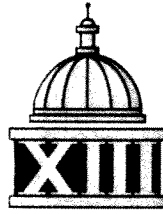
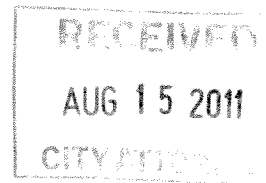


HOWARD JARVIS
TAXPAYERS
ASSOCIATION



HOWARD JARVIS, Founder (1903-1986)
ESTELLE JARVIS, Honorary Chairwoman
JON COUPAL, President
TREVOR GRIMM, General Counsel
TIMOTHY BITTLE, Director of Legal Affairs



August 11, 2011

Presiding Justice Dennis M. Perluss, and
Associate Justices Fred Woods and Laurie Zelon
Court of Appeal, Second District, Division 7
300 S. Spring Street, 2nd Floor, North Tower
Los Angeles, CA 90013

Re: **REQUEST FOR PUBLICATION - City of Palmdale v. Palmdale Water Dist., B224869**

Your Honors,

Howard Jarvis Taxpayers Association (HJTA) requests that the decision in *City of Palmdale v. Palmdale Water Dist.* (No. B224869), decided August 9, 2011, be certified for publication.

HJTA, the author of Proposition 218, fully concurs with this Court's interpretation of Proposition 218 as applied to a question of first impression.

The question presented was whether a new water rate structure adopted by the Palmdale Water District violated Proposition 218. The new rate structure contained an arbitrarily inflated fixed rate that was unrelated to actual fixed costs, and arbitrarily tiered consumption rates that were unrelated to actual consumption costs.

This Court correctly ruled that article XIII D, added to the California Constitution by Proposition 218, requires fees for property-related services such as water service to be based on the agency's actual costs, and charged in proportion to the costs attributable to each parcel's use.

Because the burden of proof was on the District to defend its rates, and the District could not justify the heavily weighted fixed rate or the inequality between tiers, this Court invalidated the structure, requiring the District to revise its rates.

To HJTA's knowledge, this is the first case to apply Proposition 218 to tiered water rates, and it is the first case to explain that "Article X, section 2 [declaring water conservation to be in the interest of the people] is not at odds with Article XIII D so long as, for example, conservation is attained in a manner that 'shall not exceed the proportional cost of the service attributable to the parcel.'"

Rule 8.1105(c) authorizes the publication of a decision when it "applies an existing rule to a set of facts significantly different from those stated in published opinions," as this decision does by applying Proposition 218's cost-of-service and proportionality requirements to tiered water rates.

Court of Appeal, 2d District, Div. 7
August 11, 2011
Page 2 of 2

The rule further authorizes publication when a decision “[r]esolves ... an apparent conflict in the law,” as this decision does by explaining that article X, section 2 can be harmonized with article XIII D, section 6.

Finally, the rule authorizes publication of opinions involving “a legal issue of continuing public interest.” HJTA can assure this Court, based on the steady volume of letters, calls, and emails it receives from ratepayers, public officials, and news reporters regarding utility rate increases, that utility rate fairness and affordability is very much an issue of continuing public interest.

For these reasons, HJTA respectfully asks the Court to certify for publication its August 9, 2011, decision in *City of Palmdale v. Palmdale Water Dist.*, No. B224869.

Sincerely,



Timothy A. Bittle
Director of Legal Affairs

PROOF OF SERVICE (Court of Appeal) <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Personal Service	FOR COURT USE ONLY
Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form.	
Case Name: City of Palmdale v. Palmdale Water District Court of Appeal Case Number: B224869 Superior Court Case Number: BC413907	

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence business address is (*specify*):
921 11th Street, Suite 1201 Sacramento, CA 95814
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*): Request for Publication
 - a. **Mail.** I mailed a copy of the document identified above as follows:
 - (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**
 - (a) **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
 - (b) **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
 - (2) Date mailed: August 11, 2011
 - (3) The envelope was or envelopes were addressed as follows:
 - (a) Person served:
 - (i) Name: Gregory M. Kunert
 - (ii) Address:
355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
 - (b) Person served:
 - (i) Name: William Matthew Ditzhazy
 - (ii) Address:
38300 Sierra Highway
Palmdale, CA 93550
 - (c) Person served:
 - (i) Name: Judy K. Skousen
 - (ii) Address:
38300 Sierra Highway
Palmdale, CA 93550
 - Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).
 - (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (*city and state*):

CASE NAME: City of Palmdale v. Palmdale Water District	CASE NUMBER: B224869
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3. b. **Personal delivery.** I personally delivered a copy of the document identified above as follows:

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(b) Address where delivered:

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(d) Time delivered:

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(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

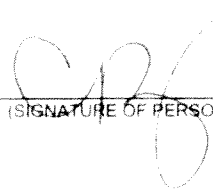
Names and addresses of additional persons served and delivery dates and times are listed on the attached page (*write "APP-009, Item 3b" at the top of the page*).

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

Date: August 11, 2011

Cindy Cathleen Perez

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

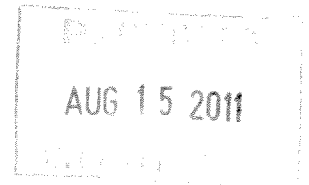
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(SIGNATURE OF PERSON COMPLETING THIS FORM)

APP-009, ITEM 3a

ATTORNEY	WHERE SERVED
Timothy J. Gosney	Lagerlof, Senecal, Gosney & Kruse LLP 301 North Lake Avenue, 10 th Floor Pasadena, CA 91101
James D. Ciampa	Lagerlof, Senecal, Gosney & Kruse LLP 301 North Lake Avenue, 10 th Floor Pasadena, CA 91101
Francis J. Santo	Lagerlof, Senecal, Gosney & Kruse LLP 301 North Lake Avenue, 10 th Floor Pasadena, CA 91101
Bradley T. Weeks	Charlton Weeks LLP 1007 West Avenue M-14, Suite A Palmdale, CA 93551
Erik Gunderson	Charlton Weeks LLP 1007 West Avenue M-14, Suite A Palmdale, CA 93551
Daniel S. Hentschke	San Diego Water Authority 4677 Overland Avenue San Diego, CA 92123-1233
Whitney G. McDonald	Richards, Watson, & Gershon 355 S. Grand Avenue, 40 th Floor Los Angeles, CA 90071

JACK COHEN
Attorney at Law
Post Office Box 6273
Beverly Hills, California 90212



August 13, 2011

The Honorable Presiding Justice Dennis Perluss and
Associate Justices Fred Woods and Laurie Zelon
Second District Court of Appeal, Division 7
300 S. Spring Street, 2nd Floor, North Tower
Los Angeles, CA 90013

Re: *City of Palmdale v. Palmdale Water Dist.* (Case No. B224869; Division 7)

**REQUEST FOR PUBLICATION OF UNPUBLISHED OPINION (C.R.C.
8.1120(a))**

Dear Presiding Justice Perluss and Honorable Associate Justices:

Pursuant to Rule 8.1120(a) of the California Rules of Court, it is requested by this letter that the unpublished opinion in *City of Palmdale v. Palmdale Water Dist.* (Case No. B224869, hereafter "*Palmdale Water*") filed on August 9, 2011, be ordered **published**.

I am one of the attorneys who drafted Proposition 218, an initiative constitutional amendment known as the "Right to Vote on Taxes Act" that passed in 1996 and added Articles XIII C and XIII D to the California Constitution. The *Palmdale Water* case arises in connection with the validity under Proposition 218 of a new water rate structure adopted by the Palmdale Water District. In particular, at issue is compliance with the various constitutional requirements for property-related fees under Proposition 218 (Cal. Const., art. XIII D, § 6).

The opinion in *Palmdale Water* meets one or more of the standards for publication certification under Rule 8.1105(c) of the California Rules of Court in that it applies an existing rule of law to a set of facts significantly different from those stated in published opinions (Cal. Rules of Court, rule 8.1105(c)(2)) and/or it involves a legal issue of continuing public interest (Cal. Rules of Court, rule 8.1105(c)(6)).

The *Palmdale Water* case involves a correct application of the Supreme Court decision in *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 217 [charges for water delivery incurred after a water connection is made are charges for a property-related service, including *consumption*-based charges] ("*Bighorn*") in the significantly different factual context of a *tiered* water rate structure. Other than *Palmdale Water*, there are *no* known appellate cases

applying a *tiered* water rate structure to the requirements of Proposition 218, especially following the decision in *Bighorn*.

In 1997, the Attorney General opined that a tiered water rate structure did not violate the property-related fee provisions of Proposition 218. (80 Ops.Cal.Atty.Gen. 183 (1997).) However, the reasoning was based on the conclusion that such water rates were *not* property-related fees under article XIII D of the California Constitution. (*Id.* at p. 186.) Such reasoning is no longer valid inasmuch as the Supreme Court subsequently held in *Bighorn* that such consumption-based water rates are property-related fees under Proposition 218. (*Bighorn, supra*, 39 Cal.4th at p. 217.) This court's opinion in *Palmdale Water* properly applied *Bighorn* in concluding that the subject water rate structure is a property-related fee under Proposition 218.¹ (Opn. at p. 10.)

Also in 80 Ops.Cal.Atty.Gen. 183 (1997), the Attorney General did conclude in a footnote with little analysis that even if tiered water rates were property-related fees under Proposition 218, they would not violate the constitutional requirements under article XIII D. (*Id.* at p. 186, fn. 1.) However, the reasoning relied on a deferential standard which no longer applies under article XIII D as a result of the independent review standard adopted by the Supreme Court in *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 448-449 ("*Silicon Valley*"). In addition, the Attorney General opinion completely ignored the burden of demonstration provision for property-related fees which places the burden on the *local government* to demonstrate compliance with the requirements of article XIII D. (Cal. Const., art. XIII D, § 6, subd. (b)(5).) This court's opinion in *Palmdale Water* properly applied the independent review standard required by *Silicon Valley* in the context of a *property-related fee* (Opn. at p. 2) and properly applied the burden of demonstration provision for property-related fees under section 6(b)(5) of article XIII D (Opn. at pp. 13-14).

An appellate court has concluded that a tiered water rate structure is not a special tax under Proposition 13 (Section 4 of article XIII A of the California Constitution). (*Brydon v. East Bay Mun. Utility Dist.* (1994) 24 Cal.App.4th 178, 190-195 ("*Brydon*").) However, *Brydon* is a pre-Proposition 218 case and sheds no light on the applicability (and validity) of a tiered water rate structure to the property-related fee provisions of Proposition 218 under article XIII D of the California Constitution.

Tiered water rate structures are often adopted in response to requirements under various provisions of law mandating water conservation. (See *Brydon, supra*, 24 Cal.App.4th at pp. 192-193.) Of particular significance in *Palmdale Water* was this court's *harmonization* of the water conservation provisions of section 2 of article X of the California Constitution with the constitutional requirements for property-related fees under section 6 of article XIII D of the

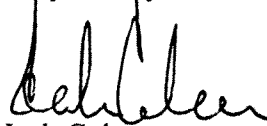
¹ There appears to be a typographical error on page 10 of the opinion. In the first full paragraph there is a reference to "Proposition 18" which should be "Proposition 218."

California Constitution. (Opn. at pp. 12-13.) Other than *Palmdale Water*, there are *no* known appellate cases addressing the legal interaction between these important, and potentially conflicting, constitutional provisions.

Application of a tiered water rate structure to the requirements of Proposition 218 is also a legal issue of continuing public interest. As a result of water shortages throughout the state and water conservation mandates, many local governments in California are adopting tiered water rate structures as a water conservation measure. Local governments need to know the legal parameters in which tiered water rate structures are permissible under the property-related fee provisions of Proposition 218. The *Palmdale Water* case provides guidance regarding those legal parameters. Unless published, additional and unnecessary litigation would result to resolve the tiered water rate structure issues that are addressed and resolved by this court in *Palmdale Water*.

The unpublished opinion in *Palmdale Water* meets one or more of the standards for publication pursuant to Rule 8.1105(c) of the California Rules of Court. Accordingly, the opinion should be ordered **published**.

Respectfully submitted,



Jack Cohen
Attorney at Law

Proof of Service
State of California, County of Los Angeles

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is: Post Office Box 6273, Beverly Hills, CA 90212.

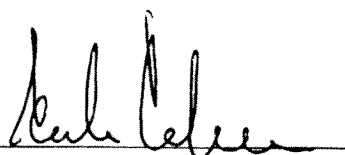
On August 13, 2011, I served the foregoing REQUEST FOR PUBLICATION OF UNPUBLISHED OPINION (C.R.C. 8.1120(a)) by depositing true copies thereof in the United States mail in Beverly Hills (County of Los Angeles), California, enclosed in sealed envelopes with the postage thereon fully prepaid, and addressed as follows:

William Matthew Ditzhazy, Esq.
Judy Kay Skousen, Esq.
Office of the City Attorney
38300 Sierra Highway
Palmdale, CA 93550
*Attorneys for Plaintiff and Appellant
City of Palmdale*

Whitney Grace McDonald, Esq.
Gregory M. Kunert, Esq.
Richards, Watson & Gershon
355 S Grand Avenue, 40th Floor
Los Angeles, CA 90071
*Attorneys for Plaintiff and Appellant
City of Palmdale*

Timothy J. Gosney, Esq.
James Dominic Ciampa, Esq.
Francis Joseph Santo, Esq.
Lagerlof, Senecal, Gosney & Kruse, LLP
301 N. Lake Avenue, 10th Floor
Pasadena, CA 91101
*Attorneys for Defendants and Respondents
Palmdale Water District
Palmdale Water District Public Facilities Corporation*

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 13, 2011, at Beverly Hills, California.



Jack Cohen