OF DELANO, Defendant, not present
DELANO GUARDIANS COMMITTEE, AN
UNINCORPORATED ASSOCIATION, Plaintiff, not
present

CHAKA OKADIGBO, Attorney, not present
INGRID BROSTROM, Attorney, not present

NATURE OF PROCEEDINGS: RULING ON: FIRST AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT;
FILED BY PETITIONERS, DELANO GUARDIANS COMMITTEE; HEARD 03/02/15 AND 08/07/15; AND SUBMITTED
ON 01/08/2016 PURSUANT TO PETITIONER'S LETTER DATED 12/18/2015.

THE COURT FINDS AS FOLLOWS:

THE COURT RULES ON THE FIRST AMENDED PETITION FOR WRIT OF MANDATE PURSUANT TO CCP SECTIONS 1060
AND 1085 AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AS FOLLOWS:

ON THE FIRST, THIRD AND FOURTH CAUSES OF ACTION, JUDGMENT SHALL BE FOR RESPONDENT/DEFENDANT.

ON THE SECOND CAUSE OF ACTION, THE CAUSE OF ACTION IS MOOT AS TO ANY CLAIM AS TO FEES FOR STREET
SWEEPING SERVICES. THE PETITION IS GRANTED AS TO THE CLAIM OF FEES FOR PUBLIC FIRE SUPPRESSION AS
PART OF WATER RATES, AND TO THE EXTENT OF FEES FOR PUBLIC FIRE SUPPRESSION, SUCH FEES CANNOT BE
COLLECTED AT THIS TIME.

SEE ATTACHED DISCUSSION FOR BASES FOR COURT'S RULINGS (17 PAGES).

COPY OF THIS MINUTE ORDER MAILED TO COUNSEL AS STATED ON THE ATTACHED CERTIFICATE OF MAILING.

MINUTE ORDER FINALIZED BY: JULIE WHITWORTH

ON: APRIL 05, 2016

MINUTE ORDER
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DELANO GUARDIANS VS CITY OF DELANO

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CERTIFICATE OF MAILING

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, and not a party to the within action, that I served the *Minute Order dated April 05, 2016* attached hereto on all interested parties and any respective counsel of record in the within action by depositing true copies thereof, enclosed in a sealed envelope(s) with postage fully prepaid and placed for collection and mailing on this date, following standard Court practices, in the United States mail at Bakersfield California addressed as indicated on the attached mailing list.

Date of Mailing: April 05, 2016

Place of Mailing: Bakersfield, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Terry McNally
CLERK OF THE SUPERIOR COURT

Date: April 05, 2016

By:

Julie Whitworth, Deputy Clerk

DELANO GUARDIANS VS CITY OF DELANO
S1500CV280116

MAILING LIST

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DISCUSSION ON PETITION FOR WRIT OF MANDATE

Introduction. Pursuant to CCP §§ 1060 & 1085, DELANO GUARDIANS COMMITTEE ("Petitioner") petitions for Writ of Mandate through its February 13, 2015, filed Verified 1st Amended Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief ("1st Amended Petition") against Respondent, CITY OF DELANO ("the Agency" or "City"), regarding the City of Delano's City Council's ("City Council") 2012 approval of utility rate increases for water, sewer, refuse and street sweeping services.

The 1st Amended Petition consists of 4 causes of action, asserting:

- 1) The Agency's Notice Failed to Include Information Required by the California Constitution (Art. XIII D § 6(a)(1)) as the notices sent to property owners (the "Notice") did not provide the amount of the fees and/or charges proposed to imposed on each parcel as required by Proposition 218. Petitioner asserts that the Notice only provided an estimate as to a hypothetical "typical single family home" and did not provide information from which a particular property owner could calculate the actual amount of his or her utility rate increase.
- 2) The Agency Imposed Inappropriate Fees in Violation of the California Constitution (Art. XIII D, § 6(c), (b)(5)) by including fees for public fire suppression as part of the water rates and fees for street sweeping services. Petitioner asserts that street sweeping services and public fire suppression fee increases are not exempt from Proposition 218's requirement that all fee related charges must be approved by a majority of the property owners who are subject to that fee/charge and that City did not submit these fees to the affected property owners for approval.
- 3) The Agency Assessed Fees for Inappropriate Costs in Violation of the California Constitution (Art. XIII D § 2(b) & GC § 53750(b)) by including capital projects costs in its utility rate increase. Petitioner asserts that Proposition 218 requires capital projects to be funded through property assessment of the specifically affected properties, which is a separate procedure from the fees/charges procedure. Petitioner asserts that City also violated Proposition 218 as the services for future capital projects were not immediately available to the affected property owners.
- 4) The Agency Inappropriately Rejected Valid Protests in Violation of the California Government Code and California Constitution (GC § 53755(b), Art. XIII D § 6(a)(2)). Petitioner asserts that City misinformed property owners and tenants of the applicable law as it did not inform residents that tenants of impacted parcels may submit a valid protest. Petitioner asserts that City also did not count protests filed by tenants of impacted parcels and did not count protests if the name on the protest did not exactly match the name of the ratepayer on the City Account Holder list. Petitioner asserts that City did not count protests filed by owners or ratepayers of parcels that exist in Delano but which were omitted from the County Tax Assessor's list. Petitioner asserts that City's failure to count valid protests violated the Government Code, the California Constitution and reflects the City's bad faith.

The Administrative Record reviewed by this Court in determination of the 1st Amended Petition is the Administrative Record as corrected by the Court's January 23, 2015, Minute Order, which added Exhibits B-1 (Kern County Taxpayer Assessor's List - Summary) and B-2 (City's Account Holder List - Summary) from the December 31, 2014, filed Declaration of Rosa Lara Rios; Exhibit B-4 (City's Account Holder's List) from the January 9, 2015, filed Additional Declaration of Rosa Lara Rios (also included in the January 16, 2015, filed Declaration of Rosa Lara Rios); and Exhibit B-3 (Kern County Taxpayer Assessor's List) the January 16, 2015, filed Declaration of Rosa Lara Rios with filed B-4) ("Administrative Record" or "AR").

Burden of Proof and Standard of Review. "[A] writ of mandate under [CCP § 1085] requires that the petitioner establish, among other things, that the [Agency] failed to perform an act despite having a clear and present ministerial duty to do so. (See *Riverside Sheriff's Assn. v. County of Riverside* (2003) 106 Cal.App.4th 1285, 1289, [citation].)" *Lazan v. County of Riverside* (2006) 140 Cal.App.4th 453, 460; see also *Kreeft v. City of Oakland* (1998) 68 Cal.App.4th 46, 52-53.

However, in Proposition 218 challenges, the agency bears "the burden of proof of demonstrating compliance with Proposition 218, and both trial and reviewing courts are to apply an independent review standard, not the traditional, deferential standards usually applicable in challenges to governmental action." *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1507, citing to *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 448 ("*Silicon Valley*"). "[I]t is not enough that the agency have substantial evidence to support its action. That substantial evidence must itself be able to withstand independent review. *Ibid.*, citing to *Silicon Valley* at pp. 441, 448-449.

Facts (taken from the 1st Amended Petition and the Administrative Record).

On November 19, 2012, the Delano City Council voted to approve proposed rate adjustments for water, sewer, refuse and street sweeping services to be included in a Proposition 218 Notice and to instruct staff to start the Proposition 218 election process. (November 19, 2012, City Council Meeting Minutes, Agenda Item 14, AR000143; see also November 29, 2012, City of Delano Staff Report, AR000148-000153.)

On February 21, 2013, the City sent the first Proposition 218 Notice to property owners, notifying them of an April 1, 2013, public hearing on proposed rate increases to water, sewer, refuse and street sweeping services. (The February 21, 2013, Notice is not included in the Administrative Record).

On March 1, 2013, the City sent a second Proposition 218 Notice (available in English and Spanish) to customers who receives water, sewer refuse and/or street sweeping services from City or was an owner of record of property that receives one or more of the utility services which changed the hearing date for the proposed rate increases from April 1, 2013, to April 15, 2013. (AR000154-000161 [English Version], AR000158-000161 [Spanish Version], AR000305-000306).

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The March 1, 2013, Notice stated that rate increases for these services were needed because existing rates did not fully recover the costs for operation, maintenance, and capital projects of the specified utilities (each utility is separately funded by rates collected for that utility), including costs for "debt service, administration, as well as costs related to prudent long-term operational and financial management of the utilities, such as maintaining adequate reserves and funding future capital needs."

The March 1, 2013, Notice contains a section which indicates the impact on "your" bill for "a typical single family home" which includes charts/graphs regarding each of the utilities affected (AR000154-AR00157). In the section "Why are rate increases needed", the Notice states "For additional information on the proposed utility rates and the methodology used to derive the rates, please refer to the 2012 Utility Rate Study on file with the City Clerk, Delano City Hall, 1015 11th Street, Delano, CA and Public Works Department, Delano Corporation Yard, 725 S. Lexington Avenue, Delano CA 93215." (AR000154.)

The March 1, 2013, Notice stated that written protests could be submitted for one or all of the four proposed utility rate increases only if "you re a customer of that utility or are the owner of property that is served by that utility." The Notice specifically stated that "[w]ritten protests must:

- (1) identify by state address or parcel number the parcel(s) or service location(s) for which the protest is submitted,
- (2) identify the name of the owner or customer submitting the protest,
- (3) include the signature of that owner or customer
- (4) state that that owner protests the rates
- (5) indicate which of the four utilities is being protest.

If a written protest does not specify which of the four utilities it applies to, it will be interpreted as a protest against the rates for all utilities provided to the parcel or service location." (AR000157 [format altered].) The Notice stated that written protests had to be mailed or hand delivered to the Office of the City Clerk "at any time prior to the [April 15, 2013] hearing" and that if the City Council determined at the close of public testimony that "protests have been received with respect to a majority of the parcels or service locations served by a utility, the proposed increased rates for that utility will not be adopted." (AR000157.) Other than the information described above, the Notice did not specify any other information a protest must include nor did it mandate any specific form a protest had to take. The number of parcels or service locations affected by each of the specified utilities is not provided in the Notice.

Based on the March 1, 2013, Notice, the property owner and/or utility customer were informed that each utility was separately funded by the rates received for that utility, that a written protest could only be lodged by a property owner or by a customer of the specific utility for each location served by a specific utility (which could be one to all of the four utilities affected), that all written protests had to be submitted to the City Council by the end of the April 15, 2013, hearing and that the increases would not be adopted if a majority of the parcels or service locations served by the utilities had been received.

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At the April 15, 2013, the hearing on the utility rate increase, City stated that 4,643 valid written protests were needed to prevent the utility rate increase. (AR000165, Minutes, 4/15/13 City Council Regular Meeting, Item 16; see also AR000268-000393.) Prior to the close of the hearing, City received more than 4,700 written protests opposing the utility rate increase (AR000165). Due to the inability of the Delano City Clerk to count the number of valid written protests received at the hearing, the Delano City Council set a subsequent hearing for April 29, 2013, to determine if it had received sufficient protests to prevent the utility rate increase. (AR000165.)

All written protests received were on the exact same form (except forms were in English and Spanish). The form was not drafted, offered or suggested by City. The form has the address of the City Clerk in upper left hand portion of the form, under which is the following:

RE: PROTEST OF PROPOSED DELANO ENTERPRISE RATE INCREASES ON WATER, WASTE, REFUSE AND STREET SWEEPING.

"My name is (print) _____ and I
(Print name as on utilities bill or property owner)

live at _____
City _____, CA. Zip _____ and I protest the proposed rate increases to the Enterprise Services (Water, Waste Treatment, Refuse, and Street Sweeping) that are to take effect on July 1, 2013. The proposed rate increases are extremely excessive. Please accept my protest vote on behalf of the following property or properties:"

Address or Parcel Number

Address or Parcel Number

Respectfully,

Signature

Date

cc: CRPE"

The forms indicate that all the utility rate increases were being protested.

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On April 29, 2013, the Delano City Council identified 9,284 impacted parcels (not identified or specified by utility). Therefore, 4,643 valid written protests were needed to make up the necessary majority to prevent the utility rate increase. The City Council announced at that hearing that only 4,048 "presumptively valid" written protests were received, so the City Council had not received a sufficient number of valid protests to prevent the utility rate increase (AR000418). The transcript of the April 29, 2013, hearing states that "[t]he law provides that only one written protest per affected parcel is to be counted in connection with each water, sewer, refuse collection and street sweeping services." (AR000418.) However, the counts are total counts, not per utility.

On April 29, 2013, the Delano City Council formally adopted Resolution 2013-16 for the utility rate increases effective July 1, 2013 (AR000414, AR000415-000420; Resolution 2013-16, AR000421-000426). The resolution included a statement that the City had not received written protests from a majority of parcel owners or tenants on the rate increases (AR000422).

A July 15, 2013, City of Delano Staff Report re: Results of Proposition 218 Election for increases in water, sewer, refuse, and street sweeping rates (AR000432-000433) indicates that 9,284 parcels, based on the Kern County Tax Assessor's data list as of April 15, 2013, were determined eligible "for a vote". This Report was presented at the July 15, 2013, City Council Meeting. The July 15, 2013, Staff Report also states that the City relied on its April 15, 2013, records for the "identity of 'rate-payer[s] of record' " to determine who could submit a written protest and that it was unable "to determine who was married to or a member of the household of any rate-payer of record".

In summary, the July 15, 2013, Staff Report (AR000432-AR000433) stated:

- ◆ 9,284 parcels were eligible "to vote"
- ◆ 4,643 valid protests were needed to defeat the increase
- ◆ 5,514 protests were received
- ◆ 4,048 protests were determined to be valid
- ◆ on recount, 4,133 protests were determined to be valid

A protest was considered to be invalid if:

- ◆ the submitting person was not listed on the Kern County Tax Assessor data list or the City account holder list
- ◆ The submitting person was not listed as the rate payer of record on the City's account holder list
- ◆ protest was submitted for an address not on the County data list or the City's account holder list
- ◆ the protest did not list an address
- ◆ the protest was not signed
- ◆ the protest contained a signature that did not match the name of a qualified person
- ◆ the protest contained a signature that did not match the name of the submitting person
- ◆ the protest was a duplicate

The ***Kern County Tax Assessor's List*** (AR000627-000787) is a "summary" List that contains 9,068 entries which are not organized in any identifiable manner. The actual list is at the January 16, 2015, filed Declaration of Rosa Lara Rios, Exhibit B-3, however, it also is not organized in any identifiable manner, is on 11" x 24" sized paper and consists of ninety-seven 3mm size rows on each page.

The ***Delano City Account Holder List*** (AR000459-000626) is a "summary" List that contains 8,852 entries which are not organized in any identifiable manner nor do any of the accounts identify the utilities that apply to each entry. The actual list is at the January 16, 2015, filed Declaration of Rosa Lara Rios, Exhibit B-4. It contains 8,848 entries which are not organized in any identifiable manner nor do any of the accounts identify the utilities that apply to each entry.

1st cause of action: The Agency's Notice Failed to Include Information Required by the California Constitution (Art. XIII D § 6(a)(1)) as it did not state the fees/charges on each parcel or provide information from which a property owner could calculate the amount of his/her utility rate increase.

Pursuant to the pertinent portion of Cal.Const. Art. XIID, § 6(a)(1):

"The agency shall provide written notice by mail of the proposed fee/charge to the record owner of each parcel, the amount of the fee/charge proposed to be imposed, the basis upon which the proposed fee/charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge."

The March 1, 2013, Notice (AR000154-000157), under "Why are rate increases needed" states:

"A financial rate study conducted by an independent consultant has demonstrated that the City's existing rates do not fully recover costs associated with operation, maintenance, and capital projects of each of the four utilities. As a result, the City has been drawing on operating reserves or borrowing from other revenue sources to fund utility expenses.

The proposed rates were calculated based on historical usage patterns and on projections of service costs in order to ensure that each customer is charged only for the cost of serving that customer. There are two types of rates, 'Fixed Charges', which are charged on an equal basis to each customer, and 'Commodity Charges' which are based on metered service usage. In general each Fixed Charge recovers fixed costs of providing a service while the Commodity Charge recovers the variable costs of providing the service."

"For additional information on the proposed utility rates and the methodology used to derive the rates, please refer to the 2012 Utility Rate Study on file with the City Clerk, Delano City Hall, 1015 11th Street, Delano, CA and Public Works Department, Delano Corporation Yard, 725 S. Lexington Avenue, Delano CA 93215."

The March 2, 2013, Notice includes, under the "Impact on your bill" section, an explanation of fixed sewer and refuse increases and gives information of what would be the increase for a single family using an average water consumption (18 thousand gallons of water per month) and also includes graphs which indicate the amount of charge on each of the increase anniversary dates (July 1st from 2013 - 2018) between the different types of property owners for the different services (where applicable) - residential, commercial, non-residential, industrial, government and where applicable between metered and unmetered service locations. From this information, an impacted property owner or rate payer could calculate the amount that their bill for the utility services would increase over the next five years as to his or her parcel. Petitioner provides no authority that the Notice had to contain the specific fee imposed on each specific parcel in the Notice sent to all property owners.

Based on the March 1, 2013, Notice, City complied with Cal.Const. Art. XIII D, § 6(a)(1)'s requirement of notifying the record owner of each parcel impacted by the increased fees the amount of the increase and the basis on which the increased fee was calculated. The 1st Amended Petition's 1st cause of action is denied.

2nd cause of action: The Agency Imposed Inappropriate Fees in Violation of the California Constitution (Art. XIII D, § 6(c), (b)(5)) by including street sweeping and public fire suppression fees as part of the water rates which are required to be separately approved by a majority of the property owners and City did not submit these fees to the property owners.

Street Sweeping Service Fees. The Petition with regards to street sweeping service rate increases is moot given as the City's February 3, 2014, Resolution No. 2014-16 (AR000453--000458), which amended Resolution No. 2013-16, by rescinding the increased fees for street sweeping services. Colony Cove Properties, LLC v. City of Carson (2010) 187 Cal.App.4th 1487, 1509. Pursuant to Resolution No. 2014-16, the street sweeping service rate increase charges had never been collected.

Petitioner asserts that the matter is not moot as City could "reinstate the fee at any time". Petitioner fails to indicate how City could "reinstate" the fee without complying with Proposition 218 to do so. Petitioner has not provided any evidence that the street sweeping service rate increase has been "reinstated" or that City has attempted to "reinstate" the street sweeping service charge increase. Therefore, Petitioner's street sweeping service charge argument is moot.

The only issue remaining under this cause of action is Petitioner's claims regarding public fire suppression fees.

Fire Suppression Fees. Pursuant to the pertinent portion of Cal.Const. Art. XIID, § 6(b)(5) & (c):

"(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements: [¶] (5) **No fee or charge may be imposed for general governmental services including, but not limited to ... fire...services, where the service is available to the public at large in substantially the same manner as it is to property owners.** Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article."

"(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area." * * *

Petitioner claims that City improperly included a fire suppression fee in the water rate increases, citing to AR 000200. AR000200 is page 20 of Willdan Financial Services March 1, 2013, City of Delano Water Rate Study draft report ("Water Rate Study draft report"), which consists of 26 pages (AR000178-000206). Petitioner makes no other argument nor offers any other reference to evidence regarding the fire suppression fee, including any argument or evidence as to what Petitioner claims is/defines the purported "fire suppression fee".

City claims that reference to "public fire protection costs" in the Water Rate Study draft report relates to maintenance of water pressure during periods of "unusual 'peak' demands" such as during use of the utility for fire and in preventing contamination due to back flow. Dowling Declaration, ¶ 3 (filed January 20, 2015); Fisher Declaration, ¶ 4 (filed January 20, 2015). As the fees have to do with water pressure in the system and not fire service fees, City asserts the "fire protection" fees in the water rates are not fee subjected to Prop. 218 process.

The March 1, 2013, Notice does not contain any reference to any "fire suppression" fee or any "fire protection" fee. The Notice states it "describes proposed changes to the City's utility rates", which is defined as "water, sewer, refuse and street sweeping rates". The Notice refers the recipient to the "2012 Utility Rate Study" on file with the City Clerk for additional information. Presumably this means the "2012 Utility Rate Studies for Water, Sewer, Refuse and Street Sweeping" which is at AR000177-000258 and includes the Water Rate Study draft report.

The Water Rate Study draft report under the section entitled "Fixed Charge" on page 20 (AR000200) states:

"There are two components to the proposed fixed charge: Customer Account costs; Public Fire Protection costs and Meter and Services. These costs are distributed to each account evenly, as each account benefits equally from those expenditure functions."

Following these sentences is a chart "Figure 3-1: Total Charge per Account which includes a line for "total Public Fire Protection Cost" under the line for "Customer Accounts Cost", both of which show the proposed annual increases for FYE 2014 through FYE 2018. The chart then shows total Customer Account and Public Fire Protection Costs over the same periods, then the number of accounts, annual charge for Customer Account and Public Fire Protection Costs, and ending the chart with a line entitled "Monthly Charge per Account" for the FYE 2014 through FYE 2018. There is nothing on this page that explains what "Public Fire Protection costs" means or encompasses.

Before AR000200, "Fire Protection" appears on "Figure 2-6: Distribution of Expenditures by Function" on AR000195-000196 as the title of the far right hand column, which indicates it is 0.1% of the total allocation of water expenses. The only figure which appears in this column in on AR000196 under the section "Water Capital Outlay" and then "Fire Hydrants". It also appears in "Figure 2-7: Distribution of Annual Expenditures by Function" (AR000197). There is no explanation in the Water Rate Study draft report that as to what "Fire Protection" or "Public Fire Protection" refers to or means. There is nothing on these pages that explains what "Public Fire Protection" means or encompasses or what the figure connected to "Fire Hydrants" under "Water Capital Outlay" means or encompasses.

Pursuant to the American Water Works Association, Principles of Water Rates, Fees and Charges, Manual of Water Supply Practices, 6th Edition (2012) ("AWWA Manual"), Chapter IV.8, p. 141 (Ex. A to the Declaration of Chaka C. Okadigbo (filed December 31, 2014)):

"Fire protection service differs from other services provided by the utility. Essentially, this is a standby service that the utility makes available on demand. Although most fire hydrants and sprinkler connections are rarely used, **the utility must be ready to provide adequate water quantities and pressures to meet fire-fighting needs at all times throughout the distribution system.**" [Emphasis added.]

The AWWA Manual recognized that "the most widely used and accepted" historical approach used to allocate costs for "fire protection" was to allocate "costs proportionately to system design and usage between general water service and fire service" which "recognizes that the dual functions of water systems, to provide basic water service and to provide a readiness-to-serve capacity for fire protection, are equally important." AWWA Manual, Chapter IV.8, p. 144 (Ex. A to the Declaration of Chaka C. Okadigbo (filed December 31, 2014)).

Further, the AWWA Manual states:

Public fire protection service is provided to all customers on a community-wide basis through fire hydrants located throughout the water system. [¶] Usually, the fire hydrants are owned by the utility, located on public rights-of-way, and available for use primarily by fire departments (or other authorized parties) for the purpose of extinguishing fires. Hydrants may also be used for system purposes, such as flushing or testing. Even though the hydrants are not directly controlled by the retail water users, the standby capacity to provide needed water is clearly intended for the use of the utility's retail users.

AWWA Manual, Chapter IV.8, p. 145 (Ex. A to the Declaration of Chaka C. Okadigbo (filed December 31, 2014)).

Based on the AWWA Manual, "fire protection services" does not relate to general maintenance of water pressure in the entire water utility system for the customers benefit, it relates to the ensuring there is sufficient water at sufficient pressure for fire suppression services when needed.

The Water Rate Study draft report references, at AR000183, the AWWA Manual as establishing "guiding principals" for water rates "to ensure there is a consistent global approach that is employed by all utilities in the development of their rates" and that "[t]hese guidelines, along with the City's objectives, have been utilized within this study as a framework to help develop utility rates that are cost-based and equitable."

As the Water Rate Study draft report does not define "fire protection" but utilizes the AWWA Manual as a "framework", reference to "fire protection" in relation to water rates as used in the Water Rate Study draft report relates to ensuring that the water utility system is capable of providing sufficient water and water pressure for fire services. Any fee included in City's water rate increase that is for "fire protection" is a fee for fire services that are available to the public at large in the same manner as it is to property owners - so is a general government service that is not a proper fee under Proposition 218.

City fails to establish that the "fire protection" fees are not fees and/or charges prohibited by Proposition 218 for general government services for fire services. Therefore, to the extent that the water rates included any fee for "fire protection" or "fire suppression services", it was an improper fee under Proposition 218 and City was in violation of Cal. Const., Art. XIII D, § 6(b)(5). The 1st Amended Petition as to the "fire protection" fee is granted.

3rd cause of action: The Agency Assessed Fees for Inappropriate Costs in Violation of the California Constitution (Art. XIII D § 2(b) & GC § 53750(b)) by including capital project costs in the utility rate increase. Petitioner asserts the capital project costs are required to be funded through assessments on the specifically affected properties, which is a separate procedure from Proposition 218's procedures. Petitioner also asserts that City violated Proposition 218 as the services for future capital projects were not immediately available to the property owners in question.

City contends collection of capital improvement through Proposition 218 fees are proper, citing to Cal. Const., art. XIID, § 2(b), (e) & (i) and Howard Jarvis Taxpayers Association vs. City of Roseville (2002) 97 Cal.App.4th 637, 647-648 (cost of providing services include capital expenditures); *et al.*

Capital costs of improvements to provide additional services, including improvements and/or services that are not immediately available to the property owner, are properly imposed through Proposition 218 fees/charges. See Capistrano Taxpayers Association, Inc. vs. City of San Juan Capistrano (2015) 235 Cal.App.4th 1493, 1497; Paland vs. Brooktrails TP Community Services Dist. Bd. of Directors (2009) 1798 Cal.App. 4th 1358, 1371.

Pursuant to the Administrative Record, the water treatment system (Arsenic Mitigation Project) and the Water Meter Project were mandated projects (AR000041 [March 19, 2012, City of Delano Staff Report] and AR000148 [November 19, 2012 City of Delano Staff Report]). As they were mandated projects, projects that the State required City to implement to the utility generally, the projects did not just benefit specific impacted parcel or user but benefitted all users of the water utility.

As noted by Capistrano Taxpayers at p. 1502, and contrary to Petitioner's assertion that the Arsenic Mitigation Project conferred a special benefit on parcels receiving drinking water, GC § 53750(m) "shows water to be part of a holistic distribution system that does not distinguish between potable and non-potable water: " "Water" means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source[]' ", that "providing each kind of water is providing the *same* service" and that "since water service is already immediately available to all customers of City Water, there is no contravention of subdivision (b)(4) in including charges to construct and provide [treated] water to some customers."

The expansion of waste water treatment facility was also done "to meet state treatment requirements, but has also [gave] the city the ability to accept new development. 74% of the plant expansion is eligible for sewer impact fees (new development), and as long as the city experienced growth, the sewer fund should only pay 26% of the loan debt service." (AR000042 [March 19, 2012, City of Delano Staff Report] and AR000149 [November 19, 2012 City of Delano Staff Report]).

Based on this language, while the expansion of the waste water treatment facility gave City the ability to collect "sewer impact fees" for any new development, which it anticipated could cover up to 74% of the costs of the project. There is no support that the project was done for the purpose of accommodating new development or that current customers do not "use" the entire expanded facility or do not benefit from the expansion of the facility. Whether or not there is new development, the facility would be used for all current customers.

The Staff Report does not state that "26% of the increased capacity will benefit existing accounts" as Petitioner claims. It states that 74% of the facility was "eligible" for "sewer impact fees" from new development and if that occurred, then the sewer fund would only have to pay the remaining 26%. There is nothing to support that the division of the debt between the sewer fund and what City hoped to recoup from new development equates to current customers' percentage of use of the expanded facility.

None of these projects imposed a "special benefit", as defined by Cal.Const., art. XIID § 2(i), on any specific properties as there is no "particular and distinct benefit over and above general benefits" from any of these projects on any specific parcel of real property. Each property is receiving the general state mandated benefits of the utility's improvement - clean available safe drinking water efficiently delivered and an effective sewer system that meets state requirements.

Based on the foregoing, City properly complied with Proposition 218 in including capital costs for water and wastewater treatment in the fees. The 1st Amended Petition as to the 3rd cause of action is denied.

4th cause of action: The Agency Inappropriately Rejected Valid Protests in Violation of the California Government Code and California Constitution (GC § 53755(b), Art. XIII D § 6(a)(2)). Petitioner asserts that City misinformed property owners and tenants of the applicable law as City did not inform them that tenants of impacted parcels may submit a valid protest.

Petitioner also asserts that City's failure to count protests filed by tenants of impacted parcels, if the name on the protest did not exactly match the name of the ratepayer on the Delano City Account Holder list and filed by owners and/or ratepayers of parcels that exist but which were omitted from the Kern County Tax Assessor's List violated the Government Code and the California Constitution, and reflects the City's bad faith.

As to Petitioner's first argument, the March 1, 2013, Notice, properly notified the property owner and/or utility customer that they could submit a written protest of the proposed utility rate increases and that the increases would not be adopted if a majority of the parcels or service locations served by the utilities had been received prior to the end of the April 15, 2013, hearing. Based on the foregoing, Petitioner's first argument is without merit or support as City properly informed the property owners and tenants of the applicable law. The Petition as to this first argument is denied.

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As to Petitioner's second argument, pursuant to Proposition 218 (Cal. Const. Art. XIII D, § 6(a)(1)):

"At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge."

The July 15, 2013, City Staff Report (AR000432-AR000433) stated:

- ◆ 9,284 parcels were eligible "to vote"
- ◆ 4,643 valid protests were needed to defeat the increase
- ◆ 5,514 protests were received
- ◆ 4,048 protests were determined to be valid
- ◆ on recount, 4,133 protests were determined to be valid

Pursuant to the July 15, 2013, City Staff Report, a protest was considered invalid if:

- ◆ the submitting person was not listed on the Kern County Tax Assessor data list or the City account holder list
- ◆ The submitting person was not listed as the rate payer of record on the City's account holder list
- ◆ protest was submitted for an address not on the County data list or the City's account holder list
- ◆ the protest did not list an address
- ◆ the protest was not signed
- ◆ the protest contained a signature that did not match the name of a qualified person
- ◆ the protest contained a signature that did not match the name of the submitting person
- ◆ the protest was a duplicate

The City used the Kern County Tax Assessor's List (AR000627-000787) and the Delano City Account Holder List (AR000459-000626) to determine who were the property owners (AR000432) and who were the tenants directly responsible for payment of utilities to validate the submitted written protests (AR000432). City asserts that based on the above criteria, it properly rejected certain written protests.

Cal. Const. Art. XIII D, § 6(a)(1) requires the notice be sent to "the record owner of each identified parcel on which the fee or charge is proposed for imposition". Per GC § 53750(j), a "record owner" is "the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll". Therefore, City's reliance on the Kern County Tax Assessor's List to determine if a protest was submitted by a record owner of a particular parcel and/or address was proper.

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Per Cal. Const., art. 13D, § 2(g), a tenant is one who is directly responsible for payment of a fee, in this case the payment of utility charges/fees ("tenant"). Therefore, City's reliance on the Delano City Account Holder List to determine if a protest was submitted by a tenant was proper.

There is no dispute that a tenant who is directly responsible for payment of a utility fee may submit a protest to the proposed utility rate increase (Cal. Const., art. 13D, § 2(g)). However, only one protest per parcel, by either a tenant or the record property owner, is deemed valid. (GC § 53755(b)). Therefore, if there are more than one tenant (more than one person responsible for the utility fees) living on the parcel, all tenants were entitled to submit a written protest against the proposed utility rate increase but only one protest for that particular parcel would be deemed valid and counted against the proposed utility rate increase. The same is true for record property owners - all record property owners were entitled to submit a written protest against the proposed utility rate increase but only one protest for that particular parcel would be deemed valid and counted against the proposed utility rate increase. If all tenants and all record property owners for a particular parcel each submitted a written protest, only one protest for that particular parcel would be deemed valid and counted against the proposed utility rate increase.

City states that the parcels and utility accounts it identified for which protests could be submitted were the 9,284 parcels on the Kern County Tax Assessor's List and the 9,068 accounts on the Delano City Account Holder List. However, Petitioner asserts that it determined 8,355 "discrete and identifiable parcels" were on the Kern County Tax Assessor's List (Bromstrom Declaration, ¶ 4, filed December 1, 2014) and 8,704 "discrete and identifiable parcels" were on the Delano City Account Holder List (Bromstrom Declaration, ¶ 3, filed December 1, 2014). That Petitioner deemed some parcels as not being "discrete and identifiable" does not mean they are not valid entries on either list or cannot be relied on by City in determining whether a submitted written protest is valid and counted against the proposed utility rate increases.

While City could have relied just on the parcels identified in the Kern County Tax Assessor's List for the final number of the parcels that were eligible to submit a written protest, that number would actually increase to include addresses that appeared on the Delano City Account Holder List but were not listed on the Kern County Tax Assessor's List since the City stated it would count a written protest as valid if it had an address that was on the Kern County Tax Assessor's List or the Delano City Account Holder List and the record owner or an identifiable tenant signed the protest. So the actual number of identified parcels are those which are contained on both lists, not counting duplicates. Petitioner's position that the number of identified parcels is either 8,355 (from the Kern County Tax Assessor's List) or 8,704 (from the Delano City Account Holder List) is unsupported since City stated it would count addresses from both lists.

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Based on the foregoing, City's reliance on the Kern County Tax Assessor's List to identify the number of eligible parcels based on the fact it contained the most identifiable parcels in the City was proper. The Court accepts that there were 9,284 parcels identified on the Kern County Tax Assessor's List that were eligible "to vote", which means that City needed to receive 4,643 valid written protests to defeat the increase.

City initially validated 4,048 protests, but increased the number to 4,133 on recount. (July 15, 2013, City of Delano Staff Report, AR000432-AR000433). Petitioner's claim that City "now accepts 4,160 protests as valid" is disingenuous and mischaracterizes City's Opposition argument which posed a hypothetical argument that *if* Petitioner's arguments were indulged, an additional 27 written protests could be added to the 4,133 protests that City recognized as being valid, but it still would not equal enough protests to defeat the utility rate increases..

After an extensive review comparing the 608 protests that Petitioner asserts were improperly rejected (Bromstrom Declaration, Exs. 2-8, filed December 1, 2014; City's Response to Court Order for an Index Relating to each Protest Form at Issue to the Applicable Page and Line number for Exhibits B-3 and B-4, filed December 18, 2015; and Petitioner's Claims of Error in Response to Respondent's Index Relating Each Protest Form at Issue to the Applicable Page and Line Number for Exhibits B-3 and B-4, filed January 8, 2016) against the Kern County Tax Assessor's List and the Delano City Account Holder Lists (Exs. 3 & 4 to the Declaration of Rosa Lara Rios, Volume 2 of 2, filed January 16, 2015), the Court finds that 542 of those written protests were properly rejected and 66 were not properly rejected (see this endnote for a chart identifying the 66 protests that were not properly rejected)¹.

The Court agrees that City properly denied protests

- where the person submitting the protest was not listed on either the Kern County Tax Assessor's List or the Delano City Account Holder List. Each protest had to be from either the record owner, whose name is on the Kern County Tax Assessor's List, or the tenant directly responsible for payment of the fee, who would be the person listed on the Delano City Account Holder List. If the person submitting the protest was not a record owner or a tenant, the protest was properly denied.
- where the protest was submitted for an address not on the Kern County Tax Assessor's List or the Delano City Account Holder List. If the address is not on either list, City has no basis to determine it was an identifiable parcel.
- where the protest did not list an address (or a parcel number).
- where the protest was not signed.
- where the protest contained a signature that did not match the name of the record owner, or the tenant directly responsible for payment of the fee.
- where the protest was a duplicate for the address for which the protest was listed (*i.e.*, more than one protest was received for a single address).

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As a protest must be signed by either the record owner or the tenant directly responsible for payment of the fee, Petitioner's claim that someone other than the record owner or the tenant (either because they are family members living at the property or the record owner is deceased) is without merit or support as they are not the identifiable record owner or tenant.

Petitioner's claim that someone with a "similar sounding name" should have been counted is also without merit or support as there is no way to verify that the person is the identifiable record owner or tenant.

Petitioner's claim that someone on either list identified under a specific last name but submitted a protest with a different last name should have been counted is also without merit or support as there is no way to verify that the person is the identifiable record owner or tenant.

Petitioner's claim that the City improperly rejected a protest because the lists identified a business and that a person submitted the protest is partially without merit where the person submitting the protest is not identified on the protest in any manner indicating that they have authority to act for or is in any way connected to the business.

Petitioner's claim that someone with the same last name as the record owner or tenant should have been counted is without merit since having the same last name does not identify the person as the record owner or tenant.

Adding the 66 improperly rejected protests to the 4,133 valid protest equals 4,199 valid protests which is still short of the 4,643 valid protests needed to defeat the increase. As City did not receive valid protests from a majority of owners of the identified parcels, the utility rate increases were properly imposed. Petitioner's second argument under the 4th cause of action is denied.

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1.

Ex.	PROPERLY REJECTED PROTESTS	IMPROPERLY REJECTED PROTESTS	AR # OF IMPROPERLY REJECTED PROTESTS
2	10	33	5639, 5772, 5774, 5807, 6045 (two different protested addresses so counts as two), 6069, 6088, 6090, 6093, 6095, 6097, 6102, 6127, 6134, 6135, 6136, 6142, 6184, 6185, 6188, 6197, 6199, 6200, 6204, 6392, 6398, 6399, 6400 (two different protested addresses so counts as two), 6441, 6442, 6491
3	8	9	5481, 5558, 5785, 5835, 5841, 5976, 6025, 6067, 6106
4	50	0	n/a
5a	89	2	5689, 5729
5b	38	2	6392, 5780
5c	85	2	5750, 5760
5d	0	0	n/a
6	41	8	5442, 5592, 5748, 5826, 5827, 6045, 6120, 6191
7	10	3	6174, 6175, 6196
8	211	7	5547, 5718, 5765, 6084, 6096, 6081, 5780
TOTAL	542	66	